

# PLENARY LECTURES

## Dignity: An Equality Analysis

Catharine A. MacKinnon

Monday 8 July, 9.30-10.30, KKL

Dignity is analysed as a dimension of equality, indignity as a common damage of inequality, substantively understood. Most dignitary deprivations are argued to be instances of substantive inequality, often not seen as such in case law and legislation, even as many instances of substantive inequality, such as sexual abuse and exploitation, contain dramatic but frequently overlooked dignitary harms. As a concept used in law around the world, dignity is criticised when abstracted from its substantive inequality context, as it usually is when made the sine qua non of or substitute for an equality analysis, and is supported when contextualized as a status harm of inequality, however separately unnecessary when the realities of inequality are substantively recognized.



**Catharine A. MacKinnon** is the Elizabeth A. Long Professor of Law at Michigan Law and the long-term James Barr Ames Visiting Professor of Law at Harvard Law School. She holds a BA from Smith College, a JD from Yale Law School, and a PhD in political science from Yale. She specializes in sex equality issues under international and domestic (including comparative, criminal, and constitutional) law. She pioneered the legal claim for sexual harassment and, with Andrea Dworkin, created ordinances recognizing pornography as a civil rights violation and the Swedish model for abolishing prostitution. The Supreme Court of Canada has largely accepted her approaches to equality, pornography, and hate speech, which have been influential internationally as well. Representing Bosnian women survivors of Serbian genocidal

sexual atrocities, she won with co-counsel a damage award of \$745 million in August 2000 in *Kadic v. Karadzic* under the Alien Tort Act, the first recognition of rape as an act of genocide. Among the schools at which she has taught are Yale, Stanford, Chicago, Harvard, Osgoode Hall (Toronto), Basel (Switzerland), Hebrew University (Jerusalem), and Columbia. She was awarded residential fellowships at the Institute for Advanced Study, Stanford, the Wissenschaftskolleg zu Berlin, and the University of Cambridge. Professor MacKinnon's scholarly books include the casebook *Sex Equality* (2001/2007), *Are Women Human?* (2006), *Women's Lives, Men's Laws* (2005), *Only Words* (1993), *Toward a Feminist Theory of the State* (1989), *Feminism Unmodified* (1987), and *Sexual Harassment of Working Women* (1979). She is widely published in journals, the popular press, and many languages. Professor MacKinnon practices and consults nationally and internationally and works regularly with Equality Now, an NGO promoting international sex equality rights for women, and the Coalition Against Trafficking in Women. Serving as the first special gender adviser to the prosecutor of the International Criminal Court (The Hague) from 2008 to 2012, she implemented her concept of "gender crime." In 2014, she was awarded the Lifetime Achievement Award by the Association of American Law Schools Women's Division and was elected to the American Law Institute. Studies document that Professor MacKinnon is among the most widely-cited legal scholars in the English language.

*Photo: Gal Hermoni/Lady Globus 2017*

## Human Rights Overreach

John Tasioulas

Monday 8 July, 11.00-12.00, KKL

Many voices today warn us about the unprecedented 'external' challenges confronting international human rights law (IHRL), challenges often conceived as a 'populist' backlash fuelled by racism, sexism, and xenophobia. Although such challenges undoubtedly exist, this talk will focus on defects 'internal' to IHRL's doctrines and self-understanding. These defects consist in ways in which IHRL systematically deviates from its proper formative aim. This aim is to give proper expression and effect to a background morality of human rights insofar as it is appropriate to do so through the medium of individual legal rights assigned to all human beings. It is argued that IHRL deviates from this formative aim in at least two significant ways: (1) the blurring of the distinction between rights and interests, and (2) an uncritical enthusiasm for legalization and judicialization. Moreover, it is argued that some of the external challenges to IHRL may have their source in these internal defects and that bringing IHRL into greater alignment with its formative aim necessitates that it be integrated more fully into our democratic political culture.



