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Immanuel Kant's concept of dignity: A philosophical ground and a case for considering human dignity as the highest constitutional value

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Abstract

The aim of this paper is to analyze and highlight the philosophical conceptualization of human dignity by the German philosopher Immanuel Kant and how his reflections in this regard can provide a compelling theoretical ground and an underpinning for recognizing and elevating human dignity to the pinnacle of constitutional values. Kant is one of the foremost thinkers of the Age of Enlightenment and the most prominent figure in the world of moral and legal philosophy. Many of his ideas are directly related to the concept of human dignity, Kant become one of the most frequently cited philosophers who analyzed the philosophical and ethical dimensions of human dignity. His ideas in this regard had a great impact on establishing human dignity as the highest constitutional value, especially in the German Basic Law 1949, which considers human dignity as a non-derogated value, which means that the human being is an end in itself and not a means to achieve the goals and objectives of others, including the state. Consequently, there is no justification for violating or diminishing human dignity by the state. On the contrary, the goal of the state's existence is to promote and respect human dignity, and this is a duty incumbent upon all state authorities, executive, legislative and judicial.

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Introduction

Philosophical reflections and conceptualizations concerning human dignity have played an enormously significant role in designing and developing certain kinds of conception and understanding of this notion and some of these philosophical conceptions have profoundly and prominently influenced the process of constitution formation, as a result, certain approach has been adopted for designing an idiosyncratic constitutional dispensation and configuration, for the purpose of re-establishing a completely new legal system centered on human dignity, accordingly a complete overhaul of the legal order of Germany has been conducted on totally different philosophical frames. The most obvious example in this regard is the German Basic Law (1949), which has elevated human dignity to the highest status in comparison to other constitutional values; this law is heavily and immensely influenced by Immanuel Kant's philosophical thought and contemplations of human dignity.

Research objective

This study aims to analyze and highlight the philosophical conceptualization of human dignity by the German philosopher Immanuel Kant, and how his reflections in this regard can furnish a compelling theoretical ground and underpin for recognizing and elevating human dignity to the pinnacle of constitutional values. And this has been asserted in the judicial adjudications.

Significance of the research

Essentially, the significance of this research is to provide an enlightening and informative analysis of Immanuel Kant' philosophy, by providing a detailed and comprehensive review of his theoretical postulation.

Research methodology

In this research, an analytical methodology has been adopted for elucidating the fundamental features and essential elements of the philosophical conception of human dignity introduced by this philosopher.

Research questions

Some fundamental questions about this research can be expressed as follows: has Kant's philosophy on human dignity crucially contributed to the emergence of a creditable and commendable constitutional commitment for the promotion and protection of human dignity, especially enshrining it as the highest value? What is his most captivating and convincing conceptualization of dignity, that without it, any reference to dignity as an overarching and supreme value will be faulty and flawed ? Can elevating human dignity to the highest constitutional value constitute a firm foundation for holding states accountable for violation of human dignity?

Research hypothesis

Analyzing Kant's philosophy on human dignity is indispensable for any legal commitment, especially constitutional one, to refrain from using human beings instrumentally, therefore, enhancing the notion that the state exists for the individuals, not the other way around. Accordingly, states can be held accountable for human dignity abuse. This ultimately leads to more robust protection of human dignity

1. Immanuel Kant's conceptualization of human dignity

1.1 Dignity as the foundation of categorical imperative

Immanuel Kant (1724-1804) is one of the most renowned and prominent philosophers of Enlightenment. Moreover, he is one of the most influential figures in the realm of moral and legal philosophy. Many of his reflections are directly related to the conceptualization of the notion of human dignity; he has become one of the most frequently cited philosophers in respect to analyzing and unpacking the philosophical and moral dimensions of human dignity [1].Kant's categorical imperative can be the base for his distinct idea about human dignity. In his perspective, ethics belongs to the realm of the moral law, under which our will is governed by commands incompatible with the reason[2], and such commands are called imperatives, which are either hypothetical or categorical. The Hypothetical imperative is concerned with the identification of the actions that are worthy as the means to achieve an end; whereas a categorical imperative means that all immoral actions are irrational because they violate them. It is inherently and necessary that a standard of rationality which embodies what is objectively indispensable in a will that makes itself harmonious to the reason.[3]

In a famous proposition, Kant articulated this categorical imperative as such "Act only according to that maxim whereby you can at the same time will that it should become a universal law."[4] The moral proposition emphasizes on

