

Through the Lens of Dignity: An Essay on Equality and Liberty

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"You are a human being. You have rights inherent in that reality. You have dignity and worth that exist prior to law."

Lyn Beth Neylon

Introduction

The evident conflict between liberty and equality has captured the imagination of generations of philosophers, statesmen, economists and theologians.² Perhaps no ideological divide has had a greater, more wide-ranging impact on global affairs;³ from groundbreaking philosophical debate, to politico-economic polarisation of the world order and armed conflict. The libertarian-egalitarian conflict has raged over centuries, reaching its zenith in the crude articulation of conflicting capitalist and communist ideology of the Cold War era. Positions may have softened, and indeed some bridges built; but the debate continues...

Philosophical discourse on the conflict has been truly fascinating. Berlin argues that the two values are so fundamentally different that they are incommensurable.⁴ Berlin's incommensurability and the notion of non-hierarchical compatibility form the two ends of a spectrum on which liberty and equality have repeatedly been ranked and pitted against each other, with a divergence in result rivalled only by the flexibility of the two values themselves. When considering the collective greatness of the minds which have devoted considerable time on the conflict,⁵ it is not surprising that most of the views have strong appeal and are grounded on convinc-

ing logic. Can they all be right? Can equality and liberty be incommensurable, conflicting and perfectly compatible all at once? If not, there must be a fundamental divergence in understanding amongst these greats. Are they speaking of the same notion and degree of equality? Of liberty? Have they grounded these values in the same manner, if they have grounded them at all? Do they even consider both to be values?⁶ In other words, are they talking past each other? Is a pamphlet to Dworkin a book to Nozick?⁷

I believe that they are indeed talking past each other. But my essay is not an attempt to consolidate their positions. I have an alternate view of my own - that the two are not incommensurable and their apparent conflict is merely illusionary. I believe the two are complementary values that are grounded in the inherent dignity of humanity, which legitimises, shapes and limits them.

I hope to justify my position by fleetingly journeying through the different positions, starting with Berlin's incommensurability and moving on to those that prioritise one value over the other. I then embark on a dignity analysis, through which I hope to convince you of the role played by dignity as "commensurator" of the seemingly incom-

measurable. I wish to go further. My argument endorses a particular worldview which is based on and promotes dignity. I therefore conclude by establishing some guiding principles which stand both as parameters of the dignity analysis and as yardsticks to measure human progress in this regard.

Berlin and Incommensurability

In a seminal essay, Isaiah Berlin introduced the world to his twin concepts of “positive” and “negative” liberty and the notion of incommensurable values.⁸

“Everything is what it is: liberty is liberty, not equality or fairness or justice or culture. (...) if I curtail or lose my freedom in order to lessen the shame of (...) inequality, and do not thereby materially increase the individual liberty of others, an absolute loss of liberty occurs.”⁹

Berlin’s point is that these values do conflict and must be prioritised over each other, but in each such situation the loss of one value is one which cannot be compensated for by the gain of another, for they are incommensurable. Williams sums up Berlin’s position better than I can hope to by saying that:

“there is a plurality of values which can conflict with one another; and which are not reducible to one another; consequently (...) we cannot conceive of a situation in which it was true both that all value-conflict had been eliminated, and that there had been no loss of value on the way.”¹⁰

Berlin did not view the incommensurability of values in a negative light. To him, conflict is the basis of progress¹¹ and the incommensurability of values is a great source of conflict. I too believe that conflict is a great stimulant of progress, but to me, the seeming conflict

between equality and liberty is not due to incommensurability. Williams’ tragic cases are those in which “an agent can justifiably think that whatever he does will be wrong”.¹² A mother having to decide which child to save from a fire is a quintessential “tragic case”. As Williams states, it is the situations themselves, and not the decisions of agents that are at fault in tragic cases.¹³ Such situations almost always arise due to resource limitations - with the help of a fireman, the mother could rescue both children. Any apparent conflict between equality and liberty is a tragic case brought about by resource limitations, and not incommensurability.

Conflicting ideologies on resource allocation¹⁴ have rallied around their respective slogans of “liberty” and “equality”, resulting in the two values being seen as synonymous of each, to the exclusion of the other. But such ideologies do not hold a monopoly over the values they claim represent them best. Equality is more than socialism, and liberty greater than liberal capitalism. It is socialist and capitalist ideology which are incommensurable, not liberty and equality themselves.

