Judicial Interpretation of Human Dignity by Hong Kong’s Courts

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Abstract
This study employed empirical, case, and comparative analysis methods to examine how Hong Kong’s courts have judicially interpreted the concept of human dignity. It aimed to understand the concept of human dignity in Hong Kong law and its role in judicial adjudication and to explore the contributions that Hong Kong’s courts have made to interpreting and developing the concept of human dignity in support of the development of national and international human rights. In this study, cases heard in Hong Kong’s courts from 1997 to 2019 were analyzed. The results showed that Hong Kong’s courts interpreted the concept of human dignity in cases concerning the right to equality, right to privacy, right to work, right to dignity, and the prohibition of torture and other cruel, inhuman, or degrading punishment or treatment, despite the fact that some of them are not found in the Hong Kong Basic Law. The concept of human dignity provides a foundation on which judges can interpret human rights and is a useful tool for litigants to safeguard their human rights. Although Hong Kong’s courts have cited interpretations of human dignity made by the European Court of Human Rights and other common law courts, they have also interpreted it in their own unique way. Hong Kong’s courts have made great contributions to shaping the concept of human dignity to increase justice around the world.

Keywords
human dignity, human rights, Hong Kong’s courts, judicial interpretation, right to dignity

Introduction
Human dignity was established as a concept when it was mentioned in the Preamble and Articles 1, 22, and 23 of the Universal Declaration of Human Rights (UDHR) and popularized the use of “dignity” and “human dignity” in human rights discourse (McCrudd, 2008). Human dignity was then also mentioned in the International Covenant on Civil and Political Rights (ICCPR); International Covenant on Economic, Social and Cultural Rights (ICESCR); Convention on the Elimination of All Forms of Discrimination Against Women; Convention on the Elimination of Racial Discrimination; Convention against Torture or other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and other international conventions. Given its prevalence in international and national jurisprudence, dignity is becoming increasingly common in legal texts concerned with protecting human rights in many jurisdictions (McCrudd, 2013). For example, given the increasing amount of jurisprudence that refers to human dignity, the European Court of Human Rights states that the very essence of the European Convention on Human Rights (ECHR) is respect for human dignity and human freedom in Pretty v. United Kingdom (1997), indicating that it regards human dignity as the foundation of all the rights protected by this Convention. There has also been an exponential growth in the discussion of dignity in the courts of England and Wales (Moon & Allen, 2006).

Does the Basic Law of the Hong Kong Special Administrative Region (HKBL) and Hong Kong’s laws contain the term “human dignity”? Although the HKBL affirms certain rights, it does not directly mention “human dignity” or “dignity.” Art. 6 of the Hong Kong Bill of Rights stipulates the rights of persons deprived of their liberty, stating, “(1) All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” Furthermore, the dignity of diplomats and consular officers is protected by the Promulgation of National Laws 1997 Schedule 5 Regulations of the People’s Republic of China Concerning Diplomatic Privileges and Immunities, the Promulgation of National Laws (No. 2) 1997 Schedule 3 Regulations of the People’s Republic of China Concerning Consular Privileges and Immunities, and the Consular...
The dignity of deceased persons is protected by the Private Columbaria Ordinance in Hong Kong.

The Hong Kong Bill of Rights mentions the dignity of persons deprived of liberty, and other statutes protect the dignity of diplomats, consular personnel, and the deceased. Do Hong Kong’s courts have a history of addressing human dignity? What are the roles of human dignity in Hong Kong’s courts? What are the contributions made by Hong Kong’s courts to the definition and development of Human Dignity?

Literature Review

Hong Kong’s courts have a wealth of precedents involving human rights, and they have rich practice in the protection of human rights (Ma, 2017; Shen, 2020; Young & Ghai, 2014).

Chinese and Hong Kong scholars have argued that Hong Kong residents’ economic and social rights must be protected based on human dignity. Chan (2004) examined the weak welfare system of the unemployed persons and argued that Hong Kong’s government should place dignity at the center of its welfare policy. Chan and Bowpitt (2005) studied how human dignity was incorporated into Hong Kong’s welfare systems. Shen (2020), who examined how Hong Kong’s courts protected human rights from 1997 to 2017, pointed out that the right to an adequate standard of living stems from human dignity. Hong Kong’s courts protected the right to minimum social security in Kong Yunming v. the Director of Social Welfare (2014).

Chinese and Hong Kong scholars have argued that human dignity is one of the grounds for right to equality. Lee’s study (2009) showed how Hong Kong’s courts considered unfair treatment detrimental to human dignity in Fok Chun Wa & Another v. Hospital Authority and Another (2012) according to Shen’s study (2020).

In summary, the research on interpretation of human dignity by Hong Kong’s courts’ needs to be advanced. The aim of the present study was to fill this gap. McCrudde (2008, 2013) and other legal scholars (e.g., Avbelj & Matej, 2018; Barak, 2015; Carozza & Paolo, 2011) have studied judicial interpretations of human dignity in numerous works that laid the foundation for the development of comparative research for this article.

Research Questions

This study was conducted to:

1. Understand how Hong Kong’s courts have judicially interpreted the concept of human dignity after Hong Kong was reunified with China,
2. Explore how judges and litigants in Hong Kong’s courts use the concept of human dignity and the relationship between human dignity and human rights in Hong Kong’s courts, and
3. Determine how Hong Kong’s courts have shaped the concept of human dignity on a global scale.