[1] Christopher McCrudden, 'Human Dignity and Judicial Interpretation of Human Rights' The European Journal of International Law, V.19, I.4, 2008, 659
[2] Immanuel Kant, Groundwork of the Metaphysics of Morals (Mary Gregor ed & tr Cambridge University Press, 1998) 1-5
[3] Kant, "Groundwork of the Metaphysics", 16
[4] Ibid, 15

determining ethical action, rather than presenting a list of desired virtues that ought to be achieved.[1] As Kerstein has pointed out, “Kant seems to invoke the special value of rational nature when he expresses what he takes to be the supreme principles of morality"[2] Thus, Kant views dignity as the most fundamental and prominent value[3] and even as the foundation of a categorical imperative. Kant claims that we have incomparable dignity when we freely exercise our capacity as a rational agent, and this unsurpassed dignity can become the source of an absolute value that is necessary for the explanation of our rational adherence to the categorical imperative.[4]

On the other hand, another formulation of the categorical imperative presented by Kant is: “act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means but always at the same time as an end"[5].

Based on this specific understanding, the core argument of Kant is that human beings possess dignity and value, and they are autonomous beings which afford them as special status, and turn them into ends by themselves, and this moral status, which is the basis of the Categorical Imperative, ought to be end in itself. More importantly, even though dignity is closely correlated to and, in

[1] Luís Roberto Barroso, ‘Here, There, And Everywhere: Human Dignity In Contemporary Law And In The Transnational Discourse’, Boston College International & Comparative Law Review, V.35, I.2, (2012) 331, 359

[2] Samuel J. Kerstein: Kantian Dignity: a critique, In the Cambridge handbook of human dignity, interdisciplinary perspectives, Ed. By Marcus Duweell, Jens Braargvig, Roger Brownsword, and Deitmar Mieth (Cambridge University Press, 2014) 223

[3] Allen wood, Kant's Ethical Thought, (Cambridge university press, 1999) 163

[4] Paul Guyer , Kant on Freedom, Law, and Happiness, (Cambridge University Press, 2000) 154

[5] Kant, “Groundwork of the Metaphysics”, 38

some senses, even grounded on the concept of law and lawgiving, this does not mean that it is replaceable by these terms[1].

1.2 Human dignity as an absolute, irreplaceable value

Kant considers dignity as an absolute value, which is an indispensable element to be regarded as the highest value. And in this regard, he uses the term "autonomy", which means the property of free will[2]. This is strongly connected with the identification of the individual's capacity for shaping their lives and setting their goals, namely self-determination. Moreover, Kant places a stoically inspired notion of dignity at the heart of his ethics, stressing rationality, self-regulation, universality, equality, and the idea that humans must never be treated "as mere means"[3] .The essential idea is that individuals are only governed by those laws that they give themselves. An autonomous person is bound by his or her own will and not by the will of someone else. Kant revolutionized moral philosophy when he insisted on the autonomy of the will, rather than making it subject to an exterior law[4].

Thus, the absolute worth of all human beings is grounded in autonomy-as a capacity-, and their inability- for example, due to imprisonment or the influence of drugs or diseases- to exercise this capacity is totally irrelevance to retain this worth. Consequently, possessing this worth remains undamaged and unharmed, even in the case of the incapacity to exercise it freely[5]. This

[1] Dieter Schönecker& Elke Elisabath Schmidt, 'Kant's Ground-Thesis, On Dignity and Value in the Groundwork', Journal Value Inquiry, V. 52,2018, 82
[2] Kant, "Groundwork of the Metaphysics", 52
[3] Yechiel Michael Barilan, Human Dignity, Human Rights, and Responsibility, The New Language of Global Bioethics and Biolaw, (Massachusetts Institute of Technology, 2012) 91
[4] Pëter Kropotkin, Ethics: Origin and Development, (The Anarchist Library, 1922) 270
[5] Andrew Brennan & Yeuk-Sze, Lo,Two Conceptions of Dignity: Honour and Self-Determination, in Perspectives on Human Dignity: A Conversation, Ed. By Jeff Malpas& Norelle Lickiss , (Springer, 2007) 50

perception is deeply rooted in Kant's conceptualization of our humanity as having a value, which is simultaneously absolute, unconditional, and incommensurable. The absoluteness of this value lies in its incapability of being outweighed and superseded, and its unconditionality is reflected in its independency of being self-sufficient and self-realizing. Finally, the incommensurability of this value resides in the fact that it cannot be ordered or ranked on a single scale alongside with any other values[1]. As Anthony has described it "dignity is something that is unquantifiable and incalculable because it flows from the very fact that we are human beings"[2].