According to Williams, the claim that values are incommensurable asserts at least four separate but connected denials: that no one currency, value independent of the conflicting values, or value (independent or not) can be appealed to rationally resolve the conflict, and that consequently, no conflict of values can ever be resolved in a rational manner.¹⁵

Using these criteria, I hope to establish that dignity can and must be used as a fundamental independent value to resolve equality-liberty conflicts, thus proving that the two are indeed commensurable. But first, let us look at some of the foremost positions on liberty and equality.

A Brief Survey of the Liberty-Equality Debate

There have been countless accounts of liberty and equality; some pitting the two against each other, others rallying under their unified banner. All great world religions have a stance on both. The great revolutions were fought in their name¹⁶ and communities continue to strive to reap their fruits in contemporary society.¹⁷ A comprehensive overview on subject matter so rich is impossible. Instead, I give a brief account of three positions which have greatly influenced contemporary thinking, beginning with the one furthest away from mine, and ending with the closest.

Robert Nozick

Nozick is probably the most outstanding contemporary proponent of the minimalist state and self ownership theory. Strongly influenced by John Locke,¹⁸ Nozick is a libertarian whose values uphold liberty, security and property rights. As Cohen states:

“[Nozick] holds that each person possesses over himself, as a matter of moral right, all those rights that a slaveholder has over a complete chattel slave as a matter of legal right; and each person is entitled, morally speaking, to dispose over himself in the way that such a slaveholder is entitled, legally speaking, to dispose over his slave.”¹⁹

Furthermore, Nozick purports that people have an equally strong moral right to any and all world resources which they acquire ownership of, as long as “the position of others no longer at liberty to use the thing is thereby (not) worsened”.²⁰

Equality ranks a clear last in Nozick’s eyes. Speaking against the “minimum egalitarian

goal”²¹ of equality of opportunity, he states that:

“No one has a right to something whose realization requires certain uses of things and activities that other people have rights and entitlements over. Other people’s rights and entitlements to particular things and how they choose to exercise [them] (...) fix the external environment of any given individual and the means that will be available to him.”²²

Therefore, no person or authority would be justified in coercing an individual to use his resources for the good of others.²³

Nozick’s position may seem normatively undesirable - even repugnant and callous - but it reflects contemporary society rather accurately.²⁴ Even those who appreciate taxation loathe the effect it has on their savings. The laissez-faire state is promoted by the World Bank and IMF in all third world countries, resulting in rapid privatisation, as multinational companies establish themselves as stronger economic players than most small and middle sized countries. The disparity between rich and poor continues to grow, and extreme prosperity and abundance is juxtaposed against abject impoverishment as never before.

John Rawls

Rawls developed his landmark theory of justice against this backdrop.²⁵ A liberal thinker, Rawls shares little else in common with Nozick.²⁶ He most famously developed the notion of “justice as fairness” as a political conception of justice for liberal, democratic societies.

There are two principles of justice as fairness:

“Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value.”²⁷

“Social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least advantaged members of society.”²⁸

Rawls’ liberalism is clearly more just than Nozick’s. He proposes, to an increasingly unfair world order, a pragmatic approach to sharing wealth, promoting liberty and cooperating as a community. However, with the first principle taking lexical priority over the second, Rawls clearly considers liberty to be a more fundamental value than equality; even though his condition that both are subject to the provision of the basic needs of citizens underscores his commitment to social justice.²⁹

Ronald Dworkin

Dworkin is the philosopher who has influenced me most. Consequently, it is not surprising that his position is closest to the one I propose. In a strong affirmation of equality, Dworkin states that:

“No government is legitimate that does not show equal concern for the fate of all (...) citizens. (...) Equal concern is the sovereign virtue of political community – without it government is only tyranny – and when a nation’s wealth is very unequally distributed (...) then its equal concern is suspect.”³⁰

Dworkin proceeds to argue for what he calls “equality of resources”,³¹ based on his two principles of ethical individualism:

1. The principle of “equal importance” according to which it is objectively important that all human lives be successful and not wasted.
2. The principle of “special responsibility” according to which it is the person whose life it is, who is specially and finally responsible for the success spoken of in principle one.³²

Dworkin’s equality of resources – “in which people are equal not in their welfare but in the resources at their command”³³ – can only be a successful project if people are afforded the freedom to take responsibility for their own ambitions. Consequently, it is “an account of distributional equality that is immediately and obviously sensitive to the special character and importance of liberty”.³⁴ Accordingly, “liberty becomes an aspect of equality rather than (...) an independent political ideal potentially in conflict with it”.³⁵ Therefore, there is no justifiable argument against curtailing liberties in favour of equality of resources when necessary.³⁶

Dworkin later provides valuable insight into his thinking when he claims that the two principles of ethical individualism “together define the basis and conditions of human dignity”, and that the first principle is an abstract invocation of equality and the second of liberty.³⁷

Thus Dworkin sets the stage, with clinical precision, for me to embark on a dignity analysis of my own.

