

## Special Workshop 9 - The Inherence of Human Dignity

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### WORKSHOP ABSTRACT

This special workshop is a continuation of IVR special workshops on the foundation of human rights (Frankfurt, 2011), and the nature of religious liberty (Washington DC, 2015), resulting in the volumes *Legitimizing Human Rights* (Ashgate, 2013; Routledge, 2016) and *Religious Liberty and the Law* (Routledge, 2017).

The present workshop examines the doctrine that human beings have a special, inherent dignity. The Universal Declaration on Human Rights (1948) declares the “inherent dignity... of all members of the human family.” But what does this mean? In what, exactly, is this dignity grounded? *Is* dignity inherent, or is it conferred by an external authority? Is it natural or conventional?

Participants will focus their attention on the following five major topics:

**1) The grounding of human dignity:**

Where do various concepts of human dignity originate, how have they developed, and can they be justified?

**2) The importance of human dignity in legal practice:**

What impact do competing notions of dignity have on foundational legal concepts, like harm, equal treatment, and freedom of conscience and expression?

**3) Dignity, old and new:**

Can the “old” notion that dignity is grounded in nature survive skeptical challenges, or must we accept the “new” notion, that dignity is conventional, constructed and conferred by the state?

**4) Broad cultural implications:**

What difference do competing visions of dignity make to our understanding of major human rights abuses like “the new slavery,” religious persecution, sex trafficking, and the erosion of family rights and freedom of speech?

**5) Implications for national and international law:**

What are the historical trajectories of competing visions of dignity in national and international law? What are the emerging trends and likely consequences?

### FORMAT OF WORKSHOP

**In each 2 hour segment, there are four papers.**

**Each presenter has 25 minutes.** After all four papers are concluded, we have 20 minutes for questions which may be directed to any of the four speakers.

### Schedule overleaf:

## Special Workshop 9 SCHEDULE

### Monday 8<sup>th</sup> July, 14:00-18:30, 3.A05 (Main university building, 3<sup>rd</sup> floor)

#### 14:00-16:00:

1. **Laura Kittel:** "What is meant by human dignity in the UDHR?"
2. **Keith Thompson:** "How do we justify human rights and dignity?"
3. **David Guretzki:** "May Critics of "Inherent Dignity" be Answered? Rejoinders from Christian Anthropology"
4. **Erik J. Wielenberg:** "Three Sources of Human Dignity"

#### 16:00-16:30 Coffee Break

#### 16:30-18:30:

5. **Hendrik Kaptein:** "Human Dignity: What to do with it? From Fruitless Abstraction to Meaningful Action (and Back Again)"
6. **Michal Rupniewski:** "Human Dignity as Law's Foundation: Towards a Personalist Jurisprudence"
7. **Friedrich Toepel:** "Human Dignity as a Legal Term"
8. **Bjarne Melkevik and Asbjörn Melkevik:** "Two Concepts of Dignity: On the Decay of Agency"

### Tuesday 9<sup>th</sup> July, 8:30-13:00, 3.A05 (Main university building, 3<sup>rd</sup> floor)

#### 8:30-10:30:

9. **Dwight Newman:** "Contemporary Human Rights Instruments and the Attribution of Dignity to Groups"
10. **Kathryn Chan:** "Inherent Human Dignity and Corporate Religious Liberty Claims"
11. **Nicholas Aroney:** "The Social Ontology of Human Dignity"
12. **Neil Foster:** "Respecting the Dignity of Religious Organisations: When is it appropriate for Courts to decide Religious Doctrine?"

#### 10:30-11:00 Coffee Break

**Tuesday 9<sup>th</sup> July, 3.A05 (Main university building, 3<sup>rd</sup> floor), Schedule continued:**

**11:00-13:00:**

13. **The Honourable Justice Dallas K. Miller:** "What International Rule of Law Programs Need (Or what is missing in Bingham's *Rule of Law*)"
14. **Katya Kozicki and William Pugliese:** "Human Dignity as an Explicit Fundamental Right: interpretative criterion for the Constitution and for social rights"
15. **Angus Menuge:** "The New Dignity Jurisprudence: A Critique"
16. **Andy Steiger:** "Artificial Dignity: The humanizing and Dehumanizing Implications of Polanyi vs. Turing's Ontology"

**14:00-16:00:**

17. **Barry Bussey:** "Judging the Religious Judge"
18. **Michael Quinlan:** "Human Dignity and Exclusion Zones in Australia"
19. **Greg Walsh:** "Are Religious Vilification Laws Necessary to Protect Individual Dignity and Promote Social Cohesion?"
20. **Vito Breda:** "Reframing Freedom and the Ashers Baking Case in a Comparative Context"

