The Inviolable Root

Human Dignity as the Interpretive Foundation of the Prohibition on Torture and Cruel, Inhuman, or Degrading Treatment

A Comparative Survey of the World's Constitutions and the United States Exception

Contents

Summary of the Review

This Review records a finding of the Institute for the Advancement of Justice & Human Rights (the “IAJ” or “the Institute”): that human dignity is the interpretive foundation from which the absolute prohibition on torture and on cruel, inhuman, or degrading treatment (“CIDT”) takes its meaning, and that the near-universal constitutional recognition of dignity in the world’s constitutions evidences and illuminates the content of the universal prohibition of torture and other prohibited ill-treatment, which is owed by every State regardless of the textual form, or the textual absence, that dignity takes in any particular domestic order.

The paradigm is Article 1 of the German Basic Law of 1949 — *“Die Würde des Menschen ist unantastbar”*, “Human dignity shall be inviolable” — placed first, made unamendable by the eternity clause, and read as the supreme value from which all other rights derive. From that anchor the Institute traces the migration of dignity into the principal post-1945 instruments and, on the strength of an independent 197-jurisdiction comparative review (with row-level confidence and source-completeness limitations disclosed in the companion workbook), into the large majority of the world’s national constitutions. By the most rigorous published count, 162 constitutions used the term by 2012, and roughly sixty per cent of those deployed it as a fundamental principle.

Two disciplines govern the argument. First, the Institute claims for dignity only what the record proves: dignity is the interpretive foundation and normative core of the prohibition of torture and other ill-treatment; the prohibition of torture is established jus cogens on its own independent and well-developed record, while the broader prohibition of other cruel, inhuman, or degrading treatment is absolute and non-derogable though the Institute does not assert identical peremptory status for it; the Review does not rest on a claim that dignity is, by constitutional convergence alone, a freestanding rule of customary international law. Second, the Institute states its own position on immunity absolutely and owes deference to no tribunal: immunity can never lawfully shield torture, an established jus cogens wrong, and for other cruel, inhuman, or degrading treatment meeting the severity threshold the Institute independently adopts the same no-immunity standard as its own institutional determination, without asserting identical peremptory status. Where the International Court of Justice, the European Court of Human Rights, or United States courts have held otherwise, the Institute records those holdings as documented failures to give effect to the peremptory norm, and flags each divergence for the reader.

Against the global pattern the Institute isolates the United States as the prominent outlier when set against established democracies whose constitutional orders were adopted or comprehensively reconstructed after 1945: its federal constitution contains no dignity clause, and dignity operates only as a balanceable gloss on the Eighth and Fourteenth Amendments. The Institute finds that this structural feature, paired with doctrines of immunity, creates or reinforces a structural pathway by which dignity-violating conduct meeting the severity of CIDT may escape accountability in the United States. The finding is recorded as the comparative-constitutional foundation of the Institute’s torture and jus cogens corpus, reasoned from first principles, verified against authoritative sources, and not assembled to support a predetermined position.

Part I. The Charter of Interpretation: The Root, the Method, and the Standard of Measurement

This Review opens not with a catalogue of constitutional texts but with the ground on which the Institute stands and the method by which it reasons. The IAJ does not approach the world's constitutions as a neutral collector cataloguing curiosities of comparative drafting. It approaches them as evidence of a single underlying obligation, and it measures each legal order — including its own — against the standard derived from the root.

A. The Function and Independence of the Institute

The IAJ is an investigative and truth-finding body, not an advocacy organization, and this Review is not a brief. It observes, investigates, evaluates, and determines the facts and the law against a standard derived from first principles, and it documents and reports its findings in the manner of an independent investigator recording a determination. It does not begin with a position and assemble support for it; it begins with the evidence — here, the constitutional and customary record — and reports what that record establishes.

The Institute owes interpretive deference to no tribunal, no government, and no institution, domestic or international. When the International Court of Justice, the treaty bodies, or the special procedures reason soundly and reach the truth, the IAJ confirms them — not because they have spoken, but because what they have said is true. When those bodies err, defer where they should not, or reach conclusions the evidence and first principles do not support, the IAJ states plainly that they have erred, documents the error, and reports it. The authority of any pronouncement flows from its fidelity to truth and to the inherent rights of the human being, never from the rank of the body that issued it. This independence is not a posture; it is the condition of the Institute's credibility and the premise of every divergence flagged in this Review.[1]

B. The Root: Article 5 of the Universal Declaration

The Universal Declaration of Human Rights supplies a central normative reference point shared across the universal and regional human-rights systems. Article 1 of the Universal Declaration of Human Rights (1948) proclaims that "all human beings are born free and equal in dignity and rights," and Article 5 supplies the operative prohibition: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."[2] The Institute treats Article 5 as the textual root of the torture and CIDT prohibition and dignity as its normative core: the wrong that Article 5 forbids is, at bottom, the negation of the dignity that Article 1 affirms. The prohibition on torture is a peremptory norm of general international law — *jus cogens* — and dignity is the value that gives that norm its absolute character.

[1]This statement of independence is the settled position of the Institute's published corpus. See The Structural Foreclosure of Effective Protection and Remedy for Rights-Violating Judicial Conduct in the Courts of the United States of America, IAJ-INV-20260616-002-PUB, Part I.B ("it owes interpretive deference to no tribunal … when those same bodies err — when they reason poorly, defer where they should not — the IAJ will plainly state that they have erred, document the error, and report it").

[2]Universal Declaration of Human Rights, G.A. Res. 217A (III), arts. 1, 5 (Dec. 10, 1948).

C. Four Registers Kept Distinct

Because precision is itself a discipline of the medico-legal standard, this Review keeps four registers distinct and does not let one borrow the authority of another.