Dignity Analysed

Dignity is one of the most difficult words to pin under a succinct and compelling definition. It is a vague, elusive concept, which most people have a sense of, but would find difficult to articulate. This is why I find Dworkin's construction of dignity particularly compelling. Its basis is the subjective; its conclusion, objective.³⁸ Dworkin appeals to the personal – to what (he considers) people would consider important to themselves, which he then applies broadly. Accordingly, if I consider my life to be of value, and worthy of success, there is no compelling reason for me not to regard all human life in the same light.³⁹ Furthermore, this intrinsic value is of objective importance – “the success or failure of any human life is important in itself”,⁴⁰ and “is not only important to the person whose life it is (...) if and because that is what he wants”.⁴¹ This notion of dignity demands mutual respect and concern. It rings of Jesus' teaching to “do unto others as you would wish them do to you”,⁴² a notion which would be convincing only if our common human heritage meant our lives were of equal value. Indeed all major world religions sound uncannily similar on this point,⁴³ a fact which I see as a universal assertion of the inherent dignity of humanity.

Dignity has historically been linked with human individualism. The stoics pinned dignity on “reason”,⁴⁴ and religions have various rationales for it.⁴⁵ Our common humanity renders us unique from the rest of nature. No other distinguishing factor⁴⁶ is necessary to establish that human life is of intrinsic and unquantifiable value to all humanity,⁴⁷ just as it is to the individual. Kant's conceptualisation of dignity can be summarised in the slogan that people should always be treated as ends and not as means to an end.⁴⁸ The German Constitutional Court endorses this view

of dignity, as evidenced by this statement in the *Microcensus* case that “the state violates human dignity when it treats persons as mere objects”.⁴⁹

The following tragic anecdote captures the essence of Kant's philosophy: in 1994, Kevin Carter took the Pulitzer Prize winning photograph of a famine stricken Sudanese child crawling towards a United Nations food camp a mile away, as a vulture looked on. The child was a means to further Carter's end. The extremity of objectification is demonstrated by the fact that Carter continued his journey immediately after taking the picture. No one knows what happened to the child, and Carter committed suicide three months later, due to depression.⁵⁰

Feldman speaks of three levels of dignity – dignity of the human species, of groups and of the individual.⁵¹ As Feldman observes,

“the dignity of the species and (...) of the individual tend to work together. (...) [T]reating corporal punishment as degrading within the meaning of Article 3⁵² of the European Convention on Human Rights reflects a sense that in certain circumstances it degrades both the individual and the whole of humanity to treat people in such a way.”⁵³

This perspective feeds off Dworkin's subjective-objective approach and highlights another aspect of dignity; namely, that whilst dignity is inherent to us, it is something we risk losing. The broad dignity of the race is compromised when the inherent dignity of the individual is; and the whole of humanity suffers when humanity inflicts suffering on its own.

Consequently, history has repeatedly demonstrated that the inherent dignity of humanity has been most strongly asserted in response

to situations of gross injustice and human suffering. International human rights law was born from the ashes of World War Two, with both the Charter of the United Nations and the Universal Declaration of Human Rights recognising and affirming the inherent dignity of humanity.⁵⁴ The post-war German Constitution also strongly affirms dignity as being inviolable to man.⁵⁵ The connection between past tragedy and the affirmation of dignity was elaborated by the Federal Constitutional Court in the *Abortion Case*:

“The Basic Law contains principles (...) which can only be explained by the historical experience and by the moral-ethical recollection of the past system of National Socialism. The almighty totalitarian state demanded limitless authority over all aspects of social life and, in pursuing its goals, had no regard for individual life. In contrast to this, the Basic Law established a value-oriented order which puts the individual and his dignity into the very centre of all its provisions.”⁵⁶

The South African experience is another example. As articulated by its Constitutional Court in *Makwanyane*:

“Respect for the dignity of all human beings is particularly important in South Africa. For apartheid was a denial of a common humanity. Black people were refused respect and dignity and thereby the dignity of all South Africans was diminished. The new Constitution rejects this past and affirms the equal worth of all South Africans. Thus recognition and protection of human dignity is the touchstone of the new political order and is fundamental to the new Constitution.”⁵⁷

To summarise the above: dignity is a concept best understood by appealing to subjective notions of how one should be treated and one’s life valued, and applying them to society

at large. Such an approach is “empathical”,⁵⁸ demands consistency and affirms the inherent, unquantifiable value of humanity. This conception of dignity is complimented by Kant’s assertion that people should be treated as subjects, as the objectification of individuals compromises the dignity of the human race as a whole.

The Scope of Dignity

As we saw earlier, Dworkin’s conception of dignity has the two dimensions of equality and liberty. Whilst I endorse this understanding, I feel this is only part of the story. Dignity is a broader concept, which contains multiple dimensions that are closely interconnected and co-dependant, operating with strong synergetic effect. Liberty, equality, autonomy, community and security⁵⁹ are all dimensions of dignity; the pillars (if you like) which stem from the foundation of dignity. International human rights law operates on this basis, with dignity as the core of a diverse but inter-related body of inalienable rights.⁶⁰

Dignity as “Commensurator”

It is my proposition that as the foundational basis of human rights, dignity holds the special position of “commensurator” in all conflicts between competing rights. Let us revisit Williams’ incommensurability test, according to which two values are incommensurable only if no single currency or value (independent or not) can be appealed to rationally resolve a conflict between them.

Dignity is not necessarily a currency; to claim so, one would have to develop a uniform method of quantifying dignity in all circumstances, an infinitely complex (if not impossible) and unnecessary exercise. However, it is more than an independent value – for it is a fundamental one, which can be applied to ra-

tionally resolve apparent conflicts between liberty and equality (and all other rights).

I use the word “apparent” because if equality and liberty are conceptualised as values which promote and uphold dignity, they will never conflict with each other. Any notion of equality or liberty which conflicts with dignity is false and must be abandoned. The balance between the two which best affirms our inherent dignity must always be preferred. Berlin’s concern of there being a total loss of value when one is compromised for the other does not arise, for equality and liberty are not freestanding values, but merely means of asserting the more fundamental value of dignity.

Dignity-centric Notions of Equality and Liberty

It becomes clear, therefore, that the “type” of liberty and equality we speak of is important. Equality and liberty can be deemed commensurable under a dignity analysis, only to the extent that they are based on dignity, and are facets of it.⁶¹ Equality and liberty so conceived are not absolute rights, but then, no version of either can ever be.⁶² They become valuable notions only to the extent that they promote and protect the inherent dignity of humanity. Likewise, any limitation on either becomes justifiable only to the extent that dignity is protected.⁶³ I shall call them “dignified liberty” and “dignified equality”.

Dignified Liberty

We live in a world in which our liberties are continuously constrained by social convention and law.⁶⁴ I cannot speak in the library, spit on the road, drive on the right, strike my enemy, play loud music, shoplift or even pat a child without risking dire consequences. There are reasons for all these constraints,⁶⁵ including protecting the liberty, bodily in-

tegrity and property of others, maintaining order and efficiency and respecting privacy. Liberty without constraint is both meaningless and counterproductive – we are social creatures who are willing to order our lives so as to make community possible and meaningful. Liberty must be given the direction and purpose which dignity offers – it must be a “dignified liberty”.

A dignified liberty has two main characteristics. Firstly, it is attached to responsibility. One who is free must take responsibility for his actions.⁶⁶ Secondly, it demands reciprocity.⁶⁷ Dignified liberty can only mean dignified liberty for all.⁶⁸ This outlook compels us to see things differently. Two quick examples:

(i) Crime must be punished, often through the deprivation of liberty. Under the dignity analysis, such a deprivation of liberty will only be justified to the extent that human dignity is preserved. Thus, the conditions of prisons, the quality of rehabilitation, the stigma attached to convicts, the fairness of the legal process, the mode in which the victim’s grievance is addressed all come under strong scrutiny.