**16:00-16:30** Coffee Break

**16:30-18:30:**

21. **Iain T. Benson:** "Abstraction and Reality: The Case for Context as the Prior Ground for Rights and Freedom in Contemporary States"
22. **Andrea Pin:** "Discovering Dignity in Adjudication: The Jurisprudence of the Court of Justice of the European Union"

**Read *in absentium*:**

23. **John Young:** "Dignity and Dialogue at the Canadian Museum for Human Rights"
24. **Clint Curle:** "Barbarous acts which have outraged the conscience of humankind"

## ABSTRACTS

### **1. Laura Kittel: “What is meant by human dignity in the UDHR?”**

This paper examines the doctrine that human beings have a special, inherent dignity from the viewpoint of the drafters of the Universal Declaration of Human Rights (UDHR, 1948). The Universal Declaration affirms the “inherent dignity” of all members of the human family. But what does this mean? In what, exactly, is this dignity grounded? Is dignity inherent, or is it conferred by an external authority? Is it natural or conventional? What is the significance of this concept of dignity for understanding human rights in the 21st century? In seeking answers to these questions, the four principal drafters—Peng Chun Chang from China, René Cassin of France, Charles Malik of Lebanon, and Eleanor Roosevelt from the United States—shall be consulted, as well as relevant perspectives from other contributors. As indicated by the term “inherent,” the drafters held that dignity belongs to human beings by virtue of their nature as human beings. However, they did not ground this understanding of human nature in any transcendent source such as the Creator, as was the case with certain 18th century rights documents like the U.S. Declaration of Independence. This was a conscious choice on the part of the drafters so that the Universal Declaration would be secular and therefore universally applicable. At the same time, the UDHR communicates the idea that dignity and rights are inherent, rather than conventional or bestowed upon individuals by the state. This suggests a third way of viewing the modern notion of human dignity: not as the “old” notion grounded in transcendent or religious concepts of human nature, nor as a “new” notion that is conventional, constructed, and conferred by the state. Instead, according to the Universal Declaration, human dignity signifies that every person is worthy of respect and that this worth is inherent rather than constructed. Although this does not resolve the tension between declaring dignity to be inherent on the one hand, and declining to specify a particular grounding on the other, the Declaration’s concept of inherence does point towards certain limits in considerations of dignity.

### **2. Keith Thompson: “How do we justify human rights and dignity?”**

Jeremy Waldron and Michael Perry have both observed that there is no compelling philosophical justification for human rights save for the theological idea that human beings were created in the image of God (*imago dei*).<sup>1</sup> Human rights may also be justified instrumentally because the equality possible when the *UDHR* is observed is arguably greater than under any other political ideology. But this instrumental justification is contestable and philosophically unsatisfying because it does not explain why we should treat each other equally.

Religious teaching provides additional insight which strengthens the *Imago dei* justification for human rights. That insight includes the golden rule principle of reciprocity and the doctrine of theosis or deification. Both of these ideas strengthen the equality justification for human rights

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<sup>1</sup> Waldron J, *God, Locke and Equality: Christian Foundations in Locke's Political Thought*, Cambridge University Press, 2002, pp 235-243; Perry MJ, *The Idea of Human Rights: Four Inquiries*, Oxford University Press, 1998.

because they identify and explain why all human beings are equal. CS Lewis' captured the deification idea in *The Weight of Glory* when he suggested that all human beings are either gods or devils in embryo.<sup>2</sup>

In this paper I will suggest that one of the reasons why the *UDHR* resonated around the world after WWII, is because the *imago dei*, reciprocity and deification ideas are universal though some religions have been reluctant to espouse or acknowledge them on grounds of humility. I will also suggest that each of these religious ideas has a secular analogue which should be exploited to market the enduring importance of human dignity and human rights.

### **3. David Guretzki: "May Critics of "Inherent Dignity" be Answered? Rejoinders from Christian Anthropology"**

The monumental claim of the Universal Declaration of Human Rights (1948) is that fundamental human rights are grounded in the "inherent dignity" of the human being. Yet wide-ranging criticism of this concept has grown. What are these criticisms? And are there any common grounds by which these criticisms may be reasonably answered? This paper will first lay out a four-fold typology of critique, mainly: 1) the *theological* (or religious) critique, which counters that inherence is successful only in theistic frameworks; 2) the *metaphysical* (or post-modern) critique, which counters that inherence is a metaphysical hold-over that appeals to either to logocentrism or speciesism; 3) the *consensual* critique, which argues that dignity as a definitional or textual consensus implicitly resists notions of inherence; and 4) the *functional* critique, which claims that the notion of inherent dignity adds no serviceable value beyond what notions of "human rights" are already accomplishing. The paper will concede that reasonable answer to the critics cannot be accomplished by resolute insistence that dignity is inherent. This is because inherent dignity implies the possibility of human existence in isolation—a notion theologically, metaphysically, practically, and legally untenable. However, it will be argued that the introduction of notions of *co-inherence* and *co-relativity* of human dignity—insights derived from Karl Barth's relational theological anthropology—may provide common grounds to satisfy theistic/metaphysical and non-theistic/non-metaphysical frameworks on the one hand, and on the other hand that such language could be usefully adopted for ongoing human rights dialogue with consensualists and functionalists alike.

