



# The renaissance of human dignity?

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## ABSTRACT

The right to human dignity is tantalisingly elusive, refreshingly undefined, potentially virile and incontestably responsive to changing societal conditions: just the recipe for common law judges worldwide. In a landmark Northern Ireland human rights case, this fundamental and universally recognised, though occasionally neglected, right, of impeccable lineage and credentials, has had something of a renaissance. There is surely ample scope for its resurgence and development in both domestic and global contexts, legal and otherwise.

**Keywords:** human rights; right to dignity; Windsor Framework; Northern Ireland; foundational; freestanding; scope; resurgence; future potential.

## INTRODUCTION

The right to human dignity, a cornerstone of every civilised society for many centuries, has had an unexpected recent renaissance in a small corner of the Commonwealth in Western Europe.

The evolution of the concept of human dignity is highly instructive.<sup>1</sup> The admonition to scholars, judges and practitioners alike is ignore this at one's peril. Human dignity can be traced to Roman law and has attracted attention in the writings of many philosophers and religious scholars, particularly from the twelfth century.<sup>2</sup>

The right to human dignity is of lengthy and impeccable lineage. Properly understood, it is the foundation of human rights. The Preamble to the Universal Declaration of Human Rights (UDHR) states:

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

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1 Christopher McCrudden, 'Human dignity and judicial interpretation of human rights' (2008) 19(4) *European Journal of International Law* 655–724.

2 See the erudite review in Michael Tugendhat, *Liberty Intact* (Oxford University Press 2017) 215–217.

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.

In 1937 the Irish Constitution was the first human rights text to specifically identify the dignity and freedom of the individual:

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 assured.

Professor McCrudden's valuable contribution to this subject<sup>3</sup> argues that, for many, dignity is a fact, a metaphysical or ontological status, as well as a moral entitlement. It reflects a view of human rights as essential for the promotion of the common good rather than the espousal of radical ethical individualism. Simultaneously, human dignity was considered antithetical to both Nazi and Communist ideology and practice. The concept of human dignity is also central in the determination of what is considered to be degrading treatment proscribed by Article 3 of the European Convention on Human Rights (ECHR) and kindred international human rights instruments.

The right to human dignity has much untapped potential in the practice of the law and judicial adjudication. I would expect most judges and practitioners to agree with this. Human rights adjudication generally can be enriched by increased deployment of this most basic right. Those involved in the complex and challenging field of adoption may benefit from some reflection on Professor McCrudden's statement that this right provides:

... a language in which judges can appear to justify how they deal with issues such as the weight of rights, the domestication and contextualisation of rights and the generation of new or more extensive rights.<sup>4</sup>

## **THE LISBON CHARTER**

The Lisbon Charter<sup>5</sup> is no ordinary international convention. Its status is equal to that of the European Union (EU) treaties. It is, therefore, an instrument of supreme importance in the global legal order. While it was in many respects a consolidating measure of the EU institutions, it also contained some surprises and novelties. As the Preamble confirms, this measure was specifically designed:

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3 McCrudden (n 1 above)

4 Ibid 724.

5 *The Charter of Fundamental Rights of the European Union.*

... to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a charter.

In other words, there was an identified pressing need to bring the law up to date. A second striking feature of the Preamble is its emphasis on the balance between individual enjoyment of the protected rights and simultaneous responsibilities to others:

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

When one delves into the content of the Lisbon Charter, one is immediately struck by the title of its opening chapter. Title 1, with commendable concision, is 'Dignity'. Article 1, appropriately, is entitled 'Human dignity' and provides:

Human dignity is inviolable. It must be respected and protected.

No punches are pulled, there is no unnecessary complexity and no distracting surplusage. The Charter, in this way, is off to a great start, the right to human dignity sitting proudly at the apex of its provisions. The stature and importance of the right to human dignity are informed by the assorted other rights which comprise Title 1. These are the right to life, the right to integrity of the person, the prohibition of torture and inhuman or degrading treatment or punishment and the prohibition of slavery or forced labour.