(ii) Property ownership has long been associated with the liberal tradition,⁶⁹ and is an ignition-point of libertarian-egalitarian debate. Dignity analysis challenges this outlook. Property ownership has resulted in unbelievable disparity of wealth worldwide. If a trivial slap is considered wrong and harmful, should not a system which has polarised community into “haves” and “have-nots” with severe implications on the dignity of the larger group be questioned?⁷⁰

Dignified Equality

Equality is a multi-faceted, much debated notion.⁷¹ Which form of equality is most com-

patible with dignity? I propose four, which compliment each other and combine to offer us a “dignified equality”.

(i) The universally accepted procedural equality affords people equality before the law. However, this fundamental notion of equality is under threat due to various factors including financial prowess,⁷² political will⁷³ and corruption. A dignity analysis would change our approach to procedural equality, beginning with an acknowledgement of its substantive dimension, and challenging us to find better ways of ensuring it.

(ii) Anti-discrimination law is also universally applied. Accordingly, factors such as race, colour, sex, religion, etc., are seen as invalid grounds on which to discriminate against people. As with procedural equality, “anti-discrimination” too is often an empty phrase, which fails to impact ground realities shaped by generations of discrimination. Hence, the notion of substantive equality is an attractive means of comprehensively dealing with discrimination through addressing past-injustice. As the Canadian Supreme Court interpreted Canada’s equality clause in *Law*:

“[T]he purpose of s. 15(1) is to prevent the violation of essential human dignity and freedom through the imposition of disadvantage, stereotyping, or political or social prejudice, and to promote a society in which all persons enjoy equal recognition at law as human beings (...) equally capable and equally deserving of concern, respect and consideration. (...) Alternatively, differential treatment will not likely constitute discrimination within the purpose of s. 15(1) where it does not violate the human dignity or freedom of a person or group in this way, and in particular where the differential treatment also assists in ameliorating the position of the disadvantaged.”⁷⁴

(iii) Dworkin’s “equality of concern” demands that governments show equal concern for the lives of all citizens.⁷⁵ A democratic government “of the people, by the people, for the people”⁷⁶ can only be legitimate to the extent that its policy and law reflects equal concern and commitment for the well being of all “the people”. This notion of equality which translates more as a challenge to good governance is a vital cog in the equality wheel.

(iv) Finally, equality of opportunity (or resources) demands that each individual be given every opportunity possible to make a success of his life.⁷⁷ Such a notion is dedicated to battling inequalities which paralyse an individual’s efforts to succeed, including poverty, illiteracy, sickness, violence and all such scourges which entrap humanity in their vicious cycle.

A Dignity Worldview

What does it mean, that liberty, equality (and other rights) can be viewed as commensurable, complementary and co-dependent values under a dignity analysis? What are the implications of such a commitment? Dignity challenges society to strive collectively; whether through battling poverty, opposing violence or resisting elements of tabloid and reality TV culture which subject individuals to public humiliation. There are many ways to affirm dignity, and I wish to make two inputs in this regard, as a means of concluding this essay.

Dignity as a Tool of Adjudication

Dworkin’s “law as integrity” is a method of adjudication which draws on legal principle to enable judges to judge “hard cases”⁷⁸ in a consistent and correct manner.⁷⁹ I see dignity as the fundamental principle on which all “hard cases” concerning human rights should be adjudicated. Accordingly, any reso-

lution which protects and promotes the inherent dignity of humanity would be the correct one.

The fact that dignity is affirmed as a foundational principle of most international human rights documents,⁸⁰ many modern constitutions⁸¹ and increasingly more national apex courts⁸² is evidence enough that dignity is already being used as a powerful tool of adjudication. Dignity has been used as a guiding principle by courts around the world, when adjudicating on matters as diverse as capital punishment,⁸³ corporal punishment,⁸⁴ socio-economic rights,⁸⁵ torture,⁸⁶ defamation,⁸⁷ equality,⁸⁸ imprisonment,⁸⁹ privacy,⁹⁰ abortion,⁹¹ degrading treatment,⁹² occupation and entertainment⁹³ and even the banning of shooting down hijacked passenger aircraft.⁹⁴

Court adjudication, whilst essential, cannot single-handedly achieve social change or a dignity-respecting world order. A more proactive, engaging approach is necessary to transform democratic institutions with which we interact on a daily basis.

A Futuristic Aside – the Three Laws of Robotics

Renowned science fiction author Isaac Asimov first introduced the world to the three laws of robotics, which govern the lives of all robots, in 1942. Accordingly:

"1. A robot may not injure a human being or, through inaction, allow a human being to come to harm.

