

Ronald Dworkin and Human Dignity as Highest Constitutional Value: Philosophical Theorization of Rights and Human Dignity in a Comparative Perspective

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Abstract

This paper focuses on the study of Ronald Dworkin and Human dignity as the highest constitutional value. Ronald Myles Dworkin (1931-2013), a famous American philosopher, jurist, and scholar of the United States constitutional law believes that constitutional provisions are permeated with moral principles and that human dignity is an intrinsic constitutional value, and that it must be considered in judicial decisions. Dworkin has his concept of rights, arguing that rights constitute claims against the state, and he espouses the idea that it is forbidden to sacrifice individual needs and preferences to achieve the public interest. That is, there are rights that the state cannot derogate from or violate, whatever the rationalizations and justifications. Dworkin categorically affirms that people have the right to be treated with dignity and that rights have an exceptional moral force that stems from the importance of human dignity, and that leads to preventing the formulation and implementation of specific policies even if they aim to enhance the general welfare of society. Consequently, his thoughts and reflections in this regard constitute a solid philosophical basis for the recognition of human dignity as the highest constitutional value.

Keywords: Human Dignity, Right, Value, Principle of Constitution, Ronald Dworkin.

1. Introduction

The philosophical approach and viewpoint of human rights and value such as the Human Dignity, has deeply permeated much constitutional structure and architecture, to the extent that some constitutions have been thoroughly restructured around human Dignities, like the German Basic Law (1949). From this perspective, it is undisputable and even indispensable to delve into the philosophical genesis of the comprehensive constitutional commitment to human rights and making human dignity as a fountainhead for human rights and sturdy ground from settling controversial cases. Roland Dworkin has contributed substantially in this regard, and he has tried to provide a sufficiently compelling and convincing case to prescribing and characterizing some rights as trump, meaning that these rights are shielded from any impairment and encroachment regardless of the grounds and the justifications provided for this violation. This philosophical underpinning underscores a significant convergence with the basic approach of constitutionalism within which human dignity constitutes the centerpiece of the constitutional structure.

This research attempt to study, explain and analyze the theorization of some rights as a trump card by Dworkin that excludes any possibility of abridgement and abrogation, or any restriction and constricting of human dignity as the

highest value. Therefore, unpacking and highlighting this aspect of his philosophical theorization of human dignity is the main focus of this research.

Dworkin provides an instructive, enlightening, and distinctive philosophical perspective concerning the conceptualization of rights; and this conceptualization can constitute a robust foundation and sophisticated philosophical underpinning for instantiating and establishing human dignity as the highest constitutional value.

2. Methodology

Basically, an analytical, as well as comparative methodology has been adopted, by exploring and analyzing Dworkin's philosophical theorization that rights and dignity are inextricably intertwined. Then by underlining and emphasizing some comparative perspective between Dworkin's philosophical conceptualization of dignity and German Constitutional court's adjudication with regard the value of dignity.

This paper provides answer to the following questions:

- Does the characterization of some human rights as a trump card by Dworkin function as the highest constitutional value?
- Can it provide an assailable barrier against encroaching upon human dignity?
- Does his perspective in this regard overlap with other dignitaries' philosophies, and can this overlap reinforce the claim for recognizing this value that cannot be overridden?

By analyzing Dworkin's philosophy, especially what it pertains to his understanding and interpretation of human dignity, an assumption can be made that as the result of gaining a deeper knowledge and a better understanding of human dignity, the justifiability of elevating this value to the highest status of constitutional order will be more convincing.

