

# ARAB CONSTITUTIONALISM AND HUMAN DIGNITY

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## ABSTRACT

*This Article 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 Article sheds light on how Arab legal culture understands dignity, exploring both its religious and secular roots in the 1926 Lebanese Constitution, which pioneered the use of dignity by using the concept to command respect toward religions. Then, this Article 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 Article presents how the Arab states have used the concept and shows that their constitutions have incorporated and expounded on the idea of human dignity progressively, with the post-Arab Spring constitutional texts reinforcing its use once more. Finally, this Work 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 in Arab countries remain uncertain; its fate will largely depend on how Arab legal culture will balance human rights with Islamic rules. This is not, however, a spe-*

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*cific feature of Arab constitutionalism: uncertainties surround the global discourse on dignity.*

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“[T]ruth has a way always of revealing itself in time to the inquiring mind.”<sup>1</sup>

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1. Charles Malik, *The Near East: The Search for Truth*, 30 FOREIGN AFF. 231, 255 (1952) [hereinafter Malik, *The Near East*].

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 countries<sup>2</sup> and seventeen constitutional changes.<sup>3</sup> 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 three times.

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.<sup>4</sup>

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 the Charybdis of Islamism, have been particularly high. Supranational institutions, such as the European Commission for Democracy through Law, which promotes democracy through advisory opinions,<sup>5</sup> voice their

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

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

4. Anthony Billingsley, *Writing Constitutions in the Wake of the Arab Spring: The Challenge of Consolidating Democracy*, FOREIGN AFF. (Nov. 30, 2011), <https://www.foreignaffairs.com/articles/libya/2011-11-30/writing-constitutions-wake-arab-spring> [<https://perma.cc/JX8X-XH6U>]; 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 Duxtader & Ebrahim Moosa eds., 2015) (discussing the Arab Spring's effects).

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

concerns that basic rights may not be respected in post-Arab Spring countries.<sup>6</sup>

The 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 discipline. Malcolm Evans has pointed out the following:

Juxtaposing religion with something else immediately tends to summon up a hermeneutic of opposition . . . . 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.<sup>7</sup>

The modern history of many Arab and Islamic states lends itself to such a dilemmatic approach, however. The efforts that, in previous decades, had toppled the authoritarian Shah in Iran and the Soviet control of Afghanistan ultimately led to the instauration of pro-Islamic law regimes. Reflecting on the future that awaits the rule of law, democracy, and human rights' protection in North Africa and the Middle East requires a historical awareness of the dynamics by which radical Islamism normally achieves power.<sup>8</sup>

Speculating about the compatibility between Islam and human rights, however, 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,<sup>9</sup> prompted a series of collective acts that has changed at least the legal and political face of Arab countries.

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*. They first and foremost called for *dignity*.

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 Preambles of the

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6. See *id.* at 583.

7. Malcolm D. Evans, "And Should the First Be Last?" 2014 BYU L. REV. 531, 531 (2014).

8. See generally Paul Cliteur, *State and Religion Against the Backdrop of Religious Radicalism*, 10 INT'L J. CONST. L. 127 (2012) (discussing how religious radicalism interacts with state dynamics and culture).

9. On December 17, 2010, the street greengrocer Tarek Bouazizi set himself on fire in the Tunisian city of Sidi Bouzid. *Mohamed Bouazizi: Tunisian Street Vendor and Protestor*, ENCYCLOPAEDIA BRITANNICA, <http://www.britannica.com/biography/Mohamed-Bouazizi> (last visited Aug. 9, 2017) [<https://perma.cc/83WE-ZRST>].

2012 and 2014 Constitutions. 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;<sup>10</sup> social justice was a long-awaited goal amongst Arab masses, who had sought individual and collective achievements for decades after colonization;<sup>11</sup> “human dignity” signified getting rid of both authoritarian regimes and poverty at the same time.<sup>12</sup> And, that some regimes cracked down on revolts with violence did nothing but confirm that regime change was needed precisely for the sake of human dignity.<sup>13</sup>

Such a rallying cry 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. The Arab Spring, overall, “was not a call for a theocratic government or an Islamic government.”<sup>14</sup>

Rather, this call for “bread, freedom, social justice, and human dignity” has been synthesized in a single word, which has become extremely popular and undoubtedly abundant in the new constitutional texts: *karāma*—dignity.<sup>15</sup>

The widespread<sup>16</sup> use of this Arabic word is the focus of this Article. 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.

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10. See Martin Beck & Simone Hüser, *Political Change in the Middle East: An Attempt to Analyze the “Arab Spring”* 6 (German Institute of Global and Arab Stud., Working Paper No. 203, 2012), [https://www.giga-hamburg.de/de/system/files/publications/wp203\\_beck-hueser.pdf](https://www.giga-hamburg.de/de/system/files/publications/wp203_beck-hueser.pdf) (reporting statistics according to which forty-one percent of the area population lives below the poverty line) [<https://perma.cc/6H83-AACG>].

11. M.A. MOHAMED SALIH, ECONOMIC DEVELOPMENT AND POLITICAL ACTION IN THE ARAB WORLD 15 (2014) (“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.”).

12. See Ashley Fernandez, *The Arab Spring: A New Season for Self-Determination*, 47 N.Y.U. J. INT’L L. & POL. 647, 647–48 (2015) (discussing how human dignity was tied to the fall of the regime and the people’s self-determination).

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

14. 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).

15. Beck & Hüser, *supra* note 10, at 7.

16. The Islamist thinker Yusuf al-Qaradawi in Egypt also advocated “Dignity.” See Abou El Fadl, *supra* note 14, at 317.

That dignity has been enshrined in several constitutions does not make its meaning and implications more ascertainable. The idea of dignity itself constitutes a hot topic for contemporary international debate,<sup>17</sup> but (or, more probably, because) its features are diversely conceived in time and space. Although, as Christopher McCrudden points out, it is “becoming commonplace in the legal texts providing for human rights protections in many jurisdictions,”<sup>18</sup> its meaning is full of uncertainties and its implications are vague. 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 will contribute to the *universal* understanding of the concept itself. This regional focus on the Arab conception of dignity fills a hole in the global picture of dignity.

The central thesis of this Article is that *karāma* captures the attempt of Arab constitutionalism to align itself with contemporary trends in human rights’ protection, democracy, and the rule of law, without losing its own character. 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 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 and descends 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.

Dealing “with the concept of human dignity in different languages” is “immensely difficult,”<sup>19</sup> and the exploration of its Arabic version, *karāma*, confirms that it is a challenging task. In a nutshell, this word initially was 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 (Universal Declaration), it refers to human beings but never really loses its reference to the state’s protection and the status of collective bodies more broadly. Dignity’s meaning grows through the passage of time.

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17. See Paust, *supra* note 13, at 2.

18. Christopher McCrudden, *Human Dignity and Judicial Interpretation of Human Rights*,

19 EUR. J. INT’L L. 655, 656 (2008) [hereinafter McCrudden, *Human Dignity*].

19. *Id.* at 712.

Since this Article focuses on the idea of dignity, it will put 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,<sup>20</sup> 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.

This Article proceeds as follows: Part I preliminarily addresses the balance between the human rights and Islamic law provisions found throughout these constitutional texts and proves that neither can really be seen as the main purpose of the new Arab constitutions from a legal point of view. This establishes the groundwork for a reflection in Part II on the religious Islamic roots as well as the legal roots of the concept of dignity as it appeared historically in constitutional texts. Part III locates the cultural watershed in international human rights law implementation at the end of World War II and highlights the role that the Charter of the United Nations (U.N. Charter) and the Universal Declaration played in boosting the concept of dignity. Part IV explores the success of *karāma* throughout Arab constitutions and Islamic international documents: this part sequences the utilizations of the concept through the decades, contextualizes each constitutional framework, and analyzes the multiple meanings that attach to the contemporary use of the concept. In Part V, a short survey of the Western journey that the idea of dignity underwent provides room for comparison. The Conclusion identifies the deep significance of *karāma* in the context of the global debate on the meaning of dignity, singles out its specificities, and suggests 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 mention dignity more often are less likely to be democratic

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20. See AHARON BARAK, DIGNITY: THE CONSTITUTIONAL VALUE AND THE CONSTITUTIONAL RIGHT XIX (Daniel Kayros trans., Cambridge Univ. Press 2015).

and free societies.<sup>21</sup> 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, at the minimum level, they are manifestos of what the leading elites want to convey to their citizens and to the international public.<sup>22</sup>

The deep connection between human rights and Islamic tradition that *karāma* entrenches within constitutional texts becomes evident if it is seen in its progressive, historical development, in contrast with the modern evolution of the concept of dignity itself. Contextualizing dignity within such a process shows that *karāma* naturally interplays with religion and human rights, rather than working simply to reconcile them *ex post facto*.<sup>23</sup>

## I. THE ROLE OF CONSTITUTIONS: BEYOND ISLAMIC LAW AND HUMAN RIGHTS

Almost 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,<sup>24</sup> only “one” source of legislation,<sup>25</sup> or place it above parliamentary legislation so that no state law can contradict Islamic law,<sup>26</sup> there is no doubt that the post-Arab Spring constitutional environment incorporates Islamic law. This long-lasting religious wave is commonly traced back to the Khomeini’s thinking and

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

22. See Nimer Sultany, *Religion and Constitutionalism: Lessons from American and Islamic Constitutionalism*, 28 EMORY INT’L L. REV. 345, 357 (2014) (discussing how Anwar Sadat of Egypt used the Egyptian Constitution of 1971 to demonstrate his commitment to Islam).

23. Evans, *supra* note 7, at 534.

24. See CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT (Jan. 18, 2014) art. 2; CONSTITUTION OF LIBYA 2011, art. 1; CONSTITUTION OF OMAN 1996, art. 2; CONSTITUTION OF QATAR 2003, art. 1; CONSTITUTION OF THE SYRIAN ARAB REPUBLIC 2012, art. 3; CONSTITUTION OF THE UNITED ARAB EMIRATES 1971, art. 7.

25. See CONSTITUTION OF THE KINGDOM OF BAHRAIN 2002, art. 2; CONSTITUTION OF KUWAIT 1992, art. 2; BASIC LAW OF GOVERNANCE 1992, art. 23 (Saudi Arabia).

26. See Article 2, Section 1, *Dustūr Jumhūriyat al-‘Irāq* [The Constitution of the Republic of Iraq] of 2005; CONSTITUTION OF THE KINGDOM OF MOROCCO 2011, art. 41.



revolution in Iran,<sup>27</sup> and to the rise of Sunni Islamist discourse through the Muslim Brotherhood movement,<sup>28</sup> which both synthesized and gave a political shape to older legal ideas.

This aspect deserves preliminary attention 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.

It is certainly true that constitutional texts since the 1970s have increasingly given room to Islam and Islamic law in Islamic and Arab countries,<sup>29</sup> with Lebanon's text being the only notable exception.<sup>30</sup> Under Saddam Hussein, the Iraqi Constitution did not mention Islamic law; it was only after international intervention and under American supervision that the hotly criticized<sup>31</sup> new Iraqi Constitution<sup>32</sup> included Islamic law among its sources of legislation.<sup>33</sup> But the reasons leading to the adoption of provisions that protect Islam and Islamic law are neither 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.<sup>34</sup> There seems to be some empirical

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27. Cliteur, *supra* note 8, at 135.

28. See Moosa, *supra* note 4, at 106.

29. See 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*].

30. See 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, 101–02 (2012).

31. See SAAD N. JAWAD, LSE MIDDLE EAST CENTRE, *THE IRAQI CONSTITUTION: STRUCTURAL FLAWS AND POLITICAL IMPLICATIONS* 5 (2013) (synthesizing the criticisms concerning the too rapid constitution-making process, the societal divisiveness that it prompted, and the ignorance of the country's history).

32. 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) [hereinafter *Bargaining and Imposing Constitutions*, CONSTITUTIONAL POLITICS]. See generally Andrew Arato, *From Interim to 'Permanent' Constitution in Iraq*, in CONSTITUTIONAL POLITICS IN THE MIDDLE EAST: WITH SPECIAL REFERENCE TO TURKEY, IRAQ, IRAN AND AFGHANISTAN 163 (Saïd Amir Arjomand ed., 2008) [hereinafter *From Interim*, CONSTITUTIONAL POLITICS] (discussing the struggles Iraq had drafting a new constitution).

33. Dawood I. Ahmed & Tom Ginsburg, *Constitutional Islamization and Human Rights: The Surprising Origin and Spread of Islamic Supremacy in Constitutions*, 54 VA. J. INT'L L. 615, 680 (2014).

34. See Eltayeb, *supra* note 30, at 102.

evidence that the same young generations who want democracy at the same time desire constitutional protection for Islam and Islamic law.<sup>35</sup> 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.<sup>36</sup> Although Islamic law has no equivalent in contemporary human rights law,<sup>37</sup> the two legal traditions stand side by side in the most recent Arab (and Islamic countries') constitutions, therefore leaving fairly open the issue of what balance exists between the two.

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

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 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 the late 1970s, for example, was to promote the role of Islamic law from being "a source of legislation" to "a *principal* source of legislation."<sup>40</sup> This same phenomenon has happened after the recent revolutions. "Liberals may want rights, and relig-

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35. See Veronica Kostenko et al., *Attitudes Towards Gender Equality and Perception of Democracy in the Arab World* (Nat'l Research Univ. Higher School of Econ., Working Paper No. 50/SOC/2014, 2014); see also 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) ("[T]here are actually many Muslims that are yearning for some form of democracy . . . . However, most of those in favor of democracy also wanted Shari'ah law.").

36. See Sultany, *supra* note 22, at 350.

37. KRISTINE KALANGES, *RELIGIOUS LIBERTY IN WESTERN AND ISLAMIC LAW: TOWARD A WORLD LEGAL TRADITION* 142 (Oxford Univ. Press, Inc. 2012).