Methods

First, this study uses an empirical analysis. All of the judgments in cases about human dignity made from 1997 to 2019 in Hong Kong’s courts were statistically analyzed.

Second, this study applies case analysis. The cases that were mainly analyzed were representational, leading human dignity cases. The analysis was conducted to explore how judges and litigants use human dignity in Hong Kong’s courts and to understand the relationship between human dignity and human rights in the courts.

Third, this study adopts a comparative analysis of how Hong Kong’s courts have shaped the concept of human dignity in support of national and international human rights development.

Findings and Discussion

Categories of Cases Directly Related to Human Dignity

The terms “dignity” or “human dignity” appeared in the judgments of 31 cases in the analysis period. The rights most frequently at issue in these cases, the relevant legal provisions, and numbers of cases are shown in Table 1. These 31 were classified according to the human rights addressed in them and relevant legal provisions guaranteeing them.

Of the 31 cases analyzed, one case was about the dignity of the deceased, four were about economic and social rights, and 25 were cases about civil and political rights.

Clapham (2006) has usefully suggested that:

Concern for human dignity has at least four aspects: (1) the prohibition of all types of inhuman treatment, humiliation, or degradation by one person over another; (2) the assurance of the possibility for individual choice and the conditions for ‘each individual’s self-fulfilment’, autonomy, or self-realization; (3) the recognition that the protection of group identity and culture may be essential for the protection of personal dignity; (4) the creation of the necessary conditions for each individual to have their essential needs satisfied. (p.538)

This system was used to categorize the 31 cases analyzed in this study.

Prohibition of inhuman treatment, humiliation, or degradation.

Human dignity has figured prominently in judgments concerning the meaning and scope of prohibitions on torture and inhuman and degrading treatment in Hong Kong’s courts. In Mohammad Palash v. William Lam, Esq and another (2017),
the court cited from Pretty v. United Kingdom (2002): “Treatment which humiliates or debases people, which disrespects or diminishes their ‘human dignity’ or arouses feelings of fear, anguish or inferiority and is capable of breaking their moral and physical resistance may be characterized as sufficiently degrading.”

In Luu the Truong v. The Chairman of the Refugee Status Review Board and Another (2003), both the Refugee Status Review Board and the court confirmed that acts of regular but petty discrimination are undesirable and harmful but do not necessarily amount to the denial of human dignity in the sense that it is referred to in the United Nations Convention Relating to the Status of Refugees. In Ubamaka Edward Wilson v. Secretary for Security &Another (2009), the court cited Lord Hope in R (Limbuela) v. Home Secretary (2006), who said, “the European court has all along recognized that ill-treatment must attain a minimum level of severity if it is to fall within the scope of the expression inhuman or degrading treatment or punishment.” The court also cited the interpretation of inhuman or degrading treatment in The Law of Human Rights (Richard & Hugh, 2009). Finally, the court held that the applicant would not be subject to inhuman or degrading punishment as a result of the deportation order.

Art. 28 of the HKBL, Arts. 3 and 6 of the Hong Kong Bill of Rights, Part VIIC “Torture claims” of the Immigration Ordinance, and Art. 1 of the CAT are often the legal basis for the prohibition of inhuman treatment, humiliation, and degradation. Hong Kong’s courts also cite cases heard by the European Court of Human Rights and other common law courts when they make decisions. Thus, Art. 3 of the ECHR and the CAT are also cited and discussed in cases concerning torture. Because of the characteristics of cases concerning the right to not be subject to torture or to cruel, inhuman, or degrading treatment or punishment in Hong Kong, Art. 33 of the United Nations Convention Relating to the Status of Refugees is relevant to cases involving the status of refugees.

In sum, torture or to cruel, inhuman, or degrading treatment or punishment is interpreted by Hong Kong’s courts as infringements of human dignity. The issue in these cases is to determine whether the alleged victims have actually suffered torture or inhumane or disregarding treatment. The HKASR courts discuss dignity when interpreting Hong Kong’s human rights laws.

Individual choice and the conditions for self-fulfillment, autonomy, and self-realization. The right to privacy is protected by Art. 30 of the HKBL and Art.14 of the Hong Kong Bill of Rights. Does violating someone’s right to privacy constitute an infringement of their human dignity? If so, under what conditions? Have Hong Kong’s courts answered these questions in their judgments?

Hong Kong’s courts have often held that dignity and privacy are closely related. In Sham Wing Kan v. Commissioner of Police (2017), the court considered many relevant common law cases, including the minority opinion in R. v. Fearon (2014) which held that an individual’s right to a private sphere is a “hallmark of a free and democratic society and privacy is essential to human dignity, to democracy, and to self-determination.” The court affirmed the importance of protecting privacy and declared that Section 50(6) of the Police Force Ordinance (Cap 232) (PFO), which authorizes police officers to search the digital content of mobile phones and similar devices seized upon arrest without a warrant in exigent circumstances, is constitutional and compliant with Art. 14 of the Hong Kong Bill of Rights and Art.30 of the HKBL. In HKSAR v. Ko Kam Fai (2001), the court confirmed that:

The [defendant] committed the series of offences over a protracted period of time. The pictures and stories were obviously tailor-made by the Defendant who had managed to obtain the personal particulars of the victims, seeking to annoy, insult and put the victims in extreme fear. It has demonstrated sheer disrespect for human dignity and disregard of the personal feelings of the victims.