Consideration of Title 1 in its totality gives rise to the proposition that the right to human dignity is one of the fundamental rights in the modern world. Finally, in the relevant 'Explanations' provision of the Charter, it is stated:

The dignity of the human person is not only a fundamental right in itself, but constitutes the real basis of fundamental rights. ... [T]he dignity of the human person is part of the substance of the rights laid down in this Charter.

... none of the rights laid down in this Charter may be used to harm the dignity of another person ...

Human dignity must therefore be respected, even where a right is restricted.

At first blush, the Brexit legislative arrangements veritably detonated the Lisbon Charter. Section 5(4) of the EU Withdrawal Act 2018 reflects a policy choice by the Government then in power to single out the Charter for special, hostile statutory treatment. In this way the Charter emerged as one of the perceived chief mischiefs which Brexit was designed to address. How ironic, some might think, in a country espousing the common law which, as it evolved, was nothing if not

the champion of developing and protecting the rights of the individual against the state.

The Government's intention was abundantly clear. But have the elaborate and complex Brexit arrangements had their desired effects? The short answer is 'no' because, in very concise summary:<sup>6</sup>

- (i) certain transitional provisions give the Lisbon Charter a limited degree of prospective effect subsequent to 'exit day';
- (ii) by virtue of the 'retained EU law' statutory provisions, certain of the rights codified under the Lisbon Charter (eg anti-discrimination rights) will remain in full force unless and until repeal occurs;
- (iii) thus, the Charter will remain influential in the interpretation of all aspects of retained EU law which it affects and all retained jurisprudence of the Court of Justice of the European Union (CJEU) in which it features;
- (iv) courts and tribunals remain at liberty to *have regard to* and give effect to post-exit day CJEU judgments which do not depart from pre-exit day judgments;
- (v) and, finally, given that the relationship between the Charter and the 'fundamental rights' jurisprudence of the CJEU derives from EU general principles, a potentially rich harvest of possibilities for continuing Charter influence exists.

(The above list is not exhaustive.)

## COUNCIL OF EUROPE

Bearing in mind that the right to human dignity is enshrined in the Lisbon Charter (and is arguably one of its most important provisions), it is appropriate to reflect briefly on a different international organisation, namely the Council of Europe (CoE). Though frequently overlooked, the ECHR belongs to and emanates from this organisation. The United Kingdom (UK) remains a member. And the UK has acceded to the ECHR, a CoE instrument. In this context the increasing alignment of the CJEU and the European Court of Human Rights (ECtHR) is of some significance. These two international courts have, commendably, developed an ever-increasing and fruitful dialogue. This has unfolded in a context where the EU *en bloc* remains committed to acceding to the ECHR. In their jurisprudence, each of these courts repeatedly subscribes to the recognition of the constitutional traditions common to the member states and the rule of law.

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6 See Christopher McCrudden (ed), *The Law and Practice of the Ireland–Northern Ireland Protocol* (Cambridge University Press 2022) 161ff.

This process of cross-pollination is unsurprising and seems merely logical given the strong association linking ECHR rights, the Lisbon Charter and the general principles of EU law. Both the Charter and the general principles of EU law have been absorbed within the ECHR jurisprudence. The indirect influence which this may have on the UK legal system is at one and the same time recognisable and unpredictable. Crucially, it means that there will be scope for the Lisbon Charter to influence the development of the common law by judges.

Sometimes the right to human dignity is also recognisable as a matter of black letter law in the judgment of a court. It is interesting to reflect on how the foundations of a decent society have found expression in certain landmark judicial decisions. Simultaneously, the Judaeo-Christian tradition<sup>7</sup> is readily identifiable. So too are the basic tenets of Islam.<sup>8</sup> There is nothing sanctimonious in this kind of reflection. Thus, for example, in what is surely the most important judicial decision on the law of negligence, the House of Lords resolved the issue of whether a legal duty was owed to the consumer damaged by the presence of a snail in her ginger beer drink by recalling the parable of the Good Samaritan and drawing on the language of the First Commandment ('Love thy neighbour') in determining who one's neighbour is in legal terms.<sup>9</sup>

