

Duška Franeta¹

UDC 177.1.026.4
342.7:929 Obama B.
Originalni naučni rad
Priljubljen: 08. 11. 2019.
Prihvaćen: 25. 03. 2020.

RELATIVISM, ECLECTICISM AND DIGNITY.

On Aharon Barak's Account of Human Dignity²

ABSTRACT: This paper presents and examines a relativistic account of human dignity in law proposed by Aharon Barak. The first section delineates the key points of his concept of dignity and the second introduces eclecticism as a philosophical basis of dignity in law along with its shortcomings. The third section elaborates on the “primacy of the sub-constitutional level” and “society’s bedrock views” as the legal underpinnings of Barak’s dignity relativism. The author argues that in this account eclecticism and relativism enter into a symbiotic relationship, in which eclecticism simulates a value foundation of law, while it at the same time enables relativism coming from below. This symbiosis threatens to push the idea of human dignity into dignities of specific jurisdictions, legal cultures a step further into their separate universes, and ‘Rechtsstaat’ a degree closer to ‘Justizstaat’.

KEY WORDS: Human dignity; Constitution; Aharon Barak; Relativism; Eclecticism.

¹ Fakultet za pravne i poslovne studije dr Lazar Vrkatić, Univerzitet Union, Bulevar oslobođenja 76, 21000 Novi Sad, dfraneta@useens.net

² An earlier version of this paper was presented at the XXVIII World Congress of the International Association for the Philosophy of Law and Social Philosophy in Lisbon.

1. Introduction

From the beginning of its introduction into law, there have been many theoretical and practical problems surrounding the concept of human dignity. Legal theory has raised the question of whether dignity is a right, principle, value, status, or something else. Ethicists have pointed to the problem of the anthropocentric aspects of the value of human dignity. Courts have faced difficulties with interpreting in certain cases what was otherwise stated to be the foundation of law. As a result, they have encountered many particularly challenging quandaries including: Does a human embryo possess human dignity?, Are the dead in some way protected by the guarantees of dignity?, Is the protection of human dignity incompatible with some sorts of punishment?, etc. (Franeta, 2015)

A part of the problem with understanding and interpreting human dignity in law emerges from the fact that dignity has acquired a very high status in fundamental legal documents such as constitutions, international declarations, and covenants, while at the same time it is being pushed into increasingly specific legal contexts. In these fundamental documents, human dignity is often ascribed a specific position or certain important characteristics: it has been determined as a basis of human rights (Preamble, ICCPR; Preamble, ICESCR), a fundamental legal value (Const. of South Africa, Art. 1), untouchable (unantastbar) (German Grundgesetz, Art. 1; Const. of Andorra, Art. 4; Const. of Serbia, Art. 23), a sacred value (Const. of Czech Republic, Preamble), an unamendable constitutional guarantee (German Grundgesetz Art. 79, 3), inviolable (CFR EU, Art. 1; Const. of Finland, Art. 1; Const. of Poland, Art. 30), an indivisible and universal value (CFR EU, Preamble), etc. (Franeta, 2019, p. 131) Moreover, in some court practice, such as the case law from the European Court of Human Rights, it has been addressed as essence of the Convention (*S. W. v. U. K.*; *Goodwin v. U.K.*) (Franeta, 2019, p. 131).

With this status of dignity in mind, as well as the philosophical origins of human dignity (which stated that human dignity had no price and was not to be balanced, that having dignity means all human beings were of equal rank, etc.) it has been argued that dignity is an absolute

legal value (Dürig, 1956, 143). Yet, this statement could mean both that there can be no legal limitations to the protection of human dignity and that the content of human dignity is not relative to specific time periods, cultures, or legal jurisdictions. Furthermore, there is also an understanding of absolute as something unconditional which does not need further grounding or justification.

In previous decades, several different legal accounts of human dignity have been offered based on the one of the connotations of the absolute (Maunz–Dürig, 1958;

Geddert-Steinacher, 1990; Enders, 1997; Tiedemann, 2006; Waldron, 2009).³ On the other hand, several relativistic elaborations of human dignity in law have also emerged as counterpoints to former ones, which proponents of relativism and others have found to be barely applicable or unreliable, or to have had some other serious shortcomings. These included, among other, dignity versus dignity conflicts, the relationship between dignity and rights, an over-narrowing of the meaning of human dignity, etc. A well-known attempt to interpret the legal concept of dignity in a relativistic fashion came from Robert Alexy (1994), who explicated it as a legal notion of a twofold nature: a relative principle and an absolute norm (p. 97). More recently, Matthias Herdegen (2010) also proposed a more flexible concept of dignity, which consists of two separate circles: a narrow core not prone to balancing, and a wider circle (relative dignity), which is subject to the principle of *'billanzierende Gesamtbetrachtung'* and lacks *absolute* legal protection (Randnummer 47).

