

KARANGALAN: A THEORETICAL FOUNDATION FOR THE FILIPINO CONCEPTION OF HUMAN DIGNITY*

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PROLOGUE

Human dignity has “emerged as the single most widely recognized and invoked basis for grounding the idea of human rights generally.”¹ Shaped by the horrors of the Second World War, it has become a potent instrument in political and legal discourse, especially in the field of human rights. In fact, because of its perceived universality, the concept of human dignity serves as a *common currency* of judicial decisions in matters of human rights.²

However, one should not be quick to conclude that human dignity is a universal concept. As Christopher McCrudden observes, its universality is more apparent than real. The recognition of human dignity as a fundamental principle “seems to camouflage [its] use in human rights adjudication to incorporate significantly different theoretical conceptions of [its] meaning and implications, enabling the incorporation of just the type of ideological, religious, and cultural differences that a common theory of human rights would need to transcend.”³ McCrudden further posits that:

[B]y its very openness and non-specificity, by its manipulability, by its appearance of universality disguising the extent to which cultural context is determining its meaning, dignity has enabled East and West, capitalist and non-capitalist, religious and anti-religious to agree (at least superficially) on a common concept.⁴

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¹ Paolo Carozza, *Human Dignity in Constitutional Adjudication*, in RESEARCH HANDBOOK IN COMPARATIVE CONSTITUTIONAL LAW 459 (Tom Ginsburg & Rosalind Dixon eds., 2011).

² Paolo Carozza, *Human Dignity and Judicial Interpretation of Human Rights: A Reply*, 19 EUR. J. INT’L L. 931–44 (2008) [hereinafter “Carroza, A Reply”].

³ Christopher McCrudden, *Human Dignity and Judicial Interpretation of Human Rights*, 19 EUR. J. INT’L L. 710 (2008).

⁴ *Id.*

This flexibility, therefore, allowed human dignity to play a critical mediating function in the negotiation and adoption of, and a significant pillar in the Universal Declaration of Human Rights.⁵ In the end, what appears to be a universal (or universalized) concept is the need to uphold human dignity, not a “common substantive conception of dignity.”⁶

With conceptions varying from jurisdiction to jurisdiction, I submit that the identification of human dignity within the Philippine cultural and legal perspective is an imperative. To advocate, however, for a normative conception of human dignity for the Philippines is the least of my concern. Rather, this paper endeavors to identify, describe and extensively present the Filipino concept of human dignity, *if there is even such a thing*.

PRÉCIS

PART I of this Article lays down the different uses and conceptions of human dignity as illustrated in landmark (and infamous) judicial decisions from various jurisdictions. In PART II, this Article attempts to trace the socio-cultural development of this concept in the Philippines, as well as its importance in the Filipino culture and psyche. Thereafter, PART III shall discuss how human dignity or any of its language is employed in relevant Philippine laws and cases. Lastly, PART IV shall inquire about the implication of the Filipino conception of human dignity to Philippine judicial litigation and interpretation.

PART I

*“[R]ecognition of the inherent dignity
and of the equal and inalienable
rights of all members of the human
family is the foundation of freedom,
justice and peace in the world [...]”*
—Universal Declaration of
Human Rights⁷

⁵ Carozza, A Reply, *supra* note 2, at 937.

⁶ *Id.* at 712.

⁷ Universal Declaration of Human Rights, at 71 G.A. Res. 217A (III), U.N. Doc. A/810 (1948).

A. Human Dignity and its Uses

The concept of human dignity is not served as a single dish, but a buffet—and, yes, most of the time, self-served and hand-picked based on one's preference. Human dignity is more legally potent than I ever dared think, yet more practically malleable than I ever dared imagine.

So flexible is the concept of human dignity that McCrudden concludes that it has become an *empty shell*, one that is culturally relative and deeply contingent on local politics and values, which results in diverse theoretical conceptions.⁸ In fact, a single case may yield two distinct dignity-based arguments. In *Obergefell v. Hodges*, the *ponencia* of Justice Anthony Kennedy held that the United States Constitution grants same-sex couples the right to equal dignity in the eyes of the law, thus allowing same-sex marriage.⁹ On the other hand, the dissent of Justice Clarence Thomas¹⁰ argued that the majority's claim that their decision will advance the dignity of same-sex couples is flawed since this concept has long been understood in the United States as innate. It is precisely because of this recognition that their Constitution does not contain a “dignity” clause. Their government, therefore, cannot bestow dignity. Neither can it be taken away.

Human dignity has been invoked to further personal autonomy, such as in abortion,¹¹ and decriminalization of sodomy in the United States¹² and South Africa.¹³ As well as in the most extreme display of autonomy of mentally competent persons, i.e. assisted suicide in Canada.¹⁴ However, it has also been used to support interference with self-determination. The practice of dwarf tossing for purposes of entertainment, even with full consent of the parties (especially by the purported victim suffering from dwarfism), was deemed by a French court as a violation of human dignity—even if banning

⁸ McCrudden, *supra* note 3, at 698.

⁹ 576 U.S. 28 (2015).

¹⁰ 576 U.S. 16–18 (2015) (Clarence, J., *dissenting*).

¹¹ *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992). Justice John Paul Stevens, in his concurring and dissenting opinion, exclaimed: “The authority to make such traumatic and yet empowering decisions is an element of basic human dignity. As the joint opinion so eloquently demonstrates, a woman's decision to terminate her pregnancy is nothing less than a matter of conscience.”

¹² *Lawrence v. Texas*, 539 U.S. 558 (2003).

¹³ *National Coal. for Gay & Lesbian Equal. v. Minister of Justice*, 1998 (12) BCLR 1517 (CC) (S. Afr.).

¹⁴ *Carter v. Canada* (AG), 1 S.C.R. (2015) (Can.). The Supreme Court of Canada overturned its initial ruling in *Rodriguez v. British Columbia* (AG), 3 S.C.R. 519 (1993) (Can.), which bans physician-assisted suicide.

the attraction will result in loss of one's job.¹⁵ And, when elevated upon the instance of purported victim himself, the decision was affirmed by European Human Rights Committee.¹⁶ The same liberty-restricting use of human dignity is found in cases of prohibition on peep shows in Germany¹⁷ and prostitution in South Africa,¹⁸ even when women consented. Likewise, the *indignity* of substance addiction was used by the Hungarian Constitutional Court to reject an argument that the right to self-determination warrants the right to use narcotic substances.¹⁹

Curiously, human dignity is also conceived as furthering communitarian interests for it “means not only the individual dignity of a person but the dignity of man as species. Dignity therefore is not at the disposal of the individual.”²⁰ Thus, the state may limit individual liberties if it is in the exercise of protecting human dignity of the general public. For example, the *Bundesverwaltungsgericht* (German Federal Administrative Court), affirmed by the European Court of Justice, held that the *laserdrome*—a game where the objective is to sensory tags placed on the jackets worn by players using a laser beam or infrared—is an affront to human dignity since it simulates acts of violence against persons, in particular the representation of acts of homicide.²¹ Nevertheless, instances that uphold individual dignity despite resulting in grave losses to the property and even life of great number

¹⁵ CE Ass. [Council of State sitting in Assembly], Oct. 27, 1995, *Commune de Morsang-sur-Orge* (Fr.).

¹⁶ *Wackenheim v. France*, Comm. No. 854/1999: France, Feb. 26, 2002, U.N. Doc CCPR/C/75/D/854/199, available at <http://hrlibrary.umn.edu/undocs/854-1999.html>.

¹⁷ *Bundesgerichtshof* [BVerwG.] [Federal Court of Justice], Dec. 15, 1981, BVerwGE 64, 274. In this first Peep-Show decision, the German Supreme Court anchored its decision on the ground that human dignity being an *objective value*, thus, the prohibition is justified to protect the dignity of the women who are to be exhibited. Notably, however, the court changed its approach in its second Peep-Show decision, BVerwG, Jan. 30, 1990, BVerwGE 84, 314 (Ger.), after receiving criticisms that the former encroached upon individual freedom. Here, the German Supreme Court held that the ban will instead protect public morals.

¹⁸ *Jordan v. The State*, 2002 (6) SA 642 (CC) (S. Afr.). The very nature of that profession, i.e. commodification of one's body, diminishes human dignity, which is accorded by their constitution. See also *Nat'l Coal. for Gay & Lesbian Equal. v. Minister of Justice*, *supra* note 13 wherein the South African Supreme Court held: “There can be no doubt that *the existence of a law which punishes a form of sexual expression for gay men degrades and devalues gay men in our broader society. As such it is a palpable invasion of their dignity and a breach of section 10 of the Constitution.*” (Emphasis supplied.)

¹⁹ *Alkotmánybíróság* [AB.] [Constitutional Court] 54/2004, XII. 13.

²⁰ McCrudden, *supra* note 3, at 705, citing Eckart Klein, *Human Dignity in German Law*, in *THE CONCEPT OF HUMAN DIGNITY IN HUMAN RIGHTS DISCOURSE* (David Kretzmer & Eckart Klein eds., 2002).

²¹ *Case C-36/02, Omega Spielhallen und Automatenaufstellungs-GmbH v. Oberbürgermeisterin der Bundesstadt Bonn*, 2004 ECR I-9609.

of people also abound. The *Bundesverfassungsgericht* (German Federal Constitutional Court) invalidated a clause in the *Luftsicherheitsgesetz* (Aviation Security Act), a law created as a response to the 9/11 incident, that would allow German armed forces to use lethal force against commercial planes hijacked for purposes of committing terrorist attacks.²² Otherwise, the hijacked plane, including all its passengers and crew members, become a mere object of the state. A gross violation of their human dignity. The same can be said in the prohibition against torture as well as other inhuman or degrading treatment as means of interrogation.²³

Arguments using human dignity permeates other highly-contentious debates. Often relating to issues from womb to tomb. Human dignity appears to be the bedrock upon which the arguments set forth for and against human cloning and its various types shall be founded. While to whom such is owed varies—to the cloned child or embryo, to the surrogate mother, to the sick and dying, or to the society—human dignity acts as the standard against which the arguments will be measured.²⁴ It also serves as the basis of the European Court of Justice to exclude from patentability the use of human embryo²⁵ for industrial or commercial as well as scientific research purposes, unless it were for therapeutic or diagnostic purposes which is applied to the human embryo itself.²⁶ As previously mentioned, human dignity is central to issues on the

²² BVerfG, Judgment of the First Senate of Feb. 15, 2006, 1 BvR 357/05, ¶¶ 1–156 (Ger.).

²³ HCJ 5100/94 Public Comm. Against Torture in Israel v. State of Israel 53(4) PD 817 (1999) (Isr.).

²⁴ See NAT. BIOETHICS ADVISORY COMM., CLONING HUMAN BEINGS (1997); PRES. COUNCIL ON BIOETHICS, HUMAN CLONING AND HUMAN DIGNITY: AN ETHICAL INQUIRY (2002). Notably, the United Nations Educational, Scientific and Cultural Organization (UNESCO) General Conference unanimously adopted the Universal Declaration on the Human Genome and Human Rights that bans practices, such as reproductive cloning of human beings, for being contrary to human dignity, Universal Declaration on the Human Genome and Human Rights, art. 11, Nov. 30, 2018, available at <http://www.unesco.org/new/en/social-and-human-sciences/themes/bioethics/human-genome-and-human-rights/>. This appears to leave some room for flexibility to cloning-for-biomedical-research, so long as it may not be found to be “contrary to human dignity.” However, the United Nations General Assembly Declaration on Human Cloning was more sweeping as it prohibits all forms of human cloning “inasmuch as they are incompatible with human dignity and the protection of human life,” U.N. Declaration on Human Cloning, item (b), Nov. 30, 2018, available at <https://www.nrlc.org/uploads/international/UN-GADeclarationHumanCloning.pdf>.

²⁵ The European Court of Justice gave a broad definition on what is considered as human embryo: (a) any human ovum after fertilization; (b) any non-fertilized human ovum into which the cell nucleus from a mature human cell has been transplanted; and (c) any non-fertilized human ovum whose division and further development have been stimulated by parthenogenesis.

²⁶ Case C-34/10, *Oliver Brüstle v. Greenpeace e.V.* 2011 ECR I-0000.

right to of a person to die.²⁷ It is worthy to mention that one State Court in India, the High Court of Allahad ruled that a person's right to life, which includes the right to live with dignity, is extended to a dead person's corpse. Thus, the state is obliged to preserve and dispose of the dead body with dignity, and the lack of proper maintenance of a state-run mortuary resulting in its continued dilapidation offends that right.²⁸

B. Human Dignity and its Concept

Two interrelated principles, as Carozza postulates, may be used in discussing the foregoing uses and, consequently, defining the essence of human dignity: (a) an *ontological claim* that dignity inheres in every member of the human family simply because they are humans, therefore all having equal and inalienable rights; and (b) a *normative principle* that all human beings are entitled to have their dignity respected by others, including the state, and responsible to respect it in all others.²⁹ Corollary to the latter is the notion that the state exists “for the sake of the individual human being, and not vice versa.”³⁰ These principles, taken altogether, are what McCrudden calls the minimum core of human dignity. Unfortunately, identifying its minimum core did not translate into a coherent and consistent conception of human dignity. Faced with varying uses enumerated above, McCrudden concludes that:

*[W]hilst there is a concept of human dignity with a minimum core, there are several different conceptions of human dignity, and these differ significantly because there appears to be no consensus politically or philosophically on how any of the three claims that make up the core of the concept are best understood.*³¹

Three strategies are usually employed to present the various conceptions of human dignity—historical, philosophical and theological (or, according to McCrudden, religious). However, these strategies are “playing off against each other continuously [for] [e]ach of the major developments in the understanding and use of dignity illustrates one or more of these strategies in operation.”³² The following paragraphs briefly present the various conceptions of human dignity using these strategies.

²⁷ See *supra* note 14.

²⁸ Ramji Singh @ Mujeeb Bhai v. State of U.P. & Ors, Civil Misc. Writ Petition No. 38985 of 2004 (2009) (Allahabad HC) (India).

²⁹ Carozza, A Reply, *supra* note 2, at 934. Notably, Carozza borrowed these principles from McCrudden, *supra* note 3, at 679–680.

³⁰ McCrudden, *supra* note 3, at 679.

³¹ *Id.* (Emphasis supplied.)

³² *Id.* at 658.

From the Latin term “*dignus*”, dignity largely meant “worthy of esteem and honor, due a certain respect, of weighty importance.”³³ The early Greeks did not believe that all human beings have dignity since most humans, by nature, are suitable only to be slaves. The same belief is found among Romans. For them, honor should be accorded only to someone worthy of that honor because of a particular status that one had.³⁴ For example, appointment to a public office brought dignity with it. Thus, dignity was applied, not to humans, but to institutions and the state itself. McCrudden observes that “[t]his concept of dignity has long been incorporated in some legal systems in the private law context as the basis for providing protection for dignity in the sense of ‘status’, ‘reputation’, and ‘privileges’.”³⁵ For the Greeks and Romans, dignity is something attributed and achieved.

Offering a broader concept of dignity, Cicero offered a slightly different view. For him, *dignitas* (or the dignity of man) is “not dependent on any additional particular status.”³⁶ While Cicero democratizes dignity for being within the reach of everyone—“human beings are regarded as having a certain worth by virtue of being human”³⁷—it remains something that needs to be achieved. And one can only achieve dignity by living that rational life possible for all of us.³⁸ This capacity for self-development by study and reflection makes mankind superior over animals.³⁹

The various strands of Buddhist tradition appear to echo the perspective that dignity is ascribed or attained. The word *arhat* (the Buddhist counterpart of dignified) was “reserved to persons who practiced Buddha’s teachings on insight and meditation, to those who would reach nirvana upon death.”⁴⁰ It is only applicable to monks, and not for the ordinary laymen.

³³ Jove Jim Aguas, *The Notions of the Human Person and Human Dignity in Aquinas and Wojtyła*, 3 KRITIKE 41 (2009).

³⁴ McCrudden, *supra* note 3, at 657.

³⁵ *Id.* “The English Bill of Rights of 1689, for instance, referred to ‘the Crown and royal dignity’. In legal systems based on Roman law, dignity was seen as a right of personality and status, and criminal and civil remedies were frequently provided if dignity in this sense was infringed. In South Africa, for example, it was recognized in the private-law sphere, deriving from Roman-Dutch law, that ‘[i]nfringement of a person’s *dignitas* constituted a delict and compensation could be claimed with the *actio iniuriarum*’. In the international sphere, this concept of ‘dignity’ was frequently used to refer to the status of sovereign states and, by extension, to the status of ambassadorial and consular staff serving their countries abroad.”

³⁶ *Id.*, citing MARCUS TULLIUS CICERO, I DE OFFICIIS 30 (44 BC).

³⁷ *Id.*

³⁸ MICHAEL ROSEN, DIGNITY: ITS HISTORY AND MEANING (2012).

³⁹ *Id.*

⁴⁰ Jens Erland Braarvig, *Buddhism: inner dignity and absolute altruism*, in THE CAMBRIDGE HANDBOOK OF HUMAN DIGNITY 171 (Marcus Düwell, Jens Erland Braarvig, Roger Brownsword & Dietmar Mieth eds., 2014).

Thus, in Classical Buddhism,⁴¹ dignity “was a concept that was not universally attributed to all individuals equally, but only to the monastic elite.”⁴² On the other hand, Mahayana Buddhism, which aims to save all living beings, “attributes dignity to all living things equally.”⁴³ Believing that the objective of Buddha’s teachings is to commit oneself to save all other beings before oneself, the Mahayana tradition propounds a radical ethical altruism and accentuated egalitarian ideology.⁴⁴ The ideal is, therefore, no longer the *arhat* but the *bodhisattva* (a person who adopted the vow of awakening for the sake of all living beings).⁴⁵ Hence, as concluded by Jens Braarvig, dignity becomes an egalitarian moral notion. From being exclusive to monks, dignity is attainable all humans. In fact, in *Majjuśrīvikeridita*, a prostitute appeared as a grand *bodhisattva*. Nonetheless, as with the Greeks and Romans, the Buddhist conception of dignity is still something ascribed to or achieved by a human being.

The Judeo-Christian worldview introduced a different perspective. According to this worldview, dignity inheres in every human being. In other words, by virtue of being human, a person is worthy of honor and respect. Central to this view is what Thomas Aquinas cited, in his prologue to the second part of his *Summa Theologiae*: the *imago dei* (image of God). Being created in the image of God, the human person individually possesses dignity. A human is, therefore, not just something, but someone because:

[h]e is ‘the only creature on earth that God has willed for its own sake’, and he alone is called to share, by knowledge and love, in God’s own life. It was for this end that he was created, and this is the fundamental reason for his dignity [...] He is capable of self-knowledge, of self-possession and of freely giving himself and entering into communion with other persons. And he is called by grace to a covenant with his Creator, to offer him a response of faith and love that no other creature can give in his stead.⁴⁶

That it inheres in every human person divorces the notion of dignity from office and hierarchy. It is not bestowed as in a status or even earned as in an office. What gives them the dignity, as previously mentioned, is the belief

⁴¹ This strand of Buddhism narrowly focuses on personal liberation and aspires for individual freedom from the world.

⁴² Braarvig, *supra* note 40.

