

## HUMAN DIGNITY IN ASIA

Using interdisciplinary methods, this book is a pioneering exploration of Asian understandings of human dignity and human rights. It encompasses rigorous scrutiny of dignity jurisprudence in major Asian apex courts, detailed philosophical analysis of dignity in religious traditions, and contextualized socio-political analysis of religious dignity discourse in several Asian societies. This is an innovative systematic survey of how human dignity is understood in Asia, demonstrating how those understandings converge and diverge with other parts of the world. Synthesising legal, philosophical, and sociological expertise, this volume furthers the dialogue between Asia and the West, and advances debates on whether human rights are universal or particular to any one region. As many of the world's liberal democracies are challenged by polarization and populism, this comparative study of human dignity broadens our horizons and offers a potential alternative to a rigidified social imagination.

Jimmy Chia-Shin Hsu is Associate Research Professor of Law, Academia Sinica, Taiwan. He was the ASLI Visiting Fellow at National University of Singapore in 2016 and Visiting Scholar of Harvard-Yenching Institute for 2016–2017. He serves on the board of Taiwan Association for Philosophy of Law and as co-chair of the Freedom of Expression Research Group of the International Association of Constitutional Law.

# Human Dignity in Asia

DIALOGUE BETWEEN LAW AND CULTURE

Edited by

**JIMMY CHIA-SHIN HSU**

Academia Sinica



**CAMBRIDGE**  
UNIVERSITY PRESS



CAMBRIDGE  
UNIVERSITY PRESS

Shaftesbury Road, Cambridge CB2 8EA, United Kingdom  
One Liberty Plaza, 20th Floor, New York, NY 10006, USA  
477 Williamstown Road, Port Melbourne, VIC 3207, Australia  
314-321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India  
103 Penang Road, #05-06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of Cambridge University Press & Assessment, a department of the University of Cambridge.

We share the University's mission to contribute to society through the pursuit of education, learning and research at the highest international levels of excellence.

[www.cambridge.org](http://www.cambridge.org)  
Information on this title: [www.cambridge.org/9781108814331](http://www.cambridge.org/9781108814331)  
DOI: 10.1017/9781108886598

© Cambridge University Press & Assessment 2022

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press & Assessment.

First published 2022  
First paperback edition 2023

*A catalogue record for this publication is available from the British Library*

ISBN 978-1-108-83574-9 Hardback  
ISBN 978-1-108-81433-1 Paperback

Cambridge University Press & Assessment has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

*I dedicate this book to **Yun-Ying Liu**, my beloved mother, and to all the courageous women in Asia, who made great sacrifice for love in the face of life's trials and cultural constraints, and who lived out a life of dignity, grace, and beauty.*

*Jimmy Chia-Shin Hsu*

## Contents

<i>Notes on Editor and Contributors</i>	<i>page</i> ix
<i>Preface</i>	xv
<i>List of Abbreviations</i>	xvii
<b>Introduction: Human Dignity, Human Rights, and Cultural Change in Asia</b>	1
Jimmy Chia-Shin Hsu	
<b>1 Human Dignity in Indian Constitutional Adjudication</b>	21
Pritam Baruah	
<b>2 The Development of Individual Dignity in Japan: Overcoming Constraints in Law, Family, and Society</b>	40
Keigo Obayashi	
<b>3 Constitutional Discourse on Human Dignity in South Korea: A Critical Appraisal</b>	62
Chaihark Hahm	
<b>4 Human Dignity in the Jurisprudence of the Taiwan Constitutional Court</b>	87
Jimmy Chia-Shin Hsu	
<b>5 The Human Dignity Factor: Interpreting the Philippine Constitution</b>	110
J. R. Robert Real	
<b>6 Human Dignity in the Jurisprudence of the Indonesian Constitutional Court</b>	139
Nadirsyah Hosen	

7	<b>Dignity as a Constitutional Value in Hong Kong: Toward a Contextual Approach?</b> Kelley Loper	160
8	<b>Human Dignity and Relational Constitutionalism in Singapore</b> Li-ann Thio	187
9	<b>Personal Dignity under Chinese Constitutional Law</b> Xiaobo Zhai	220
10	<b>Virtue, Dignity, and Constitutional Democracy: A Confucian Perspective</b> Sungmoon Kim	243
11	<b>Buddhist Philosophical Approaches to Human Dignity</b> Anton Sevilla-Liu	269
12	<b>Dignity and Status in Ancient and Medieval India</b> Timothy Lubin	285
13	<b>Human Dignity, <i>Pancasila</i>, and Islam: Contexts and Contestations in Indonesia</b> Etin Anwar	308
14	<b>Catholicism and Human Dignity in the Philippines</b> Jonathan T. Chow	332
15	<b>Protestantism and Human Dignity in South Korea</b> JinHyok Kim	356
	<i>Index</i>	379

