

Dignity Rights **Stephen L. Kass***

In the December, 1890 issue of the Harvard Law Review, two young lawyers, Louis Brandeis and his partner Samuel Warren, wrote an article on “The Right to Privacy,” a “right” nowhere mentioned in the U.S. Constitution, the Massachusetts Constitution or any federal or state statute at the time. Yet Brandeis and his colleague found the right to privacy implicit in those written laws and a unifying theme for many of the specific constitutional and statutory protections that society had adopted for the purpose of protecting evolving notions of life and liberty. Over time, Brandeis’ notion of privacy came to be recognized as the basis for reproductive and marital rights under the U.S. and state Constitutions and for even broader rights internationally. Indeed, while law students are still stumped to find the right to privacy in any article of the U.S. Constitution, few of them can now conceive of a legal regime that does not recognize and enforce that right.

Are we on the cusp of a similar evolution for the “right to dignity?” As with privacy, the claim to have one’s dignity respected by the state and the community inheres in a broad array of individual rights protecting one’s person, thoughts, property and personal relations. Dignity may even extend more broadly than privacy, touching not only on an individual’s claim to be respected, but also on a collective or communal demand for respect from the larger society. Indeed, dignity may also be seen as part of our individual and communal relationship to the natural world and even other species.

Our inquiry here is to discover and call out these underlying themes that give rise to a newly and more broadly recognized right to dignity, a concept that may, in some contexts, prove amenable to a broader range of remedies than simple judicial enforcement of “rights.” This is, in my view, a timely, even urgent, inquiry because so many individual rights are either under assault or facing challenges from a changing physical environment, changing mores and changing (and increasingly fragile) legal and political institutions. Whether dignity will rise above these challenges, as privacy has, and help usher in revitalized national and international norms is the subject that our program seeks to explore. With persistence, good humor and, if we are lucky, a small share of Brandeis’s prescience, perhaps we can take the first steps toward that goal.

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