2. A robot must obey orders given to it by human beings, except where such orders would conflict with the First Law.

3. A robot must protect its own existence as long as such protection does not conflict with the First or Second Law".⁹⁵

Most robot stories that followed drew from these laws, presenting a crisis that arose when they were being violated. I myself am no science-fiction buff⁹⁶ but the egalitarian nature of the laws captured my attention. Whilst all human creations benefit their creators and the best benefit significant numbers, many cause harm as well. Asimov is sensitive to this potential harm, and believing it to be unjust, formulated the laws which compel robots to always serve man's best interest, and never cause harm to humans, even at the wish of their creator.

These are just laws, which we would do well to replicate in the real world. Such a replication may read as: *All human creations (including laws and institutions) must always serve mankind, and must never harm the inherent dignity of humanity.*

This statement, which I call the "dignity principle", is very similar to Jesus' response to the Pharisees who chastised his disciples for plucking grain on the Sabbath.⁹⁷ He said, "the Sabbath was made for man, not man for the Sabbath; so the son of man is lord even on the Sabbath",⁹⁸ thus indicating that the law must always be interpreted and applied in the manner which serves man's needs best.⁹⁹

This must be the yardstick by which the performance of all human institutions is measured and the impact of policy decisions assessed. I bring my essay to a conclusion, by applying this principle to the human institution of property ownership.

The concept of ownership (as opposed to consumption and occupation) is a human creation, and thus would be subject to my dignity principle. Consequently, the notion of property ownership must be one that only serves mankind, and does not harm the inherent dignity of humanity. Accordingly,

property ownership which fulfils human needs such as shelter, food, privacy, security, furtherance of knowledge, etc. is compatible with the principle, but ownership which excludes other humans from enjoying these very same needs, and which prevents humans from leading meaningful and success-

ful lives, must be challenged. Man's liberty to own property must be limited to the extent that it leaves space for his fellow man to lead a dignified life. It is only then, that the values of equality and liberty would have merged into the unifying superior value of dignity.

¹ Amal De Chickera is Legal Consultant at The Equal Rights Trust. By publishing this personal essay, ERT hopes to provoke and invites polemical responses on the equality v. liberty dilemma, which will be published in future issues.

² Not to mention teachers, students, grocers, entrepreneurs, farmers ...

³ With the possible exception of clashing religious fundamentalisms.

⁴ Berlin, I., "Two Concepts of Liberty". in: Hardy, H., (ed.), *Liberty – Isaiah Berlin*, Oxford: OUP, 2002, p. 172.

⁵ Including Dworkin, Rawls, Nozick, Cohen and Williams.

⁶ Raz for example proposes a strong case for discounting equality as a moral value. See Raz, J., *The Morality of Freedom*, Oxford: Clarendon University Press, 1988, Chapter 9.

⁷ Dworkin, R., *Law's Empire*, Oxford: Hart Publishing, 1998, p. 45.

⁸ Values which are impossible to measure or compare, as they lack any common quality.

⁹ Berlin, I., see above, note 4, p. 172.

¹⁰ Williams, B., *Moral Luck*, Cambridge: CUP, 1982, p. 71.

¹¹ Berlin, see above, note 4, p. 172.

¹² Williams, see above, note 10, p. 74.

¹³ *Ibid.*

¹⁴ Namely, socialism and liberal capitalism.

¹⁵ Williams, see above, note 10, p. 77.

¹⁶ Including the French and Russian Revolutions and the American Civil War.

¹⁷ The world is riddled with conflict - domestic and international, violent and non-violent – with countless groups fighting for liberty and equality of rights.

¹⁸ In particular Locke, J., *Two Treatises on Government* (Various Editions).

¹⁹ Cohen, G. A., "Are Freedom and Equality Compatible?", in: Goodin, E. and Pettit, P. (eds.), *Contemporary Political Philosophy – An Anthology*, Oxford: Blackwell Publishing, 2006, p. 416.

²⁰ Nozick, R., *Anarchy, State and Utopia*, Oxford: Basil Blackwell, 1974, p. 178.

²¹ *Ibid.*, p. 235.

²² *Ibid.*, p. 238.

²³ Cohen, see above, note 19, p. 417.