⁴³ *Id.* at 172.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 658, citing Catechism of the Catholic Church, Part One: The Profession of Faith, § 2: The Profession of the Christian Faith, ch. 1, art. 1, ¶¶ 6, 356–57, available at <http://www.vatican.va/archive/catechism/p1s2c1p6.htm>.

that they are created in the very image of their Creator. Notably, the philosophy that flowed from this theology has been incorporated in the United Nations Charter and the Universal Declaration of Human Rights, through Jacques Maritain. A well-known presence at the time of the drafting of these instruments, Maritain helped revived the Thomist philosophy for modern times.⁴⁷ And it was him who “stressed the need for some ‘ultimate value whereon those rights depend and in terms of which they are integrated by mutual limitations.’”⁴⁸ For him and the framers, that ultimate value was human dignity.

The humanists of the Renaissance period linked Cicero’s conception of human dignity with the Christian teaching. In *On the Dignity of Man*, a seminal and influential work in this era, Pico della Mirandola “argued that the root of Man’s dignity is the ability to choose to be what he wants to be, and that this is a gift from God. ‘It is given to him to have that which he chooses and to be that which he wills.’”⁴⁹ Reason, therefore, is one of the most important gifts of God to mankind.

While dropping the religious overtones, the conception of human dignity during the Enlightenment period focused on different subjects. McCrudden shared that the philosophy of Jean-Jacques Rousseau brought a more communitarian flavor to human rights and human dignity.⁵⁰ Citing Carozza, he observed that the Rousseau’s philosophy emphasizes equality and fraternity more than liberty, unlike that prevalent in North American traditions.⁵¹ Nonetheless, while still adhering to the notion that man is free and autonomous, Glen Martin explains that, for Rousseau, “[w]e rise to our full human dignity through a social contract based on human freedom empowered and protected through the synergy of moral relationships that constitute the foundation of civil society. Within the framework of the social contract, in which we pledge our mutual security and affirmation of freedom to one

⁴⁷ McCrudden, *supra* note 3, at 662.

⁴⁸ Mary Glendon, *Knowing the Universal Declaration of Human Rights*, 73 NOTRE DAME L. REV. 1153 (1998). “But does the Declaration have such an ultimate value? An obvious candidate is human dignity. Dignity enjoys pride of place in the Declaration: it is affirmed ahead of rights at the very beginning of the Preamble; it is accorded priority again in Article 1; and it is woven into the text at three other key points, connecting the Declaration to the Charter in the fifth clause of the Preamble, introducing the social and economic rights in the “chapeau” (Article 22), and in Article 23’s reference to ‘an existence worthy of human dignity.’ The drafters fleshed out the dignity concept by connecting it to a fairly specific image of the human person. Human beings are said to be ‘endowed with reason and conscience,’ and they are expected to ‘act towards one another in a spirit of brotherhood.’” *Id.* at 1172.

⁴⁹ McCrudden, *supra* note 3, at 659.

⁵⁰ *Id.* at 660.

⁵¹ *Id.*

another, we are raised to a higher level of existence.”⁵² And with social contract at the center of this philosophy, this may be the reason why Charles Renouvier “was able confidently to assert that a Republic is a state which best reconciles the interests and the dignity of each individual with the interests and dignity of everyone.”⁵³

Meanwhile, Immanuel Kant, in *Metaphysics for Morals*, held that treating people with dignity involves treating them as “autonomous individuals able to choose their destiny.”⁵⁴ This, therefore, requires that individuals be treated as ends and not simply means to an end.⁵⁵ The Kantian conception of dignity is characterized as: (a) innate to all humans, and, thus, independent of contingent, external circumstance and accomplishment; (b) possessed in equal degrees by humans despite having different abilities; (c) intimately connected with autonomy; and (d) having a strong constraint on whether a person can be used as a mere means.⁵⁶ According to McCrudden, this conception of human dignity has become the most often cited non-religiously-based conception of dignity, but not without critics.

Arthur Schopenhauer wrote a scathing critique of the Kantian conception, arguing that it was contentless and tautological.⁵⁷ This Schopenhauerian diatribe was borne out of the vagueness of the Kantian conception, which shows the poverty of imagination in finding a real ethical basis of morals.

While recent Marxist scholars have come to reimagine or reinterpret his discourse on human rights and dignity,⁵⁸ there is textual support to the claim that Karl Marx believed that the “universal rights of the abstract individual would in reality promote the interests of one particular social type:

⁵² Glen Martin, *Human Dignity and Our Global Social Contract*, July 4, 2019, available at <https://www.radford.edu/gmartin/Human%20Dignity%20and%20Our%20Global%20Social%20Contract.pdf>.

⁵³ McCrudden, *supra* note 3, at 660, *citing* CHARLES RENOUVIER, MANUEL RÉPUBLICAIN DE L’HOMME ET DU CITOYEN (1848).

⁵⁴ *Id.*

⁵⁵ *Id.*, *citing* IMMANUEL KANT, METAPHYSICS OF MORALS, SECTION 38 OF THE DOCTRINE OF VIRTUE (AK. 6:462).

⁵⁶ Andrew Huddleston, “Consecration to Culture”: Nietzsche on Slavery and Human Dignity, 52 J. HIST. PHILOSOPHY 135 (2014).

⁵⁷ See ARTHUR SCHOPENHAUER, THE BASIS OF MORALITY (A.B. Bullock trans., 2005) and ARTHUR SCHOPENHAUER, ON HUMAN NATURE (T. Bailey Saunders trans., 2014).

⁵⁸ See Justin Lacroix & Jean-Yves Pranchère, *Was Karl Marx truly against human rights?*, 62 REVUE FRANÇAISE DE SCIENCE POLITIQUE 433–51 (Sarah-Louise Raillard trans., 2014); and DAVID LEOPOLD, THE YOUNG KARL MARX. GERMAN PHILOSOPHY, MODERN POLITICS AND HUMAN FLOURISHING (2009).

the possessive individual of capitalism.”⁵⁹ Human rights, according to Marx, are merely “the rights of egoistic man, of man as a member of the bourgeois society, that is to say an individual separated from his community and solely concerned with self-interest.” Thus, he “denounced the use of dignity by a fellow socialist as a ‘refuge from history in morality.’”⁶⁰

Marx Friedrich Nietzsche, on the other hand, criticized the Kantian and Judeo-Christian ideas of the *dignity of man*, judging them to be merely the outpourings of a sentimental egalitarianism used to persuade those who toiled to continue to do so.”⁶¹ Nietzsche introduced a rather unusual conception of human dignity. For him, “a human being only has dignity in so far as he is a tool of the genius, consciously or unconsciously.”⁶² Consequently, man, by himself, “possesses neither dignity, not rights, nor duties.”⁶³ His conception of human dignity is characterized by the following: (a) it is achieved and tied to contingent, external circumstance and accomplishment; (b) possessed by different people in differing degrees; (c) not connected with autonomy; and (d) gained through being treated as a means.⁶⁴

It was because of these attacks, according to McCrudden, that the “Catholic Church adopted ‘human dignity’ as the rallying cry for the social teaching it developed at the end of the 19th century. The threat that socialism was seen as posing, particularly with the development of Communism by Marx and the fear of radical redistribution, class war, and totalitarianism, contributed to the adoption of dignity as central to an all-encompassing Catholic social doctrine.”⁶⁵ And, as discussed above, Maritain contributed to a significant degree the inclusion of the dignity language in important human rights instruments. With this the use of human dignity in philosophical, legal and theological texts have grown exponentially.

From the foregoing survey of its various uses and conceptualizations, I submit that human dignity is not a point easily marked on a line. Rather, it appears to be the line itself, from whose points people can derive their arguments. The practical malleability of human dignity significantly contributes to its legal potency. And it is because of this legal potency that I attempt to unbox the Filipino concept of human dignity and establish a theoretical foundation for a native conception thereof.

⁵⁹ Lacroix & Pranchère, *supra* note 58.

⁶⁰ McCrudden, *supra* note 3, at 661.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Huddleston, *supra* note 56, at 145.

⁶⁵ McCrudden, *supra* note 3, at 662.

PART II

“The Philippine landscape is familiarly tropical and East Indian. But the world into which you have stepped is unlike anything of which you have yet had experience in the Orient. It is Spain—diluted, indeed, distorted, and overlaid with Americanism.”

—Aldous Huxley

Filipino culture and academia⁶⁶ have long been dominated by Western thought. And so are its political structures, and legal and judicial systems.⁶⁷ So enamored are Filipinos with the West that, despite the outbursts of its popular President against Western values,⁶⁸ they still hold in higher regard Western countries than its Asian neighbors.⁶⁹ Amusingly, a 2014 Pew Research survey showed that Filipinos like the United States even more than Americans do.⁷⁰ Considering the far-reaching effects of the Western (or American) culture, thought and values in the Philippines, is there a concept of dignity native to Filipinos?

⁶⁶ Wilfrido Villacorta, *Western Influences on Social Science Teaching in Philippine Universities*, 13 PHIL. J. PSYCHOL. 65, 65–73 (1980).

⁶⁷ Petra Mahy & Jonathan Sale, *Classifying the Legal System of the Philippines: A Preliminary Analysis with Reference to Labor Law*, XXXIII (1 & 2) PHIL. J. LAB. & INDUS. REL. 1, 1–28 (2012). This is unsurprising since the Philippines was a colony of Catholic Spain for 333 years (1565–1898) and Protestant United States of America for 48 years (1898–1946), RENATO CONSTANTINO, *THE PHILIPPINES: A PAST REVISITED* 14, 394 (1975).

⁶⁸ Martin Petty, *‘They are so into so much hypocrisy’: Philippine president again blasts Western world’ in meeting with Putin*, REUTERS, NOV. 20, 2016, at <https://www.businessinsider.com/r-meeting-putin-philippines-duterte-rails-at-western-hypocrisy-2016-11>.

⁶⁹ Japan joins the United States and Canada as countries with a very good trust rating. The United States has a net trust rating of +68, Canada and Japan have net trust ratings of +55 and +54, respectively. The Asian countries with moderate trust ratings are Singapore (+29), Malaysia (+20), Thailand (+19), Indonesia (+18), Brunei (+16) and Vietnam (+13). Myanmar, Cambodia, China and Laos have neutral trust ratings (+9 to -9). The United States net trust rating have been positive since the survey was started in December 1994 – ranging from moderate (+18) to excellent (+82). See Arianne Merez, *SWS: Filipinos trust US the most, neutral on China*, ABS-CBN NEWS, Feb. 28, 2018, available at <https://news.abs-cbn.com/news/02/28/18/sws-filipinos-trust-us-the-most-neutral-on-china>. See also Ishaan Tharoor, *Forget Duterte. The Philippines loves the United States*, THE WASHINGTON POST, Oct. 22, 2016.

⁷⁰ Rappler, *Filipinos like the US even more than Americans do*, RAPPLER.COM, Apr. 22, 2014, at <https://www.rappler.com/nation/56085-philippines-usa-pew-research>.

The Filipino, according to psychologists, “is a blend of East and West.” They observe that the “Western influence can be seen in more external ways [...] However, the internal aspect, which is at the core of his *pagkatao* [...] is Asian—deference for authority, modesty/humility, concern for others, etc.”⁷¹ From this, the author believes that there is a Philippine concept of dignity, borne out of its distinct historical context and sociopolitical experiences, which may be unlocked using Filipino language and its legal history.

A. DIGNITY IN THE FILIPINO CULTURE

In discerning the cultural usage of human dignity in the Philippines, one turns to the Filipino language.⁷² While major ethnic groups in the Philippines – Bikolano, Cebuano, Ilokano, Pampango, Pangasinense and Tagalog – borrowed the Spanish word *dignidad*, this does not mean that dignity is a concept alien to all Filipinos for it has various translations, to wit: *dignidad*, *sanghaya*, *kamahalan*, *karapatan*, *puri*, *karangalan*, *kaligdong*, *katakus*, *kadungganan*, *dayaw*, *tanok*, *kagalangan*.⁷³ Although all these words pertain to dignity, their

⁷¹ Rogelia Pe-Pua & Elizabeth Protacio-Marcelino, *Sikolohiyang Pilipino (Filipino Psychology): A Legacy of Virgilio Enriquez*, 3 ASIAN J. SOC. PSYCHOL. 56 (2000).

⁷² The ongoing (and bitter) debate involving the national language shows a conflicted linguistic history of, and reflects the politics in and among the various ethnolinguistic groups in, the Philippines. The 1935 Constitution designated *Tagalog* (the term used for the largest ethnic group in the Philippines and their language) as the national language of the country. However, this resulted in ill-feelings and broken pride among other ethnolinguistic groups. To allay fears of Tagalog imperialism, *Tagalog* was de-ethnicized by renaming it as *Pilipino*, through DepEd Ord. No. 7. Later on, the 1973 Constitution essentially abolished the *Tagalog*-based *Pilipino* and replaced it with the “non-existent but soon-to-be-developed language, ‘*Filipino*.’” (Emphasis supplied). However, *Pilipino* returned with Dep’t Order No. 25 (1974) stipulating its use as well as English as part of the bilingual education program in the Philippines. Being a designated medium of instruction, *Pilipino* became widely used. This made it the de facto national language. Section 6, Article XIV of the 1987 Constitution named *Filipino* as the national language (with the *Pilipino* as the primary sociolinguistic basis, together with other languages which *Pilipino* would come in contact with). Recently, however, the bilingual policy of education has been dislodged with the enactment of Rep. Act No. 10533 otherwise known as the “Enhanced Basic Education Act of 2013”, replacing it with the Mother Tongue-based Multilingual Education. For a more detailed account, see Ruanni Tupas, *The Politics of ‘p’ and ‘f’: A Linguistic History of Nationbuilding in the Philippines*, 36 J. MULTILINGUAL & MULTICULTURAL DEV. 587, 587–97.

⁷³ CHARLES NIGG, A TAGALOG ENGLISH AND ENGLISH TAGALOG DICTIONARY 19, 47–48, 122, 127, & 210 (1904). See also JOSE VILLA PANGANIBAN, THESAURUS DICTIONARY: ENGLISH-PILIPINO 1938–1966 375 (1970); INTERNATIONAL STANDARD PUBLISHING COMPANY, THE NEW PHILIPPINES COMPREHENSIVE DICTIONARY: 8 MAJOR DIALECTS (2003); KOMISYON SA WIKANG FILIPINO, DIKSYUNARYO ENGLISH-FILIPINO-BIKOL 221 (2000); CARL GALVEZ RUBINO, ILOCANO: ILOCANO-ENGLISH/ENGLISH-ILOCANO DICTIONARY & PHRASEBOOK 192 (1998).

actual usage varies. *Sanghaya* is used by the Tagalogs to denote “rank” and “honor” as well as “beauty” and “fineness.” That is why it is widely used to refer to a lady’s charm. Tagalogs use *kamahalan* to express excellence, highness, majesty and glory. Hence, in several literary pieces, “your majesty, the King” is usually translated as “*mahal na hari*” (where *hari* means “king”). Its root word *mahal* also means “expensiveness” or “extravagance”, often associated with the rising prices of basic commodities, as well as “love.” Thus, in verbally expressing this emotion, the Tagalogs say: “*mahal kita*” (*kita* means “you”). Meanwhile, *puri* means “honor” and “praise,” and frequently used to mean “reputation.” *Karapatan* is used as the direct equivalent of “right.”⁷⁴ From the root word *dapat* (closest to the English word “ought”), *karapatan* is also used to express a sense of “appropriateness,” “correctness,” and “fairness.” It is connected to the Filipino word *katarungan* (“justice” in English), whose Visayan root word *tarong* means—aside from “appropriate” and “correct”—“straight” and “upright.”⁷⁵ Lastly, *karangalan* is used to refer to “nobility”, “probity” and “integrity”.

Like in Tagalog, the Cebuano language use *dignidad* as the counterpart of dignity. However, it also uses *katakus* and *kaligdong*. The former means “competence” or “worthiness”. While the latter is used to refer to fidelity and honesty, with its root word *ligdong* meaning “upright” (similar to *karangalan*). Meanwhile, the other Pangasinense word for dignity is *kagalangan* which also refers to “honor”, “glory”, “privilege” and “reputation”. The Ilokanos use *dayan* which means “honor” and “respect” as well as *tanok/tan-ok* which pertains to “greatness”. The Ilonggo and Hiligaynon translations are *kadunggan* primarily refers to “honor” but may also mean “majesty.”

Of the aforementioned Tagalog words, *karangalan* is commonly used in the Filipino language as the direct equivalent of “dignity”. Notably, this

⁷⁴ As an illustration, the official Filipino name of the Philippine Commission on Human Rights is *Komisyon ng Karapatang Pantao* (where *tao* means “human”).

⁷⁵ Note that the word *tarong* originated from the Visayas, the third largest island group. While there is a direct equivalent word in Tagalog for “straight”, i.e. *tuwid*, Filipinos never use *katuwiran* as their equivalent word for the English word “justice”. Even the Tagalogs, who comprise the largest ethnic group, chose to borrow from a minority ethnic group their word for justice. Quite ironically, *katuwiran* and its cognate words (e.g. *mangatwiran*, *magmatuwid*) mean “reason”, “argument” or “justification”. Thus, it can be said that, for Filipinos, not every justification is just. According to former Senator Jose W. Diokno, the *Filipino concept of justice* is “a highly moral concept; intimately related to the concept of right; that it is similar to, but broader than, Western concepts of justice, for it embraces the concept of equity; that it is a discrimination concept, distinguishing between justice and right, on the one hand, and law and argument, on the other; that its fundamental element is fairness; and that it eschews privilege and naked power.” For a more in-depth discussion on the Filipino concept of justice, see Jose Diokno, *The Filipino Concept of Justice*, A NATION FOR OUR CHILDREN (1987).

word is used in the official Filipino translation of the 1987 Constitution of the Philippines⁷⁶ as well as the Universal Declaration of Human Rights.⁷⁷ While it encompasses notions of privilege, honor, respect, reputation, majesty, greatness, fame, glory, beauty, fineness, appropriateness and worthiness, *karangalan* is also used to refer to probity and integrity.

Dangal—the root word of *karangalan*—functions “primarily as a noun,”⁷⁸ and is loosely translated as “honor” in English. However, it is not an object or entity in the Tagalog language but signifies the individual’s *pagkatao* (personhood or humanity).⁷⁹ Interestingly, when referring to *pagkatao*, the Tagalogs use *puri* (honor, praise, or reputation) interchangeably with *dangal*. Emil Tabbada opines that “an examination of *puri* used in a specific way discloses a significant concept that will finally shed light on the meaning of *dangal*, as it is understood in Tagalog.”⁸⁰ There are two instances in which *puri* has been greatly used by Filipinos. When an individual is libeled, Filipinos usually call that felony as *paninirang-puri* (where *paninira* means “to destroy”), notwithstanding the existence of the borrowed term *libelo*. When a woman is raped, Filipinos would frequently describe it as *winasak ang* (ruined) or *nawalan ng* (lost) *puri*, although there is another Tagalog word for rape, *i.e.*, *ginahasa*. Notice, however, that while *puri* and *dangal* are synonymous for Tagalogs, their usage varies. Libel is not described as *paninirang-dangal*, neither will rape result in *pagkawasak* or *pagkawala ng dangal*. In explaining this phenomenon, Rogelia Pe-Pua and Elizabeth Protacio-Marcelino made a significant distinction between the two terms:⁸¹

⁷⁶ CONST. art. II, § 11. “The State values the dignity of every human person and guarantees full respect for human right.” (In Filipino: “*Pinahahalagahan ng Estado ang karangalan ng bawat tao at ginagarantyaan ang lubos na paggalang sa mga karapatang pantao.*”).

