

THE DENIAL OF THE FULL HUMANITY OF OTHERS IN CURRENT U.S. POLITICAL DISCOURSE. LEGAL REGULATION AND CONFORMITY WITH INTERNATIONAL OBLIGATIONS

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Summary: Despite the fact that humanity would like to think of dehumanization as a relic of a darker past, nowadays this topic is still relevant, but has acquired new shades. Today, it often becomes a tool for high-level politicians to achieve their goals: to gain cheap loyalty based not on unity of views and values, but on the fear of “others”, and to legitimize the mistreatment of certain groups of people. This problem affects not only authoritarian states but also democracies, and the United States is no exception. Therefore, this article examines the legal aspects of strategic dehumanization under the U.S. legal order and analyzes its consistency with U.S. international obligations..

Keywords: dignity, dehumanization, political discourse, legal regulation.

1 Introduction

*“Human dignity – as a constitutional value or a constitutional right – Is the dignity of every human being. Citizenship, residency, age, gender, state of health and personal characteristics are irrelevant to human dignity. The only necessary condition is to be a human... The state must protect human dignity from itself and from the actions of third parties”*¹ – writes Aharon BARAK, former President of the Supreme Court of Israel, an honored lawyer and professor. This understanding of human dignity is shared by international organizations and is included in the founding documents of the United Nations and in all core international human rights conventions.

International recognition, however, does not necessarily guarantee unconditional practical implementation. Moreover, a national interpretation of dignity may conflict with the universal one. Consequently, throughout history and in the present era, there have been numerous instances of the violation of this value or right. It is also important to note that there are cases where the

1 BARAK, Aharon. *Human Dignity: The Constitutional Value and the Constitutional Right*. Cambridge: Cambridge University Press, 2015, pp. 225–242.

very essence of human dignity is violated. One such instance is the practice of dehumanization, which is the denial of the full humanity of others.

Dehumanization, or the process of denying the human status of a person or group of people by discounting their capacity for conscious experience, rational thought, or emotional feeling,² often leads to the neglect, if not violence, of such target groups. A classic example of such consequences is the neglect of Black and Hispanic individuals in the health care system, when they receive less pain medication for the same injuries. This practice is unacceptable regardless of the identity of the author and the audience, but it becomes extremely dangerous when it becomes part of official political debates or even the basis of political programs. In other words, we are talking about legality of a conscious, open and targeted disregard for humanity in order to influence public opinion, often to create a collective identity around opposition to another group, so-called strategic dehumanization. Such rhetoric is highly effective in reinforcing a sense of group identity and is often used to legitimize differential treatment and inhumane practices.³ It is a logical extension of populist rhetoric, which uses simple language to paint a clear picture of the opponent and find someone to blame. Moreover, it is used not only in the context of wars and particularly intense conflicts, but also in everyday politics.

“We have people coming into the country or trying to come in, we’re stopping a lot of them and taking people out of the country. You wouldn’t believe how bad these people are. These aren’t people. These are animals,” – said Donald TRUMP during a meeting with Californian leaders and officials in May 2018.⁴ There are attempts to justify this statement by saying, among other, that he was talking only about MS-13 gang members.⁵ However, paying attention to the question and subsequent answer, the former president is not talking about the gang, many of whose members are Americans and cannot be *“taken out of the country”*, but specifically about individuals crossing the southern border of the United States. Thus, the president of a democratic country, one of the great powers, called part of the population *“not people, but animals”*. This is just the most recent and illustrative example, but unfortunately not the only one. We can mention the comparison with animals during BUSH’s term, or with mechanistic entities, or objects during OBAMA’s one.⁶

2 MATTHEW, Dayna, Bowen. *Just Health*. New York: New York University Press, 2022, pp. 57–91.

3 WRIGHT, James, David (ed.). *International Encyclopedia of the Social and Behavioral Sciences*. 2nd Edition. Oxford: Elsevier, 2015, pp. 31–37.

4 QIU, Linda. *The Context Behind Trump’s ‘Animals’ Comment*. [online]. Available at: <https://www.nytimes.com/2018/05/18/us/politics/fact-check-trump-animals-immigration-ms13-sanctuary-cities.html> Accessed: 06.05.2024.

