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## ABSTRACT

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This article is the result of the research conducted on “Human Dignity: Philosophical conceptualization and the implementation of law” promoted by the POLITEIA Research Group from the School of Philosophy at the Universidad Industrial de Santander, classified as category B by COLCIENCIAS. This text formulates a three-strand conceptual reconstruction of the concept of human dignity: i) the tension between its natural and artificial character (either consensual or positive), ii) the tension between its abstract and concrete character, and iii) the tension between its universal and individual character. First, the main theoretical elements of these tensions are outlined. After that, the tensions are illustrated using four Instruments of International Human Rights Law and five trials by the Inter-American Court of Human Rights. Finally, conclusions regarding the tensions are presented.

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## KEYWORDS

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Human dignity - Conceptual tensions - International human rights instruments - Jurisprudence - Inter-American Court of Human Rights



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# TENSIONS OF HUMAN DIGNITY: CONCEPTUALIZATION AND APPLICATION TO INTERNATIONAL HUMAN RIGHTS LAW

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## 1 Introduction

The theoretical and practical importance of the concept of “human dignity” is hard to deny. Moreover, it is a notion that can be approached from a variety of perspectives and disciplines because it is an idea that has applications in various areas of human life. Hence, it is necessary to indicate that this text will address the concept of *human dignity* from a jusphilosophical perspective applied to the area of International Human Rights Law.

As a philosophical concept, human dignity can be traced back to Stoic thought, specifically, to its development by Christian thinker Thomas Aquinas’ medieval theory of natural law (LEE, 2008). However, despite the ancient historical, anthropological and religious roots of the concept of human dignity, its history as one of the universal values upon which human rights is based is relatively new.

This recent history, for its part, has been dominated by a great paradox: despite the existence of an almost absolute consensus that human dignity is a founding idea of human rights, the meaning and concrete scope of this idea, however, contains widespread and generalized disagreement (BOBBIO, 1991, p. 35). This disagreement exists even within Western societies and is further exacerbated if the Western and Eastern conceptions of peoples’ dignity are compared. Eastern researcher Karen Lee acknowledges this by noting that:

*“Despite its prominent status in international law and many domestic constitutions, it does not have a concrete meaning or a consistent way of being defined. This lack of precision often leads judges to introduce their own moral standards amid competing claims of rights each of which has a plausible case of human dignity violation. The elusive nature of human dignity spells even greater challenges when it is evaluated across cultures”*

*(LEE, 2008, p. 1)*

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Notes to this text start on page 58.

A general review of the different theoretical approaches to human dignity reveals that any conceptualization of the term faces at least three apparent problems or contradictions (TORRALBA, 2005). These contradictions can be formulated as questions, thus: i) is human dignity a natural quality of human beings or is it, instead, a consensual aspect created by political will or state legislation? ii) is human dignity an abstract value or, conversely, is it possible to define it in relation to concrete aspects of human life? And iii) is human dignity absolute and universal or, conversely, is it a particular value, dependent on historical, cultural and even individual contexts?

Nevertheless, to avoid falling into possible false dilemmas, it is more appropriate to rephrase the specific problem of this research as a conceptual reconstruction of three tensions involving the concept of human dignity, namely: i) the tension between its natural and artificial character, ii) the tension between its abstract and concrete character, and iii) the tension between its universal and individual character.

This reconstruction will take place in three stages. First, each of the three tensions will be expressed in a theoretical manner. Subsequently, the three strands will be identified by International Human Rights Law to obtain a better insight and to prove their existence; for this, first, four international human rights instruments that contain explicit references to the idea of human dignity, namely: the American Declaration of the Rights and Duties of Man; the Universal Declaration of Human Rights; the American Convention on Human Rights; and the Convention on the Prevention, Punishment and Eradication of Violence against Women, “Convention of Belem do Para”, will be used as study material. After this, five Inter-American Court of Human Rights’ sentences will be analyzed in order to show how these tensions can be identified in specific human rights violations. Finally, the third and final section will present some conclusions.

However, before developing the above, it is important to specify the following details on the nature and scope of this text. Firstly, it should be noted that the text presents itself as an exploratory essay on the theme of human dignity in the context of international human rights treaties and its jurisprudential interpretation in the Inter-American Court of Human Rights. Consequently, a number of important questions will remain unresolved. Questions asked, for example, from historical, political, rhetorical-discursive and even sociological perspectives would undoubtedly extend the analysis. We hope, nonetheless, that despite these limitations, this paper will contribute to the debate about the role that human dignity has played (and can play) in the favorable interpretation of human rights.

## 2 Conceptual tensions of human dignity

In the explanation of the three tensions identified as occurring in the concept of human dignity in this study, the following presentation strategy will be adopted. First, one pole of each tension will be presented followed by a problematic aspect, after which the same procedure will be presented with the tension’s second pole, and, finally, a synthesis of the tensions will be presented.

## 2.1 *The tension between the natural or consensual character of dignity*

The first of these tensions concerns the idea, enunciated in various international documents on human rights and modern constitutions, according to which dignity is a “natural” characteristic with which all human beings are born., thus, being, naturally endowed with an attribute called “dignity”, just as each human is endowed with reason, for the simple reason of having been born. In this way, dignity appears as the defining element of the idea of human nature, which, in principle, would essentially characterize every being that is part of the human species, regardless of random features such as place of birth, ethnic origin, social status, gender, etc. From this perspective, it is nature itself, or God, who gives every individual who belongs to the human species this essential attribute called “dignity”, an attribute that, therefore, would be present in humans from the moment of conception (SOULEN; WOODHEAD, 2006, p. 8). Hence, the individual, on the one hand, has no choice but to accept such an attribute since it is much more intensely a part of his being than, say, his arms or legs; on the other hand, his co-humans and the State would have no other option but to recognize his dignity, since it is not they who have granted it to him.