⁷⁷ See United Nations Office of the High Commission on Human Rights, *Pandaigdig na Pagpapabayag ng mga Karapatan ng Tao*, OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, Jul. 20, 1998, available at <https://www.ohchr.org/EN/UDHR/Pages/Language.aspx?LangID=tgl>: “*Artikulo 1. Ang labat ng tao’y isinilang na malaya at pantay-pantay sa karangalan at mga karapatan. Sila’y pinagkalooban ng katwiran at budhi at dapat magpalagayan ang isa’t isa sa diwa ng pagkakapatiran.*” (Emphasis supplied.)

⁷⁸ Emil Tabbada, *A Phenomenology of the Tagalog Notions of Hiya [Shame] and Dangal [Dignity]*, in *FILIPINO CULTURAL TRAITS: CLARO R. CENIZA LECTURES*, 39 (Rolando Gripaldo ed., 2005).

⁷⁹ *Id.* at 41. See also Gary Palmer & Rick Brown, *The Ideology of Honour, Respect and Emotion in Tagalog*, in *SPEAKING OF EMOTIONS: CONCEPTUALISATION AND EXPRESSION* (Angeliki Athanasiadou & Elzbieta Tabakowska eds., 1998), where *dangal* is portrayed as a critical concept in Tagalog emotional thought: “The majority of Filipinos consider this, [*dangal*] is like one’s whole life.” It is so important to Filipinos that they can “spend their whole life pushing to maintain his/her *dangal* as pure.”

⁸⁰ *Id.* at 42.

⁸¹ Pe-Pua & Protacio-Marcelino, *supra* note 71, at 57.

Puri refers to honor which is physical, such as that bestowed through compliments or applauses for a good performance, thus external. It can also refer to virginity which is a virtue expected of unmarried Filipino women. *Dangal* is honor from within—knowledge of one’s true worth, character, achievement and success. It can be acknowledged through an award or a tribute (*parangal*, which is actually *pa-dangal*) but even without such gestures from outside, it is within you. Thus, a poor person who is a kind and honest person and respects the dignity of hard work has a lot of *dangal*. A woman who was raped is not stripped of her *dangal* even though her *puri* was taken away.⁸²

From this distinction, it can be gathered that *pagkatao* has two aspects: (a) *puri*, its external component; and (b) *dangal*, its internal component.⁸³ This may be the reason why although *puri* appear to be derived from “pure” (from its Latin equivalent *purus*),⁸⁴ *puro*—the other Tagalog term for pure—is seldom used in the context of rape or libel. *Puro* (purity) appears to go to the very nature of *pagkatao*, which is internal, while *puri* reflects how others perceive an individual, thus, external.

That we have unpacked the meaning of *dangal* yields an incomplete understanding of the Filipino concept of “dignity” since the sole employment of this root-word analysis glossed over other important aspects of the Filipino language. Also, bear in mind that the aforementioned legal instruments directly equates “dignity” with *karangalan* and not *dangal* per se. To arrive at a better understanding of the Filipino concept of “dignity” requires, therefore, a deeper consideration of how their language works. Tabbada notes that what distinguishes Philippine languages and dialects from English is the affixation

⁸² See also TEODORO KALAW, FIVE PERSPECTIVES FROM OUR ANCIENT MORALITY: AN INTERPRETATION (1951). Nonetheless, the author concurs with the observation of Tabbada that due to the “cultural revolution [...] slowly seeping into Tagalog culture, chastity becomes less valued. Perhaps Kalaw is discussing the common belief during his time where, compared to the present, the culture of the Tagalogs was conservative in nature.” See Tabbada, *supra* note 78, at 43.

⁸³ This internality-externality distinction is not uncommon. Salazar’s analysis of Filipino indigenous history and culture seems to point to the internality-externality component of the Filipino personality, Zeus Salazar, *Hiya: Panlapit at Salita*, in SIKOLOHIYANG PILIPINO: ISYU, PANANAW AT KAALAMAN (NEW DIRECTIONS IN INDEGENOUS PSYCHOLOGY), 288–297 (Allen Aganon & Ma. Assumpta David eds., 1985), cited in Pe-Pua & Protacio-Marcelino, *supra* note 71. In fact, there are other examples of this distinction, such as “*saya* and *ligaya* for the English word ‘happiness’; *pigil* and *timi* for ‘control’; and *dama* and *damdam* for ‘feel’,” Pe-Pua & Protacio-Marcelino, *Id.* Pe-Pua and Protacio-Marcelino is quick to “say that this internal-external dimension is unique to the Filipinos, but this is something researchers should be conscious of when trying to understand the Filipino personality.”

⁸⁴ Tabbada, *supra* note 78, at 43. This “may explain why virginity is always associated with *puri*; a violation of chastity would mean the damaging of one’s *puri*.”

system for “it is precisely in its affixed form that values are understood, not by its seemingly lifeless root word. The affixation system puts the word into action, or contextualizes the word for actual usage, so that the meaning of the word is usually understood in its affixed form.”⁸⁵ Through affixation, the meaning of the word and, eventually, the statement is transformed.⁸⁶ Another thing that distinguishes the Filipino language from English is verb-centeredness. Tabbada observes that the “verb is the usual emphasis in Tagalog as against the English emphasis on the subject.”⁸⁷ The affixation of verbs describes the temporal aspect of the action and determines the source of the verb. Taken together, the affixation system and verb-centeredness may unveil the concept of *karangalan*.

Affixation would change the meaning of the noun *dangal*. The addition of the prefix *ma-* (with) transforms it to a descriptive adjective (*may dangal* or its contracted form, *marangal*), denoting the presence of *dangal* or describing the state-of-having *dangal*. Notably, this descriptive form constitutes the two-fold context of *dangal*:

In the *first case*, *dangal* as present may mean that there is a moment when it is not present at all (privative), or that it is always there (permanence). It may also signal that *dangal* can also be made present. The concrete example is that of *pinarangalan* which means ‘someone-bestowing-dangal-on-someone.’ The addition of the prefix *pa-* implies externality and the infix *-in-* implies bestowal or being made as such. After the bestowal of *dangal* comes *pagiging marangal* (*dangal* being present) or simply *marangal*. In the *second sense*, *dangal* signifies more than the mere presence of something but rather the abundance of something.⁸⁸

While Tabbada is comfortable in adopting both contexts of *dangal*, it is my submission that the second sense is the more precise manner of explaining it. In rebuking a person, Filipinos do not say *walang* (“no” or “absence of”) *dangal*. On the contrary, as Tabbada correctly illustrates, “one simply says *hindi marangal*, the affixed form modified by a negation (*hindi* meaning ‘not’).”⁸⁹ Thus, the prefix *may-* should be understood as the “abundance” of *dangal*, which may be diminished, but not totally eradicated.

⁸⁵ *Id.* at 35–36.

⁸⁶ *Id.* at 37.

⁸⁷ *Id.* at 36.

⁸⁸ Emphasis supplied.

⁸⁹ *Id.* at 42.

This position is further strengthened when we finally examine the affix *ka-an* in *karangalan*; the addition of which gives *dangal* its abstract character.⁹⁰ In the Filipino language, the *ka-an* affixation suggests that “aside from expressing the abstract form, [this] also indicates: (1) the superlative, (2) companionship, reciprocity, simultaneity of action, (3) collectivity, (4) state, attitude, feeling, quality, or possession of something, and (5) possibility.”⁹¹ Tabbada examined the applicability of these five contexts of the affix *ka-an* to the concept *karangalan* and its root word *dangal*:

The *first*, an indication of superlatives, may not be plausible since the common superlative form of *dangal* is *pinakamarangal* (*pinaka* signaling superlativity), which literally means ‘the most *marangal*.’ The *second* form may be possible enough is the suffix is dropped, giving then the word *karangal* (fellow *marangal*). The collective context is totally out of the question since it would be more correct to say *mararangal* (all-who-are-*marangal*). The *fourth* category... is a problematic category since it contains five distinct modes, but the closest among them is that of ‘a state of being’ combined with possession of something, giving us then the translation ‘a-state-of-having-*dangal*.’ The *fifth* context is also plausible since the stress of the pronunciation is made on the last syllable, so that *karangalan* pronounced as *karanga-lan* may mean the ‘possibility of having *dangal*,’ but it also means an external bestowal of *dangal*, i.e., ‘*Nagalak siya nang siya’y binigyan ng karangalan*’ (She was happy when she was given honor). This, in fact, further indicates that *dangal* as possibility is a bestowed possibility, or that the actualization is the giving-of-*dangal*. But the possibility-of-having-*dangal* as something that has an external source is better expressed in the word *pararangalan*, which is a future tense of *parangalan*, indicating that someone-will-bestow-*dangal*. *Karangalan*, then in the fifth sense, is understood as the actualization of what was once possible.⁹²

This time, the author agrees with Tabbada that *karangalan* is “better understood as a state-of-having-*dangal*. Even when stressing the last syllable, *karangalan* is understood as has-been-given-*dangal*, which means that the person to whom *dangal* is bestowed has already actualized the state-of-having-

⁹⁰ In the English language, abstract nouns are used to name an idea, quality, action, state or condition. “Types of noun.” OXFORD LIVING DICTIONARIES (2018), *available at* <https://en.oxforddictionaries.com/grammar/types-of-noun>.

⁹¹ Tabbada, *supra* note 78, at 40, *citing* LEONARDO MERCADO, ELEMENTS OF FILIPINO PHILOSOPHY (1975). Citing Mercado, Tabbada explains that “Filipino languages are imprecise precisely because the Filipino’s view of himself is ‘holistic,’ concrete thinking (as against abstract thinking), and non-dualism.”

⁹² *Id.* at 41. (Emphasis supplied.)

dangal.”⁹³ Therefore, it would appear that either in its adjective or abstract form, *dangal* “has never been absent in the first place but is assumed to be already present.”⁹⁴ Simply put, the “system of affixation applied to *dangal* does not merely signify what is made present but points at what is already there.”⁹⁵

One more thing on this subject. The paper mentioned before that *dangal* may be diminished but not totally eradicated. But how can this be done? The fifth context of the affix *ka-an* indicates possibility. When applied to *dangal*, this *dangal*-giving possibility is better expressed in the word *parangalan*. For Tagalogs, the direct opposite of *parangalan* is *lapastanganin* (to slander), which may be done verbally or physically. Tabbada clearly outlined how *paglapastangan* (slander) diminishes or damages *dangal* or *karangalan* by distinguishing its two forms: (a) slander by deed or *paglapastangan* proper; and (b) slander by words or *pagmumura*.⁹⁶ *Paglalapastangan* is frequently used by Filipinos in the following instances—when children become disobedient to their parents in the extreme sense, when objects considered sacred (e.g. houses of worship, cemeteries) are defiled, and as euphemism for the violation of chastity, such as rape.⁹⁷ The usage of *paglapastangan*, according to Tabbada, seem to be an “external interference of something that is otherwise pure and glorious. It connotes a disturbance of the inner imperative emanating from the object of defamation: obeying parents, respecting sacred things or places, honoring chastity. Children ought to obey parents; people must respect sacred objects; men should respect a woman’s chastity.”⁹⁸ On the other hand, *pagmumura* slanders a person through the use of defamatory words (*mura*), which may be insults, curses, and dirty language.⁹⁹ Incidentally, *mura* is commonly used to “point at objects that are cheap.”¹⁰⁰ And this is the direct opposite of the above-discussed word *mahal*. When one buys a product at a bargain, Filipinos will call it *mura*. In contrast, those expensive products are considered *mahal*. This diametrical opposition of *pagmumura* and *pagmamahal* is seen beyond the economic aspect. It also covers emotional and moral aspects. Recall that *mahal* likewise denotes love, not only expensiveness

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.* at 46. Both forms of slander (or defamation) are also considered as felonies in the Philippines. Title 13 of Act No. 3815 or the “Revised Penal Code” defines what are Crimes against Honor. Article 358 thereof defines Slander or Oral Defamation (*pagmumura*), Article 359 defines Slander by deed (*paglalapastangan*). Note that while Libel (*paninirang-puri*) is considered a Crime against Honor, its application is more limited under Article 355, i.e. it should be published, and it should maliciously impute a crime, vice or defect.

⁹⁷ *Id.* at 46–47.

⁹⁸ *Id.* at 47.

⁹⁹ *Id.* at 46.

¹⁰⁰ *Id.*

and majesty. Thus, when one person is engaged in *pagmumura*, he is seen as not loving the other who is subject of his *mura*. It goes beyond the mere feeling of hate, but is actively cheapening, lowering and defaming the other person. In other words, as posited by Florentino Hornedo, *pagmumura* is an act that demeans another person through words.¹⁰¹ *Paglalapastangan* and *pagmumura* disregard the other person's "humanity by demoting it into its animal level."¹⁰² And for Tabbada, this is the essential connection of the two concepts—both "damages the person within and demotes it into its animality, or *kahayupan*."¹⁰³ Thus, *paglalapastangan* or *pagmumura* of the *pagkatao* "simply means damaging the basic requirement for being human."¹⁰⁴

When one becomes the subject of *paglalapastangan* or *pagmumura*, something is not made present in that individual, but rather is taken away from the latter "in a demeaning sense."¹⁰⁵ Remarkably, Tabbada observes that "this demeaning of the object [merely] damages, rather than destroys, something essential in the object."¹⁰⁶ The object incurs injury, but there is something in him that is not destroyed or lost. To my mind, as they interfere with something that is otherwise pure or glorious, it appears that both *paglalapastangan* and *pagmumura* damage the *puri*—the external aspect—of an individual by demeaning his *pagkatao*; bringing him down to the level of a *hayop* (animal). But his *dangal*—the internal aspect—remains intact.

Paglalapastangan appears to link what Virgilio Enriquez, the Father of Filipino Psychology, identified as the three social values of Filipinos: (a) *karangalan* (dignity); (b) *katarungan* (justice); and (c) *kalayaan* (freedom).¹⁰⁷ *Paglalapastangan* [and *pagmumura*] is a form of injustice because one does not give the other person the appropriate treatment, which is a form of *kabuktutan* (crooked path)—as opposed to *katarungan* (straight path).¹⁰⁸ The same also results in *pang-aapi* (acts of damaging domination), *pang-aalipin* (slavery), or even death, all infractions of *kalayaan*. Why *paglalapastangan* links these Filipino social values can be best explained by examining the concept of *kapwa*, dubbed as the "core of Filipino social psychology, and [...] the heart of the structure of Filipino values"¹⁰⁹ by Enriquez.

¹⁰¹ *Id.* at 47, *citing* FLORENTINO HORNEDO, *PAGMAMAHAL AND PAGMUMURA ESSAYS* (1997).

¹⁰² *Id.* at 46.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 47.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ Pe-Pua & Protacio-Marcelino, *supra* note 71, at 56, *citing* VIRGILIO ENRIQUEZ, *FROM COLONIAL TO LIBERATION PSYCHOLOGY: THE PHILIPPINE EXPERIENCE* (1994).

¹⁰⁸ Tabbada, *supra* note 78, at 47.

¹⁰⁹ Pe-Pua & Protacio-Marcelino, *supra* note 71.

Western researchers dominate the social sciences when these disciplines were still in their infancy in the Philippines. In his seminal work on Filipino values, Jesuit Frank Lynch, one of the early anthropologists, observed that:

[f]or the American newly arrived in the Philippines, the most striking quality manifested by Filipinos is their pleasantness, and among Filipinos getting their first full taste of American ways, a recurrent complaint is that Americans are often ‘brutally frank.’ These reactions are traceable to a clear intercultural difference, for smoothness of interpersonal relations [...], while valued in both societies, is considered relatively more important by Filipinos than by Americans.¹¹⁰

Using the fourfold test to identify the more important values in a culture,¹¹¹ Lynch concluded that social acceptance is the most important theme for Filipinos,¹¹² and its accompanying value is the desire to achieve smooth interpersonal relations.¹¹³ And because the latter frequently entails going along with the other person or his opinion—in other words, conformity—he loosely translated it as *pakikisama*.¹¹⁴ For years, *pakikisama* or the desire to maintain smooth interpersonal relations has been recognized as the dominant Filipino value—both by Western and local researchers. Comes

¹¹⁰ Frank Lynch, *Philippine Values II: Social Acceptance*, 10 PHIL. STUD. 89 (1962).

¹¹¹ *Id.* at 85, citing ROBIN WILLIAMS, JR., AMERICAN SOCIETY (1960).

¹¹² *Id.* at 87. According to Lynch, social acceptance is “enjoyed when one is taken by one's fellows for what he is, or believes he is, and is treated in accordance with his status. Put negatively—and this is perhaps the best way to express what I feel is the bare minimum of social acceptance for the Filipino—social acceptance is had when one is not rejected or improperly criticized by others.”

¹¹³ “SIR [Smooth Interpersonal Relations] may be defined as a facility at getting along with others in such a way as to avoid outward signs of conflict: glum or sour looks, harsh words, open disagreement, or physical violence. It connotes the smile, the friendly lift of the eyebrow, the pat on the back, the squeeze of the arm, the word of praise or friendly concern. It means being agreeable, even under difficult circumstances, and of keeping quiet or out of sight when discretion passes the word. It means a sensitivity to what other people feel at any given moment, and a willingness and ability to change tack (if not direction) to catch the lightest favoring breeze.” *Id.* at 89.

¹¹⁴ “Pakikisama is a Tagalog word derived from the root sama, ‘accompany, go along with.’ At times the word pakikisama is used as synonymous with what I understand by SIR; when so employed, the word is very frequently (almost predictably) translated as ‘good public relations.’ But I believe the term pakikisama is more commonly used with a meaning narrower than SIR. In this more restricted sense, it means ‘giving in,’ ‘following the lead or suggestion of another’; in a word, *concession*. It refers especially to the lauded practice of yielding to the will of the leader or majority so as to make the group decision unanimous. No one likes a hold-out.” (Emphasis supplied.) *Id.* at 89–90.

Enriquez in 1978 offering a different theory. He opines that it is not *pakikisama* “that Filipinos are most concerned with, but *pakikipagkapwa* which means treating the other person as kapwa.”¹¹⁵ According to Enriquez, Filipinos strive to be agreeable or even give in to others not because they simply want to be socially accepted. For him, there is a deeper reason for doing so. Thus, his concept of *kapwa*.

While *kapwa* may be roughly translated as “others”, Enriquez rejects this because of its inability to completely capture the essence of *kapwa* in the Philippine culture. For Enriquez, *kapwa* is a recognition of shared identity or shared self, thus:

When asked for the closest English equivalent of *kapwa*, one word that comes to mind is the English word ‘others.’ However, the Filipino word *kapwa* is very different from the English word ‘others.’ In Filipino, *kapwa* is the unity of the ‘self’ and ‘others.’ The English ‘others’ is actually used in opposition to the ‘self,’ and implies the recognition of the self as a separate identity. In contrast, *kapwa* is a recognition of shared identity, an inner self shared with others. When asked for the closest English equivalent of *kapwa*, one word that comes to mind is the English word ‘others.’ However, the Filipino word *kapwa* is very different from the English word ‘others.’ In Filipino, *kapwa* is the unity of the ‘self’ and ‘others.’ The English ‘others’ is actually used in opposition to the ‘self,’ and implies the recognition of the self as a separate identity. In contrast, *kapwa* is a recognition of shared identity, an inner self shared with others.¹¹⁶

While there are two categories of *kapwa*—(a) *ibang-tao* (“outsider”) and *hindi-ibang-tao* (“one-of-us”)—each with different levels of social interaction,¹¹⁷ two things need to be highlighted. *First*, the distinction is not based on the diametrical self-other, presupposing separate egos, but rather based on *taga-loob* (insider) or *tagalabas* (outsider). Thus, Enriquez explains:

¹¹⁵ Virgilio Enriquez, *Kapwa: A core concept in Filipino social psychology*, in MGA BABASAHIN SA AGHAM PANLIPUNANG PILIPINO: SIKOLOHIYANG PILIPINO, PILIPINOLOHIYA, AT PANTAYONG PANANAW, 23–33 (Atoy Navarro & Flordeliza Lagbao-Bolante eds., 2007).

