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

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April 2016
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*This paper is the offspring of a semester as a visiting fellow at the Kellogg Institute for International Studies at the University of Notre Dame. Without the generous support of the Kellogg Institute, this research never could have seen the light. I am deeply grateful to the fellows, the visiting fellows, the Institute’s staff, and anonymous reviewers for their invaluable help, dedication, and commitment. Most of all, no words can adequately express my gratitude to Kellogg Institute Director Paolo Carozza. I also wish to thank the Notre Dame Law School community for welcoming me as a visiting professor and giving me such remarkable feedback at the presentation of a preliminary version of this paper. Special thanks go to Roger Alford, A. J. Bellia, Doug Cassell, Rick Garnett, Kristine Kalanges, Randy Kozel, Jeff Pojanowski. Abduh An-Na ‘im’s advice was great. A later presentation at the Icon-s conference at New York Law School in 2015 provided more food for thought, and the opinions shared there with Brett Scharffs and Clark Lombardi were particularly helpful. John Witte Jr.’s usual generosity and the John W. Kluge Center opened up the doors of the Library of Congress to allow me to complete the bibliographical research behind this paper. Francesca Genova’s editing is amazing, as usual.*
ABSTRACT

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

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

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

RESUMEN

Este artículo explora el desarrollo a lo largo de varias décadas de la idea de dignidad humana en el constitucionalismo árabe y hace algunas reflexiones acerca de su significado y sus implicancias en el marco de nuevos textos constitucionales y a la luz de éxito de este concepto en el contexto posterior a la Primavera Árabe. Primero, el artículo hecha luz sobre cómo se entiende la dignidad en la cultura legal árabe y explora tanto sus raíces seculares como las religiosas: encuentra que la primera constitucionalización de la dignidad tuvo lugar en la Constitución libanesa de 1926, texto en el que ese concepto ordenaba respetar a las religiones. Luego, el artículo explora el éxito de la idea de dignidad en la elaboración de la Declaración Universal de los Derechos Humanos, ocasión en la que el académico libanés Charles Malik jugó un rol protagónico al incluir este concepto a lo largo del texto y universalizarlo para incluir a todos los seres humanos. Luego, el artículo relata cómo los estados árabes han usado este concepto y muestra que las constituciones árabes han incluido y expandido progresivamente la idea de dignidad humana que las constituciones posteriores a la primavera árabe han reforzado una vez más. Finalmente, el artículo observa brevemente cómo el uso de la idea de dignidad en el constitucionalismo árabe acompaña el desarrollo del mismo concepto en la cultura legal occidental, que ha integrado el pensamiento secular con el pensamiento religioso. Aún con su extensa difusión, el significado y las implicancias de la constitucionalización de la dignidad siguen siendo inciertos, su destino dependerá en buena medida del modo en que la cultura legal árabe equilibre los derechos humanos con las reglas del Islam.
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\(^2\) and seventeen constitutional changes.\(^3\) But it is thanks to the revolts and protests that have mushroomed in Arab countries from 2010 onward that the majority of legal changes have taken place. Revolts and revolutions there have taken very different shapes. Only some have led to the establishment of new constitutions, whereas others have promulgated sizable changes in their countries’ constitutional frameworks; some have been suffocated in blood, while others are still in the making. Since 2010 and the awakening of the Arab Spring, nine counties have changed their constitutions, with Egypt having done so twice (both in 2012 and in 2014).

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

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

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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. Morocco, Mauritania, Algeria, Tunisia, Libya, Egypt, Jordan, Syria, Iraq, Saudi Arabia, Yemen, Somalia, Kuwait, Bahrain, Qatar, United Arab Emirates.
constitutional change, the instability—if not chaos—that the revolutions have prompted, and the rise of new Islamist forces, many voices have warned that the Arab Spring cannot achieve its goals.

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

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

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

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

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

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

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

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

8 M.A. MOHAMED SALIH, ECONOMIC DEVELOPMENT AND POLITICAL ACTION IN THE ARAB WORLD 15 (2014). “[T]he Arab Spring cannot be reduced to an abrupt uprising in which the opportunity for rebellion prevailed; nor can it be explained as the product of a few weeks or a few months of youth anger mobilized by social media. . . . The rise of a youth consciousness has emanated from the miserable and unbearable living conditions generated by underdevelopment and not merely by media as a mobilization tool.” Id.
11 Beck & Hüser, supra note 7, at 7.
12 “Dignity” was advocated also by the Islamist thinker Yusuf al-Qaradawi in Egypt. Abou El Fadl, supra note 11, at 317.
new constitutions has to do with international fears at least as much as with concrete Arab goals. In other words, a relevant part of the debate stems from Western expectations and preoccupations regarding Arab states’ new constitutions, rather than from the genuine expectations that Arabs have enshrined in their constitutions.

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

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

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

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13 Paust, supra note 9, at 2.
16 Id. at 583.
powers can hijack its meaning or implications; but dignity itself may play a significant role in shaping a new course for Arab countries. It is an extremely creative concept, which draws from Islamic tradition as well as from Christian and liberal lineages. It is a web of different intellectual strands, and yet it does not represent a form of cultural neo-colonization of Arab law by the West. And it is surely best understood as the hybridization of religious thinking and legal thinking.

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

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

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

17 McCrudden, Human Dignity, supra note 14, at 712.  
18 Evans, supra note 5, at 531.  
19 Id. at 537.  
20 AHARON BARAK, DIGNITY: THE CONSTITUTIONAL VALUE AND THE CONSTITUTIONAL RIGHT (2015). “There is considerable overlap—complementary or conflicting—between the right to human dignity and to the other constitutional rights.” Id.
and prove that neither really can be seen as the main purpose of the new Arab constitutions, from a legal point of view. This will establish the ground for a reflection in the third part on the religious Islamic roots as well as the legal roots of the concept, as it appeared historically in constitutional texts. The fourth part will locate the cultural watershed in international human rights law implementation at the end of World War II and highlight the role that the Charter of the United Nations and the Universal Declaration of Human Rights played in boosting the concept of dignity. The next part will explore the success of karāma throughout Arab constitutions and Islamic international documents: this part will sequence the utilizations of the concept through the decades, contextualize each constitutional framework, and analyze the multiple meanings that attach to the contemporary use of the concept. In the sixth part a short survey of the Western journey that the idea of “dignity” underwent will provide room for comparison. The final part will identify the deep significance of karāma in the context of the global debate on the meaning of dignity, singling out its specificities and suggesting some possible future developments of the concept in the Arab constitutional environment.

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

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

22 Nimer Sultany, Religion and Constitutionalism: Lessons from American and Islamic Constitutionalism, 28 EMORY INT’L L. REV. 345, 357 (2014). “[T]he effect of constitutions is quite limited and is related to the dominant political culture, the efficacy of the political system, and social processes.” Id.
The deep connection between human rights and Islamic tradition in karāma becomes evident if it is seen in its progressive, historical development, in contrast with the modern evolution of the concept of “dignity” itself. This will show that karāma naturally interplays with religion and human rights, rather than working simply to reconcile them ex post facto.23

THE ROLE OF CONSTITUTIONS: BEYOND ISLAMIC LAW AND HUMAN RIGHTS

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

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

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

23 Evans, supra note 5, at 534.
24 Cliteur, supra note 6, at 135.
criticized\(^{27}\) new Iraqi constitution\(^{28}\) included Islamic law among its sources of legislation.\(^{29}\) But the reasons leading to the adoption of provisions that protect Islam and Islamic law neither are inextricably connected with the implementation of Islamist policies, nor do they necessarily promote them.

