RESOLUTION

RESOLVED, That the American Bar Association affirms that human dignity — the inherent, equal, and inalienable worth of every person — is foundational to a just rule of law; and

FURTHER RESOLVED, That the American Bar Association urges governments to ensure that “dignity rights” — the principle that human dignity is fundamental to all areas of law and policy — be reflected in the exercise of their legislative, executive, and judicial functions.
REPORT

All human beings are born free and equal in dignity and rights.
Universal Declaration of Human Rights (1948)

Human dignity stands for the simple and undeniable proposition that all human beings have worth that is equal, inherent, and inalienable. In the aftermath of World War II, it was universally recognized as “the foundation of freedom, justice and peace in the world.”¹ Since then, it has been recognized in more than 10 international human rights treaties, in the constitutions of nearly 160 nations, and innumerable domestic laws. It has also been instrumental in thousands of juridical decisions from international and regional tribunals and from domestic courts on every continent, including at the national and subnational level in the United States.

The U.S. Supreme Court has for decades invoked dignity as foundational to rights protected under the Eighth Amendment, the Due Process and Equal Protection Clauses, and in respecting rights of the accused, the infirm, the transient, and the dispossessed under other constitutional provisions.

The right of every person, everywhere to have his/her dignity respected is the very purpose of human rights, justice, and democratic rule of law. The ABA therefore should formally embrace “dignity rights” as such in advocating for human rights and a just rule of law domestically and internationally. Indeed, ABA recognition and reflection of dignity rights would bring the ABA and its members closer to the worldwide standard for human rights and strengthen its positioning as a leader within the United States in matters of justice, democracy, and rule of law.

The resolution would have the immediate effect of strengthening the ABA’s work in several ways. First, it would ensure that the ABA is on solid policy ground when it condemns practices, such as torture, humiliation and invidious discrimination. Second, it would provide support for ABA activities that are designed to advance human dignity, policies and practices that promote rule of law, democratic and political rights, and other civil rights. Third, it would provide a vocabulary for defending liberty and pursuing justice. Fourth, it would serve as a unifying principal to reflect what matters most to Association: “Defending liberty and pursuing justice.”

This report has three parts: Part I elucidates the concept of dignity rights and describes its evolution; Part II details the extent to which dignity rights already undergird U.S. law; and Part III examines the growing recognition of dignity rights in constitutions and courts around the globe.

¹ Universal Declaration of Human Rights, Preamble (Dec. 1948).
I. Dignity Rights Overview

The concept of human dignity means, quite simply, that every person has inalienable equal worth. This incontrovertible but profound concept has three elements. First, every member of the human race has value; no one can be dismissed, ignored, mistreated, or abused as if their humanity does not matter. Moreover, every human being has a right to agency, to self-development, to choose one’s life course. Second, each person’s worth is equal to every other person’s. No one’s life is more important than any other person’s. Each person’s right to human flourishing, is the same as every other’s. Notwithstanding our myriad individual differences, dignity is what unites us: in our humanity, we are all the same. Third, each person’s worth is inherent and inalienable; human dignity exists whether or not governments recognize it, and powers public and private must be held to respect and promote it.

Over the last century, dignity increasingly has been recognized as a legal right in the United States and throughout the world, particularly since the creation of the United Nations and the adoption of the Universal Declaration of Human Rights (UDHR). The Charter of the United Nations explains that its very purpose is to protect human dignity. The UDHR recognizes that "the inherent dignity … of all members of the human family is the foundation of freedom, justice and peace in the world," and that "[a]ll human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." Advancing human dignity also is a central feature of both the International Covenant on Civil and Political Rights (which the United States has ratified), and the International Covenant on Social, Economic and Cultural Rights (which it has not). Together, these instruments are binding on almost all nations of the world.

Moreover, human dignity serves as a central feature of other human rights instruments, such as the UN Convention on the Rights of the Child, the Stockholm Declaration on the Human Environment, and the UN Sustainable Development

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7 Convention on the Rights of the Child, UNDCHR. The United States is a signatory to the former.