3. Ronald Dworkin's theory of rights and the justifiability of recognizing human dignity as the highest constitutional value

3.1 Principles setting the stage for human dignity to prevail

Dworkin believes that the judges have to take into consideration the foundational and fundamental principles of society, and the prominent conception of the principles employed here is grounded in his writings on this matter. According to Dworkin "principles are standards that entail requirement (s) of justice or fairness or some other dimension of morality" (Sarkar, 2019). For example, Dworkin asserts that abstract moral principles are infusing American Constitutional clauses, including human dignity. In this regard, he also claims the centrality of the value of human dignity in the American constitutional jurisprudence (Carmi, 2007). He also argues that the wording of the individual rights are very general and abstract in almost all contemporary constitutions, therefore, a moral reading should be adopted for interpreting those constitutional provisions which are related to individual rights, based on the assumption that they imply moral principles concerning how to organize and construct a just society, and what brings political morality into the heart of constitutional law is the moral reading of these abstract constitutional clauses (Dworkin, 1997).

This has a striking similarity with the German Basic Law (GBL), which includes principles that concern the constructing of a legal system in which human dignity has the highest status of the constitutional ladder, and a value-oriented order has been established by the GBL, which makes the dignity of the individual the most central value among its provisions (Kommers & Miller, 2012) according to its first article: (1) "Human dignity shall be inviolable, to respect and protect it shall be the duty of all state authority."

Therefore, the GBL has indisputably and categorically enshrined human dignity as the highest value of the constitutional order. Accordingly, this value has been categorized as being at the pinnacle of the value order established by the GBL, accordingly, it is incumbent on the state to draw up and carry out specific policies to ensure that human dignity is protected and respected, so this normative character of human dignity as the highest constitutional value has a significant and substantial practical effect (Rao, 2008).

This has a striking similarity with the concept of dignity in the GBL. So, once human dignity is at stake, no further argument is required to deem the conduct in question as unconstitutional, therefore it invokes the art 1 of the GBL within the German constitutional discourse which has a specific consequence, therefore, it is to play a trump card concerning other values (Hörnle, 2009).

In this regard, Dworkin refers to the fact that there are ways of treating man which are characteristically add odds with recognizing him as entitled to live as a full member of the human community (Dworkin, 1977, pp. 188). For Dworkin, the sanctity of the value of human dignity is self-evident and self-explanatory and it requires treating humans as ends, and never as a means (Dworkin, 1993).

On the other hand, the way the German Federal Constitutional Court (GFCC) structured the human dignity concept strikingly resembles that of Dworkin, although, human dignity takes divergent counters in Germany and the United States. The GFCC vigorously reaffirmed that acquiring a certain social status or achieving particular attainment, or the

individual's consciousness and attentiveness of his or her dignity are not prerequisites for gaining dignity, because human dignity originates from mere humanity (Michalowski & Woods, 1999).

The GFCC vehemently established the irrelevancy of the social standing, the idiosyncratic individualities, and the accomplishments of the persons for possessing human dignity, meaning every human being is entitled to and possesses human dignity even in the case of incapability of acting meaningfully due to certain physical, psychological or mental conditions. Therefore, the court ardently maintained that human dignity cannot be taken away or forfeited even if the person conducted "undignified" behavior (Hall, 2008).

3.2 Human dignity and human rights, a mutually reinforcing relation

Dworkin's arguments are explained through a presuming hypothesis: There is a fundamental right that functions as a fountainhead to all political rights. Therefore, in stressing the requirements of equal concern and respect, we seek to defend the political rights more elaborately. By referring to this hypothesis, we can heighten and highlight the enormous importance of certain interpretive notions in contemporary political theory, taking into consideration that equality and liberty feature is prominently among these notions, in which they are almost collectively and unanimously recognized as an abstract idea in mature well-established democracies. In such societies virtually all the people agree that the governed should be treated with equal concern by the government, and they must be enabled to enjoy and exercise their freedom to chart a successful life for themselves, however, this does not necessitate unanimity regarding the right that follows those forms of abstract ideas (Dworkin, 2014).

Therefore, individuals should not be left vulnerable and unprotected from the outcome of certain majority decisions, even if they were taken according to the prescribed procedures and intended to realize perceived public interest- so right as "trump" overrides and overwhelms communitarian goals (Steinmann, 2016).