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

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

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


\(^{30}\) Eltayeb, \textit{supra} note 26, at 102.


\(^{32}\) Sultany, \textit{supra} note 22, at 350.


\(^{34}\) FEDERAL REPUBLIC OF SOMALIA PROVISIONAL CONSTITUTION 2012 art. 3 § 1 & art. 40 §§ 2 & 4, unofficial translation available at http://unpos.unmissions.org/LinkClick.aspx?fileticket=RkJTOSpoMME=. 
notable exception of South Africa’s constitution. In fact, Art. no. 40 of the Somali constitution says:

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

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

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

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

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

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

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

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

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

(b) must consider international law; and

(c) may consider foreign law.

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

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

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

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

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

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

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

38 Ahmed & Ginsburg, supra note 29, at 1.
39 Id. at 12.
40 Id. at 60. CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, Sept. 11, 1971, art. 2.
41 Id. at 14.
42 Id. at 18.
Islamic law, new rights could not pass. Such negotiations have taken place for at least fifty years, and they still go on today.

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

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

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

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

Dawood and Ginsberg have tracked the migration\(^{45}\) of references to Islam from the 1861 Tunisian civil code to contemporary clauses.\(^{46}\) Contemporary constitutional texts adopt the Islamic law repugnancy clause, following the pioneering 1907 Iranian constitution.\(^{47}\) Such clauses, which have proliferated between 1990 and 2014,\(^{48}\) do not necessarily command the active enforcement of Islamic law. Oftentimes they merely prohibit any violation of Islamic law.

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


\(^{45}\) Ahmed & Ginsburg, supra note 29, at 18.


\(^{47}\) Ahmed & Ginsburg, supra note 29, at 18.

\(^{48}\) Id. at 22.
Hence Islamic law is neither the engine of change nor the backbone of political life. It creates bounds for what state institutions can do. It does not prescribe the future; it only limits it.

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

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

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

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

50 Id. at 736.
51 Id. at 741.
52 Id. at 767.
54 Id. at 708.
Shari‘a. Shari‘a is supposed to be a comprehensive body of rules, governing the whole spectrum of personal and social life. State institutions, in classical Islamic thought, are “fundamentally executive in nature.” If the new constitutions aligned themselves to this concept, they would not need long lists of rights and provisions describing the balance of powers. This used to be the position of Saudi Arabia, which traditionally declined to have a constitution, stating that the state’s activities were the mere administrative implementation of Shari‘a. Conversely, almost all of the relevant constitutions are lengthy: Iraq’s has 144 articles; Somalia’s, 143; Syria’s, 157; Tunisia’s, 148; Egypt’s 237 (2012 constitution) and 247 (2014 constitution). This means that even the logic of Islamic law implementation is not respected.

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

The second preliminary conclusion is that both the repugnancy clauses and constitutions’ long lists of human rights at minimum serve a common purpose: as proxies “for the legitimacy and effectiveness of a government regime.” The “incorporation” of Islamic law and the long list of human rights in recent constitutions both assist the constitution building process. 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, we actually see that the two

55 KALANGES, supra note 33, at 87.
56 Ahmed & Ginsburg, supra note 29, at 83.
59 CHIBLI MALLAT, INTRODUCTION TO MIDDLE EASTERN LAW 158 (2014).
61 Fegen, supra note 31, at 1203.
components are particularly rich; this is because they serve each other in legitimizing constitutions.

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

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

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

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

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

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63 Id.
64 Deeks & Burton, supra note 60, at 85.
65 Feldman & Martinez, supra note 60, at 901.
66 CONSTITUTION OF IRAQ, Oct. 15, 2005, art. 22 (emphasis added).
67 Id. art. 37.
The post–Arab Spring constitutions, on the other hand, have made a more extensive, and sometimes newer, use of the idea of “dignity.” Arabs seem to have developed their latest constitutional texts more independently than the Iraqis did in 2004, and they decided to incorporate “dignity” much more abundantly. The changing fortune of karāma clearly arises from a priority in Arab constitutional culture, not from external influence.

THE CONSTITUTIONALIZATION OF DIGNITY IN ARAB COUNTRIES

Karāma: Its Meaning and Origins

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

The Islamic Root

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

Through frequent Islamic borrowings from Greek philosophical concepts,

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

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

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

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

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

\begin{itemize}
\item \textsuperscript{70} Id.
\item \textsuperscript{71} Karamah, in, THE OXFORD DICTIONARY OF ISLAM 166 (John L. Esposito ed., 2003).
\item \textsuperscript{72} A.I. NAQIB AL-MISRI, RELIANCE OF THE TRAVELLER (N.H. Mim Keller trans., Amana 1994).
\item \textsuperscript{73} See Denise Aigel & Catherine Mayeur-Jaouen, Miracle et karāma. Une approche comparatiste, in MIRACLE ET KARAMA. HAGIOGRAPHIES MÉDIÉVALES COMPARÉES 13 (Denise Aigel 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.”).
\item \textsuperscript{74} See, e.g., DUNCAN B. MACDONALD, DEVELOPMENT OF MUSLIM THEOLOGY, JURISPRUDENCE AND CONSTITUTIONAL THEORY (1903) (discussing this concept).
\item \textsuperscript{75} Majid Khadduri, Human Rights in Islam, 243 ANNALS OF THE AM. ACAD. OF POL. & SOC. SCI., Jan. 1946, at 77, 81.
\item \textsuperscript{76} Id.
\end{itemize}
Persia for the liberty and equality of man.” Note that, when referring to the Islamic law duty to respect “personal reputation,” he himself used the term *hurma* (forbidden), not *karāma*.

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

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

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

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

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

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77 Id. at 81.
78 Id. at 78.
80 Id., at xv.
81 Id. at xvi.
82 1 HUMAN RIGHTS IN ISLAM: THE MODERN PERSPECTIVE 190 (Muzaffar Husain Syed ed., 2003).
1990 Cairo Declaration on Human Rights in Islam, to which we will return later. The opening article of the Cairo Declaration states:

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

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

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

The Lebanese Root: Drafting the Lebanese Constitution

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

Art. no. 10 states that:

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

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

85 Richter-Bernburg, supra note 83, at 81.
to enshrine the concept in the constitutional document they were drafting, their novelty must be contextualized adequately.