²⁴ Surely a world in which six-million US dollars are paid for exclusive photographs of some people's babies (see <http://omg.yahoo.com/most-expensive-celebrity-baby-pictures/news/8129?nc>), whilst other people whose babies die for lack of clean drinking water receive no money for being photographed, is more repugnant and callous than any conceivable philosophy?

²⁵ Rawls, J., *A Theory of Justice: Revised Edition*, Cambridge, Massachusetts: Harvard University Press, 1971; revised in Rawls, J., *Political Liberalism*, New York: Columbia Classics, 1993; and Rawls, J., *Justice as Fairness: a Restatement*, Belknap Press, 2001.

²⁶ A testament to the richness of the liberal tradition.

- ²⁷ Rawls, *Political Liberalism*, see above, note 25. p. 5.
- ²⁸ *Ibid*, p. 6.
- ²⁹ *Ibid*, p. 7; See also Rawls, *A Theory of Justice*, see above, note 25, Chapter 2.
- ³⁰ Dworkin, R., *Sovereign Virtue: The Theory and Practice of Equality*, Cambridge, Massachusetts: Harvard University Press, 2000, p. 1.
- ³¹ *Ibid*, p. 3 and chapter two in general.
- ³² *Ibid*, p. 5.
- ³³ *Ibid*, p. 120.
- ³⁴ *Ibid*, p. 121, 122.
- ³⁵ *Ibid*, p. 121.
- ³⁶ Especially since liberty is frequently compromised to protect lesser ideals - as in the curtailment of free speech to minimise noise pollution.
- ³⁷ Dworkin, R., *Is Democracy Possible Here?* Princeton: Princeton University Press, 2006, p. 10.
- ³⁸ *Ibid*, pp. 9 – 17.
- ³⁹ *Ibid*, pp. 11 – 12.
- ⁴⁰ *Ibid*, pp. 9 – 10.
- ⁴¹ *Ibid*, p. 9.
- ⁴² Luke 6:31.
- ⁴³ See generally Buddhism: “Hurt not others in that you yourself would find hurtful”, Udana-Varga 5:18; Hinduism: “Do naught unto others which would cause you pain if done to you”, Mahabharata 5:1517; Islam: “No one of you is a believer until he desires for his brother that which he desires for himself”, Hadith of an-Nawawi 13, Sunnah; and Judaism: “That which is hateful unto you, do not impose on others”, Talmud, Shabbat 31a – and see <http://stop-the-hate.org/> for more such quotes.
- ⁴⁴ Grant, E., “Dignity and Equality”, *HRLR*, 2007, Vol. 7, No. 2, pp. 299 – 329, p. 304.
- ⁴⁵ Including the belief that we have been made in God’s image.
- ⁴⁶ Such as superior intelligence or free will.
- ⁴⁷ Alien invaders may see otherwise.
- ⁴⁸ Grant, see above, note 44, p. 304.
- ⁴⁹ *Microcensus Case 27 BVerfGE 1* (1969).
- ⁵⁰ <http://thexodirectory.com/2008/02/famine-stricken-child-and-vulture.html>.
- ⁵¹ Feldman, D., “Human Dignity as a Legal Value: Part 1”, *PL*, 1999; Win: 682 – 702, p. 684; see also Feldman, D., *Civil Liberties and Human Rights in England and Wales*, 2nd Ed., Oxford: OUP, 2002, p. 125.
- ⁵² Freedom from torture and cruel, inhuman and degrading treatment.
- ⁵³ Feldman, “Human Dignity as a Legal Value”, see above, note 51, p. 685.
- ⁵⁴ See the preambles of these two documents.
- ⁵⁵ Article 1(1), Basic Law for the Federal Republic of Germany.
- ⁵⁶ *Abortion Case 39 BVerfGE 1* (1975), cited in Grant, “Dignity and Equality”, see above, note 44, p. 307.
- ⁵⁷ *S v. Makwanyane* 1995 (3) SA 391 (CC) at para. 329.
- ⁵⁸ Not to be confused with the bizarre philosophy of “empathicalism” espoused by Audrey Hepburn in the film *Funny Face!*
- ⁵⁹ In all its forms – physical, psychological, material, etc.
- ⁶⁰ Feldman argues that there is no human right which is unconnected to human dignity. See “Human Dignity as a Legal Value”, see above, note 51, p. 690; see also “Dignity and Equality”, see above, note 44; Steiner, H., Alston, P. and Goodman, R., *International Human Rights in Context: Law, Politics, Morals*, 3rd Ed., Oxford: OUP, 2008, Chapters Two, Three and Four.
- ⁶¹ As in Dworkin’s analysis and international human rights law.
- ⁶² Even Nozick’s is a limited “liberty”.
- ⁶³ Other limitations necessary to promote values such as public order and efficiency would only be permissible to

the extent that dignity is not compromised.