| Cases directly related to human dignity | Provisions of HKBL | Provisions of Hong Kong Bill of Rights | Quantity |
|----------------------------------------|--------------------|----------------------------------------|----------|
| No torture or to cruel, inhuman or degrading treatment or punishment | 25,28,30,39 | 1,3,4,5,11,14,22 | 31 |
| Right to privacy | 30 | 14 | 7 |
| Right to equality | 25 | 1,22 | 7 |
| Right to dignity of persons deprived of their liberty | 26 | 6 | 2 |
| Right to vote | 26 | 21 | 1 |
| No slavery or servitude | 4 | | 1 |
| Privilege against self-incrimination | 33 | 11(2)(g) | 1 |
| Right to work | | | 2 |
| Right to social security and social welfare | | | 1 |
| Dignity of deceased person | | | 1 |
In this case, the court deemed that personal information was private and violating someone’s privacy to annoy, insult, and put them in extreme fear demonstrated disrespect for human dignity.

The Hong Kong’s courts also discuss dignity in cases concerning the rights of gay, lesbian, and transgender people. In *Navarro Luigi Recasa v. Commissioner of Correctional Services & Another* (2018), the applicant was a pre-operative male-to-female (“MtF”) transgender person who alleged that the decisions to detain her both at the Pik Uk Correctional Institution and later in the male wing of the Vulnerable Prisoners Unit of the Siu Lam Psychiatric Centre infringed upon her fundamental rights to dignity and that her psychological compulsions and gender identity were protected by her right to privacy. In *Q, R and Tse Henry Edward v. Commissioner of Registration* (2019), the applicants challenged the Commissioner of Registration’s refusal to allow a female-to-male transgender person to change their gender on their identity card from female to male on the grounds that they failed to meet certain requirements. The applicants claimed that the refusal and the relevant policy was unlawful on the grounds that they were unconstitutional as they amounted to an arbitrary and disproportionate infringement of applicants’ right to privacy and infringed applicants’ right not to be subjected to cruel, inhuman, or degrading treatment.

Although Hong Kong’s courts have held that the right to privacy is essential to human dignity, they are still trying to balance the right to privacy and public interest.

The right to not be held in slavery or servitude is codified in Art.4 of the *Hong Kong Bill of Rights* which is similar to Art.8 of the ICCPR. However, even the European Court of Human Rights in *Rantsev v. Cyprus and Russia* (2010) was not prepared to definitively say that “slavery” in Art.4(1) of the ECHR, when construed as a living instrument, covers modern slavery or human trafficking despite the serious affront to the human dignity and fundamental freedoms of the victims of each. In *ZN v. Secretary for Justice and Another* (2018), the court described “human trafficking as fundamentally objectionable because regardless of the form of exploitation intended, it treats human beings as commodities to be imported and exported for exploitation. It is an affront to the inherent human dignity of the victims involved.” The court also cited cases heard by European Court of Human Rights and held that trafficking threatens the human dignity and fundamental freedoms of its victims and that cannot be considered to be compatible with a democratic society and the values expounded in human rights conventions.

The right to justice is an important right that is codified in the *Hong Kong Bill of Rights* in Art.9(2) which stipulates a privilege against self-incrimination.

The privilege against self-incrimination protects personal freedom and human dignity. In *Salt & Light Development Inc. & Another v. Sjit Sunway Software Industry Ltd.* (2006), the court held that the consequences of a forced answer could be life-threatening. The court claimed that this principle was deeply rooted in Hong Kong law, citing *Lam Chi Ming v. The Queen* (1991) and stated that it is “the affront to dignity and privacy inherent in a practice which enables the prosecution to force the person charged to supply the evidence out of his or her own mouth.” The court held that a company as a legal person had the privilege against self-incrimination but that this right did not extend to its directors.

Participation in political life is also important. The right represents a certain degree of individual choice and it is one of the methods for individuals to exercise their autonomy and seek self-fulfillment. Thus, in *Chan Kin Sum, Leung Kwok Hung and Choi Chuen Sun v. the Secretary for Justice & Another* (2008), the court cited the decision in *August v. Electoral Commission* (1999) where the Constitutional Court of South Africa pointed that, “universal adult suffrage on a common voters’ roll is one of the foundational values of our entire constitutional order. . . . The vote of each and every citizen is a badge of dignity and of personhood.”

**Protection of group identity and culture.** Réaume (2003) argues that, unless equality or a prohibition against discrimination means that everyone must be treated the same all of the time, judges need some basis for deciding which distinctions are permissible and which are not. The right to equality is enshrined in numerous international human rights instruments and is widely embodied in the constitutions of jurisdictions around the world. It is constitutionally protected by Art. 5 of the HKBL and Arts.1(1) and Art.22 of the *Hong Kong Bill of Rights*. Hong Kong’s courts often use the concept of dignity as the normative basis for evaluating antidiscrimination laws and issues.