**John Tasioulas** joined The Dickson Poon School of Law in September 2014 as the inaugural Chair of Politics, Philosophy & Law and Director of the Yeoh Tiong Lay Centre for Politics, Philosophy & Law. He has degrees in Law and Philosophy from the University of Melbourne, and a D.Phil in Philosophy from the University of Oxford, where he studied as a Rhodes Scholar. He was previously a Lecturer in Jurisprudence at the University of Glasgow and Reader in Moral and Legal Philosophy at the University of Oxford, where he taught from 1998-2010. His most recent appointment was as Quain Professor of Jurisprudence at University College London.

Prof. Tasioulas is an Honorary Professorial Fellow at Melbourne Law School, a Distinguished Research Fellow of the Oxford Uehiro Centre for Practical Ethics, an Emeritus Fellow of Corpus Christi College, Oxford and a member of the Academia Europaea. He has held visiting appointments at the Australian National University, the University of Chicago, Harvard University, and the University of Melbourne, and has acted as a consultant on human rights to the World Bank. He has delivered the 'Or 'Emet Lecture at Osgoode Hall Law School (2011), the Natural Law Lecture at Notre Dame Law School (2012) and the Van Hasselt Lecture at TU Delft (2016). He serves on the editorial boards of the *American Journal of Jurisprudence*, the *American Society of International Law Studies in International Legal Theory*, the *Journal of Applied Philosophy*, and *Moral Philosophy and Politics*. He is also the editor of *The Cambridge Companion to the Philosophy of Law* (forthcoming 2019).

## The Islamic View of Humanity

Azizah Y. al-Hibri

Tuesday 9 July, 9.00-10.00, HS 1

This paper is about the Islamic view of humanity, which is an integral part of the Islamic worldview. This topic will be discussed from a spiritual and philosophical, yet jurisprudential perspective. The arguments will be founded upon Islamic sacred texts and the precedents of the Prophet Muhammad.

The foundational verses in the Qur'an to which I will be referring are two. In *Surat al-Nisaa'* (4:1), the Qur'an clearly states that God created all humans from a single soul, and made them into male and female, and from them He created the rest of humanity. In *Surat al-Hujurat* (49:13), the Qur'an adds that out of this male and female, God made us into nations and tribes so that we get to know each other, and that the most honored in the sight of God amongst us are those who are most pious.

These very clear and simple statements constitute the foundation for a diverse yet cooperative and collaborative world in which virtue is the highest value. But the world we live in does not reflect this model, and that includes the Muslim World in which strife has recently reached a crisis point. The basis of this strife, I shall argue, is Arrogance as it is reflected in a variety of ideologies that plague this earth. These ideologies are as old as humanity. In their simplest form they were exhibited by Cain. Today, we have developed these ideologies to fit the diversity of our world. Major among them are Patriarchy, Racism and Classism.

In my lecture, I will provide an analysis of the two Qur'anic verses and the concept of Arrogance to show how these two verses have been either misinterpreted by jurists or misused by politicians to create oppressive hierarchies that damage the bonds of a society. I will present a gender equitable interpretation of these verses, based on ancient juristic insights, that offers our modern world a path to true democracy and respect for human dignity, and that results in a just and stable world, devoid of bloodshed and fractures.



**Azizah Y. al-Hibri** is Professor Emerita at the T. C. Williams School of Law, University of Richmond, where she taught for twenty years. She is the first Muslim woman to become tenured in an American law school. She is also a former professor of philosophy, Founding Editor of *Hypatia: A Journal of Feminist Philosophy*, and Founder of *KARAMAH: Muslim Women Lawyers for Human Rights*.

In January 1997, Dr. al-Hibri delivered what may have been the first Muslim Invocation at the Virginia State Senate. In 2011, she became a presidential appointee to the United States Commission on International Religious Freedom. Dr. al-Hibri has been a Library of Congress Scholar-in-Residence (2000),

a Fulbright scholar and a National Humanities Center scholar (2000-2001).

In June 2016, Dr. al-Hibri became the first American Muslim woman to be invited by His Majesty the King of Morocco, Muhammad VI, to deliver a *Dars Hassani* (religious lecture) at his palace, attended by Muslim scholars, official, and diplomats. She has returned to Morocco annually ever since, and her lecture has been broadcast repeatedly in subsequent years over Moroccan television during the holy month of Ramadan.