On the other hand, Kant dignity's concept is something that every rational being possesses to the same degree, a kind of distinctive moral worth, constituted by and founded on the fact that such beings are ends in themselves, self-choosers and self-legislators. [3]

This is the distinct character and nature of a human being according to Kant, articulated in a set of propositions. The essential idea of Kantian conceptualization regarding this matter is that one could will to become universal law is the personification of the fulfilment of the moral conduct, every person is an end in him- or herself, which precludes the instrumentalization of any person for realizing other's agenda and ambitions, therefore, human beings are priceless and irreplaceable, because they are endowed with an absolute inner worth called dignity.[4]

[1] Andrea Sangiovanni, humanity without dignity, (Harvard University Press, 2017) 37
[2] Augustine Anthony, Human Dignity from the Beginning of Life: German and Indian Moral Theological Perspectives in an Attempt at Dialogue with Hinduism, (University of Regensburg Faculty for Catholic Theology, 2014) 28
[3] Andrew Brennan and Y.S. Lo, "Two Conceptions of Dignity", 56
[4] Luís Roberto Barroso, "Here, There, And Everywhere", 360

However, the other aspect of the prevention of instrumentalization of human beings for achieving other's ends is the positive sense of liberty, which is the desire of an individual to guide his life according to his aspiration. It is the ability to be the master of your decisions and direction of your life, and not be unduly influenced by external pressures or outside forces of whatever kind. It is about refusing to be used instrumentally for others' wishes. It also pertains to the capacity to purposefully and consciously designing your life's plan[1].

1.3 Human dignity as an uncompromisable and incommensurable value

The incommensurability of human dignity is based on the conceptualization of the worth of a human person, which is systematically entwined with several capacities recapitulated by the word of "autonomy". This worth and autonomy together impose rather the particular moral obligation on human beings to respect other similar beings, in the form of refraining from treating rational beings as a dispensable object for the sake of achieving their ends.[2] Nonetheless, treating human beings as ends in themselves is inextricably associated with treating dignity as an unconditional and absolute value. Kant argues that when a thing has a conditional value, it means that it has "price", therefore, it is vulnerable to be treated as a mere means, with the consequences of being susceptible to be traded, abandoned and compared[3]. Unlike things, human dignity is not amenable to trading, exchanging or renouncing, otherwise its higher status, as incommensurable, absolute, and unconditional will be compromised[4]. The prohibition of using human beings as an expendable thing that can be disposed of, is morally constraining: it curtails

[1] Isaiah Berlin, Liberty: Incorporating Four Essays on Liberty, (Oxford University Press 2002) 178
[2] Andrew Brennan and Y.S. Lo, "Two Conceptions of Dignity", 56
[3] Andrea Sangiovanni, "humanity without dignity", 38
[4] Ibid

the space of our actions, even in the service of maximizing the collective well-being[1].

This is why dignity precludes the possibility of instrumentalization, accordingly, human beings are not subject to the market related dealings, because dignity cannot be considered as commodity, and because it is irreplaceable. Therefore, dignity is an absolute value, and it has unique and distinctive commodity unlike other instrumental values[2].

The primary consequence of this interpretation is the preclusion of converting any person to just a means for realizing another's aspirations and ambitions because this subjugation is completely incompatible with a person's free will[3].

To sum it up, Kant points at rationality and free will as both the sources of morality and its targets, because absolute moral principles are derived from self-legislation based on free goodwill and a priori reasoning, it should follow that any abuse of free will and rationality will be immoral[4]. Further, any abuse of human being status is immoral. Consequently, humans must always treat humanity within themselves and others as an end in itself and never as "mere means"[5]. Undoubtedly, rational nature comes in variant degrees. That is people substantially have different practical skills, rational astuteness or moral insight, and they have disappointments and accomplishments. On the other hand, these rational capacities have the potential to grow as they mature, and they are susceptible to impairment by diseases, or injuries, however, all these

[1] Samuel Kerstein, "Treating Others Merely as Means", Utilitas, V. 21, N. 2, 2009, 163
[2] Nobuo Kurat, 'What is 'Human Dignity'? Biotechnology and Human Dignity', 北海道大学文学研究科紀要,(Bulletin of Graduate School of Letters, Hokkaido University), V.118, 2006, 39
[3] Aharon Barak, Human Dignity, the Constitutional Value and the Constitutional Right, (Cambridge University press, 2015) 27
[4] Allen wood, "Kant's Ethical Thought", 121
[5] Yechiel Michael Barilan, "Human Dignity, Human Rights" 81

are entirely irrelevant for Kant, because human dignity is exempt from this rule, because there is either objective ground or it does not when it comes to the categorical imperative. Therefore, human dignity, itself is strongly connected with possessing the capacity to set ends and acting according to reason, and it does not matter whether this capacity is exercised exceptionally well or badly[1] .