Dignity can also be characteristically operationalized as a "conversation stopper" (Parfenchyk & Flos, 2017) as the ground for settling an issue because once it is invoked, it does not tolerate further discussion. The significant consequence of this line of interpretation on preserving and sustaining the residual identity is profoundly pronounced on the society which increasingly becomes more pluralistic in terms of values and adopts more relativistic in its understanding and interpreting these values, therefore, its residual identity needs to be outlined negatively by taboo concepts, human dignity meets these needs. This may interpret its absoluteness and why a great deal of emotionality was attached to it (Bayertz, 1996).

What distinguishes Dworkinian characterization of dignity as a right is that under no circumstances, this right can be trampled upon under the pretext of preserving and safeguarding the collective interests (Steinmann, 2016).

By emphasizing the fact that morality and law have a common foundation while morality enforces obligations cornering others, which cover all domains of actions, modern law that relates to the creation of well-spelt out scopes for exercising private choices that enable individuals to freely pursue their choices and determine their lives. The revolutionary development in this respect is that what is not explicitly proscribed is directly permitted, on the other hand, subjective rights have a peculiar character, and they are basic principles of the construction of the modern legal system (Habermas, 2010).

The primary preoccupation of Dworkin is in concurrence with this perception, as he imagines constructing a just society by seeking to determine its real laws and then executing and fulfilling those laws, all these through the incorporation of two sets of values, the substantive values that are integrated into the positive law, and the procedural ones with regards to some aspects like equality or liberty under the law (Keyes, 2016). Therefore, Dworkin provides arguments for elevating human dignity to the highest possible status.

3.3 Rights and a case for recognizing human dignity as the highest value

Dworkin conceptualizes rights in terms of their degree of enforceability, and this fundamental theorization can be utilized and employed as the underpinning of establishing and justification of hierarchical order, within which some rights acquire higher inviolability and inalienability, and this is inextricably intertwined with the principles grounding these rights, in a sense, it can be considered as transformative principles with transformational implications. Dworkin tries to explain the weak and strong senses of right, but the question is that: can his conceptualization of rights provide a sufficient ground for recognizing human dignity as the highest value. To answer this question, a detailed analysis of Dworkin understanding of rights might be necessary. He makes a distinction between two kinds of rights: First, when a government resorts to constrain a particular right, it formulates a policy in the form of collective welfare, and it must provide some reliable evidence in this regard, this is the weak sense of right which relates to an individual right (Dworkin, 2008). In this case, rights can be sacrificed, subordinated, abandoned, or restricted for the sake of collective good, and rights do not generate an impregnable barrier against any governmental intrusion, leaving them in a permanent situation of precariousness and vulnerability. Second, when a government is morally forbidden from taking restrictive measures against a particular right, supposedly for the furtherance of general well-being, this can be described as the strongest sense of right. So, in the strong sense, the underlying principles of the right are so forcefully

asserted, and any justificatory arguments cannot be provided by the government for overriding and any encroachment on those principles under the pretext of promoting collective goals. In this case, an individual right cannot be overruled by common concerns (Dworkin, 2008).

Thus, rights- in the strong sense can override some underlying justifications that are used for legitimizing some political decision makings, and the practical implication of this understanding is that it is irreversibly erroneous for officials to violate that right even if they genuinely believe that as the result of such a violation, the whole community would be better off (Dworkin, 1985).

The persistent character that normally legitimizes the political actions is the argument of trade-off, whereas the government for the purpose of improving the welfare of the community as a whole makes a conscious evaluation of different people's interests, and it takes some actions that eventually promote the interests of some citizens at the expense of the benefits of others. Yet, certain interests are invulnerable to such process of trade-off, and they are beyond changeable political calculations. These interests can be identified as political rights that ensure the protection of particularly significant interests (Dworkin, 2008).

The character of these rights cannot be punctured on any ground whatsoever, therefore, the profound and far-reaching legal ramifications is that these rights are not susceptible to any kind of subordination, and the principles underlying them are so powerful that it forestalls any attempt in forsaking them, no matter what the justifications are invoked in this regard. Accordingly, the scale is heavily tilted in favor of these rights.