The metaphysical burden of this idea is as obvious as it is problematic, particularly in complex and pluralistic societies, such as in the present, where the idea of “a single human nature” seems untenable. For example, Mary Ann Glendon asks, “Is the universal rights idea merely based on a kind of existential act of faith? While ‘defending human dignity for all’ sounds a laudable goal in political debates, there are open questions as to what ‘the right to equal human dignity’ means, and it is not clear how far dignity could be counted on as an anchor for rights amid competing visions of human dignity in the pursuit of a good life”(GLEDON, 1999, p. 3).

Also, Serena Parekh recalls how these questions about “natural dignity” arose among the members of the committee that drafted the Universal Declaration of Human Rights:

*“The question of whether human rights should be grounded in something that was considered ‘natural’ or essential to human beings was at the heart of the debate on the first international human rights document, the Universal Declaration of Human Rights (UDHR). The tension between the desire for a truly universal theory and the fear of relying on metaphysical concepts can be seen in these debates”.*

*(PAREKH, 2007, p. 763).*

The first conceptual tension becomes evident when affirming, as opposed to what has been said above, , that the idea of human dignity is an artificial characteristic attributed consensually to all human beings because it is useful, nevertheless, it has no correspondence to an alleged reality of human nature since the existence of the latter is doubtful. Thus, it is not true that human beings are born with dignity, as if it were a natural or essential attribute; rather, it is a moral, political and especially legal fiction which is predicated on all members of the human species. Therefore it is the States, especially the constitutional States that are respectful of rights and liberties, that create the juridical-political principle of human dignity. This belief is

created largely as a way of trying to secure peace and peaceful human coexistence (HOERSTER, 1992). The fragility of the argument is revealed as obvious and problematic since the utilitarian principle could ultimately be used to justify anything, such as, for example, that the same peace in human society temporarily needs some members of the species not to be considered as bearers of this fiction called “dignity”.

In summary, this tension focuses on the very foundation of the concept of human dignity as a justification of human rights, and is closely related to the discussions between jusnaturalism and juspositivism.

## *2.2 The tension between the abstract or concrete character of dignity*

The second tension concerns the level of abstraction or, on the other hand, concreteness possessed by the idea of human dignity (ASIS, 2001, p. 37). In principle, since the Enlightenment led by Kantian practical philosophy, human dignity has been considered as a general requirement under which each human being is an end in itself which, therefore, cannot be manipulated for any other purpose. This translates into a moral maxim according to which every rational human being should treat himself and all human beings who share this “attribute” as an end in itself and never as a means. Kant, as everyone knows, tried to develop an alternative to utilitarian ethics, based on the idea that every human being is endowed with a “self-legislating” ability due to his innate freedom, as well as to his rationality and some sense of duty towards all mankind. In this sense, for Kant, every human being who has the freedom to follow reason and moral imperatives is endowed, by this very fact, with universal human dignity (KANT, 2002).

One problem at this level of conceptualization is the fact that one can hardly be in contradiction with it. However, this character of unquestionable truth can be explained by the fact that it is a completely empty definition. In other words, the abstract idea of dignity is at risk of lacking practical content. This is why disagreements start to appear when this idea is translated into more concrete aspects of social and political life as, for example, having certain rights and possibilities (certain employment, education, social relations, etc.).

Thus, in addition to the necessity of accepting an abstract notion of human dignity, the opposite pole of this second tension emphasizes the necessity to define dignity more specifically permitting higher levels of verification. Among the aspects of this increased specificity one would find, inter alia, the freedom to choose a profession and also the guarantee of receiving fair remuneration for it; the possibility of obtaining education and also the freedom to choose what kind of education; the enjoyment of certain fundamental rights that define what a human being is, such as private property; and also the enjoyment of the material means necessary for a worthwhile life, etc. (PECES-BARBA, 2003, p. 77). This illustrates that, indeed, behind the idea of human dignity, is the idea of “living well”, a notion that nobody would accept to be defined only in formal and abstract terms.

The second tension, therefore, consists of the need for any definition of human dignity to be clearly related to specific aspects of human life itself. In this sense, if human dignity is defined, for example, as “always being treated as an end and not

as a means”, such a definition generates the need to clarify in which cases there is one (being treated as a means) and in which cases there is the other (being treated as an end). However, the risk with this logic is that of misrepresenting the very idea of dignity in such a way that it would be converted into specific, convenient, quotidian and even irrelevant issues. In some ways this is the criticism that was formulated several years ago by Hannah Arendt. According to her, the recumbent conceptual confusion of the Universal Declaration of Human Rights soon would lead to “philosophically absurd and politically unrealistic claims such as that each man is born with the inalienable right to unemployment insurance or an old age pension” (ARENDR, 1949, p. 34).

In summary, in this second tension, it is evident that in addition to a definition, any concept of human dignity seems to require, in and of itself, some privileged “places” and “ways” of exercising it.

### *2.3 The tension between the universal or individual character of dignity*

In this third case, the first pole of this tension is based on the idea of the existence of an absolute and universal value, as human dignity would be, which would belong to every human being at all times and places. In this respect, human dignity would be one only, applicable to every individual of the human species (PICO DELLA MIRANDOLA, 1984, p. 50).

