

RIGHT TO DIGNITY IN CONTEMPORARY NEW HUMANISM

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Abstract:

The evolution of national and international regulation outlined, especially in the last few decades, a number of legal figures that, as a result of an universal recognition, raises to human rights. Stands out from all the Right to Human Dignity, which is configured as inclusive of all cases so far spread considered, with a *quid pluris* constituted by its meaningful correlation to the very essence of human being: everyone deserves a dignified existence. Through the legal experiences in various States since the birth of modern codifications, we can assume how the concept of dignity is strictly related to that and the meaning concept of *Persona*. The present paper is founded on this basis, it concerns the adaptation of the concept of dignity in a changing global background where, at times, seems to be overshadowed.

Keywords: human rights, quality of life, law, democracy, social inclusion, global sustainability, new business processes

1. INTRODUCTION

This research aims to highlight, through a systematic reconstruction, a common guideline in contemporary law, properly represented by the Right to Dignity. It, explained how dignity is the foundation of the modern individual protections, will focus the attention on a hypothetical constitutional involvement, estimating possible alternatives. The exposure of the issues will be structured progressively, starting from the right to birth, dealing with the existence rights, until the advanced treatment directives related to the end of life. It will be possible thanks to a short comparison on the main theories about the nature of dignity and, in particular, the right to dignity, through a contemporary reinterpretation of institutes that sometimes date back to Roman law. The analysis won't be limited to a simple reconstruction, but it will be pushed till a structural review in order to catch up a vision concerning the issue. In this way, it will be demonstrated how, from existing legal schemes, it's possible to satisfy the protection issues of a wider ranges of rights, in line with the recent new humanistic trend which, analysing the common good concept, inevitably leads to a lot of questions about the suitability of our system to fulfil its primary task: the protection of mankind. In a world which is more and more careful to the sustainability, it's not possible circumscribing such headword to the framework of human activity, as if it were an adjective reported to the industrial and technological procedures. It must be questioned, instead, on the sustainability of the social structures grown in the last decades, which is recently returned to the humanistic conception in the purest sense of the term. The revaluation of humanity as an universal separate entity, lacking from individualistic intents and aimed to the protection of Creation, lays the foundation for a deep juridical forethought which, in the coming years, should lead up to a sustainable society through revisiting the international conventions, now outdated and resulting from an antiquated point of view. A shining example is the commitment of the international community in drawing up the Milan Chart, unveiled during the International Exhibition Expo 2015 (Pope Francis 2015).

2. THEORETICAL FRAMEWORK

2.1. Dignity concept

Human dignity is a concept which our modern world normally refers to, but it's not always so simple to understand what it really means. Nowadays, looking at the growing interest by multiples disciplines, it seems to be a shortage observing entirely the concept of dignity, since is diffused properly focused attention to assigned matters. It leads to a fragmentation of the juridical and social dissertation about dignity, divided into *dignity rights*, which are considered separately into the legal system and taken into disciplines of sector. The result is a mixed framework, emphasizing on one hand the tendency to expand the areas of protection, on the other hand a sure reticence in affirming firmly the overcoming of social and geopolitical limits in the implementation of the connected mechanisms.