Dworkin argues that if someone claims a political right, he makes a very strong claim: You make a very strong claim which is an apolitical claim at the same time when you steadfastly and stubbornly insist that the government cannot appropriately promote the overall interests of the entire community, you have to explain what are the individual interests that inhibit such government action and why they are so important (Dworkin, 2008).

Dworkin's view is that people are entitled to be treated with dignity, and rights have a powerful, exceptional moral force which originates from the importance of human dignity, namely, to inhibit the formulation and execution of specific policies that might promote the community's overall general welfare (Möller, 2018). "Human dignity, for Dworkin, consists of two principles: the principle of intrinsic value 'an equality principle' and the principle of personal responsibility 'a liberty principle'. The principle of intrinsic value declares the intrinsic and equal importance of every human life." (Dworkin, 2008). He states that: When ensuring equal concern, as well as equal respect becomes the overarching and imperative principle for the legal system, people can enjoy their life and fulfill their dignity. (Mullender, 2014). But what distinguishes the principle of "equal importance" is its overwhelming emphasis on the empirical imperative of leading successful life by all human beings, while the principle of "personal responsibility" stresses the fact that the person himself is ultimately responsible for realizing and accomplishing the success mentioned in the principle one (Dworkin, 2000).

Dworkin also proclaims that according to the first principle, equal importance, it is incumbent on the government to take the interests of all citizens seriously and in an equal fashion. Simultaneously, and with respect to the second principle, the government should create sufficient space within which the citizens would be able to freely decide how to invest in their lives (Mullender, 2016).

Dworkin plainly articulates this idea as the following, taking once life seriously is the obligation of every individual: it is imperative to realize that we should do our best to make an impressive performance of our life, and make sure that it will not pass as a squandered opportunity. This is inexorably linked to human dignity, and although this term has been misused by politicians, but any moral theorization must consider the special responsibility of every person to reflect and contemplate on the notion of leading a successful life, which may be realized through a lifestyle he espouses. Accordingly, these two principles constitute the conception of human dignity, to sum it up: self-respect and authenticity are constituent aspects of human dignity. Here Dworkin embraces 'Kant's principle which states that "*a person can achieve dignity and self-respect that is indispensable to a successful life only if he shows respect for humanity in all its forms*" (Dworkin, 2011). He also argues that these two principles Identify abstract value of a human situation (Dworkin, 2008).

One has intrinsically to do human life in terms of objective value, and according to the second principle, each character has distinct accountability for how his or her lifestyle goes (Dan-Cohen, 2012). These two principles together constitute the foundation and underpinning of human dignity, and they are the dimensions of dignity. Therefore, Dworkin believes that the preeminent interpretation of moral principles is that to say they stem from human dignity, and they are framed in such a way that leads to the promotion of human dignity (Clayton & Stemplows, 2014).

By referring to the two principles of human dignity, Dworkin states, very correctly, that these principles represent the ideals that profoundly embedded in Western political theory (Dan-Cohen, 2012).

Here Dworkin's attempts to build his understanding of dignity on Kant's philosophy, for Kant Self-respect is the authentic incarnation of dignity, and the only way for realizing it is to treat the world in a way man wish to be treated. Dignity is obligatory and compulsory and must be looked at and dealt with as an end in itself without attaching any price to it on the contrary of pride or power. Dworkin tries to ground his understanding of the Kantian notion of dignity by formulating this concept as an ethical one 'by insisting that everybody must take his own life seriously' and should forcefully and passionately seek authenticity 'by discovering and pursuing a successful life' (Friedman, 2016).

