THE INNER WORTH OF DIGNITY

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ABSTRACT

The Montana Constitution has protected "individual dignity" for more than fifty years. Following a 1972 state constitutional convention, article II, section 4's "individual dignity" provision states that "[t]he dignity of the human being is inviolable." After this express recognition of the inviolability of human dignity, the next sentence contains equal protection language, followed by a third and final sentence prohibiting discrimination. Montana's "individual dignity" provision thus recognizes that human dignity contains three intersecting elements: inviolability, equal protection, and anti-discrimination. This Article focuses on the first element by exploring what it means to protect the inviolability of human dignity. To do this, the Article proceeds in three parts. The first part provides a brief overview of the historical context of Montana's dignity clause, while the second part explains how Montana's constitution provides greater individual rights protection than the U.S. Constitution. With this historical background and state constitutional independence in mind, the third part examines a recent Montana Supreme Court case, State v. Keefe*, as a contemporary example of how Montana safeguards individual rights by protecting human dignity as a safeguard against cruel and unusual punishment. Through this analysis, the Article explores specific ways that the Montana Constitution protects the inviolability of human dignity.*

TABLE OF CONTENTS

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INTRODUCTION

For more than fifty years, the dignity provision of Montana's state constitution has declared that the "dignity of the human being is inviolable."[1] While twenty-six other states include the word "dignity" in their state constitutions, only two of those twenty-six states use the word "dignity" to describe protections similar to the Montana Constitution.[2] Examples of how the other twenty-four states employ the word "dignity" in their state constitutions include the right to dignity for crime victims, the manner in which states should issue criminal indictments ("in a just manner as not to offend the dignity of the state"), and the observation that the executive of the state should act "with dignity."[3]

Only two other states—Illinois and Louisiana—provide a right to dignity that is like that codified in the Montana Constitution.[4] These three states use the words "individual dignity" to recognize the importance of protecting dignity as a concept separate from crime victims, criminal indictments, and executive behavior. While Montana, Illinois, and Louisiana thus share a constitutional recognition of the importance of protecting individual dignity itself, Montana is unique in its express recognition of human dignity as being "inviolable."[5]

For example, in Illinois, the dignity provision resides in article I, section 20 of the Illinois Constitution.[6] Like Montana's dignity provision, Illinois's dignity provision is entitled "Individual Dignity."[7] Beneath this title, the text of Illinois article I, section 20, is the following: "To promote individual dignity, communications that portray criminality, depravity or lack of virtue in, or that incite violence, hatred, abuse or hostility

1. MONT. CONST. art. II, § 4 (as amended in 1972, following the 1971–72 Montana state Constitutional Convention).
2. *See* ANTHONY JOHNSTONE, THE MONTANA CONSTITUTION IN THE STATE CONSTITUTIONAL TRADITION 462–63 (2022) (quoting Michelle Freeman, *The Right to Dignity in the United States*, 68 HASTINGS L.J. 1135, 1144–45 (2017)).
3. *Id.* at 462.
4. *Id.* at 462–63.
5. *Id.*
6. ILL. CONST. art. I, § 20.
7. *Id.*; MONT. CONST. art. II, § 4.

toward, a person or group of persons by reason of or by reference to religious, racial, ethnic, national or regional affiliation are condemned."[8]

Illinois's provision packs multiple concepts into its single sentence, beginning with the clause "[t]o promote individual dignity." Following that opening clause, the single-sentence provision explains that the way to promote individual dignity is to condemn specific communications that degrade dignity. It groups such condemned communications by describing how they "portray criminality, depravity or lack of virtue in, or that incite violence, hatred, abuse or hostility toward, a person or group of persons by reason of or by reference to religious, racial, ethnic, national or regional affiliation."[9]

This signaling of the way to "promote individual dignity" (by condemning certain kinds of communications that degrade dignity) differs from Montana's constitution. The full text of article II, section 4 of Montana's constitution is the following:

> INDIVIDUAL DIGNITY. The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.[10]

Beneath the title "Individual Dignity," Montana's article II, section 4, begins by stating: "The dignity of the human being is inviolable."[11] This short declarative sentence recognizing the inviolability of human dignity is different from Illinois's approach of beginning with a clause about promoting dignity before condemning certain kinds of communications as degrading dignity.

In addition to its first sentence recognizing the inviolability of human dignity, Montana's provision contains two additional sentences that differ from Illinois's provision. The second sentence of Montana's dignity provision contains equal protection language, and the final sentence includes anti-discrimination language. Reading these three sentences together shows how Montana recognizes the inviolability of human dignity and interweaves equal protection and anti-discrimination into a more complete understanding of the intersecting components of human dignity.

8. ILL. CONST. art. I, § 20.
9. *Id.*
10. MONT. CONST. art. II, § 4.
11. *Id.*

Montana's inclusion of equal protection and anti-discrimination as part of its "individual dignity" provision distinguishes it from Illinois's approach, and it also makes the dignity provision of Montana's state constitution more like Louisiana's. In Louisiana, the dignity provision is found in article I, section 3, and is labeled "Right to Individual Dignity."[12] The complete language of Louisiana's "Right to Individual Dignity" section is the following:

> No person shall be denied the equal protection of the laws. No law shall discriminate against a person because of race or religious ideas, beliefs, or affiliations. No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations. Slavery and involuntary servitude are prohibited, except in the latter case as punishment for crime.[13]

Instead of starting with the "[t]o promote individual dignity" clause like Illinois's provision, and instead of beginning with "[t]he dignity of the human being is inviolable" like Montana's, Louisiana's individual dignity provision begins by invoking equal protection and anti-discrimination language.