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

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

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

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

86 Malik, The Near East, supra note 1, at 239.
87 Id.
88 The Lebanese was not the first Arab constitutional text that drew inspiration from European sources: for the Belgian and Prussian influences over the Ottoman constitution of 1876, see Nathan Brown, Regimes Reinventing Themselves: Constitutional Development in the Arab World, in CONSTITUTIONALISM AND POLITICAL RECONSTRUCTION 50 (Said Amir Arjomand ed., 2007).
89 Cordelia Koch, The Separation of Powers in a Fragmented State: The Case of Lebanon, in, CONSTITUTIONALISM IN ISLAMIC COUNTRIES: BETWEEN UPHEAVAL AND CONTINUITY 394 (Rainer Grote & Tilmann Röder eds., 2012). The author goes on to claim that there was also an influence from the “the Belgian Constitution of 1931” which, evidently, cannot be the case since the latter was released after the Lebanese constitution.
90 Id.
In 1920, France created the state of the Great Lebanon\textsuperscript{92} and gave it a provisional governmental and administrative structure.\textsuperscript{93} In 1922, it laid down the rules for governing Lebanon and established the Lebanon’s Representative Council,\textsuperscript{94} which functioned as a Parliament, and organized the election of its members.\textsuperscript{95}

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

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

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

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


\textsuperscript{93} Arrêté no. 366, Sept. 1, 1920.

\textsuperscript{94} Arrêté no. 1304 bis, Mar. 8, 1922

\textsuperscript{95} Arrêté no. 1307, Apr. 1922

\textsuperscript{96} Hokayem, \textit{supra} note 92, at 85.

\textsuperscript{97} Id.

\textsuperscript{98} Id. at 220.

\textsuperscript{99} Id. at 221.

\textsuperscript{100} Id. at 226.

\textsuperscript{101} RABBATH, \textit{supra} note 91, at 392.

\textsuperscript{102} Hokayem, \textit{supra} note 92, at 247.
This is when the influence of France took a special place. Among the commission’s members there was no expert on constitutional law. Nonetheless, all of them were highly educated, familiar with the Western culture, and looked to France for inspiration. Leon Duguit, then dean of the Law School of Bordeaux, provided the commissioners with a collection of French constitutional texts, and the governor de Jouvenel requested that the constitutional law expert attached to the commission, Paul Souchier, send from France copies of any constitutional text that could be found. “Wisdom commands that we profit of the experience of other peoples and that we begin from where they have got,” were the words of Chebl Dammous, the head of the commission. France basically mediated this constitutional “experience of other peoples” for the Lebanese framers.

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

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

103 Id. at 246.
104 Id. at 246.
105 Id. at 244.
106 Id. at 345 (author’s translation).
107 Id. at 280.
108 Id. at 281.
The commission’s draft was accepted by the French expert Soucher and finally sent to de Jouvenel on May 5, 1923. The text of Art. no. 10 that de Jouvenel received and sent to France for approbation, however, had no trace of “dignity”: it just mentioned public order, morals, and the right of religious communities to run their own schools as limits to freedom of education.

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

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

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

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111 Hokayem, supra note 92, at 262.
112 Id. at 359. “L’enseignement est libre en tant qu’il n’est pas contraire a l’ordre public et aux bonnes mœurs. Il ne sera porté aucune atteinte au Droit des Communautés d’avoir leurs écoles sous réserve des prescriptions générales sur l’institution publique édictée par l’Etat.” Id.
113 Id. at 354. It provides an excerpt of the Projet de Statut organique limité au règlement mandataire élaboré par le Département (which was later developed as a constitution: Art. no 4, Par. 2., which affirms that “Il ne sera porté aucune atteinte au droit des communautés de conserver leurs écoles en vue de l’instruction et de l’éducation de leurs membres dans leur propre langue à condition de se conformer aux prescriptions générales sur l’instruction publique édictée par l’état.” Id.
114 Id. at 345. Art. no. 9 of the Charter of the mandate over Lebanon: “Art. 9: Le Mandataire s’abstiendra de toute intervention dans l’administration des Conseils de fabrique ou dans la direction des communautés religieuses et sanctuaires des diverses religions, dont les immunités son expressément garanties.” Id.
115 Art. no. 22, par. 5.
116 Hokayem, supra note 92, at 269.
117 “L’enseignement est libre en tant qu’il n’est pas contraire a l’ordre public et aux bonnes mœurs et qu’il ne porte pas atteinte a la dignité de l’une quelconque des confessions. Il ne sera porté aucune atteinte aux droits des communautés d’avoir leurs écoles sous réserve des prescriptions générales sur l’instruction publique édictées par l’Etat.” Id. at 370.
It seems that the commission, in addition to drawing from the questionnaire’s results, drew from the French legal culture; more specifically, it appears that the idea of dignity was taken from the French constitutions.

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

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

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

118 McCrudden, Human Dignity, supra note 14, at 657.
119 Id.
121 Article 23 of the 1831 constitution: “ La nomination des Pairs de France appartient au Roi. Leur nombre est illimité : il peut en varier les dignités, les nommer à vie ou les rendre héréditaires, selon sa volonté.” 1830 CONST. art. 23 (Fr.), http://www.culture.gouv.fr/Wave/image/archim/Pages/02894.htm. Article 23 of the 1852 constitution: “Le Sénat se compose : 1° des cardinaux, des maréchaux, des amiraux ; 2° des citoyens que l’empereur élève à la dignité de sénateur.” 1812 CONST.1852 art. 23 (Fr.).
122 Catherine Dupré, Constructing the Meaning of Human Dignity: Four Questions, in UNDERSTANDING HUMAN DIGNITY (Christopher McCrudden ed., 2013). The French Imperial decree of April, 27, 1848, abolished slavery with the justification that this institution was against “human dignity.” Rebecca J. Scott, Dignité/Dignidade: Organizing against Threats to Dignity in Societies after Slavery, in UNDERSTANDING HUMAN DIGNITY, supra, at 61.
States constitution, which were made available to the Lebanese framers, carry a use of “dignity” that compares with that of the 1926 Lebanese constitution.

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

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

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

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123 (emphasis added).
125 HANS WEHR, ARABISCHES WÖRTERBUCH FOR DIE SCHRIFTSPRACHE DER GEGENWART (1952).
at-Tahtawi, one of the first intellectuals whom the ruler of Egypt Mohammad Ali sent in 1826 to Europe to learn the languages and cultures, wrote a seminal book on European culture and made available to the Arabic-speaking wider public the 1814 French constitution. Its version translated the “dignity” of members of the French Chamber of peers\textsuperscript{127} with \textit{laqab}, and not \textit{karāma}\.\textsuperscript{128} A few decades later, Art. no. 19 of the 1861 Tunisian text, which gained this country the title of “birthplace” of Arab constitutions,\textsuperscript{129} said that ministers are the first “dignitaries” of the state: but it used \textit{khutat},\textsuperscript{130} not \textit{karāma}. \textit{Khutat} is unrelated to the idea of “dignity” but still conveys a sense of special position (“rank”) in the constitutional structure. And the same text said that, alongside their lives and goods, the law protected the honor of Tunisians and non-Tunisians alike using a word that was again unrelated with \textit{karāma}: ‘\textit{ard}'\textsuperscript{131} Finally, and coming closer to the times in which the Lebanese text was drafted, its prominent Arabic source of inspiration was the Egyptian constitutional text of 1923, as mentioned above. Interestingly, the Egyptian text contained a similar concept that conveyed state representatives’ worthiness of respect, status, and duty; however, the word that reflected this idea of “dignity” in that constitution was actually not \textit{karāma}, but \textit{mansib}. \textit{Mansib} has a totally different root in Arabic and is completely detached from the use of “human dignity” that would come later in Arab constitutions.

