



Working

**THE ARAB ROAD TO DIGNITY:
THE GOAL OF THE "ARAB SPRING"**

ANDREA PIN

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**THE ARAB ROAD TO DIGNITY:
THE GOAL OF THE “ARAB SPRING”***

Andrea Pin

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ABSTRACT

The paper explores how the idea of human dignity has developed in Arab constitutionalism through the decades and reflects on its meaning and implications in the framework of the new constitutional texts, given the concept's prominence in the post-Arab Spring context.

First the paper sheds light on how Arab legal culture understands dignity, exploring both its religious and secular roots: we find the first constitutionalization of dignity in the 1926 Lebanese constitution, where that concept commanded respect toward religions. Then the paper explores the success of the idea of dignity at the drafting of the Universal Declaration of Human Rights, when the Lebanese scholar Charles Malik played a leading role in emphasizing dignity throughout the text and universalizing it to encompass all human beings. Next, the paper sequences how the Arab states have used the concept and shows that their constitutions have incorporated and expounded the idea of human dignity progressively, with the post-Arab Spring constitutional texts reinforcing its use once more. Finally, the paper offers some brief observations about how the use of dignity in Arab constitutionalism parallels the development of the same concept in Western legal culture, which has blended secular thinking with religious thinking.

Notwithstanding its widespread adoption, the meaning and implications of the constitutionalization of dignity remain uncertain; its fate will largely depend on how Arab legal culture will balance human rights with Islamic rules.

RESUMEN

Este artículo explora el desarrollo a lo largo de varias décadas de la idea de dignidad humana en el constitucionalismo árabe y hace algunas reflexiones acerca de su significado y sus implicancias en el marco de nuevos textos constitucionales y a la luz de éxito de este concepto en el contexto posterior a la Primavera Árabe. Primero, el artículo hecha luz sobre cómo se entiende la dignidad en la cultura legal árabe y explora tanto sus raíces seculares como las religiosas: encuentra que la primera constitucionalización de la dignidad tuvo lugar en la Constitución libanesa de 1926, texto en el que ese concepto ordenaba respetar a las religiones. Luego, el artículo explora el éxito de la idea de dignidad en la elaboración de la Declaración Universal de los Derechos Humanos, ocasión en la que el académico libanés Charles Malik jugó un rol protagónico al incluir este concepto a lo largo del texto y universalizarlo para incluir a todos los seres humanos. Luego, el artículo relata cómo los estados árabes han usado este concepto y muestra que las constituciones árabes han incluido y expandido progresivamente la idea de dignidad humana que las constituciones posteriores a la primavera árabe han reforzado una vez más. Finalmente, el artículo observa brevemente cómo el uso de la idea de dignidad en el constitucionalismo árabe acompaña el desarrollo del mismo concepto en la cultura legal occidental, que ha integrado el pensamiento secular con el pensamiento religioso. Aún con su extensa difusión, el significado y las implicancias de la constitucionalización de la dignidad siguen siendo inciertos, su destino dependerá en buena medida del modo en que la cultura legal árabe equilibre los derechos humanos con las reglas del Islam.

[T]ruth has a way always of revealing itself
 in time to the inquiring mind
 —Charles Malik¹, *The Near East*, 255

INTRODUCTION: “BREAD, FREEDOM, SOCIAL JUSTICE, AND HUMAN DIGNITY”

If one looks back at the entire twenty-first century, the geographic area populated by Arabs has seen revolts in fourteen countries² and seventeen constitutional changes.³ But it is thanks to the revolts and protests that have mushroomed in Arab countries from 2010 onward that the majority of legal changes have taken place. Revolts and revolutions there have taken very different shapes. Only some have led to the establishment of new constitutions, whereas others have promulgated sizable changes in their countries’ constitutional frameworks; some have been suffocated in blood, while others are still in the making. Since 2010 and the awakening of the Arab Spring, nine countries have changed their constitutions, with Egypt having done so twice (both in 2012 and in 2014).

Such changes have not assuaged world public concern about the status of the Arab area. Doubts span from the new regimes’ stability to their level of democracy and protection of human rights, with considerable differences, say, between the hope for Tunisia, which observers believe to be the most promising country having experienced the Arab Spring, the uncertainties of Egypt, the political disorder in Syria and Yemen, and the extremely weak expectations for Libya, which does not seem to have experienced national unity of any kind throughout its history.⁴

Considering the poor records of the political leaders who had remained in place after a

¹ Charles Malik, *The Near East: The Search for Truth*, 30 FOREIGN AFFAIRS, no. 2, Jan. 1952, at 255, 239 [hereinafter Malik, *The Near East*].

² From West to East: Morocco, Algeria, Tunisia, Libya, Egypt, Jordan, Syria, Iraq, Saudi Arabia, Yemen, Kuwait, Bahrain, Qatar, Oman.

³ Morocco, Mauritania, Algeria, Tunisia, Libya, Egypt, Jordan, Syria, Iraq, Saudi Arabia, Yemen, Somalia, Kuwait, Bahrain, Qatar, United Arab Emirates.

⁴ Anthony Billingsley, *Writing Constitutions in the Wake of the Arab Spring: The Challenge of Consolidating Democracy*, FOREIGN AFFAIRS (Nov. 30, 2011), <https://www.foreignaffairs.com/articles/libya/2011-11-30/writing-constitutions-wake-arab-spring>. See Ebrahim Moosa, *Political Theology in the Aftermath of the Arab Spring*, in THE AFRICAN RENAISSANCE AND THE AFRO-ARAB SPRING 101, 102 (Charles Villa-Vicencio, Erik Doxtader, and Ebrahim Moosa eds., 2015) (discussing the Arab Spring’s effects).

constitutional change, the instability—if not chaos—that the revolutions have prompted, and the rise of new Islamist forces, many voices have warned that the Arab Spring cannot achieve its goals.

Understandably, much of the existing legal scholarship that has dealt with the recent reforms has focused on the basic principles of the rule of law, state institutions' accountability, or the relationship between the constitutions and Islamic law. Global hopes that truly democratic regimes would rise after the Arab Spring, making their way between the Scylla of authoritarianism and Charybdis of Islamism, have been particularly high.

This dilemma between contemporary constitutionalism and theocracy is not unique to Islamic countries. Actually, it is typical of any intellectual framework that reflects on the compatibility of religion with any other disciplines: as Prof. Malcolm Evans has pointed out: [q]uestions of “Religion and...” are prone to generate controversy.... Juxtaposing religion with something else immediately tends to summon up a hermeneutic of opposition which, rather than facilitating an exploration of the relationship at hand, often has the effect of calling into the question the legitimacy of there being a relationship at all. Nowhere does this seem to be truer than in the context of religion and human rights, where the relationship is so often assumed to be one of contradiction, if not of outright conflict.⁵

The modern history of many Arab and Islamic states lends itself to such a dilemmatic approach, however. The famous national and international efforts that, in previous decades, toppled the Shah in Iran and the Soviet control of Afghanistan ultimately had led to the instauration of pro-Islamic law regimes. Reflecting on the future that awaits the rule of law, democracy, human rights' protection, and institutional accountability in North Africa and the Middle East requires historical awareness: there are numerous reasons for an “increasing attention to...radical Islamism.”⁶

Speculating about the compatibility between Islam and human rights is not the only way to determine what Arabs are trying to achieve through political and legal changes. Actually, it fails to understand *why* the suicidal act of a young Tunisian grocer on the edge of misery, who set himself on fire in late 2010, prompted a series of collective acts that has changed at least the legal and political face of Arab countries.

⁵ Malcolm D. Evans, “*And Should the First Be Last?*” 2014 BYU L. REV. 531, 531 (2014).

⁶ Paul Cliteur, *State and Religion against the Backdrop of Religious Radicalism*, 1 INT’L J. CONSTIT. L. 10, 127 (2012).

The Arabs who occupied the roads of Cairo, Tunis, Damascus, Amman, and many other cities did not call simply for the enforcement of *human rights* or *Islamic law*.

In Egypt, the most populated Arab country, the early rallying cry of the 2011 revolution was “Bread, Freedom, Social Justice, and Human Dignity,” and it was later enshrined in the 2012 and 2014 constitutions’ Preambles. Such words capture the several layers of concern that have prompted the revolutions. The “bread” was lacking because of domestic and international crises, which worsened endemic poverty in the Arab region;⁷ “social justice” was a long-awaited goal amongst Arab masses, who had sought individual and collective achievements for decades after colonization;⁸ “human dignity” signified getting rid of both authoritarian regimes and poverty at the same time. And the violent resistance with which some regimes met revolts did nothing but confirm that regime change was needed precisely for the sake of human dignity.⁹

Such a rallying cry has not been stifled by the Muslim Brotherhood’s parliament in Egypt. It remains a core argument in the contemporary political and legal debate throughout Arab countries. It directly mentions neither democracy nor human rights; nor does it reference Islamic law. It addresses very basic needs, which seem to lie beyond any ideology, whether liberal, socialist, or Islamist. This is especially true with regard to Islamic law: the Arab Spring, overall, “was not a call for a theocratic government or an Islamic government.”¹⁰

Interestingly, the expression “bread, freedom, social justice, and human dignity” has been synthesized in a single word, which has become extremely popular and, no doubt, abundant in the new constitutional texts: *karāma*—dignity.¹¹ The widespread¹² use of this Arabic word and the rallying cry mentioned above give the impression that a sizable part of the Western debate on

⁷ Martin Beck & Simone Hüser, *Political Change in the Middle East: An Attempt to Analyze the “Arab Spring”* 6 (GIGA Working Paper No. 203, Aug.3, 2012), https://www.giga-hamburg.de/de/system/files/publications/wp203_beck-hueser.pdf (reporting statistics according to which 41 percent of the area population lives below the poverty line).

⁸ M.A. MOHAMED SALIH, *ECONOMIC DEVELOPMENT AND POLITICAL ACTION IN THE ARAB WORLD* 15 (2014). “[T]he Arab Spring cannot be reduced to an abrupt uprising in which the opportunity for rebellion prevailed; nor can it be explained as the product of a few weeks or a few months of youth anger mobilized by social media. . . . The rise of a youth consciousness has emanated from the miserable and unbearable living conditions generated by underdevelopment and not merely by media as a mobilization tool.” *Id.*

⁹ Jordan J. Paust, *International Law, Dignity, Democracy, and the Arab Spring*, 46 *CORNELL INT’L L. J.* 1, 4 (2013).

¹⁰ Khaled Abou El Fadl, *The Language of the Age: Shari’a and Natural Justice in the Egyptian Revolution*, 52 *HARV. INT’L L.J. ONLINE* 311, 312 (2011)..

¹¹ Beck & Hüser, *supra* note 7, at 7.

¹² “Dignity” was advocated also by the Islamist thinker Yusuf al-Qaradawi in Egypt. Abou El Fadl, *supra* note 11, at 317.

new constitutions has to do with international fears at least as much as with concrete Arab goals. In other words, a relevant part of the debate stems from Western expectations and preoccupations regarding Arab states' new constitutions, rather than from the genuine expectations that Arabs have enshrined in their constitutions.

It is precisely the idea of *dignity* in Arab constitutions that this paper aims to address. The idea of *dignity*, albeit already common for decades, now abounds in post-Arab Spring constitutions. It is therefore not just a *political concept*. It is a crucial *constitutional concept*, which has mobilized millions of people and received increased attention in constitutional texts.

Needless to say, the fact that it has been enshrined in several constitutions does not make its meaning and implications more ascertained. The idea of dignity itself constitutes a hot topic for contemporary international debate,¹³ but (or, more probably, because) its features are diversely conceived in time and space. Although it is “becoming a commonplace in the legal texts providing for human rights protections in many jurisdictions,”¹⁴ its meaning is full of uncertainties, and its implications are vague. Uncertainties abound in the Arab constitutional framework: supranational institutions such as the European Commission for Democracy through Law, a.k.a. the Venice Commission, which promotes democracy practically worldwide through advisory opinions that are believed to act as a sort of soft law,¹⁵ do not hide their concerns that basic rights may not be respected in post–Arab Spring countries.¹⁶ Since dignity fits squarely within the global framework of constitutional concepts, an analysis of how this concept is played out in Arab constitutionalism will both allow some clarification about the ways in which *Arabs* think about dignity and also contribute to the *universal* understanding of it. This regional focus on the Arab conception of dignity fills a hole in the global picture of dignity.

The central thesis of this paper is that *karāma*—the Arabic word for dignity—captures both the attempt of Arab constitutionalism to align itself to contemporary trends in human rights' protection, democracy, and rule of law and its distinctive patterns. The role of *karāma* may vary depending on the constitutional and political framework in which it is deployed, but this is quite usual for any use of dignity in contemporary constitutionalism. Authoritarian or theocratic

¹³ Paust, *supra* note 9, at 2.

¹⁴ Christopher McCrudden, *Human Dignity and Judicial Interpretation of Human Rights*, 19 EUR. J. INT'L L. 656, 656 (2008) [hereinafter McCrudden, *Human Dignity*].

¹⁵ Wolfgang Hoffmann-Riem, *The Venice Commission of the Council of Europe—Standards and Impact*, 25 EUR. J. INT'L L. 579, 580 (2014).

¹⁶ *Id.* at 583.

powers can hijack its meaning or implications; but dignity itself may play a significant role in shaping a new course for Arab countries. It is an extremely creative concept, which draws from Islamic tradition as well as from Christian and liberal lineages. It is a web of different intellectual strands, and yet it does not represent a form of cultural neo-colonization of Arab law by the West. And it is surely best understood as the hybridization of religious thinking and legal thinking.

As might be expected, the issue of “how to deal with the concept of human dignity in different languages” is “immensely difficult,”¹⁷ and this is true of its Arabic version, *karāma*. In a nutshell, this word initially is used in the Lebanese and Syrian constitutional texts to convey the reputation and honor of both the state and religion. After the Universal Declaration of Human Rights, it refers to human beings but never really loses its reference to the state’s protection and the status of collective bodies more broadly. Recalling Malcolm Evans’s considerations, rather than from the juxtaposition of religion and human rights that usually creates “opposition,”¹⁸ a study of *karāma* helps understanding “*each* in terms of *each* other: not as forces *pulling in opposite directions* but as forces directed *at a common endeavor*,”¹⁹ although they may diverge in what such an endeavor entails.

Since the paper focuses on the idea of dignity, it will leave aside the constitutional engineering that promulgates democratic elections, accountable institutions, and long lists of human rights. While there is an obvious connection between the conception of the human person and the institutions that govern the state,²⁰ the meaning of “dignity” itself is at stake here. The research will not reflect specifically on the provisions that secure respect for Islam, its tenets, and its law, as such. Such provisions will be treated only to the extent that they help explain what Arabs really want and need. The paper aims to describe what the constitutional protection of *human dignity* means, as this term makes multiple appearances in the contemporary constitutions of the Arab world.

This paper will proceed as follows: The next part will preliminarily address the balance between the human rights and Islamic law provisions found throughout these constitutional texts

¹⁷ McCrudden, *Human Dignity*, *supra* note 14, at 712.

¹⁸ Evans, *supra* note 5, at 531.

¹⁹ *Id.* at 537.

²⁰ AHARON BARAK, DIGNITY: THE CONSTITUTIONAL VALUE AND THE CONSTITUTIONAL RIGHT (2015). “There is considerable overlap—complementary or conflicting—between the right to human dignity and to the other constitutional rights.” *Id.*

and prove that neither really can be seen as the main purpose of the new Arab constitutions, from a legal point of view. This will establish the ground for a reflection in the third part on the religious Islamic roots as well as the legal roots of the concept, as it appeared historically in constitutional texts. The fourth part will locate the cultural watershed in international human rights law implementation at the end of World War II and highlight the role that the Charter of the United Nations and the Universal Declaration of Human Rights played in boosting the concept of dignity. The next part will explore the success of *karāma* throughout Arab constitutions and Islamic international documents: this part will sequence the utilizations of the concept through the decades, contextualize each constitutional framework, and analyze the multiple meanings that attach to the contemporary use of the concept. In the sixth part a short survey of the Western journey that the idea of “dignity” underwent will provide room for comparison. The final part will identify the deep significance of *karāma* in the context of the global debate on the meaning of dignity, singling out its specificities and suggesting some possible future developments of the concept in the Arab constitutional environment.

It goes without saying that provisions protecting human dignity do not necessarily correspond to the true intentions of those who have framed, inspired, or voted for them. Of course there can be many more—even contradictory—interests that hide under the texts’ surfaces; statistics even indicate that countries whose constitutions more often mention dignity are less likely to be democratic and free societies.²¹ The constitutional fortune of a concept does not secure its factual enforcement. This exploration therefore cannot draw any firm conclusions about the protection of human rights in the countries that have included the concept of “dignity” in their constitutional frameworks.

Nonetheless, constitutional texts provide a powerful tool through which institutions try to legitimize themselves, acquire social and political stability, and propose a new pact for their citizens. In a word, they are *manifestos* of what the leading elites want to convey to their citizens and the international public.²²

²¹ Doron Shulztiner & Guy E. Carmi, *Human Dignity in National Constitutions: Functions, Promises and Dangers*, 62 AM. J. COMP. L. 461, 489 (2014).

²² Nimer Sultany, *Religion and Constitutionalism: Lessons from American and Islamic Constitutionalism*, 28 EMORY INT’L L. REV. 345, 357 (2014). “[T]he effect of constitutions is quite limited and is related to the dominant political culture, the efficacy of the political system, and social processes.” *Id.*

The deep connection between human rights and Islamic tradition in *karāma* becomes evident if it is seen in its progressive, historical development, in contrast with the modern evolution of the concept of “dignity” itself. This will show that *karāma* naturally interplays with religion and human rights, rather than working simply to reconcile them *ex post facto*.²³

THE ROLE OF CONSTITUTIONS: BEYOND ISLAMIC LAW AND HUMAN RIGHTS

Virtually all of the constitutional texts that are enforced in Arab countries entrench the protection of Islam; and many of them, with the exception of the Tunisian constitution, reserve a specific role for Islamic law. Whether they make it the “main source of legislation,” only “one source” of legislation, or place it above parliamentary legislation so that no state law can contradict Islamic law, there is no doubt that the revolutions have highlighted Islamic law in the field of constitutional law. This aspect deserves preliminary attention, in order to set the stage for the investigation of dignity. In actuality, it seems reasonable to believe that Islamic law does not necessarily play an overwhelming role in these constitutions and should not be considered the main concern of Arab peoples.

This religious wave is commonly traced back to the Khomeini’s revolution in Iran, and even earlier to his writings.²⁴ He had found—so the story goes—an outlet for the legal ideas that the Sunni ancestors of the Sunni Muslim Brotherhood, such as Hasan-al Banna and Sayyid Qutb, and other Islamist theorists, such as Abu-‘Ala Mawdudi, had developed in the previous decades, as well as those of much older Shiite medieval scholars.

It is certainly true that constitutional texts since the 1970s have increasingly given room to Islam and Islamic law in Islamic and Arab countries,²⁵ with Lebanon’s text being the only notable exception.²⁶ In fact, the Iraqi constitution under Saddam Hussein did not mention Islamic law; it was only after international intervention and under American supervision that the hotly

²³ Evans, *supra* note 5, at 534.

²⁴ Cliteur, *supra* note 6, at 135.

²⁵ Clark B. Lombardi, *Designing Islamic Constitutions: Past Trends and Options for a Democratic Future*, 11 INT’L J. CONST. L. 615, 620 (2013) [hereinafter Lombardi, *Designing Islamic Constitutions*].

²⁶ Mohamed Saeed M. Eltayeb, *The Prohibition of Incitement to National, Racial or Religious Hatred: The Case of West Asian Arab Countries*, 7 RELIG. & HUM. RTS. 95, 101 (2012).

criticized²⁷ new Iraqi constitution²⁸ included Islamic law among its sources of legislation.²⁹ But the reasons leading to the adoption of provisions that protect Islam and Islamic law neither are inextricably connected with the implementation of Islamist policies, nor do they necessarily promote them.

Odd as it may seem, this trend of Islamic law protection and implementation goes hand in hand with the implementation of democracy and human rights.³⁰ There seems to be some empirical evidence that the same young generations who want democracy at the same time desire constitutional protection for Islam and Islamic law.³¹ If the attachment to Islamic tradition is strong, so is the quest for both international legitimization and the achievement of global standards in human rights protection, such as judicial review.³² Although Islamic law has no equivalent in contemporary human rights law,³³ the two legal traditions stand side by side in the most recent Arab (and Islamic countries') constitutions.

The example of the Somali constitution is quite significant in this respect. The text repeatedly says that Islamic law (*Shari'a*) is protected.³⁴ Nonetheless, it places Islamic law alongside international law and other countries' domestic law, which it gives such a high status that it has few analogs in the contemporary constitutional landscape on a global scale—with the

²⁷ Saad N. Jawad, *The Iraqi Constitution: Structural Flaws and Political Implications* 5 (LSE Middle East Centre Paper Series 01, Nov. 2013), <http://www.lse.ac.uk/middleEastCentre/publications/Paper-Series/Iraqi-Constitution.aspx> (synthesizing the criticisms concerning the too rapid constitution-making process, the societal divisiveness that it prompted, and the ignorance of the country's history).