This character is, however, highly problematic because, in so far as dignity is related to the idea of a *good life*, it is hardly plausible to say that this could be absolutely universal. By contrast, the idea that each culture has developed, in different times and places, an idea of “living well” and, in this sense, an idea of dignity seems to be more acceptable. In this sense, according to Karen Lee,

*“Human dignity becomes a value behind different ways of life as societies describe their own conceptions about how humans should relate to one another. When people in Western-style democracies in general regard liberalism as the cornerstone of worthy human existence, in many Asian cultures, the rights and freedoms of individuals are intertwined with their duties and roles as determined by religion or convention”*

*(LEE, 2008, p. 30).*

This is why the polar opposite of the third tension, namely, the individual nature of dignity, refers to the fact that more than one “human dignity” what really exists is a multitude of dignity ideas, each one specifically located in culturally and historically determined social groups. Thus, one could speak of the dignity of human beings as a Latin American, or as an Easterner, or as a woman, or as a Native American, etc. (FERNANDEZ, 2001, p. 53).

What is involved is the necessity of the existence of a universal discourse that really encompasses all human beings without any other distinction, a claim that risks becoming empty discourse, as in the previous tension, since it seems clear that humans suffer and have needs not as human beings in general, but, say, as exploited workers or as women

or as indigenous peoples, etc. However, the risk at the opposite pole of this tension is to rip asunder idea of “human dignity” into an infinite variety of individual dignities.

With regard to the first tension, the third seems to revive those elements that were previously regarded as “accidental” (ethnicity, gender, etc.) to establish them as being essential for the definition of the individual dignity of the members of that ethnicity, gender etc. Finally, this is intended to indicate, that, ultimately, all three tensions are closely related.

### 3 Human Dignity in International Human Rights Law

In this second section, an analysis of four international human rights instruments will be provided in relation to the tensions identified in the concept of human dignity. How the theoretical tensions regarding human dignity have been translated into the practice of the Inter-American System of Human Rights will be studied and identified; subsequently, a study of the jurisprudence of the Inter-American Court of Human Rights as related to human rights violations and the application of the principle of human dignity will be conducted.

#### 3.1 *Human Dignity in International Instruments*

##### a. **The American Declaration of the Rights and Duties of Man**

In the American Declaration of the Rights and Duties of Man, there are three explicit references to the concept of “human dignity”. The first appears in the first paragraph of the Declaration, according to which “The American peoples have acknowledged the dignity of the individual”. In line with the rest of this document, the American peoples have recognized in their Constitutions that the juridical and political institutions’, which were established to govern life in society, main purpose is to protect the rights of human beings and to create circumstances that allow them spiritual and material progress and the pursuit of happiness. The second allusion is found in the Preamble to the Declaration, which states that “All men are born free and equal, in dignity and in rights”.

These two references illustrate the first of the three tensions around dignity, namely, its jusnaturalist-essentialist character versus its consensual or political-positive character<sup>1</sup>. The first of which is in the text of the Preamble, where dignity is located as the birthright of every human being, as if it were a defining characteristic of one’s nature or essence. The second character appears in the quotation in which the people of America are defined as those who, due to the juridical-political principles expressed in their constitution, have conventionally “placed” a very useful and relevant, but not necessarily natural, feature in human beings, namely, human dignity. To the extent that it is pointless to dignify that which from the beginning has always had dignity, such “dignification” is achieved historically and through the juridical-political process that develops the will and consensus of the States.

The third reference is explicit in Article 23 of the Declaration, which guarantees the right to private property. According to this article, “Every person has a right to own

such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home”. This reference illustrates the second of the tensions identified, i.e., the abstract character of dignity vis-a-vis their concrete manifestations. One should not underestimate the fact that of all the rights listed in the American Declaration, the concept of dignity appears only explicitly related to one of the rights contained therein, namely, the right to private property. The idea of dignity that expresses its essence and which defines all human beings, either naturally or positively, is limited, as it appears upon the right to private property and not dependent upon other rights such as equality, freedom, free expression, education, etc. Thus, having a valuable human life, which is what ultimately expresses the idea of “human dignity”, would be exhausted with the pleasure and enjoyment of the right to private property and not, for example, with active participation in the public and political life of the State.

Certainly, in light of the American Declaration, one could clearly develop a broader conception of what human dignity is. A systematic interpretation of the entire Declaration (especially of its Duties) could offer results in this regard. The above considerations should be understood, if one recalls, in connection with the illustration of the existing tensions around the understanding and the normative and jurisprudential development of the concept of “human dignity”. In this sense, the American Declaration of the Rights and Duties of Man (1948) is paradigmatic, unlike other subsequent international instruments, in that only it is alone explicitly to relate human dignity with the right to property.

## **b. The Universal Declaration of Human Rights**

In the Universal Declaration of Human Rights, there are five explicit references to the idea of human dignity, two of which can be found in the Preamble and the remaining three in the articles.

In the first of the references in the Preamble, the Declaration seems to be committed to a naturalistic conception of human dignity since it is referred to as being “intrinsic” to all human beings. In this sense, dignity, as an intrinsic feature of every human being, pre-exists all juridical-political acts. Thus, juridical-political actions cannot “dignify” human beings, since dignity is already found in everyone inherently; the only thing one can do is to recognize that dignity, which, according to the Declaration, is necessary to realize the political and social principles of freedom, justice, and world peace.

Consistent with this, the fifth paragraph of the preambles states that the peoples of the United Nations have reaffirmed their “faith” in the dignity of the human person, which can be understood as a concession to the naturalistic idea, and if one desires, to the metaphysical conception of dignity as an essential attribute of every human being, a notion that for lack of an irrefutable demonstration can only be believed and accepted with the commitment to “promote social progress and better standards of life in larger freedom”.

Furthermore, Article 1 of the Universal Declaration almost exactly reproduces the first line of the Preamble of the American Declaration quoted above by saying that “All 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”. Once again, dignity is attributed to the biological fact of the birth of every human being, as if it were a defining characteristic of its nature.