Probably the newest relativistic account of human dignity in law worthy of close attention was authored by Aharon Barak. His relativism seems to be the strongest: Barak (2015) rejects both the idea of human dignity as absolutely protected by law as well as having universal meaning (p. 4–5), while the two mentioned previously still leave some room for absolute connotations of human dignity in law.

³ Some of these authors reject the interpretation of dignity as value (e.g. Enders, Waldron), but still preserve some connotation of the absolute.

In this paper I present and discuss Barak's account of human dignity. In the first section I delineate the key points of his concept of dignity, in the second I examine the philosophical basis of his dignity relativism along with its shortcomings. In the final one I elaborate on the legal underpinnings of his dignity relativism as well as the risks associated with them.

2. Key points of Barak's relativistic conception of human dignity

In order to eradicate the different problems of absolutism, Aharon Barak offers a specific interpretation of human dignity as legal concept. More precisely, he argues that human dignity is basically a constitutional concept, which potentially has both the nature of a constitutional value and a constitutional right.

By claiming that human dignity should be understood as a basically constitutional concept, Barak tries to restrict the problem of human dignity to a strictly juristic issue. His main intention seems to be to enable lawyers to apply this concept (Barak, XXV.), which while appearing to be foundational and almost omnipresent in juristic discourse, has proved to be quite inconvenient for use. Barak's version of strictly constitutional dignity is based on two premises. First, it sets aside human dignity as a concept of international law and regards its international underpinnings, at best, as constitutional inspiration; second, it dismisses philosophical discourse on legal values and dignity as a struggle of personal worldviews (Barak, 116; Similar in: Barak, 2005, 378; Barak, 2006, 116-117).

Barak's central claim that human dignity as a value is relative is a straightforward one: "...[H]uman dignity is a relative concept..." (Barak, 2015, 5), and the "[c]onstitutional value of human dignity is not universal" (Barak, 120). From his point of view, the content of human dignity is subject to time as well as cultural and legal contexts (Barak, 5). Because he believes that the value of human dignity has yet to evolve in the future, he hesitates to assign any definite meaning to it. Instead, he offers a general appraisal of different insights into it without substantially integrating them.

Dignity, according to Barak, has a broad scope, and it could be identified with the protection of humanity. Indeed, Barak is not only against reductively equating dignity and honor; among different views of the relationship of dignity and rights, he favors a broader one, one that could match the twofold legal nature of dignity (value and right) he proposes. The content of human dignity is, according to Barak, “humanity” understood from the “modern humanistic approach” (Barak, 135).

Both constitutional value and constitutional right should be broadly interpreted.⁴ The constitutional value of dignity should not be reduced to any specific aspect of humanity, and the right to dignity should not be deflated into any previously known right. The right to dignity is, from Barak’s point of view, best conceived as a framework right or a mother-right to a bundle of other constitutional rights. It encompasses both different ‘positive’ and ‘negative’ rights (Barak, 181), but the exact scope of the right to dignity is also relative: it depends not only on the *hic et nunc* meaning of the value of human dignity, but also on the specific constitution and its overall comprehensiveness as well as other sources of interpretation.

Besides the broader and more flexible content of human dignity and its anchoring in specific constitutions, there are at least two more important footings for the dignity relativism in Barak’s account. The first could be referred to briefly as “society’s bedrock views” and the second as the “primacy of sub-constitutional level” in delineating human dignity.

Barak argues that the relevant basis of the interpretation of human dignity should be, in his own words, “society’s bedrock views” (Barak, 89-90; 98-99). These views constitute each society itself, are not easily changed, and are not fashionable views, but still are prone to alteration. Judges should take these views into account when deciding whether human dignity has been violated.

The idea of society’s bedrock views is closely connected to the statement of the primacy of the sub-constitutional level in deciding cases involving

⁴ The exceptions are, in Barak’s own words, constitutions that contain limitless guarantees of dignity.

human dignity (Barak, 149, 151, 153). For example, when considering questions about whether the protection of human dignity guarantees dignitary minimum to individuals, free health services for those in need, protection of the unborn, same sex marriage, or asylum to migrants from countries in war or extreme poverty, courts could arrive at different conclusions in a variety of circumstances and countries.

