Special Workshop No. 26

In Search for a Social Minimum: Human Dignity, Poverty and Human Rights

Convenors: Gottfried Schweiger, Elena Pribytkova

Thursday 11 July, 14.00-18.30, 3.B55; Friday 12 July, 14.00-18.30, 3. B55

This workshop is aimed at discussing a social minimum as a set of human rights guarantees aimed at protecting individuals from poverty and enabling them to lead a dignified life. From theoretical and practical perspectives, the special workshop will analyze the interrelation of dignity, poverty and human rights and, in particular, the role of the concept of human dignity in justifying the social minimum principle and the right to a dignified existence. The concept of dignity is widely used in philosophical and legal theories to criticize the injustice of poverty, to underpin human rights of the poor as well as to develop social and global justice programs. At the same time, there are some valid doubts as to the capacity of contemporary broad and vague interpretations of human dignity to serve as a basis for human rights in general and the human right to a dignified existence in particular. Against this backdrop this workshop is interested in discussing, among others, the following questions:

- How can the concept of human dignity be used to criticize poverty?
- Does poverty always constitute a violation of human dignity and human rights?
- What does a dignity-based protection against poverty entail?
- What is the relation between human dignity and the (human) rights of particular groups (e.g. children, persons with disabilities)?
- Can human dignity sufficiently justify and specify human rights guarantees of a social minimum?
- How should the content and scope of the human right to a dignified existence be defined?
- How a social minimum is determined in international and domestic human rights law?
- To what extent the concept of human dignity is used in contemporary human rights practice, in particular for protecting human rights of the poor in international, regional and national courts and quasi-judicial bodies?

The special workshop will continue discussions initiated in special workshops on the theme of poverty, social justice and human rights organized at the IVR World Congresses in Belo Horizonte (2013), Washington, D.C. (2015), and Lisbon (2017).

Program

Thursday 11 July, 14.00-18.30, 3.B55

14.00-14.05 Introduction

14.05-14.40 Elena Pribytkova: Is Human Dignity a Foundation for a Social Minimum?

14.40-15.20 Jens Peter Brune: Human dignity and Poverty: A Precarious Connection?

15.20-16.00 Claudia Toledo: Existential Minimum and Human Dignity

16.00-16.30 Coffee Break

16.30-17.10 Stefano Civitarese Matteucci, Giorgio Repetto: Can Human Dignity Be Used as a Tool to Assess Welfare-to-Work Policies?

17.10-17.50 Melanie Studer: Human Dignity through Workfare?

17.50-18.30 Stefan Gosepath: A Human Right to Basic Security

Friday 12 July, 14.00-18.30, 3. B55

14.00-14.40 Otto Lehto: Securing a Dignified Minimum Income: Complexity, Radical Uncertainty, and Universal Basic Income

14.40-15.20 Matthew Perry: Embodied Dignity and The Grounds of Human Rights as Categorical Needs

15.20-16.00 Nathalie Schnabl: Too Poor for Justice? The Social dimension of the Rule of Law

16.00-16.30 Coffee Break

16.30-17.10 Hannah Mirjam Adzakpa: How Is a Social Minimum Determined in International Human Rights Law? (Skype presentation)

17.10-17.30 Closing remarks

Abstracts

Is Human Dignity a Foundation for a Social Minimum?

Elena Pribytkova

(*New York University School of Law*)

My paper examines the interrelation between human dignity and a social minimum, which represents a set of territorial and extraterritorial human rights guarantees aimed at protecting persons from extreme poverty; enabling them to lead a decent life; ensuring their involvement in society and access to shared material and intellectual values; and providing an opportunity for their moral and intellectual flourishing. Section I of my paper investigates a definition and the major ideas underlying a decent social minimum. Article 1 of the Universal Declaration of Human Rights (UDHR) proclaims that 'all human beings are born free and equal in dignity and rights'. I develop an argument that three fundamental entitlements of a person to a special moral and legal status, basic equality and membership in humanity, which are embedded in the UDHR and the International Bill of Human Rights, compose a justificatory basis for the human rights guarantees of a decent social minimum. Following the analysis of ways to determine a foundational link between human dignity and human rights, in particular basic socio-economic rights, presented in Section II, Section III addresses the problem of formulating a thin concept of human dignity, which can be accepted by various comprehensive moral, religious and philosophical doctrines. Sections VI and V explore "absolute" and "social" dimensions of the thin concept of human dignity related to freedom from poverty and basic equality, which underpin human rights guarantees of a decent social minimum. I demonstrate that human dignity is incompatible with extreme poverty and inequality characterised by severe socio-economic deprivation, oppression, disempowerment, social exclusion, marginalisation, and stigmatisation of people, and calls for human rights guarantees of freedom from poverty and secure access to a decent standard of living. A decent social minimum cannot, therefore, be confined to guarantees of a mere physical survival of individuals, but implies guarantees that enable their dignified social existence. According to the principle of basic equality, which serves as the social core concept of human dignity, local and global orders should ensure individuals' full-fledged and meaningful participation in all key institutions and practices, including significant decision-making processes, regardless of their economic and social position, place of origin, or citizenship.