- **Torture** — the specific wrong defined by UNCAT art. 1 (intentional infliction of severe pain or suffering, for a prohibited purpose, by or with the consent or acquiescence of a public official). Its peremptory (jus cogens) status is settled and appears on the International Law Commission's 2022 Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (Jus Cogens), Conclusion 23 and Annex (U.N. Doc. A/77/10), the Annex to which expressly lists the prohibition of torture.
- **Other prohibited ill-treatment (CIDT)** — the wrong addressed by UNCAT art. 16 and ICCPR art. 7. It is absolutely prohibited and non-derogable; the Institute does not assert that every form of CIDT short of torture carries the identical peremptory status and consequences as torture, and says so where the distinction bears on a conclusion.
- **Non-derogability** — a treaty property (ICCPR art. 4; UNCAT) meaning the obligation may not be suspended in emergency. It is related to, but not the same as, peremptory status.
- **Jus cogens** — peremptory status in general international law, from which no derogation is permitted. The Institute uses this register only where peremptory status is specifically established — paradigmatically for torture.

D. The Two-Plane Framework

The Institute organizes the survey through its Two-Plane Framework, which distinguishes two questions comparative-law discussions routinely conflate.

- **Plane A — the universal obligation content.** What the obligation requires of every State as a matter of universal human-rights law. On this plane the binding norm is the universal prohibition of torture and other prohibited ill-treatment, which binds every State regardless of whether its constitution contains a dignity clause and regardless of whether its courts will enforce one; human dignity supplies that prohibition's interpretive foundation and normative core, and this Review does not separately assert dignity as a freestanding universal customary rule. The near-universal constitutional recognition of dignity is powerful evidence of the content of the Plane A obligation; it is not the source of the obligation, which would exist even for a silent constitution.
- **Plane B — the domestic enforcement reality.** Whether, and how, a particular domestic order recognizes and enforces dignity — in text, in justiciability, and in operative force, text and jurisprudence together. Plane B varies enormously, and the United States sits at one extreme of that variation. Variation on Plane B does not contract the Plane A obligation: a State does not owe less to the human person because its own law affords less.

E. A Disciplined Claim About Custom

The Institute is exact about what the constitutional convergence does and does not prove. Identification of a rule of customary international law requires both general and consistent State

practice and acceptance of that practice as law (*opinio juris*).[3] Constitutional dignity clauses are strong evidence of practice and of a State's legal position, but the present survey did not undertake the separate *opinio juris* study — of pleadings, diplomatic statements, treaty explanations, and votes — that a freestanding customary dignity norm would require. The Institute therefore claims that dignity is the pervasive constitutional and international *foundation that informs the interpretation* of the torture and CIDT prohibitions, and treats the question whether dignity is itself a freestanding customary rule as a distinct inquiry it does not resolve here. Nothing in the Review turns on the larger claim: the torture prohibition's peremptory status rests on its own developed record and needs no indirect route through dignity-convergence.

F. The Method of Verification

The coding in Part V was produced by independent review against authoritative sources in a fixed order of priority: official government and constitutional-court texts where available; the Constitute Project full constitution pages (the actual article text, not the topic index); authoritative translations (Venice Commission/CODICES, treaty-body documentation); and comparative scholarship only to resolve genuine ambiguity. Two disciplines follow. The first is the exclusion of false positives: provisions protecting the "dignity of office," national prestige, ceremonial rank, or "the dignity of the Constitution" are not human-dignity guarantees and are excluded however the word appears. The second is honest, row-by-row confidence calibration — high where the current text and article number were independently confirmed, medium where a reliable source supports the coding with a translation or version caveat, low where sources conflict or status is unsettled. The aggregate "~160 of 197" figure is aligned to the cited literature, not asserted as a fresh line-verified recount of all 197 texts; the confidence distribution is set out in the Appendix and the companion workbook carries the per-row flags.[4]

Part II. The Anchor: German Menschenwürde and the Paradigm of Inviolable Dignity

Article 1 of the Basic Law for the Federal Republic of Germany (Grundgesetz), promulgated 23 May 1949, provides: "(1) Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority. (2) The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world. (3) The following basic rights shall bind the legislature, the executive and the judiciary as directly applicable law."[5]

Five features make this the paradigmatic dignity clause and the paradigm from which the five comparative features are drawn.

[3]International Law Commission, Draft Conclusions on Identification of Customary International Law, Conclusion 2 (2018). Widespread practice does not establish a customary rule without evidence that States accept the practice as legally required.

[4]On the medico-legal evidentiary standard to which the Institute investigates and documents generally, see the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol, OHCHR, endorsed 1999, rev. 2022). The Istanbul Protocol governs the Institute's investigative and documentary function; the comparative-constitutional coding method is the disclosed protocol stated in this Part, not the Istanbul Protocol, which is not a comparative-law methodology.

[5]Grundgesetz, art. 1 (1949). German: "Die Würde des Menschen ist unantastbar …" Official English: gesetze-im-internet.de.

- **Placement first.** Dignity is the very first substantive article, preceding even the right to life.
- **Inviolability.** Unlike other rights, which may be limited by proportionate law, dignity is absolute and admits no balancing.
- **An affirmative State duty.** The State must not merely refrain from violating dignity; it must respect and protect it.
- **Direct binding effect.** The basic rights bind all three branches as directly applicable law.
- **Entrenchment against amendment.** Article 79(3), the eternity clause, bars any amendment touching the principles of Articles 1 and 20.

German doctrine reads dignity through the Kantian "object formula": the State may never treat a person as a mere object. It is this combination — not the mere mention of dignity — that makes Germany exceptional.

A. The Operative Jurisprudence

Life Imprisonment Case (1977). Life imprisonment is constitutional only because dignity requires that the prisoner retain a realistic prospect of release; a sentence offering none would treat him as a mere object.[6]

Census Decision (1983). Reading Article 2(1) with Article 1(1), the Court derived the right to informational self-determination — the foundational European data-protection precedent.[7]

Aviation Security Act Case (2006). The Court struck down statutory authority to shoot down a hijacked aircraft used as a weapon: to kill innocent passengers to save others would treat them as objects.[8] This is the clearest demonstration of what a dignity-foundational order does that a balancing order cannot — it forecloses the instrumental sacrifice of the person even where the arithmetic of consequences would favor it.

