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Protecting Dignity in Virtual Space

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Abstract: Human dignity is a fundamental right protected by national, regional and international law. This research is about the ways of protecting this right in the particular space of virtual life, space which became more and more conducive to abuses of dignity. Human dignity in the digital age is being contested very openly today, and the Universal declaration of Human Rights (1948) must update every time because of new ways of abuses. This research is mostly based on cases studies of the European Court of Human Rights, so as to highlight that the more someone expose his/her life on the Internet, the more he/she will be at grave risk for his/her dignity because of a lack of protection. Finally, this research argues that nowadays, in a cyber-time like our, protection of dignity becomes a fundamental issue to deal with.

Keywords: human dignity; cyberspace; protection of human rights; dignity abuses

1. Introduction

The idea of human dignity dates back to Ciceron: it's the public recognition of a social status and something intrinsic within human being. In legal domain, this notion appears, mostly, in the Universal Declaration of Human Rights (1948). There is, and it's a fact, a difference between "explain" (from outside) and "understand" (from inside). If dignity is doubtless hard to define and explain, we can however understand it, in the way of visualizing it or perceiving the intended meaning of it. Therefore, dignity seems to be a relational reality we need to experiment, i.e., life from the inside, to understand it. If someone is alone, without anyone in front of him/her, it would be hard for this person to feel what dignity is, both his/her and other's one. Thus, dignity is understandable without needing a preliminary explanation, without needing an instruction booklet. But another question needs to be asked: do we need to be reasonable to be worthy? If so, what about human beings we consider as monsters: Hitler, Saddam Hussein. This said, we must outline that human dignity is an end, and not a means.

In this study, we first aimed to raise the important issue of protecting dignity, i.e. understand why our dignity is so important, and how people can be ensure that their dignity is protected. Then, we focused on dignity in virtual space, this new connected world in which people can be anonymous (or they think so), and we asked ourselves how, in a legal term, can dignity be protected in this specific space?

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2. The Fundamental Notion of Dignity

2.1. The Importance of Dignity for Human Beings

Words can be hard to find when describing human dignity, but we all have experienced it. We know what it feels like to be treated as inferior, misunderstood, or excluded. However, as Donna Hicks said (Hicks, 2013), “When people treat one another with dignity, they become more connected and are able to create more meaningful relationships”. And it’s really important, because she’s right when she said, talking about her book, that when we have a wound to our dignity, there is nowhere to go; no 911 call, no emergency room.

The Universal Declaration of Human Rights (UDHR) of 1948 marks the importance of human dignity by mentioning it in the first line of the preamble¹ and also in the first article². This really means that human dignity is considered as a fundamental base of a human life. One of the reasons is that human dignity means autonomy of people (for instance talking about care, inhuman treatments are prohibited to respect one’s dignity, that’s why the consent of the person is needed, to avoid abuses). But human dignity also represents a motivation for people to respect themselves. Indeed, matters of dignity show up everywhere (at work, school, home...), anytime someone is in contact with one another. That’s why dignity involves a mutual effort among people to listen, understand opinions and values and include one another in conversations.

The definition of dignity given by the Oxford dictionary underlines the value of it: it’s “the state or quality of being worthy of honor or respect”³. Therefore, dignity is a sense of pride in oneself that a human being has with him/her. We can add that humans deserve dignity just because of the fact that they were born and they’re human.

Moreover, human dignity is, as said before, a base of a human life, but it’s also more than that: it’s a base of all other human rights. Rutger Claassen was on the same mind by saying that human dignity is the justification of human rights: “respect for dignity takes the form of protection of human rights to the development of these capabilities (at least, rights to the “social basis” of such development)”⁴. Furthermore, dignity can make people act when they know that their rights are in danger. This is exactly what happened in Tunisia, when people took the problem in the street. Indeed, their slogan was “Dignity, Bread and Liberty”. Everyone who protested took the risk to be killed but refused to be intimidated. Then we can wonder what pushed them to do it, knowing they could be shot at any time. Egyptian journalist Nawara Najem suggested an explanation (Najem, 2011, p. 1): “maybe the answer was human dignity. No force, however tyrannical, is able to deprive human beings of this”.

All in all, human dignity is an important issue because it’s an existential question preceding all other important ones: dignity’s question has to be asked before questions of meaning of life, or even meaning of being. But is the notion of human dignity clear enough to be the foundation of all other human rights?