In *Secretary for Justice v. Yau Yuk Lung Zigo & Another* (2007), the respondents were charged with having engaged in sodomy with each other than in private in violation of s. 118F (1) of the *Crimes Ordinance, Cap. 200* (s. 118F (1)). The respondents argued that s.118F (1) is unconstitutional because it is discriminatory and infringes on the constitutional right to equality. Chief Justice Li, with whose judgment all members of the court agreed, stated the essence of the right to equality is equality before the law, which is a fundamental human right. Equality is the antithesis of discrimination. Discriminatory law is unfair and violates the human dignity of those discriminated against. *Director of Immigration v. QT* (2018) raises important issues concerning equality under the law, specifically, whether the Director of Immigration engaged in unlawful discrimination in administering dependent visas. QT was homosexual and entered into a same-sex civil partnership in England under the UK’s 2004 Civil Partnership Act with her partner SS in May 2011. SS was offered employment in and was granted an employment visa to work in Hong Kong. QT applied for a dependent visa but was refused by the Director of Immigration. QT alleged that the policy regarding the issue of dependent visas was unlawfully discriminatory.
Thus, discrimination and discriminatory laws can be understood to be unfair and to violate the human dignity of certain groups by violating their right to equality. Discrimination on any grounds, such as race, color, sex, language, religion, political, or other opinion, national or social origin, property, and birth or other status, is prohibited by law and such laws have been upheld by Hong Kong’s courts. However, distinction is allowed when it satisfies the justification test. Such differences in treatment do not constitute discrimination and do not infringe on the constitutional right to equality.

*Creation of the necessary conditions for individuals to have essential needs satisfied.* Socio-economic rights have also been interpreted as strongly connected to human dignity because the necessary material resources assure people’s rights to life and human dignity. In *Andayani v. Chan Oi Ling* (2001), the court stated that the applicant’s $2,200 per month wage was below the minimum wage and was insufficient to provide them with a decent standard of living and a reasonable amount of take-home pay which a migrant worker would reasonably expect for her labor. “Any right-thinking member of our civilised society must regard such a wage an affront to justice and insult to human dignity.” The minimum wage is a key factor for living in society, so society must provide workers with a minimum wage to help them lead a dignified life. In *GA, JA, FL & PA v. the Director of Immigration* (2014), GA, FI, and JA were refugees and PA was a screened-in torture claimant. The broad issue in this case was whether a right to work was recognized in Hong Kong for people in these categories. The applicants claimed that the prohibition against working was inhumane and degrading. The Court of Final Appeal (CFA) refused to apply the ICESCR directly in Hong Kong, pointing out differences in the provisions of the ICESCR and the Basic Law. The CFA said that Art.33 of the Hong Kong Bill of Rights referral to the right to work was narrower than the right protected by the ICESCR because the former only dealt with the freedom of choice of occupation. The CFA denied that the right to work existed, but did hold that the Director of Immigration must exercise their discretion to give permission to work if withholding such permission would result in inhuman or degrading treatment or a substantial and imminent risk thereof.

The court affirmed that the right to social security and social welfare is necessary for human dignity in *Kosha v. Minister of Social Development* (2004) which stated that the failure to grant the constitutional right to social security to certain groups “is likely to have a severe impact on the dignity of the persons concerned, who, unable to sustain themselves, have to turn to others to enable them to meet the necessities of life and are thus cast in the role of supplicants.”

Hong Kong’s courts do not affirm that a direct connection exists between the right to work and human dignity despite the fact that some international cases, such as *Minister of Home Affairs v. Wachenuka* (2004), have indicated that having the opportunity to engage in productive work is an important part of human dignity. However, Hong Kong’s courts have upheld the right to a minimum wage, the right to social security, and the right to social welfare.

The European Court of Human Rights’ decisions and their interaction with those of other international and national tribunals are of particular relevance in cases directly involved with human dignity in Hong Kong.

In sum, Hong Kong’s courts have 31 cases directly involving human dignity during the period from 1997 to 2019. The content of these cases involves at least four aspects of human dignity: the prohibition of all types of inhuman treatment, humiliation, or degradation; individual choice and the conditions for self-fulfillment, autonomy, and self-realization; the protection of group identity and culture; and the creation of the necessary conditions for each individual to have their essential needs satisfied.

### The roles of human dignity in the Hong Kong’s courts

In cases about human dignity in Hong Kong’s courts, parties often base their human rights claims on the concept of human dignity and judges refer to human dignity in their decisions. What are the outcomes of cases about human dignity? Are the applicants’ arguments about having certain rights successful when based on their right to human dignity? This section evaluates the roles that human dignity plays in Hong Kong’s courts.

Of the 31 cases identified in this study, all of the alleged victims argued that their human dignity and other constitutional rights were violated. The Courts found for the alleged victims in 23 cases. In the eight cases where the courts did not find for the alleged victims, the courts did not think that there were any human dignity issues or that the human dignity argument was untenable. Do human dignity arguments influence the outcomes of cases? What roles does human dignity playing in judges’ decision-making processes in Hong Kong?

**Human dignity as a way for individuals to safeguard their rights and interests.** People who allege that their human rights have been violated often argue that such rights exist based on the concept of human dignity. Thus, they attempt to protect their human rights by arguing that their human dignity has been violated.
Ma Pui Tung founded the Right to Inherent Dignity Movement Association to fight for the right to inherent dignity. In Ma Pui Tung v. The Law Society of Hong Kong and Another (2008) and HKSAR v. Ma Pui Tung (2009), Ma argued that “the Bankruptcy Ordinance in its application offends the right to the inherent dignity of a bankrupt creditor and in particular is an infringement of the bankrupt’s inherent dignity and that his right to privacy and free will are also improperly compromised.” In Ubamaka Edward Wilson v. Secretary for Security & Another (2009), the applicant claimed that if he were deported to Nigeria, he would be at risk of trial and imprisonment and that, during his imprisonment, he would likely be subject to torture and other inhuman or degrading treatment because of the drug-related nature of his offense, thus violating his human dignity. In Navarro Luigi Recasa v. Commissioner of Correctional Services & Another (2018), the applicant contended that the detention conditions unjustifiably and disproportionately interfered with her fundamental rights as a pre-operative male-to-female transgender woman and were therefore in breach of her right against arbitrary detention, human dignity, and right to privacy insofar as such rights protected her expression of her gender identity as a female. In GA, JA, FI & PA v. Director of Immigration (2014), the applicants argued that the rejection of their application for a work visa infringed upon their right to work, which constituted inhuman or degrading treatment and so violated their human dignity.