¹¹⁶ ENRIQUEZ, *supra* note 107.

¹¹⁷ Pe-Pua & Protacio-Marcelino, *supra* note 71, at 56: “In Filipino social interaction, one is immediately ‘placed’ into one of these two categories; and how one is placed determines the level of interaction one is shown. For example, if one is regarded as *ibang-tao*, the interaction can range from *pakikitungo* (transaction/civility with), to *pakikisalamuha* (interaction with), to *pakikilabok* (joining/participating), to *pakikibagay* (in-conformity with/in accord with), and to *pakikisama* (being along with). If one is categorized as *hindi-ibang-tao*, then you can expect *pakikipagpalagayang-loob* (being-in-rapport/understanding/acceptance with), or *pakikisangkot* (getting involved), or the highest level of *pakikiisa* (being one with).”

“[o]nce *ako* [‘I’] starts thinking of himself as separate from *kapwa*, the Filipino ‘self’ gets to be individuated in the Western sense and, in effect, denies the status of *kapwa* to the other. By the same token, the status of *kapwa* is also denied to the self.”¹¹⁸ In fact, one would frequently hear Filipinos say: “*hindi ako iba sa aking kapwa*” (“I am no different from others”).¹¹⁹ Thus, *kapwa* means shared self. *Second*, despite the insider-outsider distinction, notice that there is a shared heritage between the *ibang-tao* and *hindi-ibang-tao*, that is, *tao* (human). Regardless of how Filipinos would regard a particular individual and, as a consequence, what level of social interaction is accorded to the latter, it is certain that the person will be treated as a human person. Thus, *kapwa* also means shared humanity.

With this understanding of the concept of *pakikipagkapwa* as shared self, shared identity and shared humanity, it then becomes easy to understand why Tabbada even considers *paglalapastangan* (i.e. the damaging the basic requirement for being human) as the “prototypical moral counterpart, the greatest immorality, or whatever it is we consider vile or evil.”¹²⁰

In summary, the Filipino language establishes that there is a native concept of dignity, which is *karangalan*; a highly moral concept because it goes beyond the notion of rank, honor, reputation, glory and worthiness, but also involves probity and integrity; that its core element, *dangal*, is broader than the concept of honor, for it signifies humanity or personhood, considered like one’s whole life by Filipinos; that it is the already actualized state-of-having-*dangal*; that it has an internal aspect (*dangal*), which always remains intact, and an external aspect (*puri*), which may be damaged or diminished by *paglalapastangan* or *pagmumura*; and that is intimately associated with the two other Filipino societal values, namely, *katarungan* (justice) and *kalayaan* (freedom), with *pakikipagkapwa* (shared identity, shared humanity) as the common thread that binds these three.

PART III

“The State values the dignity of every human person and guarantees full respect for human rights.”

—1987 Constitution

¹¹⁸ Enriquez, *supra* note 115, at 54.

¹¹⁹ *Id.*

¹²⁰ Tabbada, *supra* note 78, at 47.

A. Dignity in the Filipino Legal System

In discerning the legal usage of human dignity in the Philippines, we turn to its various constitutions, laws, administrative issuances as well as court decisions.

Since its Proclamation of Independence from Spain on June 12, 1898, the Philippines has had six constitutions.¹²¹ Notably, however, the concept of human dignity was only incorporated in the 1973 Constitution; *first*, under the Declaration of Principles and State Policies, and *second*, under a unique article on the Duties and Obligations of Citizens. Reference to human dignity was also present under the current 1987 Constitution, also under the articles on the Declaration of Principles and State Policies, and, the newly-added article on Social Justice and Human Rights. The matrix below presents the text of the concerned provisions:

1973 Constitution	1987 Constitution
The State shall promote social justice to ensure the dignity, welfare, and security of all the people. Towards this end, the State shall regulate the acquisition, ownership, use, enjoyment, and	The State values the dignity of every human person and guarantees full respect for human rights. (<i>Declaration of Principles and State Policies</i> , art. II, § 11)

¹²¹ *Constitution Day*, OFFICIAL GAZETTE, Nov. 17, 2018, available at <https://www.officialgazette.gov.ph/constitutions/constitution-day/>. The *1899 Malolos Constitution*, adopted by the First Philippine Republic, is the first republican constitution in Asia. The *1935 Constitution* became effective upon ratification by the Filipino people through a plebiscite on 14 May 1935, after being certified by President Franklin Roosevelt pursuant to the Philippine Independence Act passed by the United States Congress, Pub. L. No. 73-127. During the Second World War, the Japanese-sponsored government replaced the 1935 Constitution with the short-lived *1943 Constitution*, used by the Second Philippine Republic. After the country's liberation in 1945, the 1935 Constitution became effective again, and was used as the basis of the Third Philippine Republic. Laying the ground for Martial Law, former President Ferdinand Marcos pushed for the amendment of the 1935 Constitution. However, foreseeing that a direct ratification by the people was bound to fail, President Marcos created citizens assemblies to ratify the newly drafted constitution by means of a *viva voce* vote in place of secret ballots. Nonetheless, despite the widespread fraud during the citizens' assembly ratification, exposed by then Chief Justice Roberto Concepcion in his dissent, the Philippine Supreme Court ruled that the ratification for the *1973 Constitution* was valid and effective, invoking the political question doctrine in *Javellana v. Executive Secretary*, G.R. No. 36142, 50 SCRA 30 (1973). When democracy was restored in the Philippines after a peaceful people power revolution, former President Corazon Aquino suspended the 1973 Constitution and promulgated Proc. No. 3 (1986) or the *Freedom Constitution*. President Aquino then convened a Constitutional Commission to draft a permanent constitution. On February 2, 1987, the Filipino people ratified the current *1987 Constitution*.

disposition of private property, and equitably diffuse property ownership and profits. (<i>Declaration of Principles and State Policies</i> , art. II, § 6)	
It shall be the duty of every citizen to engage in gainful work to assure himself and his family a life worthy of human dignity. (<i>Duties and Obligations of Citizens</i> , art. V, § 3)	The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good. (<i>Social Justice and Human Rights</i> , art. XIII, § 1)

A textual analysis of the aforesaid provisions yields the following observations. Human dignity, under the 1973 Constitution, appears to be aspirational—something that could and should be achieved. On the other hand, the 1987 Constitution clearly recognizes that while human dignity is something aspired for, it is, at the same time, inherent in man; thus, its capability of being protected and enhanced. Nonetheless, under both constitutions, the concept of human dignity is closely tied to social justice.

The 1973 Constitution stands out from the other constitutions of the Philippines. It was the only constitution that adopted a parliamentary form of government,¹²² allowed an indefinite interim membership of the representatives in the National Assembly (later on renamed as *Batasang Pambansa*, its Filipino translation),¹²³ and introduced a somewhat “Bill of Duties”—Duties and Obligations of Citizens—after its Bill of Rights.¹²⁴ The latter innovation may be understandable in view of the height of the Cold War and the Vietnam War at the time of the drafting and ratification.¹²⁵ With the

¹²² All other constitutions adopted a presidential form of government. *See* CONST. (1899 MALOLOS), tit. VII; CONST. (1935), art. VII; CONST. (1943), art. II; and CONST. (1987) art. VII. Note that the Freedom Constitution, the provisional constitution in force when former President Marcos was driven out of office, virtually follows a dictatorial form of government, pending the drafting and submission of a new constitution, *see* Proc. No. 3 (1986), art. II, § 1.

¹²³ CONST. (1973), art. XVII, § 1.

¹²⁴ CONST. (1973), art. V.

¹²⁵ Thus, the foremost duty and obligation of a citizen is “identified with th[e] fundamental principle of defense of state,” ENRIQUE FERNANDO, *THE CONSTITUTION OF THE PHILIPPINES* 85 (1977 ed.). *See* CONST. (1973), art. V, § 1. “It shall be the duty of the citizen to be loyal to the Republic and to honor the Philippine flag, to defend the State and

battle between capitalism and socialism as the zeitgeist, the 1973 Constitution was pushed by former President Ferdinand Marcos under the guise of a threat of subversion by the Maoist New Peoples' Army,¹²⁶ although it was merely a prelude to his term extension beyond constitutional limits.¹²⁷

Because human dignity in the 1973 Constitution is, in a sense, aspirational, its use is limited to the context of work. Dignity is achieved when one's social and economic rights are realized¹²⁸ for if "every employable person were employed, not only would there be happy individuals and happy families, but also a happy, peaceful, and prosperous nation."¹²⁹ This constitution lodged with the individual person the primary responsibility of achieving dignity, through work. It "does in no way make it the obligation of the Government to provide jobs for everyone [...] [because] [s]ecuring employment is a person's own responsibility."¹³⁰ However, "what the Constitution could imply in this regard is a joint effort between Government and citizen, the former to create the necessary conditions to generate job opportunities, and the latter to seek employment, and, once employed, to dedicate himself to work."¹³¹ Thus, "[w]hile the State will afford protection and assistance to labor as well as ensure full employment, the citizen is duty bound to help himself. Self-reliance and initiative are required every citizen. Indolence, laziness, and parasitism are not being tolerated in the guise of social reform. In the hands of the individual citizen lies the responsibility of being the creator of his own destiny."¹³² "Without the awareness that there is need to strive to improve one's lot for the sake of self and family, the government

contribute to its development and welfare, to uphold the Constitution and obey the laws, and to cooperate with the duly constituted authorities in the attainment and preservation of a just and orderly society."

¹²⁶ Justus van der Kroef, *Communism and Reform in the Philippines*, 46 PACIFIC AFFAIRS 29 (1973). As observed by some writers, the "rising political violence after 1969 was to a considerable degree the creation of Marcos himself, first in trying to get himself re-elected and then in preparing a justification for martial law[.]" David Wurfel, *Martial Law in the Philippines: The Methods of Regime Survival*, 50 PACIFIC AFFAIRS 5 (1977).

¹²⁷ CONST. (1935), art. VII, § 2. "The President shall hold his office during a term of four years and together with the Vice-President chosen for the same term, shall be elected by direct vote of the people."

¹²⁸ "The duty to engage in gainful work is the correlative of the social and economic right requiring the State to afford protection to labor, promote full employment and equality in employment, ensure equal work opportunities regardless of sex, race, or creed, and regulate the relations between workers and employers." EMMANUEL SANTOS, THE CONSTITUTION OF THE PHILIPPINES: NOTES AND COMMENTS, 156 (1976).

¹²⁹ ANTONIO ORENDAIN, NEW PHILIPPINE CONSTITUTION AND GOVERNMENT ANNOTATED 127 (1983).

¹³⁰ *Id.*

¹³¹ FERNANDO, *supra* note 125.

¹³² SANTOS, *supra* note 128.

may fail to impart vitality to the social justice principle,” Supreme Court Justice Enrique Fernando added.¹³³

On the other hand, the 1987 Constitution stands out for being one of the longest constitutions in the world.¹³⁴ Widely viewed as a reactionary charter due to gross human rights abuses¹³⁵ and widespread cronyism during the martial rule, the members of the 1986 Constitutional Commission intentionally put special emphasis on human rights and social justice—treating them as the “centerpiece”¹³⁶ and “heart”¹³⁷ of this new constitution. Thus, it is noteworthy that from five and ten principles and state policies under the 1935 Constitution and 1973 Constitutions, respectively, the current Philippine Constitution listed 28. In fact, the article on the Declaration of Principles and State Policies has more provisions compared to the Bill of Rights (22), the Executive Department (23), and the Judicial Department (16). Commissioner Gregorio Tingson, in his sponsorship speech for this expanded article before the commission, argues that:

[t]he inclusion [...] of 17 new sections is a manifestation that in the rebirth of our nation, the Charter that accompanies it must truly be reflective of the ideals and aspirations of the Filipino people that are not only genuine but inherent in them. Aside from presenting our basic ideological principles, the same article must equally reflect all-embracing sentiments of the people in their renewed desire to achieve a society that is founded on justice, freedom, equality, love and peace.¹³⁸

A great number of the new provisions pertain to the rights of man and his total development, the heart of which is Section 11 (originally proposed as Section 5) which “affirms [the] deep regard for the preservation of the dignity of every individual.”¹³⁹ A series of provisions on

¹³³ FERNANDO, *supra* note 125.

¹³⁴ Ramon Casiple, *Imperatives for Constitutional Reforms*, Workshop on Constitutional and Electoral Reforms of the Philippine All-Parties Conference (May 3, 2002), available at iper.org.ph/documentation/imperatives.pdf.

¹³⁵ Diane Desierto, *A Universality History of the 1987 Philippine Constitution*, 10 HISTORIA CONSTITUCIONAL 386, 289 (2009). See also Serafin Guingona, *Sponsorship Speech for the entire draft of the 1987 Constitution*, 106 RECORD CONST. COMM’N 907–10 (Oct. 12, 1986).

¹³⁶ Explanation of vote of Commissioner Ma. Teresa Nieva, 106 RECORD CONST. COMM’N 926 (Oct. 12, 1986).

¹³⁷ Explanation of vote of President Cecilia Muñoz-Palma, 106 RECORD CONST. COMM’N 944–46 (Oct. 12, 1986).

¹³⁸ 81 RECORD CONST. COMM’N 580–82 (Sep. 12, 1986).

¹³⁹ *Id.*

the coverage and aspects of human dignity ensued.¹⁴⁰ The rest are the aspirational rights of man and those needed for his total development.¹⁴¹ As clarified during the interpellation for the adoption of these provisions:

MR. BENNAGEN: Thank you. Let me go to Section 5.

The State values the dignity of the human person, guarantees full respect for human rights and undertakes to uplift the social, economic and political condition.

The first reference is to dignity of the human person but it is followed by a list of human rights and a list of social, economic and political conditions. Is the reference still to the person or to the social concept of that human person?

* * *

MR. NOLLEDO: Yes. The social concept of the human person is included because when we talk of the human personality, we must necessarily live by bread. *However, man does not live by bread alone, we have to respect his human dignity and human rights. So when we talk of the phrase 'social, economic and political condition,' we talk of his position as a human being the physical being. When we talk of 'political condition,' we talk of his participation as a member of the community where he can participate as a voter or as a candidate, and those things taken together are affected by the respect for human dignity and honor.*¹⁴²

Thus, as originally understood by the framers, human dignity serves as the basis of human rights and the core concept linking all the political, social and economic conditions aspired for and by Filipinos. This conclusion is strengthened when one compares the original and final drafts of Section 11 (then Section 5). Under Proposed Resolution No. 537 to the 1986 Constitutional Commission, the original committee proposal reads: "The State values the dignity of the human person, guarantees full respect for human rights and undertakes to uplift the social, economic and political condition."¹⁴³ However, upon deliberation of this committee proposal:

¹⁴⁰ To wit: (a) family life (art. II, § 12); (b) the mother and the unborn (art. II, § 12); (c) parents (art. II, § 12); (d) youth (art. II, § 13); (e) women (art. II, § 14); (f) labor (art. II, § 18); and (g) indigenous cultural communities (art. II, § 22).

¹⁴¹ Such as: (a) right to health (art. II, § 15); (b) right to balanced and healthful ecology (art. II, § 16); (c) education, science and technology, arts, culture, and sports (art. II, § 17); (d) self-reliant and independent national economy (art. II, § 19); (e) private sector (art. II, § 20); (f) rural development and agrarian reform (art. II, § 21); (g) civic organizations (art. II, § 23); (h) information and communications (art. II, § 24); and (i) local governments (art. II, § 25).

¹⁴² 84 RECORD CONST. COMM'N 688 (Sep. 16, 1986). (Emphasis supplied.)

¹⁴³ *Supra* note 138.

BISHOP BACANI: May I give an anterior amendment before we vote on that, if Commissioner Rama will permit.

Instead of saying 'The State values the dignity of the human person,' I propose to say, 'The state values the dignity of EVERY human person.' On the second half of the statement, I suggest: 'guarantees full respect for human rights AT ANY STAGE OF THIS PERSON'S DEVELOPMENT.'

MS. AQUINO: So, how would Section 5 read now?

THE PRESIDING OFFICER (Mr. Maambong): Will the proponent state his amendment one by one.

BISHOP BACANI: 'The state values the dignity of EVERY human person, guarantees full respect for human rights AT ANY STAGE OF THIS PERSON'S DEVELOPMENT [. . .]'

THE PRESIDING OFFICER (Mr. Maambong): I suggest that the committee take this up one by one. Let us take up the word 'EVERY' in substitution of the word 'the' on line 7 of Section 5. What does the committee say?

BISHOP BACANI: *This will not simply be general but will apply to each and every case.*

THE PRESIDING OFFICER (Mr. Maambong): Yes. The Chair is now asking the committee.

MS. AQUINO: The committee accepts the insertion of 'EVERY' before 'human person'.

* * *

THE PRESIDING OFFICER (Mr. Maambong): Will the committee now state the formulation of Section 5?

MR. TINGSON: *The formulation is: "The State values the dignity of EVERY human person AND guarantees full respect for human rights."*

THE PRESIDING OFFICER (Mr. Maambong): Is that it?

MR. RAMA: Mr. Presiding Officer, I ask that we take a vote on that simple provision.

VOTING

THE PRESIDING OFFICER (Mr. Maambong): We will now put it to a vote.

As many as are in favor of Section 5, as reformulated, please raise their hand. (*Several Members raised their hand.*)

As many as are against, please raise their hand. (*No Member raised his hand.*)

The Chair makes the same reservation of its vote.

The results show 28 votes in favor and none against; Section 5, as amended, is approved.¹⁴⁴

From a mere generic statement, the accepted amendment made it clearer that *every* human person is endowed with dignity, recognized and valued by the state. Further, while the Bacani Proposal (i.e. append the phrase “at any stage of this person’s development” to the guarantee of full respect for human rights) was voted down, the final draft is understood to have incorporated its spirit:

MS. AQUINO: Mr. Presiding Officer, the committee believes that without going into such diversions, that is already fully covered by the draft as presented by the committee, and we therefore regret that we cannot accept the proposal of Commissioner Bacani.

THE PRESIDING OFFICER (Mr. Maambong): The committee does not accept that second amendment?

MS. AQUINO: No, Mr. Presiding Officer, we cannot accept the amendment.

* * *

MR. RAMA: *Mr. Presiding Officer, the proponents of the amendment to Section 5, as well as the committee, have agreed that Section 5 should be devoted solely to human rights, human dignity and should not be cluttered with other rights in order to stress the value and the need of human rights.* I ask that Commissioner Aquino be recognized to state the provision as agreed upon.

BISHOP BACANI: Mr. Presiding Officer.

¹⁴⁴ 87 RECORD CONST. COMM’N 829–31 (Sep. 19, 1986). (Emphasis supplied.)

THE PRESIDING OFFICER (Mr. Maambong): Commissioner Bacani is recognized.

BISHOP BACANI: I agreed with the committee to withdraw my amendment on condition that I would get a response to a question which I would like to pose now.