B. A Dignity State Calibrates Immunity — It Does Not Abolish It

Germany also disproves a careless inference the Institute is careful not to draw: that a foundational dignity clause, by itself, dissolves all official immunity. It does not. Article 34 of the Basic Law ordinarily channels liability for official wrongdoing to the State, and §839(2) of the Civil Code (the *Spruchrichterprivileg*) makes a judge personally liable for an adjudicative breach of duty only where the breach constitutes a criminal offence.[9] The Institute does not treat this as a weakness in its position; it treats it as a comparative analogy consistent with it — an illustration that a legal order can protect adjudicative independence while withholding protection from criminal judicial conduct, not proof that Germany has adopted the Institute's threshold rule. The German model does not exempt the judge from accountability — it ties personal exposure to a criminality threshold, which resembles the calibrated structure the Institute advances: protection for the honest and erring judge below the threshold, and personal answerability once the conduct crosses into the criminal, of which torture, as established jus cogens, is the

[6]BVerfGE 45, 187 (1977).

[7]BVerfGE 65, 1 (1983).

[8]BVerfG, 1 BvR 357/05 (Feb. 15, 2006).

[9]Grundgesetz art. 34; Bürgerliches Gesetzbuch §839(2). The judicial privilege confines a judge's personal civil liability for a judgment to cases where the breach of official duty is itself a criminal offence.

paradigm. The paradigm dignity State thus supplies a worked example of a threshold rule, not a counter-example to one.

Part III. The International and Regional Architecture

National dignity clauses are downstream of a post-war international consensus. The Institute records the principal instruments because national constitutions frequently derive from them and because, on Plane A, they state the obligation directly.

- *Universal Declaration of Human Rights* (1948): Preamble ("inherent dignity"), Article 1 ("equal in dignity and rights"), Article 5 (the torture/CIDT prohibition).
- ICCPR and ICESCR (1966): both preambles state that rights "derive from the inherent dignity of the human person." ICCPR art. 7 prohibits torture and CIDT and is non-derogable (art. 4).
- UN Convention against Torture: defines torture (art. 1) and other CIDT (art. 16); the duties to investigate (art. 12) and to ensure complaint and examination (art. 13) extend to article 16 ill-treatment through article 16, the redress-and-compensation duty (art. 14) is by its terms directed to torture, and CAT General Comment No. 3 (2012) extends the redress framework to ill-treatment; for torture as defined in article 1, arts. 4–7 require criminalization and prosecution or extradition.
- EU Charter of Fundamental Rights (2000; binding 2009), Article 1: "Human dignity is inviolable. It must be respected and protected." Modeled on the German clause; the Charter's first Title is "Dignity."
- American Convention on Human Rights: Article 11 (honor and dignity) and — more directly for the present thesis — Article 5(2): persons deprived of liberty "shall be treated with respect for the inherent dignity of the human person," placed beside the torture and CIDT prohibition.[10]
- African Charter on Human and Peoples' Rights, Article 5: the right to "the respect of the dignity inherent in a human being," coupled with the prohibition of torture and cruel, inhuman, or degrading treatment.
- European Convention on Human Rights, Article 3: though the word "dignity" does not appear, the European Court treats the prohibition of inhuman and degrading treatment as a negative formulation of dignity.

One point of citation hygiene is observed. *Pretty v. United Kingdom* is not authority that the conduct before the Court amounted to Article 3 ill-treatment — the Court found no Article 3 violation on the facts — and the Institute does not cite it for any CIDT finding. It remains relevant only for the Court's general dignity reasoning ("the very essence of the Convention is respect for human dignity and human freedom"), and is used here for nothing more.[11]

[10]American Convention on Human Rights, art. 5(2). Article 5(2) is the Convention's most on-point dignity provision for the torture/CIDT thesis and is cited here in preference to art. 11 alone.

[11]Pretty v. United Kingdom, App. No. 2346/02, ECtHR (2002), ¶¶ 65, 67. No Article 3 violation was found; the case is not CIDT authority.

Part IV. A Functional Typology of Dignity

Across the world's legal orders dignity occupies a small number of functional positions, coded here on a five-tier scale (A–E). The tier records a jurisdiction's position on Plane B; the Plane A obligation — including the prohibition of torture and CIDT — is owed across every tier, including Tier E. The Institute notes, and does not disguise, that the scale is a summary device: several orders are genuine hybrids (for example Israel, formally Tier A with an alternative interpretive view noted; the companion workbook assigns a single formal tier — Spain B, India C — and preserves any secondary classification in its Notes), and a fuller treatment in the companion workbook records the underlying dimensions — textual location, normative wording, duty, justiciability, derogability, entrenchment, and remedy — separately, with the tier derived as an expert functional classification from those dimensions, not as a measure of similarity to any one national model.

- **Tier A — Foundational / inviolable supreme norm.** The German Article 1 model. Verified examples: Germany, Kosovo, Poland, Switzerland, Portugal, Brazil, Hungary, Finland, South Africa, Kenya, Israel (majority view).
- **Tier B — General constitutional right, value, or State objective.** Justiciable or directive, not foundational. Verified examples: China (art. 38), Russia (art. 21), Italy (art. 3), Mexico (art. 1).
- **Tier C — Preambular aspiration or context-specific operative protection.** Sub-distinguishing "preambular only" (Ireland) from "operative-but-context-specific" (Japan art. 24).
- **Tier D — Indirect importance without a general clause.** Via courts, statutes, treaties, common law, or subnational constitutions. Verified examples: United States, United Kingdom, Canada, Australia, France, and — alongside its preamble — India.
- **Tier E — No clear national-level dignity norm located.** "Not located," not "absent." Verified examples: Saudi Arabia; the Holy See / Vatican City (constitutional instrument).

Whatever the conception of dignity — Kantian, communitarian (*ubuntu*; Catholic social teaching), theological, or post-atrocity — all converge on a determinate minimum core, the prohibition of torture and CIDT, and that core is the subject of this Review.

Part V. The Global Map: A Verified Regional Survey

What follows is the Plane B record. Article numbers and wording for the entries below were verified against authoritative texts at high confidence except where a lower confidence is noted; the wider regional patterns rest on the comparative datasets identified in Part I.F.

A. Europe

Germany — Basic Law Art. 1(1), entrenched by Art. 79(3). Tier A — the benchmark (Part II).

Kosovo — Art. 23: "Human dignity is inviolable and is the basis of all human rights and fundamental freedoms." Non-derogable (Art. 56(2)). Tier A.