²⁸ On the tortuous process of the 2005 Iraqi constitution, see Nathan J. Brown, *Bargaining and Imposing Constitutions: Private and Public Interests in the Iranian, Afghani and Iraqi Constitutional Experiments*, in CONSTITUTIONAL POLITICS IN THE MIDDLE EAST: WITH SPECIAL REFERENCE TO TURKEY, IRAQ, IRAN AND AFGHANISTAN 63, 68–69 (Saïd Amir Arjomand ed., 2008) (discussing the creation of the constitution) [hereinafter CONSTITUTIONAL POLITICS]; Andrew Arato, *From Interim to 'Permanent' Constitution in Iraq*, in CONSTITUTIONAL POLITICS, *supra*, at 165 (same).

²⁹ Dawood I. Ahmed and Tom Ginsburg, *Constitutional Islamization and Human Rights: The Surprising Origin and Spread of Islamic Supremacy in Constitutions*, 54 VA. J. INT'L L. 615, 615, 650 (2013).

³⁰ Eltayeb, *supra* note 26, at 102.

³¹ Veronica V. Kostenko et al., *Attitudes toward Gender Equality and Perception of Democracy in the Arab World* 2 (Nat'l Res. U., Higher Sch. of Econ. Working Paper, No. 50/SOC/2014, 2014). See Nicholas Fegen, *Thick or Thin? Defining the Rule of Law: Why the "Arab Spring" Calls for a Thin Rule of Law Theory*, 80 U.M.K.C. L. REV., 1187, 1207 (2012) (analyzing the Arab Spring).

³² Sultany, *supra* note 22, at 350.

³³ KRISTINE KALANGES, RELIGIOUS LIBERTY IN WESTERN AND ISLAMIC LAW: TOWARD A WORLD LEGAL TRADITION, 142 (2012).

³⁴ FEDERAL REPUBLIC OF SOMALIA PROVISIONAL CONSTITUTION 2012 art. 3 ¶ 1 & art. 40 ¶¶ 2 & 4, *unofficial translation available at* <http://unpos.unmissions.org/LinkClick.aspx?fileticket=RkJTOSpoMME=>.

notable exception of South Africa's constitution.³⁵ In fact, Art. no. 40 of the Somali constitution says:³⁶

1. When interpreting the rights set out in this Chapter, a court shall take an approach that seeks to achieve the purposes of the rights and the values that underlie them.

2. In interpreting these rights, the court may consider the Shari'a, international law, and decisions of courts in other countries, though it is not bound to follow these decisions.

...

4. The recognition of the fundamental rights set out in this Chapter does not deny the existence of any other rights that are recognized or conferred by Shari'a, or by customary law or legislation to the extent that they are consistent with the Shari'a and the Constitution.

In short, the Somali provisional constitution does not deny its Islamist tradition but blends it with a progressive interpretation of human rights.³⁷

Understanding the balance between Islamic legal values with democratic ones and human rights has kept scholars busy since the new Islamic constitutionalism was born. But new constitutional texts leave such balancing fairly open, since they contain the seeds of both Islamism and the rule of law.

The topic cannot be ignored or overlooked; actually, given the breadth of scholarly efforts to detect the level of new Arab constitutional loyalty to Islam and human rights, it is

³⁵ S. AFR. CONST., § 39 (1996) (the analogies with the Somali relevant constitutional provision quoted above are striking):

“When interpreting the Bill of Rights, a court, tribunal or forum

(a) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;

(b) must consider international law; and

(c) may consider foreign law. Where is number (1)?

(2) When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights.

(3) The Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by common law, customary law or legislation, to the extent that they are consistent with the Bill.” *Id.*

³⁶ When feasible, the paper provides a web link to a reliable English translation for each of the Arab constitutions it quotes. The author has personally checked the accuracy of the translations of the relevant texts, in order to make sure that translations match the originals.

³⁷ Matthew Cavedon, *Men of the Spear and Men of God: Islamism's Contributions to the New Somali State*, 28 EMORY INT'L L. REV. 481 (2014).

impossible to underestimate the issue. But there is reason to believe that the balance between democracy and Islamic law is not necessarily the whole core of Arab constitutionalism.

As to Islamic law, there are at least two reasons for affirming that this balancing is not the core concern of Arab constitutionalism: the first deals with the context of the references to Islamic law, while the second concerns the origins of such clauses of loyalty to Islamic law. Dawood Ahmed and Tom Ginsburg have offered ample documentation for both.³⁸ They have persuasively shown why the incorporation of Islamic law into constitutions is accompanied “by *more* human rights” provisions and these texts “are indeed even *more* rights-heavy” than others.³⁹

The first reason for affirming that the balance between Islamic law and human rights is not the whole issue of Arab constitutionalism is that clauses that refer to Islamic law are actually the fruits of political negotiation. Autocratic Arab leaders have repeatedly resorted to such references in order to increase their mass popularity when they were facing economic and military failures. Unsuccessful leadership has normally led to religious parties gaining votes and popularity by promising an alternative solution to national problems. The response of President Sadat in Egypt to this confrontation in late 1970s for example, was to promote the role of Islamic law from being “a source of legislation” to “a *main* source of legislation.”⁴⁰ And this same phenomenon has happened after the recent revolutions. “Liberals may want rights, and religiously inclined groups may want Islam. If each gets what it wants, the new constitution will contain both—rights and an Islamic supremacy clause.”⁴¹ Whether such provisions are enforced after formal negotiations in parliaments or under the pressure of a leader such as the head of a state makes little difference: not everyone wants Islamic law, but just one part of the population does.

This phenomenon explains the constitutional blending of clauses that protect Islamic law (the so-called “repugnancy clauses”)⁴² with more human rights provisions. Those who want human rights negotiate their introduction by conceding Islamic law repugnancy provisions. The legal contradiction that may seem to exist is explained by the fact that without the inclusion of

³⁸ Ahmed & Ginsburg, *supra* note 29, at 1.

³⁹ *Id.* at 12.

⁴⁰ *Id.* at 60. CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, Sept. 11, 1971, art. 2.

⁴¹ *Id.* at 14.

⁴² *Id.* at 18.

Islamic law, new rights could not pass. Such negotiations have taken place for at least fifty years, and they still go on today.

But a second factor that Ahmed and Ginsburg highlight is even more relevant in understanding the role of Islamic law in constitutional texts, since it can illuminate the “will” of Islamic law proponents.

Interestingly, the lengthy new constitutional texts do not have many—or detailed—references to Islamic law. This lack can be partially explained as an attempt to protect religious institutions: since the reference to Islamic law is only allusive and generic, those who control the interpretation and the enforcement of Islamic law are more likely to be religious leaders and religious schools than secular courts and institutions. It is not the state that governs the interpretation of religious law and determines whether state norms are compatible with it; rather, the religious institutions themselves govern the interpretation of Islamic law and therefore can say what the state can enforce as law.⁴³

But this is just a partial explanation at best. Perhaps this factor is not even very important, given the fact that Islamic institutions are normally government led,⁴⁴ so that there is actually no protection for autonomous Islamic thought.

The most persuasive explanation of the generic, but widespread, inclusion of references to Islamic law is that Islamic law has functioned as a *limit to—not a goal of*—Arab constitutionalism.

Dawood and Ginsberg have tracked the migration⁴⁵ of references to Islam from the 1861 Tunisian civil code to contemporary clauses.⁴⁶ Contemporary constitutional texts adopt the Islamic law repugnancy clause, following the pioneering 1907 Iranian constitution.⁴⁷ Such clauses, which have proliferated between 1990 and 2014,⁴⁸ do not necessarily command the active enforcement of Islamic law. Oftentimes *they merely prohibit any violation of Islamic law*.

⁴³ See Michel Troper, *Sovereignty and Laïcité*, in CONSTITUTIONAL SECULARISM IN AN AGE OF RELIGIOUS REVIVAL 147 (Susanna Mancini, M. Rosenfeld eds., 2014) (discussing laïcité).

⁴⁴ ANN K.S. LAMBTON, STATE AND GOVERNMENT IN MEDIEVAL ISLAM: AN INTRODUCTION TO THE STUDY OF ISLAMIC POLITICAL THEORY: THE JURISTS 13 (1981); OLIVIER ROY, L'ISLAM MONDIALISÉ 46 (2002).

⁴⁵ Ahmed & Ginsburg, *supra* note 29, at 18.

⁴⁶ But see Anver M. Emon, *Shari'a and the Modern State*, in ISLAMIC LAW AND INTERNATIONAL HUMAN RIGHTS LAW: SEARCHING FOR COMMON GROUND? 66 (Anver M. Emon et. al eds., 2012).

⁴⁷ Ahmed & Ginsburg, *supra* note 29, at 18.

⁴⁸ *Id.* at 22.

Hence Islamic law is neither the engine of change nor the backbone of political life. It creates bounds for what state institutions can do. It does not prescribe the future; it only limits it.

Even the constitutional provisions that literally prescribe the enforcement of Islamic law are of doubtful efficacy. This point is particularly important, since the constitutions drafted or amended in the wake of the Arab Spring have included provisions that do not simply put limitations on legislatures but affirm Islamic law to be *a*—or *the*—source of legislation.

This trend began in the 1950s, with the Syrian constitution of 1950,⁴⁹ and has led to a multiplicity of such clauses. Some constitutions have affirmed that Islamic law's *principles* must be enforced or, alternatively, that its *provisions* should be. But even the strongest versions of such clauses “stating that Islamic law is *the* chief source of legislation are generally understood today to mean that states are constitutionally barred from enacting un-Islamic legislation.”⁵⁰ Islamic jurists pushing for the wide adoption of Islamic jurisprudence as a country's eminent law have not succeeded in Arab countries for sixty years, notwithstanding the constitutional provisions formally favoring them.⁵¹

The constitutional significance of such provisions, whatever their wording is, has been little; it has seldom gone beyond occasionally, if at all, invalidating state legislation.⁵² The uncertain role of Islamic law repugnancy provisions in contemporary constitutional texts is confirmed by their poor enforcement in countries that have had such provisions for a sizeable amount of time. Between 2005 and 2010, for instance, “*the Federal Supreme Court of Iraq [has] rendered only a single ruling* respecting the conformity of any law to the ‘settled rulings of Islam’ despite the Court being empowered to engage in precisely this type of review.”⁵³ After all, it seems that “Iraqi jurists have been content with avoiding state enforcement of *Shari‘a* in the post-Saddam era.”⁵⁴

A third reason can be added to prove that new constitutions' long lists of rights and few mentions of Islamic law do not fit the picture of states fully and solely interested in enforcing

⁴⁹ Clark B. Lombardi, *Constitutional Provisions Making Sharia “A” or “The” Chief Source of Legislation: Where Did They Come From? What Do They Mean? Do They Matter?*, 28 AM. U. INT'L L. REV. 733, 737 (2013).

⁵⁰ *Id.* at 736.

⁵¹ *Id.* at 741.

⁵² *Id.* at 767.

⁵³ Haider Ala Hamoudi, *Ornamental Repugnancy: Identitarian Islam and the Iraqi Constitution*, 7 U. ST. THOMAS L.J. 692, 692 (2010).

⁵⁴ *Id.* at 708.

Shari‘a. Shari‘a is supposed to be a comprehensive body of rules, governing the whole spectrum of personal and social life. State institutions, in classical Islamic thought, are “fundamentally executive in nature.”⁵⁵ If the new constitutions aligned themselves to this concept, they would not need long lists of rights and provisions describing the balance of powers. This used to be the position of Saudi Arabia, which traditionally declined to have a constitution, stating that the state’s activities were the mere administrative implementation of Shari‘a. Conversely, almost all of the relevant constitutions are lengthy: Iraq’s has 144 articles; Somalia’s, 143; Syria’s, 157; Tunisia’s, 148; Egypt’s 237 (2012 constitution) and 247 (2014 constitution). This means that even the logic of Islamic law implementation is not respected.

From the previous observations comes a quite surprising preliminary conclusion. The promotion of Islam and Islamic law may not be among the core goals of Arab Springs. Obviously, time will tell: only parliaments and courts in the years to come will reveal how the rule of law and Islamic law can assimilate with each other.⁵⁶ But the fight for “Bread, freedom, social justice, and human dignity” does not fully coincide with a call for Shari‘a. Provisos regarding Shari‘a limit the legislators,⁵⁷ rather than guide them.

The second preliminary conclusion is that both the repugnancy clauses and constitutions’ long lists of human rights at minimum serve a common purpose: as proxies “for the legitimacy and effectiveness of a government regime.”⁵⁸ The “incorporation”⁵⁹ of Islamic law and the long list of human rights in recent constitutions both assist the constitution building process.⁶⁰ Although one might expect states with strong Islamic law traditions to have a “thin” understanding of concepts such as the rule of law or human rights,⁶¹ we actually see that the two

⁵⁵ KALANGES, *supra* note 33, at 87.

⁵⁶ Ahmed & Ginsburg, *supra* note 29, at 83.

⁵⁷ See BRIAN J. GRIM & ROGER FINKE, *THE PRICE OF FREEDOM DENIED: RELIGIOUS PERSECUTION AND CONFLICT IN THE TWENTY-FIRST CENTURY* 31 (2011) (empirically studying religious persecution).

⁵⁸ Nehal Bhuta, *Rethinking the Universality of Human Rights: A Comparative Historical Proposal for the Idea of ‘Common Ground’ with Other Moral Traditions*, in *ISLAMIC LAW AND INTERNATIONAL HUMAN RIGHTS LAW*, *supra* note 46, at 131.

⁵⁹ CHIBLI MALLAT, *INTRODUCTION TO MIDDLE EASTERN LAW* 158 (2014).

⁶⁰ See, e.g., Noah Feldman & Roman Martinez, *Constitutional Politics and Text in the New Iraq: An Experiment in Islamic Democracy*, 75 *FORDHAM L. REV.* 883, 884 (2006) (“[M]ore democracy [in the process] meant more Islam.”) On the Iraqi constitution drafting, see Ashley S. Deeks & Matthew D. Burton, *Iraq’s Constitution: A Drafting History*, 40 *CORNELL INT’L L.J.* 1, 1 (2007).

⁶¹ Fegen, *supra* note 31, at 1203.

components are particularly rich; this is because they serve each other in legitimizing constitutions.

Clark Lombardi, after reconsidering the impact of “Islamic law” clauses in contemporary Arab constitutions, concludes that

[t]hose who wish to predict or influence the trajectory of democracy and liberalism in the Arab world should not focus myopically on the question of how [such clauses are] worded or even on the question of whether national constitutions contain provisions requiring state law to respect Islam. They should focus at least as hard (and perhaps harder) on other questions of constitutional design and of social context.⁶²

Such questions, in Lombardi’s mind, pertain to the presence of a representative government, the conditions for a free and active civil society, the judicial protection of liberal rights, and a few other issues.⁶³ The fate of Islamic law provisions is therefore dependent on how they will be blended with these other constitutional values.

The place of dignity in the Arab constitutional landscape has not reached the widest attention yet. But its role actually could be more relevant than scholarship expects it to be: since it has characterized the transnational rallying cry of Arab revolts and revolutions, courts and legislatures are likely to use it in the near future. This is why it will be good to focus on the idea of “dignity” and on how it found its way into the Arab constitutions.

There is a striking but telling difference between the Iraqi post-Saddam constitution and the post-Arab Spring constitutions. The post-Saddam constitutional text was framed under close international supervision the like of which would not be repeated thereafter, and it focused in no small part on human rights.⁶⁴ Noah Feldman and Roman Martinez maintain that it enshrined “the basic principles of Islam, democracy, human rights, pluralism, and federalism.”⁶⁵ But the text did not pay too much attention to dignity, although it was already present in the modern Iraqi constitutional lexicon. It enshrined dignity only in Art. no. 22, which states that “[w]ork is a right for all Iraqis in a way that guarantees a *dignified* life for them,”⁶⁶ and in Art. no. 37, which proclaims that “[t]he liberty and dignity of man shall be protected.”⁶⁷

⁶² Lombardi, *Constitutional Provisions*, *supra* note 49, at 773.

⁶³ *Id.*

⁶⁴ Deeks & Burton, *supra* note 60, at 85.

⁶⁵ Feldman & Martinez, *supra* note 60, at 901.

⁶⁶ CONSTITUTION OF IRAQ, Oct. 15, 2005, art. 22 (emphasis added).

⁶⁷ *Id.* art. 37.

The post–Arab Spring constitutions, on the other hand, have made a more extensive, and sometimes newer, use of the idea of “dignity.” Arabs seem to have developed their latest constitutional texts more independently than the Iraqis did in 2004, and they decided to incorporate “dignity” much more abundantly. The changing fortune of *karāma* clearly arises from a priority in Arab constitutional culture, not from external influence.

THE CONSTITUTIONALIZATION OF DIGNITY IN ARAB COUNTRIES

Karāma: Its Meaning and Origins

The word *karāma* is rooted in Islamic theology, but its religious meaning is rather different from its first appearance in the Lebanese constitution in 1926, in which it was first used to convey the idea of “dignity.” Lebanon was a predominantly Christian country at that time, heavily influenced by French culture. Both the Islamic and Lebanese roots of *karāma* will be considered in order to explore the meaning of this word.

The Islamic Root

As the great intellectual Louis Gardet in the *Encyclopaedia of Islam* points out,⁶⁸ *karāma* is absent from the Koran. But, as the Arabic language develops using linguistic roots, its derivative concepts are very much present. In this respect, *karāma* may be considered to be the linguistic origin of *karūma*, which in the Koran means “to be generous, be beneficent, be *karīm*; *karīm* is one of the ‘99 Most beautiful names of God’ in the Islamic theology.”⁶⁹

Through frequent Islamic borrowings from Greek philosophical concepts,

[i]n the technical vocabulary of the religious sciences, *karāma*...assumes the sense of ‘charisma’, the favour bestowed by God completely freely and in superabundance. More precisely, the word comes to denote the ‘marvels’ wrought by the ‘friends of God’ [...] which God grants to them to bring about. These marvels most usually consist of miraculous happenings in the corporeal world, or else of predictions of the future, or else of interpretation of the secrets of hearts, etc.

This concept and its role in Islamic theology have been debated for centuries. Mystics and philosophers in different strands of Islam have contended with *karāma*’s nature and

⁶⁸ Louis Gardet, *Karāma*, in 4 THE ENCYCLOPEDIA OF ISLAM (2d ed. 2014).

⁶⁹ *Id.*

existence and focused on the human beings who benefit from such gifts.⁷⁰ Overall, the religious concept fluctuates between “grace,” understood as a charismatic gift or the capacity to perform miracles, or “miracles” in themselves.⁷¹

Although the term abounds in Islamic theology, it does not play a role in Islamic law that equates to that of “dignity” or *karāma* itself in contemporary constitutional texts. In fact, in traditional Islamic law contexts it retains the meaning of “miracle” or “grace.” *The Reliance of the Traveller*, a classic manual of Islamic law composed in the fourteenth century, does mention *karāma*, but only to convey the concept of “marvel.”⁷² Nor does Islamic jurisprudence seem to have incorporated this word later in the game: early twentieth-century modern commentaries and theories still use *karāma* to mean “marvel.”⁷³ In these commentaries, when a marvel happens it confirms that the sayings of somebody are veracious or that some Islamic authorities are legitimate.⁷⁴ But marvel’s usage does not reflect the concept of dignity as it is used in contemporary constitutions.

The great Iraqi Islamic law scholar Majid Khadduri, descendant of a Greek Orthodox family, in writing in 1946 about the outlook of the future development of human rights in Islam, stated that “efforts [had] to be made to develop new traditions necessary for protection of the rights of man and the self-respect and dignity of the individual.”⁷⁵ He felt Islamic tradition did not provide a clear idea of human dignity, although it had the resources to develop in that direction. He thought that Islamic law needed to craft an idea of human dignity as a “necessary prerequisite for adopting any bill of rights in any Moslem country if it is to be of practical value:”⁷⁶ a goal that he felt to be natural after “the fierce battles fought in Turkey, Egypt, and

⁷⁰ *Id.*

⁷¹ *Karamah*, in, THE OXFORD DICTIONARY OF ISLAM 166 (John L. Esposito ed., 2003).

⁷² A.I. NAQIB AL-MISRI, RELIANCE OF THE TRAVELLER (N.H. Mim Keller trans., Amana 1994).

⁷³ See Denise Aigle & Catherine Mayeur-Jaouen, *Miracle et karāma. Une approche comparatiste*, in MIRACLE ET KARAMA. HAGIOGRAPHIES MÉDIÉVALES COMPARÉES 13 (Denise Aigle ed., 2000) (“Ici, le miracle. Là, la *karāma*, un mot qui évoque, en français, le merveilleux et le prodige surnaturel; là, un autre qui renvoie, en arabe, au champ lexical de la générosité, du don, de la grace.”).