Human Dignity and Poverty: A Precarious Connection?

Jens Peter Brune

(*University of Greifswald*)

In my *exploratory* paper, I investigate three currently advocated conceptions of human dignity with the central question being to what extent these conceptions are appropriate as a basis for a critique on the conditions of poverty and deprivation. At the same time, all three approaches assume that there are forms of poverty that do not pose an affront to human dignity – e.g. voluntary asceticism. In particular, it must be clarified in each case how the idea of human dignity is explained, how this conception pertains to the phenomena of poverty and deprivation, and where exactly the critique begins.

(1) *Humiliation approach*: Originally proposed by Avishai Margalit (1996) and particularly well-received in the German-speaking world, the *humiliation approach* determines the idea of human dignity through the phenomenon of humiliation. As not every subjectively perceived humiliation should be regarded as a violation of human dignity, this approach proposes to differentiate between a descriptive-psychological and a normative sense of humiliation. The latter refers to a situation in which the person concerned has "a sound reason" for believing their *self-respect* to be violated. Margalit defines the dignity of a person as the external expression of internal self-respect. Upon closer analysis, this position results in the designation of dignity to any being under three conditions: It must (1) exhibit human-specific features, (2) respect itself, and (3) possess the ability (abilities) to authentically express this self-respect. In order to demonstrate that poverty as such violates the dignity of a person, Margalit and others refer to the fact that poor people can be seen as

being subject to a degrading and sweeping stigmatization. The central question then appears to be: How do we get from the determination of such moral depravity (humiliation) to a duty to combat poverty? Must we not then endeavor to present additional assumptions, e.g. that poverty is *intrinsically* bad?

(2) *Capability-approach:* Within the framework of their developmental-theoretical approaches, Sen and Nussbaum have proposed making "capabilities" the basis of assessment for human misery and well-being. Particularly ambitious in normative terms, Nussbaum's approach links human dignity to the right of everyone to social participation, which creates the possibility of a dignified life. To clarify the meaning of the idea of human dignity, she makes use of her well-known list of "central" human abilities (Nussbaum 2000, 2006, 2011). The duty of all governments is to promote the abilities of their citizens above a threshold value that defines poverty. Without asserting a substantial idea of a good life, however, the success of selecting and precisely determining relevant capabilities is highly debatable. Having since turned her focus towards political liberalism, Nussbaum wishes to remain neutral with respect to various ideas of the good. Yet, how does this help in selecting capabilities relevant to dignity? In addition, she also asks if the loss of a capability entails the loss of human dignity (Nussbaum 2006, 2011). If the idea of human dignity is supposed to be made explicit through human capabilities, the selection of which involves dignity itself, don't we risk being drawn into a circular argument?

(3) *Hedgehog approach:* Dworkin's earlier model of distributive justice envisages, under ideal conditions, an auction of initial resources and a market for insurance policies to *ex ante* protect individuals from unforeseen risks (Dworkin 1981). In his later work (2011), he appears to provide an ethical foundation for this model. While ethical standards may help us to better grasp the idea of a good life, moral standards also indicate how we should behave towards others. Dworkin's project thereby consists in providing an interpretative link between both orientations. At its heart is a concept of human dignity that manifests itself in the *ethical self-relation* of persons through the two principles of self-respect and authenticity. In contrast to the previously mentioned approaches, Dworkin emphasizes the responsibility of the person, who takes their *own* life seriously and aims to make something out of their life. As the lifestyles of others can only be regarded as successful if they predicate personal responsibility, thereby endowing them with human dignity, the life of the poor must always be morally considered under *two* types of factors: Factors that lie in the realm of personal responsibility and those that do not. As only the latter circumstances call for fair compensation and as we must regard all life as important, Dworkin has developed a multi-dimensional index as a framework within one can balance the moral obligation to help others with the ethical claims on one's own lifestyle. Whether the subtle reconciliation between ethical claims on one's own lifestyle and the moral claims of the poor can succeed would crucially depend on how one answers the question: Why should I regard the lives of others as important anyway?

