

Legal Protection of Human Dignity: Starting from Regulating “Hate Speech”

HUANG Wenting *

Abstract: *The legal protection of human dignity can be explored from the perspective of regulating “hate speech.” The practices of most countries worldwide demonstrate that human dignity serves as a fundamental value limiting the freedom of expression. Legally protected human dignity encompasses three levels of meaning: the dignity of life as an inherent aspect of human existence, the dignity of individuals as members of specific groups, and the personal dignity of individuals as unique beings. These three levels collectively emphasize the principle that human beings are ends in themselves, underscoring that individuals must not be degraded to mere means or subjected to harm. The inherent nature of human dignity necessitates its protection by both the state and societal entities. Traditionally, the safeguarding of human dignity has primarily depended on state intervention. However, with the advent of the digital age, this responsibility has increasingly extended to social entities, imposing changes of enhanced and expanded obligations of respect. Consequently, the key to protecting human dignity lies in adjusting the allocation of responsibilities between the state and society in accordance with the development of the times. Under the guidance of human dignity as a constitutional value, China should focus on establishing a comprehensive protection system by improving legislation, law enforcement, and judicial practices. This includes specifying the obligations of social entities and constructing multi-level regulatory mechanisms to form an effective system of protection by the state and society.*

Keywords: human dignity ♦ legal protection ♦ “hate speech” ♦ state obligation ♦ social responsibility

I. Introduction

* HUANG Wenting (黄文婷), Assistant Research Fellow and Postdoctoral Researcher, Law School of Wuhan University.

In modern times, human dignity has become a highly significant legal concept. Within the framework of the rule of law, human dignity manifests itself as both an abstract rational concept and a concrete principle enshrined in constitutions and international covenants.¹ As the principles that “human dignity shall not be violated” and “the state has the obligation to protect human dignity” have been established as fundamental values in the constitutions of countries around the world, China has also placed increasing emphasis on human dignity. The Chinese *Constitution* provides relevant stipulations for the protection of dignity. Its foundation and direction are centered on the concepts of human dignity and subjectivity.² In the speeches and writings of Xi Jinping, general secretary of the Communist Party of China (CPC) Central Committee, human dignity has been repeatedly mentioned as a significant component of Xi Jinping Thought on the Rule of Law.³ The legislative, law enforcement, and judicial practices in China have also increasingly incorporated the concept of human dignity.⁴ Furthermore, the protection of human dignity has increasingly become an important topic in China’s legal research. The question then arises: How should the law protect human dignity? This primarily involves two aspects: the inherent nature of the legally protected human dignity, and the pathways for legal protection of human dignity.

An overview of current research and practices reveals that the protection of human dignity follows both positive and negative pathways. The former refers to the state taking various measures to safeguard human dignity, while the latter involves the state cracking down on acts that infringe upon human dignity.⁵ The protection pathways are closely related to the concept of human dignity, which can not only be defined from a positive perspective, but also judged from a negative perspective.⁶ Positive

¹ Han Dayuan, “Safeguarding Human Dignity: A Fundamental Consensus of Civilized Society,” *Exploration and Free Views* 12 (2018): 5.

² Han Dayuan, “Taking the Constitution Text Seriously,” *Tsinghua University Law Journal* 6 (2012): 17.

³ Hu Yuhong, “Jurisprudential Interpretation on Xi Jinping’s Overview of the Major Discourse on Human Dignity,” *Academic Exchange* 4 (2022): 6.

⁴ For example, the *Red Cross Society Law of the People’s Republic of China* was amended in 2017, adding “safeguarding human dignity” to Article 1. For another example, the Supreme People’s Court emphasized in its publication of typical cases of combating crimes endangering food and drug safety that, living in an environment where food and drug safety is ensured is the fundamental right and dignity enjoyed by the people, and also the society’s bottom line.

⁵ Wang Jinwen, “The Interpretation and Development of ‘Human Dignity’: Historical Origins, Comparative Analysis, and Legal Application,” *Human Rights Studies* 1 (2019): 129-134; Hu Yuhong, “Improving the Provisions on Human Dignity in China’s Current Laws,” *Studies in Law and Business* 1 (2017): 8-13.

⁶ Zhang Xiang, “The Typology of Constitutional Dignity of Human Personality: Using Civil Personality Rights and Personal Information Protection as Case Materials,” *China Law Review* 1 (2023): 58; Li Zhongxia,

definition employs an abstract and generalized approach to positively define human dignity, grasping the connotation and denotation of this concept. However, the connotation of the concept of dignity is characterized by significant uncertainty and redundancy.⁷ In other words, human dignity is a typical indeterminate legal concept with rich connotation. The positive pathway cannot eliminate the uncertainty, nor can it clarify the connotation of the concept and define clear protection pathways. An overly abstract term often loses its inherent meaning and scope of reference due to its polysemous and ambiguous descriptions.⁸ Due to certain limitations, the positive definition has been criticized and questioned. Exploring the scope of human dignity protection in abstract terms is impractical and requires concretization.⁹ Concrete definitions are achieved through negative approaches. For example, in judicial practice, human dignity is often regarded as a highly indeterminate legal concept and it is therefore interpreted more from a negative perspective, i.e., by examining its violation process.¹⁰ Acts that violate human dignity are diverse, such as extorting confessions by torture, human cloning, and gene editing. Moreover, the connotation of human dignity not only requires concretization, but also needs to be tested in real-life cases.¹¹ Through case studies of human dignity violations, we can clarify the reference scope of human dignity and establish specific protection pathways.

The broadness and ambiguity of the positive pathways contrast with the necessity and practicality of the negative pathways. This paper will adopt a negative approach to explore the protection of human dignity from the perspective of regulating “hate speech,” based on the strong correlation between the legal regulation of “hate speech” and the protection of human dignity. First, “hate speech” contradicts human dignity. “Hate speech violates the dignity of the specific individuals and groups. It maliciously discredits vulnerable groups or attacks individuals by humiliating their group identity, thereby harming the dignity and identity recognition of the

“Aviation Safety Act”, in *Selected German Constitutional Case Analyses (vol. 1)*, Zhang Xiang ed. (Beijing: Law Press China, 2012), 258.

⁷ Zheng Yushuang, “The Value Justification and Jurisprudential Construction of Human Dignity,” *Journal of Comparative Law* 5 (2019): 171.

⁸ Hu Yuhong, “A Jurisprudential Interpretation of ‘Human Dignity’,” *Law Review* 6 (2007): 3.

⁹ Hans-Jürgen Papier, “The Protection of Human Dignity”, in *The Image of the Contemporary Constitutional State*, edited by Hans-Jürgen Papier, translated by Cai Zongzhen and Li Jianliang (Taipei: Angle Publishing Group, 2014), 61.

¹⁰ Hou Yu, *Legal Reflections on Human Dignity* (Beijing: Law Press China, 2018), 337.

¹¹ Wang Jinwen, “Re-examining the Normative Status of Human Dignity: An Analysis Based on German Constitutional Doctrine and Judicial Practice,” *Chinese Journal of Human Rights* 4 (2021): 74.

attacked individuals and groups.”¹² Second, the act of making “hate speech” is a typical infringement of human dignity. While “hate speech” may violate fundamental rights such as reputation and privacy, its most fundamental impact is its denial of the value and significance of human beings as ends in themselves, thereby inflicting severe harm and threats to their intrinsic dignity. Although such speech may also threaten social order and public safety, these negative effects are secondary consequences following the harm to human dignity.¹³ “Hate speech” directly targets individuals and first infringes upon human dignity. Third, regulating “hate speech” can protect human dignity, and there is a wealth of legal practices in this regard in countries around the world. The negative definition in specific cases relies on verifiability and consensus.¹⁴ Through accumulated practices, most countries tend to reach a consensus on the definition of “hate speech” and its regulation. For example, the European Court of Human Rights (ECHR) emphasizes that tolerance and respect for the equal dignity of all individuals are the foundation of democratic and pluralistic societies. Therefore, it is necessary to prevent or even punish various forms of speech that spread, incite, exacerbate hatred, or defend hatred under the principle of proportionality.¹⁵ China’s legislation and judiciary also regulate such speech in line with international practices. Through legal provisions and court adjudication of “hate speech” cases, the boundaries and scope of human dignity protection can be accurately defined. Based on this, this paper will proceed from universal practices to conduct a typological analysis of internationally typical “hate speech” cases, and explore the specific connotation of human dignity and legal protection pathways, for the ultimate goal of improving the protection of human dignity in China.

II. Consensus on Human Dignity Protection in Regulating “Hate Speech”

The consensus on the protection of human dignity can be derived from the legal provisions and judicial practices regulating “hate speech.” Most countries worldwide not only legally regulate “hate speech” to safeguard human dignity, but also emphasize in judicial practice that limiting the freedom of expression is necessary to protect human dignity.