All in all, Barak upholds a twofold relativistic thesis. The content of human dignity is not (nor should be) a universal one but it is prone to specific societal and timely characteristics. Moreover, dignity is not (nor should be) absolutely legally protected, but it is subject to the laws of proportionality. How these two assertions are interconnected and sustain each other will be demonstrated later on in the paper.

3. Eclecticism as a basis for dignity relativism

The philosophical basis of Barak's dignity relativism is his eclecticism, while its legal basis is his understanding of constitutional interpretation.

The first one is reflected in Barak's idea of humanity as human dignity. Humanity, according to him, encompasses six aspects: "the humanity of the person as a human being", "the humanity of the person as a free being", "the humanity of the person as autonomy of will", "the humanity of a person as rejection of a person as mere means", "the humanity of a person in the framework of a society", "the humanity of the person and human race" (Barak, 124). They correspond to "modern humanistic approach" to human dignity.

Barak's thesis that human dignity should reflect complexity of persons and not only their rational sides, is a remarkable one, as is the insistence on enclosing both rational and irrational individuals (Barak, 133). It is with this exact statement that Barak (2015) distances himself from the Kantian perspective, which he endorsed when he included in his account of humanity the Kantian idea of person as an end in itself (*Selbstzweck*) (p. 130), the equality of persons, and autonomy as person's central characteristic. Yet, he does not explain how the non-rational

and rational parts are intertwined in human dignity or what is to be respected as dignified in human complexity. Indeed, he states that incapacitated people as well as minors are holders of human dignity; but it is not clear how he arrives at this statement or what precisely it means. It is clear that the incapacitated and babies cannot make their own life plans, which Barak often underlines as the core of human dignity; but it is not clear what it means to not treat them as a means, to protect the complexity of their person, etc. Is it their beneficence and could it be equated with dignity? Would it stretch the idea too far?

Although the mentioned various aspects should elucidate the concept of human dignity, it still remains perplexing. Without a theoretical framework, neither the enumerated underlying aspects, nor the “modern humanistic” perspective can help in explaining it. . Some of the facets of dignity are left barely explained (“the humanity of the person as a human being”), some are difficult to differentiate between (“the humanity of the person as a free being” and “the humanity of the person as autonomy of will”), while some are simply filled with unresolved bioethical problems (“the humanity of the person and human race”). Added to this, some simply cannot be reconciled with the principle of proportionality (person as an end in itself-*Selbstzweck*). On the other hand, it is disputable whether there is something like modern humanistic approach to human dignity or dignity is rather the point of disagreement when we refer to the problems of dignitary minimum, asylum, status of the unborn, etc. Therefore, many crucial questions are left unresolved, including whether human being and person are the same, whether freedom and autonomy are different, whether the dead have human dignity that deserves protection, in what sense children’s dignity is to be protected, whether there is dignity of the unborn, and what types of degradation and humiliation could, in the most extreme circumstances, be reconciled with the guarantees of dignity. These axiological ambiguities are also reflected in Barak’s understanding of the right to dignity, which, according to him, is a framework right and, encompasses both negative and positive freedoms. Their relationship and inherent tensions are left to the sub-constitutional level.

The outcome of such eclectic concept of dignity is a perplexing legal axiology. Yet Barak insists—to an extent righteously—that value conflicts in constitutions are not pathology (Barak, 360). He imagines law as network of principles always in conflict and full of tension (Barak, 118), and these conflicts to be resolved by the principle of proportionality.

In case of human dignity, the idea of value conflicts in constitution is faced with two issues that seem to remain here underestimated. The first is fact that there is an influential stream of interpreting human dignity as the ultimate principle of law (for example, human dignity as universal status), placed above the principle of proportionality. The second is the possible inner value conflict of human dignity resulting from eclecticism and associated unresolved questions regarding the relation between freedom and beneficence, freedom and autonomy, person and human being, positive and negative rights, individual and group, etc. Even if value conflicts must always persist to some extent in law and constitutions, the inner value conflicts make the interpretation and balancing confusing since there are no criteria upon which one could decide which meaning of a single value should prevail in a specific case.

4. Case law as a basis for dignity relativism

Barak claims that he offers a third, separate approach to human dignity besides the theological and philosophical models. As already suggested, it should be a constitutional approach (Barak, 114). What are the characteristics of this approach?