Many applicants make arguments about human dignity to protect their human rights. In one case, one appellant cited the right to human dignity.

**Human dignity as an important factor for courts to consider when making decisions.** Do Hong Kong’s courts agree with arguments about human dignity? What are the outcomes of the cases about human dignity? Are the arguments about human dignity effective?

Based on an analysis of the 31 cases in this study, this section shows that human dignity is an important factor that judges consider when making decisions. In other words, considerations of human dignity influence the outcomes of cases in Hong Kong.

Normally, the judiciary does not interfere with social, economic, or other types of government policies because of jurisdictional limitations. However, in Fok Chun Wa & Another v. Hospital Authority and Another (2012), the Court said:

> It would be appropriate for the courts to intervene (indeed they would be duty-bound to do so) where, even in the area of socioeconomic or other government policies, there has been any disregard for core values. This requires a little elaboration. Where, for example, the reason for unequal treatment strikes at the heart of core values relating to personal or human characteristics (such as race, colour, gender, sexual orientation, religion, politics, or social origin), the courts would extremely rarely (if at all) find this acceptable. These characteristics involve the respect and dignity that society accords to a human being. They are fundamental societal values.

This quote shows that Hong Kong’s courts treated human dignity a fundamental social value. Hong Kong’s courts have the duty to intervene in the execution of government policies if they violate core values related to personal or human characteristics as such violations are violations of human dignity.

The consideration of human dignity influenced the outcome in Navarro Luigi Recasa v. Commissioner of Correctional Services & Another (2018). In this case, the court considered the feelings and human dignity of transgender people and declared that the provisions of Police General Orders 49-04 are constitutional, but that, as a general rule, officers conducting body and cavity searches of transgender people in custody should be of the same biological sex of the transgender personas reflected on their identification. However, the officers retain the discretion to decide how the search can be properly and lawfully conducted in the light of all of the relevant circumstances, including those of the detained person; the need to protect the detained person’s fundamental human right to dignity and the right to privacy; and the appropriateness of the gender of the officers conducting and witnessing the search. In order to protect the right to dignity and the right to privacy, the court further required that officers must conduct body and cavity searches should be done in a way that respects the human dignity of the person being searched in the light of all the relevant circumstances. Even when the court considers the human dignity of individuals, it can still be difficult to make decisions in sensitive cases. The issues raised by such sensitive cases have a significant impact on the rights and interests of transgender people and the public interest, which can be in conflict. In ZN v. Secretary for Justice and Another (2018), the court described human trafficking as fundamentally objectionable because, regardless of the form of exploitation intended, it treats human beings as commodities to be imported and exported for exploitation. It is an affront to the human dignity of its victims. In Director of Immigration v. QT, the judges cited the decision for R (Carson) v. Secretary of State for Work and Pension (2006) in which the judge said, “In the field of human rights, discrimination is regarded as particularly objectionable because it disregards fundamental notions of human dignity and equality before the law.”

Hong Kong’s courts do not support unreasonable arguments about human dignity. In the decision for HKSAR v. Ma Pui Tung (2009), the judge pointed out that Ma asserted that the Bankruptcy Ordinance offended the dignity of whose are subject to its operation. In doing so, Ma was claiming that offending someone’s dignity meant that someone was “undignified or lacking in dignity,” which misconstrues the intent of the preamble of the ICCPR.
In all, Hong Kong’s courts consider human dignity in making their decisions, especially in some sensitive cases, and the injured parties in lawsuit also like to protect their rights and interests by using human dignity as a justification. The courts agree with reasonable arguments based on human dignity.

**Relationship Between Human Dignity and Human Rights as Interpreted by Hong Kong’s Courts**

The UDHR recognizes human dignity not only as one of the “equal and inalienable rights of all members of the human family,” but also acknowledges its role in “the foundation of freedom, justice and peace in the world.” The ICCPR and ICESCR contain the expression that rights are “derived from the inherent dignity of the person.”

Philosophers and legal scholars have different views on the relationship between human rights and human dignity. There are three main categories of views on this relationship. Those in the first category argue that human dignity and human rights are equivalent (Maritain, 2011). Those in the second category view human dignity as the threshold above which basic operational values of dignity will lead to human rights (Habermas & Jürgen, 2010). Those in the third category view human dignity as the foundation of human rights (Waldron, 2015).

How do Hong Kong’s courts view the relationship between human dignity and human rights? How do the HKASR courts view the status of human dignity?

**Human dignity as the foundation of human rights.** The judges in Hong Kong’s courts frequently link human dignity to human rights and to the right to privacy. They also use the phrases “the right to dignity,” “inherent dignity,” and “inherent human dignity” in their verdicts.