THE PRESIDING OFFICER (Mr. Maambong): *Is Commissioner Bacani withdrawing his amendment?*

BISHOP BACANI: *Yes, the second one, but depending on the answer to this question. We say that the State guarantees full respect for human rights. Does this mean, for the record, full respect for human rights at any stage of this person's development, from the time he becomes a person to the time he leaves this earth?*

MS. AQUINO: Yes.

BISHOP BACANI: Thank you very much and I withdraw my amendment.¹⁴⁵

It is equally worth noting that that while there was a proposal to clarify that the beneficiaries of this recognition of the inherence of human dignity—such as, the upliftment of the social, economic and political conditions—are only the *citizens*, said proposal did not see the light of day.¹⁴⁶ In fact, the proposal of the Committee on Social Justice about the relevant provision under the article on Social Justice and Human Rights, which was made in the same vein, was turned down during the deliberation:

MR. RODRIGO: Yes, Madam President.

Before propounding my amendment, may I ask some questions of the Committee on the use of the word "citizen" in the phrase "and enhance the right of every citizen" in Section 1. It seems that the benefits of this section are reserved for Filipino citizens. I would like to state that in both the 1973 and 1935 Constitutions, the benefits of similar provisions are not

¹⁴⁵ *Id.* (Emphasis supplied.) See also JOAQUIN BERNAS, THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: AN ANNOTATED TEXT 8 (1987).

¹⁴⁶ *Id.* "MR. RAMA: Mr. Presiding Officer, I would like to present an amendment on Section 5 to complete the sentence. Section 5 reads: "The State values the dignity of the human person, guarantees full respect for human rights and undertakes to uplift the social, economic and political condition." It does not state whose "social, economic and political condition" it seeks to uplift. So I would like to insert the word "CITIZEN'S" before the phrase "social, economic and political condition" on line 9. The amended Section 5 would then read: "The State values the dignity of the human person, guarantees full respect for human rights and undertakes to uplift the CITIZEN'S social, economic and political condition."

limited to Filipino citizens. Article II, Section 6 of the 1973 Constitution reads:

The State shall promote social justice to ensure the dignity, welfare, and security of all the people.

Article II, Section 7 of the 1973 Constitution reads:

The State shall establish, maintain, and ensure adequate social services in the field of education, health, housing, employment, welfare, and social security to guarantee the enjoyment by the people of a decent standard of living.

In the 1935 Constitution, Article II, Section 5 reads:

The promotion of social justice to ensure the well-being and economic security of all the people should be the concern of the State. Now my question is:

Do we want to limit the benefits of social justice to just Filipino citizens, to the exclusion of other persons or noncitizens who might be residing in the Philippines?

MS. NIEVA: *I think our primary concern is really the Filipino people.*

MR. RODRIGO: So, this is a change from the concept of similar provisions in the 1935 and 1973 Constitutions.

MS. NIEVA: We do not mean to prejudice anybody here; we just wanted to focus on the Filipino people's rights to social justice.

MR. RODRIGO: Will the Committee accept an amendment that instead of "every citizen" we say: "enactment of measures that protect and enhance the right of THE PEOPLE to human dignity . . ."?

MS. NIEVA: *Would the Gentleman accept THE FILIPINO PEOPLE? The suggestion was made here.*

MR. RODRIGO: *But that would amount to the same thing, that we are limiting this only to Filipino citizens.*

MS. NIEVA: Madam President, the Committee accepts.

MR. RODRIGO: *So, my amendment would be, instead of "every citizen," insert THE PEOPLE.*

MR. PADILLA: Madam President.

THE PRESIDENT: Commissioner Padilla is recognized.

MR. PADILLA: *Madam President, will the distinguished sponsor of this amendment agree to an amendment that instead of saying "of THE PEOPLE," we say ALL THE PEOPLE because those are the words in the 1935 and 1973 Constitutions?*

MR. RODRIGO: I have no objection to that if the Committee would accept it.

MS. NIEVA: *Would EVERY PERSON mean the same thing as "ALL THE PEOPLE"?*

MR. RODRIGO: Yes, I think so.

MS. NIEVA: *So, perhaps, EVERY PERSON reads much better.*

MR. RODRIGO: But that would be a departure from the wordings of the 1935 and 1973 Constitutions. And when a provision has been in existence for so many years, for decades, the words already assume a meaning, especially in jurisprudence.

MR. GARCIA: Madam President, as far as I understand, we have retained that exact paragraph on social justice in the Declaration of Principles. So, here, we simply amplify, make more specific the rights given to the citizens, especially the poor sectors of society.

MR. RODRIGO: *The situation now is, my proposed amendment to use THE PEOPLE is now sought to be amended by Commissioner Padilla by adding "ALL." My proposed amendment has already been accepted. I have no objection to adding "ALL," if the Committee would accept it.*

MS. NIEVA: The Committee accepts, Madam President.

* * *

THE PRESIDENT: May we first vote on the phrase "ALL THE PEOPLE"?

Is there any objection to use the phrase "ALL THE PEOPLE" instead of "every citizen," which has been accepted by the Committee? (*Silence*) The Chair hears none; the amendment is approved.¹⁴⁷

¹⁴⁷ 49 RECORD CONST. COMM'N 740-41 (Aug. 6, 1986). (Emphasis supplied.)

That it is clear for the framers that human dignity inheres in every human person, and the benefits thereof are extended to all can be gleaned as well from the choice of words in the social justice mandate given to Congress (i.e. “The Congress shall give highest priority to the enactment of measures that *protect and enhance* the right of all the people to human dignity [...]”)¹⁴⁸ These words imply the pre-existence of the right of all the people to human dignity.¹⁴⁹

Now, we move on to another observation. Despite the competing conceptions in the 1973 and 1987 Constitutions, human dignity is closely tied to social justice under both constitutions. While human dignity is recognized as inherent in every human person under the 1987 Constitution, social justice provides for the “material and social infrastructure for the [...] enhancement

¹⁴⁸ CONST., art. XIII, §1. (Emphasis supplied.)

¹⁴⁹ 7 RECORD CONST. COMM’N (Jun. 10, 1986). The deliberation of the 1986 Constitutional Commission on the preamble of the draft constitution sheds light on their understanding of the word “enhance”:

MR. DE LOS REYES: *The Commissioner used the word ‘enhance’ instead of the word ‘develop.’ To my understanding, when we say ‘enhance,’ we mean that we add something more to something that already exists, for example, we enhance one’s beauty. She is already beautiful but we enhance or accentuate her beauty. Is that correct?*

MR. TINGSON: The Commissioner has precisely expressed the sentiments of the Committee

MR. DE LOS REYES: *So, is it not better to retain the word ‘develop,’ instead of saying ‘conserve and enhance our patrimony,’ for there is nothing to enhance in our patrimony? We should only conserve our patrimony and develop it, which means that we should discover this patrimony and utilize its untapped resources for our development, because we are a developing country. Is that not the more appropriate term? Of course, ‘enhance’ sounds more literary, but I think the more accurate phrase to describe what should be done with our patrimony is ‘conserve and develop.’*

MR. TINGSON: Mr. Vice-President, may I call on Commissioner Quesada because I recall that she participated well on this particular phrase this morning.

THE VICE-PRESIDENT: Commissioner Quesada is recognized.

MS. QUESADA: *Mr. Vice-President, when we chose the word ‘enhance,’ we were actually thinking of a word that will really improve the word ‘develop’ because we said we are in the process of development, but we would like to improve the phase of development of our patrimony. So, that was the word we thought appropriate to improve the term ‘develop.’*

MR. DE LOS REYES: Thank you. (Emphasis supplied.)

of human dignity and effective participation in democratic processes.”¹⁵⁰ Simply put, social justice is the means to enhance this governmental end, *that is*, human dignity. That is why, part and parcel of showing how the state values and protects human rights (and consequently, human dignity) is a conscious effort to enhance the social, economic and political conditions of every person.¹⁵¹ So important is the concept of social justice in the aftermath of martial rule that the framers decided to make the same more explicit and comprehensive. Hence, from a single provision under both the 1935¹⁵² and 1973¹⁵³ Constitutions, there are 13 new provisions pertaining to social justice in the Declaration of Principles and State Policies (Article II), and an entirely new article (Article XIII), with 19 sections, dedicated solely for the same.

The foremost challenge encountered by its proponents in the 1986 Constitutional Commission is how to define social justice. As a matter of fact, even before presenting its draft for the consideration of the entire 1986 Constitutional Commission, the Committee on Social Justice decided to remove a definition of social justice because of the differences among its members.¹⁵⁴ The original proposed version simply described social justice as

¹⁵⁰ 46 RECORD CONST. COMM’N 606 (Aug. 2, 1986). Sponsorship speech of Commissioner Ma. Teresa Nieva on Proposed Resolution No. 534, recommending the incorporation in the new constitution a separate article on social justice where she also added:

“Social justice, in its substance and as a reflection of the needs of Philippine society, must include the following: provision for basic needs, equalization of access to productive resources and promotion of people’s organizations. In a nation where more than half of the people are below the poverty line, the first target of a social justice measure should, therefore, be provisions, direct and indirect, for adequate responses to these basic needs such as health, shelter and education.”

¹⁵¹ *Supra* note 142.

¹⁵² CONST. (1935), art. II, § 5. “The promotion of social justice to insure the well-being and economic security of all the people should be the concern of the State.”

¹⁵³ CONST. (1973), art. II, § 6. “The State shall promote social justice to ensure the dignity, welfare, and security of all the people. Towards this end, the State shall regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitably diffuse property ownership and profits.”

¹⁵⁴ *Supra* note 150. Commissioner Edmundo Garcia, one of the committee members, acknowledged its difficulty: “Actually, one of the parts which were deleted in the version was the definition of social justice. Earlier in our deliberations in the Committee, we were striving to recognize one definition; of course, it was not a very easy task. In fact, I think during the period of amendments, even the Committee members will find out that we differ. I recognize that this is a very complex area and, therefore, even among the members of the Committee, there may be differences.” In the interpellation of the 1986 Constitutional Commission, some members thereof even tried to second guess the definition of social justice. Commissioner Florenz Regalado, while in favor of the objectives of this new article, surmised that: “First, Section 1, line 7, attempts a definition of what social justice is, when it says, ‘Social justice, as a social, economic, political, moral imperative [. . .]’ If that was an attempt at a definition, I

a “social, economic, political, moral imperative [which] shall be the primary consideration of the State in the pursuit of national development.”¹⁵⁵ Nonetheless, to give a background and better explain its proposed version before the commission, the said committee discussed one of their earlier formulations of social justice:

MR. GARCIA: [. . .] *I would like to discuss with the body one of our earlier formulations of social justice which are not incorporated in the document but which we discussed in the subcommittee.* In speaking of social justice, we deal with justice not as practised among individuals but justice as embodied in the structures and institutions of society; namely, its system of law such as regulating the relationship between the owner and the worker of the land; or the relationship between the man who sells his labor and the manager of the company or the owner of that business enterprise. It is distribution of wealth and political power. I mention this precisely because one of the insistent points throughout this whole Article is that if we were to have justice, there will have to be a redistribution of not only economic wealth but also political power. What we intended to say when we spoke of power is that political power must also be in the hands of the majority so that they can help shape the future that affect their lives. Regarding people's organization, the Gentleman will find this as the enabling vehicle through which justice can be attained through some kind of involvement and participation in decision-making.

* * *

So, the definition that we originally agreed on in the Committee but which is not part of the Article is that social justice is a condition of the structures and institutions of society which reflect on the one hand the inherent dignity and inalienable rights of the person, and the obligation of the community to use the material wealth and political power at its disposal for the welfare of all its members, especially the poor and the weak; and on the other hand, the individual's obligation to the community and to the welfare of all its members.

wonder why the Committee did not look at, as part of the imperatives, the legal aspect.” Note that this was not an isolated event. Even before, the Supreme Court similarly encountered difficulty when it faced for the first time the task of defining what social justice signifies vis-à-vis the police power. *See also* FERNANDO, *supra* note 125, at 79.

¹⁵⁵ *Supra* note 150. “SECTION 1. Social Justice, as a social, economic, political, moral imperative, shall be the primary consideration of the State in the pursuit of national development. To this end, Congress shall give the highest priority to the formulation and implementation of measures designed to reduce economic and political inequalities found among citizens, and to promote the material structural conditions which promote and enhance human dignity, protect the inalienable rights of persons and sectors to health, welfare and security, and put the material wealth and power of the community at the disposal of the common good.”

As we can see, there is a dynamic tension throughout this Article on Social Justice—the individual and the community, and their mutual obligation to each other. We must admit that there is a definite bias for the poor and the weak; but as the Gentleman himself mentioned, those who have less in life must have more in law. Finally, why the primacy of social justice? Because, we want to tell the State that the emphasis should not be simply on economic growth but basically, to create egalitarian conditions, to create social justice. This is what will provide lasting peace that could be the condition or the atmosphere within which all other projects prosper.¹⁵⁶

In the end, considering that a great majority of the framers recognize the importance of social justice, and to avoid further complications, the approved version simply “made no attempt to give a theoretical definition of social justice but limits itself to the setting of goals.”¹⁵⁷ A mere ostensive and operational definition was given.

A word of caution. The framers of the 1987 Constitution are quick to qualify that social justice is a means to enhance human dignity only insofar as programs undertaken in pursuit of it will not “take away the initiative from the people and will do everything.”¹⁵⁸ Explaining the dynamics between human dignity and social justice, Commissioner Edmundo Garcia has this to say:

Finally, also in the norms and common understanding which govern this, *a concept of social justice involves a vision of man in society*. Fundamental to this vision are two notions which must be held in a sort of dynamic tension. First, man is a person with personal dignity and possessed of certain rights which the State did not confer and cannot take away. He can never illegitimately become simply the instrument of another man or of the State. Also, man has certain inalienable rights which are inherent to his dignity. Secondly—and this is very important—he is by nature a member of various communities. He is a member of the family; he can be a member of indigenous communities; he can be a member of a sector; and finally he is a member of the national and the world community. He needs these communities to achieve his full development as a person. The communities themselves are concerned about his welfare. *And just as he receives from them, he is obliged to contribute to them.*¹⁵⁹

¹⁵⁶ *Id.* (Emphasis supplied.)

¹⁵⁷ BERNAS, *supra* note 145.

¹⁵⁸ *Supra* note 148.

¹⁵⁹ *Id.* (Emphasis supplied.)

Now that we have an understanding of how the Philippine Constitution conceives human dignity, we now turn to Supreme Court decisions. A thematic analysis of Supreme Court cases is undertaken to have a clearer grasp of the concept of dignity in the Filipino legal system.

The phrase “human dignity” did not appear in Philippine case law until 1940, although in a dissenting opinion.¹⁶⁰ It first appeared in a majority opinion in 1945.¹⁶¹ However, the dignity language has been incorporated into the law of the land¹⁶² as early as 1901, the same year when the Supreme Court of the Philippine Islands (now, the Supreme Court of the Philippines) was formally established.¹⁶³ An exhaustive list of cases which employed the dignity language before 1945 is found towards the end of this paper.

Remarkably, in the first ever case where it appeared, “dignity” was used to invoke the majesty of a court (i.e. Court of First Instance) against a lawyer.¹⁶⁴ Aside from this instance,¹⁶⁵ “dignity” was used in earlier decisions

¹⁶⁰ *People v. Soriano*, 334 Phil. 339 (1940) (Laurel, J., *dissenting*).

¹⁶¹ *Reyes v. Crisologo*, 75 Phil. 271 (1945). *See Raquiza v. Bradford*, 75 Phil. 271 (1945). This case shows that two weeks before, the court already employed the phrase “dignity of the human person.” *See Peralta v. Dir. of Prisons*, 75 Phil. 334 (1945) (De Joya J., *concurring*). Two months after, the Philippine Supreme Court used “human dignity” again.

¹⁶² CIVIL CODE, art. 8. “Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.”

¹⁶³ Act No. 136 (1901), An Act Providing for the Organization of Courts in the Philippine Islands. This law formally established the Supreme Court of the Philippine Islands and created the various Courts of First Instance and Justices of the Peace Courts throughout the country. At that time, the Philippines was then under American rule.

¹⁶⁴ *In re Aguas*, 1 Phil. 1, 4 (1901). Lawyer Marcelino Aguas was held guilty of contempt of court and was suspended from the practice of law for twenty days, because he protested the action of the judge—approaching the witness, seizing him by the shoulders, and using the expression *lingon ang mucha* (look at me)—after the judge cautioned the witness not to look at the Atty. Aguas, and to fix his attention to the judge during examination. Here, the Supreme Court ruled that the facts and records do not show that the lawyer was “disrespectful to the court or offensive to its dignity.” *Note that In re Aguas is also the first ever Supreme Court decision reported in the Philippine Reports. Interestingly, the most recent case where the Supreme Court employed “dignity” pertains to that of the legal profession, Fabugais v. Faundo*, A.C. No. 10145, Jun. 11, 2018.

¹⁶⁵ The following cases also invoked the dignity due the courts: *In re Jones*, 9 Phil. 349 (1907); *United States v. Guazon*, 9 Phil. 371 (1907); *United States v. Laguna*, 17 Phil. 532 (1910); *Province of Tarlac v. Gale*, 26 Phil. 338 (1913); *United States v. Montalvo*, 29 Phil. 595 (1915); *Barretto v. Phil. Publ’g Co.*, 30 Phil. 88 (1915); *In re Kelly*, 35 Phil. 944 (1916); *Villavicencio v. Lukban*, 39 Phil. 778 (1919); *Borromeo v. Mariano*, 41 Phil. 322 (1921); *Abolafia v. Liverpool & London & Globe Ins. Co.*, 46 Phil. 424 (1924); *Monteverde v. Generoso*, 52 Phil. 123 (1928); *Slade Perkins v. Dir. of Prisons*, 58 Phil. 271 (1933); *Salcedo v. Hernandez*, 61 Phil. 724 (1935); *Phil. Ry. Co. v. Paredes*, 63 Phil. 129 (1936); *North Negros Sugar Co. v. Hidalgo*, 63 Phil. 664 (1936); *People v. Vera*, 65 Phil. 56 (1937); *Medina v. Rivera*, 66 Phil. 151 (1938); *Nat’l Lab. Union v. Ct. of Indus. Rel.*, 68 Phil. 732 (1939); *People v. Alarcon*, 69 Phil. 265 (1939).

in relation to defamation,¹⁶⁶ fundamental law and statutes,¹⁶⁷ state, government, political branches and city,¹⁶⁸ government officials,¹⁶⁹ religions and its officials,¹⁷⁰ diplomatic officials,¹⁷¹ wife,¹⁷² mother,¹⁷³ estate or family homes,¹⁷⁴ public documents,¹⁷⁵ excuse,¹⁷⁶ debt,¹⁷⁷ mercantile partnerships,¹⁷⁸ trade name,¹⁷⁹ contracts,¹⁸⁰ mortgage,¹⁸¹ agency,¹⁸² managers and supervisors,¹⁸³ rank or status,¹⁸⁴ and the legal profession.¹⁸⁵ The Supreme

¹⁶⁶ *Tavera v. Valdez*, 1 Phil. 468 (1902); *Legarda v. Valdez*, 1 Phil. 562 (1902); *United States v. Ortiz*, 8 Phil. 752 (1906); *United States v. Prautch*, 10 Phil. 562 (1908); *United States v. Canleon*, 11 Phil. 215 (1908); *United States v. Dela Cruz*, 17 Phil. 139 (1910); *Manila Railroad Co. v. Att’y-Gen.*, 20 Phil. 523 (1911); *People v. Castro*, 43 Phil. 842 (1922); *Yboleon v. Sison*, 59 Phil. 281 (1933).