Existential Minimum and Human Dignity

Claudia Toledo

(*Federal University of Juiz de Fora*)

Fundamental rights are human rights established in the positive law of national States (ALEXY). All fundamental rights are subjective public rights, that is, rights held by individuals and opposable to the State. Every fundamental right has a positive and a negative dimension (HOLMES; SUNSTEIN), i.e., demand both the action and abstention of the State. The distinction is what is immediately required of the State for compliance with the right. Fundamental social rights are those that immediately require State actions for their realization, and can be complied with products, services or financial benefits.

The *right to existential minimum* – "mínimo existencial" in Portuguese, "mínimo vital" in Spanish, "Existenzminimum" in German – is a particular fundamental social right: (i) it is usually not

enacted by the legislator, but hermeneutically deduced from positive law by the judicial power and doctrine; (ii) it is the only *definitive right* (established by *rule*) among fundamental rights, which are *prima facie* rights declared in constitutional *principles* (*optimization commands*).

Existential minimum refers to the *essential preconditions* for a *dignified existence*, which legally means:

1) *essential preconditions* – (i) fundamental *social* rights are the fundamental rights that guarantee the *preconditions* to the exercize of other fundamental rights; (ii) not all fundamental social rights compose the existential minimum, but those considerered *indispensable* for an elementary level of human dignity; (iii) not the entire content of these rights compose the existential minimum, but only their essential content, i.e., their *essential core*;

2) *dignified existence* – (i) for human *physical existence* (survival), *food* and *health* are necessary; (ii) for human *dignified existence*, insertion in sociocultural life is indispensable and, therefore, at least basic *education* is required.

Thus, existential minimum can be expressed more thecnically and legally as *the joint of the essential core of the fundamental social rights considered indispensable for the guarantee of an elementary level of human dignity*.

The essential core of the *right to food* can be provided either by products (like in Cuba, a monthly *food ration* – actually the rationed food is very heavily subsidized, but individuals still must pay 10% of its price) or a monthly financial benefit (like in Germany, the so called *Hartz IV*, a benefit that corresponds to the cost of the existential minimum – about 35% of the benefit amount refers to food expenses).

The essential core of the *right to health* is the medical assistance related to the satisfaction of the *first necessity health demands*. These are the demands directly referred to the *maintenance of life*.

The essential core of the *right to education* is usually established by the legislator, either the constitutional legislator like in Brazil (art. 208 of the Federal Constitution/88, basic education from four to seventeen years old) or the ordinary legislator, like in Germany (where states have the most legislative competence in education).

Finally, "an elementary level" of human dignity corresponds to its essential core. Human dignity is one of the most open expressions in Law. Based on both Kantian practical reason (focused on the individual) and communicative reason (focused on the discursive relation of individuals), human dignity can be understood as a *value attributed by society to the human being as an end in itself*.

This proposition implies three aspects of human dignity:

1) it is not an *inherent* human value, but a value (cultural creation) socially attributed to human beings, like every other one;

2) it has an *individual* dimension, i.e., refers to the person individually taken, since it is attributed to it due to its *human nature* (BARROSO). Human nature gives *universality* to human dignity and is the reason why the person must be treated as an *end in itself*;

3) it has a *social* dimension, i.e., refers to the person socially taken, since it is a community value, shared by society according to its civilizational standards (BARROSO). This dimension of human dignity can sometimes even collide with the previous one, insofar as what the individual himself considers his right according to human dignity can be different from what the society considers his right according to human dignity. In the first case, the individual is ontologically taken, while, in the second one, he is taken as a member of the society.

In short, human dignity is the value that orders the treatment of the individual as an end in itself. The essential core of this treatment is the assurance of the existential minimum. In other words, a person is not treated as an end in itself if his right to existential minimum is not complied with. That is why it is a definitive right, i.e., a right whose compliance must be immediately ordered (without a

balancing process) by judicial power, a right that takes precedence over any other fundamental right.

Can Human Dignity Be Used as a Tool to Assess Welfare-to-Work Policies?

Stefano Civitarese Matteucci (*University of Chieti-Pescara*)

Giorgio Repetto (*University of Perugia*)

Whether human dignity is considered from the viewpoint of its use by the courts or as a principle enshrined in many recent Constitutions, one has to acknowledge that it represents nowadays a global overarching value of the discourse on fundamental rights.