However, the remaining explicit allusions to dignity that appear in Articles 22<sup>2</sup> and 23<sup>3</sup> do show a considerable difference with respect to the American Declaration as dignity is not directly related to property rights but to the rights to social security and work. This suggests that in this international instrument, the abstract idea of dignity becomes more concrete due to the correspondence with the above mentioned rights.

A historical explanation of this difference would indicate that this divergence is due to the North American influence in the first Declaration in contrast to the presence of the socialist countries participating in the second. However, without intending to deny the value and veracity of explanations developed from that perspective, to the extent that this research has a theoretical framework and a jusphilosophical rather than historical methodology, what is important is to show the conceptual tension that exists when considering that human dignity is, so to speak, closer to property rights than to other social or political rights, such as social security or work. In any case, historical explanations constitute a great help for the identified purpose while aiding understanding that the idea of what is proper for a human being or, in other words, that which gives value to human existence, is, ultimately, dependent on political, social, cultural, and historical circumstances. This dependence immediately evokes the third of the identified conceptual tensions about human dignity, that is, the contradiction between its alluded to universal character vis-a-vis its historical and individual reality.

It is clear that from a socialist perspective what one conceives as valuable and desirable for all human beings differs greatly from that which is conceived from a liberal or capitalist perspective. However, the very idea of dignity always demands a remoteness and an abstraction of these particular and concrete circumstances that produce it. This underscores the third of the tensions that have been identified around the idea of human dignity, namely, the tension between its universality versus its individuality. This tension may be found more clearly in the fourth international instrument under discussion, namely, the Convention of Belem do Para.

### c. American Convention on Human Rights

In the American Convention there are three explicit references to the idea of human dignity, all of which are found in its articles. Also, the Preamble to the Convention is permeated with direct allusions that are committed to some idea of naturalistic human dignity to the extent that rights are consistently defined as “essential rights of man [which] are based upon attributes of the human personality”.

Article 5 of the Convention is directly linked to dignity with the right to personal integrity while it establishes in Section 2, “No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.”

Article 6 relates to dignity with freedom from slavery and servitude by indicating in Section 2 that “Forced labor shall not adversely affect the dignity or the physical or intellectual capacity of the prisoner.”

Once again, one could envisage a causal explanation linking this direct

relationship between dignity and rights as outlined above with the experiences of Latin American dictatorships in the twentieth century—dictatorships that committed much of their extraordinary constraints and deprivations through massive violations of freedom. However, as noted above, for the purposes of this research, these explanations, although probably true, are only relevant in that they shed light on the internal tensions that have built the concept of human dignity. Thus, despite the reiteration made in the Preamble to the American Convention, according to which the ideal of a free human being can only be realized “if conditions are created whereby everyone may enjoy his economic, social, and cultural rights, as well as his civil and political rights” and, also, in spite of the same Article 26 of the Convention<sup>4</sup>, the explicit idea of dignity that exists in such an international instrument is not linked to economic, social or cultural rights but to the rights mentioned above that are part of the tradition called first generation rights.

Thus, it is perfectly consistent with the aforementioned that Article 11 of the Convention establishes explicit protection for dignity; this protection is directly related to honor. This implies that although dignity does not appear linked only to private property, as was the case with the American Declaration of the Rights and Duties of Man, the document continues to conceive of it as something that refers exclusively to the private realm, as stipulated in Section 2 of that article: “No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation”.

#### **d. Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, “Convention of Belem do Para”**

In the explicit references to dignity in the *Convention of Belem do Para*, the three identified strands once again appear. In effect, Article 4 of the Convention concerns the right of women to be respected, in “the inherent dignity of her person”. Similarly, the same Article also states that the rights of women include their right to the protection of her family. Therefore, following the same line of argument developed in the three previous international instruments, a reader of this Convention may well be interested in the reasons that led to the expression “the inherent dignity of her person” to be expressed jointly and immediately after the idea of family. Once again, the concrete “place” which holds the reference to dignity cannot be accepted so innocently and meaninglessly, in the same way that it could not be in the previous instruments, in which, one will remember, dignity appeared related directly with some rights but not with others. Consequently, it might be suspected that despite the great progress that has been made in the world as a result of this Convention, it would seem to include a traditional idea, namely that it accepted that the privileged locus for the dignity of women (the one where this dignity becomes more concrete) is found in the family.

The Convention of Belem do Para also lets one observe the third of the tensions identified, namely, the universal or individual character of dignity. In the case of the present Convention, this tension takes a different form than those identified before. On the one hand, we have the assertion in the introduction of the Convention that “violence against women is an offense against human dignity”. This proposition, as one can see, suggests an abstract and universal idea of a single human dignity that

is thwarted and attacked by any act of violence against women. Note that this may involve both an offense against the dignity of women suffering the violent event as well as an offense against the more abstract idea of human dignity represented as the dignity of the human species as a whole. That is to say, from this standpoint, any act of violence against women is a direct affront to the dignity of humanity, composed of all human beings, men, women, etc., to the extent that such a fact would be found based on an idea of the superiority of men over women, a notion that is unacceptable in relation to the ideal of a humanity composed of free and equal beings, whose existence has value in and of itself, in each individual belonging to the human species.

