Spring 2018

This course will study the use of “dignity” (and related concepts like “degradation”) in modern constitutional and human rights law, both in the U.S. and elsewhere and it will consider the historical and philosophical background to this concept. We will consider its relation to topics such as the treatment of detainees, the death penalty, anti-discrimination law, assisted suicide, and group rights. Among other topics, we will study the following: the meaning of prohibitions against inhuman and degrading treatment and against outrages on personal dignity; dignity as an ideal of personal conduct and bearing; dignity as the ground of human rights; the use of “dignity” in constitutional discourse; the differences between its use in American and European jurisprudence; human dignity as an egalitarian idea; dignity in relation to anti-discrimination law; group dignity; the relation between human dignity and older notions of dignity that were connected with rank and status; skepticism about the meaning of “dignity”; Kantian notions of dignity; the relation between dignity and respect for persons; the use of dignity in Catholic and natural law thought and its relation to imago dei; and the importance of dignity as a value underpinning the rule of law.

The class meets every Thursday afternoon at 3:00-4:50pm in Furman Hall 310,

Reading list: There is a significant amount of reading specified for each session (though less than in previous years). Consult the COURSE MATERIALS tab of the class web-site on NYU CLASSES for each week’s readings (corresponding to this syllabus). All material is available here unless otherwise indicated.

Purchase of the following books is strongly recommended:

Michael Rosen, *Dignity: its History and Meaning*
Harvard University Press, 2012 (around $20)

Jeremy Waldron, *Dignity, Rank and Rights*
Oxford University Press, September 23, 2012 (around $25)
Assessment

You are required to attend seminar sessions, submit brief discussion papers, participate in class, and write a paper for this course on a topic of your choosing. The topic must include a substantial material from the class but it may be oriented to topic areas that we have not dealt with. Topics should be agreed with JW by mid-March. The paper should be about 20 double-spaced pages.

Writing credit

If you would like writing credit for this course, you must produce a somewhat longer paper (around 40 pages), on a topic agreed with me by mid-March at the latest. I will expect to see a first draft by the end of the term. I will make comments and return that to you, so that you can then proceed to a final version for assessment.

PLUS

Discussion Papers

Each week, beginning on January 25 (Topic 2), you should send me by e-mail a very brief paragraph or two (maximum one page) on some aspect of the reading that you would like particularly to discuss or engage with. We will talk about these papers in the seminar. Please ensure that the papers reach me by 8pm each Wednesday.

You have three “passes” which may be used at any time to excuse you from this obligation for one week. So you only have to write ten of these brief discussion papers during the semester. Please let me know by Thursday morning when you are using one of your passes.
SYLLABUS AND READINGS

1. DWARF-TOSSING (Thursday, January 18)
   - *The Dwarf-Throwing Case* = expanded version of the Conseil d'Etat (CdE) decision in Commune Morsange-sur-Orge (1995), plus the CdE commentary on the case, plus the decision of the UN Human Rights Committee in the same case, under the title *Wackenheim v France* (2002)

2. THE USE OF “DIGNITY” IN HUMAN RIGHTS LAW AND IN CONSTITUTIONAL DISCOURSE (Thursday, January 25)
   - Preambles to UDHR and ICCPR and national constitutions
3. SKEPTICISM ABOUT DIGNITY (Thursday, February 1)

- Ruth Macklin, Dignity is a Useless Concept, 327 BRITISH MEDICAL JOURNAL 1419 (2003) available at http://www.bmj.com/cgi/content/full/327/7429/1419
- ANDREAS SANGIOVANNI, HUMANITY WITHOUT DIGNITY: MORAL EQUALITY, RESPECT, AND HUMAN RIGHTS (2017), ch. 1
- Jeremy Waldron, “What do the Philosophers Have against Dignity?”