In the history of ideas, the connection between dignity and the social is not straightforward, for dignity is often discussed and conceptualized, in a kind of objective fashion, as a requirement of being human (and being treated as such) in a vertical (ie state vs individual) relationship. If dignity is constitutive of humanity – it pertains to the species – it is something universally and unconditionally identifiable irrespective of any specific social context. The poor can be treated with dignity[1] and but can the remnants of a slain enemy (Grotius)[2]. The widespread notion (after Kant) that dignity is closely related to autonomy may be seen as a step forward to the claim that dignity also encompasses what a person needs to be autonomous. Though, one of the best contemporary accounts of why a polity should constitutionalise the principle that individuals have positive rights to adequate minimum income, adequate housing, adequate education, and adequate health care is built on the assumption that "individuals have an equal fundamental interest in having a decent life for which autonomy and well-being are two privileged conditions", in which dignity is barely mentioned (C. Fabre).

Other leading scholars in the field of social rights maintain that the link between dignity and such interests is "too obvious to warrant any discussion" (J. King). Dignity in this case is, however, the normative theory which supports the idea of prioritising those goals which are associated with the human rights discourse but does not say much on how to conceive of social rights. This approach is the one adopted in the Universal Declaration of Human Rights, whose first article announces that all human beings are born free and equal in dignity and rights.

In fact, this 'obviousness' is also its problem. It is commonplace to stress the indeterminacy and ambiguity of the term in a legal context.

On the other hand, the fact that the nature of the 'social minimum'[3] and its justifiability are a matter of constant disagreement is well shown by S. White in his entry in the Stanford Encyclopaedia of Philosophy. Anyhow, in his search for the moral grounds on which a society may put in place a "social minimum policy regime", the answers offered to the question "why a social minimum?" never mention dignity.

However, dignity has undeniably entered the social rights discourse, legal sources and institutions as well, but often just as one of the outcomes deriving from providing for welfare entitlements. According to the ILO General Conference (2001) commenting on article 11 of the International Covenant on Economic, Social and Cultural Rights of 1966, social security can, through national solidarity and fair burden sharing, contribute to human dignity, equity and social justice.[4] Even within the very general frame of the Covenant what to make of dignity can become a challenge. Think, say, of the tension that may arise between dignity associated with the right to work and that

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[1] That is why some critics object to welfarism (for which the net balance between pleasure and pain must be in favour of the first) as advocated by utilitarian thinking by noting that people are capable of adaptive preferences and can be happy even in deprived conditions.

[2] H. Grotius, De Jure Belli ac Pacis (trans. A.C. Campbell, London, 1814), Bk II, chap. 19.

[3] We accept his definition of the 'social minimum' as a the "bundle of resources that a person needs in order to lead a minimally decent life in their society".

[4] ILO, Conclusions concerning Social Security, ILC89-PR16-312-En.Doc (2001), 16.

obtained by means of social security. A widespread idea is that the right to work is fundamental because work brings dignity by allowing personal self-development and that "sense of social worth that comes from an individual's contribution to the economy and society"[5]. This argument, though, could easily play against those views that seek to make the right to the social minimum, in order to enhance someone's dignity, independent from any work-conditionality.

Given this frame, the paper turns to the legal arena to see what the courts make of dignity in the social security sphere. Here as well we find different uses and outcomes. In *Law v. Canada*[6] the Canadian Supreme Court held that the principle of equality had to be interpreted taking into account whether a different treatment negatively affected the dignity of a person. But then this precedent was overruled in *R v. Kapp*[7] on the point that "several difficulties have arisen from the attempt in Law to employ human dignity as a legal test… human dignity is an abstract and subjective notion that … 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".

At the other end of the spectrum, human dignity has been instrumental in the famous South African Constitutional Court's case-law on social rights based on the reasonableness standard of review. In Grootboom, Justice Yacoob stated that "it is fundamental to an evaluation of the reasonableness of state action that account be taken of the inherent dignity of human beings. The Constitution will be worth infinitely less than its paper if the reasonableness of state action concerned with housing is determined without regard to the fundamental constitutional value of human dignity".

As has been noted (McCrudden) dignity provides a convenient language for the adoption of substantive interpretations of human rights guarantees which appear to be highly contingent on local circumstances. By analysing the constitutional litigation on social rights in five European jurisdictions – Germany, France, England, Spain and Italy – we test this finding. This analysis seems to confirm that the value/concept of dignity, on the one hand, is morality-laden and influenced by the prevailing political culture, public ethos and welfare model of each country. On the other hand, we find that dignity interacts differently with social rights adjudication (positively or negatively) depending on the overall constitutional arrangement regarding social rights and on the different ways of conceptualizing citizenship.

German jurisprudence is a case in point. The Federal Constitutional Court (in its Hartz IV ruling of 2010) has used the principle of human dignity, enshrined in Art. 1 of the Basic Law, to find a fundamental right to minimum subsistence. This minimum is not understood as the mere sustenance of biological life, for the court has identified its content as comprising both physical existence and the possibility of social relationships and participation in cultural and political life. Nonetheless, this approach has been criticised for the significant discretion the court left to the legislature in the substantiation of the right to minimum subsistence. From a different point of view, this ruling fuelled several critical remarks as to the "paternalistic" approach of a court stating what a dignified life should be made of.