In several cases, the HKASR courts explained that treatment that humiliates or degrades people or which disrespects or diminishes their human dignity may be degrading. Human dignity is the foundation of what it means to be human and so can be treated as the core of human rights. The decision for *Director of Immigration v. QT* (2018) cited the decision of *R (Carson) v. Secretary of State for Work and Pensions* (2006), stating that “In the field of human rights, discrimination is regarded as particularly objectionable because it disregards fundamental notions of human dignity and equality before the law.” This quote shows how human dignity and equality are fundamental human rights notions. Furthermore, in *Secretary for Justice v. Yau Yuk Lung Zigo & Another* (2007), the judges stated that equality before the law is a fundamental human right. Equality is the antithesis of discrimination. “Discriminatory law is unfair and violates the human dignity of those discriminated against.” Thus, the right to human dignity is a fundamental human right.

The decision for HKSAR v. Ma Pui Tung (2009) delves on how the concept of dignity in civil law differs from that in the preamble of the ICCPR. As Judge Hartmann J noted, being declared bankrupt may be embarrassing or stigmatizing. However, this is not what the concept of human dignity addresses. The meaning of human dignity referred to in the preamble of the ICCPR is inherent and fundamental.

The HKASR courts treated human dignity as the core of human rights. Any denial or disrespect of someone’s human dignity constitutes an offense against them. Human dignity was also interpreted as a core social value.

**The right to dignity as a human right.** Art.6(1) of the Hong Kong Bill of Rights mentions the dignity of people deprived of liberty. In *Navarro Luigi Recasa v. Commissioner of Correctional Services & Another* (2018), the court accepted the applicant’s argument that they had the right to human dignity. The right to dignity was treated as a human right.

It is difficult to define human dignity, but this study examined the process of its definition through the 31 cases about it. These cases demonstrate Hong Kong’s courts’ attitudes toward protecting human dignity. Hong Kong’s courts hold that human dignity is the foundation of human rights; that it is the core value of civilized societies; that the right to equality is fundamental to it; that human rights must be granted without distinctions of any kind, such as by race, color, sex, language, religion, politics, nationality, social origin, property, birth, or other status; that no one should be subjected to torture or to cruel, inhumane, or degrading treatment or punishment; that no one should be held in slavery or servitude; that privacy, family, home, correspondence, honor, and reputation must be protected; that people must be free from self-incrimination; that workers must be paid a wage that allows them to live honorably and to be treatedrespectably; and that people must be given the right to vote, the right to participate in political life, and the right to achieve self-fulfillment. Human dignity has at least four aspects (Clapham, 2006).

In brief, Hong Kong’s courts treat human dignity as both the foundation of human rights and as a human right in and of itself. The courts interpret human dignity through provisions about human rights and use it to illuminate and explain core human rights.

**Contributions Made by Hong Kong’s Courts to the Definition and Development of Human Dignity**

*Confucian heritage.* Hong Kong’s 156 years of British rule and its political separation from the rest of Lingnan have given it a unique local identity. Traditional Cantonese and British culture have mixed to shape very facets of Hong Kong, including law, politics, education, language, food, and ways of thinking (Louie, 2010). The development of Hong Kong’s jurisprudence has been influenced by British law and Chinese tradition.

In one respect, Hong Kong’s courts are open given the fact that Hong Kong has a common law system. According to Hong Kong’s Basic Law, judges can be from other countries.
Judges can cite the jurisprudence of any common law system. As a result, Hong Kong’s courts are strongly influenced by other common law countries. Traditional Confucian values, such as an emphasis on family solidarity, courtesy, and reputation, are important in Hong Kong (Wong, 1986; Turner, 1980). Thus, Confucian concepts have also had a deep influence on Hong Kong’s judicial culture and activities in that judges still strongly consider Confucian concepts generally as ideal and the concepts of xin and yi specifically when making decisions.

First, Hong Kong’s courts often look to Confucianism for standards. The courts balance private rights and human dignity against public interests. In Q. R and Tse Henry Edward v. Commissioner of Registration (2019), the court held that the right to privacy is essential to human dignity and that, while public interests should be considered, the court should balance personal rights against public interests. Hong Kong’s courts have held that entitlement to social welfare and subsidized health services is limited by local economic development and finances. In dealing with welfare benefits, the Hong Kong government and courts often “strike a very fine balance” between different sectors of society and giving “due regard to the long-term sustainability of . . . social services within limited financial resources.” (Secretary for Administration, 2003; Fok Chun Wa & Another v. Hospital Authority and Another, 2012).

Second, the core Confucianism concepts of xin and yi produce affect judicial decisions.

Xin is more closely related to modern-day concepts of the rule of law than li, offering links to concepts such as the right to a fair trial, supremacy of the law, and the avoidance of arbitrariness. Xin – which incorporates elements of trustworthiness, honesty and consistency . . . (Elgebeily, 2017).

Xin gives legitimacy to governments. It means trust in the competence and independence of judicial systems. Yi enables officials to use “independent thinking and rational autonomy. . .to arrive at an acceptable judgment or decision in a particular situation” (Tan, 2013). In Navarro Luigi Recasa v. Commissioner of Correctional Services &Another (2018), the court said that officials should use rational autonomy to arrive at an acceptable decision given the circumstances of the detained person rather than mechanically enforce the law.