1.4 The irreplaceability and pricelessness of dignity

It was clear from what we have discussed above that, Kant emphasizes not only the indispensability of dignity but also its irreplaceability and pricelessness. Hence, this can lead us to the conclusion that human dignity has a unique trait, which is its invariability and invulnerability. That is, it cannot be a subject to any comparison and proportionality, thereby leading to its inviolability. This conceptualization has been limited to theoretical and philosophical approaches that address human dignity. However, due to powerful and profound compelling argument that it presents, it has eventually emerged as the highest constitutional value. The prominent case in this regard is the German Basic Law (1949)[2], which explicitly and unequivocally elevates human dignity into an absolute value, and admits no limitations and cannot be subject to any proportionality, as it states in Article $1(1)$ of it:

“Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority”

This inviolability is inexorably interconnected with the absolute characteristic of human dignity and it is unambiguously referred to as the invulnerability of

[1] Allen wood, “Kant's Ethical Thought” 121
[2] Basic Law of Republic of Germany (1949)
https://www.btg-bestellservice.de/pdf/80201000.pdf

human dignity, which guarantees and safeguards the integrity of the human person and guards against its vulnerability. This absolute value of human dignity in the European Charter[1] has found its manifestation in the prevention of practices that endanger and imperil the integrity of human beings, as well as the prohibition of torture and all kinds of humiliating and debasing activities.[2]

In this regard we can mention that after the UN charter of 1945 which had asserted its members' resolute determination "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person...."[3] And what is more distinctively discernable not also transformative but motivational and inspirational power of human dignity for constitution making. So we can see that, human dignity is evidently presented as a value that was desecrated and dishonored during the Nazi regime (1933-1945), and therefore, defined – negatively rather than positively- as a value that has been affronted by the regime's criminal and atrocious actions. [4]

In this respect, and back to the German Basic Law, the human dignity clause as mentioned can be seen as an underlying principle rather than an operative principle, which unambiguously and unmistakability reflects the Kantian notion of dignity.[5]

1 European Convention on Human Rights (1950) https://www.echr.coe.int/documents/convention_eng.pdf

[2] Antonio Pele, 'Kant On Human Dignity: A Critical Approach - Kant E A Dignidade Humana: Uma Interpretação Crítica' Espaço Jurídico Journal of Law, V.17, I2, 2016, 497

[3] U.N. Charter, preamble, https://upload.wikimedia.org/wikipedia/commons/a/a5/Uncharter-all-lang.pdf

[4] Ariel L. Bendor& Michael Sachs, 'The Constitutional Status of Human Dignity in Germany and Israel', Israel Law Review, v.4, I.1-2, 2011, 25-27

[5] Don Chalmers and Ryuichi Ida, On the International Legal Aspects of Human Dignity, in Perspectives on Human Dignity: A Conversation, Ed. By Jeff Malpas& Norelle Lickiss (Springer, 2007) 162

As far as the Iraqi Constitution (2005)[1] is concerned, this constitution states in article 37, first: A. "The liberty and dignity of man shall be protected" and, in Article. 22, that "work is a right for all Iraqis in a way that guarantees a dignified life for them," So the perceived shortcoming in this regard is the absence of the conceptualization of human dignity as the foundational value of the new constitution; furthermore, this value has not been categorically entrenched and enshrined so as to radiate through the entire legal system and permeates all governments branches, and has not become the impulse for the constitutional interpretation and adjudication.

Constitutionally speaking the inadequate response to the past abuse and horrifying violations resulted in a situation that human dignity did not sufficiently inform the process of constitutional reconstruction, because the horrifying persecution of the past, and the outrageous and despicable human rights violations, genocide, humiliation and subjugation should have enormously shaped and immensely sharpened our sense of life and sacrosanct of human dignity.