Poland — Art. 30: inherent, inalienable, "inviolable" dignity, the source of freedoms and rights. Tier A.

Switzerland — Art. 7: "Human dignity must be respected and protected." Tier A.

Spain — Section 10(1): dignity as "the foundation of political order and social peace." Formal workbook Tier B; foundational interpretive role noted.

Portugal — Art. 1 founds the Republic on "the dignity of the human person." Tier A.

Italy — Art. 3 ("equal social dignity"); Art. 41 (economic activity may not harm dignity). Tier B.

Hungary — Fundamental Law Art. II: "Human dignity shall be inviolable." Tier A.

Finland — Section 1: the constitution guarantees "the inviolability of human dignity." Formal workbook Tier A; second-tier features noted.

France — No express clause; the Conseil constitutionnel recognized dignity as a constitutional value in its 1994 bioethics decision. Tier D.

United Kingdom — Uncodified; dignity via common law and the Human Rights Act 1998 / ECHR. Tier D.

Others — Greece (Art. 2(1)), Ireland (preamble; theological), Belgium (Art. 23), Croatia (Art. 35), Romania (first article), Bulgaria (preamble). Only a handful of European States omit dignity.

B. Africa

South Africa — §1(a) (founding value) and §10 ("everyone has inherent dignity and the right to have their dignity respected and protected"); §§36, 39. In *S v Makwanyane* (1995) the Constitutional Court abolished the death penalty, holding life and dignity the source of all rights. Tier A.[12]

Kenya — Art. 28: "Every person has inherent dignity and the right to have that dignity respected and protected." Tier A.

Nigeria — §34(1): "Every individual is entitled to respect for the dignity of his person" (operative; anti-torture, anti-slavery). Formal workbook Tier B; third-tier features noted.

Algeria — General clause **Art. 39 (prev. Art. 40)**, 2020 Constitution: "The inviolability of the human being shall not be infringed. Any form of physical or moral violence or violation of dignity shall be prohibited and punishable by law." Welfare-dignity at **Art. 77** ("within a framework of respect for human dignity"), a context-specific provision, not the general clause. Formal workbook Tier B; first-tier features noted. (See Part VI.)

Egypt — 2014 Constitution Art. 51: "Dignity is a right for every person that may not be infringed." Tier B.

Morocco — 2011 Constitution Art. 22 (physical/moral integrity; dignity). Tier B.

Tunisia — 2022 Constitution Art. 23 (the 2014 wording carried forward): "The state protects human dignity and physical integrity, and prohibits mental and physical torture." Art. 4 motto.

[12]S v Makwanyane 1995 (3) SA 391 (CC).

Formal workbook Tier B; first-tier features noted. (Some translations number the 2014 clause art. 22.)

Transitional regimes — Mali, Guinea, and Gabon have promulgated new constitutions now in force and are coded on those current texts; Burkina Faso operates under a transitional charter; and Niger and Sudan have suspended constitutions and are coded Tier E. For the suspended and transitional cases any dignity coding is provisional pending the conclusion of constitution-making.

C. The Americas

Brazil — Constitution of 1988, Art. 1(III): "the dignity of the human person" as a founding principle of the Republic. Tier A.

Colombia — Art. 1 founds the social state of law on respect for human dignity; *Sentencia T-881/2002* defines dignity as value, principle, and autonomous right. Tier A.[13]

Peru — Art. 1: "The defense of the human person and respect for his dignity are the supreme purpose of society and the State." Tier A.

Mexico — Art. 1 prohibits discrimination "against human dignity"; Art. 3 (education and dignity). Tier B.

Canada — No textual clause; dignity is a foundational Charter value central to the s.15 and s.7 jurisprudence even after *R v Kapp* (2008) retired the dedicated dignity test. Tier D.[14]

United States — Treated separately and at length in Part VII.

D. Asia

India — Formal workbook Tier C; substantial judicial operation recorded separately. Preamble ("dignity of the individual") plus the Art. 21 "right to live with human dignity" jurisprudence — *Maneka Gandhi* (1978), *Francis Coralie Mullin* (1981), *Puttaswamy* (2017). (See Part VI.)[15]

South Korea — Art. 10: "All citizens shall be assured of human worth and dignity." Formal workbook Tier A; second-tier features noted.

Japan — Art. 13 (respect for individuals) and Art. 24 ("individual dignity" in family law). Formal workbook Tier B; third-tier features noted.

China — Art. 38 (operative): "The personal dignity of citizens … is inviolable." Narrowly construed; the preamble "dignity of the Constitution" and Art. 5 "dignity of the socialist legal system" are excluded false positives. Tier B.

Taiwan — No express general clause in the ROC Constitution body; J.Y. Interpretation No. 603 (2005) makes human dignity "the core value of the constitutional structure of free democracy," with Additional Article 10 (women's dignity). Formal Tier C; judicial-operation features noted separately.

[13]Corte Constitucional de Colombia, Sentencia T-881/02.

[14]R v Oakes [1986] 1 SCR 103; Law v Canada [1999] 1 SCR 497; R v Kapp 2008 SCC 41.

[15]Maneka Gandhi v. Union of India, (1978) 1 SCC 248; Francis Coralie Mullin, (1981) 1 SCC 608; K.S. Puttaswamy, (2017) 10 SCC 1.

Pakistan — Art. 14(1): "The dignity of man … shall be inviolable." Formal workbook Tier A (the inviolability wording places it in the foundational tier).

Israel — Basic Law: Human Dignity and Liberty (1992): "There shall be no violation of the … dignity of any person as such." Formal workbook Tier A; an alternative interpretive classification is noted.[16]

Saudi Arabia — Tier E. The Basic Law of Governance has no general dignity clause: Art. 26 protects rights "in accordance with the Islamic Shari'ah," and Art. 39 concerns media decency. (See Part VI.)

Afghanistan — 2004 Constitution Arts. 6, 24 ("liberty and human dignity are inviolable") and Art. 29 (no punishment contrary to human dignity) — historical only; the constitution was suspended in August 2021 and subsequently declared abolished. No operative codified constitution. (See Part VI.)