38. See Ahmed & Ginsburg, *supra* note 33, at 625.

39. *Id.*

40. See *id.*; CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT 1971, art. 2.

iously inclined groups may want Islam. If each gets what it wants, the new constitution will contain both—rights and an Islamic supremacy clause.”<sup>41</sup> 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”)<sup>42</sup> 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 Islamic law, new rights could not pass. Such negotiations have taken place for at least fifty years and they still go on today. The repugnancy clauses and constitutions’ long lists of human rights, therefore, serve as proxies “for the legitimacy and effectiveness of a government regime.”<sup>43</sup> Both the “incorporation”<sup>44</sup> of Islamic law and the long list of human rights in recent constitutions assist the constitution building process.<sup>45</sup> 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,<sup>46</sup> the two components are particularly rich because they are instrumental in legitimizing constitutions.

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 of references could partially be explained as an attempt to protect religious institutions: since the reference to Islamic law is only allusive

41. Ahmed & Ginsburg, *supra* note 33, at 627.

42. *See id.* at 628–29.

43. 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: SEARCHING FOR COMMON GROUND? 123, 131 (Anver M. Emon et al. eds., 2012) [hereinafter ISLAMIC LAW AND INTERNATIONAL HUMAN RIGHTS LAW].

44. CHIBLI MALLAT, INTRODUCTION TO MIDDLE EASTERN LAW 158 (2007).

45. *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 drafting of the Iraqi Constitution, see Ashley S. Deeks & Matthew D. Burton, *Iraq’s Constitution: A Drafting History*, 40 CORNELL INT’L L.J. 1, 5–6 (2007).

46. *See* Fegen, *supra* note 35, at 1203.

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. But this is just a partial explanation at best. Perhaps this factor is not even very important, given that Islamic institutions are traditionally government-led,<sup>47</sup> 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 migration<sup>48</sup> of references to Islam from the 1861 Tunisian civil code to contemporary clauses.<sup>49</sup> Contemporary constitutional texts have adopted the Islamic law repugnancy clause following the pioneering 1907 Iranian Constitution.<sup>50</sup> Such clauses, which have proliferated between 1990 and 2012<sup>51</sup> do not necessarily command the active enforcement of Islamic law. Oftentimes, they merely prohibit any violation of Islamic law. 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 trend began in the 1950s, with the Syrian Constitution of 1950,<sup>52</sup> 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."<sup>53</sup> Islamic jurists pushing for the wide adoption of Islamic jurisprudence as a country's eminent law have not succeeded in Arab countries for

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

48. See Ahmed & Ginsburg, *supra* note 33, at 631–34.

49. See *id.*

50. See *id.* at 631.

51. See *id.* at 635.

52. See 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) [hereinafter Lombardi, *Constitutional Provisions*].

53. *Id.* at 736.

sixty years, notwithstanding the constitutional provisions formally favoring them.<sup>54</sup>

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.<sup>55</sup> 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.<sup>56</sup>

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 *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."<sup>57</sup> If the new constitutions aligned themselves to this concept, they would not need long lists of rights and provisions describing the balance of powers. Conversely, many 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.

This fuller picture seems to confirm that 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.<sup>58</sup> But the fight for "bread, freedom, social justice, and human dignity" does not coincide with a call for *Shari'a*. Provisos regarding *Shari'a* limit, rather than guide, the legislators.<sup>59</sup>

Clark Lombardi also warns not to exaggerate the importance of repugnancy clauses and suggests that "[t]hose who wish to predict or influence the trajectory of democracy and liberalism in the Arab

54. See *id.* at 741.

55. See *id.* at 767.

56. 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.*" Haider Ala Hamoudi, *Ornamental Repugnancy: Identitarian Islam and the Iraqi Constitution*, 7 U. Sr. THOMAS L.J. 692, 692 (2010). After all, it seems that "Iraqi jurists have been content with avoiding state enforcement of *shari'a* in the post-Saddam era." *Id.* at 708.

57. KALANGES, *supra* note 37, at 87.

58. See Ahmed & Ginsburg, *supra* note 33, at 695.

59. See BRIAN J. GRIM & ROGER FINKE, *THE PRICE OF FREEDOM DENIED: RELIGIOUS PERSECUTION AND CONFLICT IN THE TWENTY-FIRST CENTURY* 32 (Cambridge Univ. Press 2011) (empirically studying religious persecution).

world should not focus myopically on . . . whether national constitutions contain provisions requiring state law to respect Islam"; rather, he encourages an engagement with "other questions of constitutional design and of social context."<sup>60</sup> This engagement would address 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.<sup>61</sup> The fate of Islamic law provisions is therefore dependent on how they will be blended with these other constitutional values.

If the issue of balancing Islamic law with human rights is pervasive, the place of dignity in the Arab constitutional landscape does not seem to have garnered the widest attention yet, notwithstanding its core place in the Arab Spring agenda and in the post-Arab Spring constitutionalism. 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.

A striking but telling difference between the Iraqi post-Saddam Constitution and the post-Arab Spring constitutions can explain why dignity has generally been overlooked. The post-Saddam constitutional text was framed under close international supervision and focused in no small part on human rights,<sup>62</sup> but the text did not pay too much attention to dignity, although it was already known to the modern Iraqi constitutional lexicon. It enshrined dignity only in the context of workers' rights and rather generically proclaimed "[t]he liberty and *dignity* of man."<sup>63</sup>

The post-Arab Spring constitutions, which have been less directly influenced by external sources, have made a more extensive, and sometimes newer, use of the idea of dignity. The Arabs who drafted these latest constitutional texts did so more independently than the Iraqis<sup>64</sup> and incorporated dignity much more abundantly. The changing fortune of *karāma* clearly arises from a priority in Arab constitutional culture, not from external influence. This may be one of the reasons for which external observers have failed to fully understand its profound value.

60. Lombardi, *Constitutional Provisions*, *supra* note 52, at 773.

61. *See id.*

62. Deeks & Burton, *supra* note 45, at 85.

63. Dustūr Jumhūrīyat al-'Irāq [The Constitution of the Republic of Iraq] of 2005 art. 37, § 1.

64. *See* ANDREW ARATO, CONSTITUTION MAKING UNDER OCCUPATION: THE POLITICS OF IMPOSED REVOLUTION IN IRAQ 251–52 (Columbia Univ. Press 2009).

## II. THE CONSTITUTIONALIZATION OF DIGNITY IN ARAB COUNTRIES

### A. *Karāma*: Its Meaning and Origins

The word *karāma* (dignity) has undergone the tortuous process of amalgamation of law with religion. The word itself is rooted in Islamic theology, but its religious meaning is rather different from its meaning in the Lebanese Constitution of 1926, in which it conveyed the idea of dignity for the first time in the Arab constitutional environment.<sup>65</sup> The initial gap between the Islamic and the legal meaning of the word is understandable: Lebanon was a predominantly Christian country at that time,<sup>66</sup> heavily influenced by French culture. Both the Islamic and Lebanese roots of *karāma* will be considered to explore the meaning of this term.

#### 1. The Islamic Root

As the great intellectual Louis Gardet pointed out in the *Encyclopaedia of Islam*,<sup>67</sup> the word *karāma* is absent from the Koran. But, since 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.”<sup>68</sup> 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.<sup>69</sup>

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 existence and focused on the human beings who benefit from such gifts.<sup>70</sup> Over-

65. See CONSTITUTION OF LEBANON 1926 art. 10.

66. See Rania Maktabi, *The Lebanese Census of 1932 Revisited. Who are the Lebanese?*, 26 BRIT. J. MIDDLE EASTERN STUD. 219, 222 (1999) (showing census results detailing religions for inhabitants of the Lebanese Republic).

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

68. *Id.*

69. *Id.*

70. *Id.*

all, the religious concept fluctuates between "grace," understood as a charismatic gift or the capacity to perform miracles, or as "miracles" in themselves.<sup>71</sup>

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 "miracle."<sup>72</sup> 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."<sup>73</sup> In these commentaries, when a marvel happens it confirms that the sayings of somebody are veracious or that some Islamic authorities are legitimate.<sup>74</sup> But marvel's usage does not reflect the concept of dignity that attaches to human beings and is used in contemporary constitutions.

Human dignity lacked a clear equivalent in Islamic legal discourse well into the twentieth century. The great Iraqi Islamic law scholar Majid Khadduri, descendant of a Greek Orthodox family, felt that Islamic tradition did not provide a clear idea of human dignity, although it had the resources to develop one. In writing in 1946 about the outlook of the future development of human rights in Islam, Khadduri stated that "efforts must be made to develop new traditions necessary for protection of the rights of man and the self-respect and dignity of the individual."<sup>75</sup> 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";<sup>76</sup> he felt that this goal was natural after "the fierce battles fought in Turkey, Egypt, and Persia

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

72. AHMAD IBN NAQIB AL-MISRI, *RELIANCE OF THE TRAVELLER* 917–20 (Nuh Ha Mim Keller trans., Amanat 1994).

73. See Denise Aigle & Catherine Mayeur-Jaouen, *Miracle et karāma. Une approche comparative*, 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* 228, 274, 313 (Charles Scribner's Sons 1903) (discussing this concept specifically as a "wonder" or "miracle").

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

76. *Id.*



for the liberty and equality of man.”<sup>77</sup> Tellingly, when referring to the Islamic law duty to respect “personal reputation,” which is normally associated with the concept of dignity, he himself also used the term *hurma*<sup>78</sup> (forbidden), not *karāma*, likely feeling that *karāma* did not convey the sense of personal reputation that *hurma* did.

Modern Islamic legal doctrine also declines to use the religious sources of *karāma* as leverage when it elaborates a notion of human dignity. Contemporary Islamic law scholars do not normally trace the legal idea of dignity back to Koranic citations of *karāma*, 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).”<sup>79</sup>

Even though contemporary scholars admit that the Koran “is expressive of the dignity of man in numerous places,”<sup>80</sup> that the Islamic law tradition expounds this concept thoroughly,<sup>81</sup> and that “Islam has laid great emphasis on the dignity of man,”<sup>82</sup> they do not support their arguments by examining the Islamic meaning and sources of the word *karāma*. Rather, they 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.<sup>83</sup>

It seems understandable, however, that Islamic lawyers have declined to draw from the religious sources of *karāma* to convey the legal idea of an individual dignity that is given to all mankind as a gift from God. Islamic *karāma*, at least until the twentieth century, focused almost exclusively on the special relationship between God and some individuals rather than on human relations.<sup>84</sup> It described a vertical, not horizontal, relationship, and conveyed a

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77. *Id.*

78. *See id.* at 78.

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

80. *Id.* at xv.

81. *Id.* at xvi.

82. *HUMAN RIGHTS IN ISLAM: THE MODERN PERSPECTIVE* 190 (M.H. Syed ed., Anmol Publ’ns Pvt. Ltd. 2003).

83. *See id.*

84. *See* Lutz Richter-Bernburg, ‘God Created Adam in His Likeness’ in the Muslim Tradition, in *THE QUEST FOR A COMMON HUMANITY: HUMAN DIGNITY AND OTHERNESS IN THE RELIGIOUS TRADITIONS OF THE MEDITERRANEAN* 67, 77–78 (Katell Berthelot & Matthias Morgenstern eds., 2011).

*special* gift that was not universal, although it was certainly given by God.

This religious understanding of *karāma* clearly 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 especially evident in the 1990 Cairo Declaration on Human Rights in Islam,<sup>85</sup> which will be discussed later. The opening article of the Cairo Declaration states: "All human beings form one family whose members are united by submission to God and descent from Adam. All men are equal in terms of basic *human dignity*."<sup>86</sup> The godly origin of *karāma* that the Cairo Declaration affirms is in line with its religious understanding. But its universalism is not. Nor is it traditional to encapsulate the whole span of human rights and duties in that term. This is quite new.

It seems that Islamic legal thinking began using *karāma* to convey the concept of human dignity only recently. It universalized<sup>87</sup> the idea of "special gift" that was originally attached to the word to encompass all mankind and describe its special position on Earth.<sup>88</sup> 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 framing of the Universal Declaration (late 1940s), which affected constitutional drafting in predominantly Islamic regions.<sup>89</sup> Both events point in the direction of Lebanon.

## 2. The Lebanese Root: Drafting the Lebanese Constitution

The first reference to human dignity in the Arab constitutional context dates back to before World War II. The oldest mention of *karāma* is to be found in the Lebanese Constitution of 1926,<sup>90</sup> which is still in force. Here, the concept clearly conveys a sense of

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85. World Conference on Human Rights, Contribution by the Org. of the Islamic Conference, *Cairo Declaration on Human Rights in Islam*, U.N. Doc A/CONF.157/PC/ 62/Add.18 (Aug. 5, 1990) [hereinafter *Cairo Declaration*].

86. *Id.* art. 1 (emphasis added).

87. See 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).

88. See Richter-Bernburg, *supra* note 84, at 81.

89. Charles Malik, *Looking Back*, in THE CHALLENGE OF HUMAN RIGHTS: CHARLES MALIK AND THE UNIVERSAL DECLARATION 60, 233 (Habib C. Malik ed., 2000) [hereinafter THE CHALLENGE OF HUMAN RIGHTS].

90. See CONSTITUTION OF LEBANON 1926, art. 10.

“honor,” “reputation,” and “respect” for the religious groups that populate the country. To understand how and why the framers came to enshrine the concept in the constitutional document they were drafting, their novelty must be contextualized adequately. Article 10 of the Lebanese Constitution states as follows:

Education shall be free 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.<sup>91</sup>

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,” with a “burden of mediation and understanding”<sup>92</sup> of both cultures.

The Lebanese imported the idea of a written constitution from Europe; the text itself was drafted with considerable French input,<sup>93</sup> and many of its norms were borrowed from French sources.<sup>94</sup> Even though other influences were also apparent—most importantly, those of the Egyptian Constitution of 1923<sup>95</sup> and, to a lesser degree, the Constitutions of Switzerland and of the United States<sup>96</sup>—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 and shows that the local leaders had much freedom to maneuver in framing Article 10. Unfortu-

91. *Id.* (emphasis added).