For the last three decades, Dr. al-Hibri has written and lectured extensively on issues of Muslim women's rights, Islam and democracy, human rights in Islam, Islamic interfaith values, and Muslim civil rights in the U.S. Her book, *The Islamic Worldview* (2014), focuses on basic jurisprudential issues. Dr. al-Hibri publishes primarily in law journals and other legal fora. Most of her articles can be accessed at [www.karamah.org/articles](http://www.karamah.org/articles). Currently, she has been writing white papers on issues submitted by women in the community and abroad. This approach has helped these women better understand their rights under religious law, and empowered them to seek legal change in their societies.

Dr. al-Hibri has received many awards, including the Virginia First Freedom Award, presented in 2007 by the Council for America's First Freedom, the Life Time Achievement Award in 2009 from the *Journal of Law & Religion*, and the Outstanding Achievement Award by the ADC Women's Initiative in 2012.

## Replacing the Persecution Condition for Refugeehood (IVR Young Scholar Prize Lecture)

Eilidh Beaton

Tuesday 9 July, 10.30-11.30, HS 1

According to the 1951 Refugee Convention, there are two necessary and jointly sufficient conditions for refugeehood. These are: (1) alienage – that is, being outside of one's country of nationality or former habitual residence, and (2) having a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion. In this presentation, I will evaluate the persecution requirement for refugeehood against the background assumption that the alienage condition should be removed (a view I have defended elsewhere). Along the way, I will address arguments from both Convention-defenders and Convention-critics. Ultimately, I will argue that refugeehood should not be limited to the persecuted, because this excludes from protection some individuals whose human rights can only be protected by means of refuge. It is imperative that these protection gaps be eliminated, and as such, the persecution condition for refugeehood must be replaced with something more inclusive. However, some of the alternative definitions suggested by Convention-critics face some serious problems. Instead, I defend my own alternative definition of refugeehood, which satisfies three key desiderata: (1) it eliminates protection gaps; (2) it is feasible to implement in a world like ours; (3) it respects the fact that refugeehood is a distinctively political remedy.



**Eilidh Beaton** is a PhD Candidate in the Department of Philosophy at the University of Pennsylvania. Before this, she received her undergraduate degree in English and Philosophy from the University of St Andrews. Her doctoral dissertation project, supervised by Kok-Chor Tan, Brian Berkey, and Samuel Freeman, concerns the migration and integration of refugees and displaced people. This project focuses on three central issues. First, is the existing definition of a refugee in international law appropriate – and if not, how should it be expanded? Second, what is the nature of integration, and what obligations do host states have to facilitate the integration of refugees and host communities? And third, how are family ties distinctively important for displaced people, and how should family reunification policies be designed to accommodate this? Eilidh's dissertation topic was

inspired by a summer internship she completed at Oxfam GB, during which she collaborated with the Refugee Council (UK) to research the role of UK family reunification laws on refugee integration and sense of belonging. She is committed to the value of interdisciplinary research, and her own work is strongly influenced by debates in policy and international law, as well as the real-world implications of these laws and policies.

## Rescuing Human Rights: Challenges of Identity and Pluralism in an Age of Globalisation

Neus Torbisco-Casals

Thursday 11 July, 9.00-10.00, HS 1

Minimalist accounts of human rights have become increasingly influential as a response to enduring critiques that challenge the role of human rights as unqualified universal standards in a world made up by diverse cultures, identities and political ideologies. Such 'thin' approaches, both in rationale and substance, are generally conceived as an attempt at rescuing the human rights project by narrowing focus in order to recognize normative disagreement and ensure a higher level of compliance. In this effort to make human rights immune to the impact of deep diversity, its proponents emphasize the risk of triviality of an ever-expanding human rights discourse. Instead, minimalist accounts focus on identifying a subset of elemental priorities – shared human values expressing an 'overlapping consensus', in Rawlsian terms – that should be able to command cross-cultural allegiance as a partial account of a "global public reason" (Cohen, 2004). If international human rights norms are to be taken seriously and act as an effective limit to state sovereignty, their ambitions need to be more modest.