Louisiana's language recognizing equal protection and anti-discrimination is like the second and third sentences in Montana's provision. It is Montana's first sentence, recognizing the inviolability of human dignity, that distinguishes it from Louisiana's approach—Montana also includes equal protection and anti-discrimination, but Montana reaches further than Louisiana by explicitly recognizing that "[t]he dignity of the human being is inviolable." Montana also reaches further than Illinois by recognizing the inviolability of human dignity in a stand-alone sentence and by including equal protection and anti-discrimination as part of its provision.

In sum, the dignity provision in article II, section 4 of Montana's state constitution has a broader reach than similar provisions in both Illinois's and Louisiana's constitutions, expressly recognizing that individual dignity contains three intersecting elements—inviolability, equal protection, and anti-discrimination. This Article focuses on the first element by exploring what it means to protect the inviolability of human dignity. To do this, the Article organizes its analysis in three parts. The first part provides a brief overview of the historical context of Montana's dignity clause, while the second part explains how Montana's

12. LA. CONST. art. 1, § 3.
13. *Id*.

constitution provides greater individual rights protection than the U.S. Constitution. With this historical background and Montana's constitutional independence in mind, the third part examines a recent Montana Supreme Court case, *State v. Keefe*,[14] as a contemporary example of how Montana's dignity clause safeguards individual rights. Through this analysis, the Article explores ways that the Montana Constitution protects the inviolability of human dignity.

I. THE HISTORICAL CONTEXT OF MONTANA'S DIGNITY CLAUSE

Historians have written books, chapters, and articles that overview the adoption of Montana's dignity clause,[15] so this brief summary draws gratefully from their work. It also draws from the verbatim transcript of the 1972 Montana Constitutional Convention, which documented the floor discussion immediately before the vote on the dignity provision.[16]

The constitutional convention transcript pertaining to the adoption of article II, section 4, is extremely brief. The full discussion is recorded in just five pages, including a roll call vote for a proposed amendment that failed.[17] None of the discussion provides insight into the proponents' understanding of "individual dignity."

Instead of focusing on the "individual dignity" language, the discussion begins with Delegate Mansfield describing the committee's "intent of providing a constitutional impetus for the eradication of public and private discrimination."[18] Delegate Mansfield then explains that the provision derived from a unanimous committee vote[19] and is "quite similar to that of the Puerto Rico declaration of rights."[20] While further insight regarding what led the committee to draw from Puerto Rico's Bill

14. 478 P.3d 830 (Mont. 2021).

15. *See generally* LARRY M. ELISON & FRITZ SNYDER, THE MONTANA STATE CONSTITUTION: A REFERENCE GUIDE (Oxford Univ. Press 2011) (2001); Matthew O. Clifford & Thomas P. Huff, *Some Thoughts on the Meaning and Scope of the Montana Constitution's "Dignity" Clause with Possible Applications*, 61 MONT. L. REV. 301 (2000); JOHNSTONE, *supra* note 2.

16. *See* MONTANA CONSTITUTIONAL CONVENTION, 1971–1972, VERBATIM TRANSCRIPT, VOL. V 1642–46 (1981), https://scholarworks.umt.edu/cgi/viewcontent.cgi?article=1041&context=montanaconstitution [hereinafter MCC].

17. *Id.* at 1646.

18. *Id.* at 1642.

19. *Id.*

20. *Id.*; *see also* P.R. CONST. art. II, § 1 ("The dignity of the human being is inviolable. All men are equal before the law. No discrimination shall be made on account of race, color, sex, birth, social origin or condition, or political or religious ideas. Both the laws and the system of public education shall embody these principles of essential human dignity."). Note that article II is actually styled as Puerto Rico's "Bill of Rights," not its declaration of rights. *Id.* art. II.

of Rights may have been useful, the transcript contains no further mention of Puerto Rico.[21] Nor does the transcript discuss what Puerto Rico's adopters may have themselves intended by declaring that the "dignity of the human being is inviolable."[22]

The five pages of discussion focus on what is meant by the "constitutional impetus for the eradication of public and private discrimination."[23] Delegate Mansfield observed that "[i]t is hoped that the Legislature will enact statutes to promote effective eradication of the discriminations prohibited in this section," and that "[t]he considerable support for and lack of opposition to this provision indicates its import and advisability."[24]

Following the general introduction to the provision, Delegate Habedank moved to delete the words "by any person" and "firm, corporation or institution; or."[25] His proposed amendment derived from his concern "that this amendment, as it is written, can be construed to prohibit organizations which are incorporated from limiting their membership."[26] Examples mentioned in the ensuing discussion included the "Sons of Norway" which excluded people who are not Norwegian, and to which Delegate Habedank himself belonged.[27] Discussion also included whether the provision was self-executing—concluding that it was—as well as the acknowledgment that the provision expressly includes religious discrimination.[28]

After this brief discussion, Delegate Foster asked for a roll call vote on the proposed amendment, and it was defeated thirteen to seventy-six.[29] No delegates proposed any further discussion or amendments, so quickly thereafter, article II, section 4, passed with unanimous approval.[30]

The adoption of the "individual dignity" provision of Montana's constitution is notable for its brevity and for its unanimous, no-need-to-explain-it acceptance of the inviolability of individual dignity. Just as the proposal arrived on the floor through unanimous committee agreement, so did the delegates adopt it in unanimous acceptance.