¹⁶⁷ *Kepner v. United States*, 11 Phil. 669 (1904); *Tan Te v. Bell*, 27 Phil. 354 (1914); *Central Capiz v. Ramirez*, 40 Phil. 883 (1920); *Agcaoili v. Suguitan*, 48 Phil. 676 (1926); *Government v. Springer*, 50 Phil. 259 (1927).

¹⁶⁸ *Collins v. Wolfe*, 5 Phil. 285 (1905); *United States v. Chan-cun-chay*, 5 Phil. 385 (1905); *Forbes v. Chuoco Tiaco and Crossfield*, 16 Phil. 534 (1910); *Severino v. Governor-General*, 16 Phil. 366 (1910); *Municipality of Catbalogan v. Dir. of Lands*, 17 Phil. 216 (1910); *Municipality of Tacloban v. Dir. of Lands*, 18 Phil. 201 (1910); *United States v. Joson*, 26 Phil. 1 (1913); *United States v. S.S. “Islas Filipinas”*, 28 Phil. 291 (1914); *Abueva v. Wood*, 45 Phil. 612 (1924); *Alejandrino v. Quezon*, 46 Phil. 83 (1924); *Angara v. Electoral Comm’n*, 63 Phil. 139 (1936).

¹⁶⁹ *United States v. Ocampo*, 18 Phil. 1 (1910); *United States v. Tabiana*, 37 Phil. 515 (1918); *United States v. Bustos*, 37 Phil. 731 (1918); *Cornejo v. Gabriel*, 41 Phil. 188 (1920); *United States v. Perfecto*, 43 Phil. 225 (1922); *United States v. Borja*, 43 Phil. 618 (1922); *Planas v. Gil*, 67 Phil. 62 (1939).

¹⁷⁰ *Catholic Church v. Hastings*, 5 Phil. 701 (1906); *Evangelista v. Ver*, 8 Phil. 653 (1907); *United States v. Braganza*, 10 Phil. 79 (1908); *Nueva Caceres v. Dir. of Lands*, 24 Phil. 485 (1913); *United States v. Balcorta*, 25 Phil. 273 (1913); *People v. Nosce*, 60 Phil. 895 (1934).

¹⁷¹ *United States v. Lucinario*, 6 Phil. 325 (1906); *Jover v. Government*, 10 Phil. 522 (1908).

¹⁷² *Yañez de Barnuevo v. Fuster*, 29 Phil. 606 (1913); *Soto v. Ong*, 33 Phil. 414 (S.C., Feb. 3, 1916).

¹⁷³ *Legare v. Cuerques*, 34 Phil. 221 (1916).

¹⁷⁴ *Young v. Olivares*, 41 Phil. 391 (1921).

¹⁷⁵ *United States v. Nieto*, 5 Phil. 582 (1906); *McMicking v. Kimura*, 12 Phil. 98 (1908)

¹⁷⁶ *United States v. Salvador*, 22 Phil. 113 (1912).

¹⁷⁷ *Santos v. Manarang*, 27 Phil. 209 (1914).

¹⁷⁸ *Lichauco v. Lichauco*, 33 Phil. 350 (1916).

¹⁷⁹ *Compañía General de Tabacos de Filipinas v. Alhambra Cigar & Cigarette Mfg. Co.*, 33 Phil. 485 (1916).

¹⁸⁰ *Leung Ben v. O’Brien*, 38 Phil. 182 (1918).

¹⁸¹ *Phil. Nat’l Bank v. Phil. Vegetable Oil Co.*, 49 Phil. 857 (1927).

¹⁸² *Valera v. Velasco*, 51 Phil. 695 (1928).

¹⁸³ *Salgado v. St. Louis Dry Goods Store*, 38 Phil. 320 (1918); *People v. Gomez*, 49 Phil. 201 (1926); *People v. Follantes*, 64 Phil. 515 (1937).

¹⁸⁴ *People v. Dela Cruz*, 48 Phil. 533 (1925).

¹⁸⁵ *Javier v. Cornejo*, 63 Phil. 293 (1936).

Court also recognized the dignity of other states¹⁸⁶ and, even, foreign courts.¹⁸⁷

At the time of writing, the Supreme Court has promulgated 142 cases where the actual phrase “human dignity” and its other derivatives (e.g. “dignity of man”, “personal dignity”, “dignity of the human person”) are invoked. Of these, 99 cases used dignity language as a ground or one of the grounds of the majority opinion. Seventeen (17) cases invoked this language in concurring opinions, while 19 cases raised this in dissenting opinions. The remaining decisions mentioned the same tangentially. Examining the majority opinions, human dignity-based arguments are typically used in the following areas:

(a) judicial processes and remedies,¹⁸⁸ such as:

- search warrants¹⁸⁹
- habeas corpus¹⁹⁰
- writ of amparo¹⁹¹
- bail¹⁹²

(b) naturalization;¹⁹³

(c) claim for damages¹⁹⁴

¹⁸⁶ *Perkins v. Dizon*, 69 Phil. 186 (1939).

¹⁸⁷ *Ingenohl v. Walter E. Olsen & Co.*, 47 Phil. 189 (1925).

¹⁸⁸ *Dela Cruz v. Roxas*, 1 Phil. 225 (1945); *Francisco v. Nagmamalakit na mga Manananggol ng mga Manggagawang Pilipino, Inc.*, G.R. No. 160261, 415 SCRA 44 (2003); *Roy III v. Herbosa*, G.R. No. 207246, 810 SCRA 115 (2016).

¹⁸⁹ *Villanueva v. Querubin*, G.R. No. 26177, 48 SCRA 345 (1972); *People v. Burgos*, G.R. No. 68955, 144 SCRA 1 (1986); *20th Century Fox Film Corp. v. Ct. of Appeals*, G.R. No. 76649, 164 SCRA 661 (1988); *Guazon v. De Villa*, G.R. No. 80508, 181 SCRA 633 (1990); *People v. Estrada*, G.R. No. 124461, 308 SCRA 398 (1998); *Paper Ind. Corp. of the Phil. v. Asuncion*, G.R. No. 122092, 307 SCRA 271 (1999); *People v. Compacion*, G.R. No. 124442, 361 SCRA 549 (2001); *Caterpillar, Inc. v. Samson*, G.R. No. 205972, 505 SCRA 715 (2006); *Summerville Gen. Merch. Co. v. Ct. of Appeals*, G. R. No. 158767, 525 SCRA 622 (2007).

¹⁹⁰ *Reyes v. Crisologo*, 75 Phil. 271 (1945).

¹⁹¹ *Santiago v. Tulfo*, G.R. No. 205039, 773 SCRA 566 (2015).

¹⁹² *Government of Hong Kong Spec. Adm. Region v. Olalia*, G.R. No. 153675, 521 SCRA 470 (2007); *Enrile v. Sandiganbayan (Third Division)*, G.R. No. 213847, 767 SCRA 348 (2015).

¹⁹³ *Yu v. Republic*, G.R. No. 16517, 3 SCRA 544 (1961); *Lim Biak Chiao v. Republic*, G.R. No. 28541, 55 SCRA 8 (1974); *Tiong v. Republic*, 58 SCRA 116 (1974); *Chua Kian Lai v. Republic*, 59 SCRA 40 (1974); *Republic v. Ong*, G.R. No. 175430, 637 SCRA 499 (2012); *Republic v. Huang Te Fu*, G.R. No. 200983, 753 SCRA 562 (2015); *Republic v. Karbasi*, G.R. No. 210412, 383 SCRA 375 (2015); *Republic v. Batuigas*, G.R. No. 183110, 706 SCRA 755 (2013); *Watt v. Republic*, G.R. No. 20718, 46 SCRA 684 (1972).

¹⁹⁴ *Layda v. Ct. of Appeals*, 90 Phil. 730 (1952); *Domingding & Arañas v. Ng*, 103 Phil. 114 (1958); *Ortigas v. Lufthansa German Airlines*, G.R. No. 28773, 64 SCRA 610 (1975); and *Nikko Hotel Manila Garden v. Reyes*, G.R. No. 154259, 452 SCRA 548 (2005)

- (d) defense of honor,¹⁹⁵ acts of lasciviousness,¹⁹⁶ rape¹⁹⁷ and child abuse¹⁹⁸
- (e) illegal drugs¹⁹⁹
- (f) property law²⁰⁰
- (g) socialized housing and other social benefits²⁰¹
- (h) election law²⁰²
- (i) labor law²⁰³

¹⁹⁵ *People v. Jaurigue*, 76 Phil. 174 (1946); *People v. Feliciano*, 77 Phil. 530 (1946).

¹⁹⁶ *People v. Abadies*, G.R. No. 139346, 384 SCRA 451 (2002); *Amployo v. People*, G.R. No. 157718, 457 SCRA 287 (2005); and *Olivarez v. Ct. of Appeals*, G.R. No. 163866, 465 SCRA 484 (2005).

¹⁹⁷ *People v. Reyes*, G.R. No. 36874, 60 SCRA 126 (1974); *People v. Nazareno*, G.R. No. 45533, 80 SCRA 485 (1977); *People v. Casinillo*, G.R. No. 97441, 213 SCRA 777 (1992); *People v. Guibao*, G.R. No. 93517, 217 SCRA 64 (1993); *People v. Jimenez*, G.R. No. 114282, 250 SCRA 350 (1995); *People v. Timple*, G.R. No. 100391, 237 SCRA 68 (1994); *People v. Tan*, G.R. No. 103134, 264 SCRA 429 (1996); *People v. Mahinay*, G.R. No. 122485, 302 SCRA 462 (1999); *People v. Lucban*, G.R. No. 119217, 322 SCRA 313. (2000); *People v. Jalosjos*, G.R. No. 132875, 369 SCRA 182 (2001); *People v. Cinco*, G.R. No. 186460, 607 SCRA 823 (2009); *Ricalde v. People*, G.R. No. 211002, 747 SCRA 542 (2015).

¹⁹⁸ *People v. Cariquez*, G.R. No. 129304, 315 SCRA 247 (1999).

¹⁹⁹ *People v. Ale*, G.R. No. 70998, 145 SCRA 50 (1986); *People v. Taruc*, G.R. No. 74655, 157 SCRA 178 (1988); *People v. Libag*, G.R. No. 68997, 184 SCRA 707 (1990); *People v. Salcedo*, G.R. No. 86975, 195 SCRA 352 (1991); *People v. Bay*, G.R. No. 101310, 222 SCRA 728 (1993); *People v. Villarama*, G.R. No. 99287, 210 SCRA 254 (1992); *Estipona, v. Lobrigo*, G.R. No. 226679, 837 SCRA 160 (2017).

²⁰⁰ *Alfanta v. Noe*, G.R. No. 32362, 53 SCRA 76 (1973); *Nilo v. Ct. of Appeals*, G.R. No. 34586, 128 SCRA 519 (1984); *Balatbat v. Ct. of Appeals*, G.R. No. 36378, 205 SCRA 427 (1992); *Heirs of Castro v. Lozada*, G.R. No. 163026, 679 SCRA 271 (2012).

²⁰¹ *Asociacion de Agricultores de Talisay-Silay, Inc. v. Talisay-Silay Milling Co., Inc.*, G.R. No. 19937, 88 SCRA 294 (1979); *Sumulong v. Guerrero*, G.R. No. 48685, 154 SCRA 461 (1987); *Reyes v. Nat'l Hous. Auth.*, G.R. No. 147511, 395 SCRA 502 (2003); *Antonio v. Geronimo*, G.R. No. 124779, 476 SCRA 350 (2005); *Binay v. Domingo*, G.R. No. 92389, 201 SCRA 508 (1991); *Planters Ass'n of Southern Negros, Inc. v. Ponferrada*, G.R. No. 114087, 317 SCRA 465 (1999); *Southern Luzon Drug Corp. v. Dep't of Soc. Welf. and Dev't*, G.R. No. 199669, 824 SCRA 203 (2017).

²⁰² *Blo Umpar Adiong v. Comm'n on Elections*, G.R. No. 103956, 207 SCRA 712 (1992); *Osmeña v. Comm'n on Elections*, G.R. No. 132231, 288 SCRA 447 (1998); *Diocese of Bacolod v. Comm'n on Elections*, G.R. No. 205728, 747 SCRA 79 (2015).

²⁰³ *Marcopper Mining Corp. v. Ople*, G.R. No. 51254, 105 SCRA 75 (1981); *Aris Inc. v. Nat'l Lab. Rel. Comm'n*, G.R. No. 97817, 200 SCRA 246 (1991); *International Sch. All. of Educators v. Quisumbing*, G.R. No. 128845, 333 SCRA 13 (2000); *Central Bank Emp. Ass'n, Inc. v. Bangko Sentral ng Pilipinas*, G.R. No. 148208, 446 SCRA 385 (2004); *Central Textile Mills, Inc. v. Nat'l Lab. Rel. Comm.*, G.R. No. 50150, 90 SCRA 9 (1979); *Union of Supervisors (R.B.)-NATU v. Sec'y of Lab.*, G.R. No. 39889, 109 SCRA 139 (1981); *San Miguel Corp/ v. Nat'l Lab. Rel. Comm'n*, G.R. No. 50321, 128 SCRA 180 (1984); *Atlas Consol. Mining & Dev't Corp. v. Nat'l Lab. Rel. Comm'n*, G.R. No. 75755, 167 SCRA 758 (1988); *Marina Port Services, Inc. v. Nat'l Lab. Rel. Comm'n*, G.R. No. 80962, 193 SCRA 428 (1991); *Victorias Milling Co., Inc. v. Victorias-Manapla Workers Org.-PAFLU*, G.R. No. 18467, 9 SCRA 154 (1963); *De Leon v. Nat'l Lab. Rel. Comm'n*, G.R. No. 52056, 100 SCRA 691 (1980);

- (j) professional ethics²⁰⁴
- (k) ancestral domain of indigenous people²⁰⁵ and
- (l) foundlings.²⁰⁶

Notice that before the 1940s, the concept of dignity often connotes “prestige” of the subject (e.g. laws, courts, legal profession, government agencies and officials, religions and its officials, diplomatic officials, foreign states and courts, trade names) or “integrity” of an object (e.g. public documents, contract, partnership, agency, excuse, debt). In the few cases where it was ascribed to a person, dignity connotes one’s reputation or status; hence, used in cases involving defamation and slander, and violations of honor (which often pertains to women). However, starting 1940s, there has been an exponential increase in the use of dignity language, particularly *human dignity*. This may perhaps be attributed to the catastrophic Second World War, and the subsequent ratification of the U.N. Charter by then the Commonwealth of the Philippines.²⁰⁷ Noticeably, more than a third of the cases which employed human dignity as one of the grounds in the main opinion concerns social justice (i.e. workers’ rights, property ownership, socialized housing and other social benefits, ancestral domain of indigenous people, and foundlings).²⁰⁸ This validates the earlier observation that human dignity and social justice are closely tied in the Philippine legal system.

JSS Indochina Corp. v. Ferrer, G.R. No. 156381, 473 SCRA 122 (2005); Rivera v. Genesis Transp. Serv., Inc., G.R. No. 215568, 764 SCRA 662 (2015); Annang v. Vda. de Blas, A.M. No. P-91-602, 202 SCRA 635 (1991); Sarmiento v. Tuico, G.R. No. 75271, 162 SCRA 688 (1988); Globe-Mackay Cable & Radio Corp. v. Nat’l Lab. Rel. Comm’n, G.R. No. 82511, 206 SCRA 707 (1992); Teknika Skills and Trade Serv., Inc. v. Nat’l Lab. Rel. Comm’n, G.R. No. 100399, 212 SCRA 132 (1992); Montinola v. Phil. Airlines, G.R. No. 198656, 734 SCRA 454 (2014); Maula v. Ximex Delivery Express, Inc., G.R. No. 207838, 816 SCRA 16 (2017); People v. Yabut, G.R. No. 115719, 316 SCRA 250 (1999); Soc. Sec. Sys. v. Ubaña, G.R. No. 200114, 768 SCRA 51 (2015); De Tavera v. Phil. Tuberculosis Soc’y, Inc., G.R. No. 48928, 112 SCRA 243 (1982); Andaya v. Abadia, G.R. No. 104033, 228 SCRA 711 (1993).

²⁰⁴ Estoya v. Abraham-Singson, A.M. No. RTJ-91-758, 237 SCRA 23 (1994); Amame v. Mendoza-Arce, A.M. No. P-94-1080, 318 SCRA 490 (1999); Ginete v. Caballero, AM No. P-07-2413, 555 SCRA 216 (2008); Boto v. Villena, A.C. No. 9684, 706 SCRA 10 (2013); Ricafort v. Medina, A.C. No. 5179, 791 SCRA 506 (2016); Bondoc v. Mantala, G.R. No. 203080, 740 SCRA 328 (2014).

²⁰⁵ Cruz v. Sec’y of Env’t and Nat. Res., G.R. No. 135385, 347 SCRA 128 (2000).

²⁰⁶ Poe-Llamanzares v. Comm’n on Elections, G.R. No. 221697, 786 SCRA 1 (2016).

²⁰⁷ On 11 October 1945, the Philippines ratified the said charter which was executed “to reaffirm faith [...] in the *dignity and worth of the human person* [...]” (Emphasis supplied.) It is one of the original 49 members of the United Nations.

²⁰⁸ On the other hand, almost 20% of these cases is about violations of an individual’s honor, such as acts of lasciviousness, rape and child abuse. Further, 15% of the cases is about judicial processes regarding individual liberties, while 10% relates to applications for naturalization. See *supra* notes 200–01, 203, 205–06.

The thematic analysis of case law adds another dimension on the Filipino legal concept of human dignity. Building on the said observation, the Supreme Court appears to conceive human dignity as having two functions: (a) it protects individual liberties; and (b) it upholds community interests.

Firstly, the catena of cases on judicial processes and remedies, defense of honor, claim for damages, free speech during election period, and judicial and professional ethics shows that human dignity serves to protect individual liberties.²⁰⁹ In *Villanueva v. Querubin*, a case about search warrant, the Supreme Court ruled that to “value the privacy of home and person and to afford its constitutional protection against the long reach of government is no less than to value human dignity.”²¹⁰ This is the reason why the State abhors the crime of rape for it is not only a “an intrusion into a woman’s privacy, but also a violation of her sensibilities and an assault on her human dignity.”²¹¹ The determination of moral damages is filtered using the lens of the “human value and the dignity of man.”²¹² In fact, it is considered as one of the most justifiable grounds for the award thereof.²¹³ We have previously concluded that human dignity can only be enhanced (*not* developed) because, in the Philippines, it inheres in every person at any stage of stage of the person’s development.²¹⁴ To this the Supreme Court agreed. By way of illustration, free speech during election is vital to the enhancement of human dignity because it is “as a means of assuring individual self-fulfillment.”²¹⁵ Citing *United States*

²⁰⁹ There are a total of 46 cases which illustrates this particular function of human dignity. See *supra* notes 188–92, 194–95, 202, 204.

²¹⁰ G.R. No. 26177, 48 SCRA 345, 350 (1972).

