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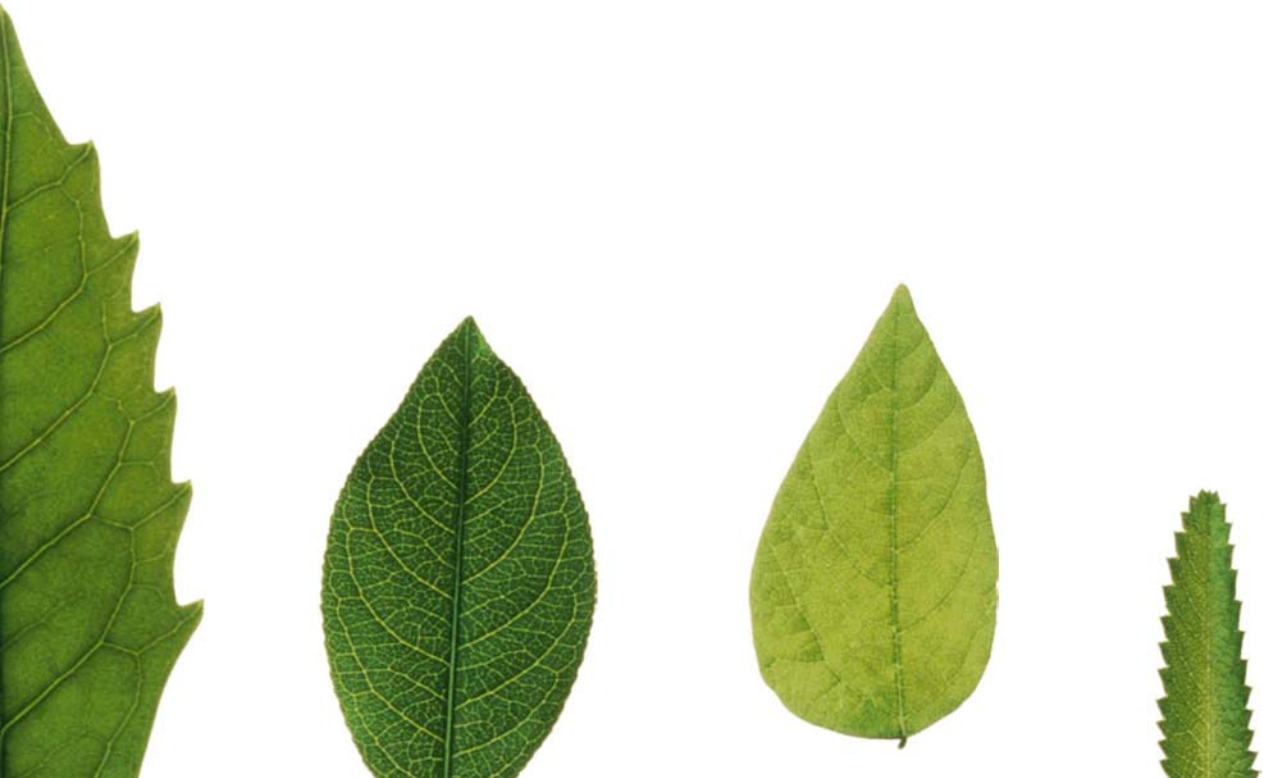
BOOK REVIEW



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Dina L Townsend, *Human Dignity and the Adjudication of Environmental Rights* (Edward Elgar Publishing Limited 2020)

In Human Dignity and the Adjudication of Environmental Rights, Dina L. Townsend asks (p. 2): 'What role does or should human dignity play when we face conflicts about the use or value of the environment?' Dr Townsend is a distinguished environmental lawyer and scholar. Her chief argument is that advancement of human dignity should lie at the centre for human rights cases when environmental issues are in play.

One of Dr Townsend's chief tropes concerns 'our humanness as being constructed in important ways by the environment.' (p. 2) That is to say, we are not solely autonomous, disconnected beings, but are constituted both by our relations with other humans, and by our relations with the nonhuman world. According to Dr Townsend, dignity 'can help us bring the environment into the core of our judicial reasoning – as constituting its own reason or justification – by drawing a bright line connecting our understanding of our own humanness and the environment.' (p. 33) Human dignity – i.e. (my interpretation) our common moral worth and inherent value — is particularly at risk now in light of growing threats from environmental degradation, and could help counter that degradation if employed more widely in human rights cases.

Dr Townsend examines the particular role that human dignity can bring to cases where indigenous peoples assert legal claims rooted in special connections to land and resources, and where the human rights of future generations are at stake. As a result of her wide-ranging discussion, she concludes that 'dignity offers new ways of thinking about problems of anthropocentrism, individualism, and the constrained temporality of human rights law.' (p. 271) Dr Townsend focuses her analysis on the jurisprudence of key domestic and international courts, because judges leave a clear, written record on their thinking, because they 'seem to be in a dialogue, of sorts, with one another around the concept of dignity,' and, presumably, because her analysis could help these courts, who hold so much power over how citizens live their lives, bring the concept of human dignity into environmental matters.

After some initial brush clearing – about what 'environment' means, about whether human rights are an unfortunately anthropocentric and Western-centred concept, in Chapter 2, Dr Townsend provides a history of 'dignity' in Western thought. She argues that 'dignity' is, in fact, an environmental concept, used to differentiate us from other animals and also to situate us in a hierarchy in the 'natural order.' We place above other creatures, and below gods – but nonetheless 'closer to God than to plants.' (p.63) The (unfortunate) environmental outcomes of this philosophy mean we have duties to other dignity holders – i.e. each other – but not to the nonhuman world. She explores cosmologies in the Americans and Africa, and finds in these regions many examples of close connections between conceptions of dignity and dependence on and relationship with the natural world, and perhaps a model for how we might fulfil human rights by a notion of dignity that is rooted in relationship with the nature around us.