21. *See* MCC, *supra* note 16, at 1642–46.
22. P.R. CONST. art. II, §1.
23. MCC, *supra* note 16, at 1642.
24. *Id*.
25. *Id*.
26. *Id*. at 1643.
27. *Id*.
28. *Id*. at 1644.
29. *Id*. at 1645–46.
30. *Id*. at 1646.

In the years since its adoption, the meaning and application of the inviolability of individual dignity has remained largely open to interpretation. For example, in their book *The Montana State Constitution: A Reference Guide*, Larry M. Elison and Fritz Snyder observed that despite the fact that the title "Individual Dignity" was novel when it was introduced in 1971, "the phrase '[t]he dignity of the human being is inviolable' has not been interpreted to mean anything in particular."[31]

While the delegates themselves did not elaborate on their understanding of the meaning of "individual dignity," a 1971 study of the Bill of Rights, authored by Rick Applegate, provided contextual framing for the delegates.[32] In his book *The Montana Constitution in the State Constitutional Tradition*, Anthony Johnstone describes how "[t]he delegates at the Constitutional Convention understood [the values of the individual dignity provision] through the lens of Rick Applegate's detailed study of the Bill of Rights, which connected 'inalienable rights' to a related conception of dignity."[33] Johnstone continues by quoting extensively from Applegate's study:

> If a right is inalienable, it is not the kind which a temporal government can grant or take away. Such inalienable rights were not part of the social contact "bargain": government could at best secure them, but it could provide no substitute for them or impetus to trade them away. To make the point more clear, one might recall the distinction Kant made between "value" and "worth." In Metaphysics of Morals, [Kant] wrote that
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> > [E]verything has either a value or worth. What has value has a substance which can replace it as its equivalent; but whatever is, on the other hand, exalted above all values, and thus lacks an equivalent, . . . has no merely relative value, that is, a price, but an inner worth, that is dignity.
> >
> > Kant's typically amazing insight sheds some light on the understanding of the concept of inalienable rights. It is not that the rights could not be transferred without the individual's consent, but that their nature made them

31. ELISON & SNYDER, *supra* note 15, at 41.
32. *See* JOHNSTONE, *supra* note 2, at 457–58.
33. *Id.* at 457.

> fundamentally untransferable in any case. In the sense of the Kantian distinction, they had worth as opposed to value.[34]

At its core, this Kantian recognition of the fundamentally untransferable "inner worth" of dignity is part of the essential context for the provision's adoption. Applegate's study provided this context, and Johnstone maintains that Applegate's study formed a "lens" through which the delegates understood the provision.

In addition to his own interpretation of the importance of Applegate's study, Johnstone heralds an article by Matthew O. Clifford and Thomas Huff, entitled *Some Thoughts on the Meaning and Scope of the Montana Constitution's "Dignity Clause" with Possible Applications*, as the "canonical overview of the 'dignity clause.'"[35] Some of the insights from Clifford and Huff's canonical article are highlighted next.

One insight is their recognition of the "intrinsic worth" of human dignity.[36] Clifford and Huff interpret the dignity clause as recognizing that "human beings have dignity because they have intrinsic worth as individuals, and their dignity is found, in one form or another, in their capacity to live self-directed and responsible lives."[37] Invoking the same Kantian insight from Applegate's study, Clifford and Huff assert that the first sentence of the provision—"[t]he dignity of the human being is inviolable"—means that "the intrinsic worth, the basic humanity, of persons may not be violated."[38]

A second insight is the application of "[o]ne of our oldest and most venerable canons of constitutional interpretation."[39] Namely, "we must, if at all possible, treat each separate clause of a constitution as both substantively meaningful and not redundant."[40] Applying this principle to article II, section 4, Clifford and Huff conclude that the dignity clause in sentence one must have substantive meaning as a stand-alone provision, as well as relational meaning relative to the sentences that follow.[41]

While the second and third sentences may be understood as specific ways that "individual dignity" can be violated (i.e., by denying somebody

34. *Id.* at 457–58 (citing RICK APPLEGATE, MONT. CONST. CONVENTION COMM'N, MONTANA CONSTITUTIONAL CONVENTION STUDIES, REP. NO. 10: BILL OF RIGHTS 82).

35. *Id.* at 458 (discussing and including an extended excerpt from Clifford & Huff, *supra* note 15, at 303–08).

36. Clifford & Huff, *supra* note 15, at 303.

37. *Id.*

38. *Id.*

39. *Id.* at 305.