My purpose in this lecture is to engage critically with this position by bringing forward the challenges facing its underlying narrative of human rights. More specifically, I will explore existing tensions in the traditional commitment to universality derived from identity claims and entanglements with marginalized ethnocultural groups. As I will contend, a normative account of human rights in an age of globalization should not just offer a standpoint to establish limitations to state sovereignty but include a conception of political membership in the 'global community'. In this conception, rather than reclaiming a 'thin' model of rights, the response to dissenting voices that perceive the human rights project as a biased neocolonialist western construct requires acknowledging diversity and guaranteeing inclusion in the global institutions that engage in multifaceted human rights substantiations. The problem, in other words, is not that the scope of human rights has overstretched, but that systemic exclusions persist that deprive human rights of normative force. International human rights law is unlikely to be transformative if it lacks resonance with identity groups who are pervasively alienated in law-making processes. Hence, there is a need to reimagine human rights from the margins and reassert the commitment to empowering rather than constraining the space in which people can frame their aspirations. Debates over the rights of indigenous peoples and their clamour for recognition in the context of broader discussions on self-determination and transitional justice will provide a specific context for this reflection.



**Neus Torbisco-Casals** is Visiting Professor in the International Law Department at the Graduate Institute in Geneva. She also teaches on the LLM in International Human Rights at the Geneva Academy of Human Rights, and is a Senior Research Fellow at the Albert Hirschman Centre on Democracy.

After completing her law degree at the University of Barcelona, Torbisco-Casals received a scholarship to develop her PhD project in Canada, where she was mainly affiliated with Queen's University. In 2000, she was awarded a doctorate in law from Pompeu Fabra University. Since then, she has held several visiting positions at Queen's University, the University of Puerto Rico and New York University School of Law, where she was a Hauser Research Fellow (2003-2004). From 2007 to 2009, she was an Academic Visitor at the

Law Department of the London School of Economics and, in 2012, she was appointed Visiting Professor at Harvard Law School.

Neus Torbisco-Casals is interested in legal and political philosophy, and in constitutional theory, human rights, and gender and migration studies. Her research focuses on issues relating to cultural diversity and minority rights, gender equality, immigration and democratic theory, as well as on the foundations of human rights. In each area, she concentrates on the ways in which legal and political orderings engage with diversity with the aim of sustaining mutual cooperation and fairness. Neus Torbisco-Casals has published several articles and chapters on these topics and has presented papers at conferences in Europe and America. She is the author of *Group Rights as Human Rights: A Liberal Approach to Multiculturalism*, Springer, 2006, and "Beyond Altruism? Globalising Democracy in the Age of Distrust" in *The Monist*, 2015, 98, 4.



## Natural Law, Cognitive Science and Human Rights

John Mikhail

Thursday 11 July, 10.30-11.30, HS 1

Many philosophers and legal theorists have turned their back on the law of nature, and with it, on a naturalistic foundation for human rights. The classical defense of natural law held that certain basic moral and legal principles are engraved in the human mind as a kind of innate instinct. In a similar vein, for centuries lawyers and jurists located the ultimate basis of the *jus gentium*, natural justice, the distinction between *mala in se* and *mala prohibita*, and similar concepts in a moral sense or conscience that “nature made universal in the whole species.” On this basis, they held some actions and institutions to be inherently wrong or unjust and, therefore, violations of human rights. Legal positivists such as Bentham, Austin, Holmes, and Kelsen subjected all of these ideas to vigorous criticism, yet they often distorted or caricatured their target in the process. More recently, the modern sciences of mind, brain, and behavior have begun to vindicate the idea that at least some moral norms and the basic intuitions that underpin them may be universal and innate. In my lecture, I summarize this new body of research and explain how it lends support to one side of the traditional debate between natural law and legal positivism. I also argue that the best understanding of human rights does not deny the existence of cultural diversity, but focuses instead on how that diversity is subject to important constraints.



