

Migrants, State Responsibilities, and Human Dignity

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Abstract. This article addresses two questions: First, how does the value of human dignity distinctively bear on a state's responsibilities in relation to migrants; and, secondly, how serious a wrong is it when a state fails to respect the dignity of migrants? In response to these questions, a view is presented about the distinction between wrongs that violate cosmopolitan standards and wrongs that violate the standards that are distinctive to a particular community; about when and how the contested concept of human dignity might be engaged; and, elaborating a three-tiered and lexically ordered scheme of state responsibilities, about how we should assess the seriousness of a state's failure to respect the dignity of migrants.

1. Introduction

Notoriously, questions about the responsibilities of nation states to “migrants”—employing this term in a generic sense to denote those persons who are seeking to leave home country A and be admitted to prospective host country B (or to some intermediate country, C, *en route* to B)¹—bring cosmopolitan virtue into headline tension with local sovereignty (Spijkerboer 2010; Valadez 2010). Whatever the particular flashpoint—whether it is the conditions in migrants holding camps (see, e.g., UN 2019), or the building of border walls, or the use of water cannon, tear gas, and stun grenades against migrants (Corbett 2020), or allowing rescued migrants to disembark (see BBC Reality Check Team 2020 and France 24/AFP 2019), and so on—we return to the fundamental question: How are we to do justice to the ideal of universal concern while, at the same time, respecting legitimate local difference (Appiah 2006; Brownsword 2010a)?

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¹ Within this generic class, some migrants might be refugees, some might be nonrefugees; some might be leaving home country A in fear for their lives, some in hope of a better life; some might be fleeing postconflict situations, others might not; some migrants might be economic, others might not; some migrants might present themselves at regular ports of entry in country B, but many will not, and so on. For discussion of the distinction between “migrants” and “refugees,” see Costello 2018.

Against this background of dispute and division, we might wonder, not for the first time, how respect for human dignity bears on the legitimate treatment of migrants.² However, given that human dignity is itself a deeply contested concept,³ there is a risk that we will simply add one layer of contestation on top of another. Nevertheless, in this article, the two questions to be addressed are, first, how the value of human dignity, or the principle of respect for human dignity, distinctively bears on a state's responsibilities when it is confronted by migrants; and, secondly, recognising that the value of human dignity is widely understood as "going deep," how serious a wrong it is when a state fails to respect the dignity of migrants. While the analysis in this article will not resolve all the tensions in debates about the treatment of migrants, it will offer a view about what is rightly cosmopolitan and what is rightly local, as well as clarifying when and how human dignity might be engaged and how we should assess the seriousness of a state's failure to respect the dignity of migrants.

Confronted by a stream of shocking images of migrant distress and tragedy—most shockingly, perhaps, by the image of a young migrant boy washed up on a Turkish beach (Smith 2015)—the international community has not been slow to respond; but what that community has said is not always explicitly connected to human dignity. For example, in the two most relevant United Nations' global compacts—one for Safe, Orderly and Regular Migration (GCSORM 2018) and the other on Refugees (GCR 2018)—we find much about the responsibilities of nation states and much about respect for human rights but very little explicitly about human dignity. If these compacts are intended to be applications of *human dignity* to a pressing global problem, they do not advertise this fact. Similarly, when 800 bioethicists recently condemned the US government's treatment of migrant children at the border with Mexico, the charge was not so much that *human dignity* was being compromised but that the state was violating "basic principles of medical ethics [which] entail respect for persons, avoidance of harm, and fair treatment" (see Cook 2019b).⁴ Conversely, in the EU Charter on Fundamental Rights,⁵ while we find some very explicit provisions about human dignity, and implicitly about the responsibilities of member states, there is nothing directly about the application of human dignity to the treatment of migrants.

Faced with the complexities of the migrant debate and the apparent omission to be more explicit about the relevance of human dignity, the present analysis proceeds in four main sections. First, in Section 2 of the article, we consider the aforementioned UN global compacts. Three features of these compacts are striking: first, the emphasis

² See Collste 2014, 461, who, taking a human rights view, is guided by two meanings of human dignity: "first, the intrinsic and equal value of each human being; and, second, a dignified life, i.e., a life lived under decent conditions." The arguments stack up on the cosmopolitan side but Collste's conclusion is the practical one that both "points of departure require more powerful global institutions that can enforce the laws" (ibid., 467). For a glancing reference to the relationship between dignity, rights, and refugees, see Milbank 2013.

³ For the landscape of human dignity, see Düwell, Braarvig, Brownsword, and Mieth 2014. On the notion of an essentially contested concept, see Gallie 1956. On human dignity as a contested concept, see Dresser 2008; Grimm, Kemmerer, and Möllers 2018.

⁴ Linking to the full text of the bioethicists' letter (see Bioethicists 2019).

⁵ Published in the *Official Journal of the European Communities* (OJ C 364, 18.12.2000), available at https://www.europarl.europa.eu/charter/pdf/text_en.pdf.

on the shared responsibilities of states to address global migration; secondly, the centrality of the obligation to respect, protect, and fulfil human rights; and, thirdly, the implicit (and controversial) recognition that national sovereignty in setting state policy on immigration has to be constrained by both the need for cooperation and the imperative of respecting human rights (Goodman 2018). By contrast, although there are one or two explicit references to human dignity (typically in the context of repatriation), in neither compact is this highlighted as one of the guiding values.

Building on the first of these features, in Section 3 of the article, a three-tiered and lexically ordered scheme of state responsibilities is sketched. At the first tier, the state's responsibilities are cosmopolitan and non-negotiable—namely, to protect and preserve the preconditions for human social existence (“the global commons,” so to speak).⁶ By contrast, at the second and third tiers, the responsibilities are specific to each particular community and potentially pluralistic. Thus, at the former tier, the state's responsibility is to articulate and respect the distinctively constitutive (or fundamental) values of the particular community; and, at the latter, the responsibility is to accommodate the conflicting and competing interests of individuals and groups in the community.

While the scheme of a state's responsibilities provides the formal framework, or scaffold, for thinking about the substantive obligations of the state, it does not yet locate human dignity at a particular tier (or tiers) of responsibility and it does not specify what the value of human dignity, or the principle of respect for human dignity, requires of states. Accordingly, in Section 4 of the article, we consider how the particular commitments to human dignity that are set out in the opening articles of the EU Charter of Fundamental Rights might relate to the scheme of state responsibilities. In other words, we consider whether we should regard the particular articulations of human dignity in the Charter as speaking to the first-tier interests of humanity, or as second-tier expressions of the values that are fundamental to our identity as “Europeans” and that define the European community, or as merely third-tier interests to be accommodated by the state.