40. *Id.*

41. *See id.* at 305–08 (discussing the substantive meaning of the clause as well as the meaning of the sentences that follow, given the context added by the first sentence).

equal protection, or by discriminating against them),[42] the first sentence also stands alone as a provision with independent force. As Clifford and Huff explain, "the inclusion of the more general prohibition against the violation of human dignity in the first clause of section 4 . . . leaves open the possibility that human dignity can be violated in ways that do not involve some sort of arbitrary classification."[43] They summarize this observation by concluding

> [I]n order to give distinct and independent meaning to the dignity clause, avoiding redundancy, this clause should be applied separately when there is a violation of the dignity of persons that does not reflect the forms of unequal treatment or invidious discrimination prohibited by the two subsequent clauses. Presumably anyone could experience such a violation of dignity, not just persons who are members of protected classes.[44]

In this way, Clifford and Huff apply Kant's understanding of dignity's intrinsic worth to understand what article II, section 4, means when it states that "[t]he dignity of the human being is inviolable." Because anybody can experience such a violation of dignity, and because one does not have to be member of a protected class to experience such violations, the application of the dignity provision contains the power to be both robust and far reaching.

Montana's dignity provision is a prime example of how the Montana Constitution provides more comprehensive individual rights than does the U.S. Constitution. The dignity provision provides additional language not contained within the U.S. Constitution. But even when the language in Montana's state constitution more closely tracks, or mirrors, language in the U.S. Constitution, Montana courts have interpreted their state constitution to provide greater individual rights protection.[45] The next section explores in more depth how the Montana courts have interpreted their state constitution relative to the U.S. Constitution.

42. *Id.* at 305–06.
43. *Id.* at 306.
44. *Id.* at 306–07.
45. *See, e.g.*, State v. Bullock, 901 P.2d 61, 75–76 (Mont. 1995) (privacy in the searches and seizures context); Armstrong v. State, 989 P.2d 364, 384 (Mont. 1999) (privacy extending to the right to access an abortion); Mont. Democratic Party v. Jacobsen, 545 P.3d 1074, 1107 (Mont. 2024) (voting rights).

II. MONTANA'S CONSTITUTIONAL INDEPENDENCE

This section situates Montana's constitutional independence within the larger federalist enterprise of states providing independent meaning to their own constitutional provisions. Montana is no exception in providing broader constitutional protections to its residents than those required under federal law. This should come as no surprise. Beyond the sometimes profound differences in the text of each state's charter, each state also has its own unique jurisprudence, experience, history, and traditions that inform the meaning of the texts.[46] And even beyond the differences in substantive meaning, states are positioned to serve as laboratories for methodological innovation in interpreting their respective constitutions.[47]

Others have written at some length about the states that have declined to move in "lockstep" with the Federal Constitution, including on the basis that the meaning of the Federal Constitution, particularly in the realm of crime and punishment, is constrained by federalist principles.[48] A few examples are worth noting. Alaska has adopted a more expansive view of its anti-punishment clause, noting that "the federalist concerns that led to the restrained approach adopted by [the U.S. Supreme Court] are not at issue when state courts are determining the scope and meaning of their own independent state constitutions."[49] Michigan adopted a similar tack. After the U.S. Supreme Court upheld Michigan's mandatory life without parole sentencing law for cocaine

46. *See* Robert F. Williams, *In the Glare of the Supreme Court: Continuing Methodology and Legitimacy Problems in Independent State Constitutional Rights Adjudication*, 72 NOTRE DAME L. REV. 1015, 1057 (1997) (citing People v. P.J. Video, Inc., 501 N.E.2d 556, 560 (N.Y. 1986)).

47. *See* New State Ice Co. v. Liebmann, 285 U.S. 262, 386–87 (1932) (Brandeis, J., dissenting) ("It is one of the happy accidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country."). *See generally* Charles W. Tyler & Heather K. Gerken, *The Myth of the Laboratories of Democracy*, 122 COLUM. L. REV. 2187 (2022) (highlighting structural impediments to experimentation).

48. *See, e.g.*, JEFFREY S. SUTTON, 51 IMPERFECT SOLUTIONS: STATES AND THE MAKING OF AMERICAN CONSTITUTIONAL LAW 17, 20 (2018); Loretta H. Rush & Marie Forney Miller, *Cultivating State Constitutional Law To Form A More Perfect Union—Indiana's Story*, 33 NOTRE DAME J.L. ETHICS & PUB. POL'Y 377, 378, 397 (2019) (explaining that while "the Indiana Constitution is a wellspring of civil-liberty guarantees . . . it often goes untapped by litigants and their legal representatives," and that "[i]n our federalist system of governance, attorneys and state supreme courts have responsibilities for cultivating the constitutional law of their states."); Robert J. Smith et al., *State Constitutionalism and the Crisis of Excessive Punishment*, 108 IOWA L. REV. 537, 544 (2023). *See generally 50 States, 50 Constitutions: One Powerful Tool*, AM. JURIS LINK STATE CONST. TOOL, https://stateconstitutiontool.org/ (last visited June 18, 2025).