After graduating from Stanford Law School, where he was Senior Article Editor of the *Stanford Law Review*, **John Mikhail** joined the law firm of Simpson, Thacher & Bartlett. He then served as a judicial clerk to Judge Rosemary Barkett on the U.S. Court of Appeals for the Eleventh Circuit.

Professor Mikhail's research and teaching are focused on constitutional law, criminal law, torts, international law, jurisprudence, moral and legal philosophy, legal history, and cognitive science. He received his Ph.D. in Philosophy from Cornell University and was a Lecturer and Research Affiliate in the Department of Brain and Cognitive Sciences at the Massachusetts Institute of Technology. He is the author of *Elements of Moral Cognition: Rawls' Linguistic Analogy and the Cognitive Science of Moral and Legal Judgment* (Cambridge University Press). He also has published articles and essays in a wide variety of academic journals, such as *Stanford Law Review*, *Virginia Law Review*, *Georgetown Law Journal*, *Law and History Review*, *Ethics*, *Jerusalem Review of Legal Studies*, *Trends in Cognitive Sciences*, and *Psychology of Learning and Motivation*.

Professor Mikhail has been a Visiting Scholar at Stanford Law School, a Visiting Junior Scholar at the Peter Wall Institute for Advanced Studies, a Teaching Fellow at the John F. Kennedy School of Government, and a Visiting Professor at the University of Zurich. His research has been featured in *Science*, *Der Spiegel*, *Boston Review*, *Prospect Magazine*, *Discover Magazine*, *The National Law Journal*, and other media outlets. From 2011 to 2013, he served as Associate Dean for International and Transnational Programs. Currently, he is Associate Dean for Research and Academic Programs.

*Photo: Georgetown Law/Sam Hollenshead*

## Diversity: Importance and Relevance

Yoshiki Wakamatsu

Friday 12 July, 9.00-10.00, HS 1

We often discuss the value of diversity; however, it does not necessarily imply that we have a clear understanding of the meaning and value of diversity. According to the common definition of diversity, we can increase the diversity of a set (let us refer to it as the set  $S$ ) by adding a new and different element (let us call it the element  $t$ ) to it ( $S \cup \{t\}$ ). However, before increasing the diversity of a set, we should check whether the more diverse set will be more valuable than the original one.

Certainly, if the added element ( $t$ ) is better than all the other elements in  $S$  ( $t > \forall x \in S$ ), the new set ( $S \cup \{t\}$ ) is better than the original set  $S$ . However, this case does not hint on the value of diversity, because the increase in value caused by the addition can be completely explained by the value of the added element  $t$  independently of the value of diversity. To emphasize the importance of diversity, we should examine the case of adding the worst element  $v$  ( $v < \forall x \in S$ ) to  $S$ . Does the addition of the worst element  $v$  to  $S$  make the new set ( $S \cup \{v\}$ ) better than the original set  $S$ ? In his *On Liberty*, J. S. Mill, who strongly advocates diversity, claims that this is the case when he writes, "it is good there should be differences, even though not for better, even though [...] some should be for the worse" (Mill [1991/1859:82]). In this lecture, I address this enigmatic claim by Mill and explain how the addition of the worst option can increase the value of the set, to quote Mill again, "utility in the largest sense, grounded on the permanent interests of man as a progressive being" (Mill [1991/1859:15]). The idea that the addition of the worst option to a set can increase the set's value may be confusing. However, this confusion is caused by our supposition that our preferences will not change over time. Contrary to this supposition, often, we, as well as our preferences, undergo changes because we are "progressive" beings. It is noted that diversity is particularly relevant when we are unsure of our future preferences. In this case, we can justify preparing and maintaining various types of elements in anticipation of our future needs. Therefore, diversity is important, although we do not consider the differences to be valuable now.



**Yoshiki Wakamatsu** has been the Dean of the University of Gakushuin Law School since 2017. Before that, he served as the Head of the Department of Law at the Seijo University between 2010 and 2013. Since 2005, he has been a Member of the Executive Committee of the Japan Association of Legal Philosophy. He has published on various topics connected to legal philosophy, including the book *Sen's Theory of Justice* (2003) and a range of articles and book chapters including "Legal Philosophy of Obesity: Self-Responsibility, Paternalism or Any Other Principle?" (2016) and "Is It Permissible to Treat Offenders Pharmacologically?" (2016). He has also edited and contributed to the compilation of essays "Utilitarianism Strikes Back" (2017), where he addressed the topic of freedom in the work of J.S. Mill.