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

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

\textsuperscript{127} Article 27: “La nomination des pairs de France appartient au roi. Leur nombre est illimité; il peut en varier les dignités, les nommer à vie ou les rendre héréditaires, selon sa volonté.” 1814 CONST. art. 27 (Fr.), http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/la-constitution/les-constitutions-de-la-france/charte-constitutionnelle-du-4-juin-1814.5102.html.
\textsuperscript{128} RIFA’AT AT-TAHTAWI, TAKHLĪṢ AL-IBRĪZ Fī TALKHĪṢ BĀRĪZ WĀL-DĪWĀN AL-NAFĪṢ BĪ-IWĀN BĀRĪS 107 (Kalimat Arabia 2011) (1834), http://faculty.ksu.edu.sa/almanasrah/414/%D8%AA%D8%AE%D9%84%D9%8A%D8%B5%20%D8%A7%D9%84%D8%A5%D8%A8%D8%B1%D9%8A%D8%B2.pdf.
\textsuperscript{129} Sultany, \textit{supra} note 22, at 360.
\textsuperscript{131} Id. arts. 86 & 109.
was mostly concerned with the relationship between the Republic of Lebanon that was coming into being and France. The new Lebanese constitutional framers themselves were the ones who deliberately drew from French culture and decided to import its idea of “dignity,” to the extent that they translated it with karāma: an unprecedented choice, given the earlier Arabic legal translations.

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

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

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

The 1930 Syrian Constitution

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

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

132 Malik, The Near East, supra note 1, at 237.
It is worth comparing the Syrian phrasing with the relevant Lebanese text. The wording is almost exactly the same, and both use convey the idea that some entity’s reputation and status should be protected. The only difference from the Lebanese context is the protection of the nation’s dignity alongside that of religions. Both are collective entities and are perceived as worthy of state protection. But it still does not describe the assets or values of either individuals or the population at large. It relates to the state and religions, as a value that makes them untouchable.

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

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

THE WATERSHED: KARĀMA AT THE UNITED NATIONS

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

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133 “The economy has to be organized based on the principles of justice, with the goal of achieving life in dignity for everyone. Within these limits the economic liberty of the individual is to be secured.” WEIMAR CONSTITUTION, Aug. 11, 1919, art. 151, unofficial translation at http://www.zum.de/psm/weimar/weimar_vve.php.
134 CONSTITUCIÓN DE 1929, art. 151 § 18 (Ecuador), http://constituyente.asambleanacional.gob.ec/documentos/biblioteca/1929.pdf. “El Estado protegerá, especialmente, al obrero y al campesino, y legislará para que los principios de justicia se realicen en el orden de la vida económica, asegurando a todos un mínimo de Bienestar, compatible con la dignidad humana.” Id.
137 Shulztiner & Carmi, supra note 21, at 464 n.14. Contrary to what Shulztiner and Carmi maintain, the 1919 Finnish Constitution does not seem to contain any reference to “human dignity” but to honor instead: in the French official translation, Art. no. 6 speaks of “honor” (“Tout citoyenne finlandais sera protégé par la loi dans sa vie, son honneur, sa liberté personnelle et ses biens”: LA CONSTITUTION DE LA
stage for the Charter and the Universal Declaration, which powerfully boosted the use of the lexicon of dignity with regard to individuals.

The two international documents particularly reinvigorated the idea of “human dignity,” which contained the understanding, in line with Kant, that individuals should be treated always as ends and not as means to an end. 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.

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

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

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

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138 Kant captured his idea of dignity in the famous maxim that individuals should be treated as ends in themselves and never as means to an end. IMMANUEL KANT, GROUNDWORK OF THE METAPHYSICS OF MORALS (Mary Gregor ed. and trans., 1998).
139 McCrudden, Human Dignity, supra note 14, at 659.
140 Id. at 662.
141 It was discovered that Barnard College dean Virginia Gildersleeve, working on the draft that the South African delegate Jan Smuts was preparing for the Preamble, suggested citing the “dignity and worth of the human person.” SAMUEL MOYN, THE SECRET HISTORY OF CONSTITUTIONAL DIGNITY, in UNDERSTANDING HUMAN DIGNITY, supra note 122, at 107.
142 U.N. Charter pmbl.
While the English version fails to specify that the dignity to which it refers pertains to individuals, the Arabic version expressly makes this point. This explicit reference seems to confirm that karāma, in itself, did not contain an individualized sense yet.

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

The Preamble thus sets out:

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world…

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

Art. no. 1 states:

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Art. no. 22 asserts:

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

Art. 23 promotes that:

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

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

145 Id. art. 1.
146 Id. art. 22.
(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

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

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

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

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

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

147 Id. art. 23.
150 This does not mean that Islamic countries were reluctant to embrace or contribute to the drafting of the Universal Declaration of Human Rights. See Susan Waltz, Universal Human Rights: The Contribution of Muslim States, 26 HUM. RTS. Q. 799 (2004) (discussing Muslim states’ participation).
151 Human Rights, supra note 149, at 192.
152 Thore Lindholm, Article 1, in THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: A COMMENTARY, supra note 143, at 32.
This is where the Arab contribution played an important role in promoting the incorporation of “dignity” in the Universal Declaration. The Greek Orthodox Lebanese member of the Committee, Charles Malik, a “chief spokesman for the Arab League,” was a prominent philosopher of Thomism 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. It seems that, in a critical evaluation of the Preamble of the Secretariat Outline, he proposed that the notion of the “dignity of man” be the “basic woof” of Art. no. 1 of the Declaration—a centrality that he would reaffirm on more occasions.

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

The debate around the “human person” as being endowed with inalienable rights but part of a broader society saw Malik and René Cassin, the French Committee member, allied in trying to rebut criticisms from both the Soviet Union and UK members, who wanted to emphasize respectively the priority of the society or that of the individual. Cassin, as did Malik, insisted on the role of “dignity” to promote this idea of the “human person” as the focus of the Declaration. 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.

154 Id.
155 Malik, The Near East, supra note 1, at 260.
156 Lindholm, supra note 152, at 34.
159 Id.
In proposing a pivotal role for “dignity,” Malik referenced the Charter of the United Nations. At a meeting of the Drafting Committee, he affirmed: “The Charter speaks in the preamble of the worth and dignity of man…. That is what we are called upon to promote and protect.”\textsuperscript{161}

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

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

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

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

\textsuperscript{161} \textit{Id.} at 27.
\textsuperscript{162} Shulztiner & Carmi, \textit{supra} note 21, at 471.
\textsuperscript{163} Malik, \textit{Four Basic Principles, supra} note 160, at 37.
\textsuperscript{165} Malik, \textit{Four Basic Principles, supra} note 160, at 38.
\textsuperscript{166} Malik, \textit{Required: National Moral Leadership, supra} note 166, at 92.
\textsuperscript{167} \textit{Id.} at 93.
\textsuperscript{168} \textit{Id.}
\textsuperscript{169} \textit{Id.} at 93.
And third, what “the relationship [is] between man and the state, the individual and the law. This is the great problem of statism.” 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.”

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

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.