Barak presents theological and philosophical models as battlefields for theologians and philosophers, both for themselves as groups and against each other, while the constitutional approach is at the same time versatile and smooth, and in different constitutional environments results in practical outcomes rather than disputes. How is this possible if one is aware of the vagueness and broadness of dignity as humanity and all the difficult issues it is applied to?

There are a couple of relevant views and tools Barak makes use of. First, constitutions and constitutional values are imagined as wide and porous enough for their interpretation to be relegated to sub-constitutional level of regulation and court practice. Second, this interpretation should be purposive and in case of human dignity focused upon the “modern people’s understanding of the constitutional value of human dignity” (Barak, 115) . Finally, the axiological ambiguities of human dignity should be filled with the “existing social reality” (Barak, 116).

The first substructure is the sub-constitutional level of interpretation. The idea is that human dignity should remain vague enough in order to be susceptible to new insights in the future. Constitutional conflicts and vagueness surrounding constitutional concept of human dignity should be resolved at the sub-constitutional level rather than the constitutional. This should happen by way of a balancing process.

The second substructure is the purposive interpretation focused on “modern people’s understanding of the constitutional value of human dignity”. Barak deems purposive interpretation to be the best way of interpreting law, at least in democratic political regimes (Barak, 2005, 11). In case of human dignity, purposive interpretation should be directed at certain neutral, modern understanding which he previously named modern humanistic approach. This approach should enable a stable framework and constancy in interpretation.

The third substructure is “the society’s bedrock views”. In balancing process, judges should base their opinion about dignity violations on, among other things, the “society’s bedrock views” (Barak, 2015, 89-90; 8-99). These views are society’s hardwired, constitutive beliefs. They are imagined as being long-lasting but also prone to change, and have the function of being one of five important external sources of purposive constitutional interpretation⁵, which, in Barak’s account, integrates different subjective and objective elements of the process (Barak, 2005, 120-181).

⁵ The other four being other constitutional provisions, post-constitutional history, precedence, and comparative law.

Barak specifically uses these views as his counterargument to the critique which accuses the purposivistic view of presentism and of always leaning towards the current majority (Fish, 2008). The argument behind the critique reads as follows: If we are to rely on the current reading of constitutional values and rights instead of on the intentional or textual reading, we will arrive at the prevailing consensus of what the majority believes these values and rights are. However, it is clear the majority can suspend even the most important values and rights. Furthermore, if dignity is relative, it is also not clear why we should favor the present understanding of dignity instead of the previous one. Barak's reply is that this critique misses the point since judges should base their interpretation of constitutional values not on the views of the current majority, but on tentative observance and interpretation of the society's hardwired beliefs.

All three legal substructures of the presented interpretation of human dignity are faced with significant difficulties. First, the idea of "modern people's understanding of the constitutional value of human dignity" and "modern humanistic approach" should eliminate philosophy and existing disputes about dignity, but in fact itself remains an obscure idea. If "modern humanism" is an approach, then it requires a theory, but every theory is developed only in dialogue with already existent theories. This would mean getting involved in the current disputes about human dignity or introducing philosophy instead of eclecticism. Left without such a theory, modern humanism is just a title that can be used as a convenient tool.

Second, the primacy of the sub-constitutional level presupposes the constitutional priority of the principle of proportionality. Although important, when placed above human dignity, which is nearly all-encompassing, proportionality acquires the so-called *deus ex machina* qualities: it becomes a tool for solving all the difficult problems. Yet, the troubling question is whether the sub-constitutional level relying on proportionality—in the same or in different countries—can arrive at contrary results regarding the interpretation of human dignity when the issue is euthanasia, prenatal human life, inhuman treatment, same sex marriage, etc.⁶

⁶ Barak (2015) himself names the example of the cruel punishment and death penalty when brought into connection with dignity in different countries (p. 109).

This raises some issues. The first is the question of whether the value of human dignity can still be called human if it allows such radical deviations in different jurisdictions, and whether it could still be considered in any way as a foundation, aim, or justification of universal human rights. What then would be left in the value of human dignity as a concept of international law apart from a vacant, lifeless word if a particular constitution immersed in a specific legal culture is the defining instance of its meaning? Barak's approach to human dignity as a concept of international law does not prevent this.