¹² Zhang Xiaoshan, “A Constitutional Analysis of Hate Speech: A Comparative Study of U.S. Supreme Court and European Court of Human Rights Jurisprudence,” *Human Rights* 2 (2022): 94.

¹³ For example, Article 130 (4) of the *German Criminal Code* prohibits approving, glorifying, or justifying Nazi violence and tyranny in public or at assemblies in a manner that violates the dignity of victims and disturbs public order.

¹⁴ H. Dreier, Art. 1 I, Rn. 38, cited in Li Zhongxia, “Constitutional Protection of Human Dignity: The German Approach,” *Study and Exploration* 4 (2011): 115.

¹⁵ *Erbakan v. Turkey* (Application No.59405/00), para 56.

A. Definition of “hate speech” and its legal regulation

Article 20 of the *International Covenant on Civil and Political Rights* mandates legal prohibition of any propaganda advocating war and any advocacy of hatred based on ethnic, racial, or religious grounds that constitutes incitement to discrimination, hostility, or violence. Most countries, including China, Germany, Canada, Hungary, Russia, and Japan, have established legal frameworks to regulate “hate speech.” Specifically, “hate speech” is predominantly addressed in criminal codes and directly regulated through legal provisions. For example: The *Criminal Code* of China, through Article 120-3 (advocacy of terrorism and extremism, incitement to commit terrorist activities) and Article 249 (incitement to ethnic hatred or discrimination), establishes corresponding offenses. German *Criminal Code* incorporates provisions in Articles 130 and 189 to criminalize acts of inciting the public (e.g., incitement to violence or hatred among the public) and defaming the deceased (e.g., speech denying Holocaust). In 2021, a new provision was introduced under Article 192a, criminalizing “hate-motivated insults” targeting speech that violates human dignity through insults, malicious slander, or defamation against groups or individuals defined by, or self-identifying through, ethnicity, race, religion, ethnic origin, ideology, disability, or sexual orientation.¹⁶ The *Criminal Code* of Canada (Articles 318-319) prohibits incitement to genocide, incitement to hatred against identifiable groups, and advocacy of anti-Semitism.¹⁷ The *Criminal Code* of Hungary (Article 332) criminalizes incitement of hatred against specific groups, including the Hungarian nation, any other nations, racial groups, religious communities, persons with disabilities, or defined by sexual identity or orientation.¹⁸ The *Criminal Code* of the Russian Federation (Article 282) prohibits incitement to hatred or hostility and the humiliation of human dignity.¹⁹

In summary, countries worldwide generally regulate “hate speech” through legal frameworks. Some legal provisions explicitly link “hate speech” to the violation of human dignity. By regulating such speech, the abstract concept of human dignity is transformed into a concrete definition, internalized within positive law, and established as a legally protected

¹⁶ German Criminal Code, accessed November 1, 2023, https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p1385.

¹⁷ The Criminal Code of Canada (R.S.C., 1985, c.C-46), accessed November 1, 2023, <https://laws-lois.justice.gc.ca/eng/acts/C-46/page-45.html#docCont>.

¹⁸ Act C of 2012 on the Criminal Code, accessed November 1, 2023, https://thb.kormany.hu/download/a/46/11000/Blk_EN.pdf.

¹⁹ Criminal Code of the Russian Federation, accessed November 3, 2023, <https://www.wipo.int/edocs/lexdocs/laws/en/ru/ru080en.pdf>.

interest. Additionally, these legal provisions preliminarily delineate the scope of “hate speech,” laying a solid foundation for judicial application.

B. Application of human dignity in judicial cases

In judicial practice, courts, by introducing the concept of human dignity, hold that “hate speech” violates human dignity. Further analysis reveals that cases concerning such speech involve the fundamental rights of both parties. From the perspective of the speaker, the case concerns freedom of expression. From the perspective of the target of the controversial speech, the case may involve the violation of one or more fundamental rights, such as the right to life, physical integrity, and health, as well as the right to equality, reputation, honor, and privacy. However, in such cases, courts not only address fundamental rights, but also incorporate arguments about human dignity. For example, in Germany, cases involving insults or defamation that violate individual personality rights as well as cases involving pro-Nazi speech are adjudicated based on the provision of human dignity set out in Article 1 of the *Basic Law*.²⁰ Similarly, the ECtHR also emphasizes the protection of human dignity while balancing fundamental rights. In the case of *Atamanchuk v. Russia*, the Court acknowledged that “hate speech” violates the rights of others, particularly the dignity of non-Russian ethnic minorities.²¹ When the court shifts the focus of the case from fundamental rights to human dignity, human dignity is pitted directly against the freedom of expression.

Then the question arises: Should “hate speech” that violates human dignity be regulated? In other words, how should states balance human dignity and freedom of expression when regulating “hate speech,” given its connection to freedom of expression? On this issue, U.S. courts and German/European human rights courts have developed two distinct approaches. The former prioritizes freedom of expression, arguing that even “hate speech” is also protected under the constitution. The latter, however, prioritizes human dignity, allowing states to regulate such speech based on the protection of human dignity.²² Currently, most countries align with the latter approach, with nations such as Japan, Canada, and Hungary

²⁰ Zhang Xiang, *Selected German Constitutional Case Analyses* (vol. 2) (Beijing: Law Press • China, 2016), 25-48, 49-84 and 200-217.

²¹ *Atamanchuk v. Russia* (Application no.4493/11), para 42.

²² Gong Yan, *Research on the Legal Regulation of Hate Speech* (Xiamen: Xiamen University Press, 2013), 78-173; Fu-Te Liao, “What is Hate Speech, Whether and How to Regulate It: An Analysis of European Court of Human Rights Judgments,” *Euramerica* 4 (2015): 455-515.

also adopting the prioritization of human dignity.²³ Under this approach, human dignity serves as the fundamental value guiding the regulation of “hate speech.”²⁴ It shows that states have largely reached a consensus in regulating “hate speech” based on the protection of human dignity.

However, there are two approaches to protecting human dignity: Absolute protection and relative protection. For example, the German courts and the ECtHR share both similarities and differences in their approaches. Germany, based on Article 1 of the *Basic Law*, established in the Strauss Case that when freedom of expression conflicts with human dignity, human dignity takes absolute precedence.²⁵ Even for a speech involving hatred, a balance should still be struck between freedom of expression and human dignity. German courts argue that human dignity enjoys absolute priority, precluding the need for case-by-case balancing. Once dignity is construed as an intrinsic, transcendent core value that demands protection above all others, the need to balance competing interests ceases to exist.²⁶ In other words, any speech deemed to violate human dignity will be subject to regulation. Human dignity stands as the paramount value within the German constitutional framework. Consequently, when freedom of expression conflicts with human dignity, it is invariably constrained by the fundamental constitutional value of human dignity and fundamental constitutional rights such as the rights to reputation and personality.²⁷ The ECtHR similarly does not protect “severe hate speech” in cases concerning freedom of expression if it clearly contradicts the values under Article 17²⁸ of the *European Convention on Human Rights* (hereinafter referred to as *Convention*). However, unlike German courts, the ECtHR distinguishes gradations of “hate speech.” For “relatively severe hate speech,” it applies the principle of proportionality under Article 10 of the *Convention* to address the conflict between freedom

²³ For example, the Hungarian Constitutional Court stated in its judgment: “According to the constitutional provisions of Hungary, everyone enjoys human dignity. Therefore, human dignity can limit freedom of expression.” See Decision 30/1992 (V.26.) AB, IV para 2.

²⁴ Christopher McCrudden, “Human Dignity and Judicial Interpretation of Human Rights,” 19 *The European Journal of International Law* 4 (2008): 702-704.

²⁵ BVerfGE 75,369 1 BvR 313/85, accessed November 5, 2023, <https://law.utexas.edu/transnational/foreign-law-translations/german/case.php?id=634>.

²⁶ Michael Rosen, *Dignity: Its History and Meaning*, translated by Shi Ke (Beijing: Law Press China, 2015), 73.

²⁷ Gong Yan, *Research on the Legal Regulation of Hate Speech*, 136.

²⁸ The ECtHR has held that the very essence of the *Convention* is respect for human dignity and human freedom. Human life is sacred and should not be violated. See *Pretty v. United Kingdom* (Application No.2346/02), para 65. Additionally, in the case of *Hizb Ut-Tahrir v. Germany*, the Court held that the values under Article 17 of the *Convention* encompass the dignity of life.

of expression and human dignity.²⁹ For example, in the case of *Atamanchuk v. Russia*, in examining whether the government's regulation of speech served a legitimate purpose, the Court deemed the protection of non-Russian ethnic minorities' dignity to be a legitimate aim. In the subsequent assessment of whether the regulation of speech was necessary for a democratic society, after considering multiple factors, including whether the speech was classified as "hate speech," the context in which the speech was made, the potentially harmful consequences, the identity of the speaker, and the reasons and penalties for the state's restrictions, the Court determined that the speech in question constituted "hate speech" and that the government's regulation was in compliance with the principle of proportionality.³⁰ In this context, the protection of human dignity is relative and subject to scrutiny under the principle of proportionality. Whether through absolute protection or relative protection, these approaches represent reasonable models developed by courts based on constitutional norms to suit their respective societies.