4. THE WORK OF IMMANUEL KANT (Thursday, February 8)

- IMMANUEL KANT, GROUNDWORK TO THE METAPHYSICS OF MORALS, extract
- IMMANUEL KANT, THE METAPHYSICS OF MORALS, extracts (Photocopy)
- Michael Meyer, Kant’s Concept of Dignity and Modern Political Thought, 8 HISTORY OF EUROPEAN IDEAS (1987)
- MICHAEL ROSEN, DIGNITY: ITS MEANING AND USES, 19-31, 77-90, 142-56
- Oliver Sensen, Kant’s Conception of Human Dignity, 100 KANT-STUDIEN 309 (2009)
- Thomas Hill, Kantian Perspectives on the Rational Basis of Human Dignity, from CAMBRIDGE COMPANION TO HUMAN DIGNITY (2014)
  - -- see also discussion of this case in Michael ROSEN, DIGNITY, pp. 100-119
5. DIGNITY AND THE DEATH PENALTY (Thursday, February 15)

- *Gregg v Georgia* 428 US 153 (1976), Brennan opinion
- Hugo Bedau, *Human Dignity and the 8th Amendment*

6. DIGNITY AND RESPECT FOR HUMAN LIFE IN RELIGIOUS THINKING (Tuesday, February 22)

7. DIGNITY IN BIOETHICS (Thursday, March 1)

- Human Dignity and Bioethics: Essays Commissioned by the President’s Council on Bioethics (Washington D.C., 2008), essays by (1) Schulman and (2) Davis, available at https://bioethicsarchive.georgetown.edu/pcbe/reports/human_dignity/

- Human Cloning and Human Dignity: An Ethical Inquiry (President’s Council on Bioethics, 2002), Executive Summary and Ch. 6, available at https://bioethicsarchive.georgetown.edu/pcbe/reports/cloningreport/

- Letters by Kahn, Harris, Shapiro in Nature vols. 387-388


- Steven Malby, Human Dignity and Human Cloning, Health and Human Rights, 6 (2002)

8. DEATH WITH DIGNITY: EUTHANASIA (OR ASSISTED SUICIDE) AND RELATED ISSUES (Thursday, March 8)

- Ronald Dworkin, Life’s Dominion, extracts

- Jeremy Waldron, The Dignity of Old Age, NYU School of Law, Public Law Research Paper No. 17-41


9. PROHIBITIONS AGAINST INHUMAN AND DEGRADING TREATMENT  (Thursday, March 22)

- **Avishai Margalit**, *The Decent Society* (1996), Chs. 6 & 7
- Public Committee Against Torture v. State of Israel HCJ 5100/94 (1999) -- references to "dignity" at paragraphs 24-5, 27, and 30-

10: DIGNITY AND RANK: THE INSTRUCTOR’S VIEW OF DIGNITY  (Thursday, March 29)

- **Jeremy Waldron**, *Dignity, Rank and Rights*; also read commentaries by Rosen and Herzog
- **James Whitman**, *Harsh Justice*, Introduction (though the whole book is worth reading)
- Gregory Vlastos, *Justice and Equality* in Waldron (ed.) *Theories of Rights*
11. DIGNITY IN NON-INDIVIDUALIST CONTEXTS: GROUP DIGNITY; SOVEREIGN DIGNITY. (Thursday, April 5)

- Extract from Emeric Vattel, *The Law of Nations*

12. RONALD DWORINKIN and STEPHEN DARWALL ON DIGNITY (Thursday, April 12)

- **RONALD DWORINKIN**, *Taking Rights Seriously* (1977), brief extract
- **RONALD DWORINKIN**, *Is Democracy Possible Here?* (2008) extracts
- **RONALD DWORINKIN**, *Justice for Hedgehogs* (2011), extract

13. DIGNITY IN ANTIDISCRIMINATION LAW (Thursday, April 19)

- South African cases:

- Canadian cases:
  - R. v Kapp 2008 SCC 41 at § 22
  - Law v. Canada (Minister of Employment & Immigration) [1999] 1 S.C.R.

- R. James Fyfe, Dignity as Theory: Competing Conceptions of Human Dignity at the Supreme Court of Canada (2007), 70 SASK. L. REV. 1


- Denise Réaume, Discrimination and Dignity, 63 LOUISIANA LR 645 (2002-3)

- Heart of Atlanta Motel Inc. v. United States, 379 U.S. 241 (1964)

14. THE DIGNITY OF CITIZENSHIP (Thursday, April 26)

- Trop v. Dulles 356 US 86 (1958), esp. 100-103