Finally, in Section 5, guided by our analysis of the state's responsibilities in conjunction with the EU Charter provisions, and with reference to the bioethicists' condemnatory letter, we can consider how the state's dignity-related responsibilities are engaged by migrants. In the light of this, among other things, we can assess whether the initial impression given by the UN global compacts—namely, that it is respect for human rights rather than for human dignity as such that is critical—accurately represents the principles that should guide the responsibilities of nation states to migrants; and we can undertake a general stock-taking of the ways in which respect for human dignity might be implicated in the appropriate treatment of migrants.

⁶ To avoid any misunderstanding, it should be emphasised that, in my usage, “the global commons” is not to be limited to or equated with “the international spaces situated beyond the limits of national jurisdiction, open to use by the international community and closed to appropriation by treaty or custom” (Shackelford 2020, xxii–xxiii). Rather, compare Yeung 2019, 42, cautioning that we should not ignore the possible systemic risks arising from algorithmic decision-making and saying that “if we fail to ensure that adequate safeguards are put in place, [this] may erode our moral, cultural, and political foundations (the ‘commons’) which could fatally undermine our democratic political system and with it our individual freedom, autonomy, and capacity for self-determination which our socio-cultural infrastructure ultimately seeks to nurture and protect [...]”

My concluding take-home messages are: (i) that there is more than one way in which a state might fail to meet its responsibilities in relation to the treatment of migrants; (ii) that, while some failures might engage cosmopolitan standards, other wrongs and failures are relative to the standards of the particular community; (iii) that we can assess the seriousness of a state's particular failure, as well as whether it relates to cosmopolitan or community standards, only if we have a clear picture of the different levels (tiers) of state responsibility; (iv) that, whether or not we judge that a particular failure or wrong specifically involves a lack of respect for, or compromising of, human dignity will depend upon our conceptual understanding and interpretation of human dignity (including its relationship with human rights); and (v) that, before we can answer our principal questions—that is, before we say why it is that a state's treatment of migrants violates human dignity and how serious that violation is—we need to be clear about both human dignity (speaking to what is distinctively wrong in a state's treatment of migrants) and the levels of state responsibility (speaking to the seriousness of the state's wrong and whether or not it violates cosmopolitan standards).

2. The Two Global Compacts

In December 2018, the United Nations adopted two landmark global compacts: the Global Compact for Safe, Orderly and Regular Migration (GCSORM 2018) and the Global Compact on Refugees (GCR 2018). Although these compacts are not legally binding, they represent an important declaration of intent by the vast majority (but not all) of the UN members. Moreover, they invite resistance by those nation states who are reluctant to cede sovereignty over immigration policy.

In the former compact, GCSORM, the context is expressed as one in which we understand that migration is “a defining feature of our globalized world, connecting societies within and across all regions, making us all countries of origin, transit and destination” (GCSORM, par. 10).⁷ This leads to an acknowledgment of the shared responsibilities of states “to address each other's needs and concerns over migration, and an overarching obligation to respect, protect and fulfil the human rights of all migrants, regardless of their migration status, while promoting the security and prosperity of all their communities” (GCSORM, par. 11). This, in turn, generates a commitment “to create conducive political, economic, social and environmental conditions for people to lead peaceful, productive and sustainable lives in their own country and to fulfil their personal aspirations, while ensuring that desperation and deteriorating environments do not compel them to seek a livelihood elsewhere through irregular migration” (GCSORM, par. 18).

At first blush, human dignity does not seem to be central to these compacts. For example, there is no explicit reference to human dignity in the ten guiding principles of the GCSORM (par. 15); and the GCR is said to emanate “from fundamental principles of humanity and international solidarity” (GCR, par. 5). Nevertheless, for

⁷ Compare Valadez 2010, 233–4: “[T]he dilemmas of immigration inevitably involve transnational relations. This means that we should take into account the impact of immigration on the needs and interests of the immigrants themselves, the countries of origin, the countries of destination, and even on the global economy as a whole.”

at least three reasons, we might find that there are echoes of human dignity in both compacts.

First, the responsibility of states to respect, protect, and fulfil the human rights of migrants is central to both compacts; and, to the extent that human dignity is implicit in such respect for human rights, human dignity is implicitly just as central as human rights. After all, there are relatively few explicit references to human dignity in the constituent instruments of the International Bill of Human Rights—the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR)—and yet the preambular reference to the foundational importance of the “inherent dignity” of humans suffices both to signal the importance of human dignity and to embed it implicitly in all human rights instruments.⁸

Secondly, when the GCR refers to “fundamental principles of humanity and international solidarity” we might take this as a further indication of the implicit importance of human dignity. This might be because we simply equate humanity with human dignity; or it might be because we equate humanity with human rights (and human dignity); or it might be because we take solidarity to presuppose respect for human dignity.

Thirdly, beyond these implicit references to human dignity, we find in both compacts explicit provisions for “repatriation in conditions of safety and dignity” and for “safe and dignified repatriation” (GCSORM, Objective 21, and GCR, par. 87). Indeed, in the articulation of Objective 21 of the GCSORM, one of the action points is to establish or strengthen mechanisms for greater accountability “in order to guarantee the safety, dignity, and human rights of all returning migrants” (GCSORM, pars. 37–8).

If we read human dignity as implicit in the global compacts, we will see it as underpinning a range of state responsibilities, including the explicitly identified responsibility to ensure safe and dignified repatriation. However, characteristically, human dignity is understood not only as covering a broad sweep of responsibilities but also as going “deep” in relation to those responsibilities. The next step in the discussion, therefore, is to try to sketch the bigger picture of a state’s responsibilities in a way that conveys the depth and layering of those responsibilities.

3. State Responsibilities: A Three-Tiered Analysis

Drawing on an idea developed in a somewhat different context (Brownsword 2019a, 2019b, 2020)⁹ in this part of the article I will present a sketch of a three-tiered lexically ordered scheme of state responsibilities. Before detailing these responsibilities, let me make four preliminary remarks.

⁸ Including, of course the European Convention on Human Rights. Thus, in the Strasbourg jurisprudence, it is clear that human dignity is implicated in the Convention’s protective regime—for example, in the *Pretty* case, the Grand Chamber affirmed that “the very essence of the Convention is respect for human dignity and human freedom.” *Pretty v. the United Kingdom*, no. 2346/02, § 65, ECHR 2002-III (35 EHRR 1). See, too, *S. W. v. the United Kingdom*, 22 November 1995, § 44, Series A no. 335-B (21 EHRR 363), and *C. R. v. the United Kingdom*, 22 November 1995, § 42, Series A no. 335-C (21 EHRR 402). For discussion, see Costa 2013.