In Chapter 3, the book explores how 'dignity' functions in human rights jurisprudence. Townsend posits 'dignity' as a universal value that undergirds human rights law. Thus, if dignity is a shared value common to all domestic legal systems, the concept could also reach across those systems as a foundational value for exploring the human rights impacts or liabilities portended, for example, by climate change. Here, I believe the book might have found a broader audience, had she stuck to straightforward analysis of jurisprudence without the need for quite so much philosophical analysis and jargon. Of course, scholars write the book they want to write, not the book the reviewer wishes they had written; but I did find that sections like 'I argue that one can understand dignity as contrapuntal, and as a concept that is both multifaceted and evolving in response to new threats and understandings. Dignity is, on this account, universal and foundational, but this is, in a sense, a functional foundationality' (p. 71) a bit off-putting.

In Chapter 3, Dr Townsend addresses a concern I had as I was reading: Scholars she cites in her section entitled 'Dignity Means Nothing and Can Be Deployed on Both Sides of Any Argument' (p. 100) suggest 'that dignity is a concept with no meaning beyond the meaning assigned to it by each user as and when they use it.' (p. 95) This, to me, was the main problem with

this impressive volume: I could never quite get a handle on what 'dignity' was — or, rather, was not (More on this below). As a 'legal pragmatist', (p. 103) Townsend sees 'judges as engaged in creative problem-solving, rather than deriving correct answers from overarching principles…'. That is to say, rather than believing that there is some external moral concept that is the 'right' way to understand dignity, she is concerned with how the term is actually wielded in the courtroom: What do we argue in the name of 'dignity'? As portrayed here, 'dignity' is not a relativist concept: Townsend describes her approach as 'contrapuntal,' i.e. different lines of jurisprudence merge to form a comprehensible harmony. I believe 'constructivist' would be a suitable term, because philosophers and, especially, judges across the world have considered each other's reasoning and are building a similar set of meanings with which they have imbued the term.

In Chapters 5 and 6, Dr Townsend applies her contrapuntal conception to show how judges may be converging on the idea that dignity includes an understanding that we are fundamentally connected to, and dependent upon, the natural world. Dignity, for Townsend, is relational: It can only be understood in how we interact with others, where 'others' includes the nonhuman world around us. Underlying environmental human rights cases are claims that harm to the environment is harm to us; this relational notion of 'dignity' that is a constructed universal underpinning for human rights jurisprudence supports and reinforces that environmental issues are human rights issues, and vice versa. She argues that judgments from the Inter-American Court of Human Rights on indigenous peoples' land rights rely too much on a Western notion of 'right to property.' Because 'dignity has been used by courts in human rights reasoning as a concept concerned with our self-understanding and with our right both to assert our own identities and to live lives in accordance with those identities,' (p. 231) a conception of dignity that honours the multifaceted relationship between peoples and their lands would be a more epistemologically accurate and legally sustainable approach.

But from this fascinating, well-researched chapter, I remained sceptical that we need 'dignity's' central role in ensuring that courts take claims of 'a connectedness to land seriously and see such claims as neither legally irrelevant nor merely evidentiary of other rights claims' (p. 231). Dr Townsend writes: 'What dignity does, however, is require indigenous peoples and their view of the environment to be incorporated into environmental decision-making in a manner that takes claims to an environmental identity seriously. It also requires that debates about best uses of resources, about what is in the public interest about who gets to be the arbiter of that public interest, remain open' (p. 231). The problem here is that the cases she cites seem to be doing exactly what she seeks, without 'dignity' playing a central, unifying role.

In her chapter on intergenerational justice, Townsend argues that 'an intergenerational dignity approach is one that might bring future interests and impacts into the heart of environmental human rights reasoning' (p. 234). As she concludes the chapter, 'we seem to have the possibility that future generations might be recognised as dignity bearers, meriting both respect and recognition' (p. 270). As in the rest of the book, I learned a *lot* from this chapter about the way courts in diverse fora have thought about (or failed to think about) the rights of future generations; I am just not sure that 'dignity' is a necessary or useful unifying concept to secure the rights of future generations to a sustainable planet. One could substitute 'bearers of human rights,' for which 'dignity' would be an underlying criterion… But then 'dignity' adds little in particular to the discussion.

In the end, I am entirely convinced of her thesis that 'in different ways, that by reconceptualizing humanness as environmentally constituted, human rights courts can better deploy human rights law to protect the environment' (p. 232). But the core problem with the book is that one can do that without recourse to the notion of 'dignity,' which, as critics she cites in this book point out, is so protean that anything may fall under its aegis. I finished the book less sure I understood what 'dignity' meant than when I opened the book.

I do not mean to be too critical here. I am quite impressed by the depth and breadth of Dr Townsend's scholarship on the history of the idea (legal and otherwise) of 'dignity,' of her mastery of comparative jurisprudence in domestic and international courts, and of her clear and compelling writing. My thoughts were provoked by her discussions on just about every page. The reader will learn a tremendous amount not

just about the history of human rights jurisprudence in all its forms, but about the comparative law of indigenous environmental human rights, and rights for future generations. Furthermore, the comparative lens, including substantial jurisprudence from the global South, is most welcome. I certainly recommend the book to any practitioner or scholar interested in the current and future state of environmental human rights jurisprudence.

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