In passing, in today's secular society it seems unlikely that the judgment of a court would be expressed in terms of this kind. If it were thus formulated, attack from certain quarters would seem likely. In Northern Ireland (NI), a judgment of the High Court in an equality of treatment case<sup>10</sup> containing a fleeting biblical reference prompted a sarcastic and scornful commentary in one local newspaper.<sup>11</sup>

Four decades later, a similar philosophy and the concept of human dignity are readily discernible in another landmark decision of the House of Lords, on this occasion formulating the duty owed by an occupier of premises to a trespasser as *the duty of common humanity*.

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7 Drawn from the judgment of Brooke LJ in the *Conjoined Twins* case: 'There can, of course, be no doubt that our common law judges were steeped in the Judaeo-Christian tradition and in the moral principles identified by the Archbishop [Archbishop Murphy-O'Connor, then Roman Catholic Prelate of England and Wales] when they were developing our criminal law over the centuries up to the time when Parliament took over the task. There can also be no doubt that it was these principles, shared as they were by the other founder members of the Council of Europe 50 years ago, which underlay the formulation of Article 2 of the European Convention on Human Rights.' *Re A (Conjoined Twins)* [2001] Fam 147, 212.

8 See *The Quran*, verses 25.72 and 2.273.

9 *Donoghue v Stevenson* [1932] AC 562, 580 (Lord Atkin).

10 *XY v Facebook Ireland* [2012] NIQB 96, para 13.

11 *The Irish News* (date untraceable).

And a third, and final, illustration of this approach is provided by another headline decision, that of the English Court of Appeal determining whether the life of one of two conjoined twins should be ended to enable the other to live, in preference to permitting the two lives to continue with the certainty of the deaths of both. In short, each of these decisions has the indelible stamp of the dignity of the human person.<sup>12</sup>

There is another aspect of the black letter law compartment of the theme of the dignity of the person, namely the corresponding judicial duty – see, especially, *Re McFarland*;<sup>13</sup> and, to like effect, *Serafin v Malkiewicz*.<sup>14</sup> Each is a striking illustration of a senior court judicial condemnation of a lower court's treatment of a litigant. It is that dark and doleful place where no self-respecting judge wishes to find themselves, albeit one where, while respect for *their* dignity might not shine brightly in the eyes of some, their right to be treated with human dignity is incontestable.

## RECENT NORTHERN IRELAND CONTRIBUTIONS

As a result of the recent Northern Ireland Court of Appeal (NICA) decision in *Re Dillon and Others*,<sup>15</sup> individual rights are, once again, in the legal headlines in this jurisdiction – and further afield. It is easy to overlook that there is nothing novel about this. Individual rights have been a prominent feature of the legal landscape of NI for several decades. In the heaving sands of the last 25 years, beginning with the peace settlement in 1998, the rights protection legislation which was a stand-out feature of the NI of the 1970s could be easily forgotten.

In a sentence, the intense statutory activity of the 1970s which, notably, unfolded in Westminster and not Stormont as a result of the prorogation of the NI legislature and Executive, was fundamentally designed to address, and rectify, perceived inequalities in NI society. This marked the beginning of a period during which the senior courts of this jurisdiction found themselves at the interface between the citizen and the state in a way and with a prominence which would not have been foreseen just a few years beforehand. There were major statutory reforms in the fields of employment, housing, education, the prosecution system and discrimination in particular. Independent and impartial judicial adjudication shone brightly as

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12 *Donoghue v Stevenson* (n 9 above); *Herrington v British Railways Board* [1972] AC 877; and *Re A (Conjoined Twins)* (n 7 above).

13 *Re McFarland* [2004] UKHL 17, paras 2–4, 16 and 31.

14 *Serafin v Malkiewicz* [2020] UKSC 23.

15 *Re Dillon and Others* [2024] NICA 59.

a constant of three decades of upheaval and destruction. A quick glance at the NI Law Reports reminds the reader of landmark rights cases and novel statutory measures which may have faded from the memory.