¹ Whereas recognition 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, UN General Assembly. (1948). *Universal Declaration of Human Rights* (217 [III] A). Paris, preamble.

² All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood, UN General Assembly. (1948). *Universal Declaration of Human Rights* (217 [III] A). Paris, article 1.

³ Dignity. Def 1. *Oxforddictionaries.com*. Web. 19th of March, 2017.

⁴ Rutger Claassen, *Human Dignity in the Capability Approach*, Published in: (Düwell, Braarvig, Brownsword, & Mieth, 2014, pp. 240-249, 6).

2.2. The Meaning of Dignity and its Definition in International Human Rights Literature

Usually, people refer to dignity with the word respect. Nevertheless, there is a difference between these two notions. Dignity is integrity, a quality of the person being elevated, whereas respect is a viewpoint, a quality of the person doing the elevating. Human beings are born with dignity, but respect is something people acquire through actions. Many people tried to define human dignity, but many failed; and that's why it can be really difficult to understand this notion, in addition to the misunderstanding with other notions. Archbishop Vincent Nichols said: "the precise meaning of "human dignity" is increasingly being questioned, particularly now in ethics and law"¹. Thus, he mentioned all the blur there is around the notion of dignity. Moreover, perception of human dignity is different from one to another: certain people will say that they lost a part of their dignity because they've been involved in a humiliating situation, but other will say the contrary for the exact same situation.

But human dignity is a central question in United Nations' declarations, all the more when this organization has an important part to play in a State reconstruction so as to the State doesn't prevent its citizens from their fundamental rights, and not to escape from its responsibility to support social institutions to ensure human dignity of all human beings. And this is exactly why it's important to understand what dignity is and how writers define it. Human dignity has been defined from the philosophical, religious and legalistic perspectives. Kant was one of the first to enunciate the philosophical roots of human dignity. The legal perspective of this concept was coined at the end of the Second World War. Indeed, digging deep the question of human dignity has led to the coining of human liberty, equality and fraternity because many people died and suffered in the hands of their fellow human beings during the war. According to Kant, human beings have an intrinsic worth, which is dignity, and which makes them valuable: "A man with inner worth will sooner sacrifice his life than commit a disreputable act, so he puts the worth of his person above his life. But the man without inner worth would sooner commit a disreputable act than sacrifice his life. In that case, he sets a value on his life, indeed, but is no longer worthy to live, because he has dishonored humanity and its dignity in his own person" (Kant, 1779, p. 149).

Here again, if most of the writers of human literature agreed to define human dignity as a concept someone has just thanks to his/her born, they don't have the same way to see and deeply define it. For instance, according to Jean-Paul Sartre, a human being is worthy thanks to the choices he can make: "Man is nothing else but that which he makes of himself. [...] But what do we mean to say by this, but that man is of a greater dignity than a stone or a table? " (Jean-Paul, 1946, p. 28). By saying this, he emphasizes the dignity of human beings: someone who would just correspond to a preliminary definition would have no responsibility, no choice so no dignity. Then, Andrew M. Song uses two conceptions of dignity to define it: a meritocratic and a democratic one. The first one, he says, is "a term of distinction. It not only

¹ Speech of Westminster Archbishop Vincent Nichols to the Thomas More Society at Old Hall, Lincoln's Inn, London, available on <http://rcdow.org.uk>, 25th of June, 2012, p. 1.

differs from individual to individual, but it can also be acquired or lost depending on one's conduct in society". Whereas the second one is "guaranteed in all persons in equal share simply by virtue of being human and thus cannot be damaged or disowned, in principle" (Song, 2015, pp. 3-4).

2.3. The Protection of Dignity in International Documents of Human Rights

After Auschwitz, human rights took a big importance in people's mind. Indeed, after World War Two, a desire of putting together universal principles on which everybody who agree emerged. The idea was that this reunion of principles would be a permanent bulwark against arbitrary action of state powers. And this is how, in 1948, was created the Universal Declaration of Human Rights¹, in which protection of dignity is mentioned in the preamble and in the first article. As these sources has already been mentioned, there is no need to go further on this idea. In the same year was created the Basic Law for the Federal Republic of Germany, and the first article protects dignity². We can notice that dignity is, most of the times, mentioned in the beginning of law texts. It shows the importance of dignity, and therefore, the importance of protecting this fundamental right. Similarly, the Geneva Conventions of 1949 provide that "outrages upon personal dignity, in particular humiliating and degrading treatment [...] shall remain prohibited at any time and at any place whatsoever"³.

