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Dignity and Mana in Aotearoa New Zealand Legislation

Abstract

The term 'dignity' is used in a variety of legislative contexts in Aotearoa New Zealand, to express different ideas and perform different functions. It is also sometimes deployed alongside the Māori concept of mana, suggesting a degree of legal association between these two discrete concepts. In this article we review the use of dignity in New Zealand case law and legislation, and critique the association being drawn between mana and dignity in our legal system. We also raise the possibility of a richer, locally legitimate conception of dignity to develop in Aotearoan law, one that draws on values and ideals from tikanga Māori – including but not limited to mana.

Keywords dignity, mana, bijuralism, bilingualism, tikanga Māori, statutory interpretation, legal theory, legal values

The term 'dignity' is deployed in a variety of legislative contexts in Aotearoa New Zealand, including 30 New Zealand Acts and 11 legislative instruments currently in force. This suggests that those responsible for designing the content of our legislation are using the concept of dignity to express certain ideas or perform certain functions. It is notable, however, that none of the legislation in question contains a definition of 'dignity', and, as discussed in this article, scholarly commentary provides competing conceptions of dignity. How, then, are statutory decision makers to approach references to dignity in a legislative regime? In addition, two Acts (the Substance Addiction (Compulsory Assessment and Treatment) Act 2017 and the Oranga Tamariki Act 1989) refer to dignity alongside the Māori concept of mana. As we discuss in this article, mana and dignity are not conceptual equivalents; how are decision makers to understand and interpret the apparent 'associations' (Roughan, 2009) being drawn between them in these statutes?

In this article we raise these questions for consideration. We suggest that statutory decision makers need to be alive to the debates that surround the concept of dignity, and its association with mana, and need to give some thought to the significance of legislative references to dignity in the context of their work. For that purpose we discuss some of the theoretical debates around dignity and our findings on how the concept has been discussed by the judiciary to date. Our aim is not to provide the answers to how dignity (including where associated with mana) ought to be interpreted or applied in every statutory regime, but to point out some conceptions of dignity, and theoretical debates around it, that may help decision makers grappling with 'dignity' references in legislation.

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The article is in three parts. The first part focuses on dignity, providing a brief introduction to the general concept of dignity, and two competing and more specific conceptions of dignity in particular. We suggest that each of these specific conceptions of dignity is evident in our legislation, and describe some aspects of dignity that have been considered in case law. The second part of the article deals with the concept of mana, and associations drawn to date, in both legislation and case law, between mana and dignity. We critique the appropriateness of those associations. The third part of the article raises the possibility of a richer, locally legitimate conception of dignity in Aotearoan law, one that draws on values and ideals from tikanga Māori – including but not limited to mana.

Dignity

The concept of 'dignity' within the liberal Western tradition

Though competing conceptions of dignity exist, it is possible to identify a 'core idea' of dignity within the liberal Western tradition. In this tradition, dignity speaks to the inherent worth of all individuals, and to the requirement that this worth be respected, both by other individuals and by the state (Resnik and Suk, 2003; McCrudden, 2008). There is an important equality dimension to this core idea of dignity, in that, as used in modern legal texts, this worth is understood as inhering equally in all persons – it is universal, not contingent on traits, circumstances or status. In this sense, the modern, Western legal understanding is that dignity exists in all humans. It does not depend on rank, hierarchy or office. Dignity in this form is a foundational human rights value, and is recognised in international legal instruments such as the United Nations Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Beyond this 'core idea', debate arises around particular conceptions of dignity. For example, an autonomy-focused account of dignity, often associated with the German philosopher Immanuel Kant, posits that dignity requires treating people as autonomous beings – as ends and not as means to an end (McCrudden, 2008).

In [the liberal Western] tradition, dignity speaks to the inherent worth of all individuals, and to the requirement that this worth be respected, both by other individuals and by the state ...

Broadly, this can be described as the idea of 'dignity as autonomy'. This can be contrasted with a 'dignitarian' account of dignity, where dignity is used to ground obligations rather than rights (Hennette-Vauchez, 2011). The dignitarian account of dignity can be exemplified by the infamous French dwarf-throwing case, in which a municipal ban on consensual 'dwarf tossing' was upheld on the basis that it violated human dignity.[1] Other instances of dignitarian jurisprudence – where dignity is essentially used to trump, rather than ground, autonomy interests – arise in relation to prostitution, abortion, the right to refuse life-saving treatment, and sadomasochistic sexual behaviour. In such cases, argues Hennette-Vauchez, dignity is used to 'protect humanity as a *matter of rank*' (ibid., p.38).