8 “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being.” http://www.un-documents.net/unchedec.htm
Goals (SDGs). Human dignity also is a constitutional guarantee in nearly 160 countries.

II. Dignity Rights in the United States

Dignity increasingly is impacting U.S. law. The U.S. Supreme Court has invoked dignity in upholding basic civil and political rights, such as to citizenship ("[t]he basic concept underlying the Eighth Amendment is nothing less than the dignity of man"), to equal treatment (the “Constitution that requires the Government to respect the equal dignity and stature of its male and female citizens"), to treatment when subject to criminal arrest ("the constitutional foundation underlying the privilege is the respect a government – state or federal – must accord to the dignity and integrity of its citizens"), to fairness in treatment of the poor ("[f]rom its founding the Nation's basic commitment has been to foster the dignity and well-being of all persons within its borders," and to dignity in administration of the death penalty ("The [Constitution] sets forth, and rests upon, innovative principles original to the American experience [and includes] broad provisions to secure individual freedom and preserve human dignity. These doctrines and guarantees are central to the American experience and remain essential to our present-day self-definition and national identity.")

The concept of dignity has been attached to constitutional protections in other ways as well. In the early 1960s, Justice William O. Douglas applied the constitutional right of dignity to “suspect minorities.” In the 1970s the Supreme Court invoked human dignity as a basis for recognizing rights of aliens, and in the 1980s, of women, older Americans, and people with disabilities. This trend has continued (and grown) into the present. In 2017, the Supreme Court invalidated a citizenship law creating different standards for unwed mothers and fathers. In that case, Justice Ginsburg held that the disparity in the criteria for the different genders “cannot withstand inspection under a Constitution that requires

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9 Adopted by all UN member states in 2015, the SDGs “envisage a world of universal respect for human rights and human dignity,” recognize “that the dignity of the human person is fundamental,” and establishes a goal to “ensure that all human beings can fulfil their potential in dignity and equality and in a healthy environment.” https://sustainabledevelopment.un.org/?menu=1300
10 https://delawarelaw.widener.edu/prospective-students/jd-program/jd-academics/signature-programs/dignity-rights-project/dignity-rights/
the Government to respect the equal dignity and stature of its male and female citizens."\(^{21}\)

In First Amendment jurisprudence, dignity operates both as a sword (assuring the right to express oneself freely and the right to information to make such expression meaningful) and as a shield (protecting against defamatory and other harmful speech). Thus defamation laws, as well as laws suppressing hate speech, fighting words, and other speech "which by its very utterance inflicts injury" might in fact promote individual dignity.\(^{22}\) The free speech case of \textit{Cohen v. California} braided together ideas of political discourse, individual autonomy and human dignity, holding that the First Amendment puts "the decision as to what views shall be voiced largely into the hands of each of us, … in the belief that no other approach would comport with the premise of individual dignity and choice upon which our political system rests."\(^{23}\)

In substantive due process cases, the Supreme Court has shifted its privacy jurisprudence toward a more textually grounded concept of liberty, undergirded by the recognition of human dignity. A plurality in \textit{Planned Parenthood of Southeastern Pennsylvania v. Casey} decided that the right to choose to terminate a pregnancy was a choice "central to personal dignity and autonomy" and constitutionally protected because "at the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life..."\(^{24}\) And more recently, in \textit{Obergefell v Hodges}, the Supreme Court observed that the liberties protected under the due process clauses "extend to certain personal choices central to individual dignity and autonomy, including intimate choices that define personal identity and beliefs" and therefore include the choice to marry a person of the same gender.\(^{25}\) These cases demonstrate the Court's profound commitment to resting the substantive right to liberty on a foundation of individual human dignity.