⁷⁴ See, e.g., DUNCAN B. MACDONALD, DEVELOPMENT OF MUSLIM THEOLOGY, JURISPRUDENCE AND CONSTITUTIONAL THEORY (1903) (discussing this concept).

⁷⁵ Majid Khadduri, *Human Rights in Islam*, 243 ANNALS OF THE AM. ACAD. OF POL. & SOC. SCI., Jan. 1946, at 77, 81.

⁷⁶ *Id.*

Persia for the liberty and equality of man.”⁷⁷ Note that, when referring to the Islamic law duty to respect “personal reputation,” he himself used the term *hurma*⁷⁸ (forbidden), not *karāma*.

Islamic legal doctrine also declined to use the religious sources of *karāma* as leverage when it tried to elaborate a notion of human dignity. Islamic law scholars do not normally use Koranic citations of *karāma* to convey the idea of dignity, although the Koran includes this relevant passage:

We have *bestowed dignity* (the two words are contained in *karamnā*—from *karāma*) on the progeny of Adam...and conferred on them special favours, above a great part of Our creation. (al-Isrā’, 17:70)⁷⁹

Even though contemporary scholars admit that the Koran “is expressive of the dignity of man in numerous places,”⁸⁰ that the Islamic law tradition expounds this concept thoroughly,⁸¹ and that “Islam has laid great emphasis on the dignity of man,”⁸² they do not support their arguments by examining the Islamic meaning of *karāma*. They rather compare the modern concern for human rights with the Koran and Islamic law’s sensitivity to human worthiness more broadly, to conclude that Islamic law holds dignity as one of its touchstones.

It seems understandable, however, that Islamic lawyers declined to draw from *karāma* to convey the idea of individual dignity that is given to all mankind as a gift from God. *Karāma* belongs to an anthropology that, at least until the twentieth century, focused almost exclusively on the relationship between God and man rather than that among human beings.⁸³ It described a vertical, not horizontal, relationship. Moreover, as already noticed, that Arab word traditionally conveys a *special* gift that is not universal, although it is certainly given by God.

The old use of *karāma* also cannot explain its prominence in the contemporary constitutional landscape throughout Arab countries. During recent decades, *karāma* has undergone a process of horizontalization and universalization that is specially evident in the

⁷⁷ *Id.* at 81.

⁷⁸ *Id.* at 78.

⁷⁹ MOHAMMAD HASHIM KAMALI, *THE DIGNITY OF MAN: AN ISLAMIC PERSPECTIVE* 1 (2002) (quoting and translating these passages).

⁸⁰ *Id.*, at xv.

⁸¹ *Id.* at xvi.

⁸² 1 *HUMAN RIGHTS IN ISLAM: THE MODERN PERSPECTIVE* 190 (Muzaffar Husain Syed ed., 2003).

⁸³ Lutz Richter-Bernburg, ‘*God Created Adam in His Likeness*’ in *the Muslim Tradition*, in *THE QUEST FOR A COMMON HUMANITY* 67, 77–78 (Katell Berthelot & Matthias Morgenstern eds., 2011).

1990 Cairo Declaration on Human Rights in Islam, to which we will return later. The opening article of the Cairo Declaration states:

All human beings form one family whose members are united by their subordination to Allah and descent from Adam. All men are equal in terms of basic *human dignity*.

The godly origin of *karāma* that the Declaration affirms is in line with the religious understanding of it. But its universality is not. Nor is it traditional to encapsulate the whole span of human rights and duties in that language. This is quite new.

It seems that Islamic legal thinking used *karāma* in a way that would convey the concept of human dignity only recently. It universalized⁸⁴ the idea of “special gift” that was originally attached to the word, in order to encompass all mankind and describe its special position on Earth.⁸⁵ It is a sort of genuine re-elaboration of Islamic concepts, prompted by modern trends and events. The two focal events that caused this evolution in Islamic legal thinking are the inception of the very word “dignity” for the first time in the Lebanese constitution (1926) and, later on, the drafting of the Universal Declaration of Human Rights (late 1940s). Both events point in the direction of Lebanon.

The Lebanese Root: Drafting the Lebanese Constitution

The first reference to human dignity in the Arab constitutional context goes back to before World War II. The oldest mention of *karāma* is to be found in the Lebanese constitution of 1926, which is still in force.

Art. no. 10 states that:

Freedom of education is established insofar as it is not contrary to public order and morals and does not affect the *dignity [karāma]* of any of the religions or sects. There shall be no violation of the right of religious communities to have their own schools provided they follow the general rules issued by the state regulating public instruction.

Here the concept clearly conveys a sense of “honor,” “reputation,” and “respect” for the religious groups that populate the country. In order to understand how and why the framers came

⁸⁴ David L. Johnston, *A Muslim and Christian Orientation to Human Rights: Human Dignity and Solidarity*, 24 IND. INT’L & COMP. L. REV. 899, 900 (2014).

⁸⁵ Richter-Bernburg, *supra* note 83, at 81.

to enshrine the concept in the constitutional document they were drafting, their novelty must be contextualized adequately.

There is scattered evidence among the sources that have inspired the Lebanese constitution that Lebanon borrowed the concept of “dignity” from other countries and, more specifically, from France. After all, this was in line with Lebanon’s aspiration of “being true to the best and truest in East and West alike,”⁸⁶ with a “burden of ‘mediation [of] and understanding’”⁸⁷ both cultures.

The Lebanese imported the idea of a written constitution from Europe; the text itself was drafted with considerable French input.⁸⁸ Many of its norms were borrowed from the French Constitution of the Third Republic (1875), with some elements being taken from the Second Republic (1848). Even though other influences were also apparent—most importantly, those of the Egyptian Constitution of 1923⁸⁹ and, to a lesser degree, the Constitutions of Switzerland and of the United States⁹⁰—France seems to have been the main inspiration for the inclusion of “dignity” in the Lebanese constitution.

This successful process that incorporated *karāma* in the text took place through close connections between the French mandate’s leaders and Lebanese politicians but also shows that the local leaders had much freedom to maneuver in framing Art. no. 10.

Unfortunately, details from the days in which “dignity” was drafted are not recorded.⁹¹ But indirect observations on what happened at the time the constitution was drafted can shed light on the inspiration of the incorporation of “dignity.”

⁸⁶ Malik, *The Near East*, *supra* note 1, at 239.

⁸⁷ *Id.*

⁸⁸ The Lebanese was not the first Arab constitutional text that drew inspiration from European sources: for the Belgian and Prussian influences over the Ottoman constitution of 1876, see Nathan Brown, *Regimes Reinventing Themselves: Constitutional Development in the Arab World*, in *CONSTITUTIONALISM AND POLITICAL RECONSTRUCTION* 50 (Said Amir Arjomand ed., 2007).

⁸⁹ Cordelia Koch, *The Separation of Powers in a Fragmented State: The Case of Lebanon*, in, *CONSTITUTIONALISM IN ISLAMIC COUNTRIES: BETWEEN UPHEAVAL AND CONTINUITY* 394 (Rainer Grote & Tilmann Röder eds., 2012). The author goes on to claim that there was also an influence from the “the Belgian Constitution of 1931” which, evidently, cannot be the case since the latter was released after the Lebanese constitution.

⁹⁰ *Id.*

⁹¹ EDMOND RABBATH, *LA FORMATION HISTORIQUE DU LIBAN POLITIQUE ET CONSTITUTIONNEL. ESSAI DE SYNTHÈSE*, NOUVELLE ÉDITION 392 (1986). “Du 10 décembre 1925 jusqu’au jour du 19 mai 1926, date à laquelle un projet de constitution fut soumis au Conseil, rien ne transpire des travaux de la commission. Les procès-verbaux des séances du conseil sont muets à cet regard.” *Id.*

In 1920, France created the state of the Great Lebanon⁹² and gave it a provisional governmental and administrative structure.⁹³ In 1922, it laid down the rules for governing Lebanon and established the Lebanon's Representative Council,⁹⁴ which functioned as a Parliament, and organized the election of its members.⁹⁵

The Lebanese constitution's drafting was initially understood as a distinct product of French diplomacy. Some thought that it should have been written in Paris to flesh out the French mandate's will; consultations with Lebanese institutions were not supposed to have a binding effect on the constitutional drafting.⁹⁶

Then the situation changed. Lebanon's Representative Council was able to exercise significant influence in the constitutional drafting.⁹⁷ Leon Cayla, then governor of Lebanon, gathered the Lebanon's Representative Council with the purpose of drafting the constitution,⁹⁸ and the Lebanese Emir Fouad Arslan requested and obtained from the new governor Henry de Jouvenel empowerment for the Council to prepare the constitution.⁹⁹

A constitutional commission entirely composed by Lebanese people was created with the purpose of materially drafting the constitutional text. The representatives of all the existing religious communities were included.¹⁰⁰

The constitution's concepts and ideas mainly were drafted from Christian suggestions, however. The parliamentary commission prepared a questionnaire regarding the political system to be built, and virtually all the responses came from Christian authorities and notables, with Sunnis and Shiites protesting against the creation of a separate state from the Great Syria and therefore opposing the very project of a constitution.¹⁰¹ The Maronite religious authorities, on the other hand, pushed to ensure that the final text did not have any antireligious or anticlerical provisions.¹⁰²

⁹² *Arrêté* no. 318, Aug. 31, 1920. See Antoine Hokayem, *La Genèse de la Constitution Libanaise de 1926* at 47 (1996) (discussing the history of the Lebanese constitution).

⁹³ *Arrêté* no. 366, Sept. 1, 1920.

⁹⁴ *Arrêté* no. 1304 bis, Mar. 8, 1922

⁹⁵ *Arrêté* no. 1307, Apr. 1922

⁹⁶ Hokayem, *supra* note 92, at 85.

⁹⁷ *Id.*

⁹⁸ *Id.* at 220.

⁹⁹ *Id.* at 221.

¹⁰⁰ *Id.* at 226.

¹⁰¹ RABBATH, *supra* note 91, at 392.

¹⁰² Hokayem, *supra* note 92, at 247.

This is when the influence of France took a special place. Among the commission's members there was no expert on constitutional law.¹⁰³ Nonetheless, all of them were highly educated, familiar with the Western culture,¹⁰⁴ and looked to France for inspiration. Leon Duguit, then dean of the Law School of Bordeaux, provided the commissioners with a collection of French constitutional texts, and the governor de Jouvenel requested that the constitutional law expert attached to the commission, Paul Souchier, send from France copies of any constitutional text that could be found.¹⁰⁵ “Wisdom commands that we profit of the experience of other peoples and that we begin from where they have got,”¹⁰⁶ were the words of Chebl Dammous, the head of the commission. France basically mediated this constitutional “experience of other peoples” for the Lebanese framers.

Art. no. 10, which was to constitutionalize the idea of “dignity,” was at the crossroads of liberalism and typically Lebanese confessionalism. Liberal philosophy gave broad protection to the freedom of education,¹⁰⁷ but the article also had to acknowledge the special position of religious communities, which was of primary importance for the country's very existence.¹⁰⁸ Lebanon and its diverse religious components had enjoyed a significant degree of autonomy for some seventy years up to this point¹⁰⁹ and would resist any attempt to destroy its social structure.

Art. no. 10 had to respect the spirit of the Lebanese political and constitutional system that was emerging. Lebanon needed to be based on a rigid pillarization of religious groups. The constitutional framework assumes that each individual belongs to a religious group and participates in the political and legal spheres through it. Political and administrative posts are allotted on a religious basis. The very fragile constitutional equilibrium that the Lebanese constitution aimed to cement necessitated that the reputation of each religious group be respected and protected.¹¹⁰

¹⁰³ *Id.* at 246.

¹⁰⁴ *Id.* at 246.

¹⁰⁵ *Id.* at 244.

¹⁰⁶ *Id.* at 345 (author's translation).

¹⁰⁷ *Id.* at 280.

¹⁰⁸ *Id.* at 281.

¹⁰⁹ Malik, *The Near East*, *supra* note 1, at 124.

¹¹⁰ ANTOINE N. MESSARRA, *THEORIE GENERALE DU SYSTEME POLITIQUE LIBANAISE. ESSAI COMPARE SUR LES FONDEMENTS ET LES PERSPECTIVES D'EVOLUTION D'UN SYSTEME CONSENSUEL DE GOUVERNEMENT* 46 (1994).

The commission's draft was accepted by the French expert Soucher and finally sent to de Jouvenel on May 5, 1923.¹¹¹ The text of Art. no. 10 that de Jouvenel received and sent to France for approbation, however, had no trace of "dignity": it just mentioned public order, morals, and the right of religious communities to run their own schools as limits to freedom of education.¹¹²

France itself, which was careful not to give the impression of harming the freedom of religious communities, never proposed to limit freedom of education for the sake of religions' "dignity."¹¹³ Actually, the French mandate was commanded by the League of Nations not to limit or endanger any religious community's immunities.¹¹⁴ This was in line with the Covenant of the League of Nations, which stated that mandates' control over territories had to protect the freedoms of religion and conscience and could impose no other limits than those aimed at securing the public order and respect for morals.¹¹⁵

After making some changes that pertained to the relationship between the new state and France,¹¹⁶ de Jouvenel gathered the Lebanon's Representative Council on May 19. The commission then presented to the Council the results of the questionnaire sent out to the representatives of Lebanese religious communities and the text itself. Four days later, on May 23, 1923, the Council would finally approve the constitutional text.

The Art. no. 10 that the commission presented on May 19 contained the idea that the freedom of education could not impair the "dignity" of religious denominations.¹¹⁷

¹¹¹ Hokayem, *supra* note 92, at 262.

¹¹² *Id.* at 359. "L'enseignement est libre en tant qu'il n'est pas contraire à l'ordre public et aux bonnes mœurs. Il ne sera porté aucune atteinte au Droit des Communautés d'avoir leurs écoles sous réserve des prescriptions générales sur l'institution publique édictée par l'Etat." *Id.*

¹¹³ *Id.* at 354. It provides an excerpt of the *Projet de Statut organique limité au règlement mandataire élaboré par le Département* (which was later developed as a constitution: Art. no 4, Par. 2., which affirms that "Il ne sera porté aucune atteinte au droit des communautés de conserver leurs écoles en vue de l'instruction et de l'éducation de leurs membres dans leur propre langue à condition de se conformer aux prescriptions générales sur l'instruction publique édictée par l'état." *Id.*

¹¹⁴ *Id.* at 345. Art. no. 9 of the Charter of the mandate over Lebanon: "Art. 9: Le Mandataire s'abstiendra de toute intervention dans l'administration des Conseils de fabrique ou dans la direction des communautés religieuses et sanctuaires des diverses religions, dont les immunités son expressément garanties." *Id.*

¹¹⁵ Art. no. 22, par. 5.

¹¹⁶ Hokayem, *supra* note 92, at 269.

¹¹⁷ "L'enseignement est libre en tant qu'il n'est pas contraire à l'ordre public et aux bonnes mœurs et qu'il ne porte pas atteinte à la dignité de l'une quelconque des confessions. Il ne sera porté aucune atteinte aux droits des communautés d'avoir leurs écoles sous réserve des prescriptions générales sur l'instruction publique édictées par l'Etat." *Id.* at 370.

It seems that the commission, in addition to drawing from the questionnaire's results, drew from the French legal culture; more specifically, it appears that the idea of dignity was taken from the French constitutions.

Several factors point in this direction: the availability of the 1852 French constitutional text; the lack of native constitutional lawyers; the strong, historical connection between the French intellectual world and the Maronite authorities, which worked to avoid having a constitutional text with antireligious tones; and, above all, the significant presence of the concept of “dignity” in the French legal culture.

It is beyond doubt that, albeit used with scattered references to human beings,¹¹⁸ “dignity” had conveyed a sense of “status,” “respect,” or “reputation” in European thinking for centuries.¹¹⁹ French legal culture was acquainted with the idea of dignity in the sense of “respect” and “status,” as well as in the sense of “human value” or even “inherent worthiness of human beings.” The 1830 and the 1852 French constitutions discussed “dignity” with reference both to “imperial dignity”¹²⁰ and the standing of peers and of senators.¹²¹ But the 1848 Imperial decree abolishing slavery is also understood as the starting point of the legal history of “human dignity.”¹²²

It must be noted also that no other known source for the Lebanese constitution bears signs of “dignity” besides the French ones. Neither the Swiss constitution of 1874 nor the United

¹¹⁸ McCrudden, *Human Dignity*, *supra* note 14, at 657.

¹¹⁹ *Id.*

¹²⁰ Article 2 of the 1852 constitution: “La dignité impériale, rétablie dans la personne de Napoléon III par le plébiscite des 21–22 novembre 1852, est héréditaire dans la descendance directe et légitime de Louis Napoléon Bonaparte, de mâle en mâle, par ordre de primogéniture, et à l'exclusion perpétuelle des femmes et de leur descendance.” 1812 CONST. art. 23 (Fr.), <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/la-constitution/les-constitutions-de-la-france/constitution-de-1852-second-empire.5107.html>.

¹²¹ Article 23 of the 1831 constitution: “La nomination des Pairs de France appartient au Roi. Leur nombre est illimité : il peut en varier les dignités, les nommer à vie ou les rendre héréditaires, selon sa volonté.” 1830 CONST. art. 23 (Fr.), <http://www.culture.gouv.fr/Wave/image/archim/Pages/02894.htm>. Article 23 of the 1852 constitution: “Le Sénat se compose : 1° des cardinaux, des maréchaux, des amiraux ; 2° des citoyens que l'empereur élève à la dignité de sénateur.” 1812 CONST. 1852 art. 23 (Fr.).

¹²² Catherine Dupré, *Constructing the Meaning of Human Dignity: Four Questions*, in UNDERSTANDING HUMAN DIGNITY (Christopher McCrudden ed., 2013). The French Imperial decree of April, 27, 1848, abolished slavery with the justification that this institution was against “human dignity.” Rebecca J. Scott, *Dignité/Dignidade: Organizing against Threats to Dignity in Societies after Slavery*, in UNDERSTANDING HUMAN DIGNITY, *supra*, at 61.

States constitution, which were made available to the Lebanese framers, carry a use of “dignity” that compares with that of the 1926 Lebanese constitution.

The Lebanese constitution seems to draw mostly from the French understanding of dignity as the kind of “respect” or “status” that attaches to the state dignitaries: Art. 10 states that “[f]reedom of education is established insofar as it is not contrary to public order and morals and does not affect the *dignity* of any of the religions or sects.”¹²³ If one replaces “dignity” in Art. no. 10 with “status” or “respect,” then the closeness to the French usage is striking.

The linguistic influence exerted by French sources on the Lebanese Art. no. 10 is therefore conceptual. *Karāma*’s common usage, at that time, was not related too much to the idea of “dignity”; it was more connected with the concept of “honor,” exactly the idea of dignity that attached to the French sources. Until the early 1950s, Arabic-English dictionaries translated *karāma* as “generosity, honor.”¹²⁴ Dignity, conversely, was translated into Arabic in several ways, among which *karāma* was never the first. And the *Arabisches Wörterbuch für die Schriftsprache der Gegenwart* by Hans Wehr,¹²⁵ then the most influential dictionary between Western languages and Arabic, did not have “dignity”¹²⁶ among the first translations of *karāma*. “*Würde*” (“dignity”) is just the sixth translation for it, coming after nobility (in two ways: *Adel* and *Edelmut*), grandeur (*Grossmut*), generosity (*Freigebigkeit*), and honor (*Ehre*). By contrast, dignity is only the fourth translation for *sharaf*, which now means honor; Wehr’s dictionary translates this term as high ranking (*hoher Rang*), nobility (*Adel*), and distinction (*Vornehmheit*) first. In sum, the idea of “honor” bridged the French concept of “dignity” with the Arabic idea of *karāma*.

Choosing *karāma* to convey the sense of “dignity,” or “honor” of religious groups, however, was not obvious for the Lebanese. Earlier Arab constitutional experiments or studies pointed to directions other than *karāma*. When the Lebanese drafted their constitution, “dignity” and “honor” had already been rendered with different words. Almost one century before, Rifa’at

¹²³ (emphasis added).

¹²⁴ HARVEY PORTER & JOHN WORTABET ET AL., ARABIC-ENGLISH AND ENGLISH-ARABIC DICTIONARY (1954). See JOHN PENRICE, DICTIONARY AND GLOSSARY OF THE KOR-AN, ARABIC-ENGLISH, (Librairie du Liban 1960) (1873) (defining the entry *karāma* (vb): “To be superior to another in generosity”); JOHN RICHARDSON, DICTIONARY, PERSIAN, ARABIC, AND ENGLISH, (New Star Press 1984) (1829) (defining the entry *karāma* (vb): to excell in honor, nobelty, generosity).