Protection of the human dignity of legal persons. Normally, human rights law affords considerable guarantees to various things, such as non-discrimination, the protection of property protection, and due process, to business entities (Malanczuk, 1997). The European Court of Human Rights has delivered several judgments concerning the human rights of companies. These judgments are often in response to claims of violations of the right to justice, property rights, and the freedom of expression (Emberland, 2006). However, traditionally, the concept of human dignity is intimately linked with the faculties of natural persons (Kretzmer & Klein, 2002), so there was little support for including corporate entities in the European Convention system on the basis of the value of individual dignity. The status of corporate human rights in European Court of Human Rights judicial practice cannot be primarily explained on the basis of the value of human dignity (Emberland, 2006). Thus, the human dignity of legal persons has rarely been mentioned by the European Court of Human Rights.

Nevertheless, Hong Kong’s courts have confirmed the human dignity of legal persons. This line of jurisprudence contributes to thought on human rights around the world. In Lam Chi Ming v. The Queen (1991), the Court affirmed the privilege against self-incrimination of natural persons on the basis that it protects personal freedom and human dignity. In Salt& Light Development Inc. & Another v. Sjtu Sunway Software Industry, Ltd., although the court rejected the plaintiff’s request due to the inapplicability of foreign law, it still held that the consequences of a forced answer could be life-threatening. The court stated that the principle of privilege against self-incrimination was deeply rooted in Hong Kong Law. It also enlarged the concept of human dignity to apply to legal persons, citing Hong Kong’s Section 65(1) of the Evidence Ordinance:

The right of a person in any legal proceedings other than criminal proceedings to refuse to answer any question or produce any document or thing if to do so would tend to expose that person to proceedings for an offence or for the recovery of a penalty.

The legal definition of “person” can include both natural and legal entities. The court searched both common law and Hong Kong statutes and found that the privilege against self-incrimination applies to corporate entities. Thus, the court affirmed the human dignity of corporate entities. Moreover, the Court held that the privilege against self-incrimination of a company did not extend to its directors.

Protection of human dignity as related to economic and social rights. In international human rights law, human dignity mandates the guarantee of economic, social, and cultural rights. Article 22 of the UDHR provides that “economic, social and cultural rights” are indispensable for human dignity. The ICESCR also has a clause addressing human dignity. Many scholars have linked economic and social rights and human dignity (e.g., Steigleder, 2014; Gearty, 2013; Matteucci & Halliday, 2017). Jurisprudence around the world has acknowledged human dignity’s link with economic and social rights. For example, the Constitutional Court of South African held that “having a home is very important to the dignity of any person.” (Malan v. City of Cape Town, 2014). The Court of Justice of the European Union stated that human dignity has economic characteristics in cases such as Job center Berlin Neukölln v. Nazifa Alimanovic and others (2015) because individuals should have access to the basic means to live a decent life.

Hong Kong has not yet applied the ICESCR, so Hong Kong’s courts have difficulty in directly applying it. As
people are enjoying social and economic development around the world, demands for the right to live a dignified life are intensifying. Hong Kong’s courts have followed the development of this trend by tending to protect social, economic, and cultural rights.

Although both HKBL and the Hong Kong Bill of Rights do not directly stipulate the right to work, the Court affirmed the right to work in Andayani v. Chan Oi Ling (2001) and stated that the applicant’s wages of $2,200 per month were below the minimum wage and were insufficient to provide a decent standard of living. The minimum wage is a key factor for living in society. A civilized society must provide a minimum wage to workers to allow them to live a dignified life. The CFA denied that there was a right to work in GA, JA, FI & PA v. Director of Immigration (2014), but it did agree that the Director of Immigration must exercise their discretion to issue work visas if not doing so would cause inhumane or degrading treatment or the substantial and imminent risk thereof. The CFA held that the right to work is linked to the right to not be subjected to inhumane or degrading treatment and indirectly affirmed the relationship between the right to work and human dignity.

Hong Kong’s courts have overcome the limitations of Hong Kong’s legislation regarding human dignity and have promoted the application and development of human dignity in economic, social, and cultural rights cases worldwide. Their judicial practices serve as models for courts around the world.

Human dignity as a tool for resolving disputes between individuals. There has been controversy over who is the subject of human rights obligations. The traditional theory of human rights holds that human rights claims are mainly used to confront the state and public authorities (Griffin, 2009). In recent years some scholars have argued that human rights are also indirectly binding on private parties (Weissbrodt, 2015).

In Hong Kong’s courts, human dignity is used to resolve disputes between the government and individuals as well as those disputes purely between two individuals. Of the 31 cases analyzed in this study, three cases were about the disputes between the individuals who were legally equals. Andayani v. Chan Oi Ling (2001) and Erwiana Sulistyaningsih v. Law Wan Tung (2015) were about the inhumane and degrading treatment that employees received from employers, including low remuneration and physical abuse, which was humiliating, distressing, and violated the employees’ human dignity. The parties in Salt & Light Development, Inc. & Another v. Siju Sunway Software Industry, Ltd. were both companies.

Hong Kong’s courts’ protection of human rights and human dignity will be a good example for the courts of mainland China. Although the Chinese Constitution stipulates the existence of human dignity, the courts in mainland China cannot directly interpret this concept (Hou, 2018; Liu, 2014). Mainland Chinese courts have handled few cases directly related to human rights and human dignity and so lack experience in directly interpreting and applying the human dignity clause. On May 28, 2020, the new Civil Code of the People’s Republic of China was promulgated. It contains rules regarding the personality rights and systems based on personal dignity. Mainland Chinese courts are now facing the issue of how to apply and interpret the concept of human dignity and the right to personality. They can refer to Hong Kong’s judicial decisions regarding human dignity.