⁹ Although the context of regulating emerging technologies is quite different to that of the treatment of migrants, it seems to me that the scheme of state responsibilities applies equally in both contexts.

First, in the present context, there are two key lines drawn by this scheme. One of these lines is drawn between, on the one side, the first tier of responsibility and, on the other, the second and third tiers of responsibility. This line divides those responsibilities that are governed by cosmopolitan considerations from those responsibilities that are governed by the values and interests of each particular community. In other words, this is the line that divides what is rightly cosmopolitan from what is rightly local. A second key line is that drawn between the second and third tiers of responsibility. This line is within the domain of national or local sovereignty, where it is the values and interests of each particular community that count. What this line anticipates is that the community will declare its constitutive values, which will then be privileged over whatever nonconstitutive values and interests it recognises.¹⁰ So, on one side of the line, we have the constitutive (or defining, or fundamental) values of the particular community and, on other side, we have all other interests that are recognised as legitimate.

Secondly, in principle, we might appeal to human dignity at any one of these three tiers. In other words, we might claim that respect for human dignity is a cosmopolitan principle that takes priority over any national or local considerations; or we might locate human dignity in the constitutive values of a particular community;¹¹ or we might argue that, in a particular community, there is a legitimate interest in human dignity (or in dignified treatment, or in not suffering an indignity) that needs to be taken into consideration when regulatory decisions are made.

Thirdly, in the context of the present article, when I refer to a particular “community,” this evokes nation states as candidate communities. However, my conception of such a community—as a particular group of humans that identifies with a constitutive set of commitments—might be instantiated neither by *all* nation states nor *only* by nation states. Rather, what a global map of particular communities might show is that some nation states are indeed particular communities so conceived but that there are also such communities to be found within nation states as well as transnationally between and beyond nation states.¹²

Fourthly, this scheme of state responsibilities is to be contrasted with those many debates in which we find that competing and conflicting interests are flattened, in which it is unclear upon whom the burden of justification lies, where there is no clear ranking of interests, and where there is scepticism about foundational values.¹³ Most

¹⁰ The form of this model is neutral between liberal communities that are constituted by respect for specified fundamental rights and communitarian groups that are constituted by respect for specified basic duties. In principle, though, a community might not restrict itself to a simple two-category distinction between constitutive and nonconstitutive values; it might, for example, operate with a three-category model of constitutive values, nonconstitutive higher-order values, and nonconstitutive lower-order values. However, for the sake of simplicity, in this article, I will stick with the two-category approach and the three-tiered scheme of responsibilities.

¹¹ Compare, e.g., AI HLEG 2019, 13, where, having accepted that some ethically acceptable trade-offs have to be made, it is said that there might nevertheless be cases where “no ethically acceptable trade-offs can be identified. Certain fundamental rights and correlated principles are absolute and cannot be subject to a balancing exercise (e.g. human dignity).”

¹² I am indebted to Marcus Düwell’s comments for this clarification: see NoVaMigra 2020, min. 33ff. For some of my own reflections on the breakdown of the traditional Westphalian map, see Brownsword 2010b.

¹³ For a particularly clear adoption of this kind of balancing approach, see Public Health Agency of Canada 2017. For general critique of this kind of approach, see Franklin 2019 (remarking on a “sense of ethical bewilderment” in bioethical circles).

importantly, at the first tier of the scheme, the premise is that regulators have a stewardship responsibility in relation to the anterior conditions for *humans* to exist and for them to function as a *community of agents* (*inter alia* by making various demands of their regulators) (Brownsword 2011a). We should certainly say that any claimed third-tier interest or proposed accommodation of interests that is incompatible with the maintenance of these conditions (the “commons”) is totally “unacceptable”—but it is more than that. Unlike the second-tier constitutive values to which a particular community commits itself—distinctive values which may legitimately vary from one community to another—the essential preconditions are not contingent or negotiable. For human agents, to compromise the commons’ conditions is simply unthinkable.

Accordingly, my proposal is that, when we are debating the state’s responsibilities in relation to migrants, we should frame our thinking in the terms of this three-tiered scheme—where, to repeat, the first-tier responsibilities are cosmopolitan and non-negotiable; where the responsibilities at the second and third tiers are contingent, depending on the fundamental values and the interests recognised in each particular community; and, where vertical conflicts (between responsibilities and interests that are at different tiers) are to be resolved lexically by reference to the tiers of importance, responsibilities, and interests that are engaged by a higher-tier always out-ranking those in a lower tier.¹⁴

By way of elaboration, we can now speak to each of the three tiers of my proposed scheme of state responsibilities.

3.1. *The First-Tier Stewardship Responsibility for the Commons*

The infrastructure for human social existence, the global commons, has two dimensions: one relating to human existence, and the other relating to the human capacity for agency.

First, the *human* species is defined by its biology; and the prospects for human life depend on whether the conditions are compatible with the biological characteristics and needs of the *human* species. Most planets will not support *human* life. The conditions on planet Earth are special for *humans*. However, the conditions are not specially tailored to the needs of any particular human; these are the generic conditions for the existence of any member of the human species.

Secondly, it is characteristic of human *agents* that they have the capacity to choose and to pursue various projects and plans whether as individuals, in partnerships, in groups, or in whole communities. Sometimes, the various projects and plans that they pursue will be harmonious; but, often, human agents will find themselves in conflict or competition with one another. However, before we get to particular projects or plans, before we get to conflict or competition, there needs to be a context in which the exercise of agency is possible. This context is not one that privileges a particular articulation of agency; it is prior to, and entirely neutral between, the particular plans and projects that agents individually favour; the conditions that make up this context are generic to agency itself.

¹⁴ This scheme, it has to be conceded, does not resolve *horizontal* conflicts or tensions within any particular tier. Whether or not a strategy for resolving this kind of conflict or tension can be developed is a matter for further consideration, including (at the first tier) resolving any tension between the interests of the present generation of humans and the interests of future generations. On this latter point, see Marcus Düwell in NoVaMigra 2020.