The functions of dignity in Aotearoa New Zealand legislation

As noted in the introduction, the term 'dignity' appears in 30 New Zealand Acts (excluding those where the term appears only in an appended international treaty) and 11 legislative instruments currently in force. Meanwhile, the term 'indignity' appears in three Acts. Our analysis of how dignity is deployed in each legislative regime suggests that both accounts of dignity referred to earlier are recognised in our legislation – a conception of dignity that emphasises personal autonomy, and a conception of dignity that emphasises our obligations to humanity.

For example, in several regimes, dignity establishes a right to be treated in a certain way and seeks to protect the individual against unnecessary intrusions, especially by the state. Section 23(5) of the New Zealand Bill of Rights Act 1990 provides that persons deprived of liberty by the state have the right to be treated with respect for their inherent dignity. In a similar vein are four Acts that allow damages to be imposed on certain entities for treating others in a way that has caused them 'loss of dignity', as determined by a specialist tribunal: the Privacy Act 2020, Human Rights Act 1993, Health and Disability Commissioner Act 1994 and Employment Relations Act 2000. And the Misuse of Drugs Act 1975 (s13ED(2), inserted in 2005) provides that rub-down or strip searches must be conducted in a way that affords the person being searched 'the greatest degree of privacy and dignity consistent with the purpose of the search'. In these legislative contexts, dignity functions as a limiting or controlling factor on state conduct, in a way that seems to emphasise the individual autonomy dimension of dignity.

We suggest that a different account of dignity is present in those Acts where dignity is used to set down a kind of broad policy objective, intended to guide how decisions are made or services are delivered. For example, section 16(1)(d) of the Public Service Act 2020 provides that one of the 'public service values' is 'to treat all people with dignity and compassion and act with humility'. Such policy-oriented statements amount to 'large-scale legislative "messages" by government', setting out aspirations that actors or decision makers under particular legislative schemes ought to try and achieve (Hammond, 1982, pp.326, 331). Here, rather than the dignity of any single individual being at issue, the legislation seeks to recognise and reinforce the obligations that we owe to each other as members of humanity, reflecting a dignitarian account of dignity.

In sum, we ought not to assume that legislative references to 'dignity' are all referring to the same conception of dignity. Rather, we can expect to see different conceptions of it across our legal system. As such, decision makers who are tasked with interpreting or applying the concept in any particular legislative regime may need to consider what conception is at play within the relevant statutory regime. In this, they may be assisted by judicial discussions of dignity to date, which we turn to now.

Dignity: a subjective experience of harm?

As noted above, four interconnected Acts allow damages for 'loss of dignity'. Until very recently, the tribunal with jurisdiction over three of these four regimes (the Human Rights Review Tribunal) had not addressed what dignity meant, or what it meant to lose it; typically the tribunal would simply make a determination that there had been a loss of dignity and provide compensation, without opining on the concept itself. But the case of *Marshall v IDEA Services Ltd* [2020] NZHRRT 9 provided the impetus for the Human Rights Review Tribunal to engage substantively with the meaning of dignity across these cognate jurisdictions.

The case concerned the sub-standard care of a profoundly disabled boy (the claimant). It was determined as a matter of fact in the case that the claimant was not capable of subjectively experiencing humiliation or emotional injury. The tribunal therefore had to determine whether a 'loss of dignity' in the terms of the statute is contingent on the person in question subjectively experiencing an impact on their dignity. Prior to *Marshall*, the tribunal had generally followed the Canadian decision of *Law v Canada* [1999] 1 SCR 497, in which dignity was described in subjective terms, relating to feelings of self-respect and self-worth. In *Marshall* the tribunal evolved its approach towards dignity, taking it to mean, in the statutory context, a normative principle of the equal and inherent worth of all people, 'and not as a feeling or reaction' (at [99]). This allowed for recognition of harm in the absence of a subjective experience of emotional harm, in a way that vindicated Marshall as an equal bearer of dignity, despite his profound disability.

Unlike comparable jurisdictions such as Canada, Aotearoa has not afforded dignity the status of a foundational constitutional value.