5 Mara Salvatrucha or MS-13 is an international criminal gang that originated in Los Angeles, California.

6 BACHMAN, Jeffrey, HOLLAND, Jack. Lethal sterility: innovative dehumanisation in legal justifications of Obama’s drone policy. *International Journal of Human Rights*, 2019, vol. 23, no. 6, pp. 1028–1047.

Thus, the purpose of this paper is to analyze the dehumanization in the political discourse of the United States and its legality under national and international law. This case study has been chosen exclusively because it is the most documented, mediatized and well-researched one. At the same time the conclusions can be used to analyze similar situations in other countries.

2 Human dignity in the US legal order

Before turning to dehumanization, it is necessary to say more about what it is attacking – about dignity and its framing in the U.S. legal order. The Declaration of Independence (1776), the U.S. Constitution (1787), and the Bill of Rights (1798) do not formally express human dignity, which is typical of the acts of that period.⁷ But can this right be recognized today, especially since some amendments contain related rights?⁸ Here is what the major American schools of constitutional interpretation think about it. Originalists note that human dignity was not part of the legal discourse of the time, and adherents of the living constitution note that teleological interpretation also does not allow unambiguously speaking of dignity as a constitutional value.⁹ For example, Justice BRENNAN, who advocates interpreting the Constitution as a living document and who is known for frequent references to human dignity in his speeches and court decisions, disagrees that human dignity should be recognized as a constitutional right, but more as a transcendent value or a prism for interpretation.¹⁰ Also, they claim that all these fundamental acts are based on individual liberty, as liberty against the state, and not human dignity, so recognizing the last-named as a constitutional value would disturb the constitutional balance.¹¹ At the same time, other authors deny this statement, as well as the fact that there is a single doctrinal basis for all constitutional acts. In particular, as Jeremy WALDRON notes, many amendments were added ad hoc, without much attention to any theoretical unity.¹²

The following interpretations of dignity can be found in the jurisprudence of the Supreme Court: as one of the peripheral rights located in the penumbras of the express constitutional rights or as a subsidiary right to liberty.¹³ The second approach is the dominant one in the Court's practice today, which is consistent

7 BARAK, Aharon. *Human Dignity: The Constitutional Value and the Constitutional Right*. Cambridge: Cambridge University Press, 2015, pp. 185–208.

8 The right to a fair trial for all (5th Amendment), prohibition on cruel and unusual punishment (8th Amendment), and equal protection of the laws (14th Amendment).

9 BARAK, Aharon. *Human Dignity: The Constitutional Value and the Constitutional Right*. Cambridge: Cambridge University Press, 2015, pp. 185–208.

10 WERMIEL, Stephen. Law and Human Dignity: The Judicial Soul of Justice Brennan. *William and Mary Bill of Rights Journal*, 1998, vol. 7, no. 1, pp. 223–239.

11 MCALLISTER, Marc, Chase. Human Dignity and Individual Liberty in Germany and the United States as Examined through Each Country's Leading Abortion Cases. *Tulsa Journal of Comparative and International Law*, 2004, vol. 11, no. 2, pp. 491–520.

12 WALDRON, Jeremy. Is Dignity the Foundation of Human Rights? *Public law and legal theory research paper series*, 2013, no. 12–73, pp. 1–29.

13 *Idem*.

with the vision of liberty as the foundation of the Constitution. Supreme Court Justice W. BRENNAN, honoring the dignity, describes the US Constitution in this matter as “a sparkling vision of the supremacy of the human dignity of every individual”.¹⁴ This understanding is also frequently reproduced by the Supreme Court and state courts in their decisions.¹⁵ Lawyers and scholars claim that human dignity has been recognized as a constitutional value since the Second World War and has been a decisive factor in many Supreme Court cases. Thus, while the value of human dignity is recognized in the US legal order, it is recognized in a rather fragmented and inconsistent way, leaving wide room for interpretation, including on issues of dehumanization in political discourse. Thus, we shall next consider how exactly this fragmented regulation of human dignity impacts on its interaction with freedom of speech.