On the other hand, the Convention, in Article 8, also makes a direct allusion to the idea of dignity, but this time no longer understood as a characteristic of the whole human species but as a particular attribute of every woman. In fact, letter g) of that article provides that party States should adopt progressive measures and programs “to encourage the communications media to develop appropriate media guidelines in order to contribute to the eradication of violence against women in all its forms, and to enhance respect for the dignity of women”. Therefore, the Convention presents an individual idea of dignity, so to speak, that corresponds to and originates from the fact of being a woman. This means that not only would there be an overall human dignity but also the special dignity of the human being called woman, a specific dignity, different and self-originated from the “woman being”. This perspective would seem to be based on those critical approaches that indicate that behind the alleged universality of the same human rights, there really lies an individual and specific idea of human being, namely, the idea of man, bourgeois, Western, Christian, heterosexual, white, etc. As such, this dominant idea of dignity that intends to impose itself universally would be contrary, or at least different, from other ideas of dignity (dignity of women, indigenous peoples, African descents, homosexuals, etc.) that appear particular only in so far as one is opposed to them. Yet this opposition neither removes these individuals nor their right to exist. However, one could also think that what appears is not an adversarial relationship between two particular ideas of dignity (one of which falsely appears to be general) but rather a complementary relationship between a general idea of general human dignity and a particular idea of dignity, for example, of women. In any case, the tension between the alleged universalism versus individualism of the idea of dignity is evidenced by the reference discussed in this Convention.

### *3.2 Human dignity in the jurisprudence of the Inter-American Court*

The study of inter-American jurisprudence permits one to illustrate the way in which the theoretical and philosophical principles of the International Human Rights Treaties materialize in enforceable rights that are embodied in specific cases. Thus, judges have the task of determining the extent of the law and the scope of protection in practices that are contrary to international principles.

Next, five judgments from the Inter-American Court of Human Rights (IACHR COURT, hereafter IACHR), where the protection of human dignity recognized in the inter-American instruments of protection have been invoked, will be analyzed. The sentences studied correspond to different periods of publication,

which permits one to observe the evolution of the Inter-American Court's judgments and its line of interpretation with regard to human dignity vis-a-vis the various human rights violations alleged by the parties.

#### a. Velasquez Rodriguez vs. Honduras

The facts of the case have to do with the “disappearance” of Manfredo Velasquez by the Honduran Armed Forces. The IACHR studied the human rights violations resulting from the forced disappearance and the State's role as guarantor. In this sense, the IACHR affirmed:

*“Without question, the State has the right and duty to guarantee its own security. It is also indisputable that all societies suffer some deficiencies in their legal orders. However, regardless of the seriousness of certain actions and the culpability of the perpetrators of certain crimes, the power of the State is not unlimited, nor may the State resort to any means to attain its ends. The State is subject to law and morality. Disrespect for human dignity cannot serve as the basis for any State action”*

*(IACHR, Velasquez Rodriguez vs. Honduras, 1988, para. 154).*

In addition to the above, the IACHR emphasized the violated rights of people illegally detained:

*“Moreover, prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment, harmful to the psychological and moral integrity of the individual and a violation of the right of respect for any detainee's inherent dignity as a human being. Such treatment, therefore, violates Article 5 of the Convention, which recognizes the right to the individual's personal integrity.*

*(IACHR, Velasquez Rodriguez vs. Honduras, 1988, para. 156).*

The range of human dignity and the State's role as guarantor discussed above are reinforced by the Court by recalling that:

*“The first obligation assumed by the States Parties under Article 1(1) is ‘to respect the rights and freedoms’ recognized by the Convention. The exercise of public authority has certain limits which derive from the fact that human rights are inherent attributes of human dignity and are, therefore, superior to the power of the State. On another occasion, this Court stated: ‘The protection of human rights, particularly the civil and political rights set forth in the Convention, is in effect based on the affirmation of the existence of certain inviolable attributes of the individual that cannot be legitimately restricted through the exercise of governmental power. These are individual domains that are beyond the reach of the State or to which the State has but limited access’”*

*(IACHR, Velasquez Rodriguez vs. Honduras, 1988, para. 165).*

The IACHR also reiterated the range of the rights that had been violated in the basic sentence since it was related to forced disappearance:

*“The practice of disappearances, in addition to directly violating many provisions of the Convention, such as those noted above, constitutes a radical breach of the treaty in that it shows a crass abandonment of the values which emanate from the concept of human dignity and of the most basic principles of the inter-American system and the Convention”*  
(IACHR, *Velasquez Rodriguez vs. Honduras*, 1988, para. 158).

Considering the above, the Velasquez Rodriguez Case is a valuable reference to demonstrate all of the argumentative force that results from considering human dignity as being inherent to the nature of every human being, as expressed by the IACHR itself. Indeed, from this perspective it is clear that, as shown by the decision of the Court, the liability that a person could have for having committed a grave crime against the security of the State itself can not imply, in any way, that said State could carry out acts that violate the dignity of that person or of other people. Human nature does not change as the result of having committed any crime, which means that even the worst criminals are still human beings with dignity and, therefore, should be well treated by the Democratic States.

Conclusions might be different if one considered that human dignity is a principle generated by a social and political consensus since, from this perspective, it seems justifiable that individuals who by their very actions reject this consensus are not entitled to the benefits to be derived therefrom. This idea, in fact, seems to be that which dominant contemporary discourses wish to impose about the fight against terrorism.

Secondly, the IACHR maintains that illegal detention or the forced disappearance of persons causes a definite risk of infringing on other rights, such as the right to physical integrity and the right to be treated with dignity. Thus, this establishes a presumption of risk when faced with a particular practice that violates human rights, which translates into a measure that defines the scope of human dignity. In this sense, the Court turned the abstract idea of dignity into concrete form by indicating that prolonged solitary confinement and incommunicado detention represent, in and of themselves, forms of cruel and inhuman treatment that contradict dignity. Thus, it is clear that the tension between the abstract and the concrete nature of human dignity finds its resolution in the courts to the extent that it is part of its work to determine the precise meaning of what is a “violation of human dignity” in the cases Brought before it.