After clarifying the legal regulation of "hate speech" and the application of human dignity in judicial cases, we can proceed with further exploration of the protection of human dignity. First, China aligns with the majority of nations in opting to regulate "hate speech." Exploring the national regulatory pathway will contribute to enhancing the protection of human dignity in China. Second, the scope and pathways for human dignity protection depend on the accumulated experience from relevant cases, the clear definition of "hate speech," and compliance with the principle of proportionality (or absolute protection). If legislation or judicial precedents regulating "hate speech" are overturned due to concerns over freedom of expression, advancing the protection of human dignity will become more challenging. A prerequisite for in-depth exploration of human dignity protection is that the controversial speech is recognized as "hate speech" by the courts, and its regulation conforms to the principle of proportionality (or absolute protection). The German Federal Constitutional Court (GFCC) and the ECtHR have extensive practical experience in relevant jurisprudence. Cases adjudicated by the GFCC primarily involve speech supporting Nazi atrocities, Holocaust denial, and hate speech targeting

²⁹ For the ECtHR's categorization of "hate speech" types and differential treatment approaches, please refer to *Lilliendahl v. Iceland* (Application No.29297/18), paras. 33-40. In practice, the Court applies Article 17 of the *Convention* (which prohibits the abuse of rights; rights exercised in violation of this provision are not protected) to speech supporting Nazism, attacking Jews, inciting terrorism, or promoting religious extremism. For "hate speech" targeting individuals or groups based on ethnicity, race, or religion, the Court applies Article 10 of the *Convention* (which permits restrictions on speech for legitimate purposes).

³⁰ *Atamanchuk v. Russia* (Application no.4493/11), paras 46-74.

individuals or specific groups. Cases adjudicated by the ECtHR address issues including but not limited to the advocacy of extremism, Holocaust denial, incitement to violence and support for terrorism, condoning war crimes, apologia for terrorism, religious hatred, ethnic hatred, incitement to racial or religious hatred, incitement to ethnic hatred, and public ridicule or defamation of individuals or groups based on certain characteristics.³¹ As the number of cases increases, the Courts have developed clearer criteria for identifying “hate speech” in line with the normative requirements of protecting human dignity. In this way, by typological analysis of the cases based on the case facts and judicial reasoning, and by deconstructing “hate speech” into constituent elements, it is possible to delineate the scope of legal protection for human dignity and identify specific protective pathways.

III. Scope of Legal Protection: The Three-level Meaning of Human Dignity

A. First level of human dignity: The dignity of life as an inherent aspect of human existence

An overview of aforementioned practices in most countries reveals that they primarily identify speech involving violence as “hate speech,” such as incitement to violence and the advocacy of terrorism, and prohibit such speech through legislation. Violence fuels hatred and is intrinsically linked to “hate speech.” In general, speech involving violence can be subdivided into three categories, which may target specific individuals or groups or be indiscriminate in their targets.

1. Incitement to violence: In the case of *Hizb Ut-Tahrir v. Germany*, the ECtHR ruled that the applicant’s advocacy for the violent overthrow of the state and the massacre of its citizens contravened the value of the sanctity (dignity) of human life enshrined in the *Convention*.³² The ECtHR held that speech denying the dignity of life is unacceptable, and endorsing violence constitutes a core element of “hate speech.” 2. Advocacy of terrorism or extremism: Building on the reasoning in the case of *Hizb ut-Tahrir v. Germany*, the ECtHR affirmed in the case of *Kasymakhunov and Saybatalov v. Russia* that advocating terrorism or imposing extremism contravenes the values of the *Convention*.³³ In the case of *Leroy v. France*, the ECtHR concluded that the applicant’s deliberate glorification of violent

³¹ Hate speech, accessed November 5, 2023, https://www.echr.coe.int/documents/d/echr/fs_hate_speech_eng. The cases selected from the ECtHR in this paper all involve controversial statements identified as “hate speech” with regulations deemed compliant with the *Convention*.

³² *Hizbut-Tahrir and Others v. Germany* (Application No.31098/08), para 74.

³³ *Kasymakhunov and Saybatalov v. Russia* (Applications Nos. 26261/05 and 26377/06), paras 106-108.

actions against thousands of civilians violated the victims' dignity.³⁴ Incitement to terrorism or extremism is more severe than incitement to violence as it threatens lives on a broader scale. 3. Justification of historical Nazi and fascist atrocities and denial of the Holocaust: In the Auschwitz Lie case, the GFCC upheld that establishing a direct link between denying the Third Reich's genocide of Jews and the infringement of the human dignity of Jews today is constitutionally justified.³⁵ The ECtHR followed a similar approach.³⁶ Denial of the Holocaust and other atrocities constitutes a direct negation and contempt for the human dignity of life.

The legal regulation of speech glorifying or inciting violence, advocating terrorism and extremism, justifying Nazi and Fascist atrocities, denying the Holocaust, and other speech involving violence underscores a commitment to safeguarding the human dignity of life. Violence inflicts physical, psychological, and even fatal harm to individuals, representing the most fundamental and severe violation of human dignity. In fact, the concept of human dignity first appeared in legal texts as a response to the atrocities of World War II. The war caused immense suffering and loss of life, prompting the world to enshrine respect for human dignity to prevent such tragedies from recurring. In its modern legal sense, human dignity originated from humanity's reflection on its own violent acts.³⁷ From this perspective, the protection of human dignity stems from the reflection on the brutal taking of human life. Legal regulation of speech involving violence serves to protect the most fundamental and essential aspect of human dignity - the dignity of life as an inherent aspect of human existence.

Dignity first requires recognition of the physiological nature of humanity and the preservation of life continuity and physical integrity.³⁸ As Ronald Dworkin noted, "Dignity refers to acknowledging a person's critical interests, which are values that regard life as intrinsically important. The importance of human life must never be denied; the overall value of life is of inherent significance. Dignity is about respecting the inherent value of

³⁴ Leroy v. France (Application No.36109/03), para 43.

³⁵ BVerfGE 90, 241 (1994), accessed November 10, 2023, <https://law.utexas.edu/transnational/foreign-law-translations/german/case.php?id=621>.

³⁶ Garaudy v. France (Application No.65831/01), page 23.

³⁷ Han Deqiang, *On Human Dignity: Interpretation of Human Dignity Theory from a Legal Perspective* (Beijing: Law Press China, 2009), 5.

³⁸ Wang Xu, "The Theory of Dignity in Constitutional Law and Its Systematization," *Chinese Journal of Law* 1 (2016): 46.

life.”³⁹ However, in contexts permeated with violent rhetoric, life is rendered expendable, and human worth is obliterated. Whether it is incitement to violence, advocacy of terrorism, or denial of the Holocaust, the underlying message is the negation of the physical integrity and even the lives of others. Speech involving violence implies that individuals, specific groups, or even indiscriminate populations can be subjected to brutal treatment, degraded to mere tools and means for others’ purposes, or sacrificed for their goals, which constitutes a severe violation of the human dignity of life. If the law fails to regulate such speech, it cannot guarantee the dignity of life as an inherent aspect of human existence, leaving individuals vulnerable to threats against their bodies or lives. Human life is invaluable, and constitutional protection of the dignity of life as an inherent aspect of human existence demands that legislation and judiciary prioritize the protection of human life, and prohibit speech advocating harm to human bodies or lives or inciting others to inflict such harm.

B. Second level of human dignity: the dignity of individuals as members of specific groups

“Hate speech” not only involves violence, but also includes discrimination, exclusion, humiliation, and denigration. As emphasized by the ECtHR, hatred may be incited not solely through violence, but also through severe discrimination against race, gender, religion, ethnicity, or other characteristics.⁴⁰ In this context, the ECtHR identifies a second category of “hate speech”: hate speech targeting specific groups, which is the most widespread form of such speech. An overview of typical judicial practices reveals that this type of speech often employs general negative descriptions or labels to characterize all members of a group, reflecting the underlying logic that “the entire group and every member of the group are hated.” In the case of *Atamanchuk v. Russia*, the ECtHR stated that the speech in question demonstrated a negative attitude toward a specific group based on race, language, and religion, with certain statements extrapolating the negative traits of some minority individuals to the entire ethnic group. When negative stereotypes about an ethnic group reach a certain level, the group’s sense of belonging and self-worth, as well as that of its members, are affected.⁴¹

Specifically, hate speech targeting specific groups can be categorized into three types: discriminatory speech, exclusionary speech, and assaultive

³⁹ Ronald • M. Dworkin, *Life’s Dominion: An Argument About Abortion, Euthanasia, and Individual Freedom*, translated by Guo Zhenling and Chen Yaru (Beijing: China University of Political Science and Law Press, 2013), 317.

