

THE NOTION OF HUMAN DIGNITY ACCORDING TO THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

*Il concetto di dignità umana secondo la Carta dei diritti fondamentali
dell'Unione Europea*

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ABSTRACT: This article analyses the notion of human dignity as enshrined in the Charter of Fundamental Rights of the European Union, with particular attention to its role as the foundation of fundamental rights. After outlining the historical emergence of dignity in international human rights law, it assesses the strengths and ethical shortcomings of the EU Charter. The study argues for the existence of an essential, innate core of human dignity, irreducible to its multiple functional or contextual uses in legal discourse. It proposes a reconstructive synthesis of “foundational dignity” as a supreme and unifying principle necessary to ensure coherence, objectivity, and resistance to relativistic interpretations within the human rights system.

KEYWORDS: Human Dignity, Charter of Fundamental Rights, Nice Charter, Foundation of Fundamental Rights, European Law.

RIASSUNTO: Questo articolo analizza la nozione di dignità umana così come sancita dalla Carta dei diritti fondamentali dell'Unione Europea, con particolare attenzione al suo ruolo di fondamento dei diritti fondamentali. Dopo aver delineato l'emergere storico della dignità nel diritto internazionale dei diritti umani, il contributo valuta i punti di forza e le carenze etiche della Carta dell'UE. L'analisi sostiene l'esistenza di un nucleo essenziale e innato della dignità umana, irriducibile ai suoi molteplici usi funzionali o contestuali nel discorso giuridico. Viene proposta una sintesi ricostruttiva della “dignità fondativa” come principio supremo e unificante, necessario a garantire coerenza, oggettività e resistenza alle interpretazioni relativistiche nel sistema dei diritti umani.

PAROLE CHIAVE: Dignità umana, Carta dei diritti fondamentali, Carta di Nizza, Fondazione dei diritti fondamentali, Diritto europeo.

SUMMARY: I. *Historical Framework of International Law*. II. *Why Choose the Charter of the European Union?*² III. *There Exists an “Essential Core” of Human Dignity*. IV. *Different Meanings of Dignity Observable in the Charter of the European Union*. V. *Reconstructing the Legal Concept of Dignity as the Foundation of Human Rights*.

In the legal section of this academic address, the question raised is that of human dignity within the realm of fundamental rights. I shall therefore leave aside numerous philosophical and ius-philosophical considerations that the concept of dignity evokes—which I have recently addressed elsewhere¹—and focus instead on the legal aspect of human dignity. I have chosen to focus today’s presentation on the Charter of Nice, the instrument which, under the name *Charter of Fundamental Rights of the European Union*,² was incorporated into the primary law of the European Union by virtue of Article 6 of the Treaty of Lisbon (2009).

In order to carry out this inquiry, I will proceed as follows. After having briefly recalled the historical framework of international law (1), I shall outline the advantages and disadvantages of selecting the EU Charter as the field of examination (2). We shall then arrive at the heart of the matter: the existence of “essential cores” of human dignity (3). However, the central question of the concept of dignity requires us to take a further step and review the numerous meanings of dignity present in the Charter (4), in order to sort and select those that correspond specifically to human dignity as the foundation of the system. After identifying the different uses of the term dignity, it will be possible to propose a reconstructive synthesis of “foundational dignity” and to offer some brief concluding reflections on the importance and urgency of arriving at a legal concept of dignity that is clear, shared, and revitalised, so that human dignity may fulfil its role as the foundation of the edifice of fundamental rights (5).

¹ J.-P. SCHOUPPE, *Refonder les droits de l’homme*, Boleine, Paris 2025, spec. 53-134.

² See G. BRAIBANT, *La Charte des droits fondamentaux de l’Union européenne*, Seuil, Paris 2001; L. BURGORGUE-LARSEN, A. LEVADE, F. PICOD, *Traité établissant une constitution pour l’Europe. Commentaire article par article*, t. 1., Bruylant, Bruxelles 2007, 141-177; F.-X. PRIOLLAUD, D. SIRITZKY, *Le Traité de Lisbonne. Texte et commentaire article par article des nouveaux traités européens (TUE – TFUE)*, La Documentation française, Paris 2008; P. GIANNITI (dir.), *I diritti fondamentali dell’Unione Europea. La Carta di Nizza dopo il Trattato di Lisbona*, Zanichelli-II Foro italiano, Bologna-Roma 2013; S. PEERS, T. HERVEY, J. KENNER, A. WARD (eds.), *The EU Charter of Fundamental Rights*, Hart-Beck-Nomos, Oxford-New York 2021².