## **b. Carmen Caballero Delgado and Santana vs. Colombia**

In this case the petitioners alleged that Carmen Caballero Delgado and Carmen Santana, at the time of their disappearance, were tortured and some witnesses stated that Carmen Santana was seen naked, which was claimed to be a violation of the right to human dignity and personal integrity.

Faced with the accounts of some witnesses about Carmen Santana’s nakedness, the Court stated that:

*“this Tribunal does not find sufficient evidence to demonstrate that Isidro Caballero-Delgado and Maria del Carmen Santana had been subjected to torture or inhumane*

*treatment during their detention, since that allegation is based solely on the vague testimony of Elida Gonzalez-Vergel and Gonzalo Arias-Alturo and was not confirmed by the statements of the other witnesses”*

*(IACHR, Caballero Delgado and Santana vs. Colombia, 1995b, para. 53).*

Consequently, due to a controversial assessment of evidence, it was left undetermined whether the forced nakedness that was inflicted on Carmen Santana, according to accounts of two witnesses, at the time of the arrest by the army, is a fact that undermines human dignity and, especially, the human rights of women.

On this point, it is worth noting that Judge Maximo Pacheco filed a dissenting opinion in relation to the aforementioned point. According to the judge: “(...) 2. No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person” (IACHR, Caballero Delgado and Santana vs. Colombia, 1995b, Dissenting Judge Maximo Pacheco Gomez).

Due to the above, the majority’s position generates the following concerns in relation to the natural conception of human dignity which had been accepted until then. Indeed, if human dignity really originates in the very nature of the person, it seems inconsistent to believe that its violation should be subject to stringent tests. On the other hand, such naturalness would seem to require a prima facie belief for a of its potential vulnerability. Moreover, one could very well think that the fact of being a woman reinforces the idea that dignity must be particularized and understood differently in the case of particularly disadvantaged or vulnerable subjects. However, one must also take into account that at the time these points were not as clear to the IACHR, since this is a sentence dated in 1995, the same year in which the Convention of Belem do Para went into effect.

### c. Neira Alegria et al vs. Peru

In this case, the responsibility of the State in the disappearance of Victor Neira Alegria, Edgar Zenteno-Escobar, and William Zenteno Escobar is debated. These people were detained in prison, as defendants, as alleged perpetrators of terrorism, and disappeared at the time that the armed forces took control of the penal institutions. For this reason, the Inter-American Commission alleges violation of Article 5.2 of the Convention relating to personal integrity and human dignity.

Upon studying the facts, evidence and possible violations of the alleged rights, the Court states the following:

*“This Court considers that in this case the Government has not violated Article 5 of the Convention. While the deprivation of a person’s life could also be understood as an injury to his or her personal integrity, this is not the meaning of the cited provision of the Convention. In essence, Article 5 refers to the rule that nobody should be subjected to torture or to cruel, inhuman, or degrading punishment or treatment, and that all persons deprived of their liberty must be treated with respect for the inherent dignity of the human person. It has not been demonstrated that the three persons to whom this matter refers*

*had been subjected to cruel treatment or that the Peruvian authorities had damaged their dignity during the time that they were being detained at the San Juan Bautista Prison...*  
(IACHR, *Neira Alegria et al vs. Peru*, 1995a, para. 86).

At this time, this brief reference made by the IACHR is useful to clarify the tensions of the concept of human dignity insofar as it clarifies that, although dignity is understood as inherent to the nature of human beings, it is not possible to identify it absolutely with the existence of life, because, as noted by the Court, human dignity has an autonomous and different sphere of meaning. Therefore, in this and in most other cases, the Court does not profoundly develop a specific concept of what should be understood by human dignity in the Inter-American system. This reference, along with all the others, creates a meaning that unfolds over all cases. This meaning, as noted above, is what really makes concrete, at least in legal terms, the abstract meaning which, in itself, contains the concept of human dignity.

#### **d. Case of the “Street Children” (Villagran Morales et al) vs. Guatemala**

In the ruling on the Villagran Morales et al landmark case, known as “The Street Children vs. Guatemala”, the kidnapping, torture, and murder of five youths who lived on the streets, two of whom were minors, is discussed. In this case it is disputed whether there was a failure of the State mechanisms to address these violations in court and convict those who were responsible. During the trial, it was revealed that four of the victims were placed in the trunk of a vehicle. As a result, the Court stated that “even if no other physical or ill treatment occurred, that action alone must clearly be considered to contravene the respect due to the inherent dignity of the human person” (IACHR, “Street Children”- Villagran Morales et al vs. Guatemala, 1999, para. 164).

The Inter-American Court, with regard to illegally detained people, recalled that “a person who is unlawfully detained is in an exacerbated situation of vulnerability creating a real risk that his other rights, such as the right to humane treatment and to being treated with dignity, will be violated” (IACHR, “Street Children”- Villagran Morales et al vs. Guatemala, 1999, para. 166).

Overall, in this case the IACHR required two elements to identify and define the violation of human dignity: *i.* conditions of people’s special vulnerability and *ii.* the context in which the violations take place. Thus, faced with evidentiary problems that had arisen in cases like *Caballero Delgado and Santana vs. Colombia* and *Neira Alegria et al v. Peru*, the tensions were resolved by putting into the balance the elements aimed at specifying and particularizing the human dignity of the victims in terms of an inherent human attribute.