Relying on these cases, plaintiffs in the U.S. are beginning to embrace, and advocate, the recognition of their own dignity in enforcing other legal rights. The notion of dignity as the development of one's identity and the ability to make personal choices directing one's life path has been invoked by the so-called "Dreamers" to maintain the Deferred Action for Childhood Arrivals (DACA) policy. The argument is that DACA allows its recipients "to live their lives with the same dignity and liberty that others have: to be gainfully employed and free to be with

\(^{23}\) 403 U.S. 15, 24 (1971).
\(^{25}\) Obergefell v Hodges, 576 U.S. ____ (2016). See also Masterpiece Cakeshop v Colorado Civil Rights Commission, 584 U.S. ____ (2018) ("Our society has come to the recognition that gay persons and gay couples cannot be treated as social outcasts or as inferior in dignity and worth.").
family and friends and to form the other enduring attachments of normal life.”

In a case originally brought against President Obama in 2015, a group of child plaintiffs make the claim that their dignity is harmed by the potentially catastrophic effects of climate change and the government’s failure to take action to mitigate it. Plaintiffs are beginning to recognize that dignity connects them to legal issues in a way they can understand and ‘own’ and can bolster their arguments when invoking a specific right.

Dignity rights are also a feature of subnational constitutions, including in Montana (“The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws”) and Puerto Rico (“The dignity of the human being is inviolable”).

III. Dignity Rights around the Globe

Dignity rights have been recognized in the constitutions of nearly 160 countries in all regions of the world. Dignity is becoming a universally recognized constitutional value, transcending geographic, cultural, and political boundaries. Today, few constitutions are adopted or meaningfully amended without adding a reference to human dignity, and most protect human dignity in a variety of ways.

Indeed, promoting human dignity often serves as the very basis for national existence, as is expressed in the Constitution of Peru, which states, "The defense of the human person and respect for his/her dignity are the supreme purpose of the society and the State.” The Constitution of India includes, as one of its fundamental aims, to assure "the dignity of the individual." In the more recent constitution of Tunisia, dignity is an element of the republic's motto as well as an enforceable right.

28 Dignity is also increasingly resonating in public discourse. See e.g. David Leonhardt, “Dignity for All
30 Puerto Rico Const. Art. II § 16.
32 Id.
33 Constitution of Peru, Article 1.
34 Constitution of India, Preamble.
35 Constitution of Tunisia, Article 4.
The constitutions of many nations, moreover, assert that dignity is an independent, enforceable, and substantive right. For example, the German Basic Law of 1949 provides that, "Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority."\(^{36}\) Such constitutional 'inviolability' of human dignity is increasingly common.\(^{37}\) Constitutions also protect human dignity in a way that reinforces or animates other rights. The 1948 Constitution of Italy states, "All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions."\(^{38}\) The 2011 Constitution of Morocco states, "No one may inflict on others, under whatever pretext there may be, cruel, inhuman, [or] degrading treatments or infringements of human dignity."\(^{39}\) Constitutions also sometimes recognize the dignity of certain vulnerable segments of the population, including women, children, the elderly, and prisoners. Often, dignity animates several aspects of a single constitution, as in South Africa, Kenya, Colombia, and other countries, where it is recognized as a fundamental value as well as one or more enforceable rights.\(^{40}\)

Because of these provisions, and of the global movement to appreciate the fundamental role that recognition of dignity plays in the application of human rights, more and more cases are being brought before courts around the world demanding the protection of human dignity. And jurists are increasingly embracing the opportunity to give meaning to dignity, even in cases where it is not absolutely needed for the resolution of the case; that is, they are choosing to address the human dignity dimensions of the claims, just as the U.S. Supreme Court has done in cases such as those cited above.