⁴⁰ *Féret v. Belgium* (Application No.15615/07), Information Note on the Court’s case-law No.121, page 1.

⁴¹ *Atamanchuk v. Russia* (Application no.4493/11), para 42.

speech. Discrimination refers to unreasonable differential treatment of a specific group, reducing them to a lower status, and denying that a certain individual or group enjoys an equal status with other individuals or another group. Exclusion refers to driving a specific group out of society or the country. Assault refers to humiliating or degrading a specific group, treating them in a dehumanizing manner. These three types of “hate speech” often intertwine, causing severe harm to human dignity. For example, in the Kyoto Korean School Case in Japan, the court ruled that the speech in question sought to exclude Koreans in Japan from Japanese society, thereby obstructing their enjoyment of human rights and freedoms on equal terms with Japanese citizens and other foreigners. This constituted exclusion based on ethnic identity and should be regulated.⁴² In the case of *Norwood v. United Kingdom*, the ECtHR held that the poster with the words “Islam out of Britain — Protect the British People,” and a symbol of a crescent and star in a prohibition sign, demonstrated the applicant’s public expression of hostility toward all Muslims in the UK.⁴³

Legislation and the judiciary regulate “hate speech” based on race, ethnicity, religion, sexual orientation, and other characteristics because such speech harms the dignity of individuals as members of specific groups. Humans are group animals and social beings shaped by their societal environment. They are always inevitably exposed to certain relationships that exist independent of their will.⁴⁴ The foundation of dignity lies not in any singular human characteristic, but in the mutually supportive relationships formed through collective efforts to advance personal interests.⁴⁵ Humans cannot exist in isolation from social bonds. Nationality, race, ethnicity, religion, and geography constitute the social foundation of human existence, rendering individuals inseparable from their communities. “It is true that humans exist as individuals. However, this individual existence encompasses the universality of the species. The species is the aggregate of individuals who share universal characteristics, and these characteristics are inherently embedded within each individual.”⁴⁶ Everyone is accepted by a group and lives as a member of that group. Human dignity includes the dignity of individuals as members of specific groups. Human

⁴² Osaka High Court, Judgment of July 8, 2014, Case No. Heisei 25 (Ne) 3235, Document No.2014WLJPCA07086001.

⁴³ *Norwood v. United Kingdom* (Application No.23131/03), part A.

⁴⁴ Central Compilation and Translation Bureau, *Complete Works of Marx and Engels (vol. 13)* (Beijing: People’s Publishing House, 1962), 8.

⁴⁵ Han Deqiang, *On Human Dignity: Interpretation of Human Dignity Theory from a Legal Perspective*, 112.

⁴⁶ Iwasaki Chikatsugu, *Human Dignity, Value, and Self-Realization*, translated by Liu Ben (Beijing: Contemporary China Publishing House, 1985), 32-33.

dignity is rooted in a sense of identity, i.e., belonging to a structured community in terms of both space and time.⁴⁷ The Supreme Court of Canada emphasized in the case of *R. v. Keegstra* that a person’s sense of dignity and belonging to society is closely related to the care and respect shown by the group they belong to. Therefore, the ridicule, hostility, and verbal abuse involved in hate propaganda can have severe negative impacts on an individual’s self-worth and sense of acceptance.⁴⁸ Human dignity is influenced by group identity. Hate speech targeting a group often attacks characteristics shared by all members of the group, meaning that even though the speech targets the group as a whole, it affects every individual member of that group. Humiliation is an emotion that can be felt simply through identification with others, even if one is not a direct victim of the humiliation.⁴⁹

Furthermore, while humans exist within various social relationships, courts currently only recognize “hate speech” targeting specific groups based on race, ethnicity, religion, or sexual orientation as violating human dignity. “Merely abstract verbal abuse or attack may make people feel annoyed or shamed, but do not undermine the fundamental purpose of human existence or affect self-governance and self-determination. However, if the insults are based on race, religious beliefs, gender, or sexual orientation and are openly hostile towards individuals, they directly undermine an individual’s inner capacity for self-governance and self-determination, thereby infringing on the core of human dignity.”⁵⁰ Whether discriminatory, exclusionary, or assaultive, such speech inherently objectifies and dehumanizes individuals by reducing them to subordinate status. In the context of hate speech targeting groups, individuals are unable to autonomously determine their identity, status, or beliefs. This demonstrates that the legal protection of human dignity hinges on determining whether “hate speech” infringes on an individual’s self-governance and self-determination, and whether it violates the core value of human beings as ends in themselves. Moreover, regulating such speech affirms the equal dignity of all individuals, irrespective of race, belief, gender, sexual orientation, or other characteristics. While, it is important to note that although the focus of regulating hate speech targeting groups is on the dignity of individuals as members of specific groups, it is ultimately

⁴⁷ Jürgen Habermas, *The Crisis of the European Union: An Essay on Europe’s Constitution*, translated by Wu Huiping and Zhu Miaomiao (Beijing: Shanghai People’s Publishing House, 2019), 16.

⁴⁸ *R. v. Keegstra*, [1990] 3 S. C. R.697, Part C (i).

⁴⁹ Avishai Margalit, *The Decent Society*, translated by Huang Shengqiang and Xu Mingyuan (Beijing: China Social Sciences Press, 2015), 24.

⁵⁰ Changhua District Court, Taiwan, China, Judgment No.Yi Zi 560 (2012).

grounded in the individual. Human dignity is grounded in the protection of the dignity of individuals as members of specific groups. It entails that individuals as members of specific groups have the right not to be subjected to discrimination, exclusion, humiliation, or degradation by other individuals, groups, societies, or states.

C. Third level of human dignity: the personal dignity of individuals as unique beings

In the case of *Delfi AS v. Estonia*, after the victim L was subjected to malicious online comments, the Supreme Court of Estonia determined that 20 of these comments were of a derogatory nature and constituted defamation. These comments, characterized by a vulgar, dignity-diminishing, and threatening nature, were clearly illegal. The majority of these comments incited hatred or violence toward L.⁵¹ “Hate speech,” in addition to the previously discussed forms of violence and discrimination against individuals or groups, also includes typical types of defamation and humiliation targeting individuals.⁵² When discussing human dignity, another extremely important theoretical aspect is the uniqueness of the individual.⁵³ In this context, “hate speech” targets individuals specifically, requiring clear identification either by name or based on identifiable characteristics of the individual. “Hate speech” humiliates or degrades individuals in terms of their existence, characteristics, choices, and other aspects related to self-governance and self-determination, discriminates against or excludes individuals, thereby violating the personal dignity of individuals as unique beings. To be specific, one important aspect of personal dignity is personal reputation and honor. For example, in the case of *Delfi AS v. Estonia*, the online comments involved abusive and derogatory language, severely infringing upon the victim’s reputation and honor. Furthermore, hate speech targeting individuals often intertwines with that targeting specific groups. It can escalate from derogating and humiliating an individual to derogating and humiliating a specific group, or conversely, derogating and humiliating a specific group for the purpose of derogating and humiliating an individual.

Another aspect of individual uniqueness is privacy, which likewise pertains to an individual’s self-governance and self-determination. In the *Strauss* case, the German court held that sexual behavior is a core part of human private life and should be protected. The victim in the case was

⁵¹ *Delfi AS v. Estonia* (Application No.64569/09), para 114.

⁵² *Vejdeland and Others v. Sweden* (Application No.1813/07), para 55.

⁵³ Hu Yuhong, “The Uniqueness of Individuals and the Justification of Human Dignity,” *Law Review* 2 (2021): 48.

depicted in a way (portrayed as a pig engaged in copulation) to demean his personal worth, thereby depriving him of his human dignity.⁵⁴ In the case of *Beizaras and Levickas v. Lithuania*, a same-sex couple disclosed their relationship on social media, only to face hundreds of malicious comments. The ECtHR ruled that privacy encompasses a person’s physical and psychological integrity, as well as their sexual orientation. The online comments impacted the victims’ mental health and dignity, to a severe degree.⁵⁵ Privacy is a crucial aspect of personal dignity, a key factor in determining what makes someone who he or she is, rather than someone else. It is an essential element enabling every individual to maintain their self-governance and self-determination. An attack on personal privacy constitutes an infringement on the personal dignity of individuals as unique beings.

Compared to the universality of dignity of individuals as members of specific groups, personal dignity reflects more particularity, embodying uniqueness that distinguishes oneself from others. As individuals, everyone possesses uniqueness, which may manifest in physical, psychological, or personality traits, or in abilities, levels, status, talents, and wealth. However, the legal regulation of “hate speech” demonstrates that human dignity is not determined by personal traits; in other words, it is precisely these personal traits that the law protects, respecting the uniqueness and diversity of individuals. Everyone equally possesses dignity, and despite differences, each person has inherent value that deserves respect. Furthermore, the universal protection of human dignity, together with the acknowledgment of differences in individual achievements and capabilities, collectively constitutes the foundation of social solidarity.⁵⁶ Human dignity, characterized by both universality and uniqueness, integrates and adjusts the relationships between individuals in society.