The second is if human dignity is conceived eclectically, and its specific meaning is directed to the sub-constitutional level, the result would likely be an overly-porous, downgraded constitution (Bendor & Zeev Segal, 2013) and an impetus for a "casuistic illusion" –an illusion that there is a wrong decision. A similar critique has already been supported by Christoph Enders in his analysis of Robert Alexy's interpretation of human dignity as a relative principle. Enders (1997) argued that subordinating dignity to proportionality was characterized by "constructive deficit" (p. 302-309). Balancing requires a criterion and measure, and if dignity is left to be all-encompassing and relative, then the criterion is lacking, the process becomes less controllable, and *Rechtstaat* moves several steps closer to *Justizstaat* (Enders, 1997). Therefore, Enders (1997) rightly concludes that in this context "the right balance" (*richtige Abwägung*) is a tautology (p. 302-309).

There are also significant difficulties related to the third legal substructure of the approach–society's bedrock views. They will be discussed in the passages that follow. First, the idea of society's bedrock views relies on a homogenous concept of culture, which observes society as built in a uniform fashion and grounded in views and beliefs shared by its members. Contrary to this, there are concepts of culture as a diffusing process that is never completely leveled into any mainstream direction

On the other hand, Aharon Barak himself authored a decision as the president of the Supreme Court of Israel on torture during interrogations (Public Committee against torture v. Israel), which stated that torture harmed human dignity and that there was no balancing of torture, degrading and inhumane treatment since these were absolute prohibitions.

and is instead created from diverse elements and subcultures, and concepts of society as being made up of very different or even conflicting segments. These accounts are at odds with the idea of hardwired (yet still evolving) bedrock views holding the society together in a Durkhemian fashion.

Second, the idea of society's bedrock views is particularly hard to use in the interpretation of human dignity since it is obvious there are opposing understandings of this concept in different contemporary milieus. It has already been mentioned that there are several thorny issues involving dignity rarely agreed upon in any society. It would be jumping to conclusions to presuppose some ongoing fundamental values reconciling these various perspectives. Finally, even if there is a hardwired belief or view regarding a particular issue in a society, it does not necessarily mean that the view is compatible with the idea of human dignity.

Third, judges do not have the appropriate methods to cognize what society's bedrock views are, so they obtain too much uncontrollable power since the concept enables unpredictable ways of reasoning.

Finally, if society's bedrock views are the basis of human dignity, then there must be different national dignities, not human dignity.⁷

However, despite claiming its relativity, Barak still confines dignity to the idea of democracy. He maintains somewhat circularly that human dignity is possible only in democratic regimes, and that democracy exists only where human dignity is upheld (Barak, 2006, 24). Dignity is simultaneously understood as relative and as necessary presupposition of democracy, its substance. This ambiguity of human dignity should be resolved by means of the concept of democracy, while relativity of democratic majority principle is to be overcome via the idea of dignity (Barak, 25, 33). After all, it would appear that owing to this tight nexus to democracy, relative dignity could tacitly get closer to a universalistic outline (Barak, 90), although now the concept of democracy bears a heavy load.

⁷ Barak argues that the current profile of national ethos is an important pillar for judges to hold to (Barak, 2015, 89, 99).

5. Conclusion

Long ago, eclecticism has been depreciated as a mediocre philosophy. It leads to prevalence of archives over reasons, to a perplexing aggregate, patchwork, mechanical connection of concepts and doctrines. In the case of law, it can also lead to excessive power, overflow and defiance of casuistry.

In the case of Barak's dignity conception, eclecticism and relativism have entered into a symbiotic relationship. Barak's general dignity relativism is reflected in the "broad understanding of values," i.e. constitutional eclecticism. Eclecticism simulates a value foundation of law at the constitutional level while at the same time enabling relativism. It is a platform for relativism. This relativism comes from beneath, from the court practice which should delineate dignity.

Therefore, in this account, dignity remains a broad concept only at the abstract level of the constitution, while sub-constitutional practice again and again provides it with a particular profile. The sub-constitutional level and the society's bedrock views shape the broad idea of humanity into a particular concept, one that is possibly very different from the dignity concept in other legal and cultural environments. With this in mind, one might wonder whether it simultaneously evolves in different directions.

Thus, dignity eclecticism and relativism in law have their price. The constitutions and legal cultures are being pushed a few steps further into their separate universes; it is not clear anymore why the value in question is to be called "human" dignity and not Chinese or Italian.

References

- Alexy, R. (1994). *Theorie der Grundrechte*. Frankfurt am Main: Suhrkamp.
- Barak, A. (2005). *Purposive Interpretation in Law*. (Sari Bashi transl.). Princeton: Princeton University Press.
- Barak, A. (2006). *The Judge in a Democracy*. Princeton: Princeton University Press.
- Barak, A. (2015). *Human Dignity: The Constitutional Value and the Constitutional Right*. (Daniel Kayros transl.). Cambridge: Cambridge University Press.
- Bendor A. L. & Zeev Segal. (2013). The Judicial Discretion of Justice Aharon Barak. *Tulsa Law Review*, 47/2, 465-476.
- Constitution of Andorra (1993)
- Constitution of Czech Republic (1993)
- Constitution of Finland (1999)
- Constitution of Poland (1997)
- Constitution of Serbia (2006)
- Constitution of South Africa (1996)
- Dürig, G. (1956). Der Grundrechtssatz von der Menschenwürde. *Archiv des öffentlichen Rechts*, 2, 117-157.
- ECHR, Christine Goodwin v. The United Kingdom, Application No. 28957/95, Judgment of 11th July 2002.
- ECHR, S. W. v The United Kingdom, Application No. 20166/92, Judgment of 22nd November 1995.
- Enders, C. (1997). *Die Menschenwürde in der Verfassungsordnung*. Tübingen: Mohr Siebeck.
- Fish, S. (2008). Intention is all there is: A Critical Analysis of Aharon Barak's Purposive Interpretation in Law. *Cardozo Law Review*, 29/3, 1110-1146.
- Franeta, D. (2015). *Ljudsko dostojanstvo kao pravna vrednost*. Beograd: Centar za izdavaštvo Pravnog fakulteta BU.
- Franeta, D. (2019). *Taking Ethics Seriously*. *European Psychologist*, 24/2, 125-135.
- Geddert-Steinacher, T. (1990). *Menschenwürde als Verfassungsbegriff*. Berlin: Duncker und Humblodt.
- German Grundgesetz (1949)
- Herdegen, M. (2010). Kommentierung zu Art. 1 GG. In: Maunz, T. et al.(eds.) (2010). *GrundgesetzKommentar*. München: C. H. Beck, Loseblattsammlung.
- Kahn, R. (2006). Review of Purposive in Interpretation in Law. *Law and Politics*, 16/9, 708-738.
- Maunz, T., & Dürig, G. (1958). *Grundgesetz: Kommentierung der Artikel 1 und 2 Grundgesetz von Günter Dürig*. München: Verlag C. H. Beck.
- Public Committee against torture in Israel v. the State of Israel, Judgement of 6th September 1999.

- The Charter of Fundamental Rights of EU. (2012). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT> (CFR EU)
- The International Covenant on Civil and Political Rights. (1966/1976). Retrieved from <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (ICCPR)
- The International Covenant on Economic, Social and Cultural Rights. (1966/1976). Retrieved from <https://www.ohchr.org/en/professionalinterest/pages/cespr.aspx> (ICESCR)
- Tiedemann, P. (2006). *Was ist Menschenwürde?* Darmstadt: WBG.
- Waldron, J. (2009). Dignity, Rank and Rights. The Tanner Lectures on Human Values. Retrieved October 2019 from http://www.jus.uio.no/smr/english/about/current/events/2015/waldron_09.pdf.

RELATIVIZAM, EKLEKTICIZAM I DOSTOJANSTVO.

Barakovo shvatanje ljudskog dostojanstva

APSTRAKT: *U radu se predstavlja i kritički preispituje relativističko shvatanje ljudskog dostojanstva u pravu Arona Baraka. U prvom delu su prikazane ključne tačke njegovog pojma dostojanstva, a u drugom eklekticizam kao filozofski osnov dostojanstva u pravu i njegovi nedostaci. U trećem delu se objašnjavaju tvrdnje o „prednosti podustavnog nivoa“ i „uvreženim društvenim mnjenjima“ i prikazuju kao pravna ležišta Barakovog relativističkog pojma dostojanstva. Autorka tvrdi da u ovom pristupu eklekticizam i relativizam ulaze u simbiozu u kojoj eklekticizam simulira vrednosne osnove prava, istovremeno omogućujući relativizam koji se uspostavlja „odozdo“. Postoji opasnost da će ovakva simbioza gurnuti ideju ljudskog dostojanstva u dignitete pojedinačnih jurisdikcija, pravne kulture korak dublje u njihove odvojene univerzume, a pravnu državu iskriviti u sudijsku državu.*

KLJUČNE REČI: *ljudsko dostojanstvo, ustav, Aron Barak, relativizam, eklekticizam.*