Our aim regarding this is to see if this case-law may serve as a benchmark to explore whether dignity can be actually used as a principle-tool to assess the above-mentioned relationship between the social minimum and work-conditionality either in an absolute or relative way. Our research question is on what grounds one can keep justifying penalty deductions against benefit receivers which affects the social minimum within the wider meaning advocated by the German constitutional court.[8] A useful empirical tool to help in doing so is the model devised by Chak

[5] B. Saul, D. Kinley, J. Mowbray, The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials, (2014) Oxford University Press, 272.
[6] Law v Canada (Minister of Employment and Immigration) (1999) 1 SCR 497.
[7] R. v. Kapp (2008) 2 SCR 483, 21.
[8] The 'Social Protection and Human Rights' initiative website (http://socialprotection-humanrights.org) raises concerns on conditionality and co-responsibility: "From a human rights perspective, the imposition of conditionalities in social protection programmes needs to be approached with caution because they have the potential to impede the enjoyment of human rights by certain rights holders. Conditional cash transfers (CCTs) are increasingly being implemented in many

Kwan Chan and Graham Bowpitt in their book 'Human Dignity and Welfare Systems' to assess how and to what extent Welfare-to-work as a key current focus of social policy and welfare programmes can (or not) enhance the dignity of unemployed persons.

This would be a more substantial function of dignity as advocated by McCrudden "not in providing an agreed content to human rights but in contributing to particular methods of human rights interpretation and adjudication".

Human Dignity through Workfare?

Melanie Studer

(*University of Basel*)

Switzerland knows a constitutionally granted right to assistance and care and to the financial means required for a decent standard of living for everyone who is in need and unable to provide for themselves (article 12 Cst.). This right to assistance when in need is by the letter of this provision and the Federal Supreme Court's interpretations closely linked to human dignity. In fact, its recognition was based on the notion of human dignity, equality before the law and the right to life. It is therefore said to be sacrosanct and cannot be subject to any restrictions.

While on first sight, this provision seems to be a guarantee for a decent human existence, at a closer look it becomes clear that access to the right is subject to eligibility criteria. Eligible to the benefits are only those persons who have exhausted their means of self-help and who have no other sources of income (principle of subsidiarity). One particular eligibility criteria is to participate in workfare programmes.[9] If the administration orders someone – in need – to participate in such a programme and the person in need refuses to do so, it is said that they are no longer in need and therefore outside the scope of the right to assistance when in need. They could care for themselves by accepting the programme position. In these instances, the person refusing to participate in such a programme is left without any benefits for as long as they could accept work in a workfare programme.

This connection of the right to assistance when in need with eligibility criteria raises theoretical questions on the Swiss judicial conception of human dignity and a decent human existence. Can – and should – dignity based benefits be connected to behavioural duties, which are seen as eligibility criteria to (dignity-based) benefits?

In this paper, I will explore this question by analysing the above-mentioned mechanism in view of the constitutionally granted right to human dignity (Art. 7 Constitution) and the right to an adequate standard of living (Art. 11 ICESCR). This will allow for reflections on the philosophical basis of these norms and show whether human dignity tolerates that eligibility criteria are set to the benefits arising from article 12 Constitution. I will discuss whether workfare programmes are to be seen as a duty of the person in need or whether these programmes are permitting a person to live a life in dignity, as the programmes allow them to show gratitude for the help received and be a part of society. Is reciprocity of benefits a way to deliver benefits and enhance human dignity of the poor at the same time?

I will base this discussion not only on an analysis of national and international literature on the topic but also on an analysis of the use of the concept of human dignity in the case law of the Federal Supreme Court and Cantonal administrative Courts. While there are only a few directly

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countries on the assumption that they strengthen human capital, and in the long term contribute to breaking the intergenerational transmission of poverty. A rights-based perspective calls for critical scrutiny, however".

[9] With this term I refer to remunerated work programmes set up by the activating welfare state, which are a precondition for receiving welfare benefits, heavily relying on the idea of reciprocity of benefits, cf. Judgements of the Federal Supreme Court: BGE 130 I 71; BGE 139 I 218; BGE 142 I 1.

relevant Supreme Court decisions, over 200 cantonal decisions from 2005-2017 have been identified as possibly relevant and will be analysed for the mentioned purpose.