The Good Friday/Belfast Agreement 1998 (GFA/BA) represented a self-evidently major legal milestone. One of its salient features was its tailor-made chapter on human rights and equality, which has now emerged as arguably its most important feature.

Fast forward 20 years and to the forefront of the careful and complex engineering of the EU/UK Withdrawal Agreement 2018 (WA) and the Ireland/Northern Ireland Protocol was the conferral of a legal status on the human rights and equality chapter of the GFA/BA which it did not previously enjoy.

The GFA/BA contained no mechanisms for dispute settlement or enforcement. This *lacuna* was substantially filled by new domestic legislation, above all the Northern Ireland Act 1998, the Human Rights Act 1998 and the Fair Employment and Treatment (NI) Order 1998. These measures were not, however, comprehensive, with the result that certain rights specified in the human rights and equality chapter were not legally enforceable and depended for their enforceability on human trust and political goodwill.

Chronologically, the next significant milestone was marked by the Brexit arrangements and, specifically, Article 2 of the Ireland/NI Protocol. Once again one finds a declaration, in this instance an undertaking by the UK Government to ‘ensure that no diminution of rights, safeguards and equality of opportunity as set out’ in the human rights and equality chapter of the 1998 Agreement would result from the UK exit from the EU. Article 2 has several striking features: the mechanism was one of preserving the *substance* of the specified rights (underpinned by EU law) rather than the underlying EU measures; Article 2 stands out in the Protocol as a device imposing obligations of result rather than of conduct; and it obliges the UK to safeguard the rights in question, albeit within the tolerance of the narrow discretion.

The human rights and social equality (RSE) chapter of the GFA/BA forms an unmistakably significant part of the genealogy of the Windsor Framework (WF) and its outworkings. The Protocol was an integral element of a suite of UK–EU withdrawal arrangements partaking of both international law and domestic NI law. In this way the RSE chapter of the GFA/BA, in contrast with its earlier status, is now subsumed within domestic NI law.

Thus, in the manner outlined, the legal status of the RSE chapter of the GFA/BA was reshaped dramatically.<sup>16</sup> The chapter itself has not

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16 Subject of course to further judicial interpretation and determination.

been altered by either the Protocol or the WF. Article 2 of the former has simply become Article 2 of the latter.

Article 2(1) of the WF is a UK Government commitment that no diminution of rights, safeguards or equality of opportunity, as set out in the relevant part of the GFA/BA, will result from the UK's withdrawal from the EU. The text is as follows:

The United Kingdom shall ensure that no diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the Union, including in the area of protection against discrimination, as enshrined in the provisions of Union law listed in Annex 1 to this Protocol, and shall implement this paragraph through dedicated mechanisms.

## JUDICIAL RESPONSES

Enter the courts. It was inevitable that, sooner or later, the senior courts of NI would have to adjudicate on aspects of the Brexit withdrawal arrangements. Unprecedented issues of acute legal and constitutional complexity have had to be judicially resolved, as evidenced most clearly by *Re Allister and Others' Applications for Judicial Review*.<sup>17</sup> The dismissal by the High Court of this judicial review challenge was affirmed by both the NICA and the United Kingdom Supreme Court (UKSC).<sup>18</sup>

More recently, in *Re Dillon and Others v SoS NI*<sup>19</sup> the target of the challenge was the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 (the 2023 Act), which enshrines the controversial arrangements devised by the Westminster Government for dealing with the legacy of the NI Troubles. The claimants were family members of people who had lost their lives. Each was recognised as being directly affected by the extinguishment of inquests and civil actions, together with the potential grant of immunity from prosecution to the perpetrators of killings.

At first instance, in the High Court, Colton J rehearsed the claimants' arguments based on the WF,<sup>20</sup> having found that certain provisions of the new statute contravene Articles 2, 3 and 6 ECHR. Article 4(1) of WA was of pivotal importance in this context, providing that those provisions of EU law 'made applicable by this Agreement':

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17 *Re Allister and Others' Applications for Judicial Review* [2021] NIQB 64.