¹²⁵ HANS WEHR, ARABISCHES WÖRTERBUCH FÜR DIE SCHRIFTSPRACHE DER GEGENWART (1952).

¹²⁶ The German Basic Law (1949) famously translates “dignity” as *Würde*. GERUNDGESETZ [GG] [BASIC LAW], translation at http://www.gesetze-im-internet.de/englisch_gg/index.html.

at-Tahtawi, one of the first intellectuals whom the ruler of Egypt Mohammad Ali sent in 1826 to Europe to learn the languages and cultures, wrote a seminal book on European culture and made available to the Arabic-speaking wider public the 1814 French constitution. Its version translated the “dignity” of members of the French Chamber of peers¹²⁷ with *laqab*, and not *karāma*.¹²⁸ A few decades later, Art. no. 19 of the 1861 Tunisian text, which gained this country the title of “birthplace” of Arab constitutions,¹²⁹ said that ministers are the first “dignitaries” of the state: but it used *khutat*,¹³⁰ not *karāma*. *Khutat* is unrelated to the idea of “dignity” but still conveys a sense of special position (“rank”) in the constitutional structure. And the same text said that, alongside their lives and goods, the law protected the honor of Tunisians and non-Tunisians alike using a word that was again unrelated with *karāma*: ‘*ard*.¹³¹ Finally, and coming closer to the times in which the Lebanese text was drafted, its prominent Arabic source of inspiration was the Egyptian constitutional text of 1923, as mentioned above. Interestingly, the Egyptian text contained a similar concept that conveyed state representatives’ worthiness of respect, status, and duty; however, the word that reflected this idea of “dignity” in that constitution was actually not *karāma*, but *mansib*. *Mansib* has a totally different root in Arabic and is completely detached from the use of “human dignity” that would come later in Arab constitutions.

Given the several Arabic linguistic alternatives for “honor” and “respect” that were available to the Lebanese framers, the choice for *karāma* therefore should be understood as an innovative step, which would later expand to fully incorporate the idea of “human dignity.”

To summarize, the importation of the concept of “dignity” was not an episode of bare constitutional colonization. As we have seen, the French mandate did not control religious education; it was very concerned to give leeway to religious communities to craft their own constitutional protections in order to integrate them into the new constitutional experiment. It

¹²⁷ Article 27: “La nomination des pairs de France appartient au roi. Leur nombre est illimité; il peut en varier les dignités, les nommer à vie ou les rendre héréditaires, selon sa volonté.” 1814 CONST. art. 27 (Fr.), <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/la-constitution/les-constitutions-de-la-france/charte-constitutionnelle-du-4-juin-1814.5102.html>.

¹²⁸ RIFA’ AT AT-TAHTAWI, TAKHLIṢ AL-IBRĪZ FĪ TALKHĪṢ BĀRĪZ AW AL-DĪWĀN AL-NAFĪS BI-ĪWĀN BĀRĪS 107 (Kalimat Arabia 2011) (1834), <http://faculty.ksu.edu.sa/almanasrah/414/%D8%AA%D8%AE%D9%84%D9%8A%D8%B5%20%D8%A7%D9%84%D8%A5%D8%A8%D8%B1%D9%8A%D8%B2.pdf>.

¹²⁹ Sultany, *supra* note 22, at 360.

¹³⁰ CONSTITUTION OF TUNISIA, Apr. 26, 1861, art. 19, <http://www.righttononviolence.org/mecf/wp-content/uploads/2012/06/1861-Tunisia.pdf>.

¹³¹ *Id.* arts. 86 & 109.

was mostly concerned with the relationship between the Republic of Lebanon that was coming into being and France. The new Lebanese constitutional framers themselves were the ones who deliberately drew from French culture and decided to import its idea of “dignity,” to the extent that they translated it with *karāma*: an unprecedented choice, given the earlier Arabic legal translations.

Overall, the introduction of the word *karāma* into the constitutional lexicon of Arab states seems to have a Lebanese origin.

It is important to notice what types of institutions the Lebanese constitution endows with “dignity.” It does not apply to single, high-ranking individuals; nor does it describe a special status. It differs from the French legal framework it borrowed from, as well as from the earlier Arab constitutions that had used other words for “dignity.” The Lebanese used it to convey the idea that religions have public standing and a constitutional role that freedom of education cannot impair. It protects religions—most noticeably, *all* officially recognized religions of Lebanon. It is much more horizontal than the previous European or Arab texts, as it does not single out *some* subjects providing them with special privileges. This gives Lebanese “dignity” also a universalistic attitude, which later Arab constitutions will build on. This unprecedented usage of “dignity” may help explain why the Lebanese chose an unprecedented word to convey that meaning: *karāma*.

From there, the meaning of the word was extended in the Syrian constitution to cover the protection of the state as well.

The 1930 Syrian Constitution

Syria and Lebanon were the only Middle Eastern territories that had been governed by the French.¹³² Deeply linked with each other from a cultural perspective, they were very imbued with French legal concepts and French culture as a whole. So, when Lebanon protected religions through *karāma*, Syria probably drew from it and introduced the idea of “dignity” early in the history of Arab constitutionalism. Its first constitution, enacted in 1930, stated in Art. no 19:

Freedom of education is established insofar it does not conflict with public order, morals, and does not affect the *dignity* of the nation or of religions.

¹³² Malik, *The Near East*, *supra* note 1, at 237.

It is worth comparing the Syrian phrasing with the relevant Lebanese text. The wording is almost exactly the same, and both uses convey the idea that some entity's reputation and status should be protected. The only difference from the Lebanese context is the protection of the nation's dignity alongside that of religions. Both are collective entities and are perceived as worthy of state protection. But it still does not describe the assets or values of either individuals or the population at large. It relates to the state and religions, as a value that makes them untouchable.

It is safe to say, then, that *karāma*, as a constitutional concept, originally was not linked to the individual or the collective experience but rather to religious autonomy—and, in its second instance, in the Syrian constitution, to the place of the state in public education.

After the Lebanese and Syrian constitutions came World War II—and the Universal Declaration of Human Rights. And, with it, a drastic shift in the meaning of *karāma* took place.

THE WATERSHED: KARĀMA AT THE UNITED NATIONS

It is only post–World War II that *karāma* comes to mean what we now understand as the individual dignity in Arab constitutions. The watershed is to be found in the Charter of the United Nations (1945) and the Universal Declaration of Human Rights (1948), which expounded *karāma* and gave it the individualized meaning that it has now. The 1919 constitution of the Weimar Republic,¹³³ the 1929 constitution of Ecuador,¹³⁴ the 1937 Irish constitution,¹³⁵ and the 1940 Cuban constitution¹³⁶ all had previously incorporated dignity in their texts,¹³⁷ setting the

¹³³ “The economy has to be organized based on the principles of justice, with the goal of achieving life in dignity for everyone. Within these limits the economic liberty of the individual is to be secured.” WEIMAR CONSTITUTION, Aug. 11, 1919, art. 151, *unofficial translation at* http://www.zum.de/psm/weimar/weimar_vve.php.

¹³⁴ CONSTITUCIÓN DE 1929, art. 151 ¶ 18 (Ecuador), <http://constituyente.asambleanacional.gob.ec/documentos/biblioteca/1929.pdf>. “El Estado protegerá, especialmente, al obrero y al campesino, y legislara para que los principios de justicia se realicen en el orden de la vida económica, asegurado a todos un mínimo de bienestar, compatible con la dignidad humana.” *Id.*

¹³⁵ Const. of Ireland 1937, <http://archive.constitution.ie/reports/ConstitutionofIreland.pdf>.

¹³⁶ CUBA CONSTITUCIÓN POLÍTICA DE 1940, <http://pdba.georgetown.edu/Constitutions/Cuba/cuba1940.html>.

¹³⁷ Shulztiner & Carmi, *supra* note 21, at 464 n.14. Contrary to what Shulztiner and Carmi maintain, the 1919 Finnish Constitution does not seem to contain any reference to “human dignity” but to honor instead: in the French official translation, Art. no. 6 speaks of “honor” (“Tout citoyen finlandais sera protégé par la loi dans sa vie, son honneur, sa liberté personnelle et ses biens”: *La Constitution de La*

stage for the Charter and the Universal Declaration, which powerfully boosted the use of the lexicon of dignity with regard to individuals.

The two international documents particularly reinvigorated the idea of “human dignity,” which contained the understanding, in line with Kant,¹³⁸ that individuals should be treated always as ends and not as means to an end.¹³⁹ In this sense, Kant’s thinking found an ally in the Catholic social teaching of the nineteenth century, which developed this idea of intrinsic human worthiness.¹⁴⁰

The first time that *karāma* conveys this meaning of “personal dignity” in a legal text is found in the Arabic version of the Charter of the United Nations, which anticipated the Universal Declaration by three years.¹⁴¹ The San Francisco Conference of 1945 that concluded the UN Charter and brought it to adoption included some Arab states among its delegates, namely Egypt, Iraq, Lebanon, Saudi Arabia, and Syria. Of these countries both Lebanon and Syria, as we have seen, had a constitutional text mentioning dignity, but not in the sense of “personal (or individual) dignity.”

The Arabic version of the Preamble of the Charter uses *karāma* to convey this sense of “personal dignity”; in fact, it associates this word with “*fard*,” which means “individual”:

to reaffirm faith in fundamental human rights, in the dignity (*karāma al-fard*) and worth of the human person . . .¹⁴²

Finlande, Helsingfors 1920, Imprimerie du Gouvernement). It is in Art. no. 15 that dignity finds its place to convey the idea of “noble rank”; “Il ne sera conféré dans la République ni titre de noblesse ni autre dignité héréditaire.” See CHARLES CROZAT, LES CONSTITUTIONS DE POLOGNE, DE DANTZIG, D’ESTHONIE ET DE FINLANDE, FACULTE DE DROIT 386 (1925) (discussing these constitutions). Similarly, the Mexican Constitution did not refer to dignity before 1946, when it was amended on December 30. See Constitución Política de los Estados Mexicanos, CPEUM, Diario Oficial de la Federación [DOF] 12-30-1946, http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM_ref_041_30dic46_ima.pdf.

¹³⁸ Kant captured his idea of dignity in the famous maxim that individuals should be treated as ends in themselves and never as means to an end. IMMANUEL KANT, GROUNDWORK OF THE METAPHYSICS OF MORALS (Mary Gregor ed. and trans., 1998).

¹³⁹ McCrudden, *Human Dignity*, *supra* note 14, at 659.

¹⁴⁰ *Id.* at 662.

¹⁴¹ It was discovered that Barnard College dean Virginia Gildersleeve, working on the draft that the South African delegate Jan Smuts was preparing for the *Preamble*, suggested citing the “dignity and worth of the human person.” Samuel Moyn, *The Secret History of Constitutional Dignity*, in UNDERSTANDING HUMAN DIGNITY, *supra* note 122, at 107.

¹⁴² U.N. Charter pmb1.

While the English version fails to specify that the dignity to which it refers pertains to individuals, the Arabic version expressly makes this point. This explicit reference seems to confirm that *karāma*, in itself, did not contain an individualized sense yet.

It was the Universal Declaration of Human Rights that finally expanded the notion of human dignity to cover also that of *individuals*. It placed it at the core of the rights it enshrined¹⁴³ and put in place the theoretical premises that led to the concept's consideration as a check on the state for the sake of individuals.

The *Preamble* thus sets out:

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...

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in *the dignity* and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom. . . .¹⁴⁴

Art. no. 1 states:

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.¹⁴⁵

Art. no. 22 asserts:

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his *dignity* and the free development of his personality.¹⁴⁶

Art. 23 promotes that:

(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

¹⁴³ Jan Martenson, *The Preamble, in THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: A COMMENTARY* 20 (Eide Asbjom et al. eds., 1992).

¹⁴⁴ G.A. Res. 217 (III) A, Universal Declaration of Human Rights, Preamble (Dec. 10, 1948).

¹⁴⁵ *Id.* art. 1.

¹⁴⁶ *Id.* art. 22.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of *human dignity*, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.¹⁴⁷

These words represent a turning point in the legal history of dignity. The sense of “respect,” “intrinsic worth,” “esteem,” and “deference” that attach to each human being¹⁴⁸ that the Universal Declaration’s wording promulgated served as a foundation for the constitutional trajectories of several states worldwide.

The roles of Arab and Islamic thought in shaping the “dignitarian” vision of human rights in the Universal Declaration seem to have diverged deeply. As to Islamic thought, no member of the Drafting Committee who prepared the first draft was Muslim. Furthermore, UNESCO had been charged with collecting authoritative opinions on human rights from intellectuals all around the globe in order to contribute to the Declaration’s shaping. When the UNESCO Symposium issue was delivered a few months before the Declaration was promulgated,¹⁴⁹ the Muslims who were involved had not contributed to the field of “dignity.”¹⁵⁰

Among the contributors were Jacques Maritain, Aldous Huxley, Fr. Teilhard de Chardin, Mahatma Gandhi, and Harold Laski. Many of them pointed to “dignity” as one of the key concepts for the protection of human rights. The Indian intellectual Humayun Kabir filed an opinion entitled *The Rights of Man and the Islamic Tradition*.¹⁵¹ His piece, in contrast to many others, made no mention of human “dignity.”

After receiving a first outline of the Declaration from the Committee’s Secretariat, the Drafting Committee, which famously was led by Eleanor Roosevelt, requested one of its members, René Cassin, to prepare a new draft.¹⁵²

¹⁴⁷ *Id.* art. 23.

¹⁴⁸ Oscar Schachter, *Human Dignity as a Normative Concept*, 77 AM. J. INT’L L. 848, 849, (1983),.

¹⁴⁹ UNESCO, *Human Rights, Comments and Interpretation: A Symposium*, UNESCO/PHS/3 (July 25, 1948), <http://unesdoc.unesco.org/images/0015/001550/155042eb.pdf>. [hereinafter *Human Rights*]

¹⁵⁰ This does not mean that Islamic countries were reluctant to embrace or contribute to the drafting of the Universal Declaration of Human Rights. See Susan Waltz, *Universal Human Rights: The Contribution of Muslim States*, 26 HUM. RTS. Q. 799 (2004) (discussing Muslim states’ participation).

¹⁵¹ *Human Rights*, *supra* note 149, at 192.

¹⁵² Thore Lindholm, *Article 1*, in THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: A COMMENTARY, *supra* note 143, at 32.

This is where the Arab contribution played an important role in promoting the incorporation of “dignity” in the Universal Declaration. The Greek Orthodox Lebanese member of the Committee, Charles Malik, a “chief spokesman for the Arab League,”¹⁵³ was a prominent philosopher of Thomism¹⁵⁴ and well versed in English, French, and Arabic. He was especially preoccupied with making the Western world and the Muslim-Arab world talk to each other and exchange their respective wisdom.¹⁵⁵ It seems that, in a critical evaluation of the Preamble of the Secretariat Outline, he proposed that the notion of the “dignity of man” be the “basic woof” of Art. no. 1 of the Declaration¹⁵⁶—a centrality that he would reaffirm on more occasions.¹⁵⁷

But which concept of dignity? Here Prof. Mary Ann Glendon acknowledges Charles Malik’s merits: “Malik proposed boldly that the Commission accept as a guiding principle of its work that the human person is more important than any group to which he or she may belong.”¹⁵⁸ This proposal later led Malik to explain—and persuade the Committee members—that the notion of the person, in his thinking, went well beyond traditional individualism: “He thus challenged not only members of the Soviet bloc who wanted to subordinate the person to the state, but also the more individualistic Westerners on the commission.”¹⁵⁹

The debate around the “human person” as being endowed with inalienable rights but part of a broader society saw Malik and René Cassin, the French Committee member, allied in trying to rebut criticisms from both the Soviet Union and UK members, who wanted to emphasize respectively the priority of the society or that of the individual. Cassin, as did Malik, insisted on the role of “dignity” to promote this idea of the “human person” as the focus of the Declaration.¹⁶⁰ Malik’s ideas about dignity essentially converged with those of Cassin, a representative of the country from which Malik’s national constitution had taken inspiration and borrowed the idea of “dignity,” although both Lebanon and France had used it mainly to describe a status or a special honor.

¹⁵³ MARY ANN GLENDON, *A WORLD MADE NEW: ELEANOR ROOSEVELT AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS* xx (2001).

¹⁵⁴ *Id.*

¹⁵⁵ Malik, *The Near East*, *supra* note 1, at 260.

¹⁵⁶ Lindholm, *supra* note 152, at 34.

¹⁵⁷ Charles Malik, *An International Bill of Rights*, in *THE CHALLENGE OF HUMAN RIGHTS: CHARLES MALIK AND THE UNIVERSAL DECLARATION* 60 (Habib C. Malik ed., 2000) [hereinafter *THE CHALLENGE OF HUMAN RIGHTS*].

¹⁵⁸ Mary Ann Glendon, *Introduction*, in *THE CHALLENGE OF HUMAN RIGHTS*, *supra* note 157, at 3.

¹⁵⁹ *Id.*

¹⁶⁰ Charles Malik, *Four Basic Principles*, in *THE CHALLENGE OF HUMAN RIGHTS*, *supra* note 157, at 36.

In proposing a pivotal role for “dignity,” Malik referenced the Charter of the United Nations. At a meeting of the Drafting Committee, he affirmed: “The Charter speaks in the preamble of the worth and dignity of man.... That is what we are called upon to promote and protect.”¹⁶¹

He was aware, however, that the affirmation of the Charter was not enough. Although dignity purposely “appeal[ed] to people of various ideological backgrounds,”¹⁶² it was “precisely [Malik’s] intention to give meaning to that vague phrase, human dignity and worth, which is used in the Charter to give it content and, therefore, to save it from hollowness and emptiness.”¹⁶³ That is why he understood the role of the Human Rights Commission to be “to give content and meaning to the pregnant phrase in the preamble of the UN Charter, ‘the worth and dignity of man.’ [Therefore the Declaration was to be] nothing other than a continuation, a completion, of the Charter itself.”¹⁶⁴

Malik captured his thinking in a nutshell: “Which is for the sake of the other? Is the state for the sake of the human person or is the human person for the sake of the state? That, to me, is the ultimate question of the present day. I believe the state is for the sake of the person.”¹⁶⁵

Malik understood that the Human Rights Commission had the duty to flesh out this idea of dignity: it raised “ultimate delicate questions. It [tried] to supply content and meaning to the phrase ‘the dignity and worth of man’. It [was] therefore the one commission of the United Nations that elaborate[d] theory, doctrine, philosophy, and ultimate ideas.”¹⁶⁶

He synthesized these ultimate questions in three broadly defined issues: First, “whether man is simply an animal, so that his rights are just those of an animal,”¹⁶⁷ not an elementary question, since “those who stress the elemental economic rights and needs of man are for the most part impressed by his sheer animal existence.”¹⁶⁸ Second, what “the place [is] of the individual human person in modern society. This is the great problem of personal freedom.”¹⁶⁹

¹⁶¹ *Id.* at 27.

¹⁶² Shulztiner & Carmi, *supra* note 21, at 471.

¹⁶³ Malik, *Four Basic Principles*, *supra* note 160, at 37.

¹⁶⁴ Charles Malik, *Required: National Moral Leadership*, in *THE CHALLENGE OF HUMAN RIGHTS*, *supra* note 157, at 91.

¹⁶⁵ Malik, *Four Basic Principles*, *supra* note 160, at 38.

¹⁶⁶ Malik, *Required: National Moral Leadership*, *supra* note 166, at 92.

¹⁶⁷ *Id.* at 93.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* at 93.

And third, what “the relationship [is] between man and the state, the individual and the law. This is the great problem of statism.”¹⁷⁰ He later summarized his thought even further in saying: “The most important issue in the order of truth today is what constitutes the proper worth and dignity of man. This will be the central theme of the debate in the Declaration of Human Rights. Unless this issue is rightly settled, there is no meaning to any other settlement.”¹⁷¹

How did the Declaration meet this challenge? Shortly after the Declaration was issued, Charles Malik reflected on its effectiveness in tackling the ultimate questions he had in mind. The judgment was largely positive: “The effective cultures and philosophies of the world have all taken vigorous stands on them. The resulting declaration is a composite synthesis, the like of which has never before occurred in history.... The present declaration is the answer to the question, How does the world conceive of man’s essential worth and dignity at the middle of the twentieth century?”¹⁷²

This synthesis draws from several different traditions, then. In Malik’s words, “[i]t is a kind of synthesis of [Western documents on human rights, spanning from the Magna Carta to the French Revolutionary Declaration of the Rights of Man and of the Citizen] but also the Slavic world, China, India, the Near East and the Latin American world” that had contributed to it.¹⁷³

Malik, however, acknowledged the unparalleled role played by some traditions in shaping the Declaration’s provisions. He described his and the international struggle for human rights as a “faint echo, on the international plane, trying in effect, knowingly or unknowingly, to go back to the Platonic-Christian tradition that affirms man’s original, integral dignity and immortality.”¹⁷⁴ It was undeniable to him that the religious organizations that interacted with and fed ideas to the Committee were Jewish, Protestant, and Catholic.¹⁷⁵

There is therefore little evidence of Arab and Islamic thought shaping and expounding the crucial concept of human dignity, except for the role played by the cosmopolitan Lebanese

¹⁷⁰ *Id.* at 94.