Above all, respect of dignity is mostly mentioned concerning cares of people, i.e., in the medical field. And this protection of dignity shall be respected since the birth; thus, it's another way of saying that dignity is at the base of a human life. Let's introduce a case analysis of human dignity as an example: In a case about a pregnant woman who used cocaine and endangered her unborn child, the Alabama Supreme Court affirmed (8-1) that the word "child" includes "an unborn child," and that the law therefore "furthers the State's interest in protecting the life of children from the earliest stages of their development"⁴. In this case, the fetus should have been considered as a human, so the respect of its dignity was fundamental.

At the contrary, we can also find law texts which do not mention dignity at all. This is the case of the UK's Human Rights Act of 1998⁵. Similarly the UK courts have, unlike the European Court of Human Rights, rarely recognized the basis of human rights indignity. Does it mean that UK doesn't protect dignity as much as other countries?

¹UDHR, already mentioned.

² Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority. *Germany: Basic Law for the Federal Republic of Germany* (Germany), 23 May 1949, first article.

³ International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Treatment of Prisoners of War, Third Geneva Convention*, 12 August 1949, 75 UNTS 135, common article 3.

⁴ Ex parte Sarah Janie Hicks. Petition for writ of certiorari to the court of criminal appeals, In re: Sarah Janie Hicks v. State of Alabama, Enterprise Circuit Court: CC-09-268; Criminal Appeals: CR-09-0642, 18th of April, 2014.

⁵ *United Kingdom: Human Rights Act 1998*. United Kingdom of Great Britain and Northern Ireland, 9 November 1998.

3. The Combination of Dignity and the Modern World of Virtual Space

3.1. The Main Ways of Violating Human Dignity through Virtual Space

Although previous studies have acknowledged that apparition of Internet means a better way of life for people (either to help students (Rajshree & Day, 1998, pp. 99-110), or to socialize teenagers (Valkenburg & Jochen, 2009, pp. 1-5)), we must say that violations of rights are more frequent on the Web. Traditionally committed in real life, offences to human dignity took a new dimensions on the Internet. Assertion of freedom of expression and feeling of anonymity make easier for authors the commission of an offence to human dignity. Spreading images, texts, videos on the Internet which are an offence to human dignity is possible by several ways: channels, social media, spams ... The lack of rules leads to detrimental abuses of human dignity. Offences to human dignity can be found in many means: public defamation, insults, or false allegations.

The main social channel Facebook had quite a few cases concerning violation of privacy by hacking people's data, which is considered as a violation of dignity. On the 26th of August, 2013, an American judge approved the fact that Facebook will pay 20 millions of dollars for the use of mentions "Like", or names with commercial purposes¹. And this problem is mainly because of an unclear delimitation of either the Internet is a public or a private space. Indeed, the Internet is a space of communications, information, discussion, which is public. However, it seems that these practices often lead to publicize contents which are most of the times private.

Moreover, one of the main recurring problems on the Internet is hijacking. People who use virtual space in order to steal someone's data or even identity. Did your credit card never has been hacked? According to statistics, you may be part of these persons. Indeed, in 2015, domestic fraud in France represents an amount of 522, 7 millions of Euros². That's why punishment of this offence is an increasingly question. In a comparative study of French and Romanian criminal law on the subject of hijacking, we can notice that France always punishes by imprisonment and fines, whereas Romania always punishes by imprisonment. As an example, hindering a system operation is punishable by 5 years of imprisonment and 75 000€ of fine in France, and by 3 to 15 years of imprisonment in Romania. Another example can be given with alteration of data: it's punishable by 3 years of imprisonment and 45 000€ of fine in France, and by 2 to 7 years of imprisonment in Romania. Besides, sentence enhancements can be ordered by a French judge (article 323-5 of criminal Code) and attempts are also punishable.

Finally, we can add that offences to human dignity on the Internet are possible even after the death of the person, according to respect of death. And when offences on human dignity are spread via media, one and only one question is recurrent: how can we accommodate freedom of expression and protection of human dignity?