18 *Re Allister and Others' Applications for Judicial Review* [2022] NICA 15, [2023] UKSC 5.

19 *Dillon* (n 15 above).

20 *Re Dillon and Others* [2024] NIKB 11, paras 518–525.

... shall produce in respect of and in the United Kingdom the same legal effects as those which they produce within the Union and its Member States ...

Legal or natural persons shall in particular be able to rely directly on [those] which meet the conditions for direct effect under Union law ..... [these provisions] shall be interpreted and applied in accordance with the methods and general principles of Union law ... [and] .... in their implementation and application be interpreted in conformity with the relevant case law of the [CJEU] handed down before the end of the transition period.

The obligation assumed by the UK Government under Article 4(2) WA was discharged by inserting a new section 7A to the EU WA 2018.<sup>21</sup> Drawing on *Allister*,<sup>22</sup> the judge held that any provision of the 2023 Act in breach of the WF must be disapplied.<sup>23</sup> Next, having drawn on the Victims Directive (VD), the judge made the specific conclusion that Articles 11 and 16 thereof were engaged and that the ‘civil rights’ protected by Article 2 WF *included* the right of access to a court *and* the right to dignity.<sup>24</sup>

Colton J next concluded that, via a combination of Article 82(2)(b) Treaty on the Functioning of the EU, Article 13(2) WF and Articles 2, 4 and 47 of the Lisbon Charter, relevant provisions of EU law – specifically the VD and the Charter of Fundamental Rights (CFR) – had direct effect in NI before the end of the transition period.<sup>25</sup> Specifically, the rights in play were Articles 1, 2, 4 and 47 of the Lisbon Charter and Articles 2, 3, 6 and 14 VD.<sup>26</sup> The judge’s further conclusion, namely that NI law giving effect to relevant BA rights was ‘underpinned by’ EU law prior to 31 December 2020 followed naturally.<sup>27</sup> The judge based this conclusion on a series of provisions of the VD and Articles 1, 2, 4 and 47 of the Lisbon Charter.<sup>28</sup>

The further conclusion, namely that of a diminution in the claimant’s rights under Articles 2, 4 and 47 of the Lisbon Charter, also followed logically, given the court’s preceding analysis of breach of ECHR rights (Articles 2, 3 and 6). The final issue addressed was that of any diminution of the rights in Article 1 of the Lisbon Charter and Article 11 VD. The court pronounced itself ‘unable to find a substantive breach of

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21 Via the European Union (Withdrawal) Act 2020.

22 *Allister* (n 17 above) paras 66–68.

23 *Dillon* (n 15 above) para 527.

24 *Ibid* para 561.

25 *Ibid* paras 562–565.

26 *Ibid* para 570.

27 *Ibid* paras 571–572.

28 *Ibid* paras 573–582.

Article 1 of the Lisbon charter as a standalone right in the 2023 Act'.<sup>29</sup> This conclusion was driven by 'the absence of a universally accepted legal definition of human dignity and a clear, exacting standard of how the right may be applied in this context'. The court, however, concluded that Article 11 VD was violated by the extinguishment of the possibility of prosecution effected by the 2023 Act.<sup>30</sup>

The overarching conclusion of the court on the WF challenge was that sections 8, 19, 20, 21, 22, 39, 41 and 42(1) of the 2023 Act must be disapplied as they result in a diminution in certain of the rights specified in the equality and human rights chapter of the BA.

*Dillon*, inevitably, made its way to the NICA.<sup>31</sup> The outcome was as follows:

- (a) Article 2(1) WF has direct effect. Although it was unfortunate that article 2(1)'s direct effect was not raised at first instance, this was not fatal to the trial judge's ensuing analysis.
- (b) Article 11 of the VD affords victims of crime the right to request a review of a decision not to prosecute. That is a clear, precise and unconditional minimum standard set by the EU. Insofar as necessary, article 11 is found to be directly effective.
- (c) The stripping away of the criminal process necessarily offends article 11 of the VD. There has been a diminution of that right following the test set out in *Re SPUC*.<sup>32</sup>
- (d) The correct remedy is disapplication in relation to the conditional immunity provisions as these are covered by the VD.