In other words, there is a deep and fundamental critical infrastructure, a commons, for any community of agents. It follows that any agent, reflecting on the antecedent and essential nature of the commons must regard the critical infrastructural conditions as special. Indeed, from any practical viewpoint, prudential or moral, that of regulator or regulatee, the protection of the commons must be the highest priority.¹⁵

Building on this analysis, the triple bottom line for regulators is the responsibility to protect, preserve, and promote:

- the essential conditions for human existence (given human biological needs);
- the generic conditions for human agency and self-development; and
- the essential conditions for the development and practice of moral agency.

These, it bears repeating, are imperatives for regulators in all regulatory spaces, whether international, transnational, or national, public or private. Of course, determining the nature of these conditions will not be a mechanical process, and I do not assume that it will be without its points of controversy. Nevertheless, let me give an indication of how I would understand the distinctive contribution of each segment of the commons.

In the first instance, regulators should take steps to protect, preserve, and promote the natural ecosystem for human life (Raworth 2017; Rockström et al. 2009). At minimum, this entails that the physical well-being of humans must be secured; humans need oxygen, they need food and water, they need shelter, they need protection against contagious diseases; if they are sick they need whatever medical treatment is available, and they need to be protected against assaults by other humans or non-human beings. It follows that the intentional violation of such conditions should be viewed as a crime not just against the individual humans who are directly affected, but against humanity itself (Brownsword 2014a).

Secondly, the conditions for meaningful self-development and agency need to be constructed: There needs to be a sufficient sense of self and of self-esteem, as well as sufficient trust and confidence in one's fellow agents, together with sufficient predictability to plan, so as to operate in a way that is interactive and purposeful rather than merely defensive. Let me suggest that the distinctive capacities of prospective agents include being able (a) to freely choose one's own ends, goals, purposes, and so on ("to do one's own thing"); (b) to understand instrumental reason; (c) to prescribe rules (for oneself and for others) and to be guided by rules (set by oneself or by others); and (d) to form a sense of one's own identity ("to be one's own person"). Accordingly, the essential conditions are those that support the exercise of these capacities (Brincker 2017; Hu 2017). With existence secured, and under the right conditions, human life becomes an opportunity for agents to be who they want to be, to have the projects that they want to have, to form the relationships that they want, to pursue the interests that they choose to have, and so on.

Thirdly, the commons must secure the conditions for an aspirant moral community, whether the particular community is guided by teleological or deontological

¹⁵ An understanding of agency implicates both awareness and recognition of, as well as respect for, self-interest and the interest of other agents: so, an understanding of what it is to have the capacity for agency presupposes respect for the conditions for both self-interested agency and other-regarding agency. To cash out this argument, see Beyleveld 1991, 2017; Gewirth 1978.

standards, by rights or by duties, by communitarian or liberal or libertarian values, by virtue ethics, and so on. The generic context for moral community is impartial between competing moral visions, values, and ideals; but it must be conducive to “moral” development and “moral” agency in a formal sense. So, for example, in her discussion of techno-moral virtues, (sous)surveillance, and moral nudges, Shannon Vallor (2016, 203) is rightly concerned that any employment of digital technologies to foster prosocial behaviour should respect the importance of conduct remaining “our *own conscious activity and achievement* rather than passive, unthinking submission” (emphasis in original)—or, as I have argued on many occasions elsewhere, we should be concerned if technological management leaves agents with no practical option other than to do what those who manage the technology judge to be the right thing (Brownsword 2005, 2008a, 2011b).

Reasoning impartially, each human agent will see itself as a stakeholder in the commons; and it will be understood that these essential conditions must be respected. While respect for the commons’ conditions is binding on all human agents, this does not rule out the possibility of prudential or moral pluralism. Rather, the commons represent the preconditions for both individual self-development and community debate, giving each agent the opportunity to develop his or her own view of what is prudent as well as what should be morally prohibited, permitted, or required. However, the practice of articulating and contesting both individual and collective perspectives (like all other human social acts, activities, and practices) is predicated on the existence of the commons.

3.2. *The Second-Tier Regulatory Responsibility to Respect the Community’s Fundamental Values*

Beyond the fundamental stewardship responsibilities, regulators are also responsible for ensuring that the constitutive values of their particular community are respected. Just as each individual human agent has the capacity to develop their own distinctive identity, the same is true if we scale this up to communities of human agents. There are common needs and interests but also distinctive identities (Brownsword 2009a).

From the middle of the twentieth century, many nation states have expressed their fundamental (constitutional) values in terms of respect for human rights and human dignity (Brownsword 2014b). These values clearly intersect with the commons’ conditions, and there is much to debate about the nature of this relationship and the extent of any overlap—for example, if we understand the root idea of human dignity in terms of humans having the capacity freely to do the right thing for the right reason (Brownsword 2013, 2018), then human dignity reaches directly to the commons’ conditions for moral agency (Brownsword 2017). However, those nation states that articulate their particular identities by the way in which they interpret their commitment to respect for human dignity are far from homogeneous.

Put somewhat bluntly, whereas, in some communities, the emphasis of human dignity is on individuals having the right to make their own choices, in others it is on the constraints (in particular, relating to the sanctity, noncommercialisation, noncommodification, and noninstrumentalisation of human life) by which individual choice is limited (Beyleveld and Brownsword 2001; Brownsword 2008b; Caulfield and Brownsword 2006). These differences in emphasis mean that we frequently encounter protagonists on both sides of a debate invoking human dignity in support of their

positions;¹⁶ puzzlingly, according to some, there is dignity in dying (choosing to die) while, according to others, there is dignity in living (life being maintained). This also means that communities articulate in very different ways on a range of beginning-of-life and end-of-life questions as well as questions of human enhancement, the use of human embryos for research, property rights in detached human body parts, and so on (Brownsword 2009b, 2018).

It is, of course, essential that whatever the fundamental values to which a particular community commits itself, they should be consistent with (or cohere with) the commons' conditions. It is the commons that sets the stage for community life; and then, without compromising that stage, particular communities form and self-identify with their own distinctive values.

3.3. *The Third-Tier Regulatory Responsibility to Seek an Acceptable Accommodation of Interests*

Within each community, there will be many debates about questions that do not implicate either the commons' conditions or the community's particular fundamental values. Judgments about benefits and risks, and about the distribution of benefits and risks, might be varied and conflictual. Inevitably, whether one favours seeking consensus or sharpening difference, dealing with a plurality of competing and conflicting views will be messy.

At this level, the responsibility of regulators is to seek out an acceptable accommodation between the competing and conflicting interests of individuals and groups that are members of the community. Where the issues (like questions about migration) are both widely and deeply contested, the accommodation will be unlikely to satisfy everyone. There is no right answer as such; and, because the balancing exercise allows a broad margin for "acceptable" accommodation, there are likely to be several regulatory positions that can claim to be reasonable, while, conversely, we have no compelling reason to favour one such reasonable accommodation over another (Brownsword and Wale 2018).