I. HISTORICAL FRAMEWORK OF INTERNATIONAL LAW

It is appropriate to begin by providing an overview of the diachronic development of the notion of dignity.³ As one jurist has observed,⁴ dignity is a concept that already has its place in classical legal thought, notably in Thomas Aquinas's conception of *dignitas personae*. However, within that framework it is not regarded as an absolute value from which specific legal consequences might derive. Rather, dignity is conceived as a concrete and relative element pertaining to each individual, to be taken into account in relations of justice—for instance, the office or function that a person exercises.

By contrast, modern legal thought, nourished by abstract rationalism, does not rely on the concept of dignity. It is therefore unsurprising that the revolutionary declarations of rights and the constitutions of the modern era make no express reference to dignity. It was not until Immanuel Kant that human dignity became the foundation of the subjective rights of man.

Subsequently, even though many jurists referred to dignity on a personal basis, legal texts themselves did not rest upon the concept of dignity until the end of the Second World War. In France, only the decree abolishing slavery of 27 April 1848 appears to constitute an exception to this observation: “slavery is an assault upon dignity.” Yet this understanding of dignity remains situated within the framework of modern *iusnaturalist* theories; it is derived from natural rights. At that stage, there were as yet no “human rights” emanating from dignity.

International instruments today reflect a general acceptance of human dignity as the foundation of human rights, following the inspirational model of the *Universal Declaration of Human Rights* (1948): “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” (Art. 1). The Preamble to the *International Covenant on Civil and Political Rights* (1966) likewise emphasises the “inherent dignity of all members of the human family” as the cornerstone of fundamental rights.

³ See X. BLOY, *Rapport introductif : le concept de dignité*, in L. BURGORGUE-LARSEN (dir.), *La dignité saisie par les juges en Europe*, Bruylant, Bruxelles 2010, 13-51.

⁴ N. HUTEN, *L'instrumentalisation de la dignité humaine dans le droit contemporain*, in B. DUMONT, M. AYUSO, D. CASTELLANO (dir.), *La dignité humaine. Heurs et malheurs d'un concept maltraité*, Pierre-Guillaume de Roux, Paris 2020, 168.

When international instruments are examined from the perspective of dignity as the foundation and source of human rights, the first reference text is the *Charter of the United Nations*, adopted on 26 June 1945. It established the international organisation (the United Nations) that would subsequently promote the drafting of the *Universal Declaration*. Yet the San Francisco Preamble merely refers to dignity as one of the purposes pursued, alongside the equality of rights between men and women and the equality of nations, large and small.

The true reversal of perspective—where dignity becomes the very source of human rights—occurs with the *American Declaration of the Rights and Duties of Man* of 2 May 1948 and the *Universal Declaration of Human Rights*, later extended in the two “twin” *UN Covenants* (1966) and the *American Convention on Human Rights* of 22 November 1969. This elevation of dignity to the status of a “foundational principle” (*principe matriciel*) of human rights corresponds to the historical necessity of the time: the protection of human dignity against the atrocities of totalitarianism, whereas the declarations of the late eighteenth century were primarily directed against despotism.

If one must begin by referring to international instruments, it is because these texts carry both political and legal significance, whereas States, for their part, are primarily concerned with ensuring a level of legal precision that allows for judicial application by domestic courts and tribunals. For a long time, they remained wary of the conceptual vagueness inherent in the notion of “dignity”—a concept invoked by various philosophical and political schools of thought—and, for that reason, refrained from incorporating it into their constitutions or fundamental laws.⁵

The European Union, which has risen above its fundamentally economic origins, is now called upon to assume a certain political stature—