## Editor and Contributors

### Editor

**Jimmy Chia-Shin Hsu** is Associate Research Professor of Institutum Iurisprudentiae, Academia Sinica, Taiwan. He received his LLB from National Taiwan University, LLM from National Chengchi University, and LLM and JSD from the University of Chicago Law School. His research interests include legal philosophy, constitutional theory, comparative constitutional law, and philosophy of punishment. He received the ASLI Visiting Fellowship from the National University of Singapore Law Faculty in early 2016 and the Visiting Scholarship of Harvard Yenching Institute 2016–17. He serves on the board of the Taiwan Association for Philosophy of Law and as co-chair of the Freedom of Expression Research Group of International Association of Constitutional Law. His recent works include “The Ultimate Test of Fidelity: Judicial Responses to Civil Disobedience in Hong Kong and Taiwan” (coauthored with Anne S. Y. Cheung, in *Democracy and Rule of Law in China’s Shadow*, edited by Brian Christopher Jones, Hart Publishing, 2021); “Right to Life and Capital Punishment in Transnational Judicial Dialogue” (the *Asian Journal of Comparative Law*, first-view December 2021).

### Contributors

**Pritam Baruah, PhD (UCL), BCL (Oxon), BA LLB (NALSAR)**, is Professor and Dean of the School of Law at BML Munjal University, India. He is a legal philosopher working on the intersections of legal theory, moral philosophy, and cognitive science. He has written on theoretical and doctrinal uses of dignity and privacy by courts and the nature of interpretive concepts. His current work examines how constitutional courts employ moral values in decision-making; and the epistemological underpinnings of theories of adjudication. Previously Pritam taught at OP Jindal University and the National University of Juridical Sciences, Kolkata, and has held visiting professorships at the University of Ottawa, the Chinese University of

Political Science and Law (Beijing), NLSIU (Bangalore), and Humboldt University.

**Keigo Obayashi** is Professor of Law at Keio University in Japan. He teaches constitutional law. He studied governmental systems, comparing Japan with the United States, and received his Bachelor of Laws, Master of Laws, and Doctorate of Laws from Keio University. His doctoral thesis was published as *The U.S. Constitution and the Executive Privilege* (2008, in Japanese). He later published another book, *The Constitution and the Risk* (2015, in Japanese). He is coeditor of *The Minority Opinion of the Supreme Court* (2016, in Japanese) and editor of *The Constitution Under the COVID-19 Crisis* (2021, in Japanese). Recently, Obayashi is interested in individual dignity and freedom of speech from the viewpoint of comparing foreign law. His article “Free Speech Jurisprudence in Japan: The Influence of Comparative Constitutional Law,” which is collected in *Hate Speech in Japan: The Possibility of a Non-regulatory Approach* (Cambridge University Press, 2021, pp. 341–362), is one such example.

**Chaihark Hahm** is Professor of Law at Yonsei University School of Law in Seoul, Korea. He teaches and writes on constitutional theory, comparative constitutional law, Confucian political theory, Korean legal culture and history, citizenship education, and human rights. His works in English have appeared in the *Journal of Democracy*, the *American Journal of Comparative Law*, and *I•CON: International Journal of Constitutional Law*, among others. He is coauthor of *Making We the People: Democratic Constitutional Founding in Postwar Japan and South Korea* (Cambridge University Press, 2015) and an editorial board member of *I•CON*. He holds law degrees from Seoul National University (LLB), Yale University (LLM), Columbia University (JD), and Harvard University (SJD).

**J. R. Robert Real** is a professional lecturer at the De La Salle University College of Law and at the Far Eastern University Institute of Law in the Philippines teaching constitutional law, public international law, and privacy law. He previously worked as a senior court attorney at the Office of the Chief Justice of the Philippines where he had handled more than 200 cases involving mostly constitutional rights issues. He was also a research associate at the National University of Singapore Centre for International Law, during which time he presented papers on international human rights law and ASEAN law at various international conferences. He obtained his LL.M. from the University of Michigan–Ann Arbor (Grotius Fellow), his MBA–JD from the De La Salle University–Far Eastern University Consortium (Best Thesis), and his BSc–Commerce from the De La Salle University. He is coauthor of the Teaching and Reaching International Law in Asia (TRILA) Project Report 2020.