### **4. Erik J. Wielenberg: "Three Sources of Human Dignity"**

A normal adult human has intellectual, cognitive, and emotional capacities that, as far as we know, far surpass those attainable by any earthly non-human species. In virtue of such capacities, any normal adult human has a special worth or value that cannot be possessed by any non-human species (call this *psychological worth*). For this reason, while torturing a normal adult human and torturing a puppy are both evil, torturing the human is the greater evil. Of course, not all human beings have the intellectual, cognitive, and emotional capacities of a normal adult human. So, what sort of worth is possessed by, for example, human infants or

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<sup>2</sup> C. S. Lewis *The Weight of Glory*, HarperOne, San Francisco, 2001, 46.

severely disabled humans? One way that a thing can have value is by representing or standing for another thing that has worth or value. For example, a flag may have value because of what it represents (call this *symbolic value*), and consequently it may be evil to treat that flag in certain ways. I suggest that human infants and severely disabled humans similarly possess symbolic value in virtue of representing or standing for normal adult humans. Another way that a thing can have value is by being the sort of thing that, if it develops normally, will become something with psychological worth (call this *potential worth*). So, an early-stage human fetus may lack psychological worth but possess potential worth and for this reason destroying it constitutes an evil – though not as great an evil as destroying a normal adult human. Thus, there are (at least) three sources of the special worth or value shared by all human beings: psychological worth, symbolic worth, and potential worth. Psychological worth is both the most valuable of the three as well as the source of the other two. In this paper I explain these three types of worth or value and draw on them to provide a secular explanation for the claim that humans possess a unique dignity that entitles them to human rights. I then defend my account against Peter Singer's charge of *speciesism*. Finally, I examine some prominent theistic alternatives to my account and argue that they are inadequate.

##### **5. Hendrik Kaptein: "Human Dignity: What to do with it? From Fruitless Abstraction to Meaningful Action (and Back Again)"**

Human dignity, however important, is a highly contested and elusive notion, its so many different interpretations depending on so many religious and other fundamental persuasions. Thus human dignity is in danger of falling foul to relativism and skepticism concerning these different and oftentimes incompatible world views and their normative implications from the beginning. Also, understanding human dignity at least presupposes an answer to the question who (or what) a human being is. But how could human beings know this, in as far as they are lacking some or other superhuman standpoint? Human dignity depends on the meaning of life, but how can life be meaningful, or meaningless for that matter, if life cannot be compared with anything else within life itself? And so on. Thus concepts of human dignity seems to dissolve into abstract meaninglessness in the end, leaving nothing much more than un- or even misdirected rhetorical force.

Here an attempt will be made to "reconstruct" human dignity from more or less incontestable implications of such dignity in human communication and conduct. Thus respecting human dignity presupposes politeness, however different rules of politeness may be in different cultures. In line with this is separation of disputes on matters impersonal from personal relationships. *Fortiter in re suaviter in modo* is another expression of respect for persons in practice. *Audi et alteram partem* is a central principle as well. It makes sense only if facts relevant for conflict resolution are not held to "disappear in postmodernist relativity and subjectivity". Adherence to principles of charity and humanity in interpreting communication "in the best possible light" is another presupposition of respecting human dignity. In line with this is the presumption of innocence: nobody is to be held guilty without conclusive proof of wrongs done and absence of excusing conditions. Blackstone's principle is in line with this: punishing one innocent person is incomparably worse than letting so many offenders go free.

Respecting human dignity is also realized by making up for what is done wrong - by whatever standards - by restoring victims' lives and worlds as if nothing wrong was done at all. Thus offenders respect "their" victims just as they respect themselves by taking full responsibility for their wrongful conduct.

Such basic norms of human communication and conduct are procedural in the first place and thus their realization may still be feasible in societies divided by different fundamental persuasions. So we don't need to really know what human dignity is in the end, as long as we act to minimal presuppositions of any human dignity in the first place.