⁵ This aligns with the interpretation offered by Jean-Paul Costa, former President of the European Court of Human Rights, regarding the absence of any explicit reference to human dignity in the ECHR (even though its connection to the *Universal Declaration of Human Rights* is expressly affirmed in the Preamble), and with the observation that human dignity plays a relatively modest role in the Strasbourg case law, even if it remains an underlying notion throughout. The Strasbourg judges are primarily concerned with identifying clear and precise criteria that allow them to adjudicate the cases before them: J.-P. COSTA, *Human Dignity in the Jurisprudence of the European Court of Human Rights*, in C. MCCRUDDEN (ed.), *Understanding Human Dignity*, Oxford University Press (The British Academy), Oxford 2014, 393-402.

especially if it intends to carry weight on the global stage. This explains the emergence of the protection of fundamental rights in the Community legal order and its gradual blossoming. Today, this objective has become a matter of primary importance that no Member State can ignore. The provisions of the *Charter of Nice*, inserted into the *Treaty of Lisbon*, form part of the primary Community norms which have legal value and are directly applicable in those States. The Court of Justice of Luxembourg should accede to the ECHR, but this process, strewn with obstacles, is still ongoing.

II. WHY CHOOSE THE *CHARTER OF THE EUROPEAN UNION*?

The choice of the Charter as the field of study is justified, on the one hand, by the relative modernity of the text (50 years younger than the ECHR) and by certain advances made in the legal technique employed. This is evident, notably, in the structuring of fundamental rights according to the “values” of the Union, the first of which (set out in Title I) is precisely dignity.⁶

That said, if one wishes to avoid falling into legal positivism at the risk of sliding back into totalitarian regimes, the formal element (that these are fundamental rights protected at a quasi-constitutional level) must be complemented by a substantive or ethical element, which is not always clearly established. This will require addressing the question of the foundation of fundamental rights in human dignity.

Moreover, certain provisions of the Charter lend themselves to criticism from an ethical standpoint. It has been accused, rightly so, of introducing “new rights” hardly compatible with the spirit of the drafters of the 1948 *Universal Declaration* and with the text of the 1950 ECHR. In this regard, here are the main points I denounced in a 2003 publication,⁷ which have not been disproved.

1°) Article 2 §1 states that “Everyone has the right to life.” The provision recognises only the right to life of each “individual,” without specifying when that life begins—thus without protecting life from conception— or when it ends. While such a soft approach to the right to life avoids

⁶ See P. GIANNITI, *Le origini del progetto Europa*, in GIANNITI (dir.), *I diritti fondamentali nell'Unione Europea*, 13-22.

⁷ J.-P. SCHOUPPE, *Les droits fondamentaux dans le futur traité constitutionnel de l'Union européenne. Questions d'éthique juridique et de liberté religieuse*, «Ius Ecclesiae» 15 (2003) 203-234.

the controversial questions of abortion and euthanasia, it stands in stark contrast with the emphasis otherwise placed on human dignity as an absolute value. Thus, the dignity of all is protected in law, except that of the most defenceless human beings who, by reason of their greater need for legal protection, are no less bearers of this human dignity that the Union has undertaken to respect.

2°) The intuition of a weakening of family protection becomes a certainty when one compares Article 9 with the corresponding provisions of the *Universal Declaration* (Art. 16) and the ECHR (Art. 12). Two innovations stand out. On the one hand, the right to marry is separated from the right to found a family. On the other, regarding the holders of the right to marry, the reference to “man and woman” is removed. Omitting any explicit prerequisite of heterosexuality, Article 9 simply stipulates that “the right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.” Not without a certain embarrassment, the “Explanations” attempt to justify this change as a “modernisation” of the law “so as to cover cases where national legislation recognises other means than marriage for founding a family.”⁸ The responsibility for deciding whether this represents a distortion of the family is thus left to the legislators of the Member States, the Charter carefully refraining from prohibiting or imposing the granting of marital status to unions between persons of the same sex.

3°) Other questionable points are the modest place reserved for conscientious objection, the omission of the institutional dimension of freedom of religion, and above all the rejection of any reference to God and to the “religious” heritage of the European Union in the Preamble to the Charter—a deliberate omission that has been the subject of much debate and continues to this day to increase the ambiguity of the founding notion of human dignity.⁹

⁸ BRAIBANT, *La Charte des droits fondamentaux de l'Union Européenne*, 114-115.