In the last few decades, dignity rights have been invoked, interpreted, and applied by courts in thousands of cases and in a wide variety of factual settings. Notable examples include: Argentina, where dignity is the foundation for freedom of speech and right of association;\(^{41}\) South Africa, where civic dignity protects voting rights and other rights associated with the political process;\(^{42}\) Israel, where it is a "mother right" whose "daughters" include the right of family unity as well as the right of prisoners to be treated humanely, among many other rights;\(^{43}\) Colombia, where dignity is a measure of the state's obligation to provide health care;\(^{44}\) Germany, where the level of pension benefits must allow a person to live

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36 Basic Law of Germany, Article 1.
37 Constitution of Kosovo, Article 23.
38 Constitution of Italy, Article 3.
39 Constitution of Morocco, Article 22.
40 Constitution of South Africa, Articles 1 and 10; Constitution of Kenya, Article 10(2), 19, 24, and 28; Constitution of Colombia, Articles 1 and 21.
41 Asociación Lucha por la Identidad Travesti-Transexual v. Inspección General de Justicia, Argentina Supreme Court of Justice (21 November 2006).
42 August and Another v Electoral Commission and Others (CCT8/99) [1999] ZACC 3; 1999 (3) SA 1; 1999 (4) BCLR 363 (1 April 1999).
44 Sentencia T-292/09 (Constitutional Court of Colombia).
in dignity;\textsuperscript{45} Nigeria and Ireland, where the right to live with dignity includes the right to a clean and stable environment;\textsuperscript{46} Pakistan, where the concept of dignity includes climate and water justice;\textsuperscript{47} and India, where dignity guarantees the right to travel.\textsuperscript{48}

These cases reveal that human dignity – while an intrinsic and universal human quality – is also a right that governments are bound to respect and that courts are bound to enforce. They show that dignity is a concept that has a defined meaning in law to strengthen democratic institutions while empowering individuals to demarcate the limits of governmental power and expand their own liberty. Courts have used dignity to elucidate when rights are violated and to remedy personal harms. Recognizing dignity does not mean that plaintiffs always win, of course; yet it draws attention to the what is at stake in these cases, provides a framework for addressing competing values, and ultimately improves the prospects of achieving justice. Overall, the cases align closely with the ABA’s motto of “Defending Liberty, Pursuing Justice.”\textsuperscript{49}

Conclusion

Human dignity is the foundation of human-rights protection in the twenty-first century. Because it recognizes and reflects that every person is equal in his or her human worth, and attaches to every person equally — regardless of gender, race, social or political status, talents, merit, or any other differentiator — it represents the commitment to equality and non-discrimination that is fundamental to American law and to a just rule of law anywhere in the world. Because it recognizes and reflects that every person has worth that must be respected, it also represents the law’s affirmation that every person must be treated fairly and justifies the law’s commitment to due process.

More nearly than any other human or legal right, dignity expresses the human experience, as human beings experience it. People may not think in terms of which rights have been violated; but they know when their dignity has been violated, when a government has allowed conditions that make them feel less than

\textsuperscript{45} BVerfG, Judgment of the First Senate of 09 February 2010 - 1 BvL 1/09 - paras. (1-220), http://www.bverfg.de/e/ls20100209_1bvl000109en.html.

\textsuperscript{46} Nigeria: Gbemre v. Shell Petroleum Development Company Nigeria Limited and Others (2005) AHRLR 151 (NgHC 2005); Merriman & ors -v- Fingal County Council & ors; Friends of the Irish Environment Cig -v- Fingal County Council & ors Neutral Citation: [2017] IEHC 695 at 292, citing Constitution of Ireland (Bunreacht Na Héireann), Art. 40.3.1.

\textsuperscript{47} Ashgar Leghari v. Federation of Pakistan (Lahore High Court, Pakistan, 2018).

\textsuperscript{48} Maneka Ghandi v. Union of India (1978) 2 SCR 621.

\textsuperscript{49} Other disciplines are catching up to the law regarding the primacy of dignity as an organizing principle. See, e.g., Gene Sperling, “Economic Dignity: We must not lose sight of what economic policy is all about: allowing people to lead dignified lives.” Democracy: A Journal of Ideas (Spring 2019), available at https://democracyjournal.org/magazine/52/economic-dignity/.
equally human or impair their right to full self-development. By focusing on what matters most to people – being treated as a person of equal worth – the law of dignity rights reminds us of what is really at stake. The focus of dignity rights on worth reminds us that every person matters; its focus on equality reminds us that every person matters equally; and its focus on inalienability reminds us that no authority has the power to diminish a person’s dignity.