3.2. The Jurisprudence of European Court of Human Rights in this Domain

The Court focus on protection of dignity of under-age children, as we can notice in a recommendation of the European Parliament and of the Council³, dealing with the protection of minors and human

¹ Facebook will pay 20 millions of dollars for a litigation on sponsored commercials, web article, available on France24.com, 27th August 2013, p. 1.

² Based on the annual report of the French Banking Card Observatory, 2015, p. 19.

³ Recommendation 2006/952/CE, 20 december 2006, *Official Journal of the European Union* L 378, 27.12.2006.

dignity and on the right of reply in relation to the competitiveness of the European audiovisual and on-line information services industry. This recommendation encourage to take a further step towards an establishment of an effective cooperation between Members States, industry and other concerned actors, regarding protection of minors and human dignity on the Internet. This recommendation completes another recommendation of the Council¹, which deals with the same subject, taking account of recent technologic developments. This relates to making sure that the content of the audiovisual services stays lawful, respects principle of human dignity and doesn't cause damage to development of minors.

De facto, even if the Internet is still a new legal object for European Court of Human Rights, its legal trends regarding freedom of expression on the Internet presage a contradictory approach and show some suspicion from the European judges on this communication network. However, when judges underline the "specific nature" of the Internet against traditional media, it often is to justify bigger restrictions of liberties than with other media, or to find out specific duties and responsibilities on the one who express themselves on the Internet. For the Internet as for other media, the Court validates certain prohibited expressions for categories of discourses, which the Court evaluates they exceed the limits of acceptable criticism. Let's take the case "Willem v. France" as an example². In 2002, a mayor announced on his website his will to boycott Israeli products in his municipality. The Court ruled that even though his intention was to denounce Israeli policy, calls for a boycott was a discriminatory measure. This way, we can notice that the Court deeply tries to protect rights, especially dignity, which was the question here as discrimination was the matter.

3.3. How to Stop the Violation of Dignity through Virtual Space?

There is a main way to protect dignity through virtual space: the right to be forgotten. New EU data protection legislation aims to create a uniform set of rules across the EU fit for the digital era, improve certainty as to the law and boost trust in the digital single market for citizens and businesses alike. Clear and affirmative consent to data processing, the right to be forgotten and tough fines for firms breaking the rules are some of the new features. The regulation will replace the EU data protection directive which dates from 1995³, when the internet was still in its infancy. It will replace the current patchwork of national laws with a single set of rules designed to give citizens more control over their own private information in a digitized world of smart phones, social media, internet banking and global transfers. The right to be forgotten is an important step for people: it gives them a control on their numerical life. The issue has arisen from desires of individuals to "determine the development of their life in an autonomous way, without being perpetually or periodically stigmatized as a consequence of a specific action performed in the past" (Mantelero, 2013, pp. 229–235). The right to be forgotten is the concept that individuals have the civil right to request that personal information be removed from the Internet.

¹ Recommendation 98/560/CE, 24 September 1998, *Official Journal* L 270, 07/10/1998 P. 0048 – 0055.

² *European Court of Human Rights*, 16th July 2009, *Willem v. France*, n°10883/05.

³ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, *Official Journal* L 281, 23/11/1995 P. 0031 – 0050.

And who is the main actor concerned? Google, of course. Google will begin blocking search results across all of its domains when a search takes place within Europe, in an extension of how it implements the “right to be forgotten” ruling. In September 2015, the French data protection authority threatened to fine Google if it did not scrub search results globally across all versions of its website, not just European domains. The company claimed doing so would have a chilling effect on the free flow of information, but has now relented. As a matter of fact, Google said it has received 386,038 “right to be forgotten” removal requests since the ruling, and has accepted approximately 42% of them. This shows how deep people care about their privacy on the Internet, or in any case, how they became aware that their rights, including dignity above all, can be abused. But as usual, there were drifts, and that’s why this European decision is a matter of debate. For instance, an unhappy doctor who received negative feedbacks by his patients, or even a man condemned to possession of child pornographic images. The first asked Google not to make the negative comments public when someone is searching for his name, and the second doesn’t want to see anymore his name related to articles mentioning his past.

Consequently, it seems that Internet is the one which truly controls rights nowadays. But do we have to adapt to the new technological age or at the contrary, fear for protection of our rights and “fight back”?