**Nadirsyah Hosen** has been working as a senior lecturer at the Faculty of Law, Monash University, since 2015. Prior to this role, Nadir was an associate professor at



the School of Law, University of Wollongong. He is internationally known for his expertise on Shari'a and Indonesian law.

**Kelley Loper** is an associate professor, director of the LLM in Human Rights Programme, and co-editor-in-chief of the *Asia-Pacific Journal on Human Rights and the Law* in the Faculty of Law at the University of Hong Kong. She has published extensively on the rights of refugees in Asia, the rights of persons with disabilities, and discrimination against sexual and gender diverse people. Her scholarship focuses on issues related to the implementation of international human rights law in domestic contexts. She teaches courses on international human rights law, comparative equality, and non-discrimination law and serves on the board of the Hong Kong Dignity Institute.

**Li-ann Thio**, BA (Hons) (Oxford), LLM (Harvard), PhD (Cambridge), is Provost Chair Professor at the National University of Singapore where she teaches and researches international human rights law, constitutional and administrative law, and comparative public law, with a focus on law and religion. She is a barrister (Gray's Inn, UK) and was a Nominated Member of the Singapore Parliament (2007–9). She was formerly chief editor of the *Singapore Journal of Legal Studies* and of the *Singapore Journal of International & Comparative Law* and is a former general editor of the *Asian Yearbook of International Law*. A prolific scholar, she has published more than 100 law review articles and book chapters, as well as several books.

**Xiaobo Zhai** is an associate professor at the University of Macau. He holds an LLB from Zhengzhou University, an LLM from Peking University, and doctorates from the Chinese Academy of Social Sciences and from University College London. His research interests include legal philosophy, constitutional theory, and Bentham studies. His publications in English have appeared in *Law and Philosophy*, the *Journal of Legal History*, the *International Journal of Constitutional Law*, and *Law, Culture and the Humanities*. His edited volume *Bentham's Theory of Law and Public Opinion* was published by Cambridge University Press in 2014.

**Sungmoon Kim** is Professor of Political Theory at the City University of Hong Kong, where he is also the director of the Center for East Asian and Comparative Philosophy. Kim's research has appeared in journals such as the *American Political Science Review*, the *Journal of Politics*, the *British Journal of Political Science*, *History of Political Thought*, the *European Journal of Political Theory*, the *Review of Politics*, *Contemporary Political Theory*, and *Philosophy East and West*, among others. As 2016/2017 Berggruen Fellow at Harvard University's Edmond J. Safra Center for Ethics, Kim is the author of *Confucian Democracy in East Asia: Theory and Practice* (Cambridge University Press, 2014), *Public Reason Confucianism: Democratic Perfectionism and Constitutionalism in East Asia* (Cambridge University Press, 2016), *Democracy after Virtue: Toward Pragmatic*

*Confucian Democracy* (Oxford University Press, 2018), and *Theorizing Confucian Virtue Politics: The Political Philosophy of Mencius and Xunzi* (Cambridge University Press, 2020).

**Anton Sevilla-Liu** originally taught at Ateneo de Manila University, Philippines. He studied for his PhD under Buddhist philosopher Sueki Fumihiko at the Graduate University for Advanced Studies, Japan. He is now Associate Professor for Philosophy of Education at Kyushu University. Research themes include Japanese philosophy, education for awakening, and clinical pedagogy. He is author of the book *Watsuji Tetsurō's Global Ethics of Emptiness* (2018) and translator of Sueki's *Buddhism and Ethics at Odds: A Buddhist Counter-Position* (2016).

**Timothy Lubin** is Jessie Ball duPont Professor of Religion and Adjunct Professor of Law at Washington and Lee University, USA. After earning degrees at Columbia University (BA, PhD) and Harvard University (MTS), he taught as lecturer at Harvard University and the University of Virginia. He examines the formation and spread of Brahmanical norms and legal institutions in the ancient and early medieval periods in South and Southeast Asia, based on the study of texts and epigraphy. He has also written on colonial-era reception of Hindu law and legal pluralism in the modern world. He coedited *Hinduism and Law: An Introduction* (Cambridge University Press, 2010) and coauthored *A Śaiva Utopia: The Śivadharmā's Revision of Brahmanical Varṇāśramadharmā* (UniorPress, 2021). His recent articles include "The Theory and Practice of Property in Premodern South Asia," "Towards a South Asian Diplomats," "Customary Practice in the Vedic Ritual Codes as an Emergent Legal Principle," "Writing and the Recognition of Customary Law in Premodern India and Java," and "Legal Diglossia: Modeling Discursive Practices in Premodern Indic Law."