49. Fletcher v. State, 532 P.3d 286, 308 (Alaska Ct. App. 2023).

possession,[50] the Michigan Supreme Court struck down the same law under its state ban on "cruel or unusual" punishment, citing the state's unique text, history, and constitutional emphasis on rehabilitation."[51] In Iowa, Massachusetts, and Washington, each state supreme court has barred youth life without parole sentences—whether discretionary or mandatory—on state constitutional grounds,[52] notwithstanding their potential permissibility under the Eighth Amendment.[53]

Yet other states have failed to independently interpret provisions of their constitutions, even when there are strong reasons to do so. Take Arizona, for example. The state's jurisprudence concerning its anti-punishment clause is decidedly originalist.[54] And Arizona was founded at the height of progressive power, both nationally and within the state,[55] yet the Arizona Supreme Court has refused to independently interpret its anti-punishment clause more expansively than its federal complement,[56] even as it has shown a willingness to independently assess other provisions of its constitution.[57]

Both state and federal jurisprudence are richer when states interpret their constitutional provisions on their own terms. Federal jurists particularly benefit when their state court counterparts independently interpret state constitutional provisions that are textually similar to the federal protection.[58] Those instances highlight where the federal

50. Harmelin v. Michigan, 501 U.S. 957, 961, 996 (1991).

51. People v. Bullock, 485 N.W.2d 866, 871–77 (Mich. 1992).

52. State v. Sweet, 879 N.W.2d 811, 839 (Iowa 2016); Diatchenko v. Dist. Att'y for the Suffolk Dist., 1 N.E.3d 270, 276 (Mass. 2013); State v. Bassett, 428 P.3d 343, 346 (Wash. 2018); *see also* State v. Fain, 617 P.2d 720, 723, 728 (Wash. 1980) (striking down life sentence for forging bad facts while acknowledging a U.S. Supreme Court holding on indistinguishable facts, but noting that the state court was "not bound to assume the framers intended an identical interpretation"). Iowa has also held that all mandatory minimum sentences violate the state's anti-punishment clause when applied to youth. *See* State v. Lyle, 854 N.W.2d 378, 380 (Iowa 2014).

53. *See* Jones v. Mississippi, 593 U.S. 98, 120 (2021) (noting the possibility of an "as-applied Eighth Amendment claim of disproportionality" of such sentences).

54. *See* John R. Mills & Aliya Sternstein, *New Originalism: Arizona's Founding Progressives on Extreme Punishment*, 64 ARIZ. L. REV. 733, 734–35 nn.2–4 (2002) (citing cases from the Arizona Supreme Court which rely on an originalist mode of interpretation).

55. *Id.* at 736 (discussing progressive dominance at the time of Arizona's founding).

56. *See, e.g.*, State v. Davis, 79 P.3d 64, 67–68 (Ariz. 2003); State v. Bush, 423 P.3d 370, 393 (Ariz. 2018).

57. *See, e.g.*, State v. Ault, 724 P.2d 545, 549–50 (Ariz. 1986) (providing greater protection under Arizona's state constitution than under the Fourth Amendment).

58. *See* Goodwin Liu, *State Constitutions and the Protection of Individual Rights: A Reappraisal*, 92 N.Y.U. L. REV. 1307, 1312 (2017) ("This redundancy in interpretive authority—whereby state courts and federal courts independently construe the guarantees that their respective constitutions have in common—is one important way that our system of government channels disagreement in our diverse democracy.").

jurisprudence could or should (or should not) go and is a particularly salutary feature of a federalist system. Indeed, the state and federal courts have a rich history of drawing on each other for interpretive guidance on analogous language.[59]

And state jurisprudence improves when courts stake a claim on their unique provisions. When the citizens of a state include provisions in their constitution that differ from the Federal Constitution, it is to provide protections relevant to their own unique interests and experiences.[60] It should come as no surprise that dryer, Western states have greater emphasis on water rights in their constitutions *and* a richer body of jurisprudence on those matters.[61] Similarly, the purpose of the state constitution is more fully realized when jurists give meaning to the unique protections governing regulation of criminal punishments.

As we discuss below, Montana's experience in this regard is highly instructive on the possibilities of avoiding a rote "lockstep" approach to jurisprudence and of methodological experimentation.

III. RECENT CASES INTERPRETING THE DIGNITY CLAUSE

Montana courts have interpreted and applied the individual dignity protection in article II, section 4, to decide issues ranging from abortion to assisted suicide and prison conditions.[62] Section A, *infra*, focuses on the excessive punishment application of the dignity provision by analyzing two cases: *Walker v. State*[63] and *Wilson v. State*.[64] Through *Walker* and *Wilson*, Section A explains how Montana has interpreted the dignity provision of its state constitution "to provide Montana citizens greater protections" than does the Federal Constitution.[65] Section B then extends the dignity analysis by broadening the lens from article II, section 4, to also include the application of the cruel and unusual punishment clause of the Montana Constitution in *State v. Keefe*.[66] By understanding the Montana Supreme Court's analysis in *Keefe*, Section B explains how the constitutional provisions identified in *Keefe* provide

59. *Id*. at 1332–33.
60. *See id*. at 1338.
61. *See* Caleb Hall, *Water, Water, Nowhere: Adapting Water Rights for a Changing Climate*, 16 SUSTAINABLE DEV. L. & POL'Y 25, 27 (2015).
62. *See* Armstrong v. State, 989 P.2d 364, 383 (Mont. 1999); Baxter v. State, 224 P.3d 1211, 1229–33 (Mont. 2009) (Warner, J., concurring); Walker v. State, 68 P.3d 872, 883 (Mont. 2003).
63. *Walker*, 68 P.3d at 883.
64. 249 P.3d 28, 33 (Mont. 2010).
65. *Id*. (quoting *Walker*, 68 P.3d at 883).
66. 478 P.3d 830 (Mont. 2021).

even more cohesive and extensive protection for the inviolability of human dignity.