A Human Right to Basic Security

Stefan Gosepath

(*Freie Universität Berlin*)

Stefan Gosepath attempts to offer a defense of human-rights-based claims to basic security by clarifying, from a philosophical standpoint, the idea, meaning, and normative foundations of our understanding of social human rights. In the first part of the paper he outlines a specific understanding of the idea of human rights based on an overlapping consensus, which also applies (at least in part) to social human rights. On the basis of this understanding he argues in the second part for an understanding of social human rights as universalistic claims to basic social security against certain disadvantages.

Securing a Dignified Minimum Income:
Complexity, Radical Uncertainty, and Universal Basic Income

Otto Lehto

(*King's College London*)

"Universal Basic Income (UBI) is defined as "a regular cash payment paid to all, on an individual basis, without means test or work requirement." (Van Parijs & Vanderborght 2017). There are two main types of argument for UBI. On the one hand, there are *pragmatic* arguments as a potential tool of efficient public policy. (E.g. Friedman 1962, Van Parijs & Vanderborght 2017, Munger 2018) On the other hand, there are *moral* arguments for UBI as a requirement of justice within the framework of basic human rights, such as the right to economic security, social participation, or human dignity. According to these scholars, justice requires giving all people (or all *adult citizens*) access to some basic amount of unconditional economic resources in the form of unconditional cash transfers. (E.g. Spence 1793, Paine 1797, George 1885, Van Parijs 1995, Widerquist 2013, Zwolinski 2014, Steiner 2016, Standing 2017.) In particular, many scholars see access to UBI as a "requirement of the basic respect for human dignity" (Widerquist 2013: 24), because "destitution and the display of destitution jeopardize human dignity" (Van Parijs 1995: 46).

I will argue three points: 1) The moral case for a guaranteed minimum income as a tool of basic economic rights and human dignity is a convincing one in ideal theory, since it promises to institutionalize the economic right to a social minimum through the direct abolition of poverty. 2) However, its successful implementation in the real world depends on an institutional understanding of the *adaptation challenges* faced by welfare states in the socioeconomic context of the new economy. 3) These challenges are insufficiently modelled in the existing literature on human rights, which is reflected in the difficulty of implementing aspirational guarantees of basic economic security in the era of rapid technological change, globalization, and the creative destruction of capitalism. We therefore need a new explanatory paradigm, which can be found in complexity theory and evolutionary theory. (E.g. Schumpeter 1947; Alchian 1950; Nelson & Winter 1982; Boulding 1991; Kochugavindan & Vriend 1998; Foster 2005; Beinhocker 2006; Colander & Kupers 2014.)

The central insight of complexity paradigm is that *radical uncertainty* is a necessary feature of a complex and evolving socioeconomic landscape. The radical uncertainty of the legislative and economic landscape jeopardizes the wellbeing of ordinary citizens, whose welfare prospects, job opportunities, and income stream are rendered insecure. The existence of complex adaptation challenges, and their potential amplification in the coming decades, raise new obstacles to the

implementation of basic human rights. Many human rights, including the rights to economic security and psychological wellbeing, cannot be sustained unless they are implemented in a way that allows ordinary people to *survive* – and hopefully *thrive* - in the face of these challenges. According to Klaus Schwab, the "overarching goal" of policy reform in the coming decades is therefore "to create agile,

responsible regulatory and legislative ecosystems that will allow innovation to thrive while minimizing its risks to ensure the stability and prosperity of society." (Schwab 2016: 63) This complexity-awareness should be extended to the discussion around the implementation and maintenance of basic human rights - including the rights of economic security and human dignity.

Some scholars have argued that UBI might be a way to secure the basic livelihood of ordinary people through these socioeconomic challenges. (E.g. Rifkin 2013, Brynjolffson and McAfee 2014, Munger 2018). I will show how the systemic features of UBI – e.g. its unconditionality, absence of bureaucratic discretion, universality, and egalitarian nature – have many advantages (although also some disadvantages) from the point of view of these challenges. If implemented as part of a broader palette of reforms, a complexity-sensitive income floor based on UBI can thus allow ordinary citizens to better adapt to permanent uncertainty in the face of the adaptive challenges of the new economy. This might be a requirement of their maintaining their rights to minimum income and human dignity. However, open questions remain about how UBI can be best transformed from into practical policy."

Embodied Dignity and The Grounds of Human Rights as Categorical Needs

Matthew Perry

(The University of Manchester)

I focus on how dignity justifies protection from, and criticises the circumstances of, poverty. I believe the route to demonstrating this involves exploring *the foundations* for human possession of dignity, and therefore probing into the reasons why we believe humans posses dignity.