D The fundamental principle drawn from the three-level meaning of human dignity

First, through regulating “hate speech,” we gain a more specific and clear understanding of the three-level meaning of human dignity and the scope of human dignity protection. First, the law prohibits speech involving violence, protecting the dignity of life as an inherent aspect of human existence, which constitutes the first level of human dignity. Second, individuals are not allowed to make seriously discriminative, exclusionary,

⁵⁴ BVerfGE 75, 369 1 BvR 313/85, accessed November 15, 2023,

<https://law.utexas.edu/transnational/foreign-law-translations/german/case.php?id=634>.

⁵⁵ *Beizaras and Levickas v. Lithuania* (Application No.41288/15), para 117.

⁵⁶ Wang Hui, “The Concept of Solidarity in Law and Fundamental Obligations,” *Tsinghua University Law Journal* 3 (2015): 16.

or assaultive remarks based on race, ethnicity, religion, or sexual orientation, protecting the dignity of individuals as members of specific groups, which constitutes the second level of human dignity. Finally, speech that degrades or humiliates individuals is not permitted, protecting the personal dignity of individuals as unique beings, which constitutes the third level of human dignity. The three levels of human dignity simultaneously reside within each individual, with the first level being the most fundamental. The dignity of life serves as the foundation for the personal dignity of individuals, either as members of specific groups or as unique beings, with the former representing an external form of dignity and the latter reflecting an internal form. Human dignity originates from life itself, neither tied to one's gender, race, ethnicity, physical or intellectual attributes at birth, nor linked to one's achievements, abilities, status, beliefs, or inclinations acquired later in life. The dignity inherent in being human truly and equally resides within every unique individual engaged in social relations.

Second, from the perspective of regulating "hate speech" and exploring further from the three-level meaning of human dignity, we can find out that the core value of human dignity resides in the principle that human beings are ends in themselves. First, from the perspective of regulating "hate speech," human beings should never be treated as objects for others to vent hatred. Second, the three-level meaning of human dignity reflects the subjectivity, universality, and equality of human dignity. (1) Subjectivity Dignity originates from the intrinsic value of being human, meaning that human beings end in themselves and the subjects of their own selves, capable of self-determination and self-control without interference or domination by others. (2) Universality Human dignity exists within every individual, unaffected by the specific traits of particular groups or individuals. (3) Equality Although people differ in their physical, psychological, and personality attributes, as well as in their status, abilities, achievements, wealth, or the groups they belong to, all individuals are absolutely equal in terms of dignity. Protecting human dignity means protecting the dignity of every individual, and protecting the dignity of every individual is protecting the dignity of humanity as a whole. Should human dignity lose its subjectivity, universality, or equality, it could very likely result in the degradation of human subjectivity or even the dehumanization of individuals, reducing them to tools or means for others, society, or even the state. In summary, the core value of human dignity fundamentally lies in the principle that human beings are ends in themselves. "Hate speech" undermines precisely this core value of human dignity, which is prohibited by law.

Third, from the perspective of regulating “hate speech” and the core value of human dignity, it is evident that human dignity requires active protection from the state and societal entities. The legal regulation of “hate speech” conveys the following principle: individuals, society, and the state must not express speech containing violence, discrimination, exclusion, or assault toward individuals or specific groups, thereby safeguarding human dignity. In other words, any individual, society, or state should respect anyone in any situation, meaning that any action involving violence, discrimination, exclusion, or assault should be prohibited, and individuals must not be degraded to mere means or subjected to harm to achieve an end. The three-level meaning of human dignity and its core value determine that dignity should not be violated. Those who violate others’ dignity inevitably undermine their own. Respecting human dignity is an obligation that individuals, society, and the state must fulfill, and safeguarding human dignity through law is a bottom line that the state must defend. So, how are roles distributed among individuals, society, and the state in protecting human dignity? And how does the law adjust state obligation and social responsibility?

IV. Legal Protection Pathways: From Reliance on the State to Strengthening Society

As previously discussed, human dignity transcends fundamental rights as the core value justifying restrictions on “hate speech,” urging the state to actively fulfill its obligation to protect human dignity. Some countries explicitly define this state obligation. For example, Article 1 of Germany’s *Basic Law* stipulates that respecting and protecting human dignity is an obligation binding on all state authorities. Other countries do not explicitly stipulate this in their constitutions, but imply the state’s duty to protect human dignity through interpretations of other fundamental rights. For example, in regulating “hate speech,” the ECtHR derives positive obligations of the state related to human dignity from Article 8 of the *Convention*, which states that everyone has the right to have their private and family life, family, and communications respected. In summary, human dignity, as a constitutional value, must be protected by the state.⁵⁷ So, how does the state protect human dignity through the law? Punishing acts that violate human dignity is one way the state fulfills this obligation. Besides, the state also protects human dignity in the following ways.

A. The state obligation to protect human dignity

When we acknowledge that all power of the state belongs to the people, the human dignity, as a deeply rooted and essential requirement of every

⁵⁷ Beizaras and Levickas v. Lithuania (Application No.41288/15), para 117.

individual, naturally imposes practical demands on the governance scope and operational model of the state and law.⁵⁸ Since human dignity was enshrined in the constitutions of countries and international law, it has served as a guiding principle and benchmark for state conduct. Through the state's regulation of "hate speech," particularly the widespread recognition among most countries that such regulation is based on human dignity, it is evident that human dignity is increasingly emerging as a central constitutional value. Constitutional jurisprudence, grounded in the intrinsic needs of human beings, has always upheld the protection of human dignity as a significant historical mission.⁵⁹ The state exists for the sake of the people, and it bears the obligation to respect, protect, assist, or promote human dignity.⁶⁰

1. The obligation to refrain from violating human dignity

To protect human dignity, it is first and foremost imperative for the state to recognize individuals as human beings and treat them with respect, rather than regarding them as means, tools, or objects for its own purposes. Respect entails non-infringement, imposing a negative obligation on the state to refrain from violating human dignity.⁶¹ The state's duty to respect human dignity implies that it must treat every individual equally as a human being and must not infringe upon their fundamental rights. For instance, in terms of speech, the state must never issue, guide or encourage any form of "hate speech." The duty of respect constitutes the most foundational and fundamental obligation, rooted in the profound reflection on World War II. For example, during the Nazi era, the authorities propagated nationalism, anti-Semitism, and racism through propaganda and education, inciting hatred toward Jews, which led to the tragic Holocaust. This painful experience and lesson emphasize that the state must never advocate for violence or force, classify individuals into hierarchical classes, make distinctions between individuals based on different categories, promote the superiority of a particular race, ethnicity, or religion, or privilege any group or individual over others. The state's respect for individuals must be on an equal, absolute, and unconditional grounding. All state policies should be developed based on respect for every individual's life, their specific social identity, and their unique personality.

⁵⁸ Hu Yuhong, "The Status of 'Human Dignity' in Modern Law," *Public Law Research* 1 (2008): 304.

⁵⁹ Han Dayuan, "Human Dignity, Tolerance, and Constitutional Protection of LGBT+ Rights," *Legal Forum* 3 (2016): 31.

⁶⁰ For the threefold protective obligations of the state, see Henry Shue, *Basic Rights: Subsistence, Affluence and U. S. Foreign Policy* (Princeton: Princeton University Press, 1996), 52-53.

⁶¹ Jiao Hongchang, "A Constitutional Analysis of 'The State Respects and Safeguards Human Rights'," *China Legal Science* 3 (2004): 46.

It is worth mentioning that the state’s respect for human dignity does not mean that the state cannot punish individuals. Punishing individuals in accordance with the law is distinct from violating human dignity. In regulating “hate speech,” “the state must balance two rights subjects: protecting the dignity of the victim and respecting the dignity of the perpetrator.”⁶² When regulating “hate speech” to uphold human dignity, the state safeguards the dignity of the victim. While the perpetrator also possesses human dignity, human dignity calls for mutual respect among individuals. If the perpetrator violates their obligation to respect others, they must be held accountable for their actions. When the state fulfills its duty to protect the victim’s dignity by punishing the perpetrator, it does not infringe upon the latter’s dignity. An individual who enjoys dignity should also take responsibility for their own actions, including bearing the consequences of violating the law. When the state restricts the perpetrator’s fundamental rights based on legitimate and lawful grounds, it does not infringe upon human dignity. However, the perpetrator also enjoys dignity, and even if they violate the law, they do not lose their inherent human value, which should still be respected by the state. The state should respect the perpetrator’s dignity, ensure a fair outcome in accordance with the law, and not subject them to torture or other cruel, inhuman, or degrading treatment or punishment. Additionally, even though the perpetrator has violated the law or committed a crime, they retain the right to resume a normal life after assuming responsibility. The state has the obligation to safeguard their reintegration into society.