3 Dehumanization and freedom of speech

“Speech may not be banned on the ground that it expresses ideas that offend” is the First Amendment principle.¹⁶ Since the object of analysis is the dehumanizing statements of politicians, for the purposes of this article, we are talking about the relationship between dignity on the one hand and a person’s freedom of expression and privacy on the other. However, as Aharon BARAK writes, there is no discussion about their overlap in the American legal community today.

Nevertheless, let’s start with a legal qualification of TRUMP’s speech. The closest qualification is a hate speech – incitement to hatred and humiliation of human dignity on the grounds of gender, race, nationality, language, sexual orientation, religion or membership of any social group. This action is a crime in many countries and is actively condemned by the Council of Europe.¹⁷ Of course, criminalization does not ensure real protection of dignity, but the US Supreme Court has taken the position that hate speech is *protected* by the First Amendment.

Of course, freedom of speech is not unlimited, there have been different approaches to defining exceptions. First of all, we should mention the clear and present danger standard in accordance with which only speech where “... the words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent”.¹⁸ Another famous attempt to delineate the boundaries of freedom of speech is the Brandenburg test, according to which, to be prohibited, speech must express advocacy of violation of the law, which calls for immediate

14 BRENNAN, William. The Constitution of the United States: Contemporary Ratification, *University of California Davis Law Review*, 1985, vol. 19, no. 1, pp. 2–14.

15 O’MAHONY, Conor. There is no such thing as a right to dignity. *International Journal of Constitutional Law*, 2012, vol. 10, no. 2, pp. 551–574.

16 Supreme Court of the United States, *Matal v. Tam*, no. 15-1293, 2017. Supreme Court of the United States, *Iancu v. Brunetti*, no. 18-302, 2019.

17 Council of Europe, Hate speech, apology of violence, promoting negationism and condoning terrorism: the limits to the freedom of expression, 2018.

18 Supreme Court of the United States, *Schenk v. US*, no. 437, 1919.

action, and is likely to occur.¹⁹ In addition, individualized libel and slander are offences in many states, but it is not a matter of deliberately denying the dignity of large groups of people (pregnant women, homeless, migrants, people with certain medical conditions and others). In addition, the more political the speech, the more serious reasons are needed to restrict it, especially when it comes to content-based or even viewpoint-based regulation, especially in public forums. In such cases, interested parties must provide truly substantial evidence that speech should be limited and a law aimed to restrict hate speech must pass strict scrutiny to be validated. For all of these reasons, political speech is the most protected from any kind of restriction. Thus, at the federal level, freedom of speech is prioritized.

There are some differences at the state level, but many laws are repealed as violating the constitution. In practice, there are some laws in force, for example, in Illinois. In the *Beauharnais v. Illinois* case, the Court held that it was legal to restrict not only individual but also collective libel against minorities because there were many incidents of violence in the state.²⁰ However, this is the exception rather than the rule. In most cases of collective defamation, the Court favors freedom speech, for example in *R.A.V. v. City of St. Paul*²¹ and *Snyder v. Phelps*,²² the Court said “*that the First Amendment requires the government to strictly protect robust debate on matters of public concern, even when that debate devolves into distasteful, offensive or hateful speech that causes others to feel grief, anger or fear*”. Thus, violence or personal insults are criminal offences, but group defamation, which often involves dehumanization, is legal if it passes the *Brandenburg* test and is not directed at a readily identifiable group of people.²³ That is why, inter alia, the attention of the international community is so focused on the United States and its political landscape.