Post-*Marshall*, therefore, the conception of dignity that prevails within the jurisdiction of the Human Rights Review Tribunal does not depend on the subjective experience of the person whose dignity is affected. It remains to be seen whether a similar approach will be taken in other jurisdictions: for example, a claim based on the breach of the right guaranteed by section 23(5) of the New Zealand Bill of Rights Act for detained persons to be treated with respect for 'the inherent dignity of the person'.

Marshall is also interesting in terms of what it reveals about whether, conceptually, dignity can be 'lost'. The tribunal in *Marshall* grounded its analysis of dignity in international human rights law and emphasised dignity's inherent, inalienable nature (at [79] and [86]). Because dignity is inherent and inalienable, it follows that it is not actually degraded or 'lost' by objectifying or disrespectful behaviour. Rather, it is the harmful and wrongful messaging and appearance of dignity's degradation which the 'loss of dignity' formulation seeks to remedy. It may be, therefore, that statutory formulations referring to 'loss of dignity' are inapt, and that it would be more appropriate to refer, for example, to an 'affront to dignity'.

Remedying impacts on dignity

The conundrum of how to remedy impacts on dignity has been considered by the courts in the context of section 23(5) of the New Zealand Bill of Rights Act. Section 23 of the New Zealand Bill of Rights Act sets out the various rights of persons 'arrested or detained', and section 23(5) provides that 'everyone deprived of liberty shall be treated with humanity and with respect for the *inherent dignity of the person*' (emphasis added).

The question of remedy for the state's failure to respect a detainee's inherent dignity was considered by Justice Hammond in *Attorney-General v Udompun* [2005] 3 NZLR 204. This was a Court of Appeal decision addressing the treatment of a Thai national on being denied entry to New Zealand. Hammond centred his interpretation of section 23(5) of the Bill of Rights Act on an understanding of human dignity as fundamental, universal and inalienable; this led to his characterisation of section 23(5) as 'not a "liability" rule [but] an "inalienability" rule':

> full and proper recognition must be accorded to the 'public' dimensions of the breach of rights … [and the fact that] the inherent dignity of human beings is a 'merit' good. It is not a tradeable private right. To the extent that compensation is awarded, that compensation should therefore, in principle, be of a 'superliability' character. (*Udompun*, at [214])

In the case of *Udompun*, this centring of dignity as inalienable and therefore of a 'superliability' character would have led Justice Hammond to allow for a higher amount in damages than was awarded by the majority.

Dignity as an overarching interpretative principle?

Unlike comparable jurisdictions such as Canada, Aotearoa has not afforded dignity the status of a foundational constitutional value. Justice Hammond in *Udompun*, discussed above, seems to suggest that it should be so recognised: he expressly cites international jurisprudence on 'the centrality of dignity, and the importance of squarely

recognising and adequately addressing that interest' (*Udompun*, at [203]). As well as Hammond's approach, two further judicial decisions suggest that dignity has the capacity to serve as an overarching interpretive principle in our law.

The first is Justice Thomas's decision in *Brooker v Police* [2007] NZSC 30, [2007] 3 NZLR 9, in which he seemed to advocate for dignity as an overarching value that has an impact on the weighing of competing rights and interests in law. *Brooker* involved a member of the public staging a protest outside the home of a policewoman; the court was tasked with balancing conflicting free speech and privacy interests. The majority interpreted the relevant provision of the Summary Offences Act in light of the right to freedom of expression (New Zealand Bill of Rights Act, s14), finding that in the circumstances Brooker's conduct was not 'disorderly behaviour'. In his dissent, Thomas adopted a dignity-centred focus reminiscent of Hammond in *Udompun* (although, unlike *Udompun*, *Brooker* did not involve interpretation of an express statutory reference to dignity). Noting that the case was essentially a balancing exercise, Thomas framed not only freedom of expression but also privacy (which is not referred to in the New Zealand Bill of Rights Act) as a 'fundamental value'; as such, the case was characterised as involving 'two fundamental values compet[ing] for ascendancy' (at [164]). Thomas then invoked dignity as a sort of touchstone or lens for evaluating these competing rights, positing that dignity is 'the key value underlying the rights affirmed in the Bill of Rights' (at [180]). By vesting privacy with the normative authority of dignity in this way, Thomas reached the conclusion that the officer's residential privacy should prevail against Brooker's freedom of expression.