My core claim is that through its foundations dignity establishes a categorical "social minimum" instituted by human rights: where poverty exists it is because an injustice has been committed against an individual through a lack of respect for dignity. This connection arises through the direct relation that respect for dignity has with respect for basic human needs. Poverty therefore doesn't merely constitute a collective failure to fulfil a positive duty of aid we all indirectly possess, but a failure to respect the core of that individuals moral worth. The categorical "social minimum" possesses deeper normative demands than currently presumed.

In order to arrive at this conclusion I first postulate that dignity is partially grounded in the ability to value, whereby:

(1) X (an activity) is *valuable for* Y (an agent) with a view to Z (a rational aim).

Due to its capturing the gestalt meaning of dignity beyond a single property (such as the capacity to reason), I believe this criteria has great merit. However, many non-human animals might fall under its purview. This is not inherently problematic, but reveals why this criteria cannot do all the work required of dignity on its own: further distinguishing on the exact difference between human and non-human life is required. Though important, I leave this issue to one side to address in later research.

Next, I critique and revise Wiggins (1987, "Needs, Value, Truth") definition of categorical needs such that:

(2) Y needs, categorically, to have X iff Y needs to have X in order to pursue any rational aim (Z)

Together, claims (1) and (2) associate dignity not with specific metrics of "need" such as food or shelter, but with the universal basis for the exercise of one's capabilities. Thus, dignity becomes directly tied with the practical circumstances acting as a basis for living a good life. That is, in order to experience one's dignity, beyond the moral status it bestows, individuals require their categorical needs to be fulfilled, for these permit one to pursue rational aims, that is, exercise one's capabilities.

Following Miller (2012, "Grounding Human Rights"), I therefore focus on human needs as a metric for understanding human rights. There are two problems I believe that the inclusion of dignity in this approach provides us with the purchase to tackle.

First, using (2), I believe that human rights can better face "particularist" critiques against their "universalist" nature. This is because (2) might be reiteratively applied as the universal basis for particular conceptions of what human rights require in particular circumstances.

Second, it seems human rights can only make moral demands on others where there exists a correlative duty. The challenge this presents is in sourcing the duty-bearer. However, if dignity acts as the foundation for our possession of rights, then rights protecting that foundation, which those deriving from the above account would appear to be, provide us with stronger duties than rights merely arising as a result of that foundation. I investigate the way this changes the character of the correlative duties. Pogge (2008, "World Poverty and Human Rights") claims that human rights imposes negative constraints on our harming others, however, it is only with this additional strength for indirect duties of this sort that I believe such a response to this second objection is tenable.

On the whole, I therefore claim that dignity establishes a categorical social minimum, practically instituted by human rights. This allows dignity to act both as a justification for protection from and as a critique of poverty.

Too Poor for Justice? The Social dimension of the Rule of Law

Nathalie Schnabl

(*Open University*)

Introduction

The rule of law is one of the most accepted concepts of the 21st century as well as subjected to theoretical scrutiny by different approaches. Examples are the legalistic approach of Raz,[10] Dicey[11] and Hayek[12], the society approach of Tamanaha[13] and the social dimension approach of Allan,[14] Lord Bingham,[15] Barber[16] and the International Congress of Jurists of 1959.[17] The social dimension approach endorses an active duty for the state to guarantee political rights, civil liberties and the equality of citizens, in contrast with the legalistic approach which is limited to the preservation of political or personal freedom. New questions are raising about the role and function of the state, mainly because of the unattainability of the welfare state and the detachment of some groups in society. Austerity measures and social uproar of the 'yellow jackets' protests of 2018 illustrate these questions. This contribution aims to provide an answer to the question of whether the rule of law has a social dimension and what the content of the social dimension may be.

Does the rule of law have a social dimension?

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[10] J Raz, The authority of law: Essays on law and morality. Oxford: Oxford University Press 1979.
[11] AV Dicey, Introduction to the study of the law of the Constitution. New York: Macmillian 1915.
[12] FA Hayek, The Road to Serfdom. Chicago: The University of Chicago Press 2007.
[13] BZ Tamanaha, Functions of the Rule of Law, Legal Studies Research Paper Series (Paper No. 18-01-01) January 2018.
[14] T Bingham, The Rule of Law. London: Penguin Books 2010.
[15] T Allan Constitutional Justice, Oxford: Oxford University Press, 2001.
[16] NW Barber, Must Legalistic Conceptions of the Rule of Law Have a Social Dimension? Wiley Online Library 2004.
[17] The Rule of Law in a free society: a report on the International Congress of Jurists, New Delphi, India, 1959.