Conclusion

Although Hong Kong’s courts have cited the interpretations of what human dignity is made by the European Court of Human Rights and other international courts, their interpretations have their own unique characteristics. Hong Kong’s courts use and interpret the concept of human dignity in cases concerning the right to equality; right to privacy; prohibition of torture and other cruel, inhuman, or degrading punishment or treatment; prohibition of slavery and servitude; the right to work; the right to social security; the right to justice; the right to vote; the right to dignity during detention; and the right to dignity for the deceased. Human dignity serves as a foundation on which judges can discuss human rights, is a tool that can resolve complex cases, and can help litigants to safeguard their human rights and interests. Human dignity is used in disputes between individuals and the government as well as those only involving individuals. Hong Kong’s courts have increased the scope of who the concept of human dignity applies to include legal entities.

Given that Hong Kong has a common law legal system which allows for judicial review and independence, the judicial interpretation of human dignity plays an important role not only in the development of human rights jurisprudence in Hong Kong and the development of Hong Kong law, but also in the amending statutes and shaping governmental behaviors. Hong Kong’s courts have tentatively expanded the scope of issues that the concept of human dignity can apply to and developed the definition of human dignity through their jurisprudence. The development of the concept of human dignity by Hong Kong’s courts is a matter of great importance. In one respect, as Hong Kong is an important part of China, improving the rule of law and respect for human rights in Hong Kong will be a great contribution to China as a whole. Given the open characteristics of common law systems, Hong Kong’s courts influence and are influenced by international courts and national courts around the world about the legal status of human dignity. Hong Kong’s court have incorporated precious Confucian culture and wisdom in interpreting human dignity. The increasing clarity of the interpretation of human dignity by Hong Kong’s courts is helping to develop the definition of the concept around the world. They make great contributions to defining human dignity in China and around the world.
### Appendix 1. Cases Concerning Human Dignity Handled by Hong Kong’s Courts (1997–2019).

| Case # | Appellant | Respondent | Other Party | Citation | Case Number | Date of Decision |
|--------|-----------|------------|-------------|----------|-------------|------------------|
| 1 | Yuen Sha Sha | Tse Chi Pan | | [1999] 1 HKC 731(1999) 8 | DCEO 1/1998 | 3 March 1999 |
| 2 | Andayani | Chan Oi Ling | | [2001] 1 HKC 252 | HCLA 96/1999 | 28 February 2001 |
| 3 | HKSAR | Ko Kam Fai | | [2001] 3 HKC 181 | CACC 83/2001 | 20 June 2001 |
| 4 | Chang Ting Kwun | Wyeth (HK) Ltd | | [2001] 2 HKC 129 | DCEO 10/1999 | 26 February 2001 |
| 5 | Luu The Truong | The Chairman of the Refugee Status Review Board & The Director of Immigration | | [2003]2 HKLRD 351 | HCAL 3261/2001 | 13 December 2002 |
| 6 | Lai Hung Wai | Superintendent of Stanley Prison | | [2003] HKCU 960 | HCAL 24/2003 | 14 August 2003 |
| 7 | Sukhmander Singh | Permanent Secretary for Security and Others | | [2003] HKCU 1242 | HCAL 68/2005 | 14 September 2003 |
| 8 | Chan Choi Yin Janice | Toppan Forms (HK) Ltd | | [2006] 3 HKC 143 | DCEO 6/2002 | 3 March 2006 |
| 9 | Salt & Light Development Inc. Exclusive Investments Limited; Salt & Light Development Inc. Exclusive Investments Limited Beaufhose Professional, Translation Limited | Sjtu Sunway Software Industry Limited | | (1999) 2 HKCFAR 245 | HCA 2939/2004; HCA 2992/2004 | 13 April 2006 |
| 10 | Secretary for Justice | Yau Yuk Lung Zigo & Lee Kam Chuen | | [2007] 3 HKC 545 | FACCI12/2006 | 17 July 2007 |
| 11 | Chan Kin Sum, Leung Kwok Hung and Choi Chuen Sun | Secretary for Justice & Another | | [2008] 6 HKC 486 | HCAL 79/2008; HCAL 82/2008; HCAL 83/2008 | 8 December 2008 |
| 12 | Ma Pui Tung | The Law Society of Hong Kong, Solicitor Disciplinary Tribunal | | | HCAL157/2004 | 16 February 2009 |
| 13 | HKSAR | Ma Pui Tung | | | HCMA 1109/2008 | 3 April 2009 |
| 14 | Sit Ka Yin Priscilla | Equal Opportunities Commission and Others: Cehung Mui Ching Fanny and Ho Choi Wai Yee Angela | | [2010] HKDC 26 | DCEO 11/1999 | 11 February 2010 |
| 15 | Ubamaka Edward Wilson | The Secretary for Security, The Director of Immigration | | [2009] 3 HKC 461 | CACV138/2009 | 19 November 2010 |
| 16 | HKSAR v Au Kwok Kuen & Others | | | [2010] 4 HKC 235 | HCMA 948/2008 | 2 June 2010 |
| 17 | Fok Chun Wa and Another | The Hospital Authority & The Secretary for Food and Health | | [2012] 2 HKC 413 | FACV No. 10 of 2011 | 2 April 2012 |
| 18 | Kong Yumning | The Director of Social Welfare | | | FACV 2/2013 | 17 December 2013 |
| 19 | GA, JA, FI & PA | The Director of Immigration | | [2014] 3 HKC 11 | FACV 7,8,9&10 / 2013 | 18 February 2014 |

(continued)
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