3.4. A National Legislation that can Inhibit Insult and Slander through Virtual Space

Of course, even though protecting dignity through virtual is harder, we can find some national legislations that inhibit insult and slander through this space. Some problems arose with the Internet, and hate speech online is one such problem. Any response that limits speech needs to be very carefully weighed to ensure that this remains wholly exceptional, and that legitimate robust debate is not curtailed; and any limitations need to be specified in law. The Internet’s speed and reach makes it difficult for governments to enforce national legislation in the virtual world. In national and international legislation, hate speech refers to expressions that advocate incitement to harm (particularly, discrimination, hostility or violence) based upon the target’s being identified with a certain social or demographic group. Much comparative research on hate speech, for example, has focused on the divide that exists between the American and European approaches to regulating hate speech. The United States has protection of freedom of expression that stretches well beyond the boundaries of speech that is tolerated in Europe. The United States’ approach is strongly influenced by the First Amendment of the federal Constitution, and hate speech, being considered close to political speech, falls under its protection most of the time (Timofeeva, 2003, p. 2). Numerous European countries, have adopted an approach that not only bans forms of speech because of their likelihood to lead to harm, but also for their intrinsic content. In Germany, for example, it is illegal to promote Nazi ideology. In Denmark, France, Britain, Germany and Canada people have been prosecuted for crimes involving hate speech on the Internet¹. Other societies have developed unique mechanisms to identify and counter hate speech. For instance, in Somalia, poets who are composing poems which are derogatory of individuals or groups, can be banned from composing new work (Stremlau, 2012, pp. 2–3). There are also some extreme examples of national laws, especially when it comes to hate speech directed at religious groups. For example, under the Bangladesh cyber laws, a blogger or Internet

¹The Legal Project. *European Hate Speech Laws*. Available at: <http://www.legal-project.org/issues/european-hate-speech-laws>.

writer can face up to ten years in jail for defaming a religion¹. However, this is contradictory to the most international treaties, which view hate speech as directed to individuals and groups, not belief systems.

The outlined differences in national legal systems create a real challenge when it comes to online hate speech. If some extremist content could be illegal and subject to removal in a European country, it cannot always be removed because their servers are often located in US where there are no legal grounds for its removal. A ready example of this kind of complications is the case in 2000, when France prosecuted the Sunnyvale-based Yahoo for selling Nazi memorabilia online. In France, it is illegal to display such items unless they are in a theatrical or museum setting. A French court ruled at the time that Yahoo had to make the auction site inaccessible to French users or pay a fine. Although it never legally accepted the French ruling, Yahoo eventually removed the auction (Timofeeva, 2003, p. 2).

So the question remains, who is responsible for monitoring and enforcing the hate speech regulations online? Is there really no one specific to point a finger at? The unification of the legislation would be useful, but it is too unlikely to set as a goal, since the roots of the differences go back to the culture and the constitutional law of the countries.

4. Conclusion

All things considered, we must admit that new uses from the Internet disrupt what is used as a reference to rights which govern the physical world. It seems necessary to extend protection of human dignity to numeric fields by the consecration of a principle of a numerical dignity right. It is clear from various case studies that the question of human dignity brings out a lot of questions in the areas of justice and equality in the society.

Nonetheless, the exception does prove the rule, and obviously there are some antithesis on the notion of dignity. Professor Pinker gives a pertinent example when he wrote an article named “The Stupidity of Dignity” (Pinker, 2008). According to him, this concept of dignity is “slippery and ambiguous”, and “leads to many contradictions”. Criticizing authors of a series of essays on dignity, he writes: “We read that slavery and degradation are morally wrong because they take someone's dignity away. But we also read that nothing you can do to a person, including enslaving or degrading him, can take his dignity away”. He claims that what we call dignity is a relative concept, that the idea we have of a worthy or unworthy conduct is definitively subjective, and that tyrannical regimes used the idea of dignity to force and impose their idea of what is a “good life”. Also according to him, the only effective use of dignity can be found in medical field, talking about cares: we should treat people “with dignity”. But he believes that even this is, in reality, synonym of a treatment in respect of their autonomy.

However, we can end remaining that dignity is the same for everyone. Could this notion apply to other forms of violations of human dignity when they're realized on the new uses of the Internet and numeric field?

¹ *Bangladesh protesters demand blasphemy law*. Available at:
<http://www.aljazeera.com/news/asia/2013/04/20134661058364976.html>.

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