⁹ See primarily R. BIFULCO, M. CARTABIA, A. CELOTTO (a cura di), *L'Europa dei diritti. Commento alla Carta dei diritti fondamentali dell'Unione Europea*, il Mulino, Bologna 2001; L. LEUZZI, C. MIRABELLI (a cura di), *Verso una Costituzione europea*, Marco Editore, Lungro di Cosenza 2003; A. VITORINO, *La charte des droits fondamentaux de l'Union européenne*, «Revue du droit de l'Union européenne» (2000/3) 499-508 and (2001/1)

These points reveal serious substantive shortcomings of the Charter, but at the same time, they point us toward the contemporary problematic of human rights, which has only intensified. In this way, the drawback becomes an advantage, as it highlights the need of a *re-foundation* of the human rights.

III. THERE EXISTS AN “ESSENTIAL CORE” OF HUMAN DIGNITY

Despite the many criticisms expressed regarding human rights and their foundation in dignity, it would seem that the worst-case scenario has been averted—or at least appears avoidable—inasmuch as part of legal doctrine, both internationalist and constitutionalist, still appears to admit the existence of an essential core of human dignity: an innate core acknowledged by jurists and illustrated (despite certain inconsistencies) in national and international jurisprudence.

After the Second World War and the war crimes perpetrated as a consequence of Nazism and Fascism, many democratic States took care to afford particular protection to human dignity. This was especially true of the two European States once part of the Axis which, in reaction, sought to entrench the protection of human dignity for the present and the future. Since the law, once considered the guardian of public freedoms, had suffered such a fatal failure, it became necessary to seek protection for human dignity at a level higher than statutory law, namely at the constitutional level.

Germany’s Basic Law of 1949 is a pioneer in this respect, publishing a list of “fundamental rights” and expressly excluding the possibility of amending the Basic Law with regard to human dignity; it thereby introduces the criterion of “essential cores” that are intangible.¹⁰ Italy,

27-64; M. LUGATO, *La Carta dei diritti fondamentali dell’Unione europea*, «Quaderni di diritto e politica ecclesiastica» 9 (2001) 481-493; V. MARANO, *Unione europea ed esperienza religiosa. Problemi e tendenze alla luce della Carta dei diritti fondamentali dell’Unione europea*, «Il Diritto ecclesiastico» (2001/3) 862ff.; M. WATHELET, *La charte des droits fondamentaux : un bon pas dans une course qui reste longue*, «Cahiers de droit européen» 36 (2000) 585-593; A. SPADARO, *La Carta europea dei diritti fra identità e diversità e fra tradizione e secolarizzazione*, «Diritto pubblico comparato ed europeo» (2001/II) 621-655.

¹⁰ Combination of Article 1(1) (the core of human dignity) and Article 79(3) (the impossibility of amending the text) of the 1949 German Basic Law.

for its part, developed the theory of *controlimiti*¹¹ to protect its constitutional principles against the injunctions of public international law. In this regard, one must address the relationship between the national constitution and European Community law, as well as the relations between supreme national jurisdictions and the Court of Justice of Luxembourg. While it is true that the jurisprudence of the Court of Justice, in a “monist” reading favourable to international and Community law, in principle takes precedence over national courts, the latter, when they foresee a conflict between their constitutional values and the Community standard, retain the right to submit a preliminary question to the Court of Luxembourg. This procedural mechanism results from a reversal of case law compared with the previously inflexible application of Community monism, and thus contributes to protecting the constitutional values of the Member State. But in certain cases, the constitutional values of the Member States are not in conformity with the absolute values upheld by the Charter.¹²

If this legal core—dignity—remains undefined, one may venture to say that, without being reducible to these aspects, it includes from a philosophical point of view two main components: the maxims of Kant and, on the other hand, the essential elements of classical anthropology and neo-Thomism, that is to say two antagonistic points of view (immanentist versus transcendent perspective).¹³ For a society to live—and according to the adage *ubi societas ibi ius*, the law must ensure precisely that this is possible—it is necessary that “the choices of free and responsible individuals” can develop therein, linked to communal life not by instinct, as in the animal world, but by “an autonomous will moved by rational motivations, which in turn contains a *quid pluris* of the *homo sapiens* in relation to the rest of creation. This is where his essential dignity is grafted.”¹⁴

¹¹ M. CARTABIA, *Principi inviolabili e integrazione europea del 1995*, Giuffrè, Milano 1995, 19ff.; GIANNITI (dir.), *I diritti fondamentali nell’Unione Europea*, 13-323; A. RUGGERI, A. SPADARO, *Lineamenti di giustizia costituzionale*, Giappichelli, Torino 2022, 109-121.