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.” It was undeniable to him that the religious organizations that interacted with and fed ideas to the Committee were Jewish, Protestant, and Catholic.

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

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170 Id. at 94.
171 Id. at 116.
174 Charles Malik, Spiritual Implication of Universal Declaration, in THE CHALLENGE OF HUMAN RIGHTS, supra note 157, at 134.
Charles Malik. Neither the concept’s inspirational sources nor the usage of the word karāma at the time of the Declaration give any support to such a thesis.

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

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

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

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

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176 Id. at 233.
177 Id. at 235.
understanding of human rights,\textsuperscript{180} were being made available among Arabs precisely during the first half of the twentieth century.\textsuperscript{181}

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

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

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

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

\textsuperscript{181} NAGUIB BALADI, IN MEMORIAM YOUSSEF KARAM 459, 464 (Institut Dominicain d’Etudes Orientales du Caire—Mélanges, 1958).
THE ROLE OF DIGNITY IN ARAB AND ISLAMIC LEGAL TEXTS AFTER THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

Karāma in International Documents

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

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

The Project mentions “dignity” on two occasions:

Art. no. 18:  
The economy will be based upon the principles of Islamic Shari‘a which guarantees human dignity and social justice. It requires striving in life through both thought and deed and ensures lawful profit.184

And Art. no. 80:

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

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

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

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184 PROJECT, supra note 182, art. 18.
185 Id. art. 80.
The first paragraph of Art. no. 6 also states:

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

Art. no. 20 asserts:

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

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

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

Art. no. 2 states:

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

Art. no. 3, paragraph 3 emphasizes that:

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

Art. 17 commands:

\(^{187}\) *Id.* art. 6.

\(^{188}\) *Id.* art. 20.


\(^{190}\) *Id.* art. 2.

\(^{191}\) *Id.* art. 3.
Each State party shall ensure in particular to any child at risk or any delinquent charged with an offence the right to a special legal system for minors in all stages of investigation, trial and enforcement of sentence, as well as to special treatment that takes account of his age, protects his dignity, facilitates his rehabilitation and reintegration and enables him to play a constructive role in society.\textsuperscript{192}

Art. no. 20 states:

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

Art. no. 33, paragraph 3, states:

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

Art. no. 40, paragraph 1, states:

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

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

\textsuperscript{192} Id. art. 17.  
\textsuperscript{193} Id. art. 20.  
\textsuperscript{194} Id. art. 33.  
\textsuperscript{195} Id. art. 40.
Karāma in Constitutional Texts

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

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

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

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

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

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

Libya

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

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

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

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196 Beck & Hüser, *supra* note 7, at 5.
Paradoxically, one of the oldest constitutional “settlements” after the Arab Spring is the Libyan one. The post-Qadhafi 2011 provisional constitution, enforced during what was expected to be a transitional period to a permanent constitution, is filled with references to “dignity.”

This is true in the Preamble, which states:

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

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

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

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

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199 2011 CONSTITUTIONAL DECLARATION OF LIBYA (Aug. 3, 2011) http://www.wipo.int/wipolex/en/text.jsp?file_id=246953 (hereinafter LIBYA CONSTITUTION). It was slightly amended twice in 2012 in order to prepare the way for the general elections, the creation of a constituent assembly, and the constitutional drafting process. For the first amendment, see 2012 AMENDMENTS TO LIBYA’S CONSTITUTION OF 2011 (July 5, 2012), http://production.clinecenter.illinois.edu/REPOSITORYCACHE/155/BmMvx3OwWyP942nka3z72a5XDsG3kal1qzt4i4xwey7Zo1RL8yUH03WOGd0Jpx8BqXMjolT1TYdoaEp45111pL6Ms3F0fe3T9EVwL1Ff5_22947.pdf. For the second amendment, see THIRD CONSTITUTIONAL AMENDMENT OF 2012 (July 5, 2012) (Libya), http://www.righttononviolence.org/mecf/wp-content/uploads/2012/07/2012-07-05-Libya-Third-Constitutional-amendment.pdf.

200 LIBYA CONSTITUTION pmbl.

201 _Id._ art. 7.
to settle human dignity. It seems that recent developments in constitutional drafting have used *karāma* in a foundational way, rooting it in the Islamic theological discourse.

**Syria**

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

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

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

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

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

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

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203 SYRIAN CONSTITUTION OF 1973 art. 25
and the citizen are the objective and purpose for which every national effort is dedicated. Preserving the dignity of the society and the citizen is an indicator of the civilization of the country and the prestige of the state.\textsuperscript{204}

Art. no. 19 holds that:

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

Finally, Art. no. 33 affirms:

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

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

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

\textit{Tunisia}

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

The \textit{Preamble}, among other goals, mentioned the task of consolidating national unity and remain[ing] faithful to the human values that constitute the common heritage of the peoples attached to human dignity, justice and liberty and who are striving for peace, progress and free cooperation among nations.\textsuperscript{208}

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

\textsuperscript{204}SYRIAN CONSTITUTION OF 2012 pmbl.
\textsuperscript{205}Id. art. 19.
\textsuperscript{206}Id. art. 33.
\textsuperscript{208}Id. pmbl.
The Republic of Tunisia shall guarantee fundamental freedoms and human rights in their universality, comprehensiveness, complementarity and interdependence. The Republic of Tunisia shall be founded upon the principles of the rule of law and pluralism and shall strive to promote human dignity and to develop the human personality.\footnote{Id. art. 5.}

Finally, Art. no. 13 states:

Sentences are personal and shall be pronounced only by virtue of a law issued prior to the punishable act, except in the case of a more favorable law. Those deprived of freedom shall be treated humanely and their dignity shall be respected, in compliance with the conditions laid down by law.\footnote{Id. art. 13.}


The \textit{Preamble} itself stresses the recognition of dignity as one of the two main goals of the 2010–2011 revolution:

\begin{quote}
We, the representatives of the Tunisian people, members of the National Constituent Assembly,

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

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

Art. no. 4, third paragraph:

The motto of the Tunisian Republic is: freedom, \textit{dignity}, justice, and order.\footnote{Id. art. 4.}

Art. no. 23:
The state protects human dignity and physical integrity and prohibits mental and physical torture. Crimes of torture are not subject to any statute of limitations.  

Art. no. 30, first paragraph:

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

Art. no. 47:

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

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

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

Egypt

The first call to dignity in Egypt, the most influential country of the Middle East, came from Nasserism and from the Egypt’s quest for a place in the community of nations. Gamal Abd-al-Nasser, one of the leaders of Arab decolonization and then President of the Republic, galvanized Egyptians’ pride through using this concept; but its appeal crossed the state borders and influenced also other Arab countries. “For millions of Egyptians and Arabs who had suffered untold indignities at the hands of the colonizers, karameh [“dignity”] would find a sure resonance in their hearts.” 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

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214 Id. art. 23.
215 Id. art. 30.
216 Id. art. 47.
217 Charles Malik, The Near East, supra note 86, at 234.
Islamic law or political theory terminology yet. He was using a colloquial expression,\textsuperscript{219} which resonated deeply with the feelings of Arabs.