## Human Dignity: Challenges, Controversies and Promise

Heiner Bielefeldt, Peter Schaber & Simone Zurbuchen

Friday 12 July, 10.30-11.30, HS 1

This panel discussion will be moderated by legal scholar Anne Kühler. She will question three philosophers who have worked on human dignity and human rights in different contexts. While the panelists agree on the importance of human dignity in moral and legal discourse, they offer diverse perspectives on the meaning of human dignity and on its impact on law and society. In order to bring out the strengths and weaknesses of the panelists' accounts of human dignity, they will be asked to reflect on the major challenges that human dignity currently faces, and may face in the future.

Peter Schaber notes that it is (very often) taken for granted that dignity should be understood as human dignity. However, it seems to be extremely difficult to come up with a good account of dignity that can be ascribed to all human beings. This is seen as a serious problem for a theory of dignity. But is it really a serious problem, or even a problem at all for a theory of dignity?

Simone Zurbuchen will address the challenge human dignity faces from a posthumanist perspective: if we take seriously the critique of human exceptionalism advocated in environmental philosophy as well as feminist and postcolonial studies, is it still possible to defend the special status or value of human beings? How do we understand 'our shared humanity', and what does this imply for non-human beings (animals, posthumans, etc.)?

Heiner Bielefeldt takes a critical view of current trends to base human dignity on individual skills, faculties or performances. Given its foundational significance for any societal interaction, human dignity must be ascribed equally to "all members of the human family" (UN Declaration). While the realm of moral responsibility nowadays includes the care of non-human living beings, such responsibility itself can only be shared among humans. If we understand human dignity as a status position that we have to respect in human beings as addressees of moral responsibility, it is dangerous to extend the concept of dignity to non-human beings.



**Peter Schaber** studied philosophy in Oxford, London, and Zurich. He previously taught at the universities of Hanover and Göttingen and is now, since 2005, Professor for Applied Ethics at the University of Zurich. In 1998, he received the National Latsis Award of the Swiss National Research Foundation.

Peter Schaber has written papers on issues in the field of global justice and poverty. In 2010, he was a fellow of the research working group on 'Human Dignity and Medical Ethics' at the Centre for Interdisciplinary Research of the University of Bielefeld. In 2012, he was also fellow of the research group on 'The Justification of Moral Norms' at the University of Münster. He has published books on using people (2010) and human dignity (2012), and co-edited, together with Andreas Müller, the

Routledge Handbook 'The Ethics of Consent' in 2018. He is currently working on a project on consent.



**Simone Zurbuchen** is Professor of Modern and Contemporary Philosophy at the University of Lausanne. She was previously Associate Professor in the Philosophy Department and affiliated to the Interdisciplinary Institute of Ethics and Human Rights at the University of Fribourg. She serves on the editorial board of the *Revue de Théologie et de Philosophie* and is President of the SVRSP. She is also a member of the International Research Network *Natural Law 1625-1850*.

Simone Zurbuchen has published widely on the history of early modern moral and political philosophy, with a focus on the law of nature and nations from Samuel Pufendorf to Emer de Vattel. She is the editor of *The Law of Nations and Natural Law, 1625-1800* (Leiden: Brill, forthcoming). Her publications deal with dignity, equality and diversity

from a historical and contemporary perspective.





**Heiner Bielefeldt** has been Full Professor of Human Rights and Human Rights Politics at the University of Erlangen-Nuremberg since October 2009. Prior to taking the newly established chair for Human Rights, he was Director of the German Institute for Human Rights in Berlin, which is the officially accredited national human rights institution of Germany. Bielefeldt's research interests focus primarily on different interdisciplinary facets of human rights theory and practice. Between 2010 and 2016, he also served as the United Nations Special Rapporteur on freedom of religion or belief.

*Photo: Harald Sippel*