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

93. The Lebanese Constitution was not the first Arab constitutional text that drew inspiration from European sources; for a description of the Belgian and Prussian influences over the Ottoman Constitution of 1876, see Nathan J. Brown, *Regimes Reinventing Themselves: Constitutional Development in the Arab World*, in CONSTITUTIONALISM AND POLITICAL RECONSTRUCTION 47, 50 (Saïd Amir Arjomand ed., Brill 2007).

94. EDMOND RABBATH, *LA CONSTITUTION LIBANAISE: ORIGINES, TEXTES ET COMMENTAIRES* 50 (1982).

95. Cordelia Koch, *The Separation of Powers in a Fragmented State: The Case of Lebanon*, in CONSTITUTIONALISM IN ISLAMIC COUNTRIES: BETWEEN UPHEAVAL AND CONTINUITY 387, 394 (Rainer Grote & Tilmann J. Röder eds., 2012). The late historian, Edmond Rabbath, maintained that the Belgian Constitution of 1931 influenced the drafting of the Lebanese Constitution, but this, however, cannot be since the Belgian text was released after the Lebanese Constitution. *See id.*

96. *Id.*

nately, details from the days during which the text pertaining to dignity was drafted are not recorded,<sup>97</sup> but indirect observations on what happened at the time can shed light on the inspirational sources behind this concept.

In 1920, France created the state of the Great Lebanon<sup>98</sup> and gave it a provisional governmental and administrative structure.<sup>99</sup> In 1922, it laid down the rules for governing Lebanon, established Lebanon's Representative Council,<sup>100</sup> which functioned as a parliament, and organized the election of its members.<sup>101</sup>

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.<sup>102</sup> Then, the situation changed.

Lebanon's Representative Council was able to exercise significant influence in the constitutional drafting.<sup>103</sup> Leon Cayla, then governor of Lebanon, gathered the Council with the purpose of drafting the Constitution<sup>104</sup> and the Lebanese Emir Fouad Arslan requested and obtained from the new governor, Henry de Jouvenel, empowerment for the Council to prepare the Constitution.<sup>105</sup> A constitutional Commission (Commission) entirely composed by Lebanese people was created with the purpose of

97. See 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.").

98. *Lebanon Country Profile*, BBC NEWS (Nov. 6, 2016), <http://www.bbc.com/news/world-middle-east-14647308> [<https://perma.cc/4JT8-PC9R>]; Arrêté (Decree) No. 318, Aug. 31, 1920; see ANTOINE HOKAYEM, *LA GENESE DE LA CONSTITUTION LIBANAISE DE 1926* 47 (1996) (discussing the history of the Lebanese constitution).

99. M. EPSTEIN, *THE STATESMAN'S YEARBOOK* 1929 881 (Macmillan and Co., 1929) ("The Lebanese Republic, of Greater Lebanon, was proclaimed a State on September 1, 1920."); Arrêté (Decree) No. 366, Sept. 1, 1920.

100. *Lebanon: Constitutional Law and the Political Rights of Religious Communities*, THE LAW LIBRARY OF CONG., at 8 (Dec. 2010), <https://www.loc.gov/law/help/lb-religious-political-rights/political-rights-of-religious-communities.pdf> [<https://perma.cc/9M75-9CCM>]; Arrêté (Decree) No. 1304 bis, Mar. 8, 1922.

101. See *Lebanon: Constitutional Law and the Political Rights of Religious Communities*, *supra* note 100; Arrêté (Decree) No. 1307, Apr. 1922.

102. HOKAYEM, *supra* note 98, at 85.

103. *Id.*

104. *Id.* at 220.

105. *Id.* at 220–21.

materially drafting the constitutional text. The representatives of all the existing religious communities were included.<sup>106</sup>

The Constitution's concepts and ideas, however, were mainly drafted from Christian suggestions. The Commission prepared a questionnaire regarding the political system to be built, and virtually all the responses came from Christian Lebanese 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.<sup>107</sup> The responses from the Maronite religious authorities, which represented the largest religious community in the country,<sup>108</sup> sought to ensure that the final text did not have any antireligious or anticlerical provisions<sup>109</sup>; the very concern that Article 10 reflects.

After collecting the responses, the Commission looked to France for inspiration. While all of the Commission's members were highly educated and familiar with Western culture,<sup>110</sup> not one was an expert on constitutional law.<sup>111</sup> They needed help in drafting their proposal; as Chebl Dammous, the head of the Commission, stated: "[w]isdom commands that we profit of the experience of other peoples and that we begin from where they have got . . ."<sup>112</sup> Leon Duguit, then Dean of the Law School of Bordeaux, provided the commissioners with a collection of French constitutional texts, and 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.<sup>113</sup> France basically mediated this constitutional "experience of other peoples" for the Lebanese framers.

Article 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,<sup>114</sup> but the article also had to acknowledge the special position of religious communities, which was of primary importance for the country's very existence.<sup>115</sup> Lebanon and its diverse

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106. *Id.* at 226.

107. RABBATH, *supra* note 97.

108. *See* Maktabi, *supra* note 66, at 222.

109. HOKAYEM, *supra* note 98, at 247.

110. *Id.* at 245.

111. *Id.* at 246.

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

113. *Id.* at 244.

114. *Id.* at 280.

115. *Id.* at 281.

religious components had enjoyed a significant degree of autonomy for some seventy years up to this point<sup>116</sup> and would resist any attempt to destroy its social and institutional structure.

Lebanon needed to be based on a rigid pillarization of religious groups.<sup>117</sup> Its constitutional framework still assumes that each individual belongs to a religious group and participates in the political and legal spheres through it;<sup>118</sup> political and administrative posts are allotted on a religious basis.<sup>119</sup> The constitutional equilibrium that the Lebanese Constitution aimed to cement necessitated that the reputation of each religious group be respected and protected.<sup>120</sup>

The French expert Soucher accepted the Commission's draft, which was finally sent to de Jouvenel on May 5, 1923.<sup>121</sup> The text of Article 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 the freedom of education.<sup>122</sup>

France itself, which was careful not to give the impression of harming the freedom of religious communities, had rather narrow leeway on this topic and never proposed to limit freedom of education for the sake of religions' dignity.<sup>123</sup> The League of Nations prohibited the French mandate from interfering with the lives of religious communities.<sup>124</sup> 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

116. See Malik, *The Near East*, *supra* note 1, at 238.

117. ANTOINE N. MESSARRA, *THÉORIE GÉNÉRALE DU SYSTÈME POLITIQUE LIBANAISE: ESSAI COMPARÉ SUR LES FONDEMENTS ET LES PERSPECTIVES D'ÉVOLUTION D'UN SYSTÈME CONSENSUEL DE GOUVERNEMENT* 46 (1994).

118. See *CONSTITUTION OF LEBANON* 1926, arts. 9, 22.

119. M. Tabet, *Religion et Fonction Publique*, in *CENTRES D'ÉTUDES DU MONDE ARABES, DROIT ET RELIGION. COLLOQUE DE BEYROUTH MAI 2000* (2003).

120. MESSARRA, *supra* note 117, at 46.

121. HOKAYEM, *supra* note 98, at 262.

122. *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.").

123. *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 into a constitution) and art. 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.*

124. *Id.* at 345 (art. 9 of the Charter of the mandate over Lebanon).

could impose no other limits than those aimed at securing the public order and respect for morals.<sup>125</sup>

After making some changes that pertained to the relationship between the new state and France,<sup>126</sup> de Jouvenel gathered Lebanon's Representative Council on May 19. The Commission then presented the Council with 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.<sup>127</sup> The Article 10 that the Commission presented on May 19 contained the idea that the freedom of education could not impair the dignity of religious denominations.<sup>128</sup>

It seems that the Commission, in addition to drawing from the questionnaire's results, voluntarily drew from the French legal culture; more specifically, the idea of dignity was taken from the French constitutions. Several factors point in this direction: the lack of native constitutional lawyers; the strong, historical connection between the French intellectual world and the Maronite authorities that resulted in the avoidance of a constitutional text with antireligious tones; and, above all, the significant presence of the concept of dignity in the French legal culture and more specifically in the French constitutional texts, which the Commission could consult.

Albeit used with scattered reference to human beings,<sup>129</sup> dignity had conveyed a sense of "status" or "reputation" in European thinking for centuries.<sup>130</sup> French legal culture was acquainted with the idea of dignity in the sense of "respect" and "status," but was also path-breaking in understanding it as "human value" or even "inherent worthiness of human beings": many of the nineteenth century's French constitutional texts discussed dignity with reference to the standing of peers and of senators,<sup>131</sup> the 1848 Imperial

125. League of Nations Covenant art. 22, par. 5.

126. HOKAYEM, *supra* note 98, at 269.

127. *Id.* at 275.

128. *Id.* at 370 ("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.").

129. See McCrudden, *Human Dignity*, *supra* note 18, at 657.

130. *Id.*

131. The 1814 Constitutional Charter (Fr.) discussed the dignity of the peers (art. 27); the 1815 Additional Act to the Constitutions of the Empire (Fr.) mentioned the dignity of the crown (preamble) and that of the peers (art. 4). More references on the status of the

decree abolishing slavery is understood as the starting point of the legal history of "human dignity."<sup>132</sup> Conversely, no other known source for the Lebanese Constitution bears signs of dignity besides the French ones. Neither the Swiss Constitution of 1874 nor the U.S. Constitution, which were made available to the Lebanese framers, carries a use of dignity that compares with that of the 1926 Lebanese Constitution.

The Lebanese Constitution therefore seems to draw mostly from the French usage of dignity as the kind of respect or status that attaches to state dignitaries in the 1830 and 1852 Constitutions of France: if "respect" or "status" replace "dignity" in the context of Article 10 of the Lebanese Constitution ("[e]ducation shall be free insofar as it . . . does not affect the *dignity* of any of the religions or sects"<sup>133</sup>), the meaning remains unaltered.

The influence exerted by French sources on the Lebanese Article 10 is even more evident at the linguistic level. *Karāma*'s common usage, at that time, did not relate 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."<sup>134</sup> Dignity, conversely, was translated into Arabic in several ways, among which *karāma* was never the first. The *Arabisches Wörterbuch für die Schriftsprache der Gegenwart* by Hans Wehr,<sup>135</sup> then the most influential dictionary between Western languages and Arabic, did not have dignity<sup>136</sup> 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

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peers are found in the 1830 Constitution art. 23 (Fr.) and the 1852 Constitution art. 20 (Fr.).

132. 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* note 132, at 61.

133. CONSTITUTION OF LEBANON art. 10 (emphasis added).

134. HARVEY PORTER & JOHN WORTABET ET AL., ARABIC-ENGLISH AND ENGLISH-ARABIC DICTIONARY (1954); see JOHN PENRICE, DICTIONARY AND GLOSSARY OF THE KORAN, ARABIC-ENGLISH 108 (Adam Publishers & Distribs. 1873) (defining the entry *karāma* (vb): "To be superior to another in generosity"); JOHN RICHARDSON, DICTIONARY, PERSIAN, ARABIC, AND ENGLISH 979 (William Bulmer & Co. 1806) (defining the entry *makarāma*: honor, glory, dignity).

135. HANS WEHR, ARABISCHES WÖRTERBUCH FÜR DIE SCHRIFTSPRACHE DER GEGENWART (Harrassowitz Verlag 1985).

136. The German Basic Law (1949) famously translates dignity as *Würde*. GRUNDGESETZ [GG] [BASIC LAW], translation at [http://www.gesetze-im-internet.de/englisch\\_gg/index.html](http://www.gesetze-im-internet.de/englisch_gg/index.html) [<https://perma.cc/Z379-S8HS>].



(*Grossmut*), generosity (*Freigebigkeit*), and honor (*Ehre*). By contrast, dignity is only the fourth translation for *sharāf* in the *Arabisches Wörterbuch* dictionary, a term that today means honor. 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, legal texts and translations had already rendered dignity and honor with different words. Almost one century before, Rifa'at 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 that made the 1814 French Constitution available to the greater Arabic-speaking public.<sup>137</sup> Its version translated the dignity of members of the French Chamber of peers<sup>138</sup> as *laqab*, and not *karāma*.<sup>139</sup> A few decades later, Article 19 of the 1861 Tunisian text, which garnered this country the title of the “birthplace of Arab constitutions,”<sup>140</sup> stated that ministers are the first “dignitaries” of the state; but it used *khutāt*,<sup>141</sup> not *karāma*. *Khutāt* is unrelated to the idea of dignity but still conveys a sense of special position (rank) in the constitutional structure. And the same text stated 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*.<sup>142</sup> Finally, and closer in time to the drafting of the Lebanese text, dignity’s 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 for respect, status, and duty; the word

137. RIFA'AT AT-TAHTAWI, TAKHLİS AL-İBRİZ Fİ TALKHİŞ BÂRİZ AW AL-DİWÂN AL-NAFİS Bİ-İWÂN BARİS (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> [https://perma.cc/29Q7-KS3A].

138. 1814 CONST. art. 27 (Fr.) *unofficial translation available at* [http://www.napoleon-series.org/research/government/legislation/c\\_charter.html](http://www.napoleon-series.org/research/government/legislation/c_charter.html) (“The appointment of peers of France belongs to the king. Their number is unlimited: he can at his pleasure alter their dignities, appoint them for life, or make them, hereditary.”) [https://perma.cc/7993-B7JX].

139. RIFA'AT AT-TAHTAWI, *supra* note 137, at 107.

140. Sultany, *supra* note 22, at 360.

141. CONSTITUTION OF TUNISIA, Apr. 26, 1861, art. 19, <http://www.righttononviolence.org/mcf/wp-content/uploads/2012/06/1861-Tunisia.pdf> [https://perma.cc/WY3U-HUET].

142. *Id.* arts. 86, 109.

that reflected this idea of dignity in that constitution, however, was actually not *karāma*, but *mansib*.<sup>143</sup> *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 of *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. The French mandate did not control religious education; it was very concerned with giving leeway to religious communities to craft their own constitutional protections to integrate them into the new constitutional experiment. Above all, it was concerned with the relationship between the Republic of Lebanon that was coming into being and France. The new Lebanese constitutional framers themselves deliberately drew from French culture and decided to import its idea of dignity, to the extent that they translated it as *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.

