

The Emergence of Human Dignity in China: From a Private Right to a Constitutional Principle



Li Zhang

Abstract Just like in Europe, human dignity is a controversial concept in China but mainly for semantic reasons due to different translations of the notion. As a result of a combination of lessons drawn from the Cultural Revolution and references to traditional Chinese culture, the ‘personal dignity or dignity of personality’ (*renge zunyan*) written in positive laws cannot be understood as a constitutional principle serving as the basis of the political regime and the ultimate value of the legal order. It should rather be seen as an individual civil right endowed with a relative dimension of dignity in order to ensure social cohesion.

Human dignity is a polysemous concept in both China and the western world¹. The Western concept of human dignity translates to many different Chinese words, including *Renge zunyan* (人格尊严), *Rende zunyan* (人的尊严) or *Renxing zunyan* (人性尊严). While all three are used by doctrine, Chinese positive law prefers the first, as it most nearly means “personal dignity”. In China, human dignity has accordingly been understood as personal dignity (1), whose uniqueness has, for some years, provoked reflections and reforms that could lead China to consider human dignity as the foundation of the political regime and the ultimate value of legal order (2).

¹ Aharon, V. B. (2015). *Human Dignity: The Constitutional Value and Constitutional Right*. Cambridge: Cambridge University Press. In France, the report of the committee tasked with reviewing the Preamble to the Constitution, chaired by Simone Veil, pointed out that “under the same root word of dignity, the law uses different meanings”, or even contradictory meanings. On the one hand, the concept of dignity can in fact be seen as an element of the individual. It is then binding on third parties to protect, for example, individual freedom. On the other hand, however, human dignity can be defined from a “certain representation of what is worthy or dignified humanity”. It can then become a general rule imposing limits on individual freedom. Report to the President of the Republic. (2008). *Redécouvrir le Préambule de la Constitution*. Paris: La Documentation française.

L. Zhang (✉)

China University of Political Science and Law (Zhongguo Zhengfa Daxue), Beijing, China
e-mail: li_clairezhang@hotmail.com

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1 Human Dignity Reduced to “Personal Dignity”

Traditional Chinese thinking, whether it is Confucianism, Taoism, or Moism, refers to human dignity. However, this concept’s inclusion in subjective rights first occurred in early twentieth-century China. After experiencing a period “without faith or law”, the new generation of political leaders, headed by Deng Xiaoping, became aware of the importance of legal rules. The creation of the People’s Republic in 1949 led to successive political movements. Included among the fundamental rights recognized by the Constitution (1.1), personal dignity is protected, in practice, principally as a private right in tort law (1.2).

1.1 *The Recognition of Personal Dignity by the Constitution*

For political and historical reasons, China has not accorded human dignity the rank of a constitutional principle but has simply referred to personal dignity, a right based on the extra-patrimonial rights recognized by civil law. Indeed, Article 38 of the Constitution states that “The personal dignity of the citizens of the People’s Republic of China is inviolable. Insult, libel, false accusation or false incrimination directed against citizens by any means is prohibited”.

1.1.1 **The Justification for the Choice of Personal Dignity**

Some writers think that the term “personal dignity” adopted by the Chinese Constitutional Committee in 1982 resulted from an incorrect translation of “human dignity” from Western languages into Chinese.² However, there is also reason to believe that the Chinese Communist Party chose this translation deliberately. This choice resulted in a combination of lessons drawn from its own history and references to traditional Chinese philosophies.

During the Cultural Revolution, thousands of people, many of whom were intellectuals and political personalities like Liu Shaoqi, then Vice-President of the State, were subjected to humiliating treatment. To avoid a recurrence of this tragedy, the Constitution of 1982³ included personal dignity in its list of fundamental rights. However, the question that arises is whether this constitutional provision refers to human dignity, a fundamental value associated with the quality of being a human being.

²Laifan, Lin (2008). Human dignity and personal dignity: thoughts on the interpretation of Article 38 of the Chinese Constitution. *Zhejiang Social Sciences*, 3:49. 林来梵: 人的尊严与人格尊严. 兼论中国宪法第38条的解释方案, 载《浙江社会科学》, 2008年第3期, 第49页。

³The People’s Republic of China has had four constitutions since it was founded in 1949: those of 1954, 1975, 1978 and 1982. Amended four times, in 1988, 1993, 1999 and 2004 respectively, the Constitution of December 04, 1982 is still in force.

The People's Republic has established a Soviet-style party-state by maintaining a form of political dictatorship known as "popular democracy" under the leadership of the Chinese Communist Party. The Preamble of the Constitution outlines not only this framework of government but also establishes dignity as a founding principle. The reference to personal dignity rather than human dignity was not the invention of the Chinese Communist Party but stems from traditional Chinese philosophy.

One must consider the contribution of Zhang Penchung,⁴ representative of the Republic of China to the UN, to the preparation of the Universal Declaration of Human Rights of 1948⁵ with regard to perspectives stemming from Chinese philosophy.

In order to understand the restrictive view of the concept of dignity found in the Constitution, it is helpful to refer to Confucianism, the dominant traditional philosophy in Chinese society. This philosophy accords special attention to the person, as it considers that the evolution of the community occurs through that of the individual. Confucianism considers the manner in which an individual behaves in relation to others or to a group. The founding principles of Confucianism, such as benevolence, devotion, and integrity, show the importance of community life, which likely influence the Chinese construction of the principle of dignity. It carries a dimension of relativity, as it ensures the functioning and well-being of the community. In the minds of Confucianists, the virtues are an internal wealth that every human can acquire, as each individual has the possibility to become a sage. However, they divide members of society into three groups according to their level of virtues: the perfect persons or sages (*shengren*), the superior persons (*junzi*), and the common persons (*fanren*) who constitute the people. Accordingly, respect for the dignity of others in such a hierarchical society depends on the moral quality of each person. Therefore, dignity does not relate to the very essence of every human being.⁶

The identity of the person is defined in accordance with their status in society. In the opinion of Jiang Qing, one of the contemporary experts on Confucianism, each person holds the value of the particular position he occupies, determined "horizontally" by his occupation and "vertically" by his status in society. Dignity can only be understood using the Confucian logic of mutual respect and reciprocal benevolence between individuals. Jiang defends this form of dignity that is rooted in societal relationships; a conception quite opposite to that held in the West, which is based on individualism and the defence of the private interests of the person.⁷

According to this Chinese theory dominated by ethical duties, the respect of a person for his own dignity leads him to respect that of others. This reciprocal

⁴Formerly written as Chang Peng Chun.

⁵Sun Pinghua (2013). *Human Rights Protection in China*. Heidelberg: Springer, 7–17.

⁶On the perception of human dignity by the Confucian school, see An'xian, Luo (2014). Human dignity in traditional Chinese Confucianism. In *The Cambridge Handbook of Human Dignity: Interdisciplinary Perspectives*, ed. M. Duwell, J. Braarvig, R. Brownsword and D. Mieth, 177–181. Cambridge: Cambridge University Press.

⁷Qing, Jiang (2003). *Political Confucianism: The change, the characteristic and the development of modern Confucianism*. Sanlian, 321. 蒋庆:《政治儒学——当代儒学的转向、特质与发展》,三联书店2003年,第321页。

relationship is perfectly illustrated in the following Confucian maxim: “do not impose on others what you yourself do not desire” (己所不欲, 勿施于人). Dignity is built on the foundation of this life in society. Dignity in Chinese law is therefore distinct from Western conceptions of human dignity, which stems from extreme individualism.⁸

1.1.2 The Meaning of Personal Dignity

Article 38, Chapter II of the Constitution, entitled “The Fundamental Rights and Duties of Citizens”,⁹ begins by affirming the inviolability of the personal dignity of citizens and then prohibits false accusation, false incrimination, insult and libel directed against citizens.

According to the dominant doctrinal trend, personal dignity is nothing other than self-esteem (自尊心或自爱心), a personal feeling regarding oneself expressed within the framework of social relationships.¹⁰ Existing in relation to other members of society, personal dignity therefore displays a relative character. According to this doctrine, “honest and upright persons have and keep their dignity”.¹¹ A consensus on this definition of personal dignity exists today. This doctrine attempts to give dignity a broad scope. Constitutional law manuals now state that the concept of dignity constitutes the “foundation of all personality rights, such as the right to honour, the right to one’s name, the right to one’s image and individual freedom, etc.”¹²

To actualize this right recognized by the Constitution, legislative and regulatory instruments adopted in different domains have referred to it. For example, Article 101 of the General Principles of Civil Law of 1986 states that “citizens and legal entities have a right to honour, and the law guarantees the personal dignity of citizens, and prohibits any violation of the honour of citizens and legal entities by means of humiliation or libel”. That is also the case with laws concerning the protection

⁸Zhang, Qianfan (2000). *For human dignity: critiques on traditional Chinese political philosophy and its restructuring*. Chinese legal system, 1–4. 张千帆著:《为了人的尊严:中国古典政治哲学批判与重构》,中国民主法制出版社,2012年,第1-4页。

⁹Just like the French Constitution of October 04, 1958, the Chinese Constitution of 1982 is a collection of fundamental standards concerning the organization and functioning of institutions, the relationships between these institutions and the citizens, and the fundamental rights and freedoms of individuals. The structure of this fundamental Chinese instrument is as follows: a Preamble, Chapter I on *General Principles*, Chapter II on *The Fundamental Rights and Duties of Citizens*, Chapter III on *The Structure of the State*, Chapter IV *The National Flag, the National Anthem, the National Emblem and the Capital*.

¹⁰Chongde, Xu (ed.). 1996. *Chinese Constitutional Law*. The People’s University of China, 418. 许崇德编:《中国宪法》(修订本),中国人民大学出版社1996年版,第418页。

¹¹*Ibid.* 许崇德编:《中国宪法》(修订本),中国人民大学出版社1996年版,第418页。

¹²Heping, Dong, Dayuan, Han and Shuzhong, Li (2000). *Constitutional Law*. Law publishing, 393. 董和平、韩大元、李树忠:《宪法学》,法律出版社2000年版,第393页。

of the disabled,¹³ minors,¹⁴ women,¹⁵ consumers,¹⁶ and prisoners.¹⁷ While these legislative instruments aim to protect vulnerable persons, their references to dignity in the Constitution are somewhat ambiguous. Evaluating the applications of dignity as a legal doctrine to particular judgements and cases provides further information about its meaning.

1.2 *Judicial Protection of Dignity*

Although the Constitution (Article 38) and the Civil Code refer to the existence of personal dignity, case law demonstrates that the references to dignity in legal doctrine lead to various interpretations. In fact, in practice, it is by means of the right to honour or a general personality right that personal dignity is protected.

1.2.1 **Personal Dignity: A Right Incorporated in the Right to Honour?**

With the booming economy, Chinese citizens are beginning to realize the importance of their rights and freedoms, including personal dignity. Legal disputes on this matter have been emerging since the 1990s, mainly in the area of civil liability. Civil law experts are divided on the subject of personal dignity. To illustrate the nuanced position of the courts on this issue, it is worth examining two important judgements on consumer protection.

In the first case involving dignity in 1992,¹⁸ the judge defined honour as the social value or esteem accorded to an individual, in terms of the morality, reputation, and credibility; dignity is based more on self-awareness or self-assessment. However, he believed that the “violation” of dignity was related to the right to honour. In this case, two people were questioned by officers of a supermarket. As this questioning took place in a public space, the judge deemed that the supermarket had violated these persons’ right to honour. As for the body search that took place in the supermarket office, the judge simply declared it illegal, without referring specifically to the right to personal dignity. In fact, as the judgement states, “the right to honour is a right related to the personality; it is intended to protect the individual’s honour and dignity, which are closely linked. In this case, the illegal acts constitute violations of the right to honour”.

¹³Law 1990 of December 28, 1990 concerning the protection of the disabled.

¹⁴Law 1991 of September 04, 1991 concerning the protection of minors.

¹⁵Law 1992 of April 03, 1992 concerning the protection of women.

¹⁶Law 1993 of October 31, 1993 concerning the protection of consumers.

¹⁷Law 1994 of December 29, 1994 on prisons.

¹⁸Case of Ni Peilu and Wang Ying vs. International Trade Centre of China of November 08, 1992 concerning the right to honor, in *Journal of the Supreme Court of China*, 1993, no. 1. 倪培璐、王颖诉中国国际贸易中心侵害名誉权纠纷案,载《最高人民法院公报》1993年第1期。

So, with regard to legal doctrine, the right to personal dignity must be distinguished from the right to honour. Article 38 of the Constitution refers first to dignity and then to the violation of honour.¹⁹ This interpretation was used by the Chinese Supreme Court. In a judicial interpretation²⁰ made with regard to compensation for non-material damage in a civil matter, the Chinese Supreme Court listed the personal rights that could be compensated. This list included the right to personal dignity, which was separated from the right to honour and also accorded the same rank as the right to life, the right to health, the right to physical integrity, the right to one's name, the right to one's image, etc. The judges of the Civil Chamber of the Chinese Supreme Court²¹ clarified this distinction by writing new legal doctrine: in the case of a violation of a person's honour (e.g.: libel), it is only the right to honour that is violated; however, in the case of a violation of just a feeling of personal honour (名誉感), the protection of the person must be provided by the right to personal dignity. This means that the right to personal dignity plays a complementary role in relation to the right to honour, as the feeling of one's honour being violated is covered by the right to dignity rather than the right to honour itself. The feeling of a violation of dignity could include the interests of the personality well beyond the feeling of a violation of honour.

Hence, the right to dignity emerges as the foundation of all the personality rights.

1.2.2 Personal Dignity: An Autonomous Personality Right

In a 1998 case,²² a woman suspected of theft was subjected to a body search. After pointing out that the personal dignity of citizens was inviolable, the judges²³ ruled that the body search carried out during a two hours period of unlawful detention constituted a violation of the constitutional and civil provisions on the personality rights. In this case, by combining the value of human dignity and the personality rights, the judge introduced in judicial practice the right to dignity as a new personality right. This precedent went on to inspire legal doctrine.

¹⁹Lixin, Yang (ed.). (2004). *The subjects debated in civil and commercial law: moral reparation*. The People's University of China, 8. 杨立新主编:《民商法理论争议问题——精神损害赔偿》,中国人民大学出版社2004年版,第8页。

²⁰Judicial interpretation of the Chinese Supreme Court of February 26, 2001. Compared to its foreign counterparts, the Chinese Supreme Court enjoys a broad power of interpretation. Apart from judicial opinions in the form of "special case responses" (*ge'an pifu*), which resemble the "*avis contentieux*" in French law, the Supreme Court can abstractly interpret a law or the provisions of a law. In this case, the Supreme Court's acts of interpretation, through their general character, are similar to implementing decrees, or even an actual piece of legislation, and are therefore exposed to criticism for encroaching on legislative power.

²¹Dehua, Tang (ed.). (2004). *Understanding and Applying the Interpretation of the Supreme Court concerning moral reparation in civil matters*. People's Courts, 30. 唐德华(主编):《最高人民法院(关于确定民事侵权精神损害赔偿责任若干问题的解释)的理解与适用》,人民法院出版社2001年版,第30页。

²²Case of Qian Yuan vs. Watsons of Shanghai in 1998, 钱缘诉上海屈臣氏日用品有限公司搜身侵犯名誉权案: http://www.pkulaw.cn/case_es/pfnl_117672923.html?match=Exact.

²³Second intermediary Court of Shanghai acting as the appeal judge.

On the occasion of the civil law codification project, Wang Liming, a professor at the People's University of China, proposed to construct, in a similar way to German law,²⁴ all of the personality rights which centre around the concept of dignity. He noticed that modern civil law accords more attention to the protection of the personality rights than to that of the patrimonial rights, and yet the Civil Code had not yet managed to draw up an exhaustive list of the personality rights requiring protection.²⁵ This led him to suggest the introduction in the future Civil Code of a “generic personality right” (*yiban rengequan*).²⁶

Whether it is incorporated into the right to honour or turned into an autonomous right, personal dignity in Chinese law remains a civil right, which spans over the private sphere alone. This seems somewhat unusual with respect to the international standards. In fact, there are two ways to interpret the concept of dignity—by placing the emphasis on either the term “dignity” or on “personal”. In the 1990s, it was the “personal” aspect that was highlighted. After China's declaration that it wants to create a rule of law that respects and protects human rights, emphasizing “dignity” serves to extend the law's field of protection of the person to the public sphere.

2 Moving Towards a Constitutional Principle of Human Dignity?

In the light of the legal concept of dignity in China as described above, it seems that personal dignity in Chinese law does not have the same status as human dignity in European countries. Due to China's recent introduction of the European conception of human dignity, one might expect China to continue in this direction, although structural issues are slowing down its development considerably.

2.1 *The Efforts Made*

By declaring in the Constitution on March 15, 1999, that “The People's Republic of China governs the country according to law and makes it a socialist country under rule of law”,²⁷ and on March 14, 2004, that “the State respects and protects human rights”, China wants to begin an era of political and legal modernization. This is

²⁴Called “*Das allgemeine Persönlichkeitsrecht*”.

²⁵Shi Chunling. (2010). The attack on and concession of the patrimonial rights in the face of the personality rights. *Hebei Law Science*, 4:130. 石春玲:“财产权对人格权的积极索取与主动避让”,载《河北法学》2010年第9期,第130页。

²⁶Wang Liming. (2012). The evolution and development of the personality right: reflections on the protection of personal dignity. *Legal Science*, 4:166. 王利明:“人格权法的发展与完善——以人格尊严的保护为视角”,载《法律科学》2012年第4期,第166页。

²⁷The 13th constitutional amendment dated March 15, 1999.

already evident at a doctrinal level and should lead, in the long term, to the adoption of specific legal instruments.

2.2 Doctrinal Contributions

Since 2000, the Chinese have begun to analyse the meaning of human dignity in foreign countries by studying how it functions in a modern state. After a decade of comparative research, a consensus has emerged that human dignity is not only the foundation and ultimate goal of modern law but also the criterion by which to assess its legitimacy.²⁸

The human being in himself or herself represents the ultimate value, in a community-based life. This value, which stems from the rationality or autonomy of each individual, is not dependent on the state. And yet, Chinese law has not taken the idea of dignity into consideration until now, perhaps because the law takes root in the value of the community, the collective life. Individuals constitute the source of the state, and the state's powers must be exercised within the framework of the Constitution. In this way, Chinese law draws from the theories of the social contract and constitutionalism, and until recently excluded the possibility of referring to the concept of human dignity. Indeed, research on dignity in China has for a long time been conducted from the perspective of civil law, leaving no room for in-depth reflection on the politico-philosophical order.

Human dignity does not always concern a purely private matter between individuals but can trigger the intervention of public authority in the name of public order as in the case of the dwarf-tossing judgement given in France by the Council of State.²⁹ Furthermore, because individuals benefit from dignity before birth³⁰ and after death,³¹ the state can grant itself the power to protect this dignity when those concerned (the foetus in the case of abortion, the deceased in the case of organ transplants, etc.) are unable to do so. Finally, in the field of biomedicine, some practices risk violating not only the rights of individuals, but also their humanity, and that of the human race as a whole. In this context, some writers recommend the development

²⁸ Yuhong, Hu (2011). The importance of human dignity in modern law. *Studies and exploration*, 4:105. 胡玉鸿：“人的尊严在现代法律上的意义”，载《学习与探索》2011年第4期，第105页。

²⁹ CE Ass., “Commune de Morsang-sur-Orge”, October 27, 1995, 372.

³⁰ Xiangfei, Qu (2009). The constitutional status of the foetus: German and American models. *Global Law Review*, 6:65. 曲相霏：“胎儿的宪法地位——德国模式与美国模式”，载《环球法律评论》2009年第6期，第65–76页。 Tiewi, L. (2015). The regulation of human embryos in British law. *The Academic Journal of the University of Political Science and Law of Eastern China*, 5:70. 李铁佚：“英国法上的人体胚胎规制体系”，载《华东政法学报》2015年第5期，第70页。

³¹ Lixin, Yang and Yanchun, Cao (2005). The status of the corpse and the applicable rules. *Jurists*, 4:76. 杨立新、曹艳春：“论尸体的法律属性及其处置规则”，载《法学家》2005年第4期，第76页。

of genetic technology while remaining aware of the violations of human dignity it can cause.³²

Human dignity in the Western sense is indeed unconditional and inalienable. Only when there is a justifiable need can the rights and freedoms stemming from it be restricted.³³ As the representative of public authority, the state must respect, protect, and promote human dignity. This involves the passive obligation not to violate dignity and the active obligation to take steps to protect and promote it.

2.3 Protection Beyond the Specific Rights Related to Honour

It is difficult to separate human dignity and human rights, as the first is, in general terms, the source of the second.³⁴ At the same time, the development of human rights illustrates the importance of human dignity and the need for the Constitution to protect it.

Over the last decade in China, a series of measures have been taken to improve respect for the freedom of movement, individual freedom, the right to subsistence, and the right to life. In 2003, after the death of a young student,³⁵ the State replaced the punitive measure of detention of vagrants to be returned to their home region³⁶ with social assistance to such persons. Alongside the transformation of the status of the poor, vagrants have been granted greater freedom of movement. Since 2011, the prohibition of inhumane measures in the case of expropriation has considerably improved the often wretched fate previously reserved for those whose property had been expropriated by the State.³⁷ In 2013, the abolition of re-education through labour (*laodong jiaoyang*) put an end to the State's abuse of this practice, which was aimed

³²Xiuqin, Shen (2012). The challenge of genetic technology to human dignity, and its constitutional solutions. *Journal of Shandong University (Philosophy and Social Science Edition)*, 6:20. 沈秀芹, “基因科技对人性尊严的挑战及宪法应对”, 载《山东大学学报(哲学社会科学版)》2012年第6期, 第20页。

³³For example, Yu, Hou (2006). The constitutional protection of human dignity. *The Academic Journal of the Henan Institute of Political Science and Law*, 2:145–146. 侯宇: “论人性尊严的宪法保障”, 载《河南省政法管理干部学院学报》2006年第2期, 第145–146页。

³⁴With regard to the relationship between human dignity and human rights, see Duwell, M. (2014). Human dignity: concepts, discussions, philosophical perspectives. In *The Cambridge Handbook of Human Dignity: Interdisciplinary Perspectives*, ed. M. Duwell, J. Braarvig, R. Brownsword and D. Mieth, 28–32. Cambridge: Cambridge University Press.

³⁵Case of Zhigang Sun, see Haibo, He (2005). *Looking for progress towards the rule of law – The principal events of administrative law (1978–2004)*. Chinese University of Political and Legal Science, 276. 何海波编著:《法治的脚步声——中国行政法大事记(1978—2004)》, 中国政法大学出版社2005年版, 第276页。

³⁶Detention for return (*Shourong qiansong*) in Chinese law was an administrative measure for temporary placement taken against vagrants and beggars while awaiting their forced return to their country or region of origin.

³⁷See Article 27, (subpara. 3) of the Regulations on the expropriation and compensation of buildings constructed on state land, dated January 19, 2011.

not only at petty criminals who were not prosecuted but also at non-criminals.³⁸ Finally, the gradual reduction³⁹ in China's number of offences punishable by the death penalty⁴⁰ constitutes progress in terms of human rights, although, for political and historical reason, China continues to apply the death penalty.⁴¹

Their awareness of the global standard to respect the dignity of individuals is leading the Chinese legislature to reform. Following the “*legislative frenzy*”⁴² in the 1990s aimed simply at establishing a legal system comparable to those of most of the rest of the world, China's recent efforts reflect the courage to look critically at former regimes favouring state authority. However, structural reform will be necessary for human dignity to be the genuine basis of the politico-legal order in the way that it is in other countries.

2.4 *The Obstacles to Overcome*

For human dignity to be respected effectively and efficiently in China, it will be necessary to overcome a number of obstacles.

2.4.1 *The Constitutional Obstacle*

The restrictive concept of dignity in Chinese law as merely the right to personal dignity prevents the incorporation of the more general concept of dignity into the heart of the legal system as the source of the constitutional rights. Recently, a broad

³⁸According to official statistics, in 2012, more than 60,000 people were subject to re-education through labor, although this figure could vary from 5000 to 300,000 per year, depending on the political and social situation. See the reportage of Wen Rujun entitled “Re-education through labor is revoked, the remaining part of the sanction will no longer be implemented”, in *Legal Daily (fazhi ribao)*, December 28, 2013. 温如军:“劳教制度正式废止 劳教人员剩余期不再执行”,载《法制晚报》,2013年12月28日。

³⁹In 2011 and in 2015.

⁴⁰Under the influence of the theory of the limited function of criminal sanctions and in order to avoid judicial errors as in the *Hugejiletu* case: On April 09, 1996, Hugejiletu, an 18-year-old worker, was sentenced to die on the same day as the judgement was pronounced, just 62 days after the crime. Then years later, following the confession of the true perpetrator of the crime, the case was qualified as a judicial error, but due to obstacles placed in its way by leaders who were police investigators at the time of this case, the revision only took effect in 2014. On December 15, 2014, Hugejiletu was completely exonerated, and his parents obtained compensation of two million yuan for judicial error.

⁴¹The number of offences punishable by the death penalty has fallen considerably. At the time of the promulgation of the criminal law in 1997, capital punishment was applied to 80 offences. Today, after various reforms (see the VIIIth amendment of February 25, 2011 and the IXth amendment of August 29, 2015 of the criminal law), the number of offences liable for the death sentence was only 46.

⁴²Bastid-Bruguiere, M. 1998. The spirit of Chinese codification. *Rights*, 27:143.

interpretation of personal dignity as referred to in the Constitution was proposed.⁴³ However, the obstacle seems to be more conceptual than terminological.

Maintaining that personal dignity in Chinese law is similar to human dignity in foreign law, Lin Laifan, Professor of Constitutional Law at the People's University of China, suggests interpreting the two sentences of Article 38 of the Constitution separately.⁴⁴ To him, the first sentence dedicated to the recognition of the inviolability of personal dignity could be interpreted, like the first Article of Germany's Basic Law, as a supreme and general constitutional principle of human dignity serving as the basis for all fundamental rights. However, in the second sentence prohibiting insult, libel, and false accusations, dignity serves as a provision related to the specific constitutional right to personal dignity.

This interpretation seems debatable as the differential interpretation of the same term within the same article of the Constitution seems unlikely. In addition, the location of this Article within the Constitution prevents it from being seen as a constitutional principle. If it was a "supreme constitutional principle", as stated by Lin, it should be contained either in the first chapter entitled "General Principles" or at the start of Chapter II concerning fundamental rights. Under no circumstances should it be placed behind the articles dedicated to specific rights.⁴⁵ The best solution would therefore be to revise the Constitution. Such a reform does not seem impossible, since over the last 33 years (1982–2015), 31 amendments to the Constitution have been adopted, at a rate of 8 amendments every 8 years.⁴⁶

While waiting for this constitutional revision, which would *re-conceptualize* human dignity so that the rights and freedoms stemming from it are as effective as possible, a reform of the judicial order appears crucial.

2.4.2 The Judicial Obstacle: The Direct Application of the Constitutional Provisions in Ordinary Litigation

In spite of its supreme position in the hierarchy of standards, the Constitution in China cannot be directly invoked as a legal rule before the ordinary courts. This long-standing tradition, which results from two Supreme Court decisions,⁴⁷ seems

⁴³For example, Laifan, Lin (2008). Human dignity and personal dignity: thoughts on the interpretation of Article 38 of the Chinese Constitution. *Zhejiang Social Sciences*, 3:47–53. 林来梵: “人的尊严与人格尊严:兼论中国宪法第38条的解释方案”, 载《浙江社会科学》2008年第3期, 第47–55页。

⁴⁴Laifan, Lin Human dignity and personal dignity: thoughts on the interpretation of Article 38 of the Chinese Constitution, *op. cit.* 林来梵: “人的尊严与人格尊严:兼论中国宪法第38条的解释方案”, 载《浙江社会科学》2008年第3期, 第53页。

⁴⁵As an example, the right to vote (Article 34), freedom of expression, freedom of the press, freedom to meet, to associate, to march, and to demonstrate (Article 35), religious freedom (Article 36) and individual freedom (Article 37).

⁴⁶The 31 constitutional amendments are divided as follows: in 1988 (1–2), in 1993 (3–11), in 1999 (12–17), and in 2004 (18–31).

⁴⁷In the first judicial opinion of July 30, 1955, the High Court expressed the idea that: “the constitutional provisions may not constitute the foundation of the pronouncement of criminal offences and

to have been broken by the judicial opinion given in the Qi Yuling case,⁴⁸ which made a direct reference to an article of the Constitution.⁴⁹

With the abrogation of this judicial opinion in 2008, the movement towards the *judicialization* of the constitutional standards in China halted. Irrespective of the reason for this abrogation,⁵⁰ if we do not want the Constitution to remain a purely political declaration, it must be “de-sanctified” and seen as a legal text that can be invoked in court, and therefore applied, in real terms, within the framework of a trial. This would therefore require the creation of a system for the judicial review of constitutionality.

At present in China, the law relating to the legislation of March 15th, 2000 has instituted a nonjudicial review of constitutional standards. Scrutiny of the laws was assigned to the legislator himself.⁵¹ However, the scrutiny procedure introduced is long and complex, and therefore fail to work efficiently.⁵²

And yet, while the settlement of numerous litigations in judicial practice depends on the conformity of the applicable standards to the Constitution, it is impossible to invoke this point.

Strengthened by the lessons drawn from foreign experience (the *judicialization* of the constitutional standards is the choice imposed to create a true rule of law), China intended to follow this route, and the reform process could be accomplished in two stages: the first would consist of making it possible to apply the constitutional standards in the settlement of litigation; the second would be to scrutinize the consti-

sentences”. In the second of October 28, 1986 concerning the citing of legislative and regulatory instruments in court judgements, the Supreme Court also ruled out the possibility for the judge to invoke the constitutional provisions. For more details about these two judicial opinions, see Zhang, L. (2009). *Jurisdictional control of the legality of administrative acts in China: elements of comparative analysis of administrative litigation in China and France*. Bruxelles: Bruylant, 501–502.

⁴⁸Qi Yuling vs. Chen Xiaoqi and others, in the *Bulletin of the Chinese Supreme Court*, 2001-5, 158. This case concerned a civil offence violating the right to education. In this case, a woman had been admitted to a specialist vocational school, but had not been notified of this. Another person, having acquired the admission notification, passed herself off as the first. The victim of this unlawful deception only discovered the truth several years later, when the imposter had not only benefited from the training but had also obtained a job on the basis of this training. With the green light given by the Supreme Court in its judicial opinion no. 2001-25 of August 13, 2001, the Superior Court of the province of Shangdong, the appeal judge, on August 23, 2001 ordered the five defendants to pay the victim damages with interest totaling 57,000 Yuan, including 50,000 Yuan for moral prejudice.

⁴⁹This case involved Article 46, which grants all citizens a right to education.

⁵⁰With regard to the reason for this abrogation, two theories have been put forward: the first concerns the recentralization of the power to interpret the Constitution into the hands of the Standing Committee of the National People’s Congress to the detriment of the Supreme Court; the second concerns the deposing for corruption of H. Songyou, President of the first civil chamber at the Supreme Court at the time the opinion was given.

⁵¹In China the Standing Committee of the National People’s Congress (NPC) ensures the implementation of the Constitution, while exercising the legislative power with the NPC.

⁵²For more details about these method of scrutiny, see Zhang, Li. *Jurisdictional control of the legality of administrative acts in China: elements of comparative analysis of administrative litigation in China and France*, Bruxelles, Bruylant, 2009, 263–267.

tutionality of existing laws, provided either by a constitutional court, like the German *Bundesverfassungsgericht*, or by the ordinary courts following the American model.

Given that the attempt to copy the American model ended with the abrogation of the judicial opinion given in the Qi Yuling case,⁵³ and that the adoption of a reform establishing a Constitutional Court in China now appears unlikely, the French system may serve as a model. Indeed, China could initially share between bodies the power of control of constitutionality,⁵⁴ invoking and applying constitutional standards in the settlement of ordinary litigation. This would serve only as a temporary procedure before gradually transforming the monitoring body for the constitutionality of the laws along the lines of the French Constitutional Council, created at the level of the legislature.

3 Conclusion

For political and cultural reasons, dignity is reduced to “personal dignity” in China. This concept’s presentation in the Constitution has changed since the 1990s and continues to do so. Doctrinal studies and case law of the 1990s place an emphasis on the “personal” or “private” nature, limiting dignity to a specific civil right. However, efforts made since the start of the twenty-first century, in particular, the constitutional revisions ensuring the creation of a rule of law respecting human rights, hold out hope for a constitutional principle which elevates respect for human dignity.

However, as long as the party-state system continues to exercise power in a paternalistic manner without respecting the autonomy of individuals, there will be a long way to go before achieving the Kantian goal of “always treating others as an end and not just as a means to an end”.⁵⁵ Furthermore, for as long as it remains impossible to exercise fundamental rights and freedoms by invoking the articles of the Constitution before the ordinary courts, the recognition of human dignity as a constitutional principle will be of no significance.

In brief, if human dignity is the dignity of the human being inherent in each person, the concept of personal dignity currently recognized by Chinese law is inadequate.

⁵³See above.

⁵⁴In France, while it is the ordinary courts, represented by the Council of State and the Court of Cassation, that are responsible for verifying the conformity of the regulatory acts to the Constitution, in disputes under ordinary law, it is the exclusive responsibility of the Constitutional Council to monitor the constitutionality of the laws.

⁵⁵The Kantian maxim is worded as follows: “Act in such a way that you treat humanity, whether in your own person or the person of any other, never merely as a means to an end, but always at the same time as an end”. Renaut, A. Grounding for the Metaphysics of Morals. In *Metaphysics of Morals*, I: *Foundation, Introduction*, French trans., 108.

For a country like China, with a long tradition of collectivism and impregnated with the idea of mutual respect between individuals, the burden of respect for human dignity rests principally on the State. The State must accept the fact that dignity is “something that is due to the human being because he is human”,⁵⁶ and is not therefore a favour granted by the State to its citizens. It is an inalienable right that individuals enjoy as subjects of law. To fully assume its role as the guarantor of human dignity, the State must guarantee an adequate standard of living from a humanist standpoint, create a legal and judicial environment favourable the protection of human rights, and above all it must itself respect the political and civic choices expressed by individuals.

Li Zhang holds a Ph. D from University of Paris I (Pantheon-Sorbonne) and is currently Professor of Public Law in the Research Center for Government by Law of China University of Political Science and Law (CUPL).

⁵⁶Ricoeur, P. 1988. In *Les Enjeux des droits de l'homme*, ed. J.-F. De Raymond, 236. Paris: Larousse.