The second decision is *Takamore v Clarke* [2012] NZSC 116, [2013] 2 NZLR 733, in which Chief Justice Elias similarly touched on dignity as relevant to judicial balancing, albeit without taking the analysis as far as Thomas. In *Takamore*, the court was faced with competing claims to determine the burial place of James Takamore. Elias noted at the outset that the case engaged 'the human rights to dignity, privacy and family' (at [1]); she later reasoned that one aspect of human dignity is cultural identification (at [12]), citing with approval an Australian authority that discussed respect for human dignity as requiring consideration for the 'cultural, spiritual and religious beliefs, practices and traditions of the deceased' (at [77]).

... the Oranga Tamariki Act goes on to expressly tie mana tamaiti to the foundational tikanga value of whanaungatanga, which understands kinship as grounding certain 'responsibilities based on obligations to whakapapa'

It would go too far to suggest that these three decisions in *Udompun*, *Brooker* and *Takamore* illustrate an emerging consensus. But they do point to a potential future direction for New Zealand dignity jurisprudence – the adoption of dignity as a foundational interpretative value. A comparative analysis of offshore dignity jurisprudence illustrates that dignity is commonly used as a foundational value or constitutional norm across domestic jurisdictions, even in jurisdictions where dignity is not expressly referred to in a constitutional text (McCrudden, 2008). The approaches of Justices Hammond, Thomas and Elias suggest that New Zealand's lack of a single, entrenched constitutional text would not necessarily preclude adoption of a similar approach here.

Dignity and mana

As noted in the introduction, there are two instances in New Zealand legislation where an association is drawn between dignity and mana. The first is the Substance Addiction (Compulsory Assessment and Treatment) Act 2017, which aims to enable compulsory treatment that may 'protect and enhance [the recipient's] mana and dignity and restore their capacity to make informed decisions about further treatment and substance use' (s3(d)). We might assume that, since the statute uses both words, it recognises some conceptual difference between them, although what that might be is not made clear. The linking of mana and dignity with making 'informed decisions' suggests a dignitarian ideal of exercising one's autonomy in a positive, self-respecting way, although this point has not yet been discussed in case law.

Second, the Oranga Tamariki Act 1989 was amended in 2019 to affirm mana tamaiti (tamariki) as a guiding principle for decision makers under the Act. Mana tamaiti is defined as:

> the intrinsic value and inherent dignity derived from a child's or young person's whakapapa (genealogy) and their belonging to a whānau, hapū, iwi, or family group, in accordance with tikanga Māori or its equivalent in the culture of the child or young person. (s2)

This conception of dignity is inherently relational, deriving from one's interconnectedness with others and requiring acknowledgement of those connections. This seems to resonate with the dignitarian understanding, canvassed above, of the collective dignity of humanity as imposing obligations and limits on individual exercises of autonomy. Indeed, the Oranga Tamariki Act goes on to expressly tie mana tamaiti to the foundational tikanga value of whanaungatanga, which understands kinship as grounding certain 'responsibilities based on obligations to whakapapa' (s2).

We found 40 judicial decisions of interest where dignity and mana are discussed in relation to one another, all

from the level of the Court of Appeal or below. However, these associations have tended to simply place the two concepts alongside each other, without defining their content or being explicit about any conceptual overlaps or differences between them. For example, mana and dignity have been associated in the criminal sentencing context in the Court of Appeal case of *Zhang v R* [2019] NZCA 507, [2019] 3 NZLR 648. There, the Court of Appeal held (at [159]):

> ingrained, systemic poverty resulting from loss of land, language, culture, rangatiratanga, mana and dignity are matters that may be regarded in a proper case to have impaired choice and diminished moral culpability.

In employment law, we found several cases referring to the need to deal with disciplinary matters in a way that respects 'mana and dignity', drawing from the wording used in a particular collective employment agreement; however, we found no cases that explored or defined those concepts.

We suggest there is a quality of deliberateness in the way 'mana' and 'dignity' have been placed alongside one another in many of the examples given above. They are not necessarily being treated as conceptual equivalents, but they are perceived to have some kind of relationship or connection. Is this appropriate? A comprehensive study of mana was beyond the scope of the project, so we cannot provide a complete answer to that question. However, our review of some of the literature on mana suggests that it may have some critical differences from dignity, and there is at least a risk that these differences are being obscured, or overlooked, in many of the examples above.