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

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

The \textit{Preamble} states:

Realizing that man’s humanity and \textit{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 \textit{dignity} is a natural reflection of the nation’s \textit{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.\textsuperscript{223}

Whereas Art. no. 42 affirms:

Any person arrested, detained or his freedom restricted shall be treated in such a manner that preserves his human \textit{dignity}.\textsuperscript{224}

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

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

\textsuperscript{219} \textit{Id}. at 54.
\textsuperscript{221} \textit{Id}.
\textsuperscript{223} \textit{Id}. pmbl.
\textsuperscript{224} \textit{Id}. art. 42.
The 2011 provisional text\textsuperscript{225} in Art. no. 9 focused on protection from public powers in saying that:

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

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

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

The Preamble itself stressed that:

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

Additionally,

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

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

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

Insulting or showing contempt toward any human being is prohibited.\textsuperscript{230}

Article 36, first paragraph, states:

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

\textsuperscript{226} Id. art. 9.
\textsuperscript{228} Id.
\textsuperscript{229} Id.
\textsuperscript{230} Id. art. 1.
\textsuperscript{231} Id. art. 36.
Finally, Art. no. 37 stressed the dignified treatment of prisoners:

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

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

The 2014 constitution\textsuperscript{233} now in force shows a deep concern for dignity twice in the Preamble:

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

. . .

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

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

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

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

\textsuperscript{232} Id. art. 37.
\textsuperscript{234} Id. pmbl.
\textsuperscript{235} Id. art. 51.
All those who are apprehended, detained or have their freedom restricted shall be treated in a way that preserves their dignity. They may not be tortured, terrorized, or coerced. They may not be physically or mentally harmed, or arrested and confined in designated locations that are inappropriate according to humanitarian and health standards. The state shall provide means of access for those with disabilities.\textsuperscript{236}

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

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

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

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

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

\textit{Karāma in the Countries that Adopted Dignity after the Arab Spring}

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

\textit{Jordan}

Jordan modified its 1952 constitution in 2011\textsuperscript{239} and introduced the idea of dignity. The mention of dignity is now embedded in Art. no. 8, which protects personal liberty:

\textsuperscript{236} Id. art. 55.  
\textsuperscript{237} Id. art. 56.  
\textsuperscript{238} Id. art. 71.  
1. No person may be seized, detained, imprisoned or the freedom thereof restricted except in accordance with the provisions of the law.
2. Every person seized, detained, imprisoned or the freedom thereof restricted should be treated in a manner that preserves human dignity; may not be tortured, in any manner, bodily or morally harmed; and may not be detained in other than the places permitted by laws; and every statement uttered by any person under any torture, harm or threat shall not be regarded.240

Morocco

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

The first appearance of dignity is in the Preamble:

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

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

Art. no. 22 states:

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

Art. no. 161 proclaims:

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

240 Id. art. 8.
242 Id. pmbl.
243 Id. art. 22.
and collective rights and freedoms of the citizens [feminine] and the citizens [masculine], and this, with strict respect for the national and universal referents in the matter.\textsuperscript{244}

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

\textbf{Beyond the Arab Spring: Other Appearances of Karāma}

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

\textit{Kuwait}

The 1962 Kuwait constitutional \textit{Preamble}\textsuperscript{246} is committed to enhancing the “dignity of the individual,” while its text later insists that “[a]ll people are equal in human dignity and in public

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

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

\textsuperscript{246} \textit{CONSTITUTION OF KUWAIT} 1962 pmbl., \textit{unofficial translation available at} http://www.servat.unibe.ch/icl/ku00000_.html .
rights and duties before the law.” 247 Here “dignity” is at the root of both rights and duties: “[w]ork is a duty of every citizen necessitated by personal dignity and public good.” 248

Algeria

Algeria’s constitutional culture enshrined the idea of “dignity” as early as 1963, 249 immediately after its liberation from French colonizers, counting the “respect for the dignity of the human being” among the “fundamental objectives” of the Republic. 250 The 1976 constitution 251 later concretized this fundamental objective with the specification that the state would be responsible for securing individuals’ dignity. 252 It also added that the liberators of the country (mujahiddin) acquired a special dignity through their actions, which justified a heightened protection for them and their memory. 253 The 1996 constitution 254 reinforced the role of dignity as a shield of the inviolable rights of the individual against any act of violence, 255 confirmed the special dignity that the revolution, its martyrs, and symbols enjoyed, 256 and added in its Preamble that Algeria is a land endowed with freedom and dignity. 257 In a few words, Algeria constitutionalism has broadened the meaning of dignity to progressively encompass the rights of individuals, the special statuses of heroic combatants, and the country’s values.

Bahrain

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

247 Id. art. 29.
248 Id. art. 41.
250 Id. art. 10.
252 Id. art. 33.
253 Id. art. 85.
255 Id. art. 34.
256 Id. art. 62.
257 Id. pmbl.
259 Id. art. 18. Note that the Article specifies that “citizens shall be equal in public rights and duties before the law, without discrimination as to race, origin, language, religion, or belief,” while remaining silent as to gender equality.
“personal dignity” and “public good.” Dignity therefore inheres in men and women as a right as well as a duty.

**Yemen**

The 1991 Yemeni constitutional text, later amended in 1994 and 2001, bears the signs of “human dignity” as understood in liberalism. It mentions this concept twice, while speaking of the duty of the state to preserve and protect the dignity and freedom of its citizens, and later while specifying that restrictions on freedom cannot entail that human dignity be demeaned.

**Mauritania**

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

> Considering that the liberty, the equality, and the dignity of Man cannot be assured except in a society which consecrates the primacy of law, concerned by creating durable conditions for a harmonious social evolution, respectful of the precepts of Islam, sole source of law and open to the exigencies of the modern world, the Mauritanian people proclaim, in particular, the intangible guarantee of the following rights and principles:
>  • the right to equality;
>  • the fundamental freedoms and rights of the human person;
>  • the right of property;
>  • the political freedoms and the trade union freedoms;
>  • the economic and social rights;
>  • the rights attached to the family, basic unit of the Islamic society.

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260 *Id.* art. 13.
264 *Id.* art. 48a.
265 *Id.* art. 48 b.
268 *Id.* pmbl.
**Saudi Arabia**

Saudi Arabia’s 1992 Basic Law\(^{269}\) has a rather limited scope, as this country has consistently maintained that Islamic law in itself is its constitution. However, “human dignity” is mentioned in the field of mass media communication and justifies limitations to freedom of expression.\(^{270}\)

**Sudan**

The 2005 Sudanese constitution\(^{271}\) mentions dignity several times. Its president is committed to preserving the “dignity” of the entire people.\(^{272}\) The state protects every human being’s “inherent right to life, dignity and the integrity of his person,”\(^{273}\) and the constitution prohibits treatment of prisoners that would degrade their dignity.\(^{274}\) The “dignity and status of women”\(^{275}\) and of the elderly\(^{276}\) are mentioned specifically. Dignity also is expanded to support welfare policies, which should bring aid to people in need.\(^{277}\)

**Oman**

In 2011 the Sultanate of Oman modified the 1996 constitution\(^{278}\) but left unaltered the only provision that touched upon the subject of *karāma*, namely Art. no. 31:

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

**Somalia**

In 2012, Somalia enforced a provisional constitution\(^{280}\) after a peace process that had taken almost a decade; its drafting was influenced by the circumstances of the war and the following


\(^{270}\) *Id.* art. 39.


