Human dignity and private property

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THE CORE, THE FLOOR, THE CEILING

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Dignity and property: The rights connection

»The participating States … will promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development.«

Principle VII, para. 3, of the 1975 Helsinki Final Act
(Conference of Security and Co-Operation in Europe)
Dignity and property: Three contact points

CONTACT POINT 1
PROPERTY MONOPOLIZATION

Consider private property in a society where one single person owns everything (1 = owns everything; N–1 = own nothing). All other members of this society depend in fundamental ways on the wisdom and whims of the one and only owner.
Dignity and property: Three contact points

CONTACT POINT 2
RADICAL PROPERTY REDISTRIBUTION

Consider another society which demands a strictly equal distribution of private property among its members (the share of 1 = entire wealth/N).

In this society, no citizen is allowed to own more or less than anybody else: Some omniscient and omnipotent mechanism, each day after dark, redistributes private property according to this strictly egalitarian principle.
Dignity and property: Three contact points

CONTACT POINT 3
PROPERTY AND POVERTY

Consider a third society where many persons own private property in a variety of quantities, but some persons own almost nothing at all (2/3 N = almost everything; 1/3 N = almost nil). The members of the ownership segment of society experience no tension between human dignity and private property. The poor, however, feel differently. It does not matter to them whether the society’s wealth is owned by one owner or 20 million owners. What matters is: the poor own too little.
Dignity and property: Too much or too little?

THE RIDDLE OF »DERIVE«
HUMAN DIGNITY AS SUPREME VALUE

• If we demand too much from dignity as the source of natural rights, we create »nonsense on stilts« (Jeremy Bentham [1843] on natural rights)

• If we reduce dignity to a convenient shell, we shall be left with a PR slogan that merely helps »to mate cannibals and non-cannibals without changing their incompatible attitudes toward cannibalism« (Myers S. McDougal [1959] on human dignity and international human rights)
Dignity and property: Three discourses

CONSTITUTIONAL DISCOURSES
unravel the meaning of domestic law: Which reading of a constitution presents better than others the meaning of a constitutional clause (e.g., Articles 1 and 14 German GG)?

PHILOSOPHICAL DISCOURSES
affirm the principles of personhood and a good life (e.g., Margalit’s decent = non-humiliating society [1996])

HUMAN RIGHTS DISCOURSES
negotiate the meaning of universal principles and seek global applicability. International human rights discourses are expressions of polyrationality on the global level.
Dignity and property: Three layers

RE-LAYERING LOCKE [1698] BOOK II, §§ 25--51

CORE

»Every Man has a Property in his own Person. ... The Labour of his Body ... we may say, are properly his.«

FLOOR

»Men, being once born, have a right to their Preservation ... and ... other things as Nature affords for their Subsistence.«

CEILING

»... useless as well as dishonest to carve himself too much, or take more than he needed ...«
Dignity and property: Three layers

HUMAN DIGNITY SHAPES LAYERS OF PRIVATE PROPERTY

CORE
defines the essence of private property

FLOOR
defines »minimal property« (B. Davy 2012)

CEILING
defines the limits of private property overload
R. v. Kapp [2008 SCC 41]

But as critics have pointed out, human dignity is an abstract and subjective notion that … cannot only become confusing and difficult to apply; it has also proven to be an additional burden on equality claimants, rather than the philosophical enhancement it was intended to be.
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