¹² CJEU, Judgment *Taricco*, December 5, 2017, C42.

¹³ See JOHN PAUL II, Encyclical *Veritatis Splendor*, August 6, 1993, n. 75.

¹⁴ M.E. GENNUSA, L. VIOLINI, *Dignità umana e diritto alla vita*, in GIANNITI (dir.), *I diritti fondamentali nell’Unione Europea*, 450 (free translation).

This is why, beyond the legitimate differences in approaches and conceptualisations of human dignity, it is important to stress, as a distinguished philosopher, Spaemann, has noted, that dignity is what founds the existence of the fundamental rights and duties of man.¹⁵

Human rights are innate rights belonging to every “human being” as a human being; herein lies his ontological dignity. This is the primary meaning sufficient to define his dignity by reason of the eminence of his being. This dignity is inalienable, unlike other aspects of moral, social, and existential dignity, which are also to be aimed at for the flourishing of the person, but which can be lost and recovered.¹⁶ We will therefore retain above all the existence of an “innate core” that is proper to the human being: his dignity. Legal doctrine often mentions it only in passing precisely because it is not very comfortable with a notion that belongs primarily to the level of fundamental knowledge,¹⁷ especially since, in this case, it veils a reference to two principal and antagonistic philosophical discourses (Kantian and neo-Thomist).¹⁸

Before moving on to examine the text of the Charter, it is worth giving an example of the essential or innate core in question here. A German case¹⁹ illustrates this idea well. In 2006, the Constitutional Court declared unconstitutional an aviation security law, enacted the previous year, that authorised the military to shoot down a hijacked

¹⁵ “Dignity is no empirically given property. To see dignity as such is no human right. It is much more the transcendental basis that human beings have rights and duties” (R. SPAEMANN, *Human Dignity and Human Nature*, in W. SCHWEIDLER [ed.], *Human Rights and Natural Law. An Intercultural Philosophical perspective*, Academia Verlag, Sankt Augustin 2012, 15-19: 15). Regarding the author’s thought, see R. SPAEMANN, *Personen. Versuche über den Unterschied zwischen etwas und jemand*, Klett-Cotta, Stuttgart 1996.

¹⁶ See DICASTERY FOR THE DOCTRINE OF FAITH, Decl. *Dignitas infinita*, April 2, 2024, especially nn. 7-9.

¹⁷ To clarify the concepts, it is appropriate to distinguish, within the legal field, three levels of knowledge: (1) a philosophical or foundational approach, which remains abstract; (2) a technical and scientific level, encompassing its various branches; and (3) a third level, that of case law, even though synergies between these levels are both possible and desirable. See in particular J. HERVADA, *Lecciones propedéuticas de filosofía del derecho*, Eunsa, Pamplona 2008⁴, 596-609.

¹⁸ See SCHOUPPE, *Refonder les droits de l’homme*, 53-134.

¹⁹ [GERMAN] FEDERAL CONSTITUTIONAL COURT, Judgement of 15 February 2006, n. 1 BvR 357/05, BVerfGE (= Entscheidungen des Bundesverfassungsgerichts) 115, 118-166.

civilian aircraft within national airspace if it was intended to be used to attack the lives of human beings. The main reason was that, in such a hypothesis, the duty to protect human life in connection with the protection of human dignity could not justify the sacrifice of the lives of the passengers and crew—innocent victims of the hijacking perpetrated by terrorists—even if the purpose of the military action was to save a potentially greater number of lives. Why was this unjustified? Because it would imply that the innocent victims of the hijacking were degraded to the rank of an object of state action, which would amount to an instrumentalisation of these persons, infringing their dignity as ends in themselves, and making an undue concession to teleological ethical theories (proportionalism and consequentialism) that introduce relativism. The operation, however, would cease to be unconstitutional if the aircraft were occupied solely by terrorists, for they would clearly not be innocent victims but subjects who had deliberately chosen to hijack an aircraft, assuming all the risks inherent in such an attempt. This example shows a happy coincidence between Kant’s conception of the non-reduction of human dignity to the rank of means and the Christian metaphysical and anthropological conception. Yet these two conceptions can lead to serious divergences on other ethical and fundamental questions.