E. Middle East and North Africa

Iran — Art. 2 ("exalted dignity … of the human being"); Art. 22 declares dignity inviolate "except as sanctioned by law" — a material qualification. Formal workbook Tier B; third-tier features noted.

Turkey — Preamble and Art. 17 (corporeal and spiritual existence; punishment incompatible with human dignity prohibited). Formal workbook Tier B; third-tier features noted.

Iraq — Art. 37 prohibits violation of human dignity. Tier B.

Syria — 2012 Art. 33 (dignity) — contested/transitional after the December 2024 change of government; constitutional order in flux. Status caveat.

F. Oceania

Australia — No express dignity term; dignity via statute, common law, and the Victorian and ACT human-rights charters. Tier D.

New Zealand — Uncodified; the Bill of Rights Act 1990 has no general dignity clause; dignity via jurisprudence. Tier D.

Papua New Guinea — §39(3) refers to "the rights and dignity of mankind" — among the most dignity-referencing constitutions in the literature. Formal workbook Tier D (extensive references, largely in non-justiciable directive principles).

G. Non-UN-Member Entities

Palestine (UN observer) — 2003 Amended Basic Law: no standalone dignity article; operative detainee dignity (Art. 13) and personal freedom (Art. 11). The "dignity of the judiciary" reference is an excluded false positive. Tier C.

Holy See / Vatican City (UN observer) — formal constitutional Tier E; nonconstitutional doctrinal dignity noted separately. The Fundamental Law of Vatican City State (in force 7 June

[16]Basic Law: Human Dignity and Liberty (1992); the "constitutional revolution" was named by Aharon Barak in CA 6821/93 United Mizrahi Bank.

2023) contains no human-dignity provision; dignity is affirmed in Church doctrine (*Dignitas Infinita*, 2024), not in the State's constitutional text. Tier D (doctrine).

H. Prevalence — With Corrected Attribution

The most rigorous published count is Shulztiner & Carmi's: by 2012, 162 national constitutions used the term, roughly sixty per cent as a fundamental principle; only five States had incorporated dignity in 1900–1944; and only fourteen constitutions enacted after 1980 omit it (among them Australia, Canada, the Netherlands, Norway, Denmark, Qatar, Senegal, Vanuatu, and Palau).[17]

The Dignity Rights Project (Daly & May) puts the figure at "more than 160" constitutions. The Institute uses that figure and drops the looser "more than 170" framing it could not verify; a frequently repeated "~70% by 2000" figure attributed to the Comparative Constitutions Project could not be independently confirmed and is not relied upon.[18]

Part VI. Four Corrections and What They Teach

In assembling this Review the Institute identified four coding errors in a widely circulated compilation and corrected them against authoritative texts. Each illustrates a principle the Two-Plane Framework exists to enforce.

A. Algeria — the wrong article (a verification failure)

The compilation coded Algerian dignity to Article 77 and rated the entry "high confidence." The general dignity provision is Article 39 of the 2020 Constitution. Article 77 is not a false positive — it does frame a welfare guarantee "within a framework of respect for human dignity" — but it is a context-specific welfare provision, not the general clause. The correct statement is therefore: Article 77 is a context-specific welfare-dignity provision; Article 39 supplies the general protection. The lesson is that a confidence rating is worthless unless the article number and wording have been read.

B. Saudi Arabia — a false positive (text is not a dignity norm)

The compilation coded Saudi dignity to Article 39 of the Basic Law of Governance, which in fact regulates media conduct. The Basic Law contains no genuine human-dignity clause; the honest coding is Tier E. Tier E does not deny that Saudi Arabia owes the Plane A obligation; it records only that its domestic text does not supply one.

C. Afghanistan — operational status is determinative

The compilation tiered Afghanistan "A — foundational/inviolable" while its own status field noted the text had ceased to operate after 2021. A tier that contradicts its own status field is incoherent. A magnificent dignity clause in a suspended or abolished constitution is historical, not current.

[17]Doron Shulztiner & Guy E. Carmi, Human Dignity in National Constitutions: Functions, Promises and Dangers, 62 Am. J. Comp. L. 461 (2014).

[18]Erin Daly & James R. May, Dignity Rights Project; Dignity Rights for a Pandemic (2020).

D. India — dignity through the courts (Plane B is not only the text)

The compilation coded India Tier C on its preamble alone, ignoring the Article 21 "right to live with dignity" jurisprudence — the most consequential dignity case law in Asia. India is formally Tier C, with substantial judicial operation noted separately. A thin text can understate real protection; Plane B is text and jurisprudence together.

Together the corrections discipline the survey in both directions — against crediting empty text (Algeria's wrong article, Saudi Arabia's media clause) and against discrediting living jurisprudence (India) or a suspended text (Afghanistan). The Plane A obligation is unaffected by any of these errors; what they affect is the accuracy of the Plane B map.

Part VII. The United States Exception and Its Consequence for Torture and CIDT

The Institute states the comparator precisely, because an undefined "outlier" claim is mere rhetoric. The Institute's own survey records some twenty jurisdictions without a general textual dignity clause (Tier D) and a Tier E set; the United States is not the only legal order lacking such a clause. The defensible and verified claim is narrower: compared with established post-1945 constitutional democracies, the United States is the prominent textual outlier, because its federal constitution contains no express dignity guarantee while the comparable rights-based democracies of Europe, and the dignity-foundational orders surveyed in Part V, do. The other textless systems — the United Kingdom, Canada, Australia, New Zealand — form a coherent common-law sub-pattern in which dignity operates through statute and jurisprudence; the United States is distinctive within and beyond that group for pairing the textual absence with expansive immunity and the absence of a national human-rights institution.

A. Dignity as Eighth Amendment Gloss

The fountainhead is *Trop v. Dulles* (1958): "the basic concept underlying the Eighth Amendment is nothing less than the dignity of man," the Amendment drawing meaning from "evolving standards of decency."[19] *Roper v. Simmons* (2005) restated the duty to respect "the dignity of all persons."[20] The decisive feature is the standard: dignity in the United States is not inviolable but evolving, and an evolving standard is, by construction, a balanceable one. Dignity also informs other guarantees — substantive due process and equal protection among them — so the Institute says dignity operates *principally*, not solely, through the Eighth and Fourteenth Amendments.