A. Before Keefe

1. *Walker v. State*

Walker v. State is a 2003 case involving the state prison's practice of using behavior modification plans (BMPs) on a prisoner (Walker).[67] After he was restrained in "lock-up status," Walker alleged that "his clothes were taken away, he was housed in a cell with human blood and waste, he was forced to sleep naked on a concrete slab without a mattress, his food was served in an unsanitary manner, and he was deprived of drinking water."[68] Walker eventually filed a pro se petition that he dictated to a neighboring inmate because he did not have any paper or writing utensils.[69] Within this petition, he "alleged that he was the victim of cruel and unusual punishment at the hands of [state prison] officials."[70]

In reviewing Walker's petition, the Montana Supreme Court read the dignity provision in article II, section 4, together with the cruel and unusual punishment provision in article II, section 22.[71] To interpret the dignity clause, the court began by recognizing that the "plain meaning of the dignity clause commands that the intrinsic worth and the basic humanity of persons may not be violated."[72] Joining this reading of the dignity clause together with the cruel and unusual punishment clause, the court found that the behavioral modifications and the living conditions that Walker experienced violated "the inviolable right of human dignity possessed by [Walker] and that such punishment constitutes cruel and unusual punishment when it exacerbates the inmate's mental health condition."[73]

In analyzing these two provisions together, the Montana Supreme Court stressed that its general practice was to "analyze most cruel and unusual punishment questions implicating article II, section 22 of Montana's Constitution by reference to that section alone . . . ."[74] Nonetheless, even though the court's usual practice was to interpret

67. 68 P.3d at 875.
68. *Id.* at 877.
69. *Id.*
70. *Id.*
71. *Id.* at 883.
72. *Id.* at 884.
73. *Id.* at 885.
74. *Id.* at 883.

section 22's cruel and unusual punishment clause by itself, the court recognized that "in certain instances where Montana's constitutional right to individual dignity (article II, section 4) is also specially implicated, we must, of necessity, consider and address the effect of that constitutional mandate on the question before us."[75]

Citing Clifford and Huff's article, the Montana Supreme Court also observed that "[t]reatment which degrades or demeans persons, that is, treatment which deliberately reduces the value of persons, and which fails to acknowledge their worth as persons, directly violates their dignity."[76] The court continued by specifying that "[f]or those imprisoned for crimes, complementary application of the dignity clause would be more appropriate."[77] They further quoted the piece and included that:

> The reformation and prevention functions of punishment both express the community's disrespect for the actions of the criminal, but the processes of punishment must never disrespect the core humanity of the prisoner . . . . However we punish, whatever means we use to reform, we must not punish or reform in a way that degrades the humanity, the dignity, of the prisoner . . . . Prisoners may not claim that their punishment, itself, violates the dignity clause, unless the conditions of that punishment violate the cruel and unusual punishment prohibition, and that violation might most easily be elaborated by asking whether the core humanity of the prisoner is being treated with dignity.[78]

Thus, even though the Montana Supreme Court does not usually group state constitutional provisions together, the court found that the circumstances that Walker endured violated his "inviolable right of human dignity . . . and that such punishment constitute[d] cruel and unusual punishment when it exacerbate[d his] mental health condition."[79]

2. *Wilson v. State*

The Montana Supreme Court decided *Wilson v. State* seven years after *Walker*.[80] While incarcerated in a Montana state prison, Wilson

75. *Id.*
76. *Id.* at 884 (citing Clifford & Huff, *supra* note 15, at 307).
77. *Id.* (citing Clifford & Huff, *supra* note 15, at 331).
78. *Id.* (citing Clifford & Huff, *supra* note 15, at 331–32).
79. *Id.* at 885.
80. Wilson v. State, 249 P.3d 28 (Mont. 2010).

alleged that his change in prescription medication violated his right against cruel and unusual punishment as well as his right to individual dignity.[81] The Montana Supreme Court affirmed the denial of Wilson's postconviction relief by finding that the prison doctor's decision to prescribe different medication than Wilson had previously been prescribed was neither cruel and unusual punishment nor a deprivation of human dignity.[82] In denying Wilson relief, the court also noted that an important difference between *Walker* and *Wilson* was that Wilson was represented by counsel and Walker was pro se.[83] Because counsel represented Wilson, his claims had been fully developed, briefed, and argued.[84]

The court also highlighted that Montana's constitution "recognizes that all human beings have the right to individual dignity," while "[t]he U.S. Constitution does not expressly provide for the right to individual dignity."[85] The court also discussed a hypothetical situation in which it would read "Montana's constitutional right to individual dignity" together with "the right to be free from cruel and unusual punishment."[86] It would read them both together, the court clarified, "when both constitutional provisions are implicated 'to provide Montana citizens greater protections from cruel and unusual punishment than does the federal constitution.'"[87]

In summary, both *Walker* and *Wilson* explained that although the Montana Supreme Court exercises restraint in bringing distinct clauses forward together, it will not hesitate to "read together Montana's constitutional right to individual dignity and the right to be free from cruel and unusual punishment when both constitutional provisions are implicated . . . ."[88]

The next section follows from the Montana Supreme Court's observation that it may sometimes "read together" Montana's individual dignity provision with its provisions that individuals have a right to be free from cruel and unusual punishment. *State v. Keefe* provides a lens to understand the Montana Supreme Court's recent application of the cruel and unusual punishment clause. Together with its concurrences and dissents, *Keefe* paves a path forward.