IV. DIFFERENT MEANINGS OF DIGNITY OBSERVABLE IN THE *CHARTER OF THE EUROPEAN UNION*

Despite the ethical weaknesses already mentioned, one may welcome the effort made by the drafters of the Charter to highlight human dignity. The instrument confirms the existing consensus in international texts that have addressed the question of the foundation of fundamental human rights. But, although all indicate dignity, none precisely identifies the concept of human dignity. Consequently, it has scarcely progressed – on the contrary – since the reflections conducted under the auspices of Jacques Maritain in preparation for the *Universal Declaration*.

The provision that holds our attention is categorical: “Human dignity is inviolable. It must be respected and protected.” (Art.1). In the technical language of fundamental rights, “to respect” means to prevent the violation of a right, while “to protect” refers to a broader duty of the State: that of ensuring positive legal protection to be implemented in a manner compatible with the Constitution. This provision

follows in the tradition of European States such as Germany and Italy, which commit to giving absolute support to human dignity. Accordingly, the EU Charter provides that the prohibition of abuse of rights reinforces the primacy owed to dignity (Art. 54), and the principle of proportionality can never serve to limit dignity or the rights enshrined in the “Dignity” chapter): “Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms.” (Art. 52 §1). This amounts to saying that, given the absolute value of the rights linked to the notion of dignity, weighing them against other competing rights is not appropriate, as is also provided by Art. 1 of Germany’s Basic Law. However, as I have previously noted, not all national constitutions are on the same wavelength regarding ethically sensitive questions and the EU Charter is not without its shortcomings. Account must also be taken of the evolving and extensive interpretations developed by the two European Courts.²⁰

It is now incumbent upon us to distinguish dignity as a foundation (or an “innate notion”) from other meanings of the term “dignity” that legal scholarship and judicial bodies employ with (perhaps excessive) frequency—that is, within the respective domains of doctrinal legal knowledge and case law.

These varied uses make human dignity a concept sometimes described as “multifunctional,” liable to generate confusion. It is important to clearly identify what belongs to dignity as the foundation of the system, and to enhance that foundational role, whereas the other ac-

²⁰ In the *Explications*, Guy Braibant notes with regard to abortion and euthanasia: “The Convention ultimately adopted a middle-ground position, which consists in maintaining the status quo, with all the nuanced interpretations given by national judges and by the Strasbourg Court” (*La Charte des droits fondamentaux de l’Union européenne*, 92). This formally contradicts the absolute character of the right to life, traditionally conceived also as a duty. Moreover, European case law merely acknowledges the existence of such permissive laws and applies the doctrine of the States’ margin of appreciation when, as in this case, there is no consensus among the States at the European level. In addition, both national and European case law are highly evolutionary, which clearly shows the limits of the protection afforded to rights directly derived from human dignity and, even more so, to other rights. See on this point A. ACOSTA-MASSÓ, *La interpretación evolutiva del Convenio Europeo de Derechos Humanos*, A.J. Gómez-Montoro (dir.), Thesis ad Doctoratum, University of Navarra 2024.

ceptions of the term ‘dignity’ should be used with moderation.²¹ First, let us examine the principal meanings of the terms “dignity” or “dignified,” whether implicit or explicit, found in the Charter:

1°) *Dignity as a founding and unifying principle* of all human rights. The fact that Title I bears the heading “Dignity” is not accidental. Dignity precedes the other Community values indicated in the following titles, namely liberty, equality, solidarity, citizenship, and justice. Each of these values justifies certain rights enumerated in the corresponding title.

2°) *Dignity as the supreme value*—that value which, without being weighed against any other, ranks above all the others. It is itself the scale used to resolve conflicts of rights or interests. It is to this meaning of dignity that the German hijacked-aircraft case applies, excluding any quantitative or proportionalist weighing.

3°) *Dignity as a value*—as such, it finds its indispensable complement in the rights to life and to personal integrity, as well as in several prohibitions: torture, inhuman or degrading treatment, slavery, and forced labour. One can scarcely imagine that dignity could be respected without protecting these dimensions so intimately linked to human dignity. For this reason, at the head of Title I, Article 1 states that dignity is “inviolable” and must be “respected and protected.” All these rights, protected in Articles 2 to 5, therefore benefit in principle from absolute protection and thus should not be weighed against other fundamental rights.