B. Dignity as Fourteenth Amendment Gloss

In *Obergefell v. Hodges* (2015) the "equal dignity" of same-sex couples grounded the marriage right — dignity as a value layered onto another clause, not an independent and non-derogable command.[21]

[19]Trop v. Dulles, 356 U.S. 86, 100–101 (1958) (plurality).
[20]Roper v. Simmons, 543 U.S. 551 (2005).
[21]Obergefell v. Hodges, 576 U.S. 644 (2015).

C. State Constitutions

A few States supply what the federal charter omits. Montana's Article II §4 ("The dignity of the human being is inviolable") tracks Puerto Rico's Article II §1; Louisiana's Article I §3 and Illinois's Article I §20 are titled for individual dignity. Where inviolable dignity is entrenched in the United States, it is recognized sub-federally and unevenly.[22]

D. The Consequence for Torture and CIDT

The absence of a foundational dignity clause distinguishes a balancing order from a trumping order. The German *Aviation Security* case shows the trumping order foreclosing the instrumental sacrifice of the person; a balancing order holds open that security, finality, or institutional comity may be weighed against the person's dignity and prevail. On Plane A the prohibition on torture and CIDT is owed by the United States in full — torture's prohibition being jus cogens. On Plane B the United States lacks the inviolable-dignity instrument other orders use to give the prohibition non-balanceable domestic force, and it pairs that absence with doctrines of immunity. The result is a gap between Plane A obligation and Plane B enforcement: dignity-violating conduct meeting the severity of CIDT can escape accountability where a dignity-foundational order would treat it as a wrong incapable of being balanced away.

E. The Immunity Position, Stated Absolutely

The Institute states its position without qualification, and owes deference to no tribunal in stating it. State and individual responsibility are concurrent and complementary, never alternatives: for a wrong attributable to a judicial or other State organ, the State bears responsibility and owes reparation, and the individual official bears personal responsibility. The State's answering never absolves the individual; the individual's answering never absolves the State.[23]

The severity threshold governs the individual's exposure, and two registers are kept distinct. Torture as defined in UNCAT article 1 is established jus cogens; immunity can never lawfully shield it — a proposition the Institute states absolutely. For other cruel, inhuman, or degrading treatment the Institute does not assert identical peremptory status; it independently adopts a no-immunity standard for ill-treatment meeting the severity threshold stated in this Review, grounded in the prohibition's absolute, non-derogable character and in the duties of prevention, investigation, remedy, and non-repetition. Below the threshold, judicial immunity legitimately shields the honest and erring judge, and reparation runs against the State. At or above it, immunity falls away and the individual is personally answerable, concurrently with the State, through whichever of these the law supplies: (i) State responsibility and reparation (the State's own answering); (ii) individual international criminal responsibility; (iii) domestic criminal liability — and, for torture as defined in UNCAT article 1, the criminalization and prosecute-or-extradite duties of UNCAT articles 4–7 are mandatory; (iv) domestic civil liability where an independently applicable cause of action exists — including, for torture committed under color of foreign law, the Torture Victim Protection Act; and (v) disciplinary responsibility. For cruel, inhuman, or degrading treatment under UNCAT article 16, the prohibition is equally absolute and non-derogable and carries duties of prevention, investigation, remedy, and non-repetition, with

[22]Mont. Const. art. II, § 4; P.R. Const. art. II, § 1; La. Const. art. I, § 3; Ill. Const. art. I, § 20.

[23]Articles on Responsibility of States for Internationally Wrongful Acts, arts. 2, 4, 31 (ILC 2001); ICCPR art. 2(3); UNCAT art. 14.

criminal responsibility attaching where domestic or international criminal law independently supplies it; the Institute maintains its anti-immunity determination across the torture/CIDT continuum as a matter of its own institutional position. The honest judge is protected by the threshold, not by a State-only-liability rule.[24]

On this point the Institute records, and does not soften, its divergence from contrary authority.

[IAJ–TRIBUNAL DIVERGENCE] The Institute's position that immunity is never available for a jus cogens wrong diverges from *Jurisdictional Immunities of the State (Germany v. Italy)* (ICJ 2012), which held that the peremptory character of the underlying prohibitions did not displace a State's immunity in foreign civil proceedings, and from *Jones v. United Kingdom* (ECtHR 2014), which found no general torture exception to immunity in the civil proceedings at issue. The Institute holds that these decisions failed to give effect to the peremptory norm — elevating a procedural immunity over a substantive jus cogens prohibition — and records them as the breach it documents, not as a qualification of its position. The Institute owes these tribunals no deference; their conclusions are tested against the root, and on this question they erred.

[IAJ–TRIBUNAL DIVERGENCE] As to domestic judicial immunity, United States doctrine — *Stump v. Sparkman* (1978) and *Mireles v. Waco* (1991) — turns immunity on whether the act was "judicial" and within "jurisdiction," not on the severity of the wrong, and as *lex lata* recognizes no torture exception to judicial immunity and no broader CIDT exception. The Institute holds that, for torture, the peremptory norm requires that immunity not shield the wrong, and that for other cruel, inhuman, or degrading treatment meeting the stated severity threshold the same no-immunity standard applies as the Institute's own determination, without asserting identical peremptory status; it states that standard as its position, set and held by independent investigation, and records the contrary U.S. doctrine as the failure its corpus exists to correct — not as the measure of the law's proper content. Germany's §839(2), tying personal judicial liability to a criminality threshold (Part II.B), demonstrates that such a calibrated rule is workable in a major legal order.

Part VIII. The Counter-Case and the Measured Reply

The Institute states the case against its position in its strongest form before answering it.