The Lebanese constitutional text's endowment of certain institutions with dignity is also innovative. Dignity does not apply to single, high-ranking individuals alone. It differs from the French legal framework it borrowed from, as well as from earlier Arab constitutions, by not simply using other words for dignity, but by actually dignifying other institutions. The Lebanese employed dignity to convey the idea that religions have public standing and a constitutional role that the 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 by providing them with special privileges. This also gives Lebanese dignity a universalistic attitude, which later Arab constitutions would build on. This unprecedented usage of dignity may help explain why the Lebanese chose an unprecedented word to convey that meaning: *karāma*.

After this use, the meaning of the word was extended in the Syrian Constitution to cover the protection of that state as well.

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143. See CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT (Apr. 19, 1923) art. 158.

### B. *The 1930 Syrian Constitution*

Syria and Lebanon were the only Middle Eastern territories that had been governed by the French.<sup>144</sup> Deeply linked with each other from a cultural perspective, they were very imbued with French legal concepts and culture as a whole. So, when Lebanon protected religions through *karāma*, it seems logical that Syria drew from it and introduced the idea of dignity early in the history of Arab constitutionalism. Syria's first constitution, enacted in 1930, stated as follows: "Education shall be free, in so far as it is not contrary to public order and good morals and is not detrimental to the *dignity* of the country or of religion."<sup>145</sup>

The Syrian wording is almost exactly the same as the Lebanese and both uses convey the idea that some institution'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. And with it, a drastic shift in the meaning of *karāma* took place.

### III. THE WATERSHED: *KARĀMA* AT THE UNITED NATIONS

It was only after World War II that *karāma* came to mean what we now understand as the individual dignity in Arab constitutions. The watershed is to be found in the U.N. Charter (1945) and the Universal Declaration (1948), which expounded *karāma* and gave it the individualized meaning that it has now. The 1919 Constitution

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

145. CONSTITUTION OF THE SYRIAN STATE, May 14, 1930, art. 19.

of the Weimar Republic,<sup>146</sup> the 1929 Constitution of Ecuador,<sup>147</sup> the 1937 Irish Constitution,<sup>148</sup> and the 1940 Cuban Constitution<sup>149</sup> all had previously incorporated dignity in their texts,<sup>150</sup> setting the stage for the U.N. Charter and the Universal Declaration, which powerfully boosted the use of the lexicon of dignity with regard to individuals.

These two international documents particularly reinvigorated the idea of “human dignity,” which contained the understanding, in line with Kant,<sup>151</sup> that individuals should be treated always as ends and not as means to an end.<sup>152</sup> 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.<sup>153</sup>

The first time that *karāma* conveyed this meaning of “personal dignity” in a legal text is in the Arabic version of the U.N. Charter, which anticipated the Universal Declaration by three years.<sup>154</sup> The San Francisco Conference of 1945 that concluded the U.N. Char-

146. WEIMAR CONSTITUTION, Aug. 11, 1919, art. 151, *unofficial translation at* [http://www.zum.de/psm/weimar/weimar\\_vve.php](http://www.zum.de/psm/weimar/weimar_vve.php) (“The economy has to be organized based on the principles of justice, with the goal of achieving life in dignity for everyone.”) [<https://perma.cc/JFX8-KBGW>].

147. See CONSTITUCIÓN DE 1929, art. 151 ¶ 18 (Ecuador), [http://www.canceleria.gob.ec/wp-content/uploads/2013/06/constitucion\\_1928.pdf](http://www.canceleria.gob.ec/wp-content/uploads/2013/06/constitucion_1928.pdf) (“El Estado protegerá, especialmente, al obrero y al campesino, y legislara . . . asegurado a todos un mínimo de bienestar, compatible con la dignidad humana.”) [<https://perma.cc/J5AS-57C3>].

148. See CONSTITUTION OF IRELAND 1937, <http://www.irishstatutebook.ie/en/constitution/index.html> [<https://perma.cc/599L-WH76>].

149. See CUBA CONSTITUCIÓN POLÍTICA DE 1940, *unofficial translation available at* <http://www.latinamericanstudies.org/constitution-1940.htm> [<https://perma.cc/H49T-NBUG>].

150. See 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, Article 6 speaks of honor (“*Tout citoyen(ne) finlandais sera protégé par la loi dans sa vie, son honneur, sa liberté personnelle et ses biens*”: LA CONSTITUTION DE LA FINLANDE, (1920)). It is in Article 15 that dignity finds its place, although it still conveys 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, FACULTÉ DE DROIT 386 (1925). 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] (Dec. 30, 1946), [http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM\\_ref\\_041\\_30dic46\\_ima.pdf](http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM_ref_041_30dic46_ima.pdf) [<https://perma.cc/8SW7-TFT4>].

151. 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).

152. McCrudden, *Human Dignity*, *supra* note 18, at 659.

153. See *id.* at 662.

154. It was discovered that Barnard College Dean, Virginia Gildersleeve, was working on the draft that the South African delegate Jan Smuts was preparing for the *Preamble* and that Gildersleeve suggested citing the “dignity and worth of the human person.” Samuel

ter and brought it to adoption included some Arab states among its delegates, namely Egypt, Iraq, Lebanon, Saudi Arabia, and Syria.<sup>155</sup> Of these countries, both Lebanon and Syria, as described, had a constitutional text mentioning dignity, but not in the sense of personal (or individual) dignity.<sup>156</sup>

The Arabic version of the Preamble of the U.N. 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 . . . .”<sup>157</sup> 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 that finally expanded the notion of human dignity to cover that of *individuals*. Starting with its Preamble, it placed human dignity at the core of the rights it enshrined<sup>158</sup> 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 states as follows:

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 . . . .<sup>159</sup>

More strategic references to dignity are also in the document, making it one of the core concepts that the Universal Declaration enshrines. Art. 1 starts out by proclaiming that “[a]ll human beings are born free and equal in *dignity* and rights.”<sup>160</sup> Later on,

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Moyn, *The Secret History of Constitutional Dignity*, in UNDERSTANDING HUMAN DIGNITY, *supra* note 132, at 107.

155. See generally U.N. Charter (bearing the signatures of the representatives of Egypt, Iraq, Lebanon, Saudi Arabia, and Syria).

156. See CONSTITUTION OF LEBANON 1926 art. 10; CONSTITUTION OF THE SYRIAN STATE 1930 art. 19.

157. U.N. Charter pmbl.

158. See Jan Martenson, *The Preamble of the Universal Declaration of Human Rights and the UN Human Rights Programme*, in THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: A COMMENTARY 20 (Asbjørn Eide et al. eds., 1992).

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

160. *Id.* art. 1.

the Declaration states that "[e]veryone . . . is entitled to realization . . . of the economic, social and cultural rights indispensable for his *dignity* and the free development of his personality."<sup>161</sup> Finally, it adds that "[e]veryone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of *human dignity* . . . ."<sup>162</sup>

These words represent a turning point in the legal history of dignity. The wording of the Universal Declaration promulgated the sense of "respect," "intrinsic worth," "esteem," and "deference" attached to each human being,<sup>163</sup> which served as a foundation for the constitutional trajectories of several states worldwide.

The roles of Arab and Islamic thought in shaping the "dignitarian"<sup>164</sup> 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 to contribute to the Declaration's shaping. When the UNESCO Symposium issue was delivered a few months before the Declaration was promulgated,<sup>165</sup> the Muslims who were involved had not explicitly contributed to the field of dignity.<sup>166</sup>

Among the contributors were Jacques Maritain, Aldous Huxley, Fr. Teilhard de Chardin, Mahatma Gandhi, and Harold Laski.<sup>167</sup> Many of them pointed to dignity as one of the key concepts for the protection of human rights. The Muslim voice failed to do so, however. The Indian intellectual, Humayun Kabir, filed an opinion entitled *The Rights of Man and the Islamic Tradition*.<sup>168</sup> His piece, in contrast to many others, made no mention of human dignity.

161. *Id.* art. 22.

162. *Id.* art. 23.

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

164. See Mary Ann Glendon, *Rights Babel: Thoughts on the Approaching 50th Anniversary of the Universal Declaration of Human Rights*, DE SALES UNIV. 4 (1996).

165. 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*] [<https://perma.cc/88AY-GCJD>].

166. See Susan Waltz, *Universal Human Rights: The Contribution of Muslim States*, 26 HUM. RTS. Q. 799, 806 (2004). This does not mean that Islamic countries were reluctant to embrace or contribute to the drafting of the Universal Declaration. *Id.* (discussing Muslim states' participation).

167. *Human Rights*, *supra* note 165, at 2–3.

168. See *id.* at 192.

Conversely, the Arab contribution played an important role in promoting the incorporation of dignity in the Universal Declaration within the Drafting Committee, which was specifically charged with drafting a text proposal and submitting it to the Commission on Human Rights of the United Nations.<sup>169</sup> After receiving a first outline of the Declaration from the Committee's Secretariat, the Committee, which was famously led by Eleanor Roosevelt, requested that one of its members, René Cassin, prepare a new draft.<sup>170</sup>

The Greek Orthodox Lebanese member of the Committee, Charles Malik, a "chief spokesman for the Arab League,"<sup>171</sup> was a prominent philosopher of Thomism<sup>172</sup> 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.<sup>173</sup> 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 Article 1 of the Declaration<sup>174</sup>—a centrality that he would reaffirm on more occasions.<sup>175</sup>

But which concept of dignity? Here, Professor 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."<sup>176</sup> 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

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169. See *Drafting of the Universal Declaration of Human Rights*, UNITED NATIONS DAG HAMMARSKJÖLD LIBRARY, <http://research.un.org/en/undhr/draftingcommittee> (last updated Aug. 3, 2017) (displaying Charles Habib Malik of Lebanon as a member of the Drafting Committee and noting that "Mr. Malik was a major force in the debates surrounding key provisions of the Declaration. He also played a critical role in explaining and refining some of its basic conceptual issues.") [<https://perma.cc/48AT-TE4P>].

170. Thore Lindholm, *Article 1*, in *THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: A COMMENTARY*, *supra* note 158, at 32.

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

172. *Malik, Charles Habib*, FRANKLIN & ELEANOR ROOSEVELT INST., <http://ccnmtl.columbia.edu/projects/mmt/undhr/biographies/214.html> (last visited Aug. 9, 2017) [<https://perma.cc/5AMK-E597>].

173. See Malik, *The Near East*, *supra* note 1, at 259–60.

174. Lindholm, *supra* note 158, at 34.

175. Malik, *An International Bill of Rights*, in *THE CHALLENGE OF HUMAN RIGHTS*, *supra* note 89, at 60.

176. Mary Ann Glendon, *Introduction*, in *THE CHALLENGE OF HUMAN RIGHTS*, *supra* note 89, at 2–3.

wanted to subordinate the person to the state, but also the more individualistic Westerners on the Commission.”<sup>177</sup>

The debate around the “human person” as being endowed with inalienable rights but being 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 U.K. 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<sup>178</sup> to promote this idea of the human person as the focus of the Declaration.<sup>179</sup> 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.<sup>180</sup>

In proposing a pivotal role for dignity, Malik referenced the U.N. Charter. At a meeting of the Drafting Committee, he affirmed: “The [U.N.] Charter speaks in the preamble of the worth and dignity of man . . . That is what we are called upon to promote and protect.”<sup>181</sup> He was aware, however, that the affirmation of the U.N. Charter was not enough. Although dignity purposely “appeal[ed] to people of various ideological backgrounds,”<sup>182</sup> it was “precisely [Malik’s] intention to give meaning to that vague phrase, human dignity and worth, which is used in the U.N. Charter to give it content and, therefore, to save it from hollowness and emptiness.”<sup>183</sup> 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 U.N. Charter, ‘the worth and dignity of man.’ [Therefore the Declaration was to be] nothing other than a continuation, a completion, of the [U.N.] Charter itself.”<sup>184</sup> Malik captured his thinking in a nutshell, as follows:

177. *Id.*

178. He would later do this in his Nobel Lecture speech of acceptance of the 1968 Nobel Peace Prize. René Cassin, Laureate, Nobel Lecture: The Charter of Human Rights at the auditorium of the Nobel Institute, NOBEL PRIZE (Dec. 11, 1968) (providing English translation of the French text in *Les Prix Nobel en 1968*).

179. GÉRARD ISRAËL, RENÉ CASSIN (1887-1976), LA GUERRE HORS LA LOI AVEC DE GAULLE LES DROITS DE L’HOMME 185 (photo. reprint 2007) (1990).

180. See *supra* Part II.

181. Malik, *The Task Ahead*, in THE CHALLENGE OF HUMAN RIGHTS, *supra* note 89, at 26.

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

183. Malik, *Four Basic Principles*, in THE CHALLENGE OF HUMAN RIGHTS, *supra* note 89, at 37.

184. Malik, *Required: National Moral Leadership*, in THE CHALLENGE OF HUMAN RIGHTS, *supra* note 89, at 91.



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 . . .<sup>185</sup>

Malik understood that the Human Rights Commission had the duty to flesh out this idea of dignity. He stated the following: “[The Human Rights Commission 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.”<sup>186</sup>

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,”<sup>187</sup> was 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.”<sup>188</sup> Second, what “the place [is] of the individual human person in modern society. This is the great problem of personal freedom.”<sup>189</sup> And third, what “the relationship [is] between man and the state, the individual and the law. This is the great problem of statism.”<sup>190</sup> 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.”<sup>191</sup>

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, as follows:

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

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185. Malik, *Four Basic Principles*, in *THE CHALLENGE OF HUMAN RIGHTS*, *supra* note 89, at 38.

186. Malik, *Required: National Moral Leadership*, in *THE CHALLENGE OF HUMAN RIGHTS*, *supra* note 89, at 92.

187. *Id.* at 93.

188. *Id.*

189. *Id.* at 93.

190. *Id.* at 94.