Yet does this alleged strength correspond to reality? One need only observe the existence of permissive national laws on abortion and euthanasia—touching the first of the rights derived from dignity—to be convinced of the contrary. In effect, the Charter also ensures respect for the various European constitutional traditions and for the jurisprudence of both the Court of Justice of the European Union and the European

²¹ An examination of the case law of the two European Courts reveals that dignity as a foundational concept must remain a “subsidiary” notion: E. DUBOUT, *Présence embarrassante*, in BOURGORGUE-LARSEN (ed.), *La dignité saisie par les juges en Europe*, 93. In the same vein: as the first principle underlying all others, dignity should be invoked only “when no other notion or principle can be applied, failing which the entire body of law would risk dissolving into dignity”: M. FABRE-MAGNAN, *Dignité*, in *Dictionnaire des droits de l’homme*, P.U.F., Paris 2008, 287 (free translation).

Court of Human Rights, these two bodies striving, with difficulty, to harmonise. This, as well as the ambiguities of the Charter announced in the section 1, paves the way for relativistic and dynamic interpretations.

4°) *A right to dignity*, whether in general or in a specific context. Thus, in the prison environment, “Guantanamo”-style experiences flouting the right of every prisoner to be treated as a person must be avoided—but a right to dignity is not dignity as the foundation of the fundamental rights.

5°) *An existential property or projection*, as in “dignified remuneration,” “dignified treatment,” “dignified housing,” etc. Here, “dignified” may mean little more than “decent” or “appropriate.” The protection granted to these projections is therefore relative, and sometimes merely quantitative.

6°) To live a *dignified life* may raise a more essential question: it can refer to a person’s life project or, negatively, to the absence of any prospect that would, in his or her eyes, justify continuing to live. But, from an ethical-legal standpoint, invoking the absence of a “dignified life” to end one’s days adds a subjective condition to the simple fact of being human, whereas being human is the only objective prerequisite for the recognition of a human right such as the right to life. In the case of suicide (or assisted suicide), this becomes a faculty to end one’s life that is no longer recognised for every human being as such, contrary to the concept of an objective human right.

7°) *Individual vs. collective conceptions of dignity*—sometimes it refers to private individual liberty, sometimes to a collective viewpoint. In the latter case, it concerns the protection of a shared idea of humanity, which can override the first. A famous example is dwarf-tossing, condemned in Germany by an administrative court and in France by the Conseil d’État on the basis of safeguarding human dignity. The collective viewpoint, linked here to public order, prevailed over the individual viewpoint, despite the performer’s own satisfaction with his work. The principle of the non-disposability of human dignity means that an individual cannot validly renounce it, even with free and informed consent. But is it legitimate to disregard the individual’s freedom completely?

8°) *Three concentric circles of dignity*: that of the individual, the group, and humanity. First, the individual is the sole bearer of ontological dignity and is the central subject of dignity. Then, the dignity of the individual as a member of a group justifies respect for the group and certain institutional rights. Finally, the dignity of humanity may impose certain limits on individual freedom, as in public health measures during a pandemic, even if one must deplore that certain measures enacted by non-democratically elected expert groups were adopted in disregard of the safeguards attached to fundamental rights.

V. RECONSTRUCTING THE LEGAL CONCEPT OF DIGNITY AS THE FOUNDATION OF HUMAN RIGHTS

In this logic, if one considers the various meanings of dignity, only the first two aspects should be taken into account in order to grasp dignity as the foundation of human rights: 1°) dignity as the *foundation and unifying principle of human rights*; 2°) dignity as a *supreme value*—to the exclusion of dignity as a mere value, which, being subject to balancing with other values, would not be absolute but relative.

In sum, human dignity should be revitalised in its role as the foundation and supreme value of the human rights system. The foundational dignity has several vital functions: promoting human rights, serving as an indispensable reference for their selection and declaration, orienting the legitimate exercise of certain rights, and guiding judges in authentic interpretation. Only a clear, shared concept of dignity can preserve the system from relativistic drift and safeguard rights rooted in an objective reference to human nature.