#### **6. Michal Rupniewski: "Human Dignity as Law's Foundation: Towards a Personalist Jurisprudence"**

The main objectives of this paper are: firstly, to identify the integral link between law and human dignity, and offer a personalist explanation of this fact. Secondly, as a result of the personalist explanation, I will give an outline of a personalist jurisprudence. As far as the first objective is concerned, I am going to follow Jeremy Waldron (2012) and Stephen Riley (2017), insofar as they argue that law, and the rule of law, are understandable only when closely, and not just contingently, linked to human dignity. In other words, I am going to argue that human dignity is foundational to law, and not just one of many values realized through, or protected by, the law. However, I will argue, their explanation of this fact, and their conception of human dignity as status, is not sufficient to fully explain this integral connection. Contrary to Waldron and Riley, I will offer a personalist account on the link between human dignity and law, following the works of Karol Wojtyła (1969) and Tadeusz Styczen (2012). The account I am going to offer is based on the idea of human action, and the dignity that is connected to the acting person. Finally, realizing the second aim, I will outline how these considerations of meta-ethics and philosophical anthropology can be operationalized in jurisprudence, and hence yield a new type of personalist jurisprudence based on the reality of human action.

#### **7. Friedrich Toepel: "Human Dignity as a Legal Term"**

Human dignity is a beautiful term, but is it also a useful term in a legal context? I shall argue that the meaning of human dignity will vary depending on the history of the individual legal system in which it is used. It does not make sense to draw any legal conclusion from the meaning of the term within a particular moral tradition if that tradition has not been accepted as authoritative by the legal system. It may be the case that a legal system adopts a particular moral tradition, but this can never be taken for granted. All those who have to apply the term should be aware of the fact that its interpretation can have enormous consequences.

However, the most effective interpretation of human dignity observable in the present age is one which succeeds in making a moral interpretation seem authoritative while this is not yet the case and thus helping such a view to become the authoritative view. It is particularly useful for achieving such a goal to present an argument which commits a sort of naturalistic fallacy and to disguise this fallacy in a skilful way.

I take the view that the commission of an extended form of naturalistic fallacy is very common in legal literature on human dignity. While the traditional view regarding the naturalistic fallacy is that an evaluative conclusion cannot be drawn from purely factual premises, it is not often recognized that this insight also prevents an evaluative conclusion within one system of norms from an evaluative premise of another system of norms. For each system of norms regards the evaluative premises accepted merely in another system of norms as factual premises.

In my opinion the term human dignity is most useful for the lawyer or politician who is able to use it as a means of gaining influence by availing himself of the positive perception of this term and at the same time concealing successfully the commission of the described form of naturalistic fallacy.

#### **8. Bjarne Melkevik and Asbjörn Melkevik: "Two Concepts of Dignity: On the Decay of Agency"**

This paper examines the radical shift we can observe in the modern legal understanding of dignity. That one should be respected for one's own sake is a cornerstone of our modern societies, enshrined in our laws and constitutions. The idea of dignity, however, is subject to fundamentally different interpretations. More precisely, this paper examines two such theories of dignity – namely, the "agency theory of dignity", associated with Immanuel Kant, and the "well-being theory of dignity", championed recently by Alan Gewirth. The modern shift from the former to the latter, we argue, is problematic, first, inasmuch as it is an expression of the decay of agency in our legal systems, and, second, because the well-being theory of dignity is often self-defeating. This paper accordingly maintains that we should go back to the agency theory of dignity. Using an antinomian reading of Kant's theory, we maintain that rational people are to be their own lawmaker and that the scope of legislative activity should therefore be limited as a matter of dignity.

#### **9. Dwight Newman: "Contemporary Human Rights Instruments and the Attribution of Dignity to Groups"**

This paper engages with certain trends in major human rights instruments that have seen a readiness to attribute dignity not just to individuals but also to groups. Noteworthy amongst contemporary human rights instruments in this regard is the United Nations Declaration on the Rights of Indigenous Peoples, which attributes dignity to Indigenous peoples as well as individuals. While Jeremy Waldron has written an important paper attempting to defend such attributions, this paper will argue that his defence manifests the very problem at stake, which is a problem of conceptual drift. Many contemporary discussions of dignity are no longer about inherent dignity but about some other conception of dignity. These shifts in parlance actually undermine the original notion of inherent dignity of the human individual more so than often realized. While attributions of dignity to groups are well-meaning, their longer-term effects are corrosive. This paper makes three main arguments for resisting these attributions of dignity to groups, noting their concept-confounding dimensions, constructivist dimensions, and anti-egalitarian dimensions.



**10. Kathryn Chan: “Inherent Human Dignity and Corporate Religious Liberty Claims”**

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**11. Nicholas Aroney: “The Social Ontology of Human Dignity”**

The Universal Declaration on Human Rights (1948) declares the “inherent dignity ... of all members of the human family”. Much attention has been given to meaning of human dignity (eg Carozza 2013; Finegan 2012), but relatively little to the social context presupposed by this concept. This project will examine why the term ‘human family’ was used in the Declaration, what it has been interpreted to mean, and how it relates to an international order constructed out of covenants between nation states and the implicit social ontology presupposed by international human rights law.