2. Protecting human dignity from infringement

Human dignity requires that the state not only respect human dignity and refrain from violating it, but also protect individuals’ dignity from infringement by others or society. Protecting fundamental rights comprehensively is challenging for individuals alone. The protection of human dignity necessitates state intervention. This protection manifests in the state’s legal measures to combat acts that infringe upon human dignity, including: establishing and refining legal frameworks *ex ante*; conducting effective investigations upon occurrence; and providing post-violation remedies for victims and holding accountable parties legally liable *ex post*.

The state’s regulation of “hate speech” exemplifies its duty to safeguard human dignity from infringement. In the case of *Féret v. Belgium*, the ECtHR emphasized that acts such as insulting, ridiculing, defaming specific groups, or inciting discrimination justify state intervention to

⁶² Wang Hui, “The Concept of Human Dignity and Its Institutionalization,” *China Legal Science* 4 (2014): 113.

counter such irresponsible racist rhetoric, as such speech undermines the dignity and security of specific groups.⁶³ The state primarily combats “hate speech” through legal mechanisms. 1. Legislative authorities formulate laws. Jurisdictions adopt either a specialized legislation model or a decentralized legislative model. While most countries choose the decentralized model, some, like Japan, employ specialized legislation. For instance, Japan’s *Hate Speech Elimination Act (2016)* states in Article 1 its purpose to “address the issue of eliminating hate speech and further clarifies the state’s responsibilities and obligations.”⁶⁴ 2. Administrative authorities enforce laws in accordance with the law. Government agencies are obligated to protect human dignity by investigating and prosecuting alleged “hate speech” through criminal mechanisms. 3. Judicial authorities adjudicate cases in accordance with the law. Judicial authorities determine “hate speech” based on legal provisions and case facts. They incorporate human dignity to evaluate the necessity and legitimacy of state regulation over such speech, while integrating fundamental rights to safeguard human dignity.

Within this framework, the ECtHR, based on Article 14 of the *Convention* (prohibiting discrimination)⁶⁵, focuses on whether law enforcement and judicial authorities treat cases involving alleged dignity-infringing speech with equality. For instance, it examines whether the police uniformly initiate investigations to determine if incidents involve “hate speech.” In the case of *Abdu v. Bulgaria*, the victim claimed to have been physically assaulted following racist insults. However, Bulgarian authorities deemed it unnecessary during their investigation to interrogate witnesses about any overheard remarks or ascertain whether the attackers’ conduct was motivated by racism. The ECtHR ruled that Bulgaria failed to adequately investigate potential racial animus behind the violence, thereby violating Article 14 of the *Convention*.⁶⁶ Similarly, in the case of *Beizaras and Levickas v. Lithuania*, the ECtHR found that discrimination against the applicants originated not only from Internet users, but also from the government. Governmental discrimination manifested in its failure to actively fulfill its obligation to investigate whether “comments about the

⁶³ *Féret v. Belgium* (Application No.15615/07), Information Note on the Court’s case-law No.121, page 1.

⁶⁴ Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech Against Foreign Nationals, accessed December 15, 2023, <https://elaws.e-gov.go.jp/document?lawid=428AC0100000068>.

⁶⁵ Article 14 of the *European Convention on Human Rights* states: “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

⁶⁶ *Abdu v. Bulgaria* (Application No.26827/08), paras 47-53.

applicants’ sexual orientation constituted hate speech” in an effective way. The government could have taken measures to mitigate the harm caused by such comments and acted more impartially, but instead, it tacitly endorsed their existence.⁶⁷ These rulings demonstrate that states should act proactively when handling cases involving alleged insulting or discriminatory speech, and take an equitable approach across all cases in conducting effective investigations, ascertaining motives, and prosecuting or adjudicating the cases in accordance with the law. Governments must not ignore, condone, or even accept “hate speech” with discriminatory attitudes, as such inaction violates the obligation to protect human dignity and renders the state liable. The state’s obligation to protect human dignity from infringement encompasses not only legislative duties to prohibit dignity-violating acts, but also the obligation to ensure impartial law enforcement and judicial investigations, as well as the imposition of appropriate penalties for such violations.

3. Assisting or facilitating the realization of human dignity

Unlike the obligation to protect, the state’s obligation to assist refers to it offering help to victims of violations, while the obligation to facilitate entails it improving institutional frameworks to accelerate the realization of human dignity and minimize the occurrence of behaviors that violate human dignity. Law must proactively ensure the realization of human dignity in social life.⁶⁸ In combating “hate speech,” the state must take proactive measures to eliminate it, thereby effectively safeguarding human dignity. For example, Japan’s *Hate Speech Elimination Act (2016)* explicitly outlines “the responsibilities of the national and local governments to address hate speech against foreign residents in Japan through institutional improvements, including: 1. Optimizing consultation mechanisms to actively respond to inquiries regarding the controversial speech, and assist in resolving and preventing related disputes; 2. Utilizing educational means to eliminate hate speech; 3. Strengthening public awareness campaigns to help residents recognize the necessity of eradicating hate speech.”⁶⁹ These measures constitute essential steps to eliminate “hate speech” and are crucial means of assisting or facilitating the realization of human dignity. In other words, it is indispensable for governments to enhance people-centered consultation systems, develop educational programs centered on respect for human dignity and empathy,

⁶⁷ Beizaras and Levickas v. Lithuania (Application No.41288/15), para 155.

⁶⁸ Hu Yuhong, “A Jurisprudential Interpretation of ‘Human Dignity’,” *Law Review* 6 (2007): 3.

⁶⁹ Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech Against Foreign Nationals, accessed December 16, 2023, <https://elaws.e-gov.go.jp/document?lawid=428AC0100000068>.

and strengthen public advocacy for fundamental rights protection to uphold human dignity.

B. Obligations of social entities

The protection of human dignity requires not only state-level efforts, but also consideration of individual and societal development. In other words, beyond state protection, the realization of human dignity also necessitates societal participation and preservation. Dignity possesses both a subjective and social nature. Thus, its realization depends on both individual self-improvement and the amelioration of external conditions.⁷⁰ It is evident that society plays a critical role in protecting human dignity.

1. Social entities bear the obligation to respect others' dignity

Based on the view that every individual possesses inherent dignity, it can be inferred that everyone should bear the obligation to refrain from treating others as mere means or objects.⁷¹ Universal human dignity necessitates mutual respect among individuals. To respect others is to respect oneself. We recognize someone as a person worthy of respect based on characteristics they share with all other human beings.⁷² For individual citizens, equal dignity constitutes both a right and a responsibility.⁷³ Human dignity, as an intrinsic value of individuals and a collective societal value, inherently entails the right to demand respect from others.⁷⁴ Based on the three-level jurisprudence of human dignity - particularly the dignity of individuals as members of specific groups — it is evident that humans are interconnected. Individuals do not exist in isolation but within social relationships, obligating them to respect others' dignity while earning respect for themselves. As an independent entity, society must maintain necessary tolerance toward its members. Those with unconventional views deserve acceptance, and those who innovate warrant respect.⁷⁵

Individuals bear the obligation to refrain from violating others' dignity. From the perspective of regulating “hate speech,” specific legal requirements for respecting others can be clarified. Human dignity requires that individuals abstain from making statements containing violent content and prohibits them from uttering discriminatory, exclusionary, derogatory,

⁷⁰ Chen Xinxia, “Human Dignity and Human Development,” *Tianjin Social Sciences* 5 (2021): 92.

⁷¹ Han Deqiang, *On Human Dignity: Interpretation of Human Dignity Theory from a Legal Perspective*, 170.

⁷² Steven Lukes, *Individualism*, translated by Yan Kewen (Nanjing: Jiangsu People's Publishing House, 2001), 116.

⁷³ Zhang Zhuoming, “A Dignity Theory Beyond Liberalism: Waldron's Philosophy of Dignity,” *Human Rights* 6 (2022): 184.

⁷⁴ Li Jianliang, “Freedom, Equality, Dignity (Part II): Human Dignity as a Constitutional Value — Its Intellectual Roots and Fundamental Challenges,” *Taiwan Law Review* 3 (2008): 198.

⁷⁵ Hu Yuhong, “A Jurisprudential Interpretation of ‘Human Dignity’,” *Law Review* 6 (2007): 12.

or humiliating remarks against groups or individuals. However, “hate speech” is currently prevalent in political settings, media, and online platforms. Numerous cases demonstrate that certain public figures, particularly politicians, exploit their privileged status to openly propagate racially discriminatory rhetoric under the guise of political debate.⁷⁶ For example, the case of *Féret v. Belgium* establishes that individuals who publicly disseminate “hate speech” must face penalties. Politicians, given their broader audience access and heightened influence, bear greater responsibility to avoid making statements that may incite hatred in public forums.⁷⁷ The duty to respect human dignity equally applies to media and online platforms at the societal level. In this regard, the ECtHR places particular emphasis on the language used in media reporting and the responsibilities of operators, requiring news media to exercise due caution in their reporting to avoid becoming tools for spreading hatred. If media outlets publish content that incites violence or similar rhetoric, courts will hold them liable for enhanced legal consequences. In the case of *Süreş and Özdemir v. Turkey*, the court ruled that the media provided instigators with a platform for inciting violence and hatred, amplifying the societal impact. Their owners or operators cannot be exempt from liability, and the state must impose appropriate penalties.⁷⁸ Similarly, online platforms must prohibit the dissemination of “hate speech.”