191. *Id.* at 116.

question, How does the world conceive of man's essential worth and dignity at the middle of the twentieth century?<sup>192</sup>

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.<sup>193</sup>

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."<sup>194</sup> It was undeniable to him that the religious organizations that interacted with and fed ideas to the Committee were Jewish, Protestant, and Catholic.<sup>195</sup>

There is, therefore, little evidence of Islamic thought shaping and expounding the crucial concept of human dignity, except for the role played by the cosmopolitan Lebanese 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 likely 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."<sup>196</sup> 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.<sup>197</sup>

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

192. Malik, *Reflecting on the Declaration*, in THE CHALLENGE OF HUMAN RIGHTS, *supra* note 89, at 132.

193. Malik, *The Twin Scourges: Materialism, Human Self-Sufficiency*, in THE CHALLENGE OF HUMAN RIGHTS, *supra* note 89, at 207.

194. Malik, *Spiritual Implication of Universal Declaration*, in THE CHALLENGE OF HUMAN RIGHTS, *supra* note 89, at 134.

195. Malik, *Looking Back*, in THE CHALLENGE OF HUMAN RIGHTS, *supra* note 89, at 132.

196. *Id.* at 233.

197. See *infra* Part IV.

hijacking the Declaration's understanding of human rights and dignity<sup>198</sup>—and this co-optation is what we will see in the Arabism rhetoric of state dignity, which took shape in the 1950s.<sup>199</sup> This is why his concern about the “determination of the proper structure of human dignity”<sup>200</sup> continued into the 1950s, while the United Nations was drafting the two Covenants on *Economic, Social and Cultural Rights* and on *Civil and Political Rights*.<sup>201</sup>

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 1926 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.<sup>202</sup> The vocabulary and the reflections of Immanuel Kant and Jacques Maritain, who both contributed to the “dignitarian” understanding of human rights,<sup>203</sup> were being made available among Arabs precisely during the first half of the twentieth century.<sup>204</sup>

*Karāma* was mainly humanized in the U.N. Charter and in 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.

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198. See Malik, *Looking Back*, in *THE CHALLENGE OF HUMAN RIGHTS*, *supra* note 89, at 235.

199. See *infra* Part IV.

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

201. See International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

202. See STEPHEN R. PALMQUIST, *CULTIVATING PERSONHOOD: KANT AND ASIAN PHILOSOPHY* 736 (Walter De Gruyter 2010).

203. 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* 6 (1995).

204. PALMQUIST, *supra* note 202.

Islamic legal thinking seems to have aligned itself to this reading of dignity later by developing and universalizing the idea of *karāma*, which 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, as Part V will show.<sup>205</sup>

The Arab and Islamic legal documents that appeared after World War II embraced the idea of *individualized* dignity while sometimes placing it alongside the idea of collective and national dignity. There is no trace of human dignity's constitutionalization among Arab states before the U.N. Charter or the Universal Declaration were drafted; there is plenty of it after the two international law documents were drafted and approved.

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

##### A. *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.

A precursor of such Islamic and Arab initiatives is to be found in the 1977 *Project for an Islamic Constitution (Project)*,<sup>206</sup> 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.<sup>207</sup> The *Project* mentions dignity on two occasions. First, it affirms that “[t]he economy will be based upon the principles of Islamic *Shari’a* which guarantees human *dignity* and social justice,”<sup>208</sup> paralleling the earliest Western constitutions, which also mentioned the concept of human dignity within the economic field. Second, it declares that “[i]t is not permissible to humiliate the imprisoned, force him to work, or

205. See *infra* Part V.

206. GENERAL SECRETARIAT OF THE ACADEMY FOR ISLAMIC RESEARCH, THE PROJECT FOR AN ISLAMIC CONSTITUTION (Oct. 1977), [https://www.researchgate.net/publication/272306686\\_The\\_1978\\_Al-Azhar's\\_Project\\_for\\_an\\_Islamic\\_Constitution](https://www.researchgate.net/publication/272306686_The_1978_Al-Azhar's_Project_for_an_Islamic_Constitution) [hereinafter PROJECT] [<https://perma.cc/H2T7-BMBS>].

207. Jerg Gutmann & Stefan Voigt, *The Rule of Law and Constitutionalism in Muslim Countries*, 162 PUB. CHOICE 351, 355 (2015).

208. PROJECT, *supra* note 206, art. 18.

insult his *dignity*.”<sup>209</sup> In later Islamic declarations, however, the concept of human dignity takes on an even more central role.

The Declaration on Human Rights in Islam (Cairo, 1990), issued by the Organization of the Islamic Conference (now the Organization of Islamic Cooperation) and covering fifty-seven nations, enshrines dignity while describing how much God esteems all human beings, stating as follows:

All human beings form one family whose members are united by their submission to God and descent from Adam. All men are equal in terms of basic *human dignity* and basic obligations and responsibilities, without any discrimination on the grounds of race, colour, language, sex, religious belief, political affiliation, social status or other considerations.<sup>210</sup>

The text also embeds two more references to dignity. First, it specifies that “[w]oman is equal to man in human *dignity*, and has rights to enjoy as well as duties to perform; she has her own civil entity and financial independence;”<sup>211</sup> second, it asserts that “[i]t is not permitted to subject [an individual] to physical or psychological torture or to any form of humiliation, cruelty or *indignity*.”<sup>212</sup>

The Arab Charter on Human Rights (2004),<sup>213</sup> issued by the League of Arab States, confirms this growing and changing usage of dignity, and carries the stamp “of the Universal Declaration and other international Human Rights texts.”<sup>214</sup> The Preamble asserts the following:

Proceeding from the faith of the Arab nation in the *dignity* of the human person whom God has exalted since the Creation and that the Arab nation is the cradle of religions and the homeland of civilizations with lofty human values that affirm the human right to a life of dignity based on freedom, justice and equality.<sup>215</sup>

The Arab Charter on Human Rights also includes specific provisions relating to dignity. It states that “[a]ll forms of racism, Zionism and foreign occupation and domination constitute an

209. *Id.* art. 80.

210. Cairo Declaration, *supra* note 85, art. 1 (emphasis added).

211. *Id.* art. 6 (emphasis added).

212. *Id.* art. 20 (emphasis added).

213. It entered into force on March 15, 2008. See Merwat Rishmawi, *The Arab Charter on Human Rights and the League of Arab States: An Update*, 10 HUM. RTS. L. REV. 169, 169 (2010).

214. Dima El Sayed, *Arabs & Human Rights*, 15 Y.B. ISLAMIC & MIDDLE E.L. 95, 105 (2009–10).

215. Arab Charter on Human Rights, pmbl (May 22, 2004) *reprinted in* 12 INT’L HUM. RTS. REP. 893 (2005) (entered into force Mar. 15, 2008) (emphasis added) [hereinafter Arab Charter].

impediment to human *dignity* . . . .”<sup>216</sup> It emphasizes that “[m]en and women have equal human *dignity* and equal rights and obligations in the framework of the positive discrimination established in favour of women by the Islamic Shariah, other divine laws and by applicable laws and legal instruments.”<sup>217</sup> It commands that “[e]ach 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 implementation of sentence, as well as to special treatment that . . . protects his *dignity*.”<sup>218</sup> It states that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent *dignity* of the human person.”<sup>219</sup> Finally, it commits State parties to “take all necessary . . . measures to guarantee the protection, survival, development and well-being of the child in an atmosphere of freedom and *dignity*,”<sup>220</sup> and to “ensure to persons with mental or physical disabilities a decent life that guarantees their *dignity*.”<sup>221</sup>

Overall, dignity in Arab and Islamic international legal documents after the Universal Declaration came to describe the quintessence of the human person. 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 to secure a decent standard of living for everybody. Third, it provides a theological foundation for both human rights and duties.

### B. *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. Since December 17, 2010, the day on which Tarek Bouazizi set himself on fire in the Tunisian city of Sidi Bouzid,<sup>222</sup> no Arab constitution drafted, passed, or amended fails to mention dignity. Indeed, most constitutions repeat it frequently. The three Egyptian constitutions that were drafted from

216. *Id.* art. 2 (emphasis added).

217. *Id.* art. 3(c) (emphasis added).

218. *Id.* art. 17 (emphasis added).

219. *Id.* art. 20 (emphasis added).

220. *Id.* art. 33 (emphasis added).

221. *Id.* art. 40 (emphasis added).

222. See Mohamed Bouazizi: *Tunisian Street Vendor and Protestor*, *supra* note 9.

2011 onwards do so. The constitutions of 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.

The following section sequences the progressive development of the concept after World War II, starting with the countries that have been at the core of the Arab Spring. These countries had been familiar with the concept for decades, but the Spring still pushed *karāma* further in their constitutional texts. Then, the Article 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 the inclusion of Somalia, Libya, and Syria in this parade must be given. Somalia proclaims itself part of the Arab world,<sup>223</sup> professes Arabic as its second official language,<sup>224</sup> and is still in the midst of a long process of regime change;<sup>225</sup> 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—for example, 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; but the 2012 text reveals the type of constitutional language with which regimes in hardship tend to legitimize themselves.

## 1. 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 quick to force their respective leader-

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223. CONSTITUTION OF SOMALIA art. 3(2) (2012), *unofficial translation at* [https://www.constituteproject.org/constitution/Somalia\\_2012.pdf?lang=en](https://www.constituteproject.org/constitution/Somalia_2012.pdf?lang=en) [<https://perma.cc/57AS-RZQG>].

224. *Id.* art. 5.

225. See Antonios Kouroutakis, *The Provisional Constitution of the Federal Republic of Somalia: Process, Architecture, and Perspectives*, 3 CAMBRIDGE J. INT'L & COMP. L. 1195, 1206 (2014).

ships to resign within weeks.<sup>226</sup> The post-Arab Spring phase has ramified into very different political and constitutional outcomes: at the time of this Article's publication, Tunisia seems rather stable, Egypt has experienced dramatic political changes, Syria is in the midst of a civil war, and Libya is immersed in chaos.<sup>227</sup> All of these states, however, have introduced new constitutions, with Egypt enacting three constitutional documents in four years.<sup>228</sup> 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 preceded them.

#### a. 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.<sup>229</sup> This constitution affirmed that the aim of judicial decisions shall be "the protection of the principles of the community and the rights, *dignity*, and freedom of individuals."<sup>230</sup> The following Declaration on the Establishment of the Authority of the People in 1977, however, proclaimed the Koran to be the Libyan Constitution, implicitly abrogating the 1969 Constitution.<sup>231</sup>

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 before a permanent constitution, makes reference to dignity.<sup>232</sup> Mentions of dignity start within the Preamble, which states the following:

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226. See Beck & Hüser, *supra* note 10, at 5.

227. Seth G. Jones, *Democracy in the Arab World: Still a Mirage*, FOREIGN AFFAIRS (May 17, 2016), <https://www.foreignaffairs.com/articles/middle-east/2016-03-17/democracy-arab-world> [https://perma.cc/CE9M-7HXC].

228. In 2011, 2012, and 2014. See *infra* notes 262, 264 and 271.

229. CONSTITUTION OF LIBYA 1969, art. 27, *translated in* 1 Amos J. Peaslee & Dorothy Peaslee Xydis Nations Rev. 4th Ed. 429, 436 (1974).

230. *Id.*

231. DECLARATION ON THE ESTABLISHMENT OF THE AUTHORITY OF THE PEOPLE OF 1977 (Libya), *unofficial translation at* [http://www.servat.unibe.ch/icl/ly01000\\_.html](http://www.servat.unibe.ch/icl/ly01000_.html) [https://perma.cc/C2L6-XPWP].

232. 2011 CONSTITUTIONAL DECLARATION OF LIBYA (Aug. 3, 2011), [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=246953](http://www.wipo.int/wipolex/en/text.jsp?file_id=246953) [hereinafter LIBYA CONSTITUTION] [https://perma.cc/85EW-FEB3]. It was slightly amended twice in 2012 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.clinceneter.illinois.edu/REPOSITORYCACHE/155/BmMvx3OwWyP942nka3z72a5XDsG3kal1qzt4i4xwey7Zo1RL8yUH03WOGd0Jpx8BqxMIJolTl>



[D]ue 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 . . . [t]he interim Transitional National Council has decided to promulgate this Constitutional Declaration . . . .<sup>233</sup>

Another constitutional provision, which protects individual rights and freedoms, also uses a related verb—*takram*—instead of *karāma* to signify that “[t]he State shall . . . strive for the promulgation of new covenants which recognize the *dignity* of man as Allah’s representative on earth.”<sup>234</sup>

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 a specific constitutional provision 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—to settle human dignity.

#### b. Syria

The idea of dignity entered the Syrian constitutional framework very early on, making this country one of the concept’s forerunners in the Arab context. As previously mentioned, *karāma* was already in use in the 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<sup>235</sup> and later confirmed that all citizens enjoyed equal dignity as individuals.<sup>236</sup>

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TYdoaEp4511lpL6Ms3F0fe3T9EVwL1ff5\_22947.pdf [https://perma.cc/2REW-GDDK]. 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> [https://perma.cc/86NJ-VY8Z].

233. CONSTITUTION OF LIBYA, *supra* note 24, pmb1. (emphasis added).

234. *Id.* art. 7.

235. CONSTITUTION OF THE SYRIAN STATE 1950, Sept. 5, 1950, pmb1.

236. *Id.* art. 7.

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 by proclaiming that "[t]he state protects the personal freedom of the citizens and safeguards their *dignity* and security."<sup>237</sup>

The 2012 Syrian Constitution is the legal reaction to the great turmoil that has spread throughout the country. Therefore, it represents the political regime and structure that its opponents are trying to topple. Its Preamble states the following:

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 . . . . Preserving *the dignity of the society and the citizen* is an indicator of the civilization of the country and the prestige of the state.<sup>238</sup>

The belief that individuals are endowed with dignity is also well-embedded in the text, which goes further, saying that "[s]ociety 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*."<sup>239</sup> Finally, it is stated that "[f]reedom shall be a sacred right and the state shall guarantee the personal freedom of citizens and preserve their *dignity* and security."<sup>240</sup>

The Syrian approach to the constitutional idea of dignity, according to the 2012 text, encompasses both the individual and the collective: its 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 the best way to protect the former. This trend, which started in the 1950s, has remained largely untouched until now.