The concept of dignity is vague itself and ethereal, so that, to define it, it comes naturally to resort to practical examples and references to specific legislations. The absence of a shared definition faces with the risk to consider the dignity as *empty vessel of questionable utility* (Glensy 2011); however, it is undeniable in every modern democratic system, because *democracy serves as a core value of State formation because it accords with fundamental notions of fair governance and gives expression to the values of human dignity and equality.* On the other side, the existence of several shapes of dignity that one can choose from (Poisson 2004) makes using in a lose way the protections provided by various possible legal systems so that, even where there isn't an explicit and constitutional mention of the dignity it is allowed to emanate sentences free from limits imposed by definitional parameters. The contrast among various views about dignity includes either those who think that *dignity does not exist in the world, nor does it describe the world* or who consider human dignity as *the premier value underlying the last two centuries of moral and political thought.* Dignity can be intended as an essential of human personhood (Saint John Paul II 1987) that *defines man's essence as a unique and self-determining being* (Arieli 2002), from which comes down a guardianship of the understood dignity as respect for the intrinsic worth of every person. This is particularly noticeable taking into account the distinction between legal entity and object of guardianship present within Italian law, such as in multiple contemporary juridical systems. Such attention toward the human dignity reaches back into antiquity (Faggin 1996): the Greek philosophers have raised questioned as to the fundamental principles of mankind (Baldry 1965) reported to the Roman epoch it's useful to mention, among the various, Cicero's though, who, to make a summary, *believed that all human beings were endowed with dignitas, and that therefore all mankind is worthy of respect for the sole fact of its existence* (Cancik

2002).

This perspective remains, although in a less marked manner than in a concept of *dignitas* understood as manifestation of personal authority, majesty or greatness, typical of the sovereigns or the great commanders, until the Renaissance, when the dignity raises the concept of divine (Pope Francis 2014) apparently extended to everyone, without distinction (Gewirth 1992). The influence of religion in the debate on dignity has grown more until the shared transposition of dignity as fundamental principle (Maritain 1951) of the modern legal system (Pope Benedict XVI 2008).

2.2. Pre-birth protection

In the sensitive debate on embryo's juridical personality is acknowledged, from a strictly scientific point of view, that is certainly established the individual identity of the unborn at least since the loss of the chance of *zygote* to self-split in more individuals (so called *totipotentiality*). Theories splits instead referring to the previous period to that moment, as well as its accurate determination, so that is possible to take position on that only through a cognitive process based on a moral judgement, on which can inevitably culminate in a pre-birth subjectivity recognition, even in absence of an incontrovertible scientific data on embryo personality, because is undeniable his human nature. In this direction have moved several juridical systems, *ex plurimis* Italy's Law 40/2004, as well as numerous national codifications not only in Europe, and internationally are underlined Europe Council recommendations n. 934/82, n. 1046/86 and 1100/89, the *Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine* (Parente 2009) (more often called Oviedo Convention), and the *American Convention on Human Rights*. The contemporary juridical consciousness developed reaching the point of wonder about the possibility of an anticipated juridical capacity recognition, prenatal, but that step isn't possible without a systematic re-examination of safeguard mechanisms about a wide range of rights, with regard to for example voluntary interruption of pregnancy or to medically assisted procreation.

2.3. Child rights

To this day, nevertheless global adhesion to concepts of safeguard and protection of children, in the whole world we still see clamorous violations of childhood rights. In the past it was diffused the thought that the minor, in so far weakest individual but also capable of tasks similar to those of adults, was usable for some less considered tasks, causing frequently exploitation phenomena: an excellent example is the children work condition during the Industrial Revolution. The fight against early school leaving, and a more strictly discipline of productive activities, has considerably reduced those cases, but still exists in several States unresolved situations about vital themes like the right to health, the right to food, the right to peace and to a free existence, all summarised with the key term *dignity* (Pope Francis 2013). Children dignity is the basic theme of Convention of the Rights of the Child, signed by 193 States starting from 20 November 1989. That Chart poses herself the objective to delineate minimum standards of children well-being, and to be the most important legally binding code of child rights, even if its compulsory is not always recognized.

2.4. Right to work

The combined disposal of Italian Constitution art. 36 and art. 41 is an example of how dignity can be placed at the heart of Labour Law. Through that approach, indeed, on the one hand the worker have right to an adequate remuneration which can ensure to him and his family a free and dignified existence, on the other hand the economic action even if free can't harm security, freedom and human dignity. Contextualized to this particular historical moment (Pope Francis 2014), that establishment may seems utopian, considering the accentuation of workforce dismissing instruments, growing