\(^{272}\) *Id.* art. 56.

\(^{273}\) *Id.* art. 28; *Id.* pmbl.

\(^{274}\) *Id.* art. 149.

\(^{275}\) *Id.* art. 32.

\(^{276}\) *Id.* art. 45.

\(^{277}\) *Id.* art. 45; *Id.* art. 185.


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

\(^{280}\) **FEDERAL REPUBLIC OF SOMALIA PROVISIONAL CONSTITUTION 2012.**
conditions of peace, while the Arab Spring’s echoes seem to have been weak. Nation building, the reconciliation and peace process, and constitution building went hand in hand, singling out Somali constitutionalism from that of the rest of the Arab world. The incorporation of karâma therefore does not appear to be related to the Arab Spring’s constitutionalism.

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

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

Dignity beyond the Arab Spring: A Summary

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

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

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

281 Id. art. 10.
282 See Cavedon, supra note 37, at 483 (describing this).
283 Id. (discussing this).
embraces human rights discourse; but when it bases the constitution on a theological ground, then it links back to Islam. *Karāma* connects both facets of contemporary Arab constitutionalism, regardless of the latest Arab Spring events and revolutions.

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

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

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

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

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

This connection between dignity’s ambiguity\(^\text{285}\) and its success is a hallmark of the global discourse. The concept’s amorphousness\(^\text{286}\) 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.\textsuperscript{287} To some extent, it has also provided a foundation for human rights themselves.\textsuperscript{288}

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

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

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

\textsuperscript{288} \textit{Griffin, supra} note 284, at 250.
\textsuperscript{289} Laura Nader, \textit{Culture and Dignity: Dialogues Between the Middle East and the West} 1 (2012).
\textsuperscript{290} Dawisha, \textit{supra} note 218, at 54.
\textsuperscript{291} Mahmud Hilmi, \textit{Dustur Al Misri Was Al Dasatir Al-‘Arabiya Al Mu’asira}, Dar Al-‘Azi 1 (1971).
\textsuperscript{292} Malik, \textit{The Near East, supra} note 1, at 236.
\textsuperscript{293} \textit{Id.} at 237.
test of Arab patriotism, dynamism, wisdom and statesmanship. It [constituted] a virtual touchstone of Arab capacities for self-preservation and self-determination.”

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

And the wide usage of the term dignity in a third way, to depict the constitutional commitment to granting affordable education and medical care, testifies that extremely poor life conditions spurred the revolts and revolutions. The frequent constitutional articles pertaining to welfare are largely “aspirational” rather than “justiciable,” but they are not unusual in Islamic regimes 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—that evidently trigger the state’s intervention, instead of putting a check on it. While it is a distinctive feature of common law traditions to pay relatively small attention to socio-economic rights, civil law regimes highly value social rights and welfare. Socio-economic rights can be and are understood by portions of contemporary constitutionalism as core elements of human rights: actually, as will be shown below, the idea of human dignity in Western constitutions was first deployed the field of economic and social rights. It is no surprise, then, that they also are linked back to the idea of “human dignity” in the Arab context.

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

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294 Id. at 242.
296 Id. at 1069.
297 DALY, supra note 286, at 114.
298 Courtney Jung et al., supra note 295, at 1064.
299 Id. at 1056.
implications for the American understanding of privacy. There, they tried to convey the protection of human dignity through the idea of privacy, with the primary purpose of protecting individuals’ honor and reputation. And, coming closer to our times, philosophers such as Jeremy Waldron advocate for a “civic” understanding of dignity, which is committed to protecting the social reputation and standing of individuals and therefore legitimates public powers’ intervention to counterbalance social threats to individuals.300

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

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

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

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

300 Daly, supra note 286, at 120.
301 Richter-Bernburg, supra note 83, at 81.
302 The connection between God, man, and human rights is oftentimes shaped according to the natural law theory: “a constitutionalism of any really viable sort presupposes Being and thus presupposes God.” Robert Lowry Clinton, God and Man in the Law 170 (1997).
303 On the tensions between the communitarian ideal and the individualistic ideal of dignity, see McCrudden, Human Dignity, supra note 14, at 699.
as a right to be equally acknowledged societally, not just to be protected legally.\textsuperscript{304} After all, the participative claims of the Arab Spring’s protesters,\textsuperscript{305} who aimed at clearing away authoritarian figures from the public space and “recreating the political space to nurture democratic and participatory activity,” confirmed Hannah Arendt’s understanding of dignity as participation in a political community.\textsuperscript{306}

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

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

\textbf{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;\textsuperscript{308} a few years later came the 1929 constitution of Ecuador,\textsuperscript{309} the 1937 Irish constitution, and the 1940 Cuban constitution.\textsuperscript{310} All of them had incorporated dignity in their texts before the United Nations Charter.\textsuperscript{311} In the

\textsuperscript{304} DALY, supra note 286, at 124.
\textsuperscript{305} Anouar Boukhars, The Arab Revolutions for Dignity, 33 AM. FOREIGN POLICY INTERESTS 61, 67 (2011).
\textsuperscript{306} DALY, supra note 286, at 133.
\textsuperscript{307} Bernhard Schlink, The Concept of Human Dignity, in UNDERSTANDING HUMAN DIGNITY, supra note 122, at 63 (highlighting that there is a common core in the use of dignity that seems to be cross-cultural).
\textsuperscript{308} See supra note 133.
\textsuperscript{309} See supra note 134.
\textsuperscript{310} See supra note 136.
\textsuperscript{311} See supra note 137.
span of twenty years, the role of dignity rose as “part of the establishment of an alternative constitutionalism.”³¹²

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

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

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

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

³¹³ David Hollenbach, Human Dignity: Experience and History, Practical Reason and Faith, in UNDERSTANDING HUMAN DIGNITY, supra note 122, at 192.
³¹⁸ Moyn, supra note 315, at 97.
divinely ordained hierarchy.” 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.

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

The focus on the individual and on his intrinsic nature and value took place only progressively. Although scholars diverge on this point, it seems apparent that for a long time the recognition of the value of all human beings—famously proclaimed by Kant—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. There is evidence that by then dignity was already understood also as inherently pertaining equally to all human beings without regard to their social position. It was under the centuries-long Catholic influence that in the first half of the nineteenth century Simón Bolívar claimed freedom and “dignity” for the oppressed peoples of Latin America. As already noted, the 1848 French abolition of slavery is considered the earliest visible sign of human dignity as a legal value. By the end of the century, Christian thinking was spreading this understanding of dignity: the 1919 Weimar constitutional reference to dignity is believed to have been influenced by Christian cultural strands. Interestingly

319 Michael Rosen, Dignity: The Case Against, in UNDERSTANDING HUMAN DIGNITY, supra note 122, at 148.
322 ROSEN, DIGNITY: ITS HISTORY, supra note 314, at 24.
324 James Hanvey, Dignity, Person, and Imago Trinitatis, in UNDERSTANDING HUMAN DIGNITY, supra note 122, at 213.
325 Carozza, From Conquest, supra note 323, at 295.
326 Id. at 301 n.102.
enough, both the European Weimar (1919) and the Latin American Ecuador (1929) constitutional experiments draw from the idea of dignity to secure some basic rights in the social and economic fields, instead of deploying it in the context of, say, *habeas corpus*. Many Arab constitutions would later deploy the concept in the same socio-economic constitutional contexts.