These difficulties and contingencies notwithstanding, the state will have a responsibility to act in good faith, both in reaching the accommodation and in keeping the position under review; and, correlatively, members of the community will have a responsibility to respond in ways that are compatible with both the fundamental values of their community and the maintenance of the commons' conditions.

Accordingly, while, in some cases, a balancing approach is the appropriate regulatory response, in other cases, it is not. To put this more precisely: At the third-tier of regulatory responsibility, a balancing of competing and conflicting preferences is appropriate; but neither at the first tier (where the responsibility is to respect the commons' conditions) nor at the second tier (where the responsibility is to hold the community true to its fundamental commitments and privilege its constitutive values) is such a balancing exercise appropriate.¹⁷

¹⁶ For a particularly complex instance of this phenomenon, see Möllers 2013 (case study of *K.U. v. Finland*, no. 2872/02, ECHR 2008, at the European Court of Human Rights).

¹⁷ Noting the concession in n. 14, where there are horizontal conflicts at either the first or second tiers, there might also need to be a "balancing of values" at the relevant level. But, of course, there is no balancing between values at *different* levels; there, the lexical ordering resolves the conflict.

4. Human Dignity and the EU Charter of Fundamental Rights

We have already mentioned that many communities have identified themselves with respect for human dignity (albeit articulating this idea in ways that range from the liberal to the conservative). In Europe, a number of states (particularly Germany, France, and Italy) have led the way in elaborating the meaning and application of human dignity; and, within the EU, the opening chapter of the Charter of Fundamental Rights, following a preambular declaration that “the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity,” is dedicated to dignity.

In this part of the article, we can start with a brief summary of the dignity provisions of the Charter, consider the possibility of “reading up” or “reading down” particular provisions (relative to the interests that structure the scheme of regulatory responsibilities), and then assess what we should make of the proposition, in Article 1 of the Charter, that dignity is “inviolable.”

4.1. *The Provisions in the Opening Chapter of the Charter*

Stated shortly, the opening Chapter of the Charter comprises five dignity Articles. In Article 1, we have a statement that human dignity is inviolable coupled with the requirement that it be respected and protected; in Articles 2 and 3, there are two general rights (to life and to the physical and mental integrity of the person) and a subset of prohibitions; and, in Articles 4 and 5, we find a number of prohibitions (against torture and inhuman or degrading treatment or punishment, against slavery and forced labour, and against human trafficking). In Article 3.2, the general right to integrity is further specified for the fields of medicine and biology. Here, there is a demand to respect free and informed consent and then a triple prohibition on eugenic practices, on making the human body and its parts a source of financial gain, and on reproductive human cloning.

While these provisions do not speak directly to the application of human dignity to a state’s responsibilities in relation to migrants, we might treat the prohibition against degrading treatment as clearly applicable to both the conditions in which migrants are held and the manner in which they are repatriated or admitted. Moreover, we might also read this prohibition as bearing on the way in which applications for visas (on humanitarian grounds) are processed.¹⁸

At all events, if we read these dignity provisions alongside the three-tier scheme of state responsibilities, what should we make of them? On the face of it, these are provisions that represent the distinctive community interest of Europeans and, as such, they speak to what I have called the second-tier responsibilities of member states. However, might we also read up some of these provisions as touching and

¹⁸ See the judgment of the Court of Justice of the European Union (Grand Chamber) of 7 March 2017, *X and X v État belge*, C-638/16 PPU, EU:C:2017:173. Whereas Advocate-General Mengozzi took the view that the Belgian authorities were bound by the Charter provisions (particularly the dignity provisions) when deciding on an application for a visa with limited territorial application under Article 25 of the Visa Code (see the AG’s opinion of February 7, 2017, EU:C:2017:93), the Grand Chamber of the Court decided against the applicability of the Visa Code in such a case and did not further consider the application of the Charter (see judgment, par. 45) (generally, see EDAL 2017).

concerning first-tier commons' conditions? Conversely, might we read down some of these provisions as touching and concerning only third-tier interests?

Of course, before we suggest any kind of reading up or reading down, it must be acknowledged that these provisions are open to interpretation. Key concepts such as "the right to life" (Council of Europe 2020), "inhuman or degrading treatment" (Webster 2018), "free and informed consent" (Beyleveld and Brownsword 2007), and so on, invite further specification. Nevertheless, we can hazard a few remarks about both reading up and reading down these provisions.

4.2. Reading Up the Provisions

To start with the possible reading up of the provisions, Article 1 itself might well be read that way. When the Charter proclaims that human dignity is "inviolable," this certainly means that it should not be treated as an interest to take its chance in a third-tier balancing judgment. Furthermore, the notion of inviolability implies that human dignity is a first-tier value, that the respecting and protecting of human dignity is one of the commons' conditions. On this interpretation, human dignity might relate to either the existence or the agency conditions of the commons, or possibly to both.

While Article 2 (the right to life) clearly specifies one of the critical existence conditions, the prohibitions in Articles 4 and 5 seem to relate more to the conditions for agency. Arguably, the general right to physical and mental integrity also applies to the conditions for agency.

This leaves the particular provisions in Article 3.2. Here, the prohibition on eugenic practices fits with the existence conditions (because it disallows a non-neutral exclusion of a community that presents no threat to the existence conditions); but it is not clear that free and informed consent and the prohibitions on commercialisation of the human body and on reproductive human cloning are generic conditions for human existence or agency. Indeed, these provisions look very much like matters that engage and divide pro-choice liberals and conservative dignitarians. While the former would argue that the community should take individual rights seriously and, concomitantly, should take free and informed consent seriously in negotiations around those rights, the latter would argue that even free and informed consent cannot justify breach of dignitarian duty.¹⁹ In other words, these are articulations of human dignity that are heavily contested across the EU; they are not commons' conditions and, in a divided Europe, it is not even clear that they are recognised as community-identifying values.

4.3. Reading Down the Provisions

Turning to the possible reading down of the provisions, given that the EU Charter enumerates *fundamental* rights, we should be slow to treat any of the articulations of human dignity as mere third-tier interests to be balanced or accommodated.