A. The Indeterminacy Objection

Christopher McCrudden argues that dignity, beyond a thin minimum core, supplies no universalistic principled basis for decision and invites judicial manipulation.[25] The objection is

[24]On the limited and correct use of ILC Article 58: that provision is a saving clause — it preserves whatever individual responsibility independently arises under other rules of international law (notably international criminal law) and does not itself create a cause of action, forum, or remedy. The Institute relies on art. 58 only for the proposition that State responsibility does not exclude concurrent individual responsibility, and grounds the individual's exposure as follows: for torture as defined in article 1, the relevant criminalization and prosecute-or-extradite duties arise under UNCAT arts. 4–7, and independently applicable domestic civil remedies may include the Torture Victim Protection Act, which reaches torture committed under color of foreign law and does not provide a remedy against United States judges or officials; for other ill-treatment, any individual criminal or civil liability must arise from independently applicable domestic or international law, and the Institute's no-immunity standard does not itself create a cause of action, forum, or remedy.

[25]Christopher McCrudden, Human Dignity and Judicial Interpretation of Human Rights, 19 Eur. J. Int'l L. 655 (2008).

well taken and beside the point, because the Institute rests not on the contested periphery of dignity but on the determinate minimum core McCrudden himself concedes: the prohibition of torture and CIDT. That core is not manipulable; for torture it is jus cogens. Paolo Carozza's reply — that the materials confirm an emerging global *ius commune* — states the affirmative case; the Institute adopts its narrower version: whatever the marginal disagreements, the core is common, and the core governs torture and CIDT.[26]

B. The "Text Is Not Enforcement" Objection

That many constitutions invoke dignity without enforcing it (China's Article 38; various authoritarian texts) is correct as to Plane B and irrelevant to Plane A. Textual presence is evidence of the content of an obligation that exists independently of any State's willingness to honor it. The four corrections in Part VI keep the map honest in both directions.

C. The Custom Objection

It may be said that the Institute leans on constitutional convergence to manufacture a customary dignity norm. It does not, and Part I.E says so expressly: the Review claims dignity as the interpretive foundation of the torture/CIDT prohibition, not as a freestanding customary rule established by convergence alone. The torture prohibition's peremptory status is independently grounded; the Review needs no more.

D. The Messenger Objection and the Institute's Independence

Finally it may be said that an institution with a stated position cannot be credited. The Institute does not claim the detachment of a tribunal; it performs, in a vacuum the United States has left unfilled, the investigative and documentary function a national human-rights institution would discharge, and it discloses its position openly (see the Independence & Conflicts Disclosure below). The argument stands or falls on the authorities it cites and the facts it documents — each verifiable independently of who assembled them. An objection that declines to engage the authorities and instead disqualifies the speaker is not a rebuttal but an instance of the substitution of status for accountability that the Institute's corpus anatomizes.

Part IX. Findings and Synthesis

On the verified record, the Institute records the following findings.

- **First.** Human dignity is a near-universal constitutional reference and a foundational constitutional principle in a substantial majority of the constitutions that recognise it — 162 constitutions by 2012, roughly sixty per cent treating it as a fundamental principle, with only fourteen post-1980 holdouts.
- **Second.** The convergence is convergence on a determinate core, the prohibition of torture and CIDT, of which torture's prohibition is jus cogens and dignity is the normative source.

[26]Paolo G. Carozza, Human Dignity and Judicial Interpretation of Human Rights: A Reply, 19 Eur. J. Int'l L. 931 (2008).

- **Third.** On Plane A the obligation is universal, owed by every State regardless of textual form — including Tier E States such as Saudi Arabia and the Holy See — and regardless of Plane B enforcement.
- **Fourth.** Compared with established post-1945 constitutional democracies, the United States is the prominent textual outlier: no foundational dignity clause, dignity as balanceable gloss, paired with immunity. The resulting Plane A–Plane B gap is the structural condition under which CIDT-grade conduct can escape accountability.
- **Fifth.** Responsibility is concurrent: the State owes reparation and the individual is personally answerable once the severity threshold is met: immunity can never lawfully shield torture (established jus cogens), and the Institute independently adopts a no-immunity standard for other ill-treatment meeting that threshold without asserting identical peremptory status. Where the ICJ, the ECtHR, or U.S. courts have held otherwise, the Institute records those holdings as documented failures to honor the peremptory norm, flagged in Part VII.

This Review is therefore the comparative-constitutional foundation of the Institute's torture and jus cogens corpus: the near-universality of constitutional recognition corroborates and illuminates the content of the Plane A obligation; the United States exception supplies the Plane B failure; and the dignity–CIDT bridge connects the two into a single finding the Institute records and will report to the mechanisms competent to receive it.

Independence, Conflicts, and Verification Safeguards

In the interest of the candor its method requires, the Institute discloses the following.

- **Position and method.** The IAJ holds stated doctrinal positions, including those in its torture, jus cogens, and judicial-immunity corpus, and this Review is consistent with them. The Institute's independence is epistemic: it does not begin with a conclusion and assemble support, but it does not pretend to be without a thesis. Its findings are answerable to the cited authorities, every one of which is independently verifiable.
- **Relationship to the existing corpus.** This Review is designed to serve as the comparative-constitutional foundation of the Institute's torture and judicial-immunity work, and it should be read as connected to, not independent of, that corpus.
- **Verification limits.** The companion workbook's twenty-six textual-entrenchment "nexus" findings were independently verified against official or authoritative constitutional sources, with the dignity clause and the entrenchment clause recorded with per-row nexus-confidence (23 HIGH and 3 MEDIUM — Ecuador, Russia and Mozambique) and per-row evidence quality (23 at L1; three at L2 — Ethiopia, Cuba and Zimbabwe); twenty-five jurisdictions' dignity clauses were additionally confirmed in the original language, with the remaining 172 carrying an authoritative English clause pending original-language verification. The wider 197-jurisdiction pattern rests on authoritative comparative sources and is rated high, medium, or low per row in the companion workbook. The Review does not claim that all 197 jurisdictions are line-verified against primary gazettes in both languages.

- **What would falsify the central claims.** The interpretive-foundation claim would be weakened by a showing that dignity does not in fact inform the construction of the torture/CIDT prohibition across the regional systems; the outlier claim would fall if the defined comparator class were shown to lack a meaningful dignity-enforcement difference once remedies and immunities are compared. The Institute states these tests so that its position can be contested on the merits.
- **Divergence transparency.** Every point at which the Institute's position departs from a tribunal holding is flagged in the text (Part VII) and is the Institute's considered position that the tribunal erred, not an oversight.