Experts have explained mana in a way that aligns less closely with the core idea of dignity, and more closely with ideas of leadership or authority. Indeed, Williams defines mana as 'the source of rights and obligations of leadership' (Williams, 2013, p.3). As has been noted by Buck (1950), a leader could acquire additional mana through certain acts; similarly, skills of oratory or acts of daring or generosity. Hence, mana in this sense may be contrasted with the 'core idea' of dignity as something that is inherent, inalienable and vested equally in all people. This difference is reinforced when we consider Metge's suggestion that mana is not necessarily 'an inseparable, inborn part' of the human being (Metge, 1986).

> If we were to see a uniquely Aotearoan conception of dignity, one that reflects the 'spirit' of the law in these lands, we suggest that it would draw not only on the Western liberal heritage of the concept of dignity, but also on values derived from tikanga Māori.

Notably, mana accrues to the individual but is dependent for its existence on the collective. For example, a leader does not decide or determine, independently of the group, how much mana they hold; rather, this is determined by the person in question as well as the people in their community (Williams, 2013). As such, the concept of mana is heavily influenced by connections between the individual and the collective. These connections are foundational to tikanga Māori and are expressed through the concept of whanaungatanga (broadly, kinship). The prior, inherent connectedness of people is not an assumption necessarily shared by a Kantian, autonomy-focused conception of dignity. But as a whanaungatanga-based, responsibility-grounding value, there are apparent parallels between mana and a 'dignitarian' conception of dignity, with its understanding of connected, situated persons as members of the 'rank of humanity' and carrying obligations flowing from membership of that rank.

In sum, mana may be a more contingent and socially dependent concept than the core idea of dignity that is expressed in our law to date. Legislative provisions and judgments referring to 'dignity and mana' suggest that the two concepts are being put into 'legal association' with one another, to draw on the language used by Roughan (2009). But the substance or value of that association, if any, has not been explored. The lack of analysis might lead us to understand that the 'mana and dignity' formulation is just a 'nod' towards Māori culture, through the use of an assumed approximation of the legal concept of dignity. We do not draw a conclusion on that, but we do argue that such questions need to be asked when Māori words or concepts are used in legislation or common law. These are the kinds of questions that have been asked, for example, in respect of the Resource Management Act 1991 and its equivalence of 'kaitiakitanga' with 'guardianship' (Kawharu, 2000).

In the next section we return to the concept of 'dignity' within our law. We consider the prospect of a rich, distinctively Aotearoan concept of dignity, comprised of values and ideals from tikanga Māori, including but not limited to mana.

Distinctively Aotearoan conception(s) of dignity in statute

Dignity is a rich concept, of which many conceptions may exist. With this in mind, in this third part of the article, we put forward for consideration the potential emergence of a distinctively Aotearoan conception, or conceptions, of dignity. Whitman has argued, in comparing the social foundations of 'human dignity' in Europe and the United States, that legal ideas such as dignity

> never seem legitimate on the strength of their own coherence or beauty. They seem legitimate only if they speak to the beliefs and anxieties of a given culture. The right way to characterise this phenomenon is to invoke, without embarrassment, Montesquieu, saying that the *spirit* of the law differs [from place to place]. And it differs because social traditions differ. (Whitman, 2006, p.123)

If we were to see a uniquely Aotearoan conception of dignity, one that reflects the 'spirit' of the law in these lands, we suggest that it would draw not only on the Western liberal heritage of the concept of dignity, but also on values derived from tikanga Māori. Further, we suggest it would draw not only on mana – which, as we have seen, is the particular tikanga value that our case law and legislation has drawn on most often in a dignity context – but on a number of interrelated concepts and foundational values from tikanga Māori.

Hirini Moko Mead explains how tikanga Māori conceptualises the importance and sanctity of the person – in other words, how tikanga Māori expresses an idea that approximates certain Western conceptions of dignity. To do this, tikanga Māori calls on a number of interrelated concepts. Mead writes that:

> several spiritual attributes are fundamental to the spiritual, psychological, and social well-being of the individual. These attributes include personal tapu [sacredness], mana, mauri [life force], wairua [spirit] and hau [vital essence]. They all relate to the importance of life, and to the relation of ira tangata [the human element] to the cosmos and to the world of the Gods … It is this particular *bundle of attributes* that defines the *importance and sanctity of the person.* (Mead, 2003, pp.65–6, emphasis added)

Thus, to support the emergence of distinctively Aotearoan conceptions of dignity, legislators would need to look more widely than a single tikanga value of 'mana'. They would need to consider the interrelated concepts and values that create the rules and the system of tikanga Māori, and that underpin the inherent importance and sanctity of the person. This would also require legislators to grapple with the weight of the value of whanaungatanga – meaning kinship or connection – within tikanga Māori, and the extent to which whanaungatanga may stand in tension with Western liberal ideals of autonomy.