¹⁹ See, e.g., the well-known German *Peep-Show* decision BVerwGE 64 (1981) 274; the French dwarf-throwing case, Conseil d'Etat (October 27, 1995) req. nos. 136-727 (Commune de Morsang-sur-Orge) and 143-578 (Ville d'Aix-en-Provence); and the judgment of the European Court of Justice (First Chamber) of 14 October 2004, *Omega Spielhallen- und Automatenaufstellungs-GmbH v Oberbürgermeisterin der Bundesstadt Bonn*, C-36/02, EU:C:2004:614 (OJ C 300, 04.12.2004, p. 3).

Certainly, there are some (especially utilitarians) who would be quick to subsume the need for free and informed consent to some perceived collective benefit, but the Charter is conspicuously not one for maximising utility. To read down consent in this way would be incompatible with the spirit of the Charter.

How, then, might dignity feature as a consideration in a third-tier balancing judgment? With the automation of health care and of caring functions, there is currently much discussion about whether, where, and why there continues to be a preference for the human touch. Consider, for example, the case of “Richard,” one of Sherry Turkle’s interviewees in her book, *Alone Together* (Turkle 2011). As Turkle reports it, Richard, who was left severely disabled by an automobile accident, apparently preferred being badly treated by his human carers to the care and attention given by robots. According to Turkle (*ibid.*, 281–2):

For Richard, being with a person, even an unpleasant, sadistic person, makes him feel that he is still alive. It signifies that his way of being in the world has a certain dignity, even if his activities are radically curtailed. For him, dignity requires a feeling of authenticity, a sense of being connected to the human narrative. It helps sustain him. Although he would not want his life endangered, he prefers the sadist to the robot.

This highlights the possibility not just that each individual will have their own views about when and for what purpose (such as for simple communication, to convey bad news, to review a decision, to undertake caring functions, and so on) they want the human touch, but also that such preferences can go deep to how we see ourselves as humans.²⁰ Automated processes might be more efficient and smart machines might be quicker and more reliable than humans, but if taking humans out of the loop is perceived to raise questions about human dignity, there needs to be some discussion about the level at which dignity is engaged. Suppose, for example, a state automates its border controls, or uses robots to police its borders: Would this lack of a human touch raise issues of respect for human dignity? If so, might human dignity be engaged simply as a preference to be balanced against any competing or conflicting interests? Or, does human dignity speak more deeply to the kind of (automated or nonautomated) community that a nation aspires to be? In other words, are we dealing with a second or third-tier responsibility?

4.4. *The Inviolability of Dignity*

Finally, in the light of the above remarks, where does this leave the proposition in Article 1 of the Charter that dignity is inviolable? First, we can say that where dignity is engaged as a first-tier common interest, then it is not subject to trade-offs with second or third-tier interests, and it regulates which interests are permissible at those lower tiers. Secondly, however, it does not follow that all the instances specified in Articles 2–5 of the Charter should be read as first-tier common interests and inviolable in this sense. Thirdly, where a proposed instance of human dignity is best interpreted as a second-tier community-defining interest, then it is “inviolable” only in the weaker sense that it is privileged relative to third-tier interests. Fourthly, if an

²⁰ Compare Cook 2019a, for the case of Ernest Quintana, whose family were shocked when they saw that a “robot” displaying a doctor on a screen was used to tell Ernest that doctors could do no more for him and that he would die soon.

appeal to dignity, or to what is dignified, is best interpreted as a third-tier interest, then it is not inviolable in any sense; it is merely one interest to be accommodated with others.

5. Human Dignity and the State's Responsibility to Migrants

In this final part of the article, we can start with the letter, signed in June 2019 by eight hundred "concerned" bioethicists, deploring the treatment of migrant children at the US-Mexico border (see Bioethicists 2019). Then, drawing on our earlier analysis, we can take stock of the state's—first the host state's and then the state of origin's—dignity-related responsibilities to migrants.

5.1. *The Bioethicists' Letter*

The bioethicists' letter starts by asserting that it takes no special expertise to see that "the conditions in which children are being detained at U.S. border facilities are ethically abhorrent." The conditions in question reportedly include children "being held in unsanitary conditions, without access to clean water or adequate nutrition, kept in frigid temperatures without the basic environmental conditions to allow them to sleep, and denied access to even the simplest emergency medical care." By so treating these children, the bioethicists charge the US government with a violation of the "basic principles of medical ethics [which] entail respect for persons, avoidance of harm, and fair treatment."

The bioethicists support this charge by referring to the golden rule and by highlighting various requirements of respect for persons that are set out in the Universal Declaration of Human Rights—for example, that everyone is entitled to "the right to a standard of living adequate for [...] health and well-being [...], including food, clothing, housing and medical care" (Art. 25 UDHR) as well as to the avoidance of "cruel, inhuman or degrading treatment or punishment" (Art. 5 UDHR). According to the bioethicists,

[t]here is no interpretation under which what is happening at these detention facilities could be described as respectful of the humanity of those detained. Denying children such basic dignities as the ability to wash their hands after using the bathroom, closing bathrooms as punishment, denying mothers the ability to sanitize their babies' bottles, withholding toothbrushes and the ability to bathe for days on end, purposefully exposing children to uncomfortably cold temperatures, failing to provide clean drinking water and age-appropriate foods, refusing to facilitate adequate sleep, forcing mothers to beg for medical care for their infants, instilling fear in those who might protest when their basic needs are not being satisfied—these are all behaviors designed to degrade and deny the humanity of the detainees. They are entirely without justification, reflecting deep ethical violations that must be stopped.

There are then some remarks about the conditions causing unnecessary harm and exposing the children to health risks; and about US government policy lacking fairness or proportionality. Pointedly, it is observed that "Americans would not stand for the children of our own citizens being used in this manner, even to prevent behavior much more detrimental to our society." Rather, "common decency" demands that vulnerable children "deserve care, protection, and acknowledgment of their humanity. As a matter of medical ethics, they deserve to be housed in conditions that will

preserve their health and the health of others, and they deserve appropriate medical care when needed.”

In conclusion, while “[w]hat is legal is not always ethical [...] in this context, the U.S. government is behaving neither legally or ethically. It must heed its ethical responsibilities rather than arguing over the semantics of ‘safe and sanitary’ conditions [...] [and] take every necessary step for the protection of these children and other detainees, with sufficient specificity and oversight to remediate current conditions and to prevent similar problems from recurring in the future.”²¹

Given our understanding of the three tiers of state responsibilities, the global compacts, and the dignity provisions of the EU Charter, what should we make of this?