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237. CONSTITUTION OF THE SYRIAN ARAB REPUBLIC 1973, art. 25 *translated in* 2 Amos J. Peaslee & Dorothy Peaslee Xydis Nations Rev. 4th ed. 1487, 1495 (1985).

238. CONSTITUTION OF THE SYRIAN ARAB REPUBLIC 2012, pmbl., *unofficial translation available at* [https://www.constituteproject.org/constitution/Syria\\_2012.pdf?lang=en](https://www.constituteproject.org/constitution/Syria_2012.pdf?lang=en) (emphasis added) [<https://perma.cc/SUL4-FT9B>].

239. *Id.* art. 19 (emphasis added).

240. *Id.* art. 33 (emphasis added).

## c. Tunisia

The idea of dignity made its appearance in Tunisia in 1959 with the new Constitution.<sup>241</sup> The concept was clearly enshrined in the Preamble, which 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.”<sup>242</sup> Some specific provisions also mentioned this word. The Constitution stipulated that “[t]he 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.”<sup>243</sup> Finally, “[t]hose deprived of freedom” had to “be treated humanely and their *dignity*” had to “be respected.”<sup>244</sup>

The 2014 Tunisian Constitution made even more references to the concept of dignity.<sup>245</sup> The Preamble itself stresses the recognition of dignity as one of the two main goals of the 2010–2011 revolution, stating as follows:

Taking pride in the struggle of our people . . . 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 . . . . We, in the name of the Tunisian people, with the help of God, draft this Constitution.<sup>246</sup>

The word is later mentioned in four articles of the text. The first reference to dignity identifies “[t]he motto of the Tunisian Republic” as “freedom, *dignity*, justice, and order.”<sup>247</sup> The second affirms that “[t]he state protects *human dignity* and physical integrity and prohibits mental and physical torture.”<sup>248</sup> The third ensures that “[e]very prisoner shall have the right to humane treatment that preserves their *dignity*.”<sup>249</sup> The fourth states that “[c]hildren are guaranteed the rights to *dignity*, health, care and education from their parents and the state.”<sup>250</sup>

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241. CONSTITUTION OF TUNISIA 1959, [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=196736](http://www.wipo.int/wipolex/en/text.jsp?file_id=196736) [<https://perma.cc/4SCG-GMU9>].

242. *Id.* pmbl.

243. *Id.* art. 5.

244. *Id.* art. 13.

245. CONSTITUTION OF THE REPUBLIC OF TUNISIA 2014 (Jan. 24, 2014), *unofficial translation available at* <http://www.venice.coe.int/files/Constitution%20TUN%20-%2027012014.pdf> [<https://perma.cc/W8RW-EQES>].

246. *Id.* pmbl.

247. *Id.* art. 4.

248. *Id.* art. 23.

249. *Id.* art. 30.

250. *Id.* art. 47.

In few words, the new Tunisian Constitution greatly emphasizes dignity as a limitation on what the state can do to individuals, although it also includes the state's 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 to refer 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.

#### d. Egypt

The first call to dignity in Egypt, the most influential country of the Middle East,<sup>251</sup> came from Nasserism and from Egypt's quest for a place in the community of nations. In the 1950s, Gamal Abd-al-Nasser, one of the leaders of Arab decolonization and then President of the Republic, galvanized Egyptians' pride by using this concept; but its appeal crossed state borders and also influenced other Arab countries.<sup>252</sup> "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."<sup>253</sup> 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 Islamic law or political theory terminology yet. He was using a colloquial expression,<sup>254</sup> which resonated deeply with the feelings of Arabs.

The 1956 Egyptian Constitution crystallized this rhetoric of dignity in the Preamble, which defined the people as "[b]lessed by *dignity* and justice,"<sup>255</sup> and later said that basic liberties are limited for the sake of individuals' *dignity* or liberty.<sup>256</sup>

While the 1962 Egyptian Constitution was silent on dignity, the 1971 Constitution, which was last amended under President Mubarak in 2007, embedded it in several provisions.<sup>257</sup> References to dignity abounded in its Preamble as follows:

251. See Malik, *The Near East*, *supra* note 1, at 234.

252. ADEED DAWISHA, *THE SECOND ARAB AWAKENING: REVOLUTION, DEMOCRACY, AND THE ISLAMIC CHALLENGE FROM TUNIS TO DAMASCUS* 54 (2013).

253. *Id.*

254. *Id.*

255. CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT 1956 pmb., <http://www.rightto-nonviolence.org/mecf/wp-content/uploads/2012/03/1956Egypt.pdf> [<https://perma.cc/4NHW-UFTG>].

256. *Id.* art. 8.

257. CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT (Sept. 22, 1971), *as amended*, May 22, 1980, May 25, 2005, Mar. 26, 2007, *translation available at* <http://www.refworld.org/cgi->

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.<sup>258</sup>

The concept was not confined to the Preamble, as the text also affirmed that "[a]ny person arrested, detained or his freedom restricted shall be treated in such a manner that preserves his human *dignity*."<sup>259</sup> While this latter article reflected a sort of protection of personal liberty in the narrowest sense, the Preamble bore 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.

All of the Egyptian constitutional texts enshrined after the Arab Spring—the 2011 Interim Constitution, which was the smallest in size, the 2012 "Muslim Brotherhood" Constitution, and the currently-in-force 2014 Constitution—have shown interest in the idea of dignity.

The 2011 provisional text<sup>260</sup> utilized dignity to protect individuals from public powers in saying that "[e]very citizen who is arrested or detained must be treated in a way that preserves his/her human *dignity*."<sup>261</sup>

The 2012 Constitution was more concerned with the idea of dignity, beginning with the Preamble. Apart from famously stating that Egyptians "publicly demanded our full rights to a decent life, freedom, social justice and *human dignity*,"<sup>262</sup> and ensuring that police respect human *dignity* and the rule of law,<sup>263</sup> the Preamble stressed that "[t]he *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."<sup>264</sup>

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bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y& docid=54917e9c4 [https://perma.cc/2NGP-ATB9].

258. *Id.* pmbl.

259. *Id.* art. 42.

260. See PROVISIONAL CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT 2011, <http://www.egypt.gov.eg/arabic/laws/constitution/default.aspx> [https://perma.cc/XGR2-Q722].

261. *Id.* art. 9 (emphasis added).

262. CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT 2012 pmbl., *unofficial translation available at* <http://niviensaleh.info/constitution-egypt-2012-translation/#preamble-intro> (emphasis added) [https://perma.cc/BQJ6-P75J].

263. *See id.*

264. *Id.* (emphasis added).

The 2012 Constitution contained scattered references to human dignity. One was entitled “Dignity and the prohibition against insults” and proclaimed that “[d]ignity 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.”<sup>265</sup> The dignity of the individual was also at the center of more articles, which protected the dignity of arrested people<sup>266</sup> and ensured that they had a dignified life both while in jail and upon their release.<sup>267</sup>

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.”<sup>268</sup> 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 Constitution now in force shows a deep concern for dignity twice in the Preamble, both speaking about the “[r]evolution that called for bread, freedom and human *dignity* within a framework of social justice, and brought back the homeland’s free will” and clarifying that Egyptians have “the right of the people to make their future.”<sup>269</sup> They, alone, are the source of authority. Freedom, human *dignity*, and social justice are a right of every citizen.”<sup>270</sup>

Other articles express the manifold ways dignity comes into play in the Egyptian legal regime. It is foremost a “right for every person that may not be infringed upon. The state shall respect, guarantee and protect it.”<sup>271</sup> “Those who are apprehended, detained or have their freedom restricted shall be treated in a way that preserves their *dignity*.”<sup>272</sup> In prisons and detention centers, “[a]ll that which violates the *dignity* of the person and or endangers his health

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265. *Id.* art. 31 (emphasis added).

266. *See id.* art. 36.

267. *See id.* art. 37.

268. *Id.* pmbl.

269. *See* CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT (Jan. 18, 2014), *supra* note 24, pmbl.

270. *Id.* (emphasis added).

271. *Id.* art. 51.

272. *Id.* art. 55 (emphasis added).

is forbidden.”<sup>273</sup> Finally, the “[S]tate guarantees citizens the right to decent, safe and healthy housing, in a way that preserves human dignity and achieves social justice.”<sup>274</sup>

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.<sup>275</sup> Interestingly, Nasserism and the pro-Islamic 2012 Constitutions both stress the collective prong of this concept.

## 2. *Karāma* in the Countries that Adopted Dignity after the Arab Spring

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

Jordan modified its 1952 Constitution in 2011<sup>276</sup> and introduced the idea of dignity. The concept now serves to protect personal liberty as evidenced in the constitutional phrase that “[e]very person seized, detained, imprisoned or the freedom thereof restricted should be treated in a manner that preserves *human dignity*.”<sup>277</sup>

Morocco introduced a new constitution in 2011<sup>278</sup> as well, mentioning dignity for the first time in three different contexts. The first appearance of dignity is in the Preamble, which states that the Kingdom of Morocco “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

273. *Id.* art. 56 (emphasis added).

274. *Id.* art. 78 (emphasis added).

275. Muge Aknur, *The Muslim Brotherhood in Politics in Egypt: From Moderation to Authoritarianism*, 9 REV. INT’L L. & POL. 1, 19 (2013).

276. See CONSTITUTION OF JORDAN 1952, as amended 2011, [http://www.representatives.jo/pdf/constitution\\_en.pdf](http://www.representatives.jo/pdf/constitution_en.pdf) [https://perma.cc/9NGV-3ANK].

277. *Id.* art. 8(2) (emphasis added).

278. See generally CONSTITUTION OF THE KINGDOM OF MOROCCO 2011.

of correlation between the rights and the duties of the citizenry.”<sup>279</sup> Then dignity is embedded in two more articles of the Moroccan Constitution, respectively prohibiting “degrading treatments or infringements of human *dignity*”<sup>280</sup> and entrusting the newborn National Council of the Rights of Man to “guarantee their full exercise and their promotion, as well as the preservation of the *dignity*.”<sup>281</sup>

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 the term 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 as a justification for its intervention.

### 3. Beyond the Arab Spring: Other Appearances of *Karāma*

Some Arab countries have been largely spared from the 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 have gone through a very special post-war journey,<sup>282</sup> 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

279. *Id.* pmb. (emphasis added).

280. *Id.* art. 22 (emphasis added).

281. *Id.* art. 161 (emphasis added). 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.

282. After the end of Siad Barre’s dictatorship in 1991, Somalia suffered from a prolonged period of territorial fragmentation and inter- and intra-clan confrontations, which, from time to time, erupted in open conflicts and did not end until 2012. See Matthew Cavedon, *Men of the Spear and Men of God: Islamism’s Contributions to the New Somali State*, 28 EMORY INT’L. L. REV. 473, 474 (2014) (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 IN THE MIDDLE EAST: WITH SPECIAL REFERENCE TO TURKEY, IRAQ, IRAN AND AFGHANISTAN 77, 84–85 (Said Amir Arjomand ed., 2008).



an overview in the chronological order in which these countries have introduced *karāma* into their texts.

Kuwait's 1962 constitutional Preamble<sup>283</sup> 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 rights and duties before the law."<sup>284</sup> Here, dignity is at the root of both rights and duties, as is also confirmed by the statement that "[w]ork is a duty of every citizen necessitated by personal *dignity* and public good."<sup>285</sup>

Algeria's constitutional culture enshrined the idea of dignity as early as 1963,<sup>286</sup> immediately after its liberation from French colonizers, counting the "respect for the *dignity* of the human being" among the "fundamental objectives" of the Republic.<sup>287</sup> The 1976 Constitution<sup>288</sup> later concretized this fundamental objective with the specification that the state would be responsible for securing individuals' dignity.<sup>289</sup> It also added that the liberators of the country (*mujahiddin*) acquired special dignity through their actions, which justified a heightened protection for them and their memories.<sup>290</sup> The 1996 Constitution<sup>291</sup> reinforced the role of dignity as a shield of the inviolable rights of the individual against any act of violence;<sup>292</sup> confirmed the special dignity that the revolution, its martyrs, and symbols enjoyed;<sup>293</sup> and added in its Preamble that Algeria is a land endowed with freedom and dignity.<sup>294</sup> In a few words, Algeria's 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's constitutionalism, from 1973 onwards,<sup>295</sup> has a two-pronged treatment of dignity. The first prong enforces it as an

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283. See CONSTITUTION OF KUWAIT 1962, pmb., *unofficial translation available at* [http://www.servat.unibe.ch/icl/ku00000\\_.html](http://www.servat.unibe.ch/icl/ku00000_.html) [https://perma.cc/F2DQ-3SB9].

284. *Id.* art. 29 (emphasis added).

285. *Id.* art. 41 (emphasis added).

286. See CONSTITUTION OF ALGERIA 1963, *translated in The Algerian Constitution*, 17(4) MIDDLE EAST J. 446 (Autumn 1963).

287. *Id.* art. 10.

288. See CONSTITUTION OF ALGERIA 1976, <http://www.conseil-constitutionnel.dz/Index-Arab.htm> [https://perma.cc/367A-RQ6D].

289. *Id.* art. 33.

290. *Id.* art. 85.

291. See CONSTITUTION OF ALGERIA 2008, *unofficial translation available at* [http://www.servat.unibe.ch/icl/ag00000\\_.html](http://www.servat.unibe.ch/icl/ag00000_.html) [https://perma.cc/K9L9-MRYF].

292. See *id.* art. 34.

293. See *id.* art. 62.

294. *Id.* pmb.

295. See CONSTITUTION OF BAHRAIN MAY 26, 1973.

equalizing principle, stating that "People are equal in human *dignity*";<sup>296</sup> the second prong asserts that its citizens have the "duty" to work, as it stems from "personal *dignity*" and "public good."<sup>297</sup> Dignity therefore inheres in men and women as a right as well as a duty.