The NICA further decided:

- (i) The five-year time limit on requesting reviews cannot at present be said to violate Convention rights.
- (ii) While the Independent Commission for Reconciliation and Information Recovery's determination to conduct its affairs in a Convention compliant manner was not doubted, the 2023 Act violates Article 2 ECHR by reason of insufficient effective next-of-kin participation, and the role of the Secretary of State for NI in relation to disclosure in cases where, previously, an inquest would have been required to discharge the state's Article 2 ECHR obligations.
- (iii) The restriction on civil actions breaches Articles 2 and 6 ECHR.

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29 Ibid para 602.

30 Ibid paras 603–610.

31 Ibid.

32 *Re SPUC* [2023] NICA 35.

The NICA's conclusions on the RSE chapter of the GFA/BA are of particular interest in the present context. The court considered it clear that the commitment to rights and safeguards encompassed within this chapter were intended to extend much further than those rights specifically listed in paragraph 1 thereof. The RSE chapter established a broad suite of rights which had been recognised by the participants in the pre-GFA/BA settlement negotiations and were thenceforth to be given further effect in the mechanisms to be established thereunder, such as the incorporation into NI law of the ECHR. This suite of rights would provide a baseline for individual rights protection in the new arrangements for the governance of NI to follow. These arrangements were to be founded on the protection of citizens' rights. The broad language of the RSE chapter was to be construed restrictively.<sup>33</sup>

In summary, the NICA affirmed the High Court's remedy of disapplication of specified provisions of the 2023 Act on the basis of Article 2 WF incompatibility, together with the declaration of incompatibility with ECHR rights in respect of specified provisions of the new statute;<sup>34</sup> and found further ECHR incompatibility defects in the new legislation.<sup>35</sup> The remedy of disapplication of certain provisions of primary legislation derives from the decision in *Factortame*,<sup>36</sup> where an Act of Parliament was disapplied by the courts for the first time in the UK's constitutional history.

### MEANING OF 'CIVIL RIGHTS'

Specifically, the NICA held that the sentence in which the concept of 'civil rights' is included should not be quietly brushed aside, as the Secretary of State had argued. This leads to the following question: what, exactly, does 'civil rights' encompass? And, more specifically, how does the right to human dignity, protected by Article 1 CFR,<sup>37</sup> emerge from the judgment of the NICA?

At first instance, in the High Court, there had been some significant debate as to the meaning of 'civil rights'. It is here that one finds the genesis of the human dignity debate in this litigation. The Equality Commission for Northern Ireland (ECNI) in particular sought to interpret 'civil rights' through the lens of 'dignity', suggesting that the term 'civil rights' should be interpreted taking into account the aims

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33 See *Dillon* (n 15 above) paras 310–312.

34 See *ibid* paras 161–162.

35 There is pending an application to the UKSC for leave to appeal, which was refused by the NICA. All issues, with the exception of Colton J's human rights findings, are open in the grounds of appeal. Expedition has been requested.

36 *R v SOS for Transport, ex p Factortame (No 2)* [1991] 1 AC 603.

37 *Pretty v UK* [2002] 35 EHRR1, para 28.

and purposes of both Article 2 WF and the rights provisions of the GFA/BA. In the case of the Protocol, the context was all-important. And what is the core of this European human rights and equality mainstream?

The ECNI argued that the CFR and the ECHR provide the answer, as central to both is the concept of dignity. Human dignity belongs to the DNA of the ECHR. In *Pretty v UK*,<sup>38</sup> the ECtHR stated: '[t]he very essence of the Convention is respect for human dignity and human freedom'. The CFR Explanations attached to Article 1 were also invoked:

The dignity of the human person is not only a fundamental right in itself, but constitutes the real basis of fundamental rights. ... [T]he dignity of the human person is part of the substance of the rights laid down in the Lisbon Charter.