5.2. *The Responsibilities of the Host State*

First, while the letter from the bioethicists explicitly draws on respect for persons, avoidance of harm, and fair treatment, we can read human dignity as being implicated in their critique of US government policy and practice at the border with Mexico. This is encouraged not only by the explicit references to “common decency,” to the “basic dignities,” and to the avoidance of behaviour that degrades and denies the humanity of persons, but also by the implicit references carried by reliance on the UDHR. Indeed, recalling Article 4 of the EU Charter, we might think that the bioethicists should be saying that the conditions at the border degrade the migrants and, thereby, violate human dignity. We should also note that, if human dignity impacts on the host state’s responsibilities in this way, it is not simply in relation to safe and dignified repatriation (as per the global compacts) that the state has dignity-related responsibilities.

Secondly, to the extent that US immigration policy reflects a utilitarian balancing of the interests of US nationals against the interests of unauthorised migrants, the bioethicists are saying that this will not do. Human dignity is not to be traded in this way; and, by their own community standards, Americans should judge this to be unfair and unacceptable. In other words, we can treat the bioethicists as offering an immanent critique of US government policy and practice, relative to the community’s own fundamental values.

Thirdly, it is not so clear that the bioethicists are treating first-tier conditions as engaged. However, to the extent that the conditions in the detention areas are a threat to human health, this raises questions about the existence conditions. Whether or not we treat this as a failure relative to human dignity depends on whether we conceive of human dignity as covering the full range of commons’ conditions or a more limited set of the conditions (Brownsword 2017).

5.3. *The Responsibilities of the State of Origin*

So much for the position of the receiving host state. What, though, of the responsibilities of the state of origin? And, where there are fundamental failures by the state of origin, how does this shape the responsibilities of any receiving state? After all, there are many

²¹ While the bioethicists concede that what is legal is not always ethical, in fact, there is recent district court support for the view that the conditions in which migrants are held at the Arizona border are unconstitutional: see the successful class action alleging a violation of the due process clause of the Fifth Amendment in *Unknown Parties v. Kirstjen M. Nielsen*, case CV-15-00250-TUC-DCB (D. Ariz., Feb. 19, 2020; David Bury J.).

reasons for global migration, ranging from natural disasters, where the state of origin is not in breach of its responsibilities, through to persecution and genocide, and civil war and conflict, where failed or rogue states are in fundamental breach of their responsibilities.

In the global compacts, the emphasis on shared state responsibilities means that there is no exemption from respecting, protecting, and fulfilling human rights and no shirking of one's responsibilities. For all states, for all prospective countries of origin, Objective 2 of the GCSORM aims at minimising the adverse drivers and structural factors that compel people to leave their country of origin—in short, aiming at maintaining an environment that is conducive to human social existence. According to Article 18(b), states should invest in programmes for

poverty eradication, food security, health and sanitation, education, inclusive economic growth, infrastructure, urban and rural development, employment creation, decent work, gender equality, and empowerment of women and girls, resilience and disaster and risk reduction, climate change mitigation and adaptation, addressing the socioeconomic effects of all forms of violence, nondiscrimination, rule of law and good governance, access to justice and protection of human rights, as well as creating and maintaining peaceful and inclusive societies with effective, accountable and transparent institutions.

If we check this back against the elements of the commons' conditions that I sketched in Section 3 of the paper, this might seem a touch overinclusive. Nevertheless, much of what Article 18(b) specifies seems to me to be in line with how we might substantively fill out a state's first-tier responsibilities.

Where state A, the state of origin, is in breach of its first-tier responsibilities, as a result of which migrants and refugees seek to enter state B, what are the responsibilities of the receiving host state? Whatever the sins of state A, they should not be visited on its innocent citizens; those migrants and refugees who arrive at the border should be treated in a way that is fully respectful of their human rights; they are the victims of state A's failure to discharge its stewardship responsibilities. That said, there is no reason why state B should bear the full burden of caring for displaced migrants; nor is there any reason why state B alone should seek to hold state A to its responsibilities—the restoration and maintenance of the commons' conditions should be the top priority for all states.

5.4. *Taking Stock*

Precisely how human dignity fits into various migration scenarios depends, as always, on how we conceive of this value—for example, whether we conceive of human dignity as “empowerment” or as “constraint,” or as a particular kind of virtue (Beylvelde and Brownsword 2001)²²—and how we fill out the substantive details of

²² That said, of course, some might argue that, with so many competing conceptions, our analytical and ethical thinking would be clearer if we dispensed with the concept of human dignity. See, e.g., Kuhse 2000, 74: “[H]uman dignity plays a very dubious role in contemporary bioethical discourse. It is a slippery and inherently speciesist notion, it has a tendency to stifle argument and debate and encourages the drawing of moral boundaries in the wrong places. Even if the notion could have some uses as a short-hand version to express principles such as ‘respect for persons,’ or ‘respect for autonomy,’ it might, given its history and the undoubtedly long-lasting connotations accompanying it, be better if it were for once and for all purged from bioethical discourse.” Similarly, and famously, see Macklin 2003. However, it strikes me as odd that we should be giving the concept of human dignity such critical reviews when we operate with a raft of constitutional concepts—such as equality, justice, freedom, and human rights—that are contested in the same way (Brownsword 2018).

our particular conception. However, my suggestion is that it depends, too, on the level of state responsibility at which we are seeking to locate human dignity.

If we treat human dignity as a first-tier interest, we might treat it as coextensive with the commons' conditions or as linked to a particular segment of those conditions. If we take the former, broader, view, we will characterise conditions in state A (whatever the particular way in which they represent a breach of first-tier responsibilities) as a failure to respect human dignity. However, if we take the latter, narrower, view—if, say, we equate human dignity more specifically with the context for moral agency—while we might treat migrants who are trying to escape an oppressive surveillance state as fleeing from a state that has failed to respect the conditions for human dignity, we might take a different view about economic migrants. In both cases, if the holding conditions in state B are judged to be degrading, then we might characterise this as a dignity-related failure of some kind—quite possibly, as a first-tier failure but not necessarily so.

That said, once we treat human dignity as something other than a first-tier interest, we can no longer plead it as, strictly speaking, inviolable. Nevertheless, second-tier values are privileged and, for state B, human dignity as a second-tier interest might still impose significant constraints on the way in which it treats migrants. The immanent critique presented by the eight hundred bioethicists, albeit not with human dignity as the explicit guiding value, surely underlines the point that second-tier community values are extremely significant for their community.