2: The legal implications of the Kantian notion of human dignity

2.1 Operationalization of Kantian notion of dignity in the judicial adjudication

The practical implications of distinctive German constitutional order and safeguarding the inviolability of human dignity featured strongly and prominently in the German Federal Constitutional Court (GFCC) judgments, especially with regard to the Aviation Security act in 2006, which was the consequence of the

[1] Iraqi Constitution (2005)
https://www.constituteproject.org/constitution/Iraq_2005.pdf?lang=en

terrorist attacks in September 2001. The intention of the framers of the law was to enable the armed forces to prevent and shoot down passenger aircraft in case of being turned into a weapon for attacking a large number of people on the ground.[1]

The court encountered an enormously controversial case and it had to balance between the lives of passengers and people on the ground, but in contemplating the relevant considerations of the case, it operationalized human dignity as an anchor to its judgment, and for invalidating the bill and rendering it unconstitutional. The Court grounded its ruling on the reasoning that the duty of the state is to respect the human dignity of passengers and how the later takes precedence over its duty of protecting the lives of the potential victims of a terrorist attack. As Lepsuius contends:

"with their lives being disposed of unilaterally by the state, the persons on the board of the aircraft…are denied the value which is due to a human being for his or her own sake."[2]

The court also faced a very sensitive question concerning the rationality of favoring the life of those individuals who probably have a short duration over those persons with a longer life expectancy. The court rejected this interpretation, and stressed the irrelevancy of personal attributes, physical appearances, social status, their failures and frustrations, their successes and

[1] Jürgen Habermas, "The Concept of Human Dignity and the Realistic Utopia of Human Rights', Meta philosophy, vol. 41 no. 4, 2010, 465

[2] Oliver Lepsius, 'Human Dignity and the Downing of Aircraft: The German Federal Constitutional Court Strikes Down a Prominent Anti-terrorism Provision in the New Air-transport Security Act', German Law Journal V. 7, N. 09, 2006, 763

achievements, and the predicted duration of her life, because all human beings are equally endowed with dignity by virtue of their existence.[1]

This judgment profoundly reflects Kant's categorical imperative, which holds that the state should be prohibited from treating any person as dispensable means for achieving any other purposes, even if intends to save the lives of many other people.[2]

This can be characterized as the "Formula of Humanity"; accordingly, Kant embraces the principle that it is wrong for us to treat others merely as a means. So, this mere means principle plays the role of a moral constraint, as it limits what we may do, even in the service of promoting the overall good.[3]

This was deeply reflected in the conceptualization of dignity in the German Basic Law, Article 1, which regards human dignity as the highest constitutional value. Nevertheless, if we recognize human dignity as the supreme value of the German Basic law, then this value should be the guiding principle for the interpretation and application of all other values and the state's protection must include all the fundamental right that is closely associated with this maximum value.[4]

On the other hand, it has been argued that inferring the dignity of humanity, as a value of objective law, cannot be directly or easily assumed from the structure of Article 1(1) of the German Basic Law or even form examining its

[1] Par Rory Stephen Brown, 'Shooting Down Civilian Aircraft: illegal, immoral, and just plain stupid', Revue québécoise de droit international, V.20, I.1, 2007,101
[2] Jürgen Habermas, "The Concept of Human', 465
[3] Samuel Kerstein, "Treating Others", 163
[4] Christian Bickenbach, Legislative Margins of Appreciation as the Result of Rational Lawmaking, in Rational Lawmaking under Review Legisprudence According to the German Federal Constitutional Court, Ed. By Klaus Meßerschmidt&A. Daniel Oliver-Lalana (Springer International Publishing Switzerland, 2016) 240

entire objective legal contents. Because, in addition to the state's commitment to uphold the dignity of human beings, as a constitutional value of objective character, parallel to the objective legal contents of the entire constitutional scheme, a similar commitment is required to a personal object of protection. This may mean that the responsibility and the obligation of protecting the dignity of human beings is submitted to the state, as it formulated by Article $1(1)$ of the German Basic Law[1].

2.2 Measuring the Kantian influence on the understanding and enforcing dignity's jurisdiction

Based on what has been mentioned in previous sections, the influence of Kant is very clear. It relates or reflects the Germans effort and desire to ground their social order on the notion that human beings hold invariable and absolute intrinsic worthiness, correspondingly and consequently, treating human beings as a tool for fulfilling other purposes should be constitutionally inconceivable and impermissible[2].