Human dignity provided the basis for the American civil rights movement which, in turn, had animated claims for 'civil rights' in Northern Ireland. In both these contexts, dignity provided the unifying principle because it appealed to the inherent value of the human person – a universal principle. The roots of the BA equality and human rights provisions and European human rights and equality law (both ECHR and CJEU) are the same: human dignity. Fundamentally, it was contended that what 'civil rights' encompassed should be understood through the lens of dignity.<sup>39</sup>

Some reflection on this line of argument, at one and the same time skilful and intriguing, is appropriate. It leads to another point of reference, namely EU law and, further, draws attention to the continuing influence of EU law post-Brexit in NI. To the extent that EU law seeks to protect and promote human dignity it serves as an underpinning of the GFA/BA RSE chapter. Dignity provides the golden thread that seamlessly links together Article 2 WF, relevant measures of EU law, the HRA/ECHR rights and the GFA/BA RSE chapter. The further notable component of the ECNI argument was that Article 1 CFR establishes a stand-alone right that could be enforced through Article 2 of the Protocol/WF.<sup>40</sup>

The effect of this argument is to mould together into a single unit, namely human dignity, the material individual rights belonging to the four sources just noted, all of them (in the present context) derived from Article 2 WF.

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38 Ibid para 35.

39 Ibid para 30.

40 *Dillon* (n 15 above) para 80. This para contains a summary of the submissions of Professor Christopher McCrudden, counsel for ECNI.

Just how far did the ECNI argument travel in the *Dillon* judgments? Has a runaway human dignity train been unleashed? While judicial nervousness about the right to human dignity is detectable in certain cases,<sup>41</sup> the sober reality is that uncontrolled trains and bursting floodgates have been a rarity in the evolution of the common law. Warnings and expectations of this kind have seldom been fulfilled. The excellent judgment of Colton J is couched in orthodox and far from radical terms, while the judgment of the NICA on this issue is unlikely to be viewed by future generations as revolutionary, as appears from the following passage. The NICA, having agreed with the High Court's treatment of CFR Article 1, made the following discrete conclusion:

The trial judge rightly (and in our view correctly) [found] that the CFR right to human dignity contained within article 1 was too imprecise to be justiciable in its own right. We will not add to an already lengthy judgment by examining this question of the content of CFR rights any further ... However, it is necessary to state our conclusion that to say that the CFR provides a freestanding justiciable right in this way goes too far. Rather, we adopt the position that the CFR acts as an aid to interpretation of relevant EU law provisions.<sup>42</sup>

It will predictably be highlighted in arguments advanced in future cases and academic commentaries alike that this passage is couched in conclusionary terms and, further, does not address the meaning of 'civil rights' in Article 2 WF. It is a fact that there is in existence a cohort of pending cases,<sup>43</sup> one of which is the Northern Ireland Human Rights Commission challenge to the Illegal Immigration Act 2023. Thus, the answer to my hypothetical '*Quo vadis?*' question will foreseeably, as so often, be provided incrementally on a case-by-case basis.

## CONCLUSION

The right to human dignity is tantalisingly elusive, refreshingly undefined, potentially virile and incontestably responsive to changing societal conditions: just the recipe for development by judges in a common law jurisdiction, one might think. As a result of a carefully chosen intervention by the ECNI in a landmark Northern Ireland case<sup>44</sup> and the ensuing skilful arguments of its counsel, a fundamental and universally recognised right of impeccable lineage and credentials has veritably been resurrected. There is surely ample scope for its

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41 For example, in *Secretary of State for Work and Pensions v AT* [2023] EWCA Civ 1307, paras 177–179.

42 *Dillon* (n 15 above) para 137.

43 There are some 22 cases in the NI court system (not including tribunal appeals) raising WF issues.

44 *Dillon* (n 15 above) para 17.

development in both our local legal system and further afield. The WF, faithful to the law of unintended consequences, might inadvertently have unleashed a slumbering human rights giant.

The following is particularly clear. Roman law, the UDHR, the CFR and other international instruments combine to imbue the right to human dignity with an unrivalled and unquestionable pedigree. A renewed recognition and exposition globally of this venerable right is overdue.