Yemen's 1991 constitutional text,<sup>298</sup> later amended in 1994<sup>299</sup> and 2001,<sup>300</sup> bears the signs of "human dignity" as understood in liberalism. It mentions this concept twice, first while speaking of the duty of the state to preserve and protect the dignity and freedom of its citizens,<sup>301</sup> and later while specifying that restrictions on freedom cannot entail that human dignity be demeaned.<sup>302</sup>

Mauritania modified its 1991 Constitution<sup>303</sup> in 2012.<sup>304</sup> There were no changes to the Preamble, which notes the following:

[T]he 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 . . .<sup>305</sup>

Saudi Arabia's 1992 Basic Law<sup>306</sup> has a rather limited scope, as this country has consistently maintained that Islamic law in itself is its Constitution.<sup>307</sup> However, "human *dignity*" is mentioned in the field of mass media communication and justifies limitations to the freedom of expression.<sup>308</sup>

296. *Id.* art. 18 (emphasis added). 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. *Id.*

297. *Id.* art. 13 (emphasis added).

298. *Country Profile Yemen*, LIB. OF CONGRESS 3 (Aug. 2008), <https://www.loc.gov/rf/frd/cs/profiles/Yemen.pdf> [<https://perma.cc/4Y8M-RU9X>]; see CONSTITUTION OF THE REPUBLIC OF YEMEN 1990 (May 16, 1991).

299. CONSTITUTION OF THE REPUBLIC OF YEMEN 1990, <http://al-bab.com/constitution-republic-yemen-1990> [<https://perma.cc/LY5C-MYCW>].

300. CONSTITUTION OF THE REPUBLIC OF YEMEN, Sept. 29, 1994 *as amended through 2001*, <http://www.refworld.org/pdfid/3fc4c1e94.pdf> [<https://perma.cc/V25F-TL2R>].

301. *Id.* art. 48(a).

302. *Id.* art. 48(b).

303. See CONSTITUTION OF MAURITANIA 1991, *as amended 2012*, [https://www.constituteproject.org/constitution/Mauritania\\_2012.pdf](https://www.constituteproject.org/constitution/Mauritania_2012.pdf) [<https://perma.cc/5554-XBJM>].

304. *Id.*

305. *Id.* pmbl. (emphasis added).

306. BASIC LAW OF GOVERNANCE OF SAUDI ARABIA (Mar. 1, 1992), *unofficial translation available at* <http://www.wipo.int/edocs/lexdocs/laws/en/sa/sa016en.pdf> [<https://perma.cc/TV27-U26K>].

307. Joseph L. Brand, *Aspects of Saudi Arabian Law and Practice*, 9 B.C. INT'L & COMP. L. REV. 1, 8 (1986).

308. BASIC LAW OF GOVERNANCE OF SAUDI ARABIA, *supra* note 306, art. 39.

Sudan's 2005 Constitution<sup>309</sup> mentions dignity several times. The President of Sudan is committed to preserving the dignity of the entire people.<sup>310</sup> The state protects every human being's "inherent right to life, *dignity* and the integrity of his person,"<sup>311</sup> and the Constitution prohibits treatment of prisoners that would degrade their dignity.<sup>312</sup> The "*dignity* and status of women"<sup>313</sup> and of the elderly<sup>314</sup> are mentioned specifically. Dignity also is expanded to support welfare policies, which should bring aid to people in need.<sup>315</sup>

Oman's Sultanate modified its 1996 Constitution in 2011,<sup>316</sup> but left unaltered the only provision that touched upon the subject of *karāma*; the provision protects the freedom of the press, while making it forbidden "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."<sup>317</sup>

Somalia submitted a provisional constitution in 2012<sup>318</sup> after a peace process that had taken almost a decade; its drafting was influenced by the circumstances of the war and the following conditions of peace.<sup>319</sup> The constitutional text gives a broad, even multifaceted, portrait of dignity in saying that "[h]uman *dignity* is given by God to every human being, and this is the basis for all human rights"; that such dignity "is inviolable and must be protected by all"; and that "State power must not be exercised in a manner that violates human dignity."<sup>320</sup>

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309. See SUDANESE CONSTITUTION JULY 9, 2005, *unofficial translation available at* [https://www.constituteproject.org/constitution/Sudan\\_2005.pdf](https://www.constituteproject.org/constitution/Sudan_2005.pdf) [<https://perma.cc/AL5Y-93Z4>].

310. *Id.* art. 56.

311. *Id.* art. 28 (emphasis added); *id.* pmbl.

312. *Id.* art. 149.

313. *Id.* art. 32 (emphasis added).

314. *Id.* art. 45.

315. *Id.*; *id.* art. 185.

316. CONSTITUTION OF OMAN 1996, *as amended* 2011, *unofficial translation available at* [https://www.constituteproject.org/constitution/Oman\\_2011.pdf](https://www.constituteproject.org/constitution/Oman_2011.pdf) [<https://perma.cc/2AM8-FLNP>].

317. *Id.* art. 31. Note that Article 59, which mentions "dignity of the judiciary," does not actually use the same word but instead uses *sharf*. *Id.* art. 59.

318. See FEDERAL REPUBLIC OF SOMALIA PROVISIONAL CONSTITUTION 2012, *unofficial translation available at* [http://unpos.unmissions.org/LinkClick.aspx?fileticket=RkJTOSpoMME=\[https://perma.cc/VW6K-QA57](http://unpos.unmissions.org/LinkClick.aspx?fileticket=RkJTOSpoMME=[https://perma.cc/VW6K-QA57)].

319. Kouroutakis, *supra* note 225, at 1199.

320. FEDERAL REPUBLIC OF SOMALIA PROVISIONAL CONSTITUTION 2012, art. 10 (emphasis added).

#### 4. 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 the one hand, such texts confirm that the protection of human dignity against the state is among the main concerns of Arab legal culture. 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 can also legitimize the state's intervention for the sake of protecting individuals from 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* origin<sup>321</sup>—of dignity is of particular salience, as it displays the legitimizing role that this concept can play with regard to the state.<sup>322</sup>

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

#### C. *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. 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).

321. See Cavedon, *supra* note 282, at 483.

322. *Id.*

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 said that "different cultures can understand different things by it";<sup>323</sup> this is also true for the different generations of citizens in Arab countries. Each has been able to ground its own expectations of dignity.

This connection between dignity's ambiguity<sup>324</sup> and its success is a hallmark of the global discourse. The concept's amorphousness<sup>325</sup> is a common thread in contemporary global constitutionalism. This vagueness has served to reinforce many of the characteristics of political morality that put a check on democracy, alongside the rule of law, human rights, and equality.<sup>326</sup> To some extent, it has also provided a foundation for human rights themselves.<sup>327</sup>

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"<sup>328</sup> countries that were setting out on 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

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

324. See Mark Movsesian, *Of Human Dignities*, 91 N.D. L. REV. 1517, 1518 (2016) (examining dignity).

325. See ERIN DALY, DEMOCRACY, CITIZENSHIP, AND CONSTITUTIONALISM: DIGNITY RIGHTS, COURTS, CONSTITUTIONS, AND THE WORTH OF THE HUMAN PERSON 103 (2012) (explaining dignity as being on a "continuum between everything and nothing").

326. Jan Komarek, *National Constitutional Courts in the European Constitutional Democracy*, 12 INT'L J. CONST. L. 525, 529 (2014).

327. GRIFFIN, *supra* note 323, at 250.

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

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].”<sup>329</sup>

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 ha[d] been erected as a creed, a sole doctrine which dominate[d] social thought and a single force which sway[ed] the public”;<sup>330</sup> 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.”<sup>331</sup> Recognizing states’ dignity, however, is not unique to Arab constitutionalism even now—the idea of the dignity of the state is also well-present in contemporary legal discourse and the U.S. Supreme Court’s case law still utilizes it.<sup>332</sup>

Later decades did not see this aspect of dignity fade. 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 test of Arab patriotism, dynamism, wisdom and statesmanship. It constitute[d] a virtual touchstone of Arab capacities for self-preservation and self-determination.”<sup>333</sup>

Albeit present in the constitutional texts since the 1950s, human dignity has taken over in relatively recent times, when liberated masses can express their skepticism towards public powers and authoritarian figures<sup>334</sup> who used to be constitutionally celebrated as founding fathers or pillars of the nations.

The wide usage of the term dignity also depicts the constitutional commitment to granting affordable education and medical care, testifying that extremely poor living conditions spurred the revolts and revolutions around 2010.<sup>335</sup> The frequent constitutional articles pertaining to welfare are largely “aspirational” rather

329. DAWISHA, *supra* note 252, at 54.

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

331. *Id.* at 237.

332. Maxwell O. Chibundu, *Can, Do, and Should Legal Entities Have Dignity?: The Case of the State*, 75 MD. L. REV. 194, 194 (2015).

333. Malik, *The Near East*, *supra* note 1, at 242.

334. See Fernandez, *supra* note 12, at 647–48.

335. Scott Hibbard & Azza Salama Layton, *The Origins and Future of Egypt’s Revolt*, 12 J. ISLAMIC L. & CULTURE 197, 197 (2010).

than “justiciable,”<sup>336</sup> but they are not unusual in Islamic regimes<sup>337</sup> 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 care<sup>338</sup>—that evidently trigger the state’s intervention, instead of putting a check on it. This is rather typical of civil law regimes, which highly value social rights and welfare.<sup>339</sup> Socio-economic rights 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 in the field of economic and social rights. It is no surprise then, that they also are linked to the idea of “human dignity” in the Arab context.

Also not uncommon among Arab constitutions is the use of dignity to trigger state intervention for the sake of protecting individuals’ honor. But this use of dignity does not exclusively pertain to Arab constitutionalism. Think of Warren and Brandeis’s *The Right to Privacy* article, which appeared in the *Harvard Law Review* in 1891<sup>340</sup> with longstanding 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. Even contemporary philosophers advocate for a “civic” understanding of dignity,<sup>341</sup> which is committed to protecting the social reputation and standing of individuals and therefore legitimizes public powers’ intervention to counterbalance social threats to individuals.

Another 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.<sup>342</sup> This understanding is a powerful instrument to legitimize—or re-legitimize—a legal regime from a religious perspec-

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336. 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).

337. See Jung et al., *supra* note 336, at 1069.

338. DALY, *supra* note 325, at 114.

339. See Jung et al., *supra* note 336, at 1056.

340. See Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193 (1890).

341. DALY, *supra* note 325, at 120.

342. See Richter-Bernburg, *supra* note 84, at 81.

tive. By 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 by saying in Article 1 that "[h]uman dignity shall be inviolable,"<sup>343</sup> opened its Preamble with the bold affirmation that the German people are "[c]onscious of their responsibility before God and man . . . ."<sup>344</sup> 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 states.<sup>345</sup>

Overall, Arab constitutional texts have been familiar with the constitutional term of dignity for almost a century now. 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;<sup>346</sup> there is no lack of texts empowering the state with the enforcement of dignity, however. What is declining, however, are the understandings that dignity protects collectivities and, above all, that the nation is the source of individuals' dignity.

Instead, there is significant interest in grounding people's rights 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, as a right to be equally acknowledged societally, not just to be protected legally.<sup>347</sup> After all, the participative claims of the Arab Spring's protesters,<sup>348</sup> 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.<sup>349</sup>

343. GRUNDGESETZ [GG] [BASIC LAW], May 23, 1949, art. 1.

344. *Id.* pmbl.

345. 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).

346. On the tensions between the communitarian ideal and the individualistic ideal of dignity, see McCrudden, *Human Dignity*, *supra* note 18, at 699–701.

347. DALY, *supra* note 325, at 124.

348. Anouar Boukhars, *The Arab Revolutions for Dignity*, 33 AM. FOREIGN POL'Y INTS. 61, 67 (2011).

349. DALY, *supra* note 325, at 133.



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,<sup>350</sup> 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 passage of time. The following Part illustrates how modern Western constitutionalism tapped the idea of dignity in its early foundational texts, and what it drew from.

#### V. 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;<sup>351</sup> a few years later came the 1929 Constitution of Ecuador,<sup>352</sup> the 1937 Irish Constitution, and the 1940 Cuban Constitution.<sup>353</sup> All of them had incorporated dignity in their texts before the U.N. Charter.<sup>354</sup> In the span of twenty years, the role of dignity rose as "part of the establishment of an alternative constitutionalism."<sup>355</sup>

But the concept of 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.

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350. Bernhard Schlink, *The Concept of Human Dignity*, in UNDERSTANDING HUMAN DIGNITY, *supra* note 132, at 63 (highlighting that there is a common core in the use of dignity that seems to be cross-cultural).

351. See WEIMAR CONSTITUTION, Aug. 11, 1919.

352. See CONSTITUCIÓN DE 1929 (Ecuador).

353. See CUBA CONSTITUCIÓN POLÍTICA DE 1940.

354. See U.N. Charter.

355. Samuel Moyn, *The Secret History of Constitutional Dignity*, in UNDERSTANDING HUMAN DIGNITY, *supra* note 132, at 96 [hereinafter Moyn, *Secret History*].

Legal historians and philosophers have traced the idea of dignity back to the ancient Greeks.<sup>356</sup> It is commonly thought, however, that the evolution of this concept passed through the fundamental contributions of Cicero, Thomas Aquinas, Pico della Mirandola, Kant, and Schopenhauer.<sup>357</sup> This evolution enriches the idea of human dignity, giving it more nuances with the passage of time.

On the one hand, dignity's DNA has a distinctive aristocratic<sup>358</sup> 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."<sup>359</sup> Its distinctive feature is the existence of a "social honor" that "belongs to the world of hierarchically ordered traditional societies."<sup>360</sup> As "late as the 1930s, in tune with its millennial prior trajectory, dignity [still] attached to a huge range of objects."<sup>361</sup> Also, nineteenth-century Catholicism had frequent recourse to dignity to describe the value that human beings derived "from their place in a divinely ordained hierarchy."<sup>362</sup> 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.<sup>363</sup>

On the other hand, this ranking aspect of 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."<sup>364</sup> But 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

356. David Hollenbach, *Human Dignity: Experience and History, Practical Reason and Faith*, in UNDERSTANDING HUMAN DIGNITY, *supra* note 132, at 192.