Kant considered dignity as a matchless and irreplaceable value confers on every person– or every rational being–, simply by virtue of their autonomy, which is the capability to design laws and carry them out without unnecessary and unwarranted impact, weather from external forces or internal desires. According to Kant every rational being—which is to say, every person—is endowed with dignity, an incalculable and incomparable worth, by virtue of their autonomy, the capacity to follow the laws of their own design without undue

[1] Horst Dreier, Does Cloning Violate the Basic Law's Guarantee of Human Dignity? In Human Dignity and Human Cloning, Ed. By Silja Vöneky and Rüdiger Wolfrum, (Springer Science+ Business Media Dordrecht, 2004) 82

[2] Edward J, Eberle, 'The German Idea of Freedom', Oregon Review of International Law, V.10, 2008,3

influence from external pressures and internal desires. The dignity of a person entails respect from both other persons and themselves and provides a substantive basis for Kant's ethics, reflected most clearly in his prohibition against using persons as mere means to an end.[1]

Furthermore, Kant stresses that dignity and price: "Cannot be brought into comparison or competition at all without, as it was, assaulting it is [dignity's] holiness"[2].

Kant proclaims the impossibility of making a comparison between the value of a person and the value of a thing, because when bringing them into "comparison and competition", the status of being with dignity would be susceptible to devaluation and disrespectfulness[3].

The concept of human dignity and its overriding and supreme value is conspicuous and discernable within the framework of Kantian ethics, meaning that human dignity as distinct and intrinsic worth or value enables and endows human beings with the ability and capability of shaping and determining their ends according to universalizable rule or maxim. It is an intrinsic worth that confers on persons a value that is unparalleled and irreplaceable. [4]

Kant further elaborates on human nature and he point out that: "man regarded as a person, that is, as the subject of a morally practical reason (…) he is not to be valued merely as a means (….) he possesses a dignity (absolute inner

[1] Mark D. White, Kantian ethics and economics, Autonomy, Dignity, and Character, (Stanford University Press, 2011)5
[2] Ibid, 195
[3] Ibid
[4] Uriah Kriegel, Dignity and the phenomenology of recognition-respect, in Emotional Experience: Ethical and Social Significance, Ed. By J. Drummond and S. Rinofner-Kreidl , (Rowman& Littlefield, 2017) 121-122

worth) by which he exacts respect for himself from all other rational beings in the world"[1]

Probably, from the entire ethical theory of Kant we can single out the notion that rational nature constitutes the supreme value that accounts for whatever value anything else possesses, but what about the reaction that our rationality is not unique in this regard, because we value other human capacities, sensation, sensitivity, sympathy, excitement? Basically, this can be disapproved easily because it is predicated on the wrong presumption of "reason". For Kant, certain feelings stem from reason, morality, respect and philanthropy. Even the appreciation of natural beauty is regarded as closely correlated to moral feeling, and the consciousness of dignity is equivalent to the capacity to be moved by inspirational words or conduct.[2]

2.3 Reinforcing the inherent and absolute worthiness of the human person

Generally, it can be said that what has been discussed represents a particular line of interpretation. This is essentially consequential, because it defines human dignity as inherent and absolute worthiness of the human person, which results in a substantial outcome, as far as the first aspect (inherent value) is concerned, all human beings possess an intrinsic (or internal) worth. This provides not only the justification of having and exercising their autonomy, but it also asserts and reinforces the equality of all individuals (equal dignity). And emphasizing the fact that this value is inherent to the human means that

[1] Kant, "Groundwork of the Metaphysics", 121
[2] Allen wood, "Kant's Ethical Thought" 121

obtaining or developing this value within themselves does not depend on behaving in a certain way.[1]

Despite this, the possibility of infringing upon human dignity persists. However, the GFCC has steadily asserted that intrinsic dignity cannot be lost or relinquished.[2]

The article (1) of the German Basic Law is designed to guarantee human dignity of all people merely by virtue of their existence, and from the Constitutional Court's perspective even the individual's unawareness of their dignity is entirely irrelevant, so they possess dignity whether they are conscious of it or not. This has significant legal and practical implications. First, human dignity is protected under any circumstances. Second, nothing even undignified conduct, justifies the surrender of this legal protection, third people cannot voluntarily relinquish it. This represents dignity as

“an intrinsic characteristic of human life, an unalienated quality that all humans share and that cannot be lost or diminished”.[3]

This indicates that Article 1, paragraph 1, of the German Basic Law, cannot be considered as a mere pronouncement, and it is not only a political declaration, but an enforceable legal norm that all public authorities should adhere to. The term "inviolable" is not descriptive in nature, but it is prescriptive in essence. At the same time, this expression inherently entails the meaning that the person does not lose dignity, even in the case of encountering or experiencing