2. Strengthen the responsibilities of social entities on the internet

In recent years, an increasing volume of “hate speech” has proliferated on the Internet, inciting violence or wantonly attacking, humiliating, and disparaging an individual or a group. Such rhetoric intertwines with cyber violence, severely infringing upon human dignity. In response, states have actively implemented measures to strengthen Internet regulation to optimize the digital environment and curb the spread of “hate speech” online. International practices demonstrate that social entities’ duty to respect human dignity is further reinforced on digital platforms. Individuals or social media entities are not only required to bear responsibility for their own actions, but may also be held liable for others’ conduct under specific circumstances. This represents the changes in human dignity protection in the digital age.

On the one hand, requirements for specific individuals on online platforms. In the case of *Sanchez v. France*, French courts convicted the applicant, a political figure, of inciting hatred or violence against specific ethnic groups and individuals, as he failed to promptly remove “hate speech”

⁷⁶ Mao Junxiang and Guo Min, “On the Regulation of Racist Speech,” *Human Rights* 5 (2022): 124.

⁷⁷ *Féret v. Belgium* (Application No.15615/07), Information Note on the Court’s case-law No.121, page 2.

⁷⁸ *Süreş and Özdemir v. Turkey* (Applications Nos. 23927/94 and 24277/94), para 63.

posted by others on his social media during an election campaign. The ECtHR upheld France's approach, ruling that the applicant exhibited insufficient vigilance and responsiveness to comments on his social media. The government was justified in combating such abuse of free expression that undermines the dignity and security of specific groups or individuals.⁷⁹ In other words, specific individuals, such as politicians, public figures, or influential online users, bear the responsibility to prevent the further dissemination of "hate speech" posted on their social media. Preventive measures include deleting their own posts or others' comments, and stopping more users from posting replies. This implies that, under specific circumstances, specific individuals may be held liable for others' actions that violate human dignity. On the other hand, requirements for online social media. In the case of the news media Delfi, which had multiple avenues to block the spread of "hate speech" but failed to act promptly, the ECtHR deemed the host state's decision to penalize Delfi reasonable and proportionate. Online media must remain vigilant and responsive to relevant comments, regardless of whether users submit removal requests.⁸⁰ In other words, platforms may also be held accountable for "hate speech" posted by its third-party users under specific circumstances. If a platform fails to take timely and concrete measures to prevent violations of human dignity, it must bear corresponding liability.

An overview of practices shows that the ECtHR has intensified and expanded the responsibilities of social entities on the Internet, building upon their obligation to respect human dignity. Specifically, if individuals or platforms fail to take timely and concrete measures to prevent dignity-infringing acts online, they will be held legally accountable, regardless of whether such acts are taken by themselves or others. Particularly, as platforms play an increasingly prominent role in social governance, their duty to respect human dignity has become more pronounced. In response, many states have enacted legislation to specify platform obligations. For example, the EU's *Digital Services Act* clarifies the duties of special entities like very large online platforms and imposes stricter penalties, reflecting a trend toward rigorous platform regulation.⁸¹ Meanwhile, states recognize the need to balance the protection of human dignity with the safeguarding of information freedom. Therefore, the regulatory scope of law for platforms remains subject to ongoing adjustments.

⁷⁹ Sanchez v. France (Application No.45581/15), paras 88-90.

⁸⁰ Delfi AS v. Estonia (Application No.64569/09), para 162.

⁸¹ Regulation (EU) 2022/2065 of the European Parliament and of the Council of October 19, 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) Section 3: Article 19-28, accessed March 20, 2024, <https://eur-lex.europa.eu/eli/reg/2022/2065/oj>.

In summary, while human dignity centers on the individual as an independent subject, it encompasses relationships between individuals, individuals and society, and individuals and the state.⁸² Protecting human dignity constitutes a systematic project involving the state, society, individuals, and the protection of fundamental rights. Among these entities, the state plays a pivotal role. It bears the obligation to respect human dignity and refrain from violating it, the responsibility to hold accountable those who commit human dignity violations, and the obligation to create conditions to safeguard human dignity. Individuals, media, and platforms, as social entities, are also obligated to respect human dignity and refrain from violating it. Any violation will incur penalties. Furthermore, under defined circumstances, this obligation expands to impose liability on specific individuals or platforms for third-party dignity-violating actions on the Internet. It can be concluded that the key to protecting human dignity lies in timely adjusting the allocation of responsibilities between the state and societal entities with the development of the times.

V. Interim Conclusion: Advancing Fundamental Pathways to Protecting Human Dignity in China

The connotation of human dignity carries universal significance. Like other jurisdictions, China faces the issue of “hate speech,” though in China, it predominantly manifests as cyber violence. In analyzing the causes of cyber violence, the primary motivator often lies in perpetrators’ internal hatred toward individuals, a specific group, society, or the state. When hate speech that already exists in physical spaces migrates to online platforms, it becomes a major form of cyber violence. Namely, “the primary motivator of cyber violence often lies in perpetrators’ internal hatred toward individuals, a specific group, society, or the state. When hate speech that already exists in physical spaces migrates to online platforms, it becomes a major form of cyber violence.”⁸³ Specifically, “hate speech” related to violence includes not only statements inciting violence, but also propaganda advocating terrorism or extremism, and endorsements of militarism. Hate speech targeting specific groups often involves discriminatory, exclusionary, or assaultive remarks based on ethnicity, region, gender, or other characteristics, such as severe misogynistic rhetoric or speech inciting ethnic hatred. Hate speech targeting individuals often involves insults or defamation, such as the Liu Xuezhou case and the

⁸² Wang Jinwen, “A Review of the Concept of ‘Human Dignity’ in Rule of Law Construction: Definition and Scope of Application,” *Law Review of Chongqing University*, vol. 2, no.1 (2019): 98.

⁸³ Wang Wenhua, “On the Legal Governance of Cyber Violence from the Perspective of Combating Hate Speech,” *China Review of Administration of Justice* 5 (2023): 63.

cyberbullying of the pink-haired student. These forms of speech constitute part of cyber violence, which violates human dignity at three levels: The dignity of life as an inherent aspect of human existence, the dignity of individuals as members of specific groups, and the personal dignity of individuals as unique beings. All such violations fundamentally undermine the core value that humans are ends in themselves.

The protection of human dignity also holds universal applicability. Regardless of whether human dignity is explicitly codified in law, it constitutes the fundamental value of the national constitution, and the state bears an obligation to protect it. Even if a state's constitution does not expressly enshrine this duty, it is typically combined with fundamental rights as the basis for the state to fulfill its protective obligations. In China, constitutional provisions inherently safeguard dignity. Starting from the constitutional clause stating that "the state respects and protects human rights" and the regulatory framework of specific fundamental rights⁸⁴, the constitutional value of human dignity and the state's protective obligations can be affirmed. The comprehensive preservation of human dignity has become one of the key tasks of the rule of law under socialism with Chinese characteristics.⁸⁵ Furthermore, pursuant to Article 51 of the *Constitution*, it can be inferred that China also regulates "hate speech" based on the protection of human dignity, while ensuring such regulation remains balanced with safeguarding freedoms.⁸⁶ In the context of the rapid spread of such rhetoric online, which has become a significant trigger for cyber violation, greater emphasis should be placed on protecting human dignity. Examining China's practices in regulating such speech reveals that in China, beyond state protection, this responsibility has increasingly extended to social entities, imposing changes of enhanced and expanded obligations of respect on the Internet.

However, while universal protection is essential, it must also account for particularities to refine China's approach to protecting human dignity. An overview of China's current practice of human dignity protection reveals the following particularities at state and societal levels. At the State level, 1. Human dignity has yet to be fully operationalized in legislation. Particularly in legislation concerning human dignity, China has yet to grasp

⁸⁴ Li Haiping, "A Normative Analysis of Human Dignity in Constitutional Law," *Contemporary Law Review* 6 (2011): 31-32.

⁸⁵ Hu Yuhong, "An Analysis of the Legal Attributes of Human Dignity," *Social Sciences in China* 5 (2016): 118.