81. *Id.* at 31.
82. *Id.* at 34.
83. *Id.*
84. *See id.*
85. *Id.* at 33.
86. *Id.*
87. *Id.* (quoting Walker v. State, 68 P.3d 872, 883 (Mont. 2003)).
88. *Id.*

B. State v. Keefe *and Beyond*

There are three Montana Supreme Court opinions in *State v. Keefe*. The first is the direct appeal of Keefe's 1986 conviction for burglary and three counts of deliberate homicide.[89] A jury convicted Keefe, seventeen years old at the time of his offense, on all counts, and he was sentenced to three consecutive life sentences without the possibility of parole plus fifty years (resulting from an additional ten years for the burglary charge and a ten-year enhancement on each count for the use of a weapon).[90] The 1988 opinion by the Montana Supreme Court affirmed his convictions.[91]

The second opinion is a result of a resentencing hearing following Keefe's petition for postconviction relief (PCR).[92] Filed in 2017 in the wake of the United States Supreme Court's decisions in *Miller v. Alabama*[93] and *Montgomery v. Louisiana*,[94] as well as in light of the Montana Supreme Court's application of *Miller* and *Montgomery* in *Steilman v. Michael*,[95] Keefe asserted the unconstitutionality of his sentences of life without the possibility of parole.[96] The district court granted Keefe's petition for postconviction relief and held a resentencing hearing, but at the conclusion of that hearing the district court again sentenced Keefe to three consecutive terms of life without the possibility of parole and an additional fifty years.[97] Keefe appealed his resentencing hearing to the Montana Supreme Court, which issued a decision on January 8, 2021.[98] This second opinion ties most directly to this Article. It resulted in a new resentencing hearing on remand that is described in more detail below, after which he was sentenced to life *with* the possibility of parole and fifty years additional time.[99] Keefe appealed this

89. State v. Keefe, 759 P.2d 128, 129 (Mont. 1988).

90. State v. Keefe, 512 P.3d 741, 743 (Mont. 2022) (reaffirming sentence and summarizing case history).

91. *Id.* (reaffirming sentence and summarizing case history).

92. State v. Keefe, 478 P.3d 830, 833–34 (Mont. 2021) (remanding for new resentencing hearing).

93. 567 U.S. 460, 489 (2012) (holding that the Eighth Amendment's ban on cruel and unusual punishment requires that a judge or jury consider mitigating circumstances before imposing life without the possibility of parole for juveniles).

94. 577 U.S. 190, 212 (2016) (holding that *Miller v. Alabama* announced a substantive rule of constitutional law and is therefore retroactive).

95. 407 P.3d 313, 320 (Mont. 2017).

96. *Keefe*, 478 P.3d at 833.

97. *Id.* at 834 (affirming sentence and summarizing case history).

98. *Id.* at 830.

99. State v. Keefe, 512 P.3d 741, 744 (Mont. 2022).

second resentencing hearing, and in its third *Keefe* opinion in 2022, the Montana Supreme Court affirmed his sentence.[100]

Although the Montana Supreme Court's decisions in these cases ultimately resulted in a sentence that could result in death in prison, the court's decisions still highlight the importance of protecting against cruel and unusual punishment both under the Eighth Amendment to the U.S. Constitution and under article II, section 22 of the Montana Constitution. Under both the U.S. Constitution and the Montana Constitution, as well as under Montana sentencing policy,[101] it is important to note the basis upon which the Montana Supreme Court remanded for the district court to conduct a new resentencing hearing to consider mitigating evidence in support of a lesser sentence.[102] This order for a new resentencing hearing was based on the Montana Supreme Court's recognition that "*Miller* commands a resentencing court to consider 'the possibility of rehabilitation' before a juvenile can lawfully be sentenced to life without parole,"[103] including the Montana Supreme Court's mandate that "evidence of rehabilitation in the years since the original crime must be considered by the resentencing court."[104] In light of this recognition, the Montana Supreme Court held that the district court had failed to consider the *Miller* factors, including "undisputed evidence of rehabilitation progress."[105]

In light of the final resentencing hearing resulting in Keefe's continued imprisonment under three consecutive life sentences (plus fifty additional years), it is critical to analyze his sentence against the context of Montana's expansive individual rights protections. Indeed, in the second Montana Supreme Court opinion (where the 2021 court remanded for a new resentencing hearing), Chief Justice Mike McGrath filed an opinion concurring in part and dissenting in part.[106] Chief Justice McGrath concurred with the majority's reversal of the district court's sentencing hearing,[107] but he dissented "to the majority's decision to remand to the district court for yet another sentencing."[108] Instead of remanding for a new resentencing hearing, Chief Justice McGrath stated