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

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

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

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328 Carozza, *From Conquest*, supra note 323, at 282.
334 The 1937 Irish constitution *Preamble* stated that it was “seeking to promote the common good, with due observance of Prudence, Justice and Charity, so that the dignity and freedom of the individual may be
promulgated shortly after the two pontifical documents and was deeply influenced by Catholic teaching. The main drafter of the text, Eamon de Valera, was familiar with the neo-Scholastic circles that promoted the idea of human dignity and showed the papal nuncio in Ireland critical points in the text, including the mention of dignity.335

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

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

assured, true social order attained, the unity of our country restored, and concord established with other nations.” Const. of Ireland 1937.
335 Moyn, Constitutional Dignity, supra note 320, at 54.
336 Moyn, Secret History, supra note 315, at 106.
337 Christoph Goos, Würde des Menschen: Restoring Human Dignity in Post-Nazi Germany, in UNDERSTANDING HUMAN DIGNITY, supra note 122, at 92.
338 WALDRON, supra note 316, at 33.
340 Moyn, Constitutional Dignity, supra note 320, at 56; see SMITH, supra note 180, at 29 (discussing dignity and the Catholic Church).
341 Johnston, supra note 84, at 900.
342 Id.
CONCLUSION: THE PLACE OF KARĀMA IN THE GLOBAL QUEST FOR “DIGNITY”

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

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

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

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

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

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

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

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

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

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

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

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

344 Christopher McCrudden, Human Dignity, supra note 14, at 678.
345 Id.
At the moment, the tendency to harmonize the Universal Declaration and documents such as the Islamic Declaration leans towards conforming the latter to the former. The new constitutions seem to confirm this, as interpretative efforts try to make the Islamic tradition converge with the global concept of dignity, instead of vice-versa. This assimilation is apparent not simply from the use of the word “dignity” but also from the contexts in which it is used. The protection of human persons, as understood by the globalized discourse on human rights, is clearly at the core of the new constitution-building.

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

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

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

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347 This attempt to square Islamic legal traditions with the human rights tradition is not unique to the concept of dignity: concepts coming from outside religious traditions have influenced religious interpretation throughout Islamic modernity. See NADER HASHMI, ISLAM, SECULARISM, AND LIBERAL DEMOCRACY: TOWARD A DEMOCRATIC THEORY FOR MUSLIM SOCIETIES, 70 (2005) (discussing democracy and Islam).
results. Just to name a few: in Canada it led the Supreme Court to decide that assisted suicide was permissible;\(^{351}\) the European Court of Justice decided that it was possible under European Union law to consider the “laser tag” game as “playing at killing” and therefore an offense to human dignity;\(^{352}\) the United States Supreme Court in \textit{United States v. Windsor}\(^{353}\) and \textit{Obergefell v. Hodges}\(^{354}\) mentioned the concept of “equal dignity” repeatedly in the context of same-sex marriage rights,\(^{355}\) to the extent that now commentators prophesize that dignity will become a milestone in constitutional adjudication in America,\(^{356}\) as a piece of the globalized culture of fundamental rights.\(^{357}\) \textit{Karāma} probably will shift through litigation on its meaning and scope, as happens everywhere else the concept of dignity is played out.

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

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

\(^{351}\) \textit{Carter v. Canada.}, [2015] 1 S.C.R. 331 ¶ 2 (Can.).


\(^{353}\) 133 S. Ct. 2675 (2013).

\(^{354}\) 135 S. Ct. 2584 (2015).


\(^{357}\) \textit{Id.} at 21.


\(^{359}\) Malik, \textit{The Near East, supra} note 1, at 264.
Morocco,” for instance, suggest avoiding “generalized evaluation of the role of Islam even within…the sub-region of North-Africa.”

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

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

Second, it is not at all clear what the result of blending karāma with Islamic law will be. After all, “[i]n almost every country of the Muslim world, people disagree about who can interpret sharia and about what sharia requires.” The diversification of Arab societies is likely to play a major role, as it probably will push the use of karāma in different directions: “different groups…might agree that there is such a thing as the dignity of the person and largely agree on the rights that follow from it, but differ in their understanding of quite what that ‘dignity’ is.”

This does not equate to a dilution of the word’s meaning and its implications: “the idea of dignity reflects sociohistorical conceptions of basic rights and freedoms.” For decades after World War II, dignity “was something like a proprietary Catholic concept, generally restricted to natural law circles”; 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

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362 Id.
363 Lombardi, Designing Islamic Constitutions, supra note 25, at 616.
364 Griffin, supra note 284, at 192.
365 Schachter, supra note 148, at 853.
366 Moyn, Constitutional Dignity, supra note 320, at 64.
typical of some liberal traditions.\footnote{Neville Cox, \textit{The Clash of Unprovable Universalisms—International Human Rights and Islamic Law}, 2 OXFORD J. L. & RELIGION 307, 313 (2013).} Pure individualization would deny the Islamic feature of the word, as well as its transcendent approach which attaches liberty to its ultimate goal: the \textit{“worth of the individual} in the horizontal relations between different human beings” cannot mean here erasing the \textit{“status of the ‘human beings’ in the vertical relation to God.”}\footnote{Habermas, \textit{supra} note 317, at 474.}

Another unique feature of the Arab version of dignity has to do with the relationship among law, the public square, and religion. It is very probable that the public discourse of what constitutes \textit{karāma} will include religious discourse, which is implicated in rooting this concept in Islamic doctrine. Drawing from Islamic law while interpreting \textit{karāma} does not pre-decide its meaning, but it necessarily gives standing to religious thinking. Public dialogue in new Arab constitutional democracies will be able to use religious tones as well.\footnote{DALY, \textit{supra} note 286, at 108.}

Finally, \textit{karāma} may also challenge the global discourse on dignity. On one hand, it may disentangle dignity from the \textit{“right to autonomy,”}\footnote{GRIFFIN, \textit{supra} note 284, at 192.} 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 \textit{“provide a modicum of material well-being such as housing, access to water and food, and medical care.”}\footnote{DALY, \textit{supra} note 286, at 114.} Such state interventions would probably not narrow down the scope of dignity but would rather challenge its liberal interpretations, which are inclined to hold that the only \textit{“state’s job is to get out of the way.”}\footnote{\textit{Id.} at 123.}

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

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\item \textsuperscript{367} Neville Cox, \textit{The Clash of Unprovable Universalisms—International Human Rights and Islamic Law}, 2 OXFORD J. L. & RELIGION 307, 313 (2013).
\item \textsuperscript{368} Habermas, \textit{supra} note 317, at 474.
\item \textsuperscript{369} DALY, \textit{supra} note 286, at 108.
\item \textsuperscript{370} GRIFFIN, \textit{supra} note 284, at 192.
\item \textsuperscript{371} DALY, \textit{supra} note 286, at 114.
\item \textsuperscript{372} \textit{Id.} at 123.
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