⁸⁶ Shi Wenlong, "On the Restriction of Citizens' Exercise of Rights and Freedoms and the Normative Framework of 'Restriction': A Study of Article 51 of China's Constitution," *Politics and Law* 7 (2013): 73-75.

the substantive purpose behind technical legal frameworks, leading to statutes that rarely explicitly establish the legislative purpose of protecting human dignity. 2. State institutions remain insufficiently attentive to human dignity when protecting fundamental rights. For instance, law enforcement, prosecutorial, and judicial authorities prioritize high-profile or severe cases of cyberbullying while neglecting ordinary cases, leading to inadequate protection of personal dignity. At the societal level, China has yet to clearly define obligations for social entities, and public awareness of respecting human dignity remains weak. Although China has acknowledged the importance of social entities respecting human dignity on the Internet and has legally imposed responsibilities on entities such as media and platforms, these provisions remain rather abstract and lack detailed implementation rules. Moreover, the absence of effective regulatory mechanisms and inadequate enforcement hampers the state’s ability to hold relevant entities accountable. Going forward, China may enhance the protection of human dignity through the following approaches:

A. The State’s leading role in protecting human dignity

The state bears the obligation to protect human dignity. In China, human dignity can be comprehensively safeguarded by establishing it as a constitutional value and integrating it with fundamental rights such as dignity of human personality and the right to equality. The state plays a leading role in protecting human dignity.

On the one hand, to strengthen the protection of human dignity, the state should emphasize its status as a constitutional value and effectively protect fundamental rights. The urgency and necessity for the state to regulate acts infringing upon human dignity do not depend on the scale of such violations. Rather, the state should initiate protection whenever an individual’s dignity is violated. Going forward, the state should clarify the significance and status of human dignity in constitutional and legal frameworks to ensure that legislative, administrative, and judicial authorities fulfill their obligations to protect human dignity and enhance societal awareness of respecting human dignity. Furthermore, the state can also protect human dignity by comprehensively protecting fundamental rights. For instance, in regulating cyber violation, the state can first restrict freedom of expression by applying human dignity as a constitutional value. By limiting the freedom of expression, it can further protect fundamental rights such as the right to life, the right to equality, and dignity of human personality, ultimately realizing the goal of protecting human dignity. Therefore, protecting fundamental rights is crucial to the protection of human dignity. Moreover, by protecting fundamental rights, the state can not only enrich the connotation of existing rights, but also establish new fundamental rights based on the actual situation.

On the other hand, the state should adapt to the digital age by improving legislation, law enforcement, and judicial processes to construct a comprehensive legal protection system. The state should explicitly define the concrete connotation of human dignity, namely, the dignity of life as an inherent aspect of human existence, the dignity of individuals as members of specific groups, and the personal dignity of individuals as unique beings. Clarifying these meanings of human dignity will guide state institutions and societal entities in undertaking targeted protective actions. Meanwhile, by anchoring human dignity as a constitutional value, the state should mandate legislative authorities to establish a fundamental rights protection system centered on human dignity, while clarifying the respective responsibilities of administrative, procuratorial, and judicial authorities. Taking regulating cyber violence as an example, administrative authorities should treat all cases impartially, actively investigate whether violations of human dignity are involved, ensure accurate evidence collection and case categorization, and strengthen sustained supervision of cyberbullying for effective governance. Procuratorial authorities should file public interest litigation against cyberbullying that harms societal public interests, compensating for individuals' limited capacity to fully combat such violations.⁸⁷ Judicial Authorities must incorporate the value of human dignity into fair and impartial case adjudication. This includes refining judicial interpretations, issuing guidelines, or compiling guiding cases to clarify the definition of human dignity and delineate the responsibilities of relevant entities. Furthermore, to ensure proactive fulfillment of the state's protective obligations, it is imperative to provide training on safeguarding human dignity for police officers, prosecutors, and judges. Government departments should hold public officials accountable for negligence in these duties. Of course, the state's protection of human dignity has inherent limits. When conflicts arise with fundamental rights, the state must exercise meticulous and prudent balancing to strike a sound equilibrium between protecting human dignity and restricting fundamental rights.

B. Specifying the obligations of social entities to respect human dignity

At the societal level, the roles of individuals, media, and platforms in protecting human dignity have become increasingly critical with the development of the digital age. While the state bears the obligation to

⁸⁷ *Opinions Jointly Issued by the Supreme People's Court, Supreme People's Procuratorate, and Ministry of Public Security on Punishing Cyber Violence Crimes According to Law; Procuratorial Authorities Can Lawfully File Public Interest Litigation Against Cyber Violence Harming Social Public Interests*, Supreme People's Procuratorate Website, accessed March 5, 2024, https://www.spp.gov.cn/spp/xwfb/wsfbt/202309/t20230925_629255.shtml#1.

protect human dignity, this does not mean that the state alone should shoulder this responsibility. Based on their inherent duty to respect human dignity, social entities must not only refrain from violating human dignity themselves and, but also take timely measures to prevent others from committing such violations under specific circumstances. The changes of social entities’ enhanced obligations of respect necessitate legal frameworks to promptly respond by clarifying and specifying applicable conditions, thereby promoting social entities to fulfill their obligations in accordance with the law.

The state should define liability provisions and penalize entities that infringe upon human dignity, establish legal rules to ensure effective societal protection of human dignity, and cultivate and elevate awareness among social entities through educational initiatives and other means.

First, the state should strengthen legal constraints on the online behavior of social entities to foster a dignity-respecting online environment. In the digital age, social entities include not only individuals in the physical world, but also online platforms, Big Vs (key opinion leaders) on social media, self-media, traditional media, and other information publishers or disseminators. Social entities bear the obligation to refrain from infringing upon others’ dignity on the Internet. To protect human dignity, the state should, on the basis of existing laws, prioritize strengthening accountability mechanisms for influential information publishers or disseminators that violate human dignity, including clear penalties such as warnings and fines, thereby fostering a healthy online ecosystem.

Second, the state should construct a dual protection mechanism involving both society and the state. (1) Laws must explicitly require special entities such as Big Vs, self-media, and public figures to assume responsibility for managing their social media to prevent dignity violations, thereby urging them to maintain necessary vigilance and responsiveness toward user comments on their social media. (2) To ensure platforms effectively fulfill their duties, it is essential to specify platform obligations through legislation and construct multi-level regulatory mechanisms. While societal protection in the digital age relies on platform participation, strengthening platform obligations necessitates concrete and enforceable legal rules. Although China has established a general legal framework for regulating platform obligations, future efforts should focus on issuing implementing rules to define substantive standards and procedural mechanisms. Platforms failing to meet obligations or exceeding permissible limits must bear civil, administrative, or even criminal liability. It is important to note that while platform protections are crucial, platforms do not possess or exercise public authority, and thus, their responsibilities must be calibrated appropriately. This necessitates the state to construct multi-

level regulatory mechanisms. From a legal perspective, the state may impose greater obligations on platforms in the civil domain and require their compliance with administrative supervision, but it will exercise caution in punishing platforms by imposing criminal liability. From the view of platform entities, responsibilities should be differentiated based on platform size, distinguishing among super platforms, large platforms, and small-to-medium platforms. (3) China must uphold the state's primary role in protecting human dignity. When platforms violate their obligation of respect or demonstrate insufficient diligence, the state should intervene promptly to rectify and remedy such failures. Effective dual protection of human dignity can only be achieved through complementary collaboration between the state and societal entities, where each addresses the other's shortcomings.

Finally, the state should strengthen social entities' awareness of respecting human dignity. This requires proactive cultivation and education, not merely coercion and punishment. The advent of the digital age has amplified the importance and urgency of societal obligations to respect human dignity, yet current awareness among citizens and platforms remains inadequate. Therefore, the state should continuously leverage consultative, educational, and awareness-raising initiatives to foster an environment where society voluntarily safeguards human dignity and autonomous development, thereby establishing norms for society to jointly safeguard human dignity. The state must not only respect and protect the foundational value of human dignity, but also inspire societal reverence for it. Equally important is the need for individuals to stand up for this value themselves.⁸⁸

Through the regulation of "hate speech," it becomes evident that human dignity is a perceptible, objective, and concrete existence. The key to protecting human dignity lies in clarifying the responsibilities of both the state and societal entities. Furthermore, exploring the legal protection of human dignity through the lens of "hate speech" is not only about regulating such speech, but also about urging the state to comprehensively fulfill its obligation to protect human dignity and refine specific protection pathways based on the clarification of the connotation of human dignity. In other words, these approaches to enhance the state's protective obligations apply not only to regulating dignity-infringing speech, but also to other actions that violate human dignity. In China, cyber violence, including "hate speech," is a typical and highly concerned form of dignity violation. Other issues closely related to human dignity also include privacy breaches and personal data leaks, digital divides, gene editing, and human cloning. These

⁸⁸ Hans-Jürgen Papier, *The Image of the Contemporary Constitutional State*, 73.

are new challenges emerging with technological advancements. The state should, proceeding from its obligation to protect human dignity, promptly adapt its protective duties and the legal responsibilities of social entities in accordance with the development of the times, balancing rights and specifying duties through legal frameworks. This highlights the significance of exploring the legal protection of human dignity from the perspective of regulating “hate speech.”

(Translated by *JIANG Yu*)