[1] Antonio Pele, “Kant On Human Dignity”, 497
[2] Christoph Enders, ‘The Right to have Rights: The concept of human dignity, in German Basic Law’ Revista de Estudos Constitucionais, Hermenêutica e Teoria do Direito, V.2, I.1, 2013, 4-5
[3] Ruth Horn & Angeliki Kerasidou, ‘The Concept of Dignity and Its Use in End-of-Life Debates in England and France’, Cambridge Quarterly of Healthcare Ethics, V.25. I.3, 2016, 409

degrading and inhumane treatment. Therefore, this constitutional inconceivability of depriving any person of his or her dignity and the unmitigated legal emphasize on respecting dignity, which stems from the right to dignity, generates a significant and a legally distinctive implication. That is that human dignity cannot be encroached upon, consequently, such violations constitute unconstitutional deeds, based on the Article 1, Paragraph 1, of the German Basic Law.[1]

This kind of interpretation raises the following logical question if human dignity as an intrinsic and inherent attribute is characterized by inalienability and inviolability, that cannot be possibly diminished regardless of the conduct of the person, then what would be the rationale for its protection?[2]

T address this question, the court developed a particular line of interpretation, the court held that human dignity has a particular component that can be characterized as expressivist, which is intrinsically correlated to the "degradation" of the person to a thing.[3] Although human dignity is inalienable, and a human being permanently retains his or her dignity, irrespective of the way treated by others, he or she needs to be protected from disrespectful manners. This expressivist component has featured prominently in a decision of the court about the tapping of telephones.[4] The court asserted that to "violate human dignity, the treatment of a person […] must […] be an

[1] Horst Dreier, Dignity in German Law, in The Cambridge Handbook of Human Dignity, Interdisciplinary of perspectives, Ed. By Marcus Duwell, Jens Braarvig, Roger Brownsword, Dietmar Mieth (Cambridge University Press, 2014)376

[2] Rainer Ebert&Reginald M.J. Oduor, 'The Concept of Human Dignity in German and Kenyan Constitutional Law, Thought and Practice' A Journal of the Philosophical Association of Kenya V.4 No.1, 2012, 51

[3] Elizabeth S. Anderson & Richard H. Pildes, 'Expressive Theories of Law: A General Restatement', University of Pennsylvania Law Review, V.148, I. 5, 2000, 1053-1575

[4] Rainer Ebert&Reginald M.J. Oduor, "The Concept of Human Dignity" 51

expression of contempt for the value which accrues to every human being by virtue of the fact that he is a person"[1]

2.4 Dignity and the Object Formula

Preventing the objectification of human beings as an affront to their dignity is characterized as an object formula, which is developed by the GCC in the Aviation security act case (2006), by referring to the imperative of preventing human beings merely as a means for achieving others ends. The GCC invalidated the act as unconstitutional because it inherently entails the objectification of human beings[2]. (Lepsius, 2006, Pp.763-64).

The GCC applied the so-called object-formula, which echoed the Kantian notion of human dignity, and it holds that respect for human dignity and this is primarily composed of treating human beings always an end, and never as a mere means (Monteiro, 2014, Pp.256-57).

The Aviation Security Act the GCC stated that:

"the obligation to respect and protect human dignity generally precludes making a human being a mere object of the State." (Möller, 2010, P.5)

The GCC further explained that human persons have a special status because they possess dignity and inalienable right, and such a treatment would detrimentally affect that status. To save others at the expense of killing them- the innocent passengers on board- means they have been reduced to an object for fulfilling the state's goal, which simultaneously involves infringement of their rights. This objectification is further accentuated by the unilateral action

[1] Christoph Enders "The Right to have Rights", 3
[2] Oliver Lepsius, "Human Dignity", 763-764

of the state for demeaning their lives, while the blameless passengers are in desperate need for protection.[1]

By referring back to Formula of Humanity it can be said that asserting the respect of the existence of a substantive value, should take as a command. This is not a matter of desirability or favorability. It is mainly about the existence of the substantial value that commands respect, and esteem in all our actions.[2]

Another reflection of Kant's idea concerning the impermissibility of treating a human being as a means can be found in the Life Imprisonment Case. The GCC had to decide the constitutional validity of the imprisonment for life without the possibility of conditional release. The constitutional violations claimed by the applicant included, inter alia, that debarring a person from society violates the value of human dignity enshrined unequivocally in Article 1 of the German Basic Law.[3]