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

358. Moyn, *Secret History*, *supra* note 355, at 97; see Ben A. McJunkin, *Rank among Equals*, 113 MICH. L. REV. 855, 856 (2013) (discussing that dignity was seen as the gradual democratization of aristocratic privilege).

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

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

361. Moyn, *Secret History*, *supra* note 355, at 97.

362. Michael Rosen, *Dignity: The Case Against*, in UNDERSTANDING HUMAN DIGNITY, *supra* note 132, at 148.

363. Moyn, *Secret History*, *supra* note 355, at 98; see also Samuel Moyn, *The Secret History of Constitutional Dignity*, 17 YALE HUM. RTS. & DEV. J. 39, 46 (2014) [hereinafter Moyn, *Constitutional Dignity*].

364. ROSEN, DIGNITY: ITS HISTORY, *supra* note 357, 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).

recognition of the value of *all human beings*—famously proclaimed by Kant<sup>365</sup>—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 peoples and against slavery in Latin America.<sup>366</sup> There is evidence that by then dignity was already understood as inherently pertaining equally to all human beings without regard to their social position.<sup>367</sup> It was under the centuries-long Catholic influence<sup>368</sup> that, in the first half of the nineteenth century, Simón Bolívar claimed freedom and dignity<sup>369</sup> 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. In the late 1800s, Christian thinking was spreading this understanding of dignity, and after the turn of the century, the 1919 Weimar constitutional reference rose as a product of Christian cultural strands.<sup>370</sup> Interestingly enough, however, both the European Weimar and the Latin American Ecuador (1929) constitutional experiments pioneered the constitutionalization of dignity to secure some basic rights in the social and economic fields<sup>371</sup> instead of deploying it in the context of civil rights.

The reflection that took place mainly in French Catholic environments between the late nineteenth century and the 1930s helped to sharpen the concept.<sup>372</sup> 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

365. ROSEN, DIGNITY: ITS HISTORY, *supra* note 357, at 24.

366. See Paolo G. Carozza, *From Conquest to Constitutions: Retrieving a Latin American Tradition of the Idea of Human Rights*, 25 HUM. RTS. Q. 281, 292–95 (2003) [hereinafter Carozza, *From Conquest*].

367. James Hanvey, *Dignity, Person, and Imago Trinitatis*, in UNDERSTANDING HUMAN DIGNITY, *supra* note 132, at 213.

368. Carozza, *From Conquest*, *supra* note 366, at 295.

369. *Id.* at 301 n.102.

370. 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> [<https://perma.cc/4C5X-CFM5>].

371. Carozza, *From Conquest*, *supra* note 366, at 282.

372. Moyn, *Secret History*, *supra* note 355, at 99.

different levels of dignity within each rank.<sup>373</sup> The former way of thought slowly 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 late nineteenth century's Encyclical letters of Leo XIII and the documents released under Pius XI and Pius XII in the 1930s and 1940s echoed these intellectual developments and progressively expounded this understanding of dignity.<sup>374</sup>

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,<sup>375</sup> as well as in his *Divini Redemptoris* encyclical letter (March 19, 1937) against communism.<sup>376</sup> The *Divini Redemptoris*, however, still gave different meanings to the same word, as it used "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,<sup>377</sup> which was promulgated shortly after the two pontifical documents and was deeply influenced by Catholic teaching. The main drafter of the text, the political leader Eamon de Valera, was familiar with the neo-Scholastic circles that promoted the idea of human dignity and shared critical points in the text, including the mention of dignity, with the papal nuncio in Ireland.<sup>378</sup>

The Catholic Church later repeatedly used this idea of human dignity: "[t]hanks to Pius XII, in fact, individual dignity became an incredibly common concept across the Atlantic during the later phases"<sup>379</sup> of World War II. By the time the German Basic Law was

373. *Id.*

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

375. See Pope Pius XI, *Mit brennender Sorge* GIVEN AT THE VATICAN ON PASSION SUNDAY ¶ 21 (Mar. 14, 1937).

376. See Encyclical Letter from Pope Pius XI to Venerable Brethren, Health and Apostolic Benediction, ¶¶ 10, 14, 34, 51, 70 (Mar. 19, 1937).

377. The 1937 Irish Constitution Preamble includes "the dignity and freedom of the individual" among the core goals of the new text. CONSTITUTION OF IRELAND 1937 pmb1.

378. Moyn, *Constitutional Dignity*, *supra* note 363, at 54.

379. Moyn, *Secret History*, *supra* note 355, at 106.

drafted, it had become commonplace, as Protestant and secularist politicians guided the debate that would later enshrine this idea in Germany's constitutional text.<sup>380</sup>

If one compares the trajectories of *karāma* and “human dignity,” the similarities are striking. Just like *karāma*, “human dignity” underwent a process of “equalization,”<sup>381</sup> which refocused the concept on human persons in themselves.<sup>382</sup> This took place progressively thanks to religious cultures’ ability to interact with and to 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.”<sup>383</sup> 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 dignity<sup>384</sup> and expound the broadest consideration for human needs through the lens of dignity; for instance, both Christian social doctrine and Islamic constitutionalism encapsulate their special attention to human rights in the field of economics precisely in the idea of human dignity.<sup>385</sup>

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

The usage of *karāma* to convey 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.<sup>386</sup>

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380. Christoph Goos, *Würde des Menschen: Restoring Human Dignity in Post-Nazi Germany*, in UNDERSTANDING HUMAN DIGNITY, *supra* note 132, at 92.

381. WALDRON, *supra* note 359, at 33.

382. See James Q. Whitman, *The Two Western Cultures of Privacy: Dignity versus Liberty*, 113 YALE L. J. 1151, 1160–61, 1164 (2004).

383. Moyn, *Constitutional Dignity*, *supra* note 363, at 56; see SMITH, *supra* note 203, at 29 (discussing dignity and the Catholic Church).

384. See Johnston, *supra* note 87, at 900.

385. See *id.*

386. Sally Engle Merry, *Inequality and Rights: Commentary on Michael McCann’s “The Unbearable Lightness of Rights,”* 48 L. & SOC’Y REV. 285, 288–289 (2014).

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 (the provisions of the 1926 Lebanese Constitution protecting the dignity of religions are 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 to protect human dignity, but there is also a new, widespread skepticism about the role of the state, which must be put in 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 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 has 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. Provisions protecting human dignity have multiplied with virtually every constitutional change.

Third, the Universal Declaration influenced even the religious dimension of *karāma*. As already noted, this word traditionally conveyed the idea of a *special* gift or honor that comes from God. The pre-Universal Declaration constitutions benefitted the state, the state's dignitaries, or religions, with this special status. It was thanks to the Universal Declaration that *karāma*'s meaning came to encompass all human beings: the Universal Declaration prompted the universalization of the concept, allowing it to evolve from being solely a gift from God to covering all of mankind. In so doing, *karāma* is likely to have taken a shape that aligns both with modern human rights and Islamic law.

It would be inaccurate to maintain that there is a clear thread that unites Islamic *karāma* and modern constitutional *karāma*. But *karāma*'s religious root—the belief in dignity as given by God to human persons—has established the premises that have made Islamic law assimilate the Universal Declaration's dignitarian spirit. The Islamic legal tradition has been receptive to dignity insofar as it has incorporated it.

The incorporation of dignity in Islamic discourse is not illusory because it came later. The reciprocal assimilation of Islamic law and human dignity through *karāma* fills what is universally perceived to be a void in Muslim culture, namely the very root of human rights. Dignity itself in the Universal Declaration was a sort of "linguistic-symbol."<sup>387</sup> Thanks to this symbol, everyone could agree that human dignity was central without having to explain "why or how."<sup>388</sup> 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.

The process that aligned Islamic thinking to the dignity discourse is bidirectional, however, and did not end with the post-World War II international law documents. That dignity was used in the Universal Declaration as well as in more recent documents, such as the Declaration on Human Rights in Islam,<sup>389</sup> has undoubtedly modified the meaning of dignity once again. In Islamic constitutions, a "life of dignity" is understood also in light of *Shari'a*<sup>390</sup>; this logic has affected the meaning of the word and conformed it, at least partially, to Islamic law provisions.

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,

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387. McCrudden, *Human Dignity*, *supra* note 18, at 678.

388. *Id.*

389. *See supra* Part IV.

390. 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).

instead of vice-versa.<sup>391</sup> This assimilation is apparent not only simply from the use of the word “dignity” but also from the contexts in which it is used. The constitution-building processes that have taken form in Arab countries lately largely focus on the topics that are commonly understood by the globalized discourse on human rights.

That Arab constitutions draw heavily from a core global concept is not unusual in constitutional borrowing, nor does it 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. 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.”<sup>392</sup> Not only has the global idea of dignity influenced constitutional texts, but constitutional adjudication will look abroad to shed light on the numerous provisions and judicial decisions bearing this word as well.<sup>393</sup> The fate of dignity will depend on how Arab judges implement it. 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, with the ability to deploy more traditional or less traditional Islamic law interpretations depending on the contexts and subjects that they are called to adjudicate.<sup>394</sup>

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. This concept entails 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.”<sup>395</sup> It is no surprise, then, that the concept of dignity

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391. See NADER HASHEMI, *ISLAM, SECULARISM, AND LIBERAL DEMOCRACY: TOWARD A DEMOCRATIC THEORY FOR MUSLIM SOCIETIES* 70 (2009) (discussing democracy and Islam). This attempt to square Islamic legal traditions with the human rights tradition is not unique to the concept of dignity; concepts from outside religious traditions have influenced religious interpretation throughout Islamic modernity. See *id.*

392. David S. Law, *Generic Constitutional Law*, 89 MINN. L. REV. 652, 659–660 (2005).

393. See 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).

394. Aneesa Walji, *Constitution-Making in Egypt: The Role of Constitutional Court Judges*, in *REVOLUTION AS A PROCESS: THE CASE OF THE EGYPTIAN UPRISING* 101, 114–15 (Adham Hamed, ed. 2014).

395. *Id.*



has been used in cases about disparate issues, with very different results. Just to name a few: in Canada, it led the Supreme Court to decide that assisted suicide was permissible;<sup>396</sup> the European Court of Justice decided that it was possible under E.U. law to consider the *laser tag* game as “playing at killing” and therefore an offense to human dignity;<sup>397</sup> the U.S. Supreme Court in *United States v. Windsor*<sup>398</sup> and *Obergefell v. Hodges*<sup>399</sup> mentioned the concept of “equal dignity” repeatedly in the context of same-sex marriage rights,<sup>400</sup> to the extent that commentators now prophesize that dignity will become a milestone in constitutional adjudication in America<sup>401</sup> as a piece of the globalized culture of fundamental rights.<sup>402</sup> The meaning and scope of *karāma* will likely shift through litigation, as the concept of dignity is played out anywhere else.

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.”<sup>403</sup> 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.”<sup>404</sup>

How this transcendental concept will be blended with other values—such as those in Islam or Islamic law—is not a given; nor will

396. *Carter v. Canada*, [2015] 1 S.C.R. 331 ¶ 4 (Can.).

397. Case C-36/02, *Omega Spielhallen v. Oberbürgermeisterin ben Bundesstadt Bonn*, 2001 E.C.R. I-9641, <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-36/02> [<https://perma.cc/A5NU-2FYJ>].

398. *United States v. Windsor*, 133 S. Ct. 2675 (2013).

399. *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

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

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

402. *Id.* at 21.

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

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

it necessarily be the same throughout the Arab region. "In almost every country of the Muslim world, people disagree about who can interpret *sharia* and about what *sharia* requires."<sup>405</sup> The "theological, historical and contextual difference between Libya, Tunisia and Morocco," for instance, suggests avoiding "generalized evaluation of the role of Islam even within . . . the sub-region of North-Africa."<sup>406</sup> Finally, the impact of international law on domestic adjudication should also be considered, as it can promote different interpretations of the constitutional texts, with powerful ramifications for the judicial protection of dignity.<sup>407</sup>

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

Second, 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 . . . but differ in their understanding of quite what that 'dignity' is."<sup>408</sup> This does not equate to a dilution of the word's meaning and its implications, as the idea of dignity normally "reflects sociohistorical conceptions of basic rights and freedoms."<sup>409</sup> For decades after World War II, dignity "was something like a proprietary Catholic concept, generally restricted to natural law circles";<sup>410</sup> 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 typical of some liberal traditions.<sup>411</sup> 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

405. Lombardi, *Designing Islamic Constitutions*, *supra* note 29, at 616.

406. Abdullahi Ahmed 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 104, 105 (2014).

407. See Mohamed Y. Mattar, *Article 43 of the Arab Charter on Human Rights: Reconciling National, Regional, and International Standards*, 26 HARV. HUM. RTS. J. 91, 130, 138 (2013).

408. GRIFFIN, *supra* note 323, at 192.

409. Schachter, *supra* note 163, at 853.

410. Moyn, *Constitutional Dignity*, *supra* note 363, at 64.

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

relations between different human beings” cannot mean here erasing the “status of the ‘human beings’ in the vertical relation to God . . . .”<sup>412</sup>

Another unique feature of the Arab version of dignity has to do with the relationship between 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 predetermine 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.<sup>413</sup>

Finally, *karāma* may also challenge the global discourse on dignity. On the one hand, it may disentangle dignity from the “right to autonomy,”<sup>414</sup> 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.”<sup>415</sup> Such state interventions would probably not narrow down the scope of dignity but would rather challenge its most extreme liberal interpretations, which are inclined to hold that the “state’s job is [only] to get out of the way.”<sup>416</sup>

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 *karāma*.<sup>417</sup> 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.

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412. Habermas, *supra* note 360, at 474.

413. DALY, *supra* note 325, at 108.

414. GRIFFIN, *supra* note 323, at 192.

415. DALY, *supra* note 325, at 114.

416. *Id.* at 123.

417. A case-study on the judicial utilization of dignity is found in Reem Bahdi & Mudar Kassir, *Decolonization, Dignity and Development Aid: A Judicial Education Experience in Palestine*, 37 *THIRD WORLD Q.* 1 (2016).