> … it is worth emphasising the need for care where the word 'dignity' is placed alongside mana in the statutory scheme, or indeed wherever Māori and English terms are placed side by side.

It remains to be seen whether this is a realistic project. Our legal system remains fundamentally weighted towards Anglo-New Zealand law. Turvey has observed that previous attempts to incorporate te reo Māori terms into legislation may be seen as 'government accommodating Māori values in its own decision-making process in order to defuse growing challenges to its right to exclusive sovereignty' (Turvey, 2009, p.540). We would be right to express a degree of scepticism over the capacity of our legal system to enact and interpret a concept of dignity that effectively knits together Western values and tikanga values.

Nonetheless, as has been pointed out by Supreme Court judge Joe Williams, arguably our legal system is already experiencing these kinds of evolutions. According to Williams, we are in a period in which recognition of custom or tikanga Māori within the law is 'intended to be permanent and, admittedly within the broad confines of the status quo, transformative' (Williams, 2013, p.12). Thus, Williams says, in some parts of the legal system we can identify a 'third law':

> This third law is predicated on perpetuating the first law, and in so perpetuating, it has come to change both the nature and culture of the second law. And it is at least arguable therefore that the resulting hybrid ought to be seen as a thing distinct from its parents with its own new logic. (ibid.)

We see the capacity, therefore, for a uniquely Aotearoan, socially legitimate legal conception of dignity, one that speaks to the diversity of social traditions in this place. An endogenous, inward-looking understanding of dignity would be informed not only by Western thought and the value of autonomy, but equally by relevant, interrelated tikanga values. We note that the richness of this concept will depend on the capacity of our judges and legislators to look to, and draw on, Māori values and concepts in an appropriate way. These skills will be especially critical if we see dignity emerging as a foundational interpretive value, in the manner discussed earlier with reference to *Udompun*, *Brooker,* and *Takamore*.

As an illustration of a possible move in this direction, we refer to the concepts of dignity and mana tamaiti within section 2 of the Oranga Tamariki Act 1989, mentioned earlier. Under that Act, mana tamaiti is a guiding principle for decision makers, and is defined as 'the intrinsic value and inherent dignity derived from a child's or young person's whakapapa (genealogy) and their belonging to a whānau, hapū, iwi, or family group', whether in accordance with tikanga Māori or another cultural equivalent. Thus, we see dignity being associated with mana in a way that connects it with the centrality of whānau in Māori life. Williams describes whānau as 'the essential glue that holds Māori culture together' (ibid., p.23). This approach, we argue, suggests an attempt to move towards

a more balanced integration of dignity and Māori values. For example, an understanding of a child's dignity as not just relating to their autonomous capabilities, but also as contingent on legal recognition of their situated status, their whakapapa, their *belonging*, might have radical implications for decision making about all New Zealand children.

Conclusion

With this article, we emphasise the need for statutory decision makers to reflect on difference conceptions of 'dignity', and have set out some discussion that may assist decision makers in those reflections. In particular, it is worth emphasising the need for care where the word 'dignity' is placed alongside mana in the statutory scheme, or indeed wherever Māori and English terms are placed side by side. Each are rich and contestable concepts in their own right. The lack of jurisprudential analysis of what the concepts mean in relation to each other, when used together in this way, underscores the need for a careful approach by decision makers. Lastly, a further, future challenge for decision makers may emerge, in the form of a new, distinctively Aotearoan conception of dignity, one that draws on interrelated tikanga Māori values. We wait to see the capacity of the actors in our legal system to design and interpret such a conception skilfully, and with appropriate acknowledgement of our rich legal heritage in Aotearoa New Zealand.

1 (*Wackenheim v France*, Comm. No. 854/1999; France, 26 February 2002, UN Doc CCPR/C/75/D/854/1999)

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