4 Consistency with U.S. international commitments

The situation in the US has not gone unnoticed internationally.²⁴ As for international obligations, the U.S. has ratified the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the International Convention on

19 Supreme Court of the United States, *Brandenburg v. Ohio*, no. 492, 1969.

20 Supreme Court of the United States, *Beauharnais v. Illinois*, no. 118, 1956. President of the White Circle League in Illinois, organized the distribution of a petition flyer calling on Chicago authorities to “*stop further encroachments, harassments, and invasions by Negroes on white people, their property, neighborhoods, and persons.*” The leaflet urged white Chicagoans to unite and warned that if “*conviction and the need to prevent the mixing of the white race with Negroes will not unite us, then [the] aggression, rapes, robberies, knives, guns and marijuana of Negroes will certainly unite us.*”

21 Supreme Court of the United States, *R.A.V. v. City of St. Paul*, no. 90-7675, 1992.

22 Supreme Court of the United States, *Snyder v. Phelps*, no. 09-751, 2011.

23 US District Court for the Eastern District of Louisiana, *In Re Ny Life Ins. Co. Agents' Class*, no. MDL 1149, 1997.

24 HEATH, Dreisen. *Politics of Dehumanization in the United States*. [online]. <https://www.hrw.org/news/2018/07/27/politics-dehumanization-united-states> Accessed: 06.05.2024.

the Elimination of All Forms of Racial Discrimination, which deal directly with the issue of human dignity and prohibit, among other things, the propagation of ideas aimed at creating an environment conducive to discrimination and hostility based on membership in a particular social group. As this is a cross-cutting issue, we will focus on the opinions of experts from different sectors and, first of all, on the compilation of UN information prepared by the Working Group on the Universal Periodic Review on the national report of the United States.²⁵ The document points to the persistence of institutionalized discrimination, in particular the increasing use of hate speech and attempts to marginalize racial, ethnic and religious minorities in political discourse that encourages violence, intolerance and fanaticism.

The Special Rapporteur on the rights of migrants stated that the public discourse on immigration in the United States of America was of great concern, in particular because of the racist and xenophobic language used by the authorities. He noted that it stigmatized migrants and refugees, equating them with crime and epidemics.²⁶ The Special Rapporteur on extreme poverty and human rights noted the long-standing structural discrimination based on race and stated that the United States remained a segregated society and there was even an increase in racism and xenophobia.²⁷ Experts also note the activity of hate crime groups. The Committee against Torture notes the continuation of suspicious activities against detainees and the neglect of persons with mental health and substance use problems, which looks like inhumanization of vulnerable groups. We can summarize with a phrase from one of the reports: *“It is of particular concern that such rhetoric is expressed by high-level authorities, leading to the escalation and normalization of hate speech, incitement to hatred and discrimination in the political and public sphere.”*²⁸

5 Conclusion

Of course, not every hate speech is dehumanizing. At the same time, it is the extreme form that directly attacks human dignity and makes further discussion impossible. What human rights can we talk about if a person is not or less than a human being?

National perceptions of human dignity and the obligations that flow from them can differ dramatically from universal ones, resulting in a lack of real

25 Human Rights Council. Working Group on the Universal Periodic Review, Compilation on the United States of America Report of the Office of the United Nations High Commissioner for Human Rights, no. A/HRC/WG.6/36/USA/2, 2020.

26 Office of the United Nations High Commissioner for Human Rights. *Migrant caravan: States have duty to protect human rights*. [online]. Available at: <https://www.ohchr.org/en/press-releases/2018/11/migrant-caravan-states-have-duty-protect-human-rights> Accessed: 06.05.2024.

27 Human Rights Council. Report of the Special Rapporteur on extreme poverty and human rights on his mission to the United States of America, no. A/HRC/38/33/Add.1, 2018.

28 United Nations. *Central American migrants must be protected, urge UN experts*. [online]. Available at: <https://news.un.org/en/story/2018/11/1026831> Accessed: 06.05.2024.

protection against dehumanization. It is theoretically possible that, in the absence of any form of malfeasance, this would not be a problem even with the level of freedom of speech that exists in the United States. However, there are individuals who exploit emotion, disinformation and psychology in order to profit from this kind of rhetoric, and it is unlikely that they will cease their activities on their own initiative.

In the United States, social media platforms such as Facebook play a protective role by banning hate speech in accordance with their terms of use. This mitigates the potential for digitalization and globalization to exacerbate existing issues. While such practices may be legally permissible under national law, they may still contravene a state's international commitments.

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