4. Human dignity, human rights and the relation between state and citizens

4.1 Human dignity's role among conflicting rights

Dworkin's conceptualization of rights is entirely inconceivable without acknowledging the highest status of human dignity among other values, because only this position affords a human dignity the distinct character and role, as 'commensurate' among conflicting rights and a foundation for human rights, at the same time. This can be the best illustration by referring to the incommensurability test, (De Ureta, 2019) based on which two currencies, are incommensurable, and in case of conflict between them, there is only one potentiality, in which that one currency 'whether independent or not' must be appealed to and outweigh the other, but human dignity cannot be characterized as a currency, because this requires engaging in an open-ended and incredibly complex exercise to design and develop a uniform method of quantifying dignity in all circumstances. Furthermore, human dignity is an independent value and a foundational one, which provides an approach for determining the outcome of any apparent conflicts between liberty and equality and all other rights. Here, the use of 'apparent' is chosen deliberately or purposefully, because, in terms of conceptualizing equality and liberty as values that uphold and safeguard human dignity, this conflict is unthinkable, (Dworkin, 2011) because, Dworkin strongly believes that principles are fundamentally oriented towards unity, for example, he says that: "*idea that ethical and moral values depend on one another is a creed; it proposes a way to live*" (Dworkin, 2011).

Therefore, values do not come in isolation, but they have a connection to some other values, which may be constituents or consequences of it (Raz, 2014). Consequently, framing equality and liberty as two values that hold the potentiality of conflicting with each other, should be abandoned altogether. The balance between these two values should be struck in such a way that it produces the necessary and preferred outcome, which is preserving and protecting human dignity (De Chickera, 2009).

In the process of balancing one of the prevailing values inherently entails the total elimination of the compromised value, does not arise here, because equality and liberty are not self-supporting values, instead, they function merely as an instrument for reinforcing and strengthening more fundamental value of dignity (De Chickera, 2009).

4.2 Another comparative aspect: The relations between the state and the citizens

Dworkin believes in some strong rights that their restrictions are completely inconceivable and implausible under any circumstances, and he describes these rights as 'human rights' because their abrogation cannot be justified by general well-being. The GCC clearly adopted a Dworkinian understanding of human rights, by applying a distinctive method and by portraying any attack on human dignity as a straightforward and direct assault on human rights. This can be considered as a faithful interpretation of the article 1, parag.1 of the GBL (Kommers & Miller, 2012), so the inviolability of human dignity emphatically inhibits any intrusion into its realm (Hall, 2008).

Another striking similarity is Dworkin's conceptualization of a relationship between the state and citizens with the German constitutional perception. If we take the case of invalidating the Security Aviation Act of 2006 by the GFCC, it can be justified on the ground of Dworkin's perception and conceptualization of human dignity, which obviously accentuates the higher status of human dignity over the state that necessitates not only by preventing the state from taking any action that infringes upon dignity, but also to ensure the respect of the dignity of all.

The security aviation act allowed the German Federal Ministry of defense to shoot down an airplane that was hijacked and kill the passengers if the hijackers turned it a weapon to target a large number of people on the ground, but the GFCC viewed life inseparably with dignity, and since it faithfully utilized and operationalized this notion of dignity, it was able to assert the indispensability of the life of blameless passengers and the crew of the aircraft that should not be relinquished simply for the sake of rescuing the lives of a greater number of people (Dan-Cohen, 2012).

The Dworkin's concept concerning the state and dignity can be explained by referring to the fact that established people's rights against the government does not stem from exercising primordial ritual or form uninterruptedly doing a national sport. It is a hard practice that makes the function of the government more complicated and more expensive in seeking to secure the general benefit. So, taking rights seriously and glorifying the government for respecting them, necessarily requires having some sense of what that purpose might be. Accordingly, it is inevitable to accept, at the minimum, one or both of two enormously consequential ideas. The first one is the authoritative but deeply indeterminate idea of human dignity, meticulously articulated by Kant. The dignity idea presupposes that

certain specific conducts may be detrimental by causing damage to the person's sense of belonging to the human community which would be overwhelmingly unjust (Dworkin, 1977).