**Etin Anwar** is Professor at Hobart and William Smith Colleges, Geneva, New York. She teaches classes on Islam, environmental apocalypse, and comparative ethics. She is the author of *A Genealogy of Islamic Feminism: Pattern and Change in Indonesia* (Routledge, 2018) and *Gender and Self in Islam* (Routledge, 2006). She has published several articles on Ibn Sina, Meister Eckhart, Ibn Arabi, anti-Americanism, and women's movements in Indonesia in various journals including *Islamic Studies*, *Islam and Christian-Muslim Relations*, and *Hawwa*.

**Jonathan T. Chow** is Assistant Professor of Political Science at Wheaton College, Massachusetts, USA. His research focuses on the relationship between religion and transnational norms, the international politics of "pariah states," and regional politics in Southeast Asia. He has held visiting fellowships at Georgetown University's Berkley Center for Religion, Peace and World Affairs; the Ateneo Center for Asian Studies at Ateneo de Manila University (Philippines); and the Asan Institute for Policy Studies (South Korea). Dr. Chow received his BA from Williams College and an MA and PhD in Political Science from the University of California, Berkeley.

**JinHyok Kim** is Associate Professor of Systematic Theology at Torch Trinity Graduate University in Seoul, South Korea. He teaches and researches theology, philosophy, and ethics with special focus on nineteenth- and twentieth-century European Christian thought. He received his BA and ThM from Yonsei University (South Korea), his MDiv from Harvard Divinity School (United States), and his DPhil from the University of Oxford (United Kingdom). He worked as a visiting doctoral researcher at the University of Heidelberg (Germany) and as a postdoctoral research fellow at Heythrop College, University of London (United Kingdom). He has published *The Spirit of God and the Christian Life* (Fortress Press, 2014) and articles on modern Christian thought, political theology, theological aesthetics, and the relationship between religion and literature.

## Preface

In the past decade, there has been a booming literature on comparative dignity jurisprudence and philosophy. While it has probed widely across regions, it has left a visible gap on Asia. This book is meant to fill this gap. It grows out of my research project funded by my institute, Institutum Iurisprudentiae, Academia Sinica, Taiwan. I invited scholars of multiple disciplines who specialize in Asian public law and major religious and philosophical traditions in Asian contexts. The book investigates how human dignity as a legal concept features in judicial and political discourse in major Asian jurisdictions, which include India, Japan, South Korea, Taiwan, the Philippines, Indonesia, Hong Kong, Singapore, and China. It also examines dignity in three religious or philosophical traditions heavily concentrated in Asia, including Confucianism, Buddhism, and Hinduism. Further, it investigates the idea of human dignity as expressed by representative voices of major religions in particular societies, including Islam in Indonesia, Protestantism in South Korea, and Catholicism in the Philippines.

This project was first conceived when I was a Visiting Scholar at Harvard Yenching Institute in 2016. I thank Michael Rosen, who was my mentor during my stay at Harvard, for his precious friendship and his extraordinary book on the history of the idea of dignity, which inspired my interest in this fascinating concept. I thank Tom Ginsburg, Albert Chen, and Kevin Y. L. Tan for their advice at the early stage of this project on what jurisdictions to be included. I am immensely grateful for all the contributors to this book, including Pritam Baruah, Keigo Obayashi, Chaihark Hahm, Robert Real, Nadir Hosen, Kelley Loper, Li-ann Thio, Xiaobo Zhai, Sungmoon Kim, Anton Sevilla-Liu, Timothy Lubin, Etin Anwar, Jonathan Chow, and JinHyok Kim. This book owes what it is to their excellent scholarship. I thank all the participants at the conference on “Human Dignity in Asia,” which was held in Taipei in July 2018. My special thanks go to Michael Rosen and Christopher McCrudden for giving keynote speeches and to Mary Anne Case for her very helpful participation at the conference. I am grateful to the former director Dr. Tzu-Yi Lin and the current director Dr. Chien-Liang Lee of Institutum

Iurisprudentiae, Academia Sinica, Taiwan, for their continued support for this project. My sincere thanks go to Joe Ng at Cambridge University Press for his guidance along the way and Gemma Smith for her editorial assistance. I would also like to thank my assistants Naifei Wu, Chiawen Huang, Huei-Ya Chen, Yun-Chung Lin, Fang-Sin Cao, and Cheng-Ching Lin for their great job of indexing this book. Lastly, I express sincere gratitude to my wife, Yoshing, and children, Jerome and Celina, for standing by me through good times and bad.