For its part, the separate vote of judges A. A. Cancado Trindade and A. Abreu Burelli, recalls that:

*“The duty of the State to take positive measures increases precisely in relation to the protection necessity of the life of vulnerable and defenseless persons, in situations of risk, such as children in the streets. The arbitrary deprivation of life is not limited, thus, to*

*the illicit act of homicide; it extends likewise to the deprivation of the right to live with dignity. This position conceptualizes the right to life as belonging, both to the domain of civil and political rights, as well as of economic, social and cultural rights, thus illustrating the interrelation and indivisibility of all human rights”*

*(IACHR, “Street Children” - Villagran Morales et al vs. Guatemala, 1999, Separate vote of judges. A. A. Cancado Trindade and A. Abreu Burelli, para. 4).*

Additionally, the separate vote notes the constraints that must be taken into account because the case is dealing with children and their particular vulnerability: “The needs of protection of the weaker, such as children in the streets, require definitively an interpretation of the right to life so as to comprise the minimum conditions of a life with dignity” (IACHR, “Street Children” - Villagran Morales et al vs. Guatemala, 1999, separate vote by judges. A. A. Cancado Trindade and A. Abreu Burelli, para. 7).

These separate votes are of the utmost importance since they return to the connection between human dignity and life, but, this time, the judges indicated that dignity cannot simply be a concept that applies only to limit any abuse by the State power in relation, for example, to private property, life, personal integrity, etc. Even if one cannot say that this is part of the majority decision, the separate votes really open a space to indicate that human dignity is not limited solely to the protection of these rights but actually relates to the enjoyment of some minimum conditions for a “decent life”. Thus, the interpretative work of the IACHR continues, even if it is in the separate opinions, solidifying the abstract meaning of human dignity to extend it to “the domain of civil and political rights, as well as economic, social and cultural rights, thus illustrating the interrelation and indivisibility of all human rights” (IACHR, “Street Children” - Villagran Morales et al vs. Guatemala, 1999, separate vote by judges. A. A. Cancado Trindade and A. Abreu Burelli, para. 4).

#### **e. Case of the Miguel Castro Castro Prison vs. Peru**

The Inter-American Human Rights Commission filed before the Court a demand to declare the Peruvian State responsible for the violation of human rights of 42 inmates who died, 175 inmates who were wounded, and 322 prisoners who were subjected to cruel, inhuman, and degrading treatment.

The IACHR, upon analyzing the extent of violations arising from the fact that the inmates were subjected to forced nudity during periods of time states:

*“...it is necessary to emphasize the fact that said forced nudity had especially serious characteristics for the six female inmates who, as proven, were submitted to this treatment. Likewise, during the entire time they were in this place, the female inmates were not allowed to clean themselves up and, in some cases, in order to use the restroom they had to do so in the company of an armed guard who did not let them close the door and who aimed their weapon at them while they performed their physiological needs (supra para. 197(49)). The Tribunal considers that these women, besides receiving a treatment that violated their personal*

*dignity, were also victims of sexual violence, since they were naked and covered only with a sheet, surrounded by armed men, who apparently were members of the State police force. What qualifies this treatment as sexual violence is that men constantly observed the women.”*  
(IACHR, *Criminal Castro Castro Prison vs. Peru*, 2006, para. 306).

The decisive factors in this case that characterized the violation of human dignity were based on the circumstances in which the events unfolded, i.e., not only the deprivation of freedom, but the subjection to nudity, to being observed, among other considerations, which the Court described as degrading, obviously taking into account that these prisoners were women.

According to the criteria of the Inter-American Court, based on the Convention of Belem Do Para, certain violations against women are inadmissible and particularly serious because they are particularly vulnerable and discriminated against in various areas. Therefore, dignity is not the same for everyone as this case reaffirms the idea that if subjects are especially vulnerable, the protection of human dignity must be strengthened, i.e., in the case of women, children, and indigenous peoples, the concept of dignity demands different obligations of the States.

## 4 Conclusions

From a theoretical viewpoint, the three conceptual tensions regarding human dignity seem unsolvable when faced with the difficulty of the problems that they present. Indeed, dignity is either natural to human beings, therefore, it antedates every social, legal, or political act, or, conversely, it is an attribute created by the dynamics of the juridical-political systems of modern societies. On the other hand, the right do human dignity is either an abstract value defined in formal terms and, therefore, ambiguous, or it is a specific value that is embodied in various spheres of human life, such as the right to property, personal integrity, social security, etc. Finally, either there is only one notion of human dignity that applies to all people without distinction of culture, class, gender, or other “accidental” attributes, or, conversely, human dignity is a concept that is necessarily qualified by these individual participation in various different social groups.

Furthermore, a systematic reading of the various international human rights treaties does not seem to suggest an answer to the above questions since, on the contrary, such a reading proves the existence of these tensions within the international documents. In this sense, the theoretical problem persists and even intensifies because each day new international documents appear (resolutions, treaties, conventions, declarations, etc.) which intend to recognize the existence of certain social groups which, in one way or another, had become invisible due to the generality s of existing documents to date. Recent cases of the rights of indigenous peoples and even religious groups illustrate this assertion.

But amid these conceptual uncertainties, there is one safe constant: the judicial decision. Indeed, irrespective of the level of difficulty a case presents, or whether or not there are theoretical doubts about the extent of certain concepts, such as human dignity, the judge always has the absolute obligation to make a decision.

Therefore, as shown, the jurisprudence analyzed participates at another level

in the theoretical debate about the tensions of human dignity. For this purpose, the main value of the court rulings is that through them, implicitly or explicitly, the judges are defining the range and meaning of certain terms and, especially, are making concrete that which, in principle, seems hopelessly abstract.

Thus, the jurisprudence of the IACHR that was analyzed and the inter-American precedents in relation to the range and protection of the right to human dignity have common roles in what concerns their applicability in certain situations.