Like Kant, Dworkin also embraces the notion that humans have intrinsic values that cannot be compromised or undermined even for the sake of saving other's lives, and he makes a distinction between two kinds of values and says that there are “*Two categories of intrinsically valuable things: those that are incrementally valuable— the more of them we have the better— and those that are valuable in a very different way, I shall call the latter sacred or inviolable values*” (Dworkin, 1993).

This resembles the status of human dignity within the GBL which forcefully asserts the inviolability of human dignity; therefore, there is no collective justification that could justify an intrusion into its realm (Hall, 2008).

4.3 Abstract and concrete rights: Liberty, Legitimacy, dignity

What has been explained is also associated with Dworkin's idea of liberty. When a government stops citizens from engaging in killing each other, implementing Punitive measures against the perpetrator cannot be considered as an encroachment on human dignity, conversely, Dworkin says, “*the government would fail to protect your dignity if it didn't prevent murder*” (Guest, 2013), and it will be an offence against once dignity if someone else decides how his or her body is to be used (Dworkin, 2008).

The idea of Dworkin with regard to the legitimacy is worth considering here, for him the principle of legitimacy (Dworkin, 2008) is the most abstract source of political rights, and the coercive nature of state power is bereft from any moral authority which can force any person to take a certain course of action even if this attempt was cloaked to improve the happiness and prosperity of the whole community unless it respects those two essential prerequisites person by person. As such, the value of dignity indicates enormously abstract political right, and it overrides the collective policies of the government (Dworkin, 2008).

Based on what was stated above, Dworkin regards human dignity as the highest value that even overrides the government's decisions, and he characterizes human dignity as an abstract right. Additionally, he provides further elucidation to clarify the distinction between abstract rights and concrete ones. Abstract rights can be portrayed as general statements such as: people are entitled to enjoy a right of free speech, or dignity, and so on. Their abstractness stems from the fact that they do not pinpoint the implications of exercising them in a specific social situation, or how these rights ought to be balanced against other rights. In contrast to this, concrete rights approximately identify the impact they make on the situation; for example, when we insist that people should behave the right to publish even clandestine information related to defense plans, on the condition that this disclosure will not create an imminent and menacing impact on the lives of the troops. This can be described as the concretization of an abstract right of free speech (Dworkin, 2008), and in Dworkin's opinion what is profoundly and presumptuously unjust is the treatment of a person that is deeply incompatible with recognizing him as a full member of the human community (Dworkin, 1977). He also regards human dignity as a sanctified value unto itself; it requires that humans should be treated as ends, not as means. This means that “people never be treated in a way that denies the distinct importance of their own lives.” (Dworkin, 1993).

5. Discussion

There are different threads of arguments that aim to underscore the theoretical implications and contributions of our exploration of Dworkin's concepts of dignity as the highest constitutional value.

The paper argues that every constitutional order is grounded in certain foundational and fundamental principles among them is human dignity, which has been permeated and embedded deeply in the constitutional order, the invoking of human dignity as a basis for constitutional adjudication has been an effective way for preserving and safeguarding the central pillars of the constitutional order.

In addition to that, it argues the utilization of the concept of human dignity as the supreme value represents the revolutionized approach of judiciary for structuring legal reasoning and an indispensable component for reaching any settlement, which creates and erect a powerful impenetrable barrier against an action that constitutes impairment on human dignity.

6. Conclusion

What has been presented represents the personification of the recent approach of asserting the notion that the state should be functioning in a way that refrains from encroaching upon human dignity, otherwise it will be acting against the very constitutional order, therefore stepping outside its constitutional boundaries, because human dignity has not been granted by the state to be able to withhold it or take it away.

The paper refers to the philosophical sophisticated significant point of convergence-with overarching legal implications- between Kant and Dworkin, with regard to the status of human dignity in the hierarchical constitutional order, in the sense that human dignity withstands any attempt to violate it. The fact that these philosophical understanding has become compelling and crucial constitutional concept has a fundamental and profound implication on contemporary constitutionalism, which human dignity overwhelm other constitutional values which increases the

power and impact of judicial review to more rigidly preserve constitutional structure and provide more protection of human rights.

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