¹⁷¹ *Id.* at 116.

¹⁷² Charles Malik, *Reflecting on the Declaration*, in *THE CHALLENGE OF HUMAN RIGHTS*, *supra* note 157, at 132.

¹⁷³ Charles Malik, *The Twin Scourges: Materialism, Human Self-Sufficiency*, in *THE CHALLENGE OF HUMAN RIGHTS*, *supra* note 157, at 207.

¹⁷⁴ Charles Malik, *Spiritual Implication of Universal Declaration*, in *THE CHALLENGE OF HUMAN RIGHTS*, *supra* note 157, at 134.

¹⁷⁵ Charles Malik, *Looking Back*, in *THE CHALLENGE OF HUMAN RIGHTS*, *supra* note 157, at 132.

Charles Malik. Neither the concept's inspirational sources nor the usage of the word *karāma* at the time of the Declaration give any support to such a thesis.

But the opposite conclusion can probably be maintained. Through the Universal Declaration, the new concept of “human dignity” found its way into the Arab context. In a 1952 interview with Eleanor Roosevelt, Malik himself affirmed that “[t]he declaration has had an acknowledged influence upon the new [constitution of] Syria.”¹⁷⁶ In fact, as we will see later, in 1950 Syria put in place a constitutional document that used the word *karāma* in a way consistent with the Declaration.

This is not to say that this utilization supplanted the previous, or affirmed the new, understanding of “dignity” once and for all. Malik himself acknowledged that mass societies and materialism were hijacking the Declaration's understanding of human rights and dignity¹⁷⁷—and this co-optation is what we will see in the Arabism rhetoric of state dignity, which took shape in the 1950s. This is why his concern about shielding human persons from the perils of statism continued throughout the 1950s, while the United Nations was drafting the two Covenants on *Economic, Social and Cultural Rights* and on *Civil and Political Rights*.¹⁷⁸ By then, Malik understood that his task consisted in the “determination of the proper structure of human dignity.”¹⁷⁹

There is therefore a reasonable possibility that the Declaration prompted a change in the understanding of the Arabic word for “dignity,” from collectivities to persons and from reputation to worthiness.

Karāma acquired a new legal meaning mainly through the Universal Declaration and the work of Charles Malik. This transition from the protection of religions (in the 1923 Lebanese constitution) and the state (in the 1930 Syrian constitution) to encompass human beings as well was quite easy. This is because Middle Eastern thinkers were able to act as bridges. Middle Eastern philosophers such as Youssef Karam had been bridging European—mainly French and German—ideas about the nature of human beings to the Arab world: the vocabulary and the reflections of Immanuel Kant and Jacques Maritain, who both contributed to the “dignitarian”

¹⁷⁶ *Id.* at 233.

¹⁷⁷ *Id.* at 235.

¹⁷⁸ International Covenant on Civil and Political Rights, *adopted* Dec. 19, 1966, 999 U.N.T.S. 171, 6 I.L.M. 368; International Covenant on Economic, Social and Cultural Rights, *adopted* Dec. 19, 1966, 993 U.N.T.S. 3; 6 ILM 368. Both adopted December 16, 1966.

¹⁷⁹ Charles Malik, *Human Rights in the United Nations*, 13 U.N. BULL. 248 (Sept. 1, 1952).

understanding of human rights,¹⁸⁰ were being made available among Arabs precisely during the first half of the twentieth century.¹⁸¹

Karāma was mainly humanized in the United Nations Charter and at the Universal Declaration; but its success was almost immediate because those who proposed it—such as Charles Malik—and those who connected the Middle East with the West—such as Majid Khadduri and Youssef Karam—had paved the way.

Islamic legal thinking seems to have aligned itself to this reading of dignity later, through developing and universalizing the idea of *karāma* that was embedded in Islamic doctrine already. But this sort of dynamic that connects legal and religious discourse in a bidirectional relationship is not fictional, nor is it unique to Islamic culture. It can also be traced back to Christian Western thinking. The inception of “human dignity” in twentieth-century constitutionalism strikingly parallels the journey that *karāma* had to undergo. Below we will notice how the Christian and the Muslim trajectories paralleled each other in how they reflected on the idea of “dignity” between the nineteenth and the twentieth centuries.

The Arab and Islamic legal documents that followed thereafter embraced the idea of *individualized* dignity while sometimes placing it alongside the idea of collective and national dignity in a significant parallel between the liberal and the communist understandings of dignity. There is no trace of human dignity’s constitutionalization among Arab states before the Charter of the United Nations or the Universal Declaration of Human Rights were drafted. However, the mentions of “human dignity” abound in the constitutional and international law texts that came after.

¹⁸⁰ On Jacques Maritain’s vision of human dignity and on his historical importance in expounding this concept, see MICHAEL A. SMITH, *HUMAN DIGNITY AND THE COMMON GOOD IN THE ARISTOTELIAN-THOMISTIC TRADITION* (1995).

¹⁸¹ NAGUIB BALADI, *IN MEMORIAM YOUSSEF KARAM* 459, 464 (Institut Dominicain d’Etudes Orientales du Caire—Mélanges, 1958).

THE ROLE OF DIGNITY IN ARAB AND ISLAMIC LEGAL TEXTS AFTER THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

***Karāma* in International Documents**

The post–World War II international documents drafted by Islamic and Arab states in the field of human rights have given much room to the idea of *karāma* as individual dignity, building upon the achievements of international law in the Universal Declaration of Human Rights.

A precursor of such Islamic and Arab initiatives is to be found in the 1977 *Project for an Islamic Constitution*,¹⁸² which was drafted by the *Distinguished Al-Azhar Academy for Islamic Research*, a body of the Al-Azhar institution—namely, the Islamic body of highest repute in the Sunni world.¹⁸³

The *Project* mentions “dignity” on two occasions:

Art. no. 18:

The economy will be based upon the principles of Islamic Shari‘a which guarantees human *dignity* and social justice. It requires striving in life through both thought and deed and ensures lawful profit.¹⁸⁴

And Art. no. 80:

It is not permissible to humiliate the imprisoned, force him to work, or insult his dignity.¹⁸⁵

The Declaration on Human Rights in Islam (Cairo, 1990) enshrines dignity in Art. no. 1:

All human beings form one family whose members are united by their subordination to Allah and descent from Adam. All men are equal in terms of basic *human dignity* and basic obligations and responsibilities, without any discrimination on the basis of race, colour, language, belief, sex, religion, political affiliation, social status or other considerations. The true religion is the guarantee for enhancing such dignity along the path to human integrity.¹⁸⁶

¹⁸² DISTINGUISHED AL-AZHAR ACADEMY FOR ISLAMIC RESEARCH, PROJECT FOR AN ISLAMIC CONSTITUTION (1977), <http://www.tahrirdocuments.org/wp-content/uploads/2011/07//ع-الدستور-مشروع-الاسلامى.pdf> [hereinafter PROJECT].

¹⁸³ Jerg Gutmann and Stefan Voigt, *The Rule of Law and Constitutionalism in Muslim Countries* 5 (May 8, 2014), <http://ssrn.com/abstract=2434793>.

¹⁸⁴ PROJECT, *supra* note 182, art. 18.

¹⁸⁵ *Id.* art. 80.

¹⁸⁶ Cairo Declaration on Human Rights in Islam, art. 1, GAOR, 4th Sess., U.N. Doc A/CONF.157/PC/62/Add.18 (Aug. 5, 1990) [hereinafter Cairo Declaration].

The first paragraph of Art. no. 6 also states:

Woman is equal to man in human *dignity*, and has her own rights to enjoy as well as duties to perform, and has her own civil entity and financial independence, and the right to retain her name and lineage.¹⁸⁷

Art. no. 20 asserts:

It is not permitted without legitimate reason to arrest an individual, or restrict his freedom, to exile or to punish him. It is not permitted to subject him to physical or psychological torture or to any form of maltreatment, cruelty or *indignity*. Nor is it permitted to subject an individual to medical or scientific experiments without his consent or at the risk of his health or of his life. Nor is it permitted to promulgate emergency laws that would provide executive authority for such actions.¹⁸⁸

The Arab Charter of Human Rights (2004 version) confirms this trend, with multiple provisions drawing in the concept of dignity. The *Preamble* asserts:

Based on the faith of the Arab nation in the *dignity* of the human person whom God has exalted ever since the beginning of creation and in the fact that the Arab homeland is the cradle of religions and civilizations whose lofty human values affirm the human right to a decent life based on freedom, justice and equality.¹⁸⁹

Art. no. 2 states:

All forms of racism, Zionism and foreign occupation and domination constitute an impediment to human *dignity* and a major barrier to the exercise of the fundamental rights of peoples; all such practices must be condemned and efforts must be deployed for their elimination.¹⁹⁰

Art. no. 3, paragraph 3 emphasizes that:

Men and women are equal in respect of human *dignity*, rights and obligations within the framework of the positive discrimination established in favour of women by the Islamic Shari'a, other divine laws and by applicable laws and legal instruments.¹⁹¹

Art. 17 commands:

¹⁸⁷ *Id.* art. 6.

¹⁸⁸ *Id.* art. 20.

¹⁸⁹ League of Arab States, Arab Charter on Human Rights, May 22, 2004, *reprinted in* 12 INT'L HUM. RTS. REP. 893 (2005) (entered into force Mar. 15, 2008) [hereinafter Arab Charter].

¹⁹⁰ *Id.* art. 2.

¹⁹¹ *Id.* art. 3.

Each State party shall ensure in particular to any child at risk or any delinquent charged with an offence the right to a special legal system for minors in all stages of investigation, trial and enforcement of sentence, as well as to special treatment that takes account of his age, protects his *dignity*, facilitates his rehabilitation and reintegration and enables him to play a constructive role in society.¹⁹²

Art. no. 20 states:

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent *dignity* of the human person.¹⁹³

Art. no. 33, paragraph 3, states:

The States parties shall take all necessary legislative, administrative and judicial measures to guarantee the protection, survival, development and well-being of the child in an atmosphere of freedom and *dignity* and shall ensure, in all cases, that the child's best interests are the basic criterion for all measures taken in his regard, whether the child is at risk of delinquency or is a juvenile offender.¹⁹⁴

Art. no. 40, paragraph 1, states:

The States parties undertake to ensure to persons with mental or physical disabilities a decent life that guarantees their *dignity*, and to enhance their self-reliance and facilitate their active participation in society.¹⁹⁵

Overall, “dignity” in Arab and Islamic international legal documents after the Universal Declaration of Human Rights came to describe the quintessence of the human person and provide the reason for protecting the person from state power as well as for empowering the state with the capacity to promote dignity. Such documents endow *karāma* with multiple, foundational meanings: First, it protects individuals against public powers. Second, it triggers the state's intervention to counterbalance social inequalities and secure a decent life standard for everybody. Third, it provides a theological foundation both for human rights and duties.

¹⁹² *Id.* art. 17.

¹⁹³ *Id.* art. 20.

¹⁹⁴ *Id.* art. 33.

¹⁹⁵ *Id.* art. 40.

***Karāma* in Constitutional Texts**

Karāma has spread progressively in Arab constitutionalism after the 1948 Universal Declaration, both in terms of the countries that have incorporated it in their texts and the number of references that Arab constitutions make to the word.

The Arab Spring was another turning point for the constitutional development of dignity. If Day One on our timeline is December 17, 2010, the day in which Tarek Bouazizi set himself on fire in the Tunisian city of Sidi Bouzid, no Arab constitution drafted, passed, or amended after it fails to mention “dignity,” and indeed most constitutions repeat it frequently. The three Egyptian constitutions that were drafted starting from 2011 do so. Jordan, Libya, Mauritania, Morocco, Oman, Somalia, Syria, and Tunisia also mention human dignity in several different ways. In some cases, a country’s constitutional history was familiar with the concept; in others, it was only after the beginning of the Arab Spring that the constitutional culture came to incorporate it.

What follows here sequences the progressive development of the concept after World War II, starting out with the countries that have been at the core of the Arab Spring. (These countries actually have been familiar with the concept for decades but the Spring still pushed *karāma* further in their constitutional texts.) Then the paper considers the countries that have incorporated the concept most recently, and finally reflects on the states that have remained at the periphery of the Arab Spring without making any significant changes to their constitutional uses of “dignity.”

A preliminary explanation with regard to inclusion of Somalia, Libya, and Syria in this parade must be given. Somalia proclaims itself part of the Arab world, professes Arabic as its second official language, and is going through a long process of regime change; Libya’s constitutional declaration is hardly enforced, but it is still meaningful as a manifesto of its drafters; Syria’s 2012 constitution is a response by Assad’s regime to the revolts and therefore exemplifies well how a regime can take a symbolic step—e.g., replacing a constitution with an entirely new one—to address the demand for change coming from its citizens. For the time being, the future of Syria is so uncertain that it is really hard to predict if, when, and how a constitutional text will become effective.

The Core of the Arab Spring and the Development of Dignity

The Arab countries that certainly have experienced the greatest changes after 2010 are Egypt, Libya, Syria, and Tunisia, with Egypt and Tunisia being especially fast in forcing their respective leaderships to resign within weeks.¹⁹⁶ All but Syria have experienced a deep regime change, because their leaders were definitively toppled. Tunisia is probably in the best shape to re-establish the rule of law. Egypt has experienced a very painful transition, the outcome of which has been criticized for being almost as authoritarian as the Mubarak regime, as the Army took over again after Mohammad Mursi's tumultuous presidency and had its military leader, Al-Sissi, established as the new head of the State. Libya, after the end of Qadhafi regime, is living through a period of turmoil and is on the edge of dissolution, with a weak truce between a pro-secularist coalition and an Islamist party and an expansion of Islamic State's militias. Syrian President Assad does not control the whole country anymore, as the government, rebel factions, and the Islamic State contend for its territory.

All of these states, however, have introduced new constitutions, with Egypt implementing three constitutional documents in three years. And all of them were already familiar with the concept of "dignity." It will be good, then, to contrast the new provisions with those that immediately preceded them.

Libya

The idea of "dignity" is not new to Libya's constitutional lexicon. The first Qadhafi revolutionary constitution adopted the word "dignity" as early as 1969. This constitution reads, at Art. no. 27:

The aim of judicial decisions shall be the protection of the principles of the community and the rights, *dignity*, and freedom of individuals.¹⁹⁷

The following *Declaration on the Establishment of the Authority of the People*¹⁹⁸ in 1977 proclaimed the Koran to be the Libyan constitution, implicitly abrogating the 1969 constitution.

¹⁹⁶ Beck & Hüser, *supra* note 7, at 5.

¹⁹⁷ LIBYAN CONSTITUTION OF 1969, *unofficial translation at* http://www.servat.unibe.ch/icl/ly00000_.html.

¹⁹⁸ DECLARATION ON THE ESTABLISHMENT OF THE AUTHORITY OF THE PEOPLE (1977), *unofficial translation at* http://www.servat.unibe.ch/icl/ly01000_.html.

Paradoxically, one of the oldest constitutional “settlements” after the Arab Spring is the Libyan one. The post-Qadhafi 2011 provisional constitution, enforced during what was expected to be a transitional period to a permanent constitution, is filled with references to “dignity.”¹⁹⁹

This is true in the Preamble, which states:

In view of our belief in the Revolution of the 7th day of February . . . which has been led by the Libyan people in different districts of their country and due to our faithfulness to the martyrs of this blessed Revolution who sacrificed their lives for the sake of freedom, *living with dignity* on the land of home as well as retrieving all the rights looted by Al-Gaddafi and his collapsed regime. . . . The interim Transitional National Council has decided to promulgate this Constitutional Declaration in order to be the basis of rule in the transitional stage until a permanent Constitution is ratified in a plebiscite.²⁰⁰

Art. no. 7, which protects individual rights and freedoms, uses a verb—*takram*—instead of *karāma* to signify the respect of human dignity, in the following terms:

The State shall safeguard human rights and fundamental freedoms, endeavor to join the regional and international declarations and covenants which protect these rights and freedoms and strive for the promulgation of new covenants which recognize the *dignity* of man as Allah’s representative on earth.²⁰¹

The difference between the 1969 and the 2011 contexts of dignity is quite striking. In the 1969 text, “dignity” clearly refers to individuals, even in opposition to the community’s interests. The 2011 provisional constitution lacks a similar individualistic understanding of human dignity. In the *Preamble*, it refers to the Libyan people collectively, whereas in Art. no. 7 this term refers to the foundation of rights: it roots the protection of an individual’s rights in the dignity that God confers upon him as His representative (*khalif*) on Earth. Thus the constitution draws from traditional Islamic theology—which says that human beings are Allah’s earthly representatives—

¹⁹⁹ 2011 CONSTITUTIONAL DECLARATION OF LIBYA (Aug. 3, 2011) http://www.wipo.int/wipolex/en/text.jsp?file_id=246953 (hereinafter LIBYA CONSTITUTION). It was slightly amended twice in 2012 in order to prepare the way for the general elections, the creation of a constituent assembly, and the constitutional drafting process.

For the first amendment, see 2012 AMENDMENTS TO LIBYA’S CONSTITUTION OF 2011 (July 5, 2012), http://production.clinecenter.illinois.edu/REPOSITORYCACHE/155/BmMvx3OwWyP942nka3z72a5XD sG3kal1qzt4i4xwey7Zo1RL8yUH03WOGd0Jpx8BqxMIJolTITYdoaEp45111pL6Ms3F0fe3T9EVwL1Ff5_22947.pdf. For the second amendment, see THIRD CONSTITUTIONAL AMENDMENT OF 2012 (July 5, 2012) (Libya), <http://www.righttononviolence.org/mecf/wp-content/uploads/2012/07/2012-07-05-Libya-Third-Constitutional-amendment.pdf>.

²⁰⁰ LIBYA CONSTITUTION pmb1.

²⁰¹ *Id.* art. 7.

to settle human dignity. It seems that recent developments in constitutional drafting have used *karāma* in a foundational way, rooting it in the Islamic theological discourse.

Syria

The idea of “dignity” entered the Syrian constitutional framework very early, making this country one of the concept’s forerunners in the Arab context. As we have seen, *karāma* was already in use in 1930s to convey the idea of “respect” for the state and for religions. This constitutional idea never faded, but remained a common thread throughout Syria’s whole constitutional history.

Even before the Assad regime, this concept had populated Syrian constitutional documents. The 1950 constitutional text enshrined “dignity” as inherent to human beings among the core values of the new regime in its *Preamble*. Art. no. 7 confirmed that all citizens enjoyed equal dignity as individuals.²⁰²

The 1973 constitution, which entered into force shortly after the regime change that led to Hafez al-Assad’s decades-long rule, established the pivotal role of the state for the protection of human dignity. It proclaimed in Art. no. 25:

Freedom is a sacred right. The state protects the personal freedom of the citizens and safeguards their *dignity* and security.²⁰³

The 2012 Syrian constitution is the legal reaction to the great turmoil that has spread through the country. Therefore, it represents the political regime and structure that its opponents are trying to topple. Notwithstanding, note that the 2012 constitutional text mentions dignity in certain provisions. The *Preamble* states:

The completion of this Constitution is the culmination of the people’s struggle on the road to freedom and democracy. It is a real embodiment of achievements, a response to shifts and changes, an evidence of organizing the march of the state towards the future, a regulator of the movement of its institutions and a source of legislation. All of this is attainable through a system of fundamental principles that enshrines independence, sovereignty and the rule of the people based on election, political and party pluralism and the protection of national unity, cultural diversity, public freedoms, human rights, social justice, equality, equal opportunities, citizenship and the rule of law, where the society

²⁰² SYRIAN CONSTITUTION OF 1950 art. 7, <http://www.righttononviolence.org/mecf/wp-content/uploads/1950/09/1950Syria.pdf>.

²⁰³ SYRIAN CONSTITUTION OF 1973 art. 25

and the citizen are the objective and purpose for which every national effort is dedicated. Preserving *the dignity of the society and the citizen* is an indicator of the civilization of the country and the prestige of the state.²⁰⁴

Art. no. 19 holds that:

Society in the Syrian Arab Republic shall be based on the basis of solidarity, symbiosis and respect for the principles of social justice, freedom, equality and maintenance of *human dignity of every individual*.²⁰⁵

Finally, Art. no. 33 affirms:

Freedom shall be a sacred right and the state shall guarantee the personal freedom of citizens and preserve *their dignity* and security.²⁰⁶

The Syrian approach to the constitutional idea of “dignity,” according to the 2012 text, encompasses both the individual and the collective: the society overall is endowed with this characteristic. And this understanding empowers the state to protect human dignity—especially that of individuals—instead of imposing a check on it.