## Abbreviations

AA	Additional Articles of the Constitution
AIDS	Acquired Immunodeficiency Syndrome
AMS	Algemene Middelbare scholen
Asabri	Asuransi Sosial Angkatan Bersenjata Republik Indonesia (Indonesian Armed Forces Insurance)
ASEAN	Association of South East Asian Nations
Askes	Asuransi Kesehatan Indonesia (Indonesian Health Insurance)
BOR	Bill of Rights Ordinance
BPJS	Badan Penyelenggara Jaminan Sosial (Social Security Providers) BPUKI Badan Penyelidik Usaha-Usaha Kemerdekaan Indonesia (Dokuritsu Junbi Chosa-kai)
CBCP	Catholic Bishops' Conference of the Philippines
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CFA	Court of Final Appeal (Hong Kong)
CR	Cultural Revolution
CSHRS	China Society for Human Rights Studies
DAAD	Deutscher Akademischer Austauschdienst (German Academic Exchange Service)
DPR	Dewan Perwakilan Rakyat (People's Representative Assembly)
ESC	economic, social, and cultural (rights)
FDWs	female domestic workers
GBHN	Garis-Garis Besar Haluan Negara (Broad Guidelines of State Policy)
GDP	gross domestic product
GHQ	General Headquarters
GPCL	General Principles of the Civil Law
GNI	gross national income
HBS	Hoogere burgerschool
ICCPR	International Covenant on Civil and Political Rights

ICESCR	International Covenant on Economic, Social and Cultural Rights
ISDV	Indies Social Democratic Association
ISSA	International Social Security Association
ITE	Information and Electronic Transactions
Jamkesmas	Jaminan Kesehatan Masyarakat (Community Health Insurance)
Jamsostek	Jaminan Sosial Tenaga Kerja (Workforce Social Security)
JIBDA	Jong Islamieten Bond Dames Afdeeling (Young Muslim League Women's Section)
KMT	Kuomintang
KNPB	Korean National Prayer Breakfast
LGBT	lesbian, gay, bisexual, and transgender
LGBTQ+	lesbian, gay, bisexual, transgender, and queer or questioning
MCA	Mental Capacity Act
MK	Mahkamah Konstitusi (Constitutional Court)
MPs	Members of Parliament
MPR	Majelis Permusyawaratan Rakyat (People's Consultative Assembly)
MULO	Meer uitgebreid lager onderwijs
NCCK	National Council of Churches of Korea
NCCS	National Council of Churches in Singapore
NGOs	nongovernmental organizations
NPC	National People's Congress
OFWs	overseas Filipino workers
P <sub>4</sub>	Pedoman Penghayatan dan Pengamalan Pancasila (Guideline for Instilling and Implementing Pancasila into Practice)
PAP	People's Action Party
PCRH	Presidential Council for Religious Harmony
PERPU	Peraturan Pemerintah Pengganti Undang-Undang (Government Regulation in Lieu of Law)
PIL	Public Interest Litigation
PKI	Partai Komunis Indonesia (Communist Party of Indonesia)
PM	Prime Minister
PNI	Perserikatan Nasional Indonesia (Indonesian Nationalist Association)
POHA	Protection from Harassment Act
PRC	People's Republic of China
ROC	Republic of China
SAR	special administrative region
SJSN	Sistem Jaminan Sosial Nasional (National Social Security System)
SPC	Supreme People's Court
STOVIA	School tot Opleiding van Inlandsche Artsen (School for the Training of Native Doctors)

*List of Abbreviations*

xix

Taspen	Dana Tabungan dan Asuransi Pegawai Negeri (Civil Servants Pension Fund)
TCC	Taiwan Constitutional Court
UDHR	Universal Declaration of Human Rights
UN	United Nations
US, USA	United States of America
UUD	Undang-Undang Dasar (the Constitution)
WAD	women and development
WCC	World Council of Churches
WID	women in development
WWII	World War II