International human rights law is often understood in a way that prioritises the rights of individuals (Taylor 1985) and underplays the embeddedness of human beings in groupings of various kinds: familial, economic, social, religious and political (Etzioni 1995). However, a close examination of international human rights law instruments shows them to presuppose a social ontology in which human beings are not merely isolated individuals, but members of communities at personal, local and regional scales (see, eg, Gibson 2011; McCrudden 2011).

An exploration of this communal embedding of the dignity of all members of the human family has implications for how international human rights are understood, particularly in controversial areas in which the rights of human beings conceived as individuals have to be harmonised with the rights of human beings living in community with others (Sachedina 2009). For example, the rights of individuals not to be discriminated against on the basis of protected attributes (Articles 2 and 26 of the ICCPR) has to be harmonised with the rights of human beings manifesting their religious beliefs, enjoying their own culture and using their own language in community with others (Articles 18 and 27 of the ICCPR). A better understanding of the social ontology presupposed by international human rights law is a prerequisite for addressing problems of harmonisation of this kind.

**12. Neil Foster: “Respecting the Dignity of Religious Organisations: When is it appropriate for Courts to decide Religious Doctrine?”**

The notion of “dignity” is usually associated with individuals. But in the religious sphere, individuals often join together as part of organisations, whether “churches” or other groups. Court decisions in disputes involving religious parties may involve the court being invited to decide what is a “valid” or “correct” religious doctrine. But is it consistent with the dignity that ought to be afforded to religious groups for secular courts to take on a role as “amateur theologians”? There are good public policy reasons to suggest not, based on the lack of expertise of judicial officers, and religious freedom considerations supporting the authority and dignity of religious actors to decide the meaning of their own doctrines. However, in some cases, courts are *required* to determine religious questions for the purposes of enforcing a

private law right, such as under a charitable trust for the advancement of religion, or an employment contract. Refusing to decide these issues in such cases may leave deserving parties without a valid remedy. This article reviews the approach to this issue taken by courts in the United States, United Kingdom and Australia, in order to determine whether these different decisions can be reconciled. It recommends that courts usually continue to respect the dignity of religious organisations by declining to determine the content of religious doctrine, but should be willing to do so where the private rights of parties arise under a religious regime initially accepted by the parties concerned.

**13. The Honourable Justice Dallas K. Miller: “What International Rule of Law Programs Need (Or what is missing in Bingham’s Rule of Law)”**

Many rule of law programs that operate in the majority world use as their model the work of North American and British academics and jurists. One such model is that of former Senior Law Lord Tom Bingham whose celebrated work *The Rule of Law (2011)* continues to have impact. Bingham lists eight principles that form the base for a nation’s serious attempt to operate a legal system under the rule of law. These principles provide practical ways that laws and policies can be enacted to give life to a fair and just legal system that properly operates under an appropriate constitutional order. Lord Bingham’s work is critically examined both from a historic and international perspective in light of its absence of the right to protect religious freedom. Basic to any rule of law model is the protection of personal liberties so as to constrain the unjustifiable intrusion of the state into a zone of belief, conscience and practice into which the “law” or “state” may not or should not go. The foundational principle of freedom of religion by its absence in Lord Bingham’s list of principles is critiqued in light of both a “thin” formalist conception and a “thick” substantive understanding. An argument to include freedom of religion in a model such as Bingham’s will be made as a natural right, like bodily security, property and contract, all which exist prior to and independent of the state.

**14. Katya Kozicki and William Pugliese: “Human Dignity as an Explicit Fundamental Right: interpretative criterion for the Constitution and for social rights”**

The theme of human dignity is essential for the comprehension of contemporary Law. Human dignity is an indispensable principle for the interpretation of national and international Law, awakening a series of discussions, from its meaning to the most effective instruments for their protection. The present paper aims to investigate a very particular topic, which is the effect of specifically provisioning human dignity as a fundamental principle in a Constitution, such as Germany’s Basic Law and Brazil’s Constitution. The current analysis shall focus on three subjects. Primarily, the research will examine if the specific provision of human dignity as a fundamental right has any effect on its definition or in its interpretation. In second place, the paper argues that the explicit protection of human dignity in a Constitution makes it work as an interpretative criterion for all the other provisions of such Constitution, given its broad implications. Lastly, following the rationale of the first two arguments, the paper focuses on the interpretation of social rights grounded on human dignity. The relationship between human dignity and social rights is prolific because it works in both directions: while social rights must

be interpreted in accordance with human dignity, one can argue that the core of human dignity may be filled in by social rights, such as education, health and security. The paper concludes that a conception of human definition may benefit from its interpretative nature and by social rights.