After all, the utilization of *karāma* within the Syrian constitutional framework has both encompassed the man and the state, with the latter’s achievements seen as a the best way to protect the first. This trend, which started in the 1950s, has remained largely untouched until now.

Tunisia

The idea of dignity made its appearance in Tunisia in 1959 with the new constitution.²⁰⁷ At that time, the concept already was clearly enshrined in the text.

The *Preamble*, among other goals, mentioned the task of consolidating

national unity and remain[ing] faithful to the human values that constitute the common heritage of the peoples attached to human *dignity*, justice and liberty and who are striving for peace, progress and free cooperation among nations.²⁰⁸

Several Articles also mentioned this word. In Art. no. 5, the first two paragraphs state:

²⁰⁴ SYRIAN CONSTITUTION OF 2012 pmbl.

²⁰⁵ *Id.* art. 19.

²⁰⁶ *Id.* art. 33.

²⁰⁷ CONSTITUTION OF TUNISIA 1959, http://www.wipo.int/wipolex/en/text.jsp?file_id=196736 (last visited: January 22, 2016).

²⁰⁸ *Id.* pmbl.

The Republic of Tunisia shall guarantee fundamental freedoms and human rights in their universality, comprehensiveness, complementarity and interdependence.

The Republic of Tunisia shall be founded upon the principles of the rule of law and pluralism and shall strive to promote human *dignity* and to develop the human personality.²⁰⁹

Finally, Art. no. 13 states:

Sentences are personal and shall be pronounced only by virtue of a law issued prior to the punishable act, except in the case of a more favorable law.

Those deprived of freedom shall be treated humanely and their *dignity* shall be respected, in compliance with the conditions laid down by law.²¹⁰

The 2014 Tunisian constitution made broad references to the concept of “*dignity*.”²¹¹

The *Preamble* itself stresses the recognition of dignity as one of the two main goals of the 2010–2011 revolution:

We, the representatives of the Tunisian people, members of the National Constituent Assembly,

Taking pride in the struggle of our people to gain independence and build the state, to free ourselves from tyranny, to affirm our free will and to achieve the objectives of the revolution for freedom and *dignity*, the revolution of December 17, 2010 through January 14, 2011, with loyalty to the blood of our virtuous martyrs, to the sacrifices of Tunisian men and women over the course of generations, and breaking with injustice, inequality, and corruption. . . . We, in the name of the Tunisian people, with the help of God, draft this Constitution.²¹²

The word later is mentioned in four articles of the text.

Art. no. 4, third paragraph:

The motto of the Tunisian Republic is: freedom, *dignity*, justice, and order.²¹³

Art. no. 23:

²⁰⁹ *Id.* art. 5.

²¹⁰ *Id.* art. 13.

²¹¹ CONSTITUTION OF THE REPUBLIC OF TUNISIA 2014, *unofficial translation available at* <http://www.venice.coe.int/files/Constitution%20TUN%20-%202014.pdf>.

²¹² *Id.* pmbl.

²¹³ *Id.* art. 4.

The state protects *human dignity* and physical integrity and prohibits mental and physical torture. Crimes of torture are not subject to any statute of limitations.²¹⁴

Art. no. 30, first paragraph:

Every prisoner shall have the right to humane treatment that preserves their *dignity*.²¹⁵

Art. no. 47:

Children are guaranteed the rights to *dignity*, health, care and education from their parents and the state.²¹⁶

The new Tunisian constitution greatly emphasizes dignity as a limitation on what the state can do to individuals, although it also includes a state duty to intervene in some cases, as seen in relation to children's rights.

The overall impression is that Tunisian constitutions consistently rely on the concept of dignity as referring to individuals, with the state both limited by and invoked to protect dignity itself. *Karāma* has a clearly individualized meaning, and is both a check on the state and a justification for its intervention.

Egypt

The first call to dignity in Egypt, the most influential country of the Middle East,²¹⁷ came from Nasserism and from the Egypt's quest for a place in the community of nations. Gamal Abd-al-Nasser, one of the leaders of Arab decolonization and then President of the Republic, galvanized Egyptians' pride through using this concept; but its appeal crossed the state borders and influenced also other Arab countries. "For millions of Egyptians and Arabs who had suffered untold indignities at the hands of the colonizers, *karameh* ["dignity"] would find a sure resonance in their hearts."²¹⁸ When Nasser used this word—or, more precisely, the Egyptian dialectal version of "dignity," *karameh*—in his speeches, he was not relying on well-settled

²¹⁴ *Id.* art. 23.

²¹⁵ *Id.* art. 30.

²¹⁶ *Id.* art. 47.

²¹⁷ Charles Malik, *The Near East*, *supra* note 86, at 234.

²¹⁸ ADEED DAWISHA, *THE SECOND ARAB AWAKENING* 54 (2013).

Islamic law or political theory terminology yet. He was using a colloquial expression,²¹⁹ which resonated deeply with the feelings of Arabs.

Traces of dignity can be found in the 1956 Egyptian constitution, which in the *Preamble* defined the people as “[b]lessed by *dignity* and justice.”²²⁰ Art. no. 8 also said that basic liberties are limited for the sake of individuals’ *dignity* or liberty.²²¹

While the 1962 Egyptian constitution was silent on dignity, the 1971 constitution, which was amended last under President Mubarak in 2007, embedded it in several provisions.²²²

The *Preamble* states:

Realizing that man’s humanity and *dignity* are the beams of light that guide and direct the course of the great development of mankind for the realization of its supreme ideal. Man’s *dignity* is a natural reflection of the nation’s *dignity*, now that the individual is the cornerstone in the edifice of the homeland, the land that derives its strength and prestige from the value of man and his education.²²³

Whereas Art. no. 42 affirms:

Any person arrested, detained or his freedom restricted shall be treated in such a manner that preserves his human *dignity*.²²⁴

While Art. no. 42 reflects a sort of protection of personal liberty in the narrowest sense, the *Preamble* bears the signs of a specific interest in magnifying the nation’s role as the source of individual identity and increasing the role of modern development in the achievement of dignity for Egyptians.

The 2011 Interim constitution, which is the smallest in size, the 2012 “Muslim Brotherhood” constitution, and the currently-in-force 2014 constitution all have shown interest in the idea of dignity.

²¹⁹ *Id.* at 54.

²²⁰ CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT 1956, <http://www.righttononviolence.org/mecf/wp-content/uploads/2012/03/1956Egypt.pdf> (last visited: January 21, 2016).

²²¹ *Id.*

²²² CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 11 Sept. 1971, *as amended*, 22 May 1980, 25 May 2005, 26 Mar. 2007, *translation available at* <http://www.constitutionnet.org/files/Egypt%20Constitution.pdf>.

²²³ *Id.* pmb1.

²²⁴ *Id.* art. 42.

The 2011 provisional text²²⁵ in Art. no. 9 focused on protection from public powers in saying that:

Every citizen who is arrested or detained must be treated in a way that preserves his/her human *dignity*.²²⁶

The 2012 constitution was more concerned with the idea of dignity, starting from the *Preamble*, which famously says that:

We publicly demanded our full rights to “a decent life, freedom, social justice and *human dignity*.”²²⁷

The *Preamble* itself stressed that:

The *dignity* of the individual is part and parcel of the *dignity* of the homeland. And a country in which women are not respected has no dignity; for women are the sisters of men and partners in national gains and responsibilities.²²⁸

Additionally,

Security is a great blessing watched over by the police that work to serve and protect the people and enforce justice; for there can be no justice without protection, and no protection without security institutions which respect human *dignity* and the rule of law.²²⁹

In the 2012 constitution’s provisions, Art. no. 1 focused directly on human dignity, as it was entitled “Dignity and the prohibition against insults” and its provisions mentioned the word twice:

Dignity is the right of every human being. The state and society guarantee respect for *dignity* and its protection.

Insulting or showing contempt toward any human being is prohibited.²³⁰

Article 36, first paragraph, states:

Any person arrested, detained or whose freedom is restricted in any way, is treated in a manner preserving his *dignity*. He may not be tortured, nor may he be compelled, nor may he be physically or morally harmed.²³¹

²²⁵ PROVISIONAL CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT 2011, <http://www.egypt.gov.eg/arabic/laws/constitution/default.aspx>.

²²⁶ *Id.* art. 9.

²²⁷ CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT 2012 pmb. <http://www.righttononviolence.org/mecf/12082012-new-constitutional-document-presidential-constitutional-declaration/>.

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.* art. 1.

²³¹ *Id.* art. 36.

Finally, Art. no. 37 stressed the dignified treatment of prisoners:

Prison is a place of discipline, correction and reform. It is subject to judicial supervision. Anything that violates human *dignity* or a person's health is prohibited. The state is responsible for the rehabilitation of convicts and facilitating for them a *dignified life* after their release.²³²

Overall, the 2012 constitution had a sweeping conception of dignity. Dignity served as a shield against state power, as well as a justification for government intervention in the context of hate speech. Perhaps even more interestingly, the 2012 text drew a striking parallel between national and individual dignity, with the latter being a reflection of the former: "The dignity of the individual is part and parcel of the dignity of the homeland." In a sense, the 1971 constitution was similar to the 2012 Muslim Brotherhood's constitution, since both derived individual dignity from the collective dignity of the nation.

The 2014 constitution²³³ now in force shows a deep concern for dignity twice in the *Preamble*:

We, Egyptians, strived to keep up with the pace of development, and offered up martyrs and made sacrifices in several uprisings and revolutions until our patriotic army delivered victory to the sweeping popular will in the "Jan 25—June 30" Revolution that called for bread, freedom and human *dignity* within a framework of social justice, and brought back the homeland's free will.

...

We believe in democracy as a path, a future, and a way of life; in political multiplicity; and in the peaceful transfer of power. We affirm the right of the people to make their future. They, alone, are the source of authority. Freedom, human *dignity*, and social justice are a right of every citizen. Sovereignty in a sovereign homeland belongs to us and future generations.²³⁴

Art. 51 expresses the manifold ways dignity comes into play in the Egyptian legal regime:

Dignity is a right for every person that may not be infringed upon. The state shall respect, guarantee and protect it.²³⁵

Art. 55, first paragraph, stresses the concern for individual dignity:

²³² *Id.* art. 37.

²³³ CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, <http://www.righttononviolence.org/mecf/wp-content/uploads/2013/07/2013-07-08-Egypt-Constitutional-Declaration-ARABIC.pdf>.

²³⁴ *Id.* pmb1.

²³⁵ *Id.* art. 51.

All those who are apprehended, detained or have their freedom restricted shall be treated in a way that preserves their *dignity*. They may not be tortured, terrorized, or coerced. They may not be physically or mentally harmed, or arrested and confined in designated locations that are inappropriate according to humanitarian and health standards. The state shall provide means of access for those with disabilities.²³⁶

Art. 56 deals with treatment of prisoners. As stated in the second paragraph:

Prisons and detention centers shall be subject to judicial oversight. All that which violates the *dignity* of the person and or endangers his health is forbidden.²³⁷

Finally, Art. 78, paragraph 1, repeats the concern for dignity in the area of housing:

The state guarantees citizens the right to decent, safe and healthy housing, in a way that preserves human *dignity* and achieves social justice.²³⁸

The three most recent Egyptian constitutions show a growing interest in dignity, although they frame it differently. While the interim constitution of 2011, being rather short in length, confined “dignity” to the narrowest understanding of protecting personal liberty, both the 2012 and 2014 ones keep the idea of dignity as limiting the state while also viewing the state as the guarantor and enforcer of dignity. The 2012 constitution, drafted by the “Muslim Brotherhood” majority, stressed the collective—even national—origin of individual liberty, whereas the 2014 one focuses more on individual liberty. Interestingly, Nasserism and the pro-Islamic 2012 constitutions both stress the collective prong of this concept.

***Karāma* in the Countries that Adopted Dignity after the Arab Spring**

A series of countries have introduced the idea of “dignity” in the texture of their constitutions only lately. A quick review of such references to the idea of *karāma* will show how much the Arab Spring has push Arab constitutionalism to include this legal concept.

Jordan

Jordan modified its 1952 constitution in 2011²³⁹ and introduced the idea of dignity. The mention of *dignity* is now embedded in Art. no. 8, which protects personal liberty:

²³⁶ *Id.* art. 55.

²³⁷ *Id.* art. 56.

²³⁸ *Id.* art. 71.

²³⁹ CONSTITUTION OF JORDAN 1952, *as amended* 2011, http://www.representatives.jo/pdf/constitution_en.pdf.

1. No person may be seized, detained, imprisoned or the freedom thereof restricted except in accordance with the provisions of the law.
2. Every person seized, detained, imprisoned or the freedom thereof restricted should be treated in a manner that preserves *human dignity*; may not be tortured, in any manner, bodily or morally harmed; and may not be detained in other than the places permitted by laws; and every statement uttered by any person under any torture, harm or threat shall not be regarded.²⁴⁰

Morocco

Morocco introduced a new constitution in 2011²⁴¹ as well, mentioning for the first time dignity in three different contexts.

The first appearance of dignity is in the *Preamble*:

With fidelity to its irreversible choice to construct a democratic State of Law, the Kingdom of Morocco resolutely pursues the process of consolidation and of reinforcement of the institutions of a modern State, having as its bases the principles of participation, of pluralism and of good governance. It develops a society of solidarity where all enjoy security, liberty, equality of opportunities, of respect for their *dignity* and for social justice, within the framework of the principle of correlation between the rights and the duties of the citizenry.²⁴²

Then dignity is embedded in two more articles of the Moroccan constitution, pertaining respectively to personal liberty and to the newborn institution, the National Council of the Rights of Man, which is empowered with supervising the protection of human rights.

Art. no. 22 states:

The physical or moral integrity of anyone may not be infringed, in whatever circumstance that may be, and by any party that may be, public or private.
No one may inflict on others, under whatever pretext there may be, cruel, inhuman, [or] degrading treatments or infringements of human *dignity*.²⁴³

Art. no. 161 proclaims:

The National Council of the Rights of Man is a pluralist and independent national institution, charged with taking cognizance of all the questions relative to the defense and to the protection of the Rights of Man and of the freedoms, to guarantee their full exercise and their promotion, as well as the preservation of the *dignity*, of the individual

²⁴⁰ *Id.* art. 8.

²⁴¹ CONSTITUTION OF MOROCCO 2011, <http://www.righttononviolence.org/mecf/01072011-amendment-constitution-of-2011/>.

²⁴² *Id.* pmbl.

²⁴³ *Id.* art. 22.

and collective rights and freedoms of the citizens [feminine] and the citizens [masculine], and this, with strict respect for the national and universal referents in the matter.²⁴⁴

Jordan and Morocco, drawing on the idea of dignity after the Arab Spring, have, in a nutshell, embraced a rather individualized understanding of it. Although Morocco has used the term in a particularly diffuse manner, it seems to constantly link it to the idea of *protecting individuals* against the state; Jordan's very idea of *habeas corpus* finds in "dignity" its first and strongest shield, therefore giving this concept a paramount importance in securing personal safety against state violations. The idea of dignity is therefore conceived as a check on the state—a limit imposed on its role and power—rather than a justification for its intervention.

Beyond the Arab Spring: Other Appearances of *Karāma*

Some Arab countries have been largely spared from Arab Spring's revolutions—or have dealt with them with no consequences to their constitutional texts, at least with reference to dignity. States such as Somalia went through a very special post-war journey,²⁴⁵ which has developed quite apart from the Arab Spring. Nevertheless, their fundamental texts enshrine *karāma* among their core concepts, endowing it with multiple meanings. Although such constitutions have not really pioneered the usages of *karāma* or championed the last wave of "dignitarian" constitutional discourse after the Arab Spring, an overview of them will help sequence the development of *karāma*, in its manifold facets and its scattered presence within Arab constitutionalism. What follows is an overview in the chronological order in which these countries have introduced *karāma* into their texts.

Kuwait

The 1962 Kuwait constitutional *Preamble*²⁴⁶ is committed to enhancing the "dignity of the individual," while its text later insists that "[a]ll people are equal in human dignity and in public

²⁴⁴ *Id.* art. 161. Note that the original Arabic seems to convey the meaning that dignity is retained by human beings as individuals as well as when they gather into collective bodies.

²⁴⁵ See Cavedon, *supra* note 37, at 474 (discussing this journey); see also Ann Elizabeth Mayer, *The Respective Roles of Human Rights and Islam: An Unresolved Conundrum for Middle Eastern Constitutions*, in *CONSTITUTIONAL POLITICS*, *supra* note 27, at 84.

²⁴⁶ CONSTITUTION OF KUWAIT 1962 pmb1., *unofficial translation available at* http://www.servat.unibe.ch/icl/ku00000_.html .

rights and duties before the law.”²⁴⁷ Here “dignity” is at the root of both rights and duties: “[w]ork is a duty of every citizen necessitated by personal dignity and public good.”²⁴⁸

Algeria

Algeria’s constitutional culture enshrined the idea of “dignity” as early as 1963,²⁴⁹ immediately after its liberation from French colonizers, counting the “respect for the dignity of the human being” among the “fundamental objectives” of the Republic.²⁵⁰ The 1976 constitution²⁵¹ later concretized this fundamental objective with the specification that the state would be responsible for securing individuals’ dignity.²⁵² It also added that the liberators of the country (*mujahiddin*) acquired a special dignity through their actions, which justified a heightened protection for them and their memory.²⁵³ The 1996 constitution²⁵⁴ reinforced the role of dignity as a shield of the inviolable rights of the individual against any act of violence,²⁵⁵ confirmed the special dignity that the revolution, its martyrs, and symbols enjoyed,²⁵⁶ and added in its *Preamble* that Algeria is a land endowed with freedom and dignity.²⁵⁷ In a few words, Algeria constitutionalism has broadened the meaning of dignity to progressively encompass the rights of individuals, the special statuses of heroic combatants, and the country’s values.

Bahrain

Bahrain’s constitutionalism, from 1973 onwards,²⁵⁸ has a two-pronged treatment of “dignity.” The first prong enforces it as an equalizing principle, stating that “People are equal in human dignity”;²⁵⁹ the second prong asserts that its citizens have the “duty” to work, as it stems from

²⁴⁷ *Id.* art. 29.

²⁴⁸ *Id.* art. 41.

²⁴⁹ CONSTITUTION OF ALGERIA 1963, <http://www.righttononviolence.org/mecf/wp-content/uploads/1963/09/1963Algeria.pdf>.

²⁵⁰ *Id.* art. 10.

²⁵¹ CONSTITUTION OF ALGERIA 1976, <http://www.conseil-constitutionnel.dz/IndexArab.htm>.

²⁵² *Id.* art. 33.

²⁵³ *Id.* art. 85.

²⁵⁴ CONSTITUTION OF ALGERIA 1996, *unofficial translation available at* http://www.servat.unibe.ch/icl/ag00000_.html.

²⁵⁵ *Id.* art. 34.

²⁵⁶ *Id.* art. 62.

²⁵⁷ *Id.* pmbl.

²⁵⁸ CONSTITUTION OF THE STATE OF BAHRAIN 1973, *unofficial translation available at* <http://confinder.richmond.edu/admin/docs/Bahrain.pdf>.

²⁵⁹ *Id.* art. 18. Note that the Article specifies that “citizens shall be equal in public rights and duties before the law, without discrimination as to race, origin, language, religion, or belief,” while remaining silent as to gender equality.

“personal dignity” and “public good.”²⁶⁰ Dignity therefore inheres in men and women as a right as well as a duty.

Yemen

The 1991 Yemeni constitutional text,²⁶¹ later amended in 1994²⁶² and 2001,²⁶³ bears the signs of “human dignity” as understood in liberalism. It mentions this concept twice, while speaking of the duty of the state to preserve and protect the dignity and freedom of its citizens,²⁶⁴ and later while specifying that restrictions on freedom cannot entail that human dignity be demeaned.²⁶⁵

Mauritania

Mauritania modified its 1991 constitution²⁶⁶ in 2012,²⁶⁷ leaving untouched the mention of dignity and its centrality in its *Preamble*, which reads as follows:

Considering that the liberty, the equality, and the *dignity* of Man cannot be assured except in a society which consecrates the primacy of law, concerned by creating durable conditions for a harmonious social evolution, respectful of the precepts of Islam, sole source of law and open to the exigencies of the modern world, the Mauritanian people proclaim, in particular, the intangible guarantee of the following rights and principles:

- the right to equality;
- the fundamental freedoms and rights of the human person;
- the right of property;
- the political freedoms and the trade union freedoms;
- the economic and social rights;
- the rights attached to the family, basic unit of the Islamic society.²⁶⁸

²⁶⁰ *Id.* art. 13.

²⁶¹ CONSTITUTION OF THE REPUBLIC OF YEMEN 1991, http://www.wipo.int/wipolex/en/text.jsp?file_id=225176.

²⁶² CONSTITUTION OF THE REPUBLIC OF YEMEN 1991, *as amended* 1994, <http://www.al-bab.com/yemen/gov/con94.htm>.