²¹¹ *People v. Casinillo*, G.R. No. 97441, 213 SCRA 777, 787 (1992). See *Ricalde v. People*, G.R. No. 211002, 747 SCRA 542, 561–62 (2015). The Supreme Court also had the occasion to explicate on the concept of *male rape*. “The gravamen of the crime is the violation of the victim’s dignity. The degree of penetration is not important. Rape is an “assault on human dignity [...] The classifications of rape in Article 266-A of the Revised Penal Code are relevant only insofar as these define the manners of commission of rape. However, it does not mean that one manner is less heinous or wrong than the other. Whether rape is committed by nonconsensual carnal knowledge of a woman or by insertion of the penis into the mouth of another person, the damage to the victim’s dignity is incalculable.” (Emphasis supplied.)

²¹² *Layda v. Ct. of Appeals*, 90 Phil. 730 (1952).

²¹³ *Ortigas v. Lufthansa German Airlines*, G.R. No. 28773, 64 SCRA 610 (1975). “Verily, however, such discriminatory acts of the defendants in those cases which were not only violative of their contractual obligations but also offensive to human dignity and national or racial pride constitute about the most justifiable ground for the award of moral damages, for the resulting injury therefrom cannot but cause immense mental anguish, besmirched reputation, wounded feelings, moral shock and social humiliation.”

²¹⁴ See 87 RECORD CONST. COMM’N, *supra* note 144, in relation to 7 RECORD CONST. COMM’N, *supra* note 149.

²¹⁵ *Diocese of Bacolod v. Comm’n on Elections*, G.R. No. 205728, 747 SCRA 79, 89 (2015).

v. Bustos, the Supreme Court in *Diocese of Bacolod v. Commission on Elections* acknowledged:

[t]hat free speech includes the right to criticize the conduct of public men: The interest of society and the maintenance of good government demand a full discussion of public affairs. *Complete liberty to comment on the conduct of public men is a scalpel in the case of free speech.* The sharp incision of its probe relieves the abscesses of officialdom. Men in public life may suffer under a hostile and an unjust accusation; the wound can be assuaged with the balm of a clear conscience. A public officer must not be too thin-skinned with reference to comment upon his official acts. *Only thus can the intelligence and dignity of the individual be exalted.*²¹⁶

The Supreme Court also had the occasion to explain that the protection of individual dignity is the rationale for requiring the conduct of court personnel, lawyers and, even, doctors to follow the highest ethical standards.²¹⁷

Secondly, human dignity also upholds community interests as shown in numerous social justice cases, as well as in decisions on naturalization application, and those involving illegal drugs.²¹⁸ That social justice is communitarian in nature is best shown in its definition given by the Supreme Court, through Justice Jose Laurel:

*Social justice is 'neither communism, nor despotism, nor atomism, nor anarchy,' but the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated. [It] means the promotion of the welfare of all the people, the adoption by the Government of measures calculated to insure economic stability of all the competent elements of society, through the maintenance of a proper economic and social equilibrium in the interrelations of the members of the community.*²¹⁹

Further, the discussion in *Globe-Mackay Cable & Radio Corp. v. National Labor Relations Commission*²²⁰ not only validates our earlier observation about the difference on the social justice concept of the 1973 and 1987

²¹⁶ *Id.* (Emphasis supplied.)

²¹⁷ See *supra* note 204 for the list of related cases.

²¹⁸ There is a total of 53 cases which illustrates this particular function of human dignity. See *supra* note 193.

²¹⁹ *Calalang v. Williams*, 470 Phil. 726, 734 (1940). (Emphasis supplied.)

²²⁰ G.R. No. 82511, 206 SCRA 701 (1992).

Constitutions, it likewise affirms the point that human dignity, through the social justice mechanism, is used as well to uphold community interests:

Before proceeding any further, it needs must be recalled that the present Constitution has gone further than the 1973 Charter in guaranteeing vital social and economic rights to marginalized groups of society, including labor. Given the pro-poor orientation of several articulate Commissioners of the Constitutional Commission of 1986, it was not surprising that a whole new Article emerged on Social Justice and Human Rights designed, among other things, to ‘protect and enhance the right of all the people to human dignity, reduce social, economic and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.’ Proof of the priority accorded to labor is that it leads the other areas of concern in the Article on Social Justice, viz., Labor ranks ahead of such topics as Agrarian and Natural Resources Reform, Urban Land Reform and Housing, Health, Women, Role and Rights of People’s Organizations and Human Rights.²²¹

Since one of its aims is to insure economic stability, a great number of cases on social justice relates to work because it “not only contributes to defining the individual, it also assists in determining one’s purpose[.] [In other words,] work provides for the material basis of human dignity,”²²² especially that of one’s family. This is the reason why excessive placement fees charged by recruitment agencies are tantamount to illegal exaction²²³ and why illegal recruitment “must be stamped out by the full force of the law.”²²⁴ Relatedly, since social justice equally promotes the welfare of all the people, the court has recognized the validity of various social benefits, such as a social amelioration program to augment the income of sugar workers because:

[n]owhere is the economic disparity between labor and capital so evident than in the sugar industry. While it is the lowly farm worker who must toil in the field under the harshness of conditions, it is the planter who gets to enjoy more the fruits of production. While the planter lives in the comfort of his palatial home, *the living*

²²¹ *Id.* at 706–07.

²²² *Montinola v. Phil. Airlines*, G.R. No. 198656, 734 SCRA 439, 454 (2014).

²²³ *Teknika Skills & Trade Serv., Inc. v. Nat’l Lab. Rel. Comm’n*, G.R. No. 100399, 212 SCRA 132 (1992). “*Many hapless citizens of this country who have sought foreign employment to earn a few dollars to ensure for their families a life worthy of human dignity and provide proper education and a decent future for their children have found themselves enslaved by foreign masters, harassed or abused and deprived of their employment for the slightest cause. No one should be made to unjustly profit from their suffering.*” (Emphasis supplied.)

²²⁴ *People v. Yabut*, G.R. No. 115719, 316 SCRA 237, 250 (1999).

*condition of the sugar farm worker more often than not defies the basic tenets of human dignity.*²²⁵

The Supreme Court likewise declared as constitutional Republic Act No. 9257 or the “Expanded Senior Citizens Act of 2003”, which gives discounts in food, medicine, health care and entertainment to all senior citizens in the Philippines because they “are in need and should be entitled to government support, and the fact that they may still be earning for their own sustenance should not disqualify them from the privilege.”²²⁶ Other welfare programs like socialized housing programs²²⁷ and funeral benefits²²⁸ were repeatedly upheld by the Supreme Court. Furthermore, human dignity and social justice were invoked to hold that foundlings, as a class, are considered as natural-born citizens.²²⁹ Human dignity is also employed to uphold community interests in the string of cases on naturalization proceedings to ensure that that applicants for Filipino citizenship are assets and will not be a menace to the country.²³⁰ And the same objective is strongly expressed by the Supreme Court in cases concerning illegal drugs:

It would not also be correct to state that there is no offended party in crimes under RA 6425 as amended. While the acts constituting

²²⁵ *Planters Ass’n of Southern Negros, Inc. v. Ponferrada*, G.R. No. 114087, 317 SCRA 463, 465 (1999).

²²⁶ *Southern Luzon Drug Corp. v. Dep’t of Soc. Welf. & Dev.*, G.R. No. 199669, 824 SCRA 164, 218 (2017).

²²⁷ *Reyes v. Nat’l Hous. Auth.*, G.R. No. 147511, 395 SCRA 494 (2003). “Moreover, the Constitution itself allows the State to undertake, for the common good and in cooperation with the private sector, a continuing program of urban land reform and housing which will make at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban centers and resettlement areas. *The expropriation of private property for the purpose of socialized housing for the marginalized sector is in furtherance of the social justice provision under Section 1, Article XIII of the Constitution.*” (Emphasis supplied.)

²²⁸ *Binay v. Domingo*, G.R. No. 92389, 201 SCRA 508 (1991). “The care for the poor is generally recognized as a public duty. The support for the poor has long been an accepted exercise of police power in the promotion of the common good. There is no violation of the equal protection clause in classifying paupers as subject of legislation. Paupers may be reasonably classified. Different groups may receive varying treatment. Precious to the hearts of our legislators, down to our local councilors, is the welfare of the paupers. Thus, statutes have been passed giving rights and benefits to the disabled, emancipating the tenant-farmer from the bondage of the soil, housing the urban poor, etc.”

²²⁹ *Poe-Llamanzares v. Comm’n on Elections*, G.R. No. 221697, 786 SCRA 1 (2016).

²³⁰ *Yu v. Republic*, G.R. No. 16517, 3 SCRA 544 (1961). “Although petitioner is a physician, this alone is insufficient to entitle him to become a citizen of the nation. He must further show that he is a law-abiding person, a man of sterling character capable to stand against the slightest temptation to transgress any law or rules of conduct sanctioned by human dignity. Without these moral qualifications, he can not be considered an asset to the country, whatever may be the magnitude of his knowledge in medical science.” *See infra* note x for the list of similar cases.

the crimes are not wrong in themselves, they are made so by law because they infringe upon the rights of others. *The threat posed by drugs against human dignity and the integrity of society is malevolent and incessant (People v. Ale, G.R. No. 70998, October 14, 1986, 145 SCRA 50, 58). Such pernicious effect is felt not only by the addicts themselves but also by their families. As a result, society's survival is endangered because its basic unit, the family, is the ultimate victim of the drug menace.* The state is, therefore, the offended party in this case. As guardian of the rights of the people, the government files the criminal action in the name of the People of the Philippines. The Fiscal who represents the government is duty bound to defend the public interests, threatened by crime, to the point that it is as though he were the person directly injured by the offense (*see United States v. Samio, 3 Phil. 691, 696*). Viewed in this light, the consent of the offended party, i.e. the state, will have to be secured from the Fiscal who acts in behalf of the government.²³¹

One final point. In *Binay v. Domingo*,²³² the Supreme Court notes a growing trend in Philippine case law. In this case about the validity of a local government's burial assistance program challenged by the Commission on Audit (COA),²³³ it was observed that the:

COA is not attuned to the changing of the times. Public purpose is not unconstitutional merely because it incidentally benefits a limited number of persons. *As correctly pointed out by the Office of the Solicitor General, "the drift is towards social welfare legislation geared towards state policies to provide adequate social services (Section 9, Art. II, Constitution), the promotion of the general welfare (Section 5, ibid) social justice (Section 10, ibid) as well as human dignity and respect for human rights (Section 11, ibid)."*²³⁴

From this case, one may be quick to conclude that from a more individualistic conception of human dignity, the Filipino legal concept of human dignity has now eschewed the former and adopted a more communitarian approach. This appears to be true especially when one

²³¹ *People v. Villarama*, G.R. No. 99287, 210 SCRA 246, 254 (1992). (Emphasis supplied.) For a more recent case, *see Estipona v. Lobrigo*, 816 Phil. 789 (2017).

²³² G.R. No. 92389, 201 SCRA 508 (1991).

²³³ *Id.* "The [COA] shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters [...]." *See* CONST. art. IX-D, § 2.

²³⁴ *Binay v. Domingo*, G.R. No. 92389, 201 SCRA 508, 516 (1991). (Emphasis supplied.)

appreciates the development of the social justice doctrine in the Philippines. The phrase “social justice” first appeared in *People v. Pomar*²³⁵, a case about the validity of Act No. 3071, which grants a thirty-day maternity leave benefit. Citing precedents in American case law, the Supreme Court favored individual liberties (i.e. freedom to contract) over social justice:

It has been said that the particular statute before us is required in the interest of social justice for whose and freedom of contract may lawfully be subjected to restraint. The liberty of the individual to do as he pleases, even in innocent matters, is not absolute. That liberty must frequently yield to the common good, and the line beyond which the power of interference may not be pressed is neither definite nor unalterable, but may be made to move, within limits not well defined, with changing needs and circumstances.

* * *

The statute in question is exactly analogous to the "Minimum Wage Act" referred to above. In section 13 it will be seen that no person, firm, or corporation owning or managing a factory, shop, or place of labor of any description, can make a contract with a woman, without incurring the obligation, whatever the contract of employment might be, *unless also promise to pay to such woman employed as a laborer, who may become pregnant, her wages for thirty days before and thirty days after confinement.* In other words, said section creates a term or condition in every contract made by every person, firm, or corporation with any woman who may, during the course of her employment, become pregnant, and a failure to include in said contract the terms fixed by the law, makes the employer criminally liable and subject to a fine and imprisonment. *Clearly, therefore, the law has deprived, every person, firm or corporation owning or managing a factory, shop or place of labor of any description within the Philippine Islands, of his right to enter into contracts of employment upon such terms as he and the employee may agree upon. The law creates a term in every such contract, without the consent of the parties. Such persons are, therefore, deprived of their liberty to contract. The constitution of the Philippine Islands guarantees to every citizen his liberty and one of his liberties is the liberty to contract.*

* * *

The police power of the state is a growing and expanding power. As civilization develops and public conscience becomes awakened, the police power may be extended, as has been demonstrated in the growth of public sentiment with reference to the manufacture and

²³⁵ *People v. Pomar*, 46 Phil. 440 (1924).

sale of intoxicating liquors. *But that power cannot grow faster than the fundamental law of the state, nor transcend or violate the express inhibition of the people's law—the constitution.*²³⁶

Clearly, in *Pomar*, statutes designed to attain social justice are necessarily limited by the provisions of the fundamental law. Thus, if “the people desire to have the police power extended and applied to conditions and things prohibited by the organic law, they must first amend that [organic] law.”²³⁷ It is equally true as well that after the adoption of the 1935 Constitution, where social justice was first constitutionalized, there was an explosion of Supreme Court decisions invoking social justice. From the time the Supreme Court was constituted in 1901 until the approval and ratification of the 1935 Constitution on February 8, 1935 and March 25, 1935, respectively, there were only two (2) cases mentioning social justice,²³⁸ while, in the same period after its ratification, there were more than 100 decisions on the subject matter. However, those points, taken together, do not necessarily result in the above-stated hasty conclusion. For one, the period after *Pomar* and before the ratification of the 1935 Constitution is not characterized by indiscriminate adherence to individual liberties, reminiscent of the *Lochner* Era in the United States.²³⁹ The Supreme Court upheld various

²³⁶ *Id.* at 451–55. (Emphasis supplied.)

²³⁷ *Id.* at 455–56.

²³⁸ *Id.* The other case is *Int'l Banking Corp. v. Yared*, 59 Phil. 72 (1933). Note, however, that this is a case involving civil procedure and evidence law: “If a litigant, who finds himself compelled to resort to such recourse, were not permitted to impugn the veracity of his adversary, he would find himself helpless to enforce his rights and to obtain justice before the courts, which would be unjust. It is, therefore, in accordance with reason and the principles of social justice, that a litigant, who finds it necessary to avail himself of the testimony of his adversary in order to prove his rights, be permitted to impugn such testimony when it fails to state the truth.”

²³⁹ David Strauss, *Why Was Lochner Wrong?*, 70 U. CHI. L. REV. 373, 373–74 (2003). “*Lochner v. New York* would probably win the prize, if there were one, for the most widely reviled decision of the last hundred years. *Lochner* does have capable defenders who make arguments that must be taken seriously. And *Lochner* would have some competition for the prize; *Korematsu v. United States*, in particular, would be a strong contender. But judged by some rough-and-ready indicators—Would you ever cite this case in a Supreme Court brief, except to identify it with your opponents' position? If a judicial nominee avowed support for this case in a Senate confirmation hearing, would that immediately put an end to her chances?—*Lochner* is one of the great anti-precedents of the twentieth century. You have to reject *Lochner* if you want to be in the mainstream of American constitutional law today. *Lochner*, which declared unconstitutional a New York maximum hours statute for bakers, is, of course, more than just a case. It symbolizes the era in which the Supreme Court invalidated nearly two hundred social welfare and regulatory measures, including minimum wage laws, laws designed to enable employees to unionize, and a federal statute establishing a pension system for railway workers. The *Lochner*-era decisions were ferociously attacked, and the Court's 1937 decision in *West Coast Hotel Co. v. Parrish* marked the end of the *Lochner* era. By the early 1940s, *Lochner*'s status as a pariah was secure.” (Emphasis

limitations in the exercise of the rights to do business and enter into contracts, following the well-known maxim *salus populi supreme lex* (the welfare of the people is the supreme law).²⁴⁰ Furthermore, the Supreme Court, in *Alano v. Florido*, recognized that the teachers' retirement and disability fund is not only an act of liberality but also "in compliance with the State's duty imposed by social justice."²⁴¹ While the case was promulgated the day immediately after the ratification of the 1935 Constitution, it was litigated before the ratification, and the new social justice provision in the new constitution was never referred to in that case. Besides, there are more than 60 statutes of the same species predating the 1935 Constitution, 24 of which were enacted even before *Pomar*. At best, the explosion of case law on social justice can be attributed to the constitutionalization of this doctrine some 1935. But to conclude that before its ratification, the Supreme Court, in particular, or even the State, in general, was partial to individual liberties than community interests, as a result of *Pomar*, is specious. In addition, the conclusion that the Filipino legal concept of human dignity has now eschewed the more individualistic conception of human dignity and adopted a more communitarian approach is likewise inaccurate in light of the Supreme Court's ratiocination in *Blo Umpar Adiong v. Commission on Elections*.²⁴² In answering in the negative the issue whether the Commission on Elections "may prohibit the posting of decals and stickers on 'mobile' places, public or private, and limit their location or publication to the authorized posting areas that it fixes,"²⁴³ the Supreme Court explained that:

[T]he constitutional objective to give a rich candidate and a poor candidate equal opportunity to inform the electorate as regards their candidacies, mandated by Article II, Section 26 and Article XIII, Section 1 in relation to Article IX[–C] Section 4 of the Constitution, is not impaired by posting decals and stickers on cars and other private vehicles. *Compared to the paramount interest of the*

supplied.) See also Stephen Siegel, *Lochner Era Jurisprudence and the American Constitutional Tradition*, 70 N.C.L. REV. 1 (1991) and David Bernstein, *Lochner Era Revisionism, Revised: Lochner and the Origins of Fundamental Rights*, 92 GEO. L.J. 1 (2003).

²⁴⁰ In *Seng Kee & Co. v. Earnshaw*, 56 Phil. 206 (1931), the Supreme Court recognized as valid the land zoning powers of the City of Manila to abate the nuisance caused by a soy sauce factory. The Supreme Court also allowed a zoning ordinance prohibiting the storing and selling of lumber in the main residential and commercial areas and thoroughfares, which were considered as nuisance for public safety reasons, even if it will result in the closure of existing lumber stores, *Tan Chat v. Mun. of Iloilo*, 60 Phil. 465 (1934). Notably, even in the simple bookkeeping aspect of the business operation, the Court declared as constitutional a law which requires that account books should only be kept in the English or Spanish language, or the local dialect, *Yu Cong Eng v. Trinidad*, 47 Phil. 385 (1925).

²⁴¹ 61 Phil. 303, 305 (1935).

²⁴² G.R. No. 103956, 207 SCRA 712 (1992).

²⁴³ *Id.* at 713.

State in guaranteeing freedom of expression, any financial considerations behind the regulation are of marginal significance.

Under [S]ection 26, Article II of the Constitution, "The State shall guarantee *equal access* to opportunities for public service, [. . .] while under section 1, Article XIII thereof "The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and *political inequalities*, and remove cultural inequities by equitably diffusing wealth and political power for the common good."