Early authors, as well as modern liberal authors, emphasize the juridical dimension of the rule of law. Core concepts are accessibility and equal application of the law and the circumscribed powers of officials. However, a legalistic approach has its limitations in upholding the rule of law. Without the social dimension, the juridical dimension is out of reach for some people within society. Next, the rule of law is not only a conceptual framework but has a normative influence on society and depends on the expectations raised within society. 'Access to the court', often defined as the legal possibility to take a case to court, also has a social dimension: the possibility to have access to justice. Recognizing the social dimension of the rule of law might help to form an analytical framework to answer questions like "to what extent are states required to provide legal aid?"

Overall, trust in institutions is rising over time, but there is a significant difference in the trust in courts between the best educated (87,0%) and the poorest educated (55,1%).[18] This lack of trust of the latter category affects the legitimacy of the rule of law. The social dimension does not only include the formal possibility to seek justice but also acknowledges that groups may have different perspectives on their chances to seek justice.

Elements of the social dimension

The first element that may be included in the social dimension is the possible limitations of the legalistic state/society view. The social dimension approach recognizes *groups within society* itself, such as well-educated / poor educated, rich / poor and citizens / companies, while an overlap with respect to those belonging to the first two categories may be discerned.

A second element within the social dimension may be *individual obstacles* to seek justice. The legalistic approach underestimates the complexity of the legal order and the time, money and knowledge required for access to justice. Bourdieu defines three categories of 'Capital'[19] that may be able to serve as a framework to assess the capability to seek justice as an individual or a (small) company:

- Economic (money, assets and property)
- Social (actual and potential resources connected to the possession of a network)
- Cultural (knowledge and intellectual skills)

The third element may be the *distribution of justice*, analysing the opportunities for different groups to retrieve justice. The ECtHR obligates states to provide legal aid. European states granted legal aid to, on average, 658,000 cases, with € 429,- per case in 2016.[20] While in 2014, these numbers had significantly increased: 834,000 cases and € 456,- per case.[21] The social dimension allows reviewing austerity measures while questioning the obligations of other actors within society, something that the legalistic approach rejects.

The fourth element may see to *access to different forms of justice*. Many states allow alternative forms of conflict resolution. In Europe, the budgets of judicial systems increases, on average with €58.10 per person in 2014 and € 64.50 per person in 2016.[22] Costs may be lowered in the case of alternative conflict resolutions, but the question arises how these different forms contribute to the (perception of) justice.

With these elements in place, the social dimension of the rule of law can be framed, giving a new impulse to the academic debate about the social dimension of the rule of law.

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[18] Vertrouwen in mensen en in organisaties; persoonskenmerken 2017 (30 April 2018), https://opendata.cbs.nl/statline/#/CBS/nl/dataset/82378NED/table?dl=C39F

[19] P Bourdieu, The Forms of Capital In: J Richardson, Handbook of Theory and Research for the Sociology of Education. Westport, CT: Greenwood 1986, p. 241-258.

[20] European judicial systems – Efficiency and quality of justice', CEPEJ Studies no 26, 2018 Edition (2016 data), p. 13.

[21] European judicial systems – Efficiency and quality of justice', CEPEJ Studies no 23, 2016 Edition (2014 data), p. 15.

[22] European judicial systems – Efficiency and quality of justice', CEPEJ Studies no 26, 2018 Edition (2016 data), p. 6.

How Is a Social Minimum Determined in International Human Rights Law?

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Europe is generally seen as a continent with very well-developed welfare state systems and social protection buffers. Nevertheless, not everybody in Europe today has recovered from the Great Recession of 2007/2008. In particular, vulnerable and disadvantaged groups continue to be disproportionately affected by poverty and unemployment. From an international human rights perspective, it is a fact that every single EU member state has ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR). According to Art 2(1), the ICESCR does not require state parties to immediately fulfil all the rights protected in the Covenant but rather allows step-wise implementation according to the available resources in the state party. Nevertheless, all state parties – and therefore all EU member states - have immediate core obligations of nondiscrimination and the protection of the minimum core content of every Covenant right.

The Covenant protects the right to work (Arts 6, 7), the right to social security (Art 9) and the right to an adequate standard of living (Art 11). State parties should therefore ensure that everybody has access to a social minimum needed to survive – no matter whether gained through work, social security or social assistance benefits. I argue that reading Arts 6, 7, 9 and 11 in conjunction with the non-discrimination provision and the obligation to protect 'minimum essential levels' of each Covenant right provides the foundation to protect a real human right to a social minimum. This paper therefore aims at distilling the normative content of the right to a social minimum from the ICESCR by analysing the most recent Concluding Observations of the Committee on Economic, Social and Cultural Rights (CESCR). This exercise enables an analysis of the fulfilment of this right to a social minimum in 23 EU Member States in the time period of 2011 – 2018.