²⁶³ CONSTITUTION OF THE REPUBLIC OF YEMEN, *as amended* 1994, 2001, <http://www.refworld.org/pdfid/3fc4c1e94.pdf> (last visited: January 22, 2016).

²⁶⁴ *Id.* art. 48a.

²⁶⁵ *Id.* art. 48 b.

²⁶⁶ CONSTITUTION OF MAURITANIA 1991, <http://www.mauritania.mr/fr/index.php?niveau=5&coderub=4&codsousse=74&codesousrub=11>.

²⁶⁷ CONSTITUTION OF MAURITANIA 1991, *as amended* 2012, https://www.constituteproject.org/constitution/Mauritania_2012.pdf.

²⁶⁸ *Id.* pmbl.

Saudi Arabia

Saudi Arabia's 1992 Basic Law²⁶⁹ has a rather limited scope, as this country has consistently maintained that Islamic law in itself is its constitution. However, "human dignity" is mentioned in the field of mass media communication and justifies limitations to freedom of expression.²⁷⁰

Sudan

The 2005 Sudanese constitution²⁷¹ mentions dignity several times. Its president is committed to preserving the "dignity" of the entire people.²⁷² The state protects every human being's "inherent right to life, dignity and the integrity of his person,"²⁷³ and the constitution prohibits treatment of prisoners that would degrade their dignity.²⁷⁴ The "dignity and status of women"²⁷⁵ and of the elderly²⁷⁶ are mentioned specifically. Dignity also is expanded to support welfare policies, which should bring aid to people in need.²⁷⁷

Oman

In 2011 the Sultanate of Oman modified the 1996 constitution²⁷⁸ but left unaltered the only provision that touched upon the subject of *karāma*, namely Art. no. 31:

Freedom of the press, printing and publication is guaranteed in accordance with the conditions and circumstances defined by the Law. It is prohibited to print or publish material that leads to public discord, violates the security of the State or abuses a person's *dignity* and his rights.²⁷⁹

Somalia

In 2012, Somalia enforced a provisional constitution²⁸⁰ after a peace process that had taken almost a decade; its drafting was influenced by the circumstances of the war and the following

²⁶⁹ BASIC LAW OF GOVERNANCE OF SAUDI ARABIA 1992, *translation available at* http://www.saudiembassy.net/about/country-information/laws/The_Basic_Law_Of_Governance.aspx.

²⁷⁰ *Id.* art. 39.

²⁷¹ SUDANESE CONSTITUTION 2005, *unofficial translation available at* https://www.constituteproject.org/constitution/Sudan_2005.pdf (last visited: January 22, 2016).

²⁷² *Id.* art. 56.

²⁷³ *Id.* art. 28; *Id.* pmbl.

²⁷⁴ *Id.* art. 149.

²⁷⁵ *Id.* art. 32.

²⁷⁶ *Id.* art. 45.

²⁷⁷ *Id.* art. 45; *Id.* art. 185.

²⁷⁸ CONSTITUTION OF OMAN 1996, *as amended 2011*, *unofficial translation available at* https://www.constituteproject.org/constitution/Oman_2011.pdf.

²⁷⁹ *Id.* art. 31. Note that Art. 59, which mentions "dignity of the judiciary," does not actually use the same word but instead uses *sharf*. *Id.* art. 59, http://www.wipo.int/wipolex/en/text.jsp?file_id=180953.

²⁸⁰ FEDERAL REPUBLIC OF SOMALIA PROVISIONAL CONSTITUTION 2012.

conditions of peace, while the Arab Spring's echoes seem to have been weak. Nation building, the reconciliation and peace process, and constitution building went hand in hand, singling out Somali constitutionalism from that of the rest of the Arab world. The incorporation of *karāma* therefore does not appear to be related to the Arab Spring's constitutionalism.

Art. no. 10 of the Somali constitution, which explicitly provides dignity with a constitutional protection, gives a broad, even multifaceted portrait of “dignity”:

1. *Human dignity* is given by God to every human being, and this is the basis for all human rights.
2. *Human dignity* is inviolable and must be protected by all.
3. State power must not be exercised in a manner that violates *human dignity*.²⁸¹

Dignity beyond the Arab Spring: A Summary

This short parade of constitutional experiments is meaningful to the extent that it shows the Arab interest in *karāma* apart from and beyond the Arab Spring. On one hand, such texts confirm that among the main concerns of Arab legal culture is the protection of human dignity against the state. On the other hand, however, they also show how “dignity” can have other facets. It can limit others' rights and therefore trigger—instead of limit—state power: this is what the Omani, Saudi, and Somali constitutions all allude to when they protect “dignity” from the private press (as in Oman's constitution or in Saudi basic law), or when they command that it be protected “by all” (as seen in the Somali constitution). “Dignity” becomes a public affair, as it applies to everyone and legitimizes state intervention to protect individuals. It can shield persons from state power but also legitimize the state's intervention for the sake of protecting individuals against society.

Finally, constitutions can deal with the *foundation* of dignity: the Somali constitution again clarifies that “Human dignity is given by God.” The origin—and, more specifically, the issue of the *theological* origin²⁸²—of “dignity” is of particular salience, as it displays the legitimizing role that this concept can play with regard to the state.²⁸³

Here, however, it is possible to highlight a distinctive feature of dignity in the Arab constitutional framework played out above: “Dignity” draws on human rights discourse as well as Islam. When it is intended to shield human beings against public or private powers, it certainly

²⁸¹ *Id.* art. 10.

²⁸² See Cavedon, *supra* note 37, at 483 (describing this).

²⁸³ *Id.* (discussing this).

embodies human rights discourse; but when it bases the constitution on a theological ground, then it links back to Islam. *Karāma* connects both facets of contemporary Arab constitutionalism, regardless of the latest Arab Spring events and revolutions.

An Overview of the Post–World War II Usage of “Dignity” in Arab Constitutions: Sequencing a Concept

Different usages have characterized the Arabic term *karāma* after it was included in the drafting of the Universal Declaration of Human Rights. The previous constitutional inceptions of *karāma* had portrayed the idea of respect for religion (Lebanese constitution 1926) and for both religion and state (Syrian constitution 1930).

After the Universal Declaration, this idea of “respect” shifted to convey the idea that individuals (and states, in several constitutional texts) must be respected, as well as protected. New uses of *karāma* were added to the pre–Universal Declaration ones, making the role of the concept more dense and ambiguous, and the constitutional references to it more numerous.

Indeed, the uses of dignity in post–World War II Arab constitutions are manifold. Dignity has signified the nation’s value and the worth of human beings. It has entailed the need to protect such worthiness from state intrusion, as well as the requirement that the state actively protect and promote it against societal obstacles. Finally, it has legitimized the constitutional structure itself through a theological discourse, which grounds human value on the special place that God has accorded to mankind.

The degree of obscurity and ambiguity that surrounds dignity paradoxically incentivizes its use. It has been noted that “different cultures can understand different things by it”:²⁸⁴ this observation applies to the different seasons through which Arab countries have come. Each has been able to ground its own expectations on dignity.

This connection between dignity’s ambiguity²⁸⁵ and its success is a hallmark of the global discourse. The concept’s amorphousness²⁸⁶ is a common thread in contemporary global constitutionalism. This vagueness has served to reinforce many of the characteristics of political

²⁸⁴ JAMES GRIFFIN, ON HUMAN RIGHTS 203 (2008).

²⁸⁵ See Mark Movsesian, *Of Human Dignities 2* (unpublished manuscript) (on file with author) (examining dignity).

²⁸⁶ ERIN DALY, DEMOCRACY, CITIZENSHIP, AND CONSTITUTIONALISM: DIGNITY RIGHTS, COURTS, CONSTITUTIONS, AND THE WORTH OF THE HUMAN PERSON 103 (2012).

morality that put a check on democracy, alongside the rule of law, human rights, and equality.²⁸⁷ To some extent, it has also provided a foundation for human rights themselves.²⁸⁸

The idea of the dignity of the individual was fleshed out in the Arab world as early as the 1950s. But, at that time, “[t]he indignities faced by colonized”²⁸⁹ countries that were setting out for a modern, democratic course made the idea of the “dignity of the nation” especially appealing, so this meaning prevailed over the individualized one. Gamal Abd-al-Nasser, predicated his fortune on this idea of dignity: “If one word is associated with the minds of people with Nasser’s oratory, a word that was repeated over and over again in his speeches it was [dignity].”²⁹⁰

This explains the 1950s’ extensive recourse to dignity to describe the worthiness of Arab nations, alongside the reference to dignity as an inherent feature of human beings. It epitomized the democratization of post-colonial countries and the rise of their peoples to the world stage, especially in Egypt.²⁹¹ This need for global recognition as a country in the community of states was not unique to Egypt, however. National resentments spanned throughout the Middle East: in 1950s Iraq, for instance, “nationalism pure and simple [had] been erected as a creed, a sole doctrine which [dominated] social thought and a single force which [swayed] the public;”²⁹² after Greater Syria was dismembered, even in Syria the “nationalist movement came to look upon the West not as a friend, not as a liberator, but as a schemer and intriguer.”²⁹³

Later decades did not see this aspect of dignity really fading. Struggles for real independence and modernization, territorial rivalries, and the fight for full respect from the global community were exacerbated by an additional issue: the existence of Israel, which already in the 1950s was understood as being “a real and serious challenge to Arab existence. It [was] a

²⁸⁷ Jan Komarek, *National Constitutional Courts in the European Constitutional Democracy*, 12 INT’L J. CONSTIT. L. 525, 529 (2014).

²⁸⁸ GRIFFIN, *supra* note 284, at 250.

²⁸⁹ LAURA NADER, *CULTURE AND DIGNITY: DIALOGUES BETWEEN THE MIDDLE EAST AND THE WEST* 1 (2012).

²⁹⁰ DAWISHA, *supra* note 218, at 54.

²⁹¹ MAHMUD HILMI, *DUSTUR AL MISRI WAS AL DASATIR AL-ARABIYA AL MU’ASIRA*, DAR AL-‘AZI 1 (1971).

²⁹² Malik, *The Near East*, *supra* note 1, at 236.

²⁹³ *Id.* at 237.

test of Arab patriotism, dynamism, wisdom and statesmanship. It [constituted] a virtual touchstone of Arab capacities for self-preservation and self-determination.”²⁹⁴

Albeit present in the constitutional texts since 1950s, human dignity takes over in relatively recent times, when liberated masses can express their skepticism towards public powers and authoritarian figures who used to be constitutionally celebrated as founding fathers or pillars of the nations.

And the wide usage of the term dignity in a third way, to depict the constitutional commitment to granting affordable education and medical care, testifies that extremely poor life conditions spurred the revolts and revolutions. The frequent constitutional articles pertaining to welfare are largely “aspirational” rather than “justiciable,”²⁹⁵ but they are not unusual in Islamic regimes²⁹⁶ and reflect the socio-economic preoccupations that are attached to Arab constitutionalism.

This connection between welfare and human dignity, however, is not spurious: several legal traditions are concerned with endowing individuals with welfare resources—which span from education to medical care²⁹⁷—that evidently trigger the state’s intervention, instead of putting a check on it. While it is a distinctive feature of common law traditions to pay relatively small attention to socio-economic rights,²⁹⁸ civil law regimes highly value social rights and welfare.²⁹⁹ Socio-economic rights can be and are understood by portions of contemporary constitutionalism as core elements of human rights: actually, as will be shown below, the idea of human dignity in Western constitutions was first deployed the field of economic and social rights. It is no surprise, then, that they also are linked back to the idea of “human dignity” in the Arab context.

Not uncommon among Arab constitutions is the use of “dignity” to trigger state intervention for the sake of protecting individuals’ honor. But this fourth use of dignity does not exclusively pertain to Arab constitutionalism. Think of Warren and Brandeis’s *The Right to Privacy* article, which appeared on the *Harvard Law Review* in 1891 with longstanding

²⁹⁴ *Id.* at 242.

²⁹⁵ Courtney Jung et al., *Economic and Social Rights in National Constitutions*, 62 AM. J. COMP. L. 1043, 1060 (2014). See Shulztiner & Carmi, *supra* note 21, at 480 (discussing welfare).

²⁹⁶ *Id.* at 1069.

²⁹⁷ DALY, *supra* note 286, at 114.

²⁹⁸ Courtney Jung et al., *supra* note 295, at 1064.

²⁹⁹ *Id.* at 1056.

implications for the American understanding of privacy. There, they tried to convey the protection of human dignity through the idea of privacy, with the primary purpose of protecting individuals' honor and reputation. And, coming closer to our times, philosophers such as Jeremy Waldron advocate for a "civic" understanding of dignity,³⁰⁰ which is committed to protecting the social reputation and standing of individuals and therefore legitimizes public powers' intervention to counterbalance social threats to individuals.

A fifth use of the word "dignity" concerns religious discourse. Contemporary Arab constitutions may trace back the worthiness of the human person to his being created by and in the image of God.³⁰¹ This understanding is a powerful instrument to legitimize—or re-legitimize—a legal regime from a religious perspective. Through saying that a legal order will first and foremost protect human dignity, as it stems from God, public institutions justify their very existence with religious tones.

But placing dignity at the core of the constitution and tracing it back to God is not unique to Arab constitutionalism. The 1949 German Basic Law, which starts out with saying in its Art. no. 1 that "[h]uman dignity shall be inviolable," opened its *Preamble* with the bold affirmation that the German people are "[c]onscious of their responsibility before God and man." Hence, the connection between human rights, dignity, and God is not solely a characteristic feature of Arab legal orders but finds a place in other nations.³⁰²

Overall, many Arab constitutions mentioned dignity well before the Arab Spring. The Spring pushed such constitutions to stress the role of dignity as a check on the state for the benefit of individuals;³⁰³ there is no lack of texts empowering the state with the enforcement of dignity, however. Declining, though, are the understandings of dignity as protecting collectivities and of the nation as being the source of individuals' dignity.

Instead, there is a significant interest in grounding people's right to democratic participation in dignity. But, again, this falls squarely within the scope of dignity widely considered. For example, South Africa's legal culture understands dignity in affirmative terms,

³⁰⁰ DALY, *supra* note 286, at 120.

³⁰¹ Richter-Bernburg, *supra* note 83, at 81.

³⁰² The connection between God, man, and human rights is oftentimes shaped according to the natural law theory: "a constitutionalism of any really viable sort presupposes Being and thus presupposes God." ROBERT LOWRY CLINTON, *GOD AND MAN IN THE LAW* 170 (1997).

³⁰³ On the tensions between the communitarian ideal and the individualistic ideal of dignity, *see* McCrudden, *Human Dignity*, *supra* note 14, at 699.

as a right to be equally acknowledged societally, not just to be protected legally.³⁰⁴ After all, the participative claims of the Arab Spring’s protesters,³⁰⁵ who aimed at clearing away authoritarian figures from the public space and “recreating the political space to nurture democratic and participatory activity,” confirmed Hannah Arendt’s understanding of dignity as participation in a political community.³⁰⁶

The Arab conception of dignity in the post–World War II period has several features. But none of them lies outside the spectrum of meanings that dignity has in contemporary global discourse: they speak of dignity where one could expect them to,³⁰⁷ according to global legal scholarship on this subject.

The trajectory of the concept of “dignity” in Arab constitutionalism is not unique. Actually, many features of *karāma*’s shifts in meaning parallel those of the idea of “dignity” in Western constitutionalism, which drew from secular and religious roots to convey different ideas through the passing of time. It will be good to illustrate how modern Western constitutionalism tapped the idea of “dignity” in its early foundational texts, and what it drew from.

A SIGNIFICANT COMPARISON: THE INCEPTION OF HUMAN DIGNITY IN WESTERN CONSTITUTIONALISM AND THE CATHOLIC INFLUENCE

The idea of human dignity’s constitutional inception is commonly found in the first three decades of the twentieth century. Several constitutions mentioned the concept of human dignity.

First came the 1919 constitution of the Weimar Republic;³⁰⁸ a few years later came the 1929 constitution of Ecuador,³⁰⁹ the 1937 Irish constitution, and the 1940 Cuban constitution.³¹⁰ All of them had incorporated dignity in their texts before the United Nations Charter.³¹¹ In the

³⁰⁴ DALY, *supra* note 286, at 124.

³⁰⁵ Anouar Boukhars, *The Arab Revolutions for Dignity*, 33 AM. FOREIGN POLICY INTERESTS 61, 67 (2011).

³⁰⁶ DALY, *supra* note 286, at 133.

³⁰⁷ Bernhard Schlink, *The Concept of Human Dignity*, in UNDERSTANDING HUMAN DIGNITY, *supra* note 122, at 63 (highlighting that there is a common core in the use of dignity that seems to be cross-cultural).

³⁰⁸ See *supra* note 133.

³⁰⁹ See *supra* note 134.

³¹⁰ See *supra* note 136.

³¹¹ See *supra* note 137.

span of twenty years, the role of dignity rose as “part of the establishment of an alternative constitutionalism.”³¹²

But “dignity” had to go on a long journey before being included in a constitutional text. This was not just because there was a lack of will among the constitutional framers of several countries; it also depended on a rather quick transformation of dignity.

The first twentieth-century constitutional endorsements of dignity as something that attaches to human beings in themselves seem to derive mainly from the doctrinal developments of modern Christianity, with a prominent role played by Catholic thinking.

Legal historians and philosophers have traced the idea of dignity back to the ancient Greeks.³¹³ It is commonly thought, however, that the evolution of this concept passes through the fundamental contributions of Cicero, Thomas Aquinas, Pico della Mirandola, Kant, and Schopenhauer.³¹⁴ This evolution enriches the idea of human dignity, giving it more nuances with the passing of time.

On one hand, dignity’s DNA has a distinctive aristocratic³¹⁵ and reputational origin: it “was once tied up with rank: the dignity of a king was not the same as the dignity of bishop and neither of them was the same as the dignity of a professor.”³¹⁶ Its distinctive feature is the existence of a “social honor” that “belongs to the world of hierarchically ordered traditional societies.”³¹⁷ As “late as the 1930s, in tune with its millennial prior trajectory, dignity [still] attached to a huge range of objects.”³¹⁸ Also nineteenth-century Catholicism had frequent recourse to “dignity” to describe the value that human beings derived “from their place in a

³¹² Samuel Moyn, *The Secret History of Constitutional Dignity*, in UNDERSTANDING HUMAN DIGNITY, *supra* note 122, at 96.

³¹³ David Hollenbach, *Human Dignity: Experience and History, Practical Reason and Faith*, in UNDERSTANDING HUMAN DIGNITY, *supra* note 122, at 192.

³¹⁴ MICHAEL ROSEN, DIGNITY: ITS HISTORY AND MEANING 1–25 (2012) [hereinafter ROSEN, DIGNITY: ITS HISTORY].

³¹⁵ Samuel Moyn, *The Secret History of Constitutional Dignity*, in UNDERSTANDING HUMAN DIGNITY, *supra* note 122, at 97 [hereinafter Moyn, *Secret History*]. See Ben A. McJunkin, *Rank among Equals*, 113 MICH. L. REV. 855, 856 (2013) (discussing dignity).

³¹⁶ JEREMY WALDRON, DIGNITY, RANK, AND RIGHTS 14 (2012).

³¹⁷ Jürgen Habermas, *The Concept of Human Dignity and the Realistic Utopia of Human Rights*, 41 METAPHILOSOPHY 464, 472 (2010).

³¹⁸ Moyn, *supra* note 315, at 97.

divinely ordained hierarchy.”³¹⁹ In the early 1930s, Pope Pius XI’s encyclical letters still used dignity with reference to collective entities, such as workers and the sacrament of marriage.³²⁰

On the other hand, this ranking aspect of the dignity was more complex than just establishing a hierarchy: “even in its very early stage, the idea of dignity in the Western tradition went beyond merely ascribing to individuals an elevated status in a particular social order.”³²¹

The focus on the individual and on his intrinsic nature and value took place only progressively. Although scholars diverge on this point, it seems apparent that for a long time the recognition of the value of *all human beings*—famously proclaimed by Kant³²²—stood alongside other uses of the word.

The thread that would make the idea of inherent human dignity shine through the decades was already present in nineteenth-century Europe, also thanks to the centuries-long efforts of Catholic theologians and philosophers who had been advocating in favor of indigenous peoples³²³ and against slavery in Latin America. There is evidence that by then dignity was already understood also as inherently pertaining equally to all human beings without regard to their social position.³²⁴ It was under the centuries-long Catholic influence³²⁵ that in the first half of the nineteenth century Simón Bolívar claimed freedom and “dignity”³²⁶ for the oppressed peoples of Latin America. As already noted, the 1848 French abolition of slavery is considered the earliest visible sign of human dignity as a legal value. By the end of the century, Christian thinking was spreading this understanding of dignity: the 1919 Weimar constitutional reference to dignity is believed to have been influenced by Christian cultural strands.³²⁷ Interestingly

³¹⁹ Michael Rosen, *Dignity: The Case Against*, in UNDERSTANDING HUMAN DIGNITY, *supra* note 122, at 148.