However, once human dignity is relegated to a third-tier interest, state B has a relatively free hand and, especially where the migrants are coming from defaulting state A, or where economic migrants cannot in practice be separated from non-economic migrants, state B can argue for a balance of interests that is simply convenient—or that is, at least, not unreasonable.²³

6. Conclusion

How does the value of human dignity, or the principle of respect for human dignity, bear on a state's responsibilities when it is confronted with migrants? Inevitably, to repeat a point just made, the way in which we answer this question will turn on how we conceive of human dignity and the substantive specification that we give to our conception. However, in this paper, I have suggested that our conceptualisation of

²³ It should also be noted that, when it comes to holding a particular state to account for its actions or omissions, there is an important distinction between the standing of migrants who seek to be admitted to the particular state and citizens of that state. In relation to a state's first-tier responsibilities, migrants (simply as humans) are in the same position as citizens (simply as humans): All persons have standing directly to hold the state accountable. However, in relation to a state's second- or third-tier responsibilities, while citizens have standing directly to hold the state accountable, the claims on behalf of noncitizen migrants are indirect. Compare Waldron 2013, 335–6: "Even when it applies to all humans in a given country, the idea of the dignity of the citizen remains specific and relational: it directs us to something like a membership-relation or a constituent-relation between an individual and the government of the country where that individual resides." Then, at 341–2, Waldron says that respecting a citizen means "according her the respect that would be due to one of the framers of the country's legal and constitutional arrangements. Her concerns are to be answered, her questions are not to be brushed aside, her views are to be respected [...]. Whatever her actual political power amounts to, she has *standing* in these matters" (emphasis in original).

a state's responsibilities, and where we place human dignity within that conceptual frame, is equally important.

My central point is that while human dignity might speak to what is distinctively wrong about a state's treatment of migrants, it is the conceptualisation of state responsibilities that speaks to the seriousness of a state's wrongdoing (which, in turn, might provoke some revision of what precisely we think is wrong with a state's acts or omissions). In other words, while human dignity might be the answer to the question "Why, or in what way, is the state failing in its responsibilities?," our conceptual framing of state responsibilities helps us to answer the question "How serious a wrong is the state's failure?" And, concomitantly, we begin to see both where cosmopolitan virtue really must prevail and where local sovereignty rightly is privileged.

The condemnation of the conditions in migrant border camps illustrates my point. Bioethicists from both Europe and the United States are agreed that the conditions are unacceptable, indeed degrading. However, while Europeans (referring to the EU Charter) will see this as a violation of human dignity, Americans articulate their critique in terms of a failure to respect persons, as unnecessarily harmful, and as unfair. For both Europeans and Americans, the conditions are unacceptable relative to the fundamental values that define and distinguish their particular communities. For each community, this is a fundamental wrong. However, in the bigger picture of a state's responsibilities, this implies that we are dealing with a second-tier wrong; to be sure, degrading conditions are a serious wrong, but they are not, without more, the most serious kind of wrong; without more, the conditions in the camps do not touch and concern the commons; they do not represent, it seems, a first-tier wrong. But, of course, those who condemn the conditions might want to uprate their critique and claim that, actually, the conditions are so threatening to life or so compromising of agency that they do touch and concern the commons; that they do represent a first-tier wrong. We know that human dignity goes deep and, with first-tier wrongs on the radar, we can appreciate just how deep it might go.

If human dignity alone (without a scheme of state responsibilities) cannot speak to both the nature and seriousness of a wrong, does it follow that a scheme of state responsibilities, but without human dignity, also cannot speak to the nature and seriousness of a wrong? I think that it probably does, but it remains to specify precisely how human dignity fits into the picture and, in particular, how it articulates something distinctive in the commons' conditions. If human dignity is simply coextensive with those conditions, it does not seem to add much to the analysis, or enable a critique of state action. My inclination is to assign human dignity to the agency preconditions rather than to the existence preconditions. On the agency side of the commons, I would start with human dignity as speaking to the preconditions for *moral* agency which might mean that, at this first-tier level, human dignity does not have much critical purchase on a state's treatment of migrants (whether in holding camps or elsewhere).²⁴ That said, I am not sure that I have any good reason to resist the proposal that human dignity should speak to the context for both self-interested and other-regarding agency, for self-development as well as for moral development. Moreover, if we conceive of human dignity in that broader sense, human dignity becomes a much more potent critical idea in relation to a state's treatment of migrants.

²⁴ Compare Margalit 1996, 274, where it is suggested that we should not forget that illegal Mexican immigrants *already in the United States* are victims of humiliation, being treated "as serfs, if not degraded slaves, of the employers who keep them and hide them."

Finally, to avoid any misunderstanding, let me emphasise that I am not suggesting that human dignity as a second-tier critical value is unimportant. Respect for human dignity is one of the values that defines Europeans as the people that they aspire to be.²⁵ We might not yet have appreciated just how “inviolable” human dignity might be (as a first-tier precondition for agency) but, as a second-tier value, human dignity constrains those states who might otherwise be disposed to treat migrants as having only third-tier interests and needs that are to be put into a balance of acceptability or reasonable accommodation. At least, as a second-tier value, human dignity represents a significant constraining force on national sovereignty, and it is a reminder that states have a responsibility to treat migrants in a way that is not simply convenient or politically expedient.

Summing up, I take it that it will be agreed that there is more than one way in which a state might fail to meet its responsibilities in relation to the treatment of migrants. I also take it that, whether or not we judge that a particular failure or wrong specifically involves a lack of respect for, or compromising of, human dignity will depend upon our conceptual understanding and interpretation of human dignity (including its relationship with human rights). This leaves plenty of room for disagreement as to whether or not a particular allegation of wrongdoing (concerning, say, the conditions in a migrant camp) is made out (both on the facts and in principle), and, where it is agreed that the allegation is made out, as to how we should characterise that wrongdoing, and how serious a wrongdoing it is. What the analysis in this article does not do is narrow the scope for difference. Rather, what the scheme of state responsibilities enables us to do is to organise our thinking about the seriousness of particular wrongs (including whether such wrongs violate cosmopolitan standards or standards that are special to a particular community), as well as to clarify in what sense human dignity might be “inviolable” and in what sense it is contestable relative to the fundamental commitments and conflicting interests of a particular community.

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²⁵ In the context of the coronavirus pandemic, Europeans aspire to both respect for “common human dignity” and “solidarity” in the inclusive sense of recognising that “respect is due to everyone, and not exclusive to those that live in our town, region, or country” (European Group on Ethics 2020, 1). In a memorable concluding sentence, the EGE exhorts Europeans to respond in a way “that provides resilience, lasting social and economic solidarity and lasting immunity against indifference” (ibid., 4). No doubt, this exhortation is equally applicable to European aspirations in relation to the treatment of migrants.

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