As a first ruling, the Velasquez Rodriguez Case marks the interpretation line of the Court regarding the right to human dignity and the characterization of particular practices like the practices of forced disappearance, partly in response to the plight of many Latin American countries as the result of military dictatorships and gross practices of human rights violation.

However, the jurisprudence of the IACHR shows several cases of ambivalence when trying to translate human dignity into concrete facts in part, admittedly, because it is dealing with violations that are difficult to prove due to the ageing of the facts. Thus, the IACHR prefers, in some cases, to appeal to the lack of evidence to avoid a problematic substantive ruling. In other cases, the IACHR argues lack of cooperation on the part of national authorities and/or over-valuation of the context existing when the events occurred or, also, chooses to condemn the State assuming its defaulting on its duty to respect and guarantee human rights.

Given the evidential problems of lack of clarity in the events that constitute the violation of international treaties currently in different courts, both international and domestic, courts have been at the task of broadening the perspectives of interpretation and have used different decision criteria: pro person, pro worker, pro diversity, pro child, preferred position, special vulnerability, etc. These criteria seek to protect the human dignity of those who are threatened and vulnerable in different ways. In this regard, Judge Cecilia Medina warns:

*“if we consider that one of the elements to interpret international norms is taking into consideration the object and the purpose of the treaty, which both aim at the protection of human rights, one cannot but conclude that the interpretation must always be in favor of the individual (a pro person interpretation). This being so, it follows that the formulation and scope of rights must be interpreted broadly, while restrictions on them require a restrictive interpretation...A pro person interpretation is, thus, an important feature of the interpretation of the norms about human rights, which is the north that should guide the interpreter at all times”*

(MEDINA, 2003, p. 9).

Therefore, dignity is not only a right or a recognized principle in international treaties but it is also reborn as interpretive criterium in favor of broader human rights. Overall, it is undeniable that the general and abstract principles of international protection treaties that protect human dignity of all people have a range of shades of grey when it comes to applying them to specific cases. However, beyond the tensions presented, appealing to the respect for human dignity today is a positive strategy for the defense of human rights.

However, as we noted at the beginning of this paper, too many questions remain unsolved. At a theoretical level, for example, it seems necessary to develop an historical and socio-political reconstruction system to complement and help better to explain the three identified strands of human dignity. This type of analysis would, among other things, develop a better understanding of the explanatory functions of these three tensions, particularly with respect to the discourse of human rights. Similarly, from this wider perspective one could certainly make a critical assessment of the jurisprudence of the Inter-American Court of Human Rights to take into account not only those instances in which the Court has explicitly used the concept of “dignity”, but all those in which, having had the possibility of using it, chose (consciously or unconsciously) not to do so. Even from this perspective, it would be desirable to include the role of the Inter-American Commission in the analysis. Ultimately, as we also have noted at the beginning of this essay, the debate is open, and what is at stake is not insignificant.

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## NOTES

1. In the present text, the adjectives "artificial", "consensual", and "positive" are taken to be synonymous. We understand this need not be. However, we consider in all of them the aspect that interests us in the context of this article, namely, its contrast with the idea that human dignity is something "natural".

2. Article 22 "Everyone, as a member of society, has the right to social security and is entitled

to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality."

3. Article 23.1 "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection

against unemployment. 2. Everyone, without any discrimination, has the right to equal pay for equal work. 3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. 4. Everyone has the right to form and to join trade unions for the protection of his interests."

4. Article 26. Progressive Development "The States Parties undertake to adopt measures, both

internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires, according to available resources, through legislation and other appropriate measures".

## RESUMOS

Este artigo é resultado da pesquisa "Dignidad Humana: conceptualización filosófica y aplicación jurídica" apresentada pelo Grupo de Pesquisa POLITEIA da Escola de Filosofia da Universidade Industrial de Santander, classificado na categoria B por COLCIENCIAS. Neste texto, fazemos uma reconstrução conceitual de três tensões inerentes ao conceito de dignidade humana: i) a tensão entre seu caráter natural e seu caráter artificial (ou consensual ou positivo); ii) a tensão entre seu caráter abstrato e seu caráter concreto; e iii) a tensão entre seu caráter universal e seu caráter particular. Em um primeiro momento, expomos os principais elementos teóricos destas tensões. Posteriormente, tais tensões são ilustradas mediante quatro instrumentos de Direito Internacional de Direitos Humanos e cinco sentenças da Corte Interamericana de Direitos Humanos. No final, apresentamos conclusões.

## PALAVRAS-CHAVE

Dignidade humana – Tensões conceituais – Instrumentos internacionais de direitos humanos – Jurisprudência – Corte Interamericana de Direitos Humanos.

## RESUMEN

El presente artículo es resultado de la investigación "Dignidad Humana: conceptualización filosófica y aplicación jurídica" adelantada por el Grupo de Investigación POLITEIA de la Escuela de Filosofía de la Universidad Industrial de Santander, clasificado en categoría B por COLCIENCIAS. En este texto se realiza una reconstrucción conceptual de tres tensiones del concepto de dignidad humana: i) la tensión entre su carácter natural y su carácter artificial (o consensual o positivo); ii) la tensión entre su carácter abstracto y su carácter concreto y iii) la tensión entre su carácter universal y su carácter particular. En un primer momento se exponen los principales elementos teóricos de las tensiones. Posteriormente, las tensiones se ilustran mediante cuatro instrumentos de Derecho Internacional de los Derechos Humanos y cinco sentencias de la Corte Interamericana de Derechos Humanos. Al final se presentan las conclusiones lo anterior.

## PALABRAS CLAVE

Dignidad humana – Tensiones conceptuales – Instrumentos internacionales de derechos humanos – Jurisprudencia – Corte Interamericana de Derechos Humanos.