So, from the GFCC's standpoint, and concerning the life imprisonment without the chance to be freed, and striping the convicted person of the capability and propensity to shape his or her life, will be equivalent to instrumentalizing. And the instrumentalization of a human being can be construed in a broader sense; the wrongness is not only confined to using people merely as a means but also includes humiliating, neglecting and insulting.[4] Brennan and Lo added that:

[1] Oliver Lepsius, "Human Dignity",771
[2] Allen wood, "Kant's Ethical Thought", 141
[3] Rinie Steinmann, 'The Core Meaning of Human Dignity', Potchefstroom Electronic Law Journal, V.19, 2019,11-12
[4] Paulus Kaufmann, Instrumentalization: What Does It Mean to Use a Person? In Humiliation, Degradation, Dehumanization, Human Dignity Violated, Ed. By Paulus Kaufmann, Hannes Kuch, Christian Neuhäuser, and Elaine Webster (Springer Science+Business Media, 2011) 59-60

"On the other hand, this interpretation is correlated with autonomy, so if autonomy is what underpins the claim that people have a special moral status, then certain offences against people—unjust detention, for example, —are objectionable not because they interfere directly with the capacities that we have, but because they interfere with the exercise of such capacities."[1]

Also with respect to humiliation we can say, if we conceive a society deprived of human dignity, habituated to human misery and humiliation, unable to fend off discrimination, and alienation, it is not a society that can aspire to constructing and recognizing itself as a social, democratic and constitutionalist state.[2]

On the other hand, the Basic Law – which categorically recognizes human dignity as an overriding constitutional value, provides protection for a wide range of substantive rights, like equality and free speech.[3]

Conclusion

In previous sections, we tried to explain the notion of dignity by Kant and to connect it with modern a constitution, which treats human dignity as a high

[1] Andrew Brennan and Y.S. Lo, "Two Conceptions of Dignity', 50

[2] Rodolf Arango, 'Basic Social Rights, Constitutional Justice and Democracy' (Ratio Juris an International Journal of Jurisprudence and philosophy of Law, V.16, I.2, 2003, 147. With regard to the states responsibility for violating human dignity, we can say that if "a state has ratified covenants or conventions, it has agreed that there are certain things the state must to do to help protect human dignity and rights. The expectations and claims that people within a state have of that state are called 'human rights'. States that have ratified international human rights covenants and conventions are known as 'States Parties'. These states have obligations in international law to protect human dignity and rights in all contexts related to sport. These obligations are self-executing, meaning that remedy for breach within a state cannot be enforced unless the obligations have been brought into domestic law. However, the UN Human Rights Council, UN human rights treaty bodies and other UN human rights mechanisms regularly review the compliance of states with these obligations. Domestic entities such as non-governmental organizations and NHRIs regularly report to these bodies and mechanisms." David Rutherford, States' Obligations under International Human Rights Conventions, the Implications for Government Sport Policy, (Commonwealth Secretariat, 2018) 9

[3] Rodolf Arango, "Basic Social Rights" 147

constitutional value especially by German constitutional legal trends. Kant's notion of the categorical imperative that human beings should be treated always as an end, never as a means, has not remained as philosophical conceptualization and theorization, but it has been transformed to the centerpiece of some new constitutional dispensation that provides significant safeguards that prevent human dignity from been encroached upon and violated. Kant's theory has enormous and extensive implications about elevating the value of human dignity to the highest status of constitutional hierarchy, since human dignity admits no equivalence. Therefore, its invariability insulates and protects it from any vulnerability and susceptibility to any limitations, correspondingly, human dignity admits no balancing and proportionality with other constitutional values, which leads to the impossibility of simultaneous satisfaction of these values, eventually and ultimately the value of human dignity takes precedence and Supremacy.

The philosophical conceptualization of human dignity has fundamentally transformed the constitutional landscape and grounded constitutional framing and adjudication on Kant's thought. This conceptualization intended to provide the utmost constitutional commitment and attentiveness for human dignity, and to preclude the recurrence of mass indignation and large-scale human dignity violation that happened especially during the Second World War.

The embracement and invocation of the Kantian notion of dignity has significantly altered the constitutional configuration, by providing absolute protection of human beings, because this notion guarantees the irreplaceability and interchangeability of the dignity of any person, therefore, protects human beings form being used instrumentally .