**15. Angus Menuge: “The New Dignity Jurisprudence: A Critique”**

In his dissenting opinion, Clarence Thomas contrasts the “old dignity” (enshrined in the Declaration of Independence and the US Constitution) and the “new dignity” at work in the *Obergefell v. Hodges* (2015) ruling. According to the old concept, human dignity is an inherent, natural right, one which the state is required to recognize and protect. But according to the new concept, dignity is *constructed* by the state: it can be conferred or removed, injured or healed, by the law. On this understanding, aggrieved parties can demand legal reforms to redress their “dignitary wounds.” While neither Thomas nor Chief Justice John Roberts found constitutional grounding for the new concept, it appears to have wide cultural support. In this paper, I first present the key premises of the new dignity jurisprudence, and trace them back to their major philosophical precursors in Rousseau, Nietzsche, Sartre and postmodern thought. I then argue that the resulting account is an unacceptable basis for jurisprudence because it promotes legal decisions that are: (a) unintelligible; (b) arbitrary; (c) inconsistent; (d) unstable and (e) untrustworthy. Rulings lose legitimacy if it is not possible for a well-informed person to understand why the decision was made (the decision is *unintelligible*), why *that* decision rather than another was made (the decision is *arbitrary*), or why the opposite decision could not be made on the same general grounds (*inconsistent* rulings). This account is also *unstable*, since the principles of new dignity allow one to argue that the process of “redressing dignitary wounds” sets up a cycle of compensatory discrimination which *creates* “dignitary wounds” in those whose rights have been abridged to aid the aggrieved party. As a result, the process is *untrustworthy*, because citizens can never be sure that what they consider a major advance for human dignity (analogous, they may think, to abolishing slavery) will not be reversed using the very same principles used to make that advance. Thus, even the proponents of the new dignity need a more stable and rationally defensible concept of dignity to ground their jurisprudence.

**16. Andy Steiger: “Artificial Dignity: The humanizing and Dehumanizing Implications of Polanyi vs. Turing’s Ontology”**

Michael Polanyi (1891–1976) was a Hungarian medical doctor and a distinguished physical chemist. Of particular concern to Polanyi was how science—including computer science—is predicated on a form of reductive physicalism, which he referred to as “objectivism”. One of Polanyi’s fundamental concerns with objectivism was the dehumanizing implications, such as Artificial Intelligence (AI).

Polanyi was one of the first to articulate his concern regarding AI and he even participated in an interdisciplinary panel discussion on “The Mind and the Computing Machine” with Alan Turing in 1949. The key question of the dialogue was: *Can thinking be mechanical?* That discussion

would lead Turing to publish his seminal article: *Computing Machinery and Intelligence*, in which he recast the question into an ontological game of imitation. If a computer can pass the Turing Test of convincingly imitating intelligence, does that qualify as thinking? Does that qualify as human?

Polanyi argued from his epistemological development of tacit knowledge that thinking cannot be mechanized because it cannot be explicitly stated. However, recent advancements in machine-learning have undermined Polanyi's argument. Algorithms are increasingly proficient at processing information and predicting accurate responses. If Ray Kurzweil is correct, a computer will have the processing power and programming necessary to convincingly imitating human interactions within the next decade. No longer is an android a distant philosophical concern of the future but a growing challenge to human dignity currently.

More than ever, society needs to consider the cost of granting humanity to a machine. Although it's often assumed that passing the Turing Test makes a machine human, it in fact does the opposite - it reduces humans to machines. There is a need for clarity regarding what AI is and why an algorithm can never be human nor worthy of human dignity.

Although Polanyi's epistemological argument is under attack, his ontological understanding of a machine is proving to be much more robust and capable of explaining the flaw in the Turing Test by demonstrating that successfully *mimicking* human behavior does *not* constitute humanness nor the subsequent prize of human dignity. Specifically, Polanyi develops an ontology of purpose that distinguishes between the parts something is made *of*, versus the purpose something is made *for*. However, Polanyi's ontology requires a metaphysical foundation that is best grounded in Christianity.

In my presentation and chapter, I will seek to accomplish three things: 1) Introduce the dehumanizing nature of reductive physicalism; 2) explain how AI is predicated on reductive physicalism and thus undermines human dignity; 3) develop an alternative ontology based on Polanyi's work but grounded in a Christian metaphysic, that is capable of explaining the difference between AI and humanity; and 4) conclude by showing that human dignity cannot be manufactured but follows from our ontology.