Table of Authorities

Constitutions and constitutional-level instruments

Basic Law for the Federal Republic of Germany (Grundgesetz) (1949), arts. 1, 2, 34, 79(3).

Constitution of the Republic of South Africa (1996), §§ 1, 7, 10, 36, 39.

Constitution of the Republic of Kosovo (2008), arts. 23, 56.

Constitution of Algeria (2020), arts. 39, 77, 223.

Constitution of Tunisia (2014; 2022 successor), arts. 4, 23.

Basic Law: Human Dignity and Liberty (Israel, 1992).

Constitution of the People's Republic of China (1982, am. 2018), art. 38.

Constitution of the United States, amends. VIII, XIV; Mont. Const. art. II § 4; P.R. Const. art. II § 1; La. Const. art. I § 3; Ill. Const. art. I § 20. Torture Victim Protection Act of 1991, Pub. L. No. 102-256, 106 Stat. 73 (28 U.S.C. § 1350 note).

Constitution of India (1949), Preamble, art. 21; Constitution of Brazil (1988), art. 1(III); Constitution of Colombia (1991), art. 1; Constitution of Peru (1993), art. 1; Constitution of the Republic of Korea (1987), art. 10; Constitution of Kenya (2010), art. 28.

Bürgerliches Gesetzbuch (German Civil Code) § 839(2).

International and regional instruments

Universal Declaration of Human Rights, G.A. Res. 217A (III) (1948), arts. 1, 5.

International Covenant on Civil and Political Rights (1966), arts. 2(3), 4, 7.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), arts. 1, 4–7, 12–14, 16. Committee against Torture, General Comment No. 3 (2012), CAT/C/GC/3.

Charter of Fundamental Rights of the European Union (2000), art. 1.

American Convention on Human Rights (1969), arts. 5(2), 11; African Charter on Human and Peoples' Rights (1981), art. 5; European Convention on Human Rights (1950), art. 3.

International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts (2001), arts. 2, 4, 31, 58.

International Law Commission, Draft Conclusions on Identification of Customary International Law (2018), Conclusion 2; ILC, Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (Jus Cogens), Conclusion 23 and Annex, U.N. Doc. A/77/10 (2022).

Cases

BVerfGE 45, 187 (1977); BVerfGE 65, 1 (1983); BVerfG, 1 BvR 357/05 (2006).

S v Makwanyane 1995 (3) SA 391 (CC).

Corte Constitucional de Colombia, Sentencia T-881/02.

Maneka Gandhi v. Union of India, (1978) 1 SCC 248; Francis Coralie Mullin v. Administrator, (1981) 1 SCC 608; K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

J.Y. Interpretation No. 603 (Taiwan, 2005); CA 6821/93 United Mizrahi Bank (Israel, 1995).

R v Oakes [1986] 1 SCR 103; Law v Canada [1999] 1 SCR 497; R v Kapp 2008 SCC 41.

Trop v. Dulles, 356 U.S. 86 (1958); Roper v. Simmons, 543 U.S. 551 (2005); Obergefell v. Hodges, 576 U.S. 644 (2015).

Jurisdictional Immunities of the State (Germany v. Italy), 2012 I.C.J. 99; Jones v. United Kingdom, App. Nos. 34356/06 & 40528/06, ECtHR (2014); Stump v. Sparkman, 435 U.S. 349 (1978); Mireles v. Waco, 502 U.S. 9 (1991); Pretty v. United Kingdom, App. No. 2346/02, ECtHR (2002).

Scholarship

Christopher McCrudden, Human Dignity and Judicial Interpretation of Human Rights, 19 Eur. J. Int'l L. 655 (2008).

Paolo G. Carozza, Human Dignity and Judicial Interpretation of Human Rights: A Reply, 19 Eur. J. Int'l L. 931 (2008).

Doron Shulztiner & Guy E. Carmi, Human Dignity in National Constitutions: Functions, Promises and Dangers, 62 Am. J. Comp. L. 461 (2014).

Aharon Barak, Human Dignity: The Constitutional Value and the Constitutional Right (2015).

Erin Daly & James R. May, Dignity Rights for a Pandemic (2020); Dignity Rights Project.

Standards

Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol, OHCHR, endorsed 1999, rev. 2022).

Caveats on Sources and Method

- **Scope of verification.** The companion workbook's twenty-six textual-entrenchment nexus findings were independently verified against official or authoritative constitutional sources, at 23 HIGH / 3 MEDIUM nexus-confidence; twenty-five jurisdictions' dignity clauses were confirmed in the original language, with 172 pending. The wider 197-jurisdiction pattern rests on authoritative comparative sources, rated high, medium, or low per row. This Review does not claim a complete primary-text, dual-language recount of all 197.
- **Prevalence statistics.** The citable figures are Shulztiner & Carmi (162 by 2012; ~60% as fundamental principle; 14 post-1980 holdouts) and Daly & May ("more than 160"). The "more than 170" and "~70% by 2000" figures are not relied upon.
- **Translation and numbering variance.** Article numbers vary across translations (Algeria art. 39 vs. older "art. 34"; Tunisia art. 23 vs. "art. 22"); official texts govern.
- **Operational status.** Several constitutions are not in ordinary force as of June 2026, with operational status recorded per row: Afghanistan's is historical (abolished); Myanmar, Niger, and Sudan are suspended; Burkina Faso and Syria are transitional; and Tunisia's

2014 text has been superseded by its current 2022 constitution. Coding for these regimes is historical or nominal and requires re-audit.

- **Doctrinal status of the immunity position.** The Institute's position that immunity is never available for a jus cogens wrong is its standard, set and held by independent investigation; it is not a description of present ICJ, ECtHR, or U.S. black-letter doctrine, from which it diverges as flagged in Part VII.
- **Citation discipline.** Cite by title, not Document ID alone. Pretty v. United Kingdom is not CIDT-violation authority. The VCLT is invoked elsewhere in the corpus only as customary international law, the United States not being a party.

The Inviolable Root: Human Dignity as the Interpretive Foundation of the Prohibition on Torture and Cruel, Inhuman, or Degrading Treatment — A Comparative Survey of the World's Constitutions and the United States Exception

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