³²⁰ Moyn, *supra* note 315, at 98. See also Samuel Moyn, *The Secret History of Constitutional Dignity*, 17 YALE HUM. RTS. AND DEVELOP. J. 39, 46 (2014) [hereinafter Moyn, *Constitutional Dignity*].

³²¹ ROSEN, DIGNITY: ITS HISTORY, *supra* note 314, at 11; Jeremy Waldron, *What Do Philosophers Have against Dignity?* 1459 (N.Y.U. Sch. of Law, Pub. Law and Legal Theory Res. Paper Series, Working Paper, 2014) (defending the theory of dignity’s status as a constructive legal concept).

³²² ROSEN, DIGNITY: ITS HISTORY, *supra* note 314, at 24.

³²³ Paolo G. Carozza, *From Conquest to Constitutions: Retrieving a Latin American Tradition of the Idea of Human Rights*, 25 HUM. RTS. Q. 281, 292–295 (2003) [hereinafter Carozza, *From Conquest*].

³²⁴ James Hanvey, *Dignity, Person, and Imago Trinitatis*, in UNDERSTANDING HUMAN DIGNITY, *supra* note 122, at 213.

³²⁵ Carozza, *From Conquest*, *supra* note 323, at 295.

³²⁶ *Id.* at 301 n.102.

³²⁷ Jörg Luther, *Ragionevolezza e dignità umana* 5 (Dipartimento di Politiche pubbliche e scelte collettive—POLIS Working Paper No. 79/2006), <http://polis.unipmn.it/pubbl/RePEc/uca/ucapdv/luther79.pdf>.

enough, both the European Weimar (1919) and the Latin American Ecuador (1929) constitutional experiments draw from the idea of dignity to secure some basic rights in the social and economic fields,³²⁸ instead of deploying it in the context of, say, *habeas corpus*. Many Arab constitutions would later deploy the concept in the same socio-economic constitutional contexts.

The reflection that took place mainly in French Catholic environments between the late nineteenth century and the 1930s finally sharpened the concept:³²⁹ between the Encyclical letters of Leo XIII and Pius XI and the doctrine of Pius XII, the idea of human dignity had expanded.³³⁰ While the first constitutional experiments bearing signs of the idea of human dignity were being drafted, in France philosophical personalism and social Catholicism, which pushed for a bold affirmation of the value of the person, were confronting conservative corporatism, which insisted on the existence of a hierarchically ordained society and distributed different levels of dignity within each rank.³³¹ The former way of thought prevailed, and dignity ceased to be attached to human beings differentially, depending on their social affiliations. Instead, it turned out to be a concept that depicted the inherent value of human persons. It was inherent in each human being, encapsulating his or her individuality and belonging to broader society.

The gross human rights violations that took place in Europe in the late 1930s accelerated the affirmation of this sharper understanding of dignity. It all took place within a few months. Pius XI used this concept in his *Mit brennender Sorge* declaration (March 14, 1937) against Nazi acts,³³² as well as in his *Divini Redemptoris* encyclical letter (March 19, 1937) against communism.³³³ Interestingly, this latter encyclical used the word “dignity” with reference to human worthiness, as well as the state’s status and the value of collective bodies such as workers.

The inherent worthiness of the human being would prevail over time as the foundation of human rights. The synthesis is particularly evident in the 1937 Irish constitution,³³⁴ which was

³²⁸ Carozza, *From Conquest*, *supra* note 323, at 282.

³²⁹ Moyn, *Secret History*, *supra* note 315, at 99.

³³⁰ GILES J. STAAB, THE DIGNITY OF MAN IN MODERN PAPAL DOCTRINE: LEO XIII TO PIUS XII 11 (1957).

³³¹ Moyn, *Secret History*, *supra* note 315, at 99.

³³² POPE PIUS XI, MIT BRENNENDER SORGE ¶ 21 (March 14, 1937) .

³³³ POPE PIUS XI, DIVINI REDEMPTORIS ¶10, 14, 34, 51, & 70 (March 19, 1937).

³³⁴ The 1937 Irish constitution *Preamble* stated that it was “seeking to promote the common good, with due observance of Prudence, Justice and Charity, so that the dignity and freedom of the individual may be

promulgated shortly after the two pontifical documents and was deeply influenced by Catholic teaching. The main drafter of the text, Eamon de Valera, was familiar with the neo-Scholastic circles that promoted the idea of human dignity and showed the papal nuncio in Ireland critical points in the text, including the mention of dignity.³³⁵

This idea of human dignity was later used repeatedly by the Catholic Church: “[t]hanks to Pius XII, in fact, individual dignity became an incredibly common concept across the Atlantic during the later phases”³³⁶ of World War II. By the time the German Basic Law was drafted, it had become commonplace, as Protestant and secularist politicians guided the debate that would later enshrine this idea in Germany’s constitutional text.³³⁷

If one compares the trajectories of *karāma* and “human dignity,” the similarities are striking. Just like *karāma*, “human dignity” underwent a process of “equalization,”³³⁸ which refocused the concept on human persons in themselves.³³⁹ This took place progressively thanks to religious cultures’ ability to interact with and respond to the needs of the times they were facing: even the great Catholic thinker Jacques Maritain, a herald of the dignitarian vision of human rights, “did not connect dignity to ‘human rights’ until 1942 at the earliest.”³⁴⁰ Islam seems to have done what Catholicism did before: look into its tradition and sort out new features from old ideas. The universalistic approaches of Islam and Christianity have come to universalize human dignity³⁴¹ and expound the broadest consideration for human needs through the lens of dignity. It is no surprise, for instance, that both Christianity and Islam pay special attention to human rights in the field of economics, precisely in the name of human dignity.³⁴²

assured, true social order attained, the unity of our country restored, and concord established with other nations.” Const. of Ireland 1937.

³³⁵ Moyn, *Constitutional Dignity*, *supra* note 320, at 54.

³³⁶ Moyn, *Secret History*, *supra* note 315, at 106.

³³⁷ Christoph Goos, *Würde des Menschen: Restoring Human Dignity in Post-Nazi Germany*, in UNDERSTANDING HUMAN DIGNITY, *supra* note 122, at 92.

³³⁸ WALDRON, *supra* note 316, at 33.

³³⁹ See James Q. Whitman, *The Two Western Cultures of Privacy: Dignity versus Liberty*, 113 YALE L.J. 1151 (2004) (discussing dignity and privacy).

³⁴⁰ Moyn, *Constitutional Dignity*, *supra* note 320, at 56; see SMITH, *supra* note 180, at 29 (discussing dignity and the Catholic Church).

³⁴¹ Johnston, *supra* note 84, at 900.

³⁴² *Id.*

CONCLUSION: THE PLACE OF *KARĀMA* IN THE GLOBAL QUEST FOR “DIGNITY”

The concept of *karāma* as conveying the idea of “dignity” is certainly of paramount importance in the contemporary Arab constitutional context. Constitutional texts are saturated with this word. And the idea of “dignity” affects rights differently, as some of them are shields against the state and therefore can receive immediate protection, whereas other types of rights—notably social and economic rights—are only of progressive realization and require the state’s intervention for fulfillment.³⁴³

Dignity’s success parallels its ambiguities. The Middle East’s constitutional landscape now uses “dignity” to protect personal liberty, to enhance the reputation of whole countries, to legitimize state limitations on human rights, to root fundamental rights and duties and the legitimacy of political institutions in religious discourse, and to protect religions (Art. no. 10 of the 1926 Lebanese constitution is still in force).

Although the meaning of *karāma* has been enriched instead of distilled, it is beyond doubt that there is a special interest in protecting human persons. And there is also quite a new attitude towards the role of the state in this field.

Contemporary constitutions still contemplate broad state interventions in society and the economy in order to protect human dignity, but there is also a new, widespread skepticism about the role of the state, which must be put under check precisely to protect this human dignity.

More broadly, if one considers the path that *karāma* has followed through the decades, it seems plausible to conclude that the idea of “dignity” as enshrined in the Universal Declaration of Human Rights has played an important role in shaping the Arab concept.

First, dignity’s inception in the Universal Declaration prompted a new understanding of it at the constitutional level. Since the 1950s, Arab countries have not ignored the meaning that “dignity” had in the Universal Declaration. This does not mean that such an understanding monopolized the Arab lexicon—but it certainly affected it. Human persons became, at least prospectively, owners of “dignity.”

Second, this understanding of dignity has prevailed over time, even if it took decades for it to take effect.

³⁴³ Sally Engle Merry, *Inequality and Rights: Commentary on Michael McCann’s “The Unbearable Lightness of Rights,”* 48 LAW AND SOC’Y REV. 288–289 (2014).

Third, the Universal Declaration modified the religious conception of dignity. As we have seen, *karāma* traditionally conveyed the idea of a *special* gift or honor, whether, per the Islamic tradition, it comes from God, or, as the pre-Universal Declaration constitutions confirmed, it benefits the state, the state’s dignitaries, or religions.

Therefore, it would be inaccurate to maintain that there is a clear thread that unites Islamic *karāma* and modern constitutional *karāma*. But the religious origin—the belief in “dignity” as given by God to human persons—has facilitated the permeability of the Islamic context to the Universal Declaration’s understanding and the assimilation of the latter into the former. The Islamic legal tradition has been receptive to “dignity” insofar as it has incorporated it.

This does not mean that the incorporation of “dignity” in Islamic discourse is illusory because it came later. The Islamic interpretation of dignity fills what is universally perceived to be a void, namely the very root of human rights. “Dignity” itself in the Universal Declaration was a sort of “linguistic-symbol.”³⁴⁴ Thanks to this symbol, everyone could agree that human dignity was central, without having to explain “why or how.”³⁴⁵ The Islamic reinterpretation in light of dignity’s value in human rights discourse tries to explain precisely why and how human rights acquire cogency from a religious point of view: *karāma* connects human rights to God in Islamic thought, rooting them in Islamic religious discourse. If this connection is fictional, then the same must be said about the whole discourse of dignity as the foundation of human rights.

Karāma, as a *universalized* gift from God, is likely to have bridged the gap between human rights and Islamic law. The idea of dignity could avoid friction between Islam and human rights and make them theoretically compatible.

The process that aligned Islamic thinking to the “dignity” discourse is bidirectional, however. The fact that “dignity” was used in the Universal Declaration as well as in more recent documents, such as the Universal Islamic Declaration, has undoubtedly modified the meaning of “dignity” once again. In Islamic law a “life of dignity” “ultimately has to conform to the *Shari‘a*”:³⁴⁶ this logic has affected the meaning of the word and conformed it, at least partially, to Islamic law provisions.

³⁴⁴ Christopher McCrudden, *Human Dignity*, *supra* note 14, at 678.

³⁴⁵ *Id.*

³⁴⁶ Audrey Guichon, *Some Arguments on the Universality of Human Rights in Islam*, in RELIGION, HUMAN RIGHTS AND INTERNATIONAL LAW 186 (Javaid Rehman & Susan C. Breau eds., 2007).

At the moment, the tendency to harmonize the Universal Declaration and documents such as the Islamic Declaration leans towards conforming the latter to the former. The new constitutions seem to confirm this, as interpretative efforts try to make the Islamic tradition converge with the global concept of dignity, instead of vice-versa.³⁴⁷ This assimilation is apparent not simply from the use of the word “dignity” but also from the contexts in which it is used. The protection of human persons, as understood by the globalized discourse on human rights, is clearly at the core of the new constitution-building.

The fact that Arab constitutions draw heavily from a core global concept is not unusual in constitutional borrowing; hence it does not say too much about the fate of dignity in the new constitutional regimes. Borrowings take place both at the constitution’s creation and within constitutional adjudication, and the fate of dignity will depend on how Arab judges will play it. It has become commonplace to talk about a “generic constitutional law” as a body of “constitutional theory, practice, and doctrine that belongs uniquely to no particular jurisdiction.”³⁴⁸ Not only has the global idea of dignity influenced constitutional texts, but constitutional adjudication will look abroad to shed light on the numerous provisions bearing this word as well.³⁴⁹ This is of no secondary importance, since domestic judiciaries such as the Egyptian Supreme Constitutional Court have proven to be extremely independent, not just toward the government but also toward their own legal tradition, being able to deploy more traditional or less traditional Islamic law interpretations depending on the contexts and subjects that they are called to adjudicate.³⁵⁰

The ambiguities that *karāma* may present in litigation are not unique to this Arabic version of dignity: they are entrenched in the very global discourse about dignity.

The ambiguities about the foundation and the implications of human dignity reappear in adjudication. The concept has been used in cases about disparate issues, with very different

³⁴⁷ This attempt to square Islamic legal traditions with the human rights tradition is not unique to the concept of dignity: concepts coming from outside religious traditions have influenced religious interpretation throughout Islamic modernity. See NADER HASHEMI, *ISLAM, SECULARISM, AND LIBERAL DEMOCRACY: TOWARD A DEMOCRATIC THEORY FOR MUSLIM SOCIETIES*, 70 (2005) (discussing democracy and Islam).

³⁴⁸ David S. Law, *Generic Constitutional Law*, 89 MINN. L. REV. 659–660 (2005).

³⁴⁹ Mohamed A. Arafa, *Whither Egypt? Against Religious Fascism and Legal Authoritarianism: Pure Revolution, Popular Coup, or a Military Coup D’État?* 24 IND. INT’L & COMP. L. REV. 859, 860 (2014).

³⁵⁰ Aneesa Walji, *Constitution-Making in Egypt: The Role of Constitutional Court Judges* 104 (2014), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2533686.

results. Just to name a few: in Canada it led the Supreme Court to decide that assisted suicide was permissible,³⁵¹ the European Court of Justice decided that it was possible under European Union law to consider the “laser tag” game as “playing at killing” and therefore an offense to human dignity;³⁵² the United States Supreme Court in *United States v. Windsor*³⁵³ and *Obergefell v. Hodges*³⁵⁴ mentioned the concept of “equal dignity” repeatedly in the context of same-sex marriage rights,³⁵⁵ to the extent that now commentators prophesize that dignity will become a milestone in constitutional adjudication in America,³⁵⁶ as a piece of the globalized culture of fundamental rights.³⁵⁷ *Karāma* probably will shift through litigation on its meaning and scope, as happens everywhere else the concept of dignity is played out.

Regardless of how *karāma* will be used in the near future, the very fact that Arab constitutions make ample recourse to it has another powerful implication: it gives the constitutional texts a universal dimension. As Paolo Carozza has pointed out, “[r]eliance on the idea of human dignity as a source of justification...does not make sense unless it is regarded, at least implicitly, as something the meaning and value of which transcend local context and constitute a commonality across the differences of time and place.”³⁵⁸ When a constitution adopts the idea of human dignity, notwithstanding the cultural peculiarities in which it is embedded, it actually acknowledges a transcendent dimension of humanity. This was the value envisaged by Charles Malik himself, who, when asking himself in 1952, “What is the ultimate trouble with the world today?” replied, “It is the loss of the dimension of transcendence.”³⁵⁹

How this transcendental concept will be blended with other values—such as those in Islam or Islamic law—is not a given; nor will it necessarily be the same throughout the Arab region. The “theological, historical and contextual difference between Libya, Tunisia and

³⁵¹ *Carter v. Canada*, [2015] 1 S.C.R. 331 ¶ 2 (Can.).

³⁵² Case C-36/02, *Omega Spielhallen v. Oberbürgermeisterin ben Bundesstadt Bonn*, <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-36/02>.

³⁵³ 133 S. Ct. 2675 (2013).

³⁵⁴ 135 S. Ct. 2584 (2015).

³⁵⁵ See Erin Daly, *Constitutional Comparisons: Emerging Dignity Rights at Home and Abroad*, 20 WIDENER L. REV. 199, 200 (2014) (discussing this case).

³⁵⁶ Lawrence Tribe, *Equal Dignity: Speaking Its Name*, 129 HARV. L. REV. FORUM 16, 20 (2015).

³⁵⁷ *Id.* at 21.

³⁵⁸ Paolo G. Carozza, *Human Dignity and Judicial Interpretation of Human Rights: A Reply*, 19 EUR. J. INT'L L. 931, 933 (2008).

³⁵⁹ Malik, *The Near East*, *supra* note 1, at 264.

Morocco,” for instance, suggest avoiding “generalized evaluation of the role of Islam even within...the sub-region of North-Africa.”³⁶⁰

The uncertainties about the significance of dignity and its implications in the new Arab constitutions are not unique to this world region. Dignity is still perceived to be a “precarious cultural achievement,”³⁶¹ entailing for all political entities one of the “most fundamental political questions that one can imagine: for it involves deliberating about what kind of people we want to be and what kind of society we want to bring into being.”³⁶² Arab countries are participating in a global quest that blends religious and secular cultures with mixed results.

There are several reasons to believe that Islamic law will not necessarily win the day in the Arab constitutional vision of human dignity. First, as we have noticed, Islamic law has adapted more to *karāma* than *karāma* has adapted to it.

Second, it is not at all clear what the result of blending *karāma* with Islamic law will be. After all, “[i]n almost every country of the Muslim world, people disagree about who can interpret *sharia* and about what *sharia* requires.”³⁶³ The diversification of Arab societies is likely to play a major role, as it probably will push the use of *karāma* in different directions: “different groups...might agree that there is such a thing as the dignity of the person and largely agree on the rights that follow from it, but differ in their understanding of quite what that ‘dignity’ is.”³⁶⁴ This does not equate to a dilution of the word’s meaning and its implications: “the idea of dignity reflects sociohistorical conceptions of basic rights and freedoms.”³⁶⁵ For decades after World War II, dignity “was something like a proprietary Catholic concept, generally restricted to natural law circles”;³⁶⁶ lately, it has become a key concept for the legal protection of same sex couples in the United States and the right to assisted suicide in Canada. The future of *karāma* does not necessarily rest on its Islamic law premises.

It seems most plausible that the idea of *karāma* will be shaped by different states in different ways. But they are all likely to resist the extreme *individualization* of rights that is

³⁶⁰ Abdullahi A. An-Na’im, *The Secular State for Religious Society: The Role of Islam in New Arab Constitutions and the Quest for Democracy*, IEMED MEDITERRANEAN YEARBOOK 105 (2014).

³⁶¹ Mary Ann Glendon, *The Bearable Lightness of Dignity*, FIRST THINGS, May 2011, <http://www.firstthings.com/article/2011/05/the-bearable-lightness-of-dignity>.

³⁶² *Id.*

³⁶³ Lombardi, *Designing Islamic Constitutions*, *supra* note 25, at 616.

³⁶⁴ GRIFFIN, *supra* note 284, at 192.

³⁶⁵ Schachter, *supra* note 148, at 853.

³⁶⁶ Moyn, *Constitutional Dignity*, *supra* note 320, at 64.

typical of some liberal traditions.³⁶⁷ Pure individualization would deny the Islamic feature of the word, as well as its transcendent approach which attaches liberty to its ultimate goal: the “*worth of the individual* in the horizontal relations between different human beings” cannot mean here erasing the “status of the ‘human beings’ in the vertical relation to God.”³⁶⁸

Another unique feature of the Arab version of dignity has to do with the relationship among law, the public square, and religion. It is very probable that the public discourse of what constitutes *karāma* will include religious discourse, which is implicated in rooting this concept in Islamic doctrine. Drawing from Islamic law while interpreting *karāma* does not pre-decide its meaning, but it necessarily gives standing to religious thinking. Public dialogue in new Arab constitutional democracies will be able to use religious tones as well.³⁶⁹

Finally, *karāma* may also challenge the global discourse on dignity. On one hand, it may disentangle dignity from the “right to autonomy,”³⁷⁰ or at least redefine the boundaries between the two, as its religious facet understands the human being in relationship with other human beings as well as with God. On the other hand, it may account for a broader role of the state, to encompass education policies and intervention to “provide a modicum of material well-being such as housing, access to water and food, and medical care.”³⁷¹ Such state interventions would probably not narrow down the scope of dignity but would rather challenge its liberal interpretations, which are inclined to hold that the only “state’s job is to get out of the way.”³⁷²

In a nutshell, how Arab countries will blend human rights and Islamic law in the near future will affect the meaning, scope, and implications of core concepts such as *karāma*. How such constitutional forces will combine is not obvious. In the long run, one can reject the other; but it may also happen that they genuinely assimilate to each other. After all, *karāma* itself was forged in a crucible of Islamic and Christian thinking, Arab culture, and the modern culture of rights.

³⁶⁷ Neville Cox, *The Clash of Unprovable Universalisms—International Human Rights and Islamic Law*, 2 OXFORD J. L. & RELIGION 307, 313 (2013).

³⁶⁸ Habermas, *supra* note 317, at 474.

³⁶⁹ DALY, *supra* note 286, at 108.

³⁷⁰ GRIFFIN, *supra* note 284, at 192.

³⁷¹ DALY, *supra* note 286, at 114.

³⁷² *Id.* at 123.