### **17. Barry Bussey: "Judging the Religious Judge"**

Liberal democratic countries have long recognized the importance of accommodating religious belief and practice in all areas of life. Exemptions from generally applicable law are not uncommon for those citizens who have conscientious objections to carrying out a legal requirement. Religious observances, for example, are accommodated where employers must, by law, allow their religiously observant employees time off to fulfill their religious duty. Religious garb is another instance where the state has made accommodations to permit the practice of religion, for example, allowing the observant Sikh to wear his turban in place of the state-issued police uniform. Religious hospitals have been given the right not to allow abortions on their premises. Clergy, though acting as civil officials in marriage ceremonies, are exempt from performing marriages against their religious tradition. Given this well-established

pattern in the law, my focus in this paper will be the case of the religious judge. Here, the law is not so clear. Here, the issues are complex, and authorities have been reticent about permitting religious exemptions for judges performing official state duties. This paper provides an examination or delineation of the "reasonable limits" which can be "demonstrably justified" when it comes to accommodating the religious freedom of judges. It addresses the mixed signals a religious judge receives when called upon to be involved in official duties whose performance would violate her conscientiously held beliefs. There is a growing opinion in the legal literature that suggests that if religious government officials are unable to perform any of their duties because of their religious beliefs they should relinquish their office. However, such a position fails to appreciate the complexity of a liberal democracy that seeks to accommodate religion whenever possible. This paper argues against the growing opinion that state officials are required to leave their religious conscience at home when on official business for the following reasons. First, it is not practical. Religious persons do not, indeed cannot, bifurcate their public lives from their deeply held beliefs on fundamental human life issues. Second, liberal democratic societies are champions of religious freedom for all citizens, including public officials. Public office does not mean individual officials lose their religious identity because of the office they hold. Third, we need a principled approach to such issues of conscience and not a politically expedient strategy that is subject to the shifting fortunes of identity politics. How should the religious judge be accommodated in cases where individual conscience may conflict not only with popular opinion, but also with "settled law"? In other words, is *stare decisis* a stronger principle than religious conviction? If not, how is the rule of law to be reconciled with a lawmaker whose conscience compels her to become a lawbreaker. Ours is a society of laws that has the protection afforded to it by long-held traditions of human interactions that have made us the envy of the world. We can ill afford an approach that treats some citizens differently because their religious beliefs are no longer politically correct.

#### **18. Michael Quinlan: "Human Dignity and Exclusion Zones in Australia"**

A growing number of Australian States and Territories have introduced exclusion zones around clinics which terminate pregnancies. Other States are actively considering doing so. A wide range of activities, including communications about abortion, are proscribed by criminal sanction within these zones. Penalties for transgression include fines and imprisonment. In justifying exclusion zones, legislatures have relied on the dignitary harm said to be suffered by workers and visitors to such sites when they are exposed to prohibited communications and conduct. This paper considers the evidence of such harm. It contrasts that harm with the impact such legislation has on the dignity of others. It considers the impact such legislation has on the dignity of those motivated by religious faith or conscience to provide 'sidewalk counselling.' Such persons seek to provide information within those zones about alternatives to the termination of pregnancy and about practical assistance which is available to those who choose to carry their babies to term. The paper also consider the impact on the dignity of those who wish to pray in such zones. Finally the paper considers the impact on the dignity of those who terminate their pregnancies and suffer deleterious health consequences as a result and who would have accepted assistance if provided to them within a zone. On the basis of this review the paper argues for the reversal of the exclusion zone trend and for the amendment of

existing exclusion zone laws to narrow the scope of the proscribed conduct and to give greater recognition to the dignity of those adversely impacted by such laws.

**19. Greg Walsh: “Are Religious Vilification Laws Necessary to Protect Individual Dignity and Promote Social Cohesion?”**

In States that are increasingly religiously diverse one of the central challenges faced is encouraging social conditions that enable different religious groups to live together harmoniously. A major obstacle encountered in the pursuit of this objective is how to effectively address religious vilification while not unjustly limiting freedom of expression, religious liberty and other human rights. This paper focuses on the religious vilification laws enacted in Australia and assesses their merits especially focusing on their impact on community cohesion between religious groups. Recent cases indicate that the substantive and procedural elements of religious vilification laws need to be carefully drafted to ensure that these laws operate appropriately in promoting individual dignity and community cohesion.

**20. Vito Breda: “Reframing Freedom and the Ashers Baking Case in a Comparative Context”**

The UK Supreme Court rebalanced, in *Lee (Respondent) v Ashers Baking Company Ltd and others (Appellants) (Northern Ireland)*, the interplay between freedom of speech and the freedom to manifest religion beliefs. The decision has attracted criticism since, in Northern Ireland, it might be constructed as promoting sectarianism.

However, I will argue that *Lee v Ashers*, in comparative context, might be interpreted as a manifestation of a change of trend on the role of the state’s institutions in balancing manifestations of religious beliefs and individual rights. The presentation will be divided into two sections preceded by a short introduction to the case and followed by a conclusion. The first part of the presentation provides an overview of the current jurisdictional trend in the UK, Europe, Australia and New Zealand. The second part shows that *Lee (Respondent) v Ashers* is a manifestation of cross pollination of jurisdictional ideas that seek, albeit imperfectly, to protect shared communal values.

**21. Iain T. Benson: “Abstraction and Reality: The Case for Context as the Prior Ground for Rights and Freedom in Contemporary States”**

Jürgen Habermas has proposed an understanding of culture as divided between “systems” and “life-worlds”. While this distinction has much to offer in relation to such insights as the tendency of “systems” (law and politics) to both “colonize” and “parasitize” the lived associational life of the “life-worlds”, what needs greater analysis is the role that de-contextualized abstractions (such as “equality” “inclusion” or “values”) play in the jurisdictional extensions of systems.

This paper will build on the author’s prior work on Habermas and associations to link this with how abstractions such as “equality”, “inclusion” and “values” are being used to attack the

contextualized differences and specificity of life-worlds in general and religious associations in particular.

The paper will explore the conceptual framework of abstraction in work by Winifred Fallers Sullivan (*The Impossibility of Religious Liberty*) and Lori Beaman (*Deep Equality*) alongside principles, such as subsidiarity, diversity, tolerance and accommodation, which need to be understood as the grounds for genuine pluralism and freedom in contemporary constitutionalism.

## **22. Andrea Pin: “Discovering Dignity in Adjudication: The Jurisprudence of the Court of Justice of the European Union”**

The presentation focuses on the role that the idea of “dignity” plays in the Court of Justice of the European Union’s (hereinafter: CJEU) case law.

The CJEU is a judicial organ of paramount importance within the post- World War II European and global context. It covers 27 countries (considering Brexit); it also spells out the final word on the interpretation of EU law at the domestic level; its judgments are binding throughout its member states; and, at least since the 1970s, its activity has been seen as projecting “natural law” (Cappelletti) into the post-modern era. Throughout the decades, its docket has dramatically increased, thanks both to the expansion of the EU’s competences and to the expansive role that it has given itself while interpreting EU law. Its terrains used to be largely confined to economic activities. Now, since EU law has progressively incorporated many instruments for human-rights protection and nondiscrimination, its rulings affect a wide range of fields, including gender, religion, and reproductive policies. Such fields are rather new to the CJEU but will certainly be controlled by its case law in the future.

The CJEU’s case law revolving around the subject of dignity has evolved with the CJEU’s tasks. A search for the Court of Justice’s rulings that cite “dignity” in the official database returns 152 cases closed and decided. Although many cases make only superficial reference to the concept of dignity, a sizable and increasing portion of them discusses it and its intersection with other interests protected by EU law in greater length. Only one case discussed dignity during the 1960s, two in the 1970s, four in the 1980s, two in the 1990s, seven in the 2000s, and thirty-four in 2010s.

My presentation aims to focus on the CJEU’s understanding of dignity – more precisely, of “human dignity,” which its case law uses more narrowly than the broader concept. The CJEU’s jurisprudence is of interest in understanding judicial dignity not just for its legal effect but also because of its judicial style and its institutional role. Judicially, it often balances competing fundamental rights: an exploration of human dignity at the CJEU is an exploration of the very conceivability of balancing this value with other relevant interests. Institutionally, the CJEU needs to be aware that different European countries understand the same concepts in very different ways. It has to be modest and to accept multiple visions of dignity in order not to generate intra-state conflicts with its jurisprudence. Research into human dignity at the CJEU

will be helpful in order to better understand whether and how different conceptualizations of dignity can coexist within the same legal framework.

**Read *in absentiam*:**

**23. John Young: “Dignity and Dialogue at the Canadian Museum for Human Rights”**

The Canadian Museum for Human Rights opened in 2014 with a mandate to cultivate dialogue and reflection on Human Rights. As an institution that mediates legal and philosophical concepts on one hand, and concrete developments and lived experiences on the other, we recognize that dialogue is a critical component of the meaningful embrace of human rights and human dignity. Drawing from practical experience in Museum program and exhibition development, this paper will highlight the importance of dialogue in understanding, expressing, and cultivating public memory around human rights.

**24. Clint Curle: “Barbarous acts which have outraged the conscience of humankind”**

This paper explores the interesting career of the legal phrase, “barbarous acts which have outraged the conscience of humankind.” It emerged in 19th century jurisprudence as part of an attempt to understand the boundaries of national sovereignty in international law, and more specifically, when it might be legally acceptable to violate national sovereignty for purposes of humanitarian intervention. The phrase was given prominent place in the preamble to the Universal Declaration of Human Rights and continues to be an important reference today in the work of the International Criminal Court. My argument is that the consistent and enduring use of this legal phrase only makes sense in the context of an implicit but broadly shared understanding of human dignity which is stable across time and culture.