It is to be reiterated that the posting of decals and stickers on cars, calesas, tricycles, pedicabs and other moving vehicles needs the *consent* of the owner of the vehicle. Hence, the preference of the citizen becomes crucial in this kind of election propaganda not the financial resources of the candidate. *Whether the candidate is rich and, therefore, can afford to dole out more decals and stickers or poor and without the means to spread out the same number of decals and stickers is not as important as the right of the owner to freely express his choice and exercise his right of free speech.* The owner can even prepare his own decals or stickers for posting on his personal property. To strike down this right and enjoin it is impermissible encroachment of his liberties.²⁴⁴

Here, the individual's right to free speech appears to have given more weight than the social justice provision. This, therefore, demonstrates that the *Pomar* doctrine is still alive notwithstanding the constitutionalization of the social justice provision, and belies the claim that the current conception of human dignity by Philippine courts is exclusively communitarian in nature. Consequently, the foregoing gives the impression that, in the Filipino legal system, the individualistic and communitarian functions of human dignity are coexisting, neither alternative nor hierarchical.

But how do we make sense out of this seemingly conflicting—or confused—legal conception of human dignity? We, again, turn to the Filipino culture for guidance. With *pakikipagkapwa* (recognition of shared humanity) as the core Filipino value, the Filipino culture is comfortable in simultaneously maintaining both the individualistic and communitarian aspect of *karangalan*. Since *hindi ako iba sa aking kapwa* ("I am no different from others"), there will always be a communitarian expectation in the Filipino concept of human dignity. Thus, the Philippine legal system may not overprioritize individual liberty at the expense of the common good. And because this "recognition

²⁴⁴ *Id.* at 722–23. (Emphasis supplied.)

starts with the self and not from others,”²⁴⁵ there will necessarily be an individualistic expectation of the same. Corollarily, the Philippine legal system should not deny any individual of his rights and liberties in the pursuit of common good. As explained by Enriquez, “[o]nce *ako* [‘I’] starts thinking of himself as separate from *kapwa*, the Filipino ‘self’ gets to be individuated in the Western sense and, in effect, denies the status of *kapwa* to the other. By the same token, the status of *kapwa* is also denied to the self.”²⁴⁶

In summary, the Philippine constitutions, laws and court decisions establish that the Filipino legal concept of human dignity is not something to be aspired for, rather, it is inherent in every human person, and, thus, can only be enhanced; that its benefits extends to all individuals, not only to Filipino citizens; that, as originally understood by the framers, it serves as the basis of human rights and the core concept linking all the political, social and economic conditions aspired for and by Filipinos; that it is intimately related to the concept of social justice, with the latter being the material and social infrastructure for the enhancement of the former; that it has two functions, *to wit*: (a) to protect individual liberties (individualistic); and (b) to uphold community interests (communitarian); and that these stated functions are coexisting, neither alternative nor hierarchical.

PART IV

Judicial litigation and interpretation involving human dignity would have been easier if invoked to provide redress for a clear violation of individual dignity or to uphold the dignity of a marginalized sector of the society. However, most cases involve human dignity being claimed by opposing parties. These hard cases—*from* ensuring the common good like those involving the imposition of death penalty to deter crimes, use of lethal force or banning some religious clothes to ensure national security, or cloning for therapeutic reasons, *to* protecting a certain segment of the society like prohibition against gamification of murder, hate speeches, prostitution, abortion and slavery, *to* guaranteeing individual security and autonomy like ban on tortures or decriminalization of physician-assisted suicide—abound in various jurisdictions and international courts or tribunal. Indeed, it is but just

²⁴⁵ Jay Yacat, *Filipino Psychology (Sikolohiyang Pilipino)*, in 2 ENCYCLOPEDIA OF CROSS-CULTURAL PSYCHOLOGY 551–56 (John Wiley & Sons ed. 2013), *citing* Enriquez, *supra* note 115. “A person starts having *kapwa* not so much because of a recognition of status given to him by others but more because of his awareness of shared identity. The *ako* (ego) and the *iba-sa-akin* (others) are one and the same in *kapwa* psychology: *Hindi ako iba sa akin kapwa* (I am no different from others).”

²⁴⁶ Enriquez, *id.*, at 54.

a matter of time when hard cases like these will be tackled by Philippine courts. In the adjudication of these hard cases, where *Karangalan* will surely play a central (and defining) role, can Philippine courts coherently hold its two coexistent, yet often conflicting, functions at the same time, all the time? What can courts do if these functions happen to clash?

McCrudden identifies three major approaches in resolving conflicts of rights or those between rights and other values.²⁴⁷ The *first* approach is to hold that resolving conflicting rights and/or values lies outside the province of the court, but with the legislature. The *second* approach is to employ a utilitarian balancing, where the court may inquire whether the damage incurred by a single person is greater than the potential effect on, say, national security, social fabric, or common good. The *third* approach is to employ proportionality analysis.

The author submits that the second approach is not be applicable in the Philippines given the fact that *Karangalan* coincides with the Judeo-Christian and Kantian conceptions of human dignity: it is inherent in every human person, not something ascribed, attained or achieved. Citing *Port Elizabeth Municipality v. Various Occupiers*,²⁴⁸ McCrudden observed that “[i]n a society founded on human dignity, equality and freedom it cannot be presupposed that the greatest good for the many can be achieved at the cost of intolerable hardship for the few.” Besides, it can also be argued that the utilitarian balancing of rights or values is a decision best left to the legislature.²⁴⁹

The first approach is a viable option for Philippine courts. Since there appears to be no ultimate scale against which to compare those rights or values, being essentially incommensurable,²⁵⁰ congress is the “best forum for the discovery and application of such emotions. The courts have no special insight into the issue and the legislature is ultimately more suited.”²⁵¹ This approach is in keeping with Article 10 of the Civil Code which presumes that the lawmaking body intended right and justice to prevail in case of doubt in the interpretation or application of laws.

²⁴⁷ McCrudden, *supra* note 3, at 715.

²⁴⁸ 2004 (12) BCLR 1268 (CC of S. Africa).

²⁴⁹ *Id.*

²⁵⁰ *Id.* at 714, *citing* ISALAH BERLIN, LIBERTY: INCORPORATING FOUR ESSAYS ON LIBERTY (Henry Hardy ed., 2002).

²⁵¹ *Id.*, *citing* John Alder, *The Sublime and the Beautiful: Incommensurability and Human Rights*, in PUBLIC LAW 697 (2006).

While cautious restraint on the part of the courts should be the preferred approach, there may be instances in which a claim of violation of *Karangalan* by opposing parties will not involve legislation. One example that comes into my mind is when human cloning technology reach Philippine shores and be threatened to be performed without the government actively regulating it.²⁵² I surmise that religious groups may embark on a legal battle to prohibit its use, via a petition for mandamus. Here, no legislative or even executive act is involved.²⁵³ On the contrary, governmental regulation is being implored by proponents. In such a case, Philippine courts may not decline to render judgment simply because of the silence, obscurity or insufficiency of the laws.²⁵⁴ The third approach, thus, becomes warranted.

According to McCrudden, there are many variations in the ways courts may formulate proportionality, but essentially, each formulation has the following common elements:

[F]irst, where a limit is placed on a claimed right, the court should first establish whether that limit furthers a legitimate aim; secondly, the court should consider whether the means chosen to achieve this aim are rationally connected to that aim; thirdly, the court should consider whether the measure is proportionate in the strict sense,

²⁵² As this technology may be used to produce children or for purposes of biomedical research, *Karangalan* may be invoked by or on behalf of the following: (a) *parents*, who are incapable of having children without assistance from this technology, can invoke the dignity to raise their own family; (b) *cloned children* can claim that they were and are continuously being subjected to *paglapastangan* because of the potential medical, psychological and societal problems brought about by cloning; (c) *cloned embryos*, whose right to life and dignity may be violated upon their destruction during their blastocyst stage, should they be considered as humans; (d) *surrogate mothers*, to whose respective wombs will the cloned embryos need to be implanted, can claim that their dignity is violated as a result of the instrumentalization of their bodies; (e) the *sick or dying*, whose right to life and dignity may be upheld as a result of cloning-for-biomedical research; and (f) the *society*, whose moral fabric may forever be changed when it crosses this moral point of no return.

²⁵³ Currently, there is no official executive policy on human cloning in the country. Nonetheless, a Joint Resolution on the Human Genome and Human Rights was issued by the National Academy of Science and Technology (NAST) and National Research Council of the Philippines, calling for a ban of “artificial reproductive cloning for the purpose of producing a human being while allowing therapeutic cloning for the purpose of producing stem cells, except if the stem cells are derived from living human embryos; and crafting of policies and regulations on the disposition of excess human embryos.” NAST, *Human Genome: Perspectives and Applications*, 4 NAST MONOGRAPH SERIES (2004). Furthermore, while there were bills filed in both chambers of Congress these remain unacted. See House Bill (HB) No. 1203 filed in 2001 and refiled in 2004 as HB No. 148 by Congressman Constantino Jaraula; Senate Bill No. 1509 filed in 2004 by Senator Miriam Defensor-Santiago, and refiled on 24 July 2007 during the 14th Congress, on 19 July 2010 during the 15th Congress (with Senator Manuel Lapid as co-author), and on 3 October 2013 during the 16th Congress (as sole author).

²⁵⁴ CIVIL CODE, art. 9.

meaning that the court should consider whether there are any means available to achieve the objective which are less restrictive of the claimed right, and whether the benefits of restriction outweigh the harms.²⁵⁵

He, however, points out that this approach will likewise require the injection of value judgment²⁵⁶ (which is similar to utilitarian balancing), and result in resorting to similar techniques previously described.²⁵⁷ Despite this problem, I submit that the proportionality test is still important for it serves an institutional purpose: it provides a “language in which courts can indicate the weighting given to particular rights and other values.”²⁵⁸ Also, unlike in other jurisdictions,²⁵⁹ Philippine courts may not simply choose to what party should *Karangalan* be imputed, considering its two functions.

²⁵⁵ McCrudden, *supra* note 3, at 715. Note, however, the problem in employing this approach. According to McCrudden, “the proportionality test requires the injection of a significant element of value judgement in at least two particular parts of the test: in determining whether the aim of the restrictive measure furthers a legitimate objective, and in carrying out the final balancing exercise.” *Id.* at 715–16. Resultingly, the court tends to “resort to similar techniques described in the previous paragraphs: deference to legislative judgment, creating a hierarchy of rights, engaging in crude utilitarian balancing, or, as Waldron identifies, requiring that reasons be given explaining the considerations upon which the governmental decision was arrived at and scrutinizing the adequacy of such reasons.” *Id.* at 716. Nonetheless, despite this problem, he believes that the proportionality test is still important for it serves an institutional purpose. It provides a “language in which courts can indicate the weighting given to particular rights and other values.” *Id.* Thus, “[w]hen a particular right or other value is described as engaging dignity, this indicates that the court considers that considerable (even in some cases overwhelming) weight should be attributed to it.” *Id.*

²⁵⁶ *Id.* at 715–16. “The proportionality test requires the injection of a significant element of value judgment in at least two particular parts of the test: in determining whether the aim of the restrictive measure furthers a legitimate objective, and in carrying out the final balancing exercise.”

²⁵⁷ *Id.* at 716. To wit: deference to legislative judgment, creating a hierarchy of rights, engaging in crude utilitarian balancing, or, requiring that reasons be given explaining the considerations upon which the governmental decision was arrived at and scrutinizing the adequacy of such reasons.

²⁵⁸ *Id.* Thus, “[w]hen a particular right or other value is described as engaging dignity, this indicates that the court considers that considerable (even in some cases overwhelming) weight should be attributed to it.”

²⁵⁹ McCrudden gives us the following illustrations: (a) In the aforementioned *Aviation Security Case*, dignity reinforced the right to life of the victims of hijacking. Inasmuch as the innocent lives have been instrumentalized to save the lives of other, the *Bundesverfassungsgericht* (German Federal Constitutional Court) invalidated the subject clause in the *Luftsicherheitsgesetz* (Aviation Security Act). That the ascription of dignity serves the function imbuing more weight to the right to life is shown in the conclusion of the *Bundesverfassungsgericht*: “if terrorists are alone on the plane, shooting the plane down would be proportionate because the criminals are not being treated as objects; [o]n the contrary, it corresponds to the position of the aggressor as a subject to make him accountable for the consequences of his autonomous actions.” *Id.* at 717; (b) In the *First Abortion Case*, the

How, then, do Philippine courts employ the third approach? First, they must ensure that the starting and ending points of their analysis must be to uphold *Karangalan*.²⁶⁰ Second, courts should not attempt to identify dignity with a particular party. On the contrary, they must be duty-bound to accord dignity to those sides claiming it. Third, they should identify as solution that which most comports with *Karangalan* since it is “engaged on both sides of the conflict, therefore, [it] again provides a metric common to both.”²⁶¹

In practical terms, how the Canadian court arrived at a decision regarding hate speech may be illuminating. After holding that the protection accorded by the legal restrictions on hate speech as heavily engaging dignity as with the right to freedom of speech, the dignity-based reasons why speech ordinarily should be protected from interference are substantially reduced since the speech is one that undermines dignity.²⁶² The same strategy may be used in other hard cases. For example, in abortion, it may lead to a decision where an absolute prohibition against it may be softened by admitting exceptions, such as if the pregnancy was a result of sexual abuse like rape, or if it may result in endangering the life of the mother. In those cases, forcing pregnancy may impinge on the *Karangalan* of the mother by absolutely turning a blind eye to her right to life or right to self-determination. But abortion just to escape the consequences of consensual sexual relationship may still be illegal since the dignity-based reason favoring self-determination is reduced

Bundesverfassungsgericht likewise employed dignity in conjunction with the right to life, but this time, of the fetus. Thus, it declared the Abortion Reform Act of 1974, which liberalized some restrictions on abortion as unconstitutional for failing to overcome the stricter scrutiny to derogations from the state’s duty to protect life. *Id.*, at 716–17; (c) On the other hand, the Bundesverfassungsgericht wanted to give greater weight to the rights of the woman in *Second Abortion Case*. Thus, it departed from its technique of attributing dignity primarily to the life interest in the foetus resulting in an opinion “decidedly more respectful of the woman’s rights and reflected a more even-handed balancing overall.” *Id.* at 717.

²⁶⁰ *Id.* at 718.

²⁶¹ *Id.* at 719.

²⁶² *Id.* at 718–19, citing *R. v. Keegstra*, 3 S.C.R. 697 (1990) (Can.). “Traditionally, in both these contexts, other jurisdictions (perhaps particularly the United States) have contrasted the right to freedom of expression against the mere ‘interests’ of the government, and have come down heavily in favour of freedom of speech. In contrast, in the Canadian cases, the interests of the government were reformulated in dignity terms, and the result was markedly different. Thus, in *Keegstra*, we saw earlier that Dickson, *C.J.* conceptualized the protection accorded by the legal restrictions on hate speech as heavily engaging dignity. The majority considered that the right to freedom of speech was also underpinned by dignity. ‘Freedom of expression is a crucial aspect of the democratic commitment, not merely because it permits the best policies to be chosen from among a wide array of proffered options, but additionally because it helps to ensure that participation in the political process is open to all persons. Such open participation must involve to a substantial degree the notion that all persons are equally deserving of respect and dignity.’”

because it is the one used to undermine the dignity of the unborn, especially if the latter is considered a human person already. The conduct of human cloning *only* for biomedical research may likewise be justified with appropriate limitations, such as using only those leftover in vitro fertilization embryos created initially for reproduction and prohibiting the actual creation of embryos. In this way, the right to dignity and life of sick people needing newer forms of treatment may be balanced with the right to dignity and life of the unborn. Prohibition against the wearing of religious clothes that covers the entire face may be justified if these dresses are being used to easily facilitate terrorist activities. Again, as in the Canadian hate speech case, the abuse of the right to self-determination (wearing of clothes) undermines the dignity of other persons. In the case of prostitution, an argument calling for its total decriminalization or the criminalization only of the act of buying²⁶³ may also be successfully argued, as a way of balancing the autonomy of the prostitute and the communitarian interest to preserve the dignity of those people involved in it.

Note, however, that the author is not making a definitive doctrinal claim in the preceding paragraph. Rather, they are just mere illustrations on how Philippine courts can practically employ the third approach when using *Karangalan* in their opinions. Besides, judicial interpretation of the issues the author raised above may be affected, to a great extent, by other pertinent legal texts and factual circumstances.

Nonetheless, an argument may be raised that the usage of *Karangalan* is useless in so far as it is ascribed to all parties claiming it. First, bear in mind that it is not a magical incantation which can be recited anytime. As in any judicial litigation, claimants should find sound textual and factual bases to support it. Hence, there will be cases in which only one side can validly invoke it, tipping the scale in favor of the claimant. But suppose both sides were found to have validly invoked *Karangalan*, can this be likened to merely adding the same weight of variable in a mathematical formula? Thus, resulting in each side retaining their previous weight prior to its addition. Will *Karangalan* suffer the same disease that plagued the conceptions of human dignity in various jurisdictions: it has become a placeholder, devoid of any substantial meaning?²⁶⁴ I submit that it will not. In practice, *Karangalan* gives judges something to say when confronted with hard issues.²⁶⁵ By providing a metric common to competing sides,²⁶⁶ it avoids the dilemma of having to choose

²⁶³ This is the Nordic Model used in several European countries.

²⁶⁴ *Id.* at 722.

²⁶⁵ *Id.*

²⁶⁶ *Id.* at 719.

between essentially dissimilar rights or values using some foreign or arbitrary standard. For what it is worth, this institutional function of *Karangalan*, while not normatively attractive, may soon prove to be useful in judicial adjudication—particularly of hard cases involving human rights.

KARANGALAN: THE FILIPINO CONCEPT OF HUMAN DIGNITY

The Filipino conception of human dignity is *Karangalan*. It is a highly moral concept because it goes beyond the notion of rank, honor, reputation, glory and worthiness, but also involves probity and integrity. Its core element (*dangal*) is broader than the concept of honor, for it signifies humanity or personhood, considered like one's whole life by Filipinos. It has two aspects: (a) *dangal*, the internal aspect which always remains intact; and (b) *puri*, the external aspect which may be damaged or diminished when one's humanity is debased. *Karangalan* is, therefore, something not to be aspired for because it is the already actualized state-of-having-*dangal*. Since all human persons are endowed with *karangalan*, it is not dependent on one's ethnicity, sex, capacity, status in life, or any other categorizations.

Karangalan serves as the basis of human rights, being inherent in every human person. Thus, while it cannot be developed or made to exist, it can be enhanced. This is the reason why the framers consider *karangalan* as the core concept linking all the political, social and economic conditions aspired for and by Filipinos. It is intimately related to the concept of social justice, with the latter being the material and social infrastructure for the enhancement of the former.

It is one of the three Filipino societal values; the other two are *katarungan* (justice) and *kalayaan* (freedom). These societal values are all linked together by the Filipino core value of *pakikipagkapwa* (recognition of shared humanity). *Pakikipagkapwa* explains why *karangalan* is comfortable in simultaneously maintaining its two functions in the Philippine legal system: (a) to protect individual liberties (individualistic); and (b) to uphold community interests (communitarian). These stated functions, therefore, are coexisting, neither alternative nor hierarchical.

It can soon be proven useful in judicial adjudication, particularly of hard cases involving human rights. Because judges are duty-bound to accord *Karangalan* to those sides claiming it, in keeping with its coexisting individualistic and communitarian functions, they should not attempt to identify *Karangalan* with a particular party. By providing language for a metric common to competing sides, Philippine courts can indicate the weighting

given to particular rights and other values. This institutional purpose will be helpful in ensuring that the starting and ending points of their analysis is that which most comports with *Karangalan*.

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