The ABA’s affirmation of human dignity as the foundation of a just rule of law, democracy, and the advancement of human rights in the United States would mark an important milestone in the annals of the American legal profession.

Respectfully submitted,

Hon. Bernice B. Donald
Chair, Center for Human Rights
August 2019

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Violent extremist groups continue to grow from the sense of injustice, futility, and betrayal that stems from predatory state behavior. A comprehensive countering strategy needs to focus squarely on the relationship between citizens and their state by creating leverage for citizens to exercise their democratic power and authority.

Id. Linda Bishai is Director of Research, Evaluation, and Learning at the ABA Rule of Law Initiative.
GENERAL INFORMATION FORM

Submitting Entity: Center for Human Rights (CHR)

Submitted By: Hon. Bernice B. Donald, Chair

1. **Summary of Resolution(s).**

This resolution recognizes the inseparability of human dignity in all areas of law and policy (and not only those typically characterized as discrete “human rights” concerns), and urges governments to carry out their various functions in a manner consistent with this “dignity rights” principle.

2. **Approval by Submitting Entity.** The resolution was approved by the CHR Board in April 2019.

3. **Has this or a similar resolution been submitted to the House or Board previously?** No. There have been numerous human rights policies, of course, but none on “dignity rights” specifically.

4. **What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?** This Resolution supports virtually all the Association’s prior human rights policies by recognizing the core principle underlying each of them.

5. **If this is a late report, what urgency exists which requires action at this meeting of the House?** N/A

6. **Status of Legislation.** (If applicable) N/A

7. **Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.** This resolution will reaffirm and enhance the Association’s commitment to human dignity.

8. **Cost to the Association.** (Both direct and indirect costs) No additional direct or indirect costs to the Association are anticipated.

9. **Disclosure of Interest.** (If applicable) N/A

10. **Referrals.** The Resolution with Report has been referred to the:

    Business Law Section
    Section of Civil Rights and Social Justice
113B
Health Law Section
Section of International Law
Section of Labor and Employment Law
Section of Litigation
Center for Public Interest Law
Commission on Domestic & Sexual Violence
Commission on Immigration
Commission on Sexual Orientation and Gender Identity

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

Michael Pates, CHR Director
American Bar Association
1050 Connecticut Ave, NW, Fourth Floor
Washington, DC 20036
202/662-1025
michael.pates@americanbar.org

12. Contact Name and Address Information. (Who will present the Resolution with Report to the House? Please include best contact information to use when on-site at the meeting. Be aware that this information will be available to anyone who views the House of Delegates agenda online.)

Hon. Bernice B. Donald, CHR Chair
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EXECUTIVE SUMMARY

1. Summary of the Resolution

The resolution recognizes the inseparability of human dignity in all areas of law and policy (and not only those typically characterized as discrete “human rights” concerns), and urges governments to carry out their various functions in a manner consistent with this “dignity rights” principle.

2. Summary of the Issue that the Resolution Addresses

As with “national security” or “fiscal policy” or myriad other areas of public concern, “human rights” often is thought of as a discrete set of legal and policy issues to be weighed against others. Properly understood, however, human rights forms the foundation of a just rule of law on which all other areas of democratic law- and policy-making are premised. The resolution therefore corrects the misperception by affirming the principle of “dignity rights,” which recognizes human dignity as a fundamental principle underlying a democratic rule of law across all areas of legal and policy concern.

3. Please Explain How the Proposed Policy Position Will Address the Issue

Human dignity has existed since human beings have existed. What has changed in the decades since the end of World War II is the irrefutable and irreversible awareness that just laws do and must reflect human dignity. The ABA’s affirmation of human dignity as the foundation of rule of law, democracy, and the advancement of human rights in the United States would mark an important milestone in the ability of Americans to advocate for themselves — in the relationship between attorneys and their clients, in the language in which judges issue rulings, and in the foundation of constitutional rights.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None received thus far.