⁶⁴ Dworkin, *Sovereign Virtue*, see above, note 30, Chapter 4.

⁶⁵ Some more trivial than others.

⁶⁶ Thus Dworkin's second principle.

⁶⁷ Going back to Jesus' commandment.

⁶⁸ Taking us back to Feldman and the link between dignity of the group and of the individual.

⁶⁹ Going back to Locke and his *Two Treatises*.

⁷⁰ I further comment on this issue in the final section of this essay.

⁷¹ See Dworkin, *Sovereign Virtue*, see above, note 30; Rawls, *A Theory of Justice*, see above, note 25; Raz, *The Morality of Freedom*, see above, note 6; and Goodin E. and Pettit P. (eds.), *Contemporary Political Philosophy – An Anthology*, Oxford: Blackwell Publishing, 2006, Part VI for a useful collection of essays.

⁷² Who has the means to engage in a long litigation saga with a multi-national company?

⁷³ Government prosecutors often prioritise cases due to resource constraints, taking up politically relevant matters at the expense of cases which have less of a public impact.

⁷⁴ *Law v. Canada (Minister of Employment and Immigration)* [1999] 1 S.C.R. 497 at para 51.

⁷⁵ Dworkin, *Sovereign Virtue*, see above, note 30, p. 1.

⁷⁶ Abraham Lincoln upon dedicating the Gettysburg military cemetery, see <http://www.whitehouse.gov/history/presidents/al16.html>

⁷⁷ Whatever that notion may be, as long as it does not depend on or result in the erosion of dignity of anyone (including his own).

⁷⁸ Cases which are difficult to resolve by virtue of perceivably falling within the cracks of the law.

⁷⁹ Dworkin, *Law's Empire*, see above, note 7, p. 226 and Chapter Seven.

⁸⁰ Including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Convention on Economic, Social and Cultural Rights.

⁸¹ Including the German, South African and Hungarian Constitutions.

⁸² Including the Canadian and French apex courts.

⁸³ *Makwanyane*, see above, note 57.

⁸⁴ *Christian Education South Africa v. Minister of Education* 2000 (4) SA 757.

⁸⁵ *Government of the Republic of South Africa v. Grootboom* (1) SA 46 (CC).

⁸⁶ *Public Committee against Torture v. The State of Israel and the General Security Service* (1999) 7 B.H.R.C. 31.

⁸⁷ *Khumalo v. Holomisa* 2002 (5) SA 401 (CC).

⁸⁸ *Law v. Canada*, see above, note 74.

⁸⁹ *Life Imprisonment Case* 45 BVerfGE 187 (1977).

⁹⁰ *Bernstein v. Bester* 1996 (4) BCLR 449 (CC); and *National Coalition for Gay and Lesbian Equality v. Minister of Justice*, 1999 (1) SA 6 (CC).

⁹¹ *Abortion Case*, see above, note 56.

⁹² *Tyrer v. United Kingdom*, Eur. Ct. H. R., Judgment of April 25, 1978, Series A, No. 26.

⁹³ *The Dwarf Throwing Case*, discussed in Feldman, "Human Dignity as a Legal Value", see above, note 51, p. 701.

⁹⁴ *Luftsicherheitsgesetz Case*, BVerfG, 1 BvR 357/05 of February 15, 2006; See Moller, K., "On Treating Persons as Ends: the German Aviation Security Act, Human Dignity, and the German Federal Constitutional Court", *PL*, 2006; Aut: 457 - 466 for a useful critique of the judgement.

⁹⁵ Asimov, I., "Runaround", in: *Astounding Science Fiction*, Street & Smith, March 1942; see http://en.wikipedia.org/wiki/Three_Laws_of_Robotics for information on the laws in general.

⁹⁶ I stumbled upon the three laws when watching the recent blockbuster *I Robot* one forgettable evening.

⁹⁷ Harvesting in any form was forbidden on the Sabbath – God's designated day of rest.

⁹⁸ Mark 2:27-28.

⁹⁹ This sounds very similar to the natural law position that an unjust law is no law at all.