100. *Id.* at 747.
101. *See* MONT. CODE ANN. § 46-18-101(2)(d) (2023) (providing for, *inter alia*, "rehabilitation and reintegration of offenders back into the community").
102. *Keefe*, 478 P.3d at 839, 841 (quoting § 46-18-101(2)(d)) (remanding for new resentencing hearing).
103. *Id.* at 839 (quoting Miller v. Alabama, 567 U.S. 460, 478 (2012)).
104. *Id.*
105. *Id.* at 840–41.
106. *Id.* at 841 (McGrath, C.J., concurring and dissenting).
107. *Id.*
108. *Id.*

that, in his view, "the Montana Constitution and the rationales underlying the *Miller* and *Montgomery* decisions warrant stronger protection for youthful defendants facing a lifetime in prison."[109]

In support of his dissent, Chief Justice McGrath referenced the "[g]rowing understanding of the psychology and brain development of young people that has led the United States Supreme Court to . . . demand special constitutional protections in criminal sentencing."[110] In addition to the provisions against cruel and unusual punishments in both the U.S. Constitution and the Montana Constitution, he also highlighted article II, section 15 of the Montana Constitution, which "specifically grants all fundamental rights enjoyed by adults to persons under age eighteen, but, moreover, encourages laws which enlarge the protections of youth."[111]

Chief Justice McGrath also cited the verbatim transcript of the 1972 Constitutional Convention debate of section 15, which "clearly emphasized the importance of protecting juveniles under the new constitution."[112] He quoted committee chair and provision sponsor Delegate Monroe's statement explaining that what section 15 "is attempting to do is to help young people reach their full potential" and to make sure their rights and privileges are retained and protected.[113] Other excerpts from this portion of the case include another quote from the convention debate recognizing that "Montana can be the leader among all the states in recognizing the rights of people under the age of majority,"[114] as well as Chief Justice McGrath's observation that "[i]mposition of a punishment that denies an individual any hope of life outside prison walls is a case where the special status of minors demands the enhancement of their protection."[115]

Following Chief Justice McGrath's opinion, Justice Dirk Sandefur filed his own opinion specially concurring in part and dissenting in part.[116] Justice Sandefur joined Chief Justice McGrath's concurrence and filed his own additional opinion because he would further hold that the Montana Constitution stands alone, independent of the United States Constitution, to provide its own constitutional protections of juvenile

109. *Id.*
110. *Id.* (citing Roper v. Simmons, 543 U.S. 551, 569 (2005)).
111. *Id.* at 842 (discussing U.S. CONST. amend. VIII; MONT. CONST. art. II, § 22; MONT. CONST. art. II, § 15).
112. *Id.* at 843.
113. *Id.* (citing MCC, *supra* note 16, at 1750).
114. *Id.* (citing MCC, *supra* note 16, at 1750).
115. *Id.*
116. *Id.* at 844 (Sandefur, J., specially concurring in part and dissenting in part).

offenders.[117] Moreover, Justice Sandefur would recognize that, under the Montana Constitution, "life in prison without possibility of parole is cruel and unusual punishment of a juvenile offender."[118] In light of this finding, he would not have remanded for a new resentencing hearing, and would have instead struck and excluded the portion of the sentence restricting Keefe from parole eligibility.[119]

No member of the court addressed the role of individual dignity as it relates to juveniles in Montana's criminal courts. Yet the court's analysis in *Keefe* left ample opportunity for them to do so. After all, the court had previously recognized that where a punishment is "exacerbate[d]" by a defendant's mental health or condition, the dignity clause is implicated.[120] And as Chief Justice McGrath explained at some length, it is juveniles' psychological and cognitive development that make them uniquely worthy of mercy. As any parent knows, it is uniquely difficult to treat a child or teenager with dignity in virtually any setting. But in Montana, that is their "inviolable" right, including in the regulation of criminal punishment.

But the implications extend beyond juveniles. Those behind bars suffer from an array of mental health disorders or even conditions of confinement that could trigger the application of the human dignity provision.[121] These include confinement of the demented, issues concerning competency to be executed, and solitary confinement, among others.[122] And it is not *only* mental health and conditions that trigger the application of the right to human dignity. Degrading conditions of confinement, including overcrowding, inadequate heating or cooling, and unsanitary or unhealthy conditions also affect human dignity. And Montana's unique constitutional provisions enhance each other, giving rise to protections that reflect the values they embody.

117. *Id.* at 844–45.
118. *Id.* at 845.
119. *Id.*
120. Walker v. State, P.3d 872, 885 (Mont. 2003).
121. *See* ACLU of Montana, *Montana State Prison Violating Rights of Prisoners with Mental Illness*, AM. CIV. LIBERTIES UNION (Feb. 28, 2014, 12:00 AM), https://www.aclu.org/press-releases/montana-state-prison-violating-rights-prisoners-mental-illness.
122. *See id.*; *Montana Prosecutors Drop Death Penalty Against Mentally Ill Defendant*, DEATH PENALTY INFO. CTR., https://deathpenaltyinfo.org/montana-prosecutors-drop-death-penalty-against-mentally-ill-defendant (Mar. 14, 2025).

CONCLUSION

As the Montana courts continue in their tradition of judicial and constitutional independence, the inviolable right to dignity can play an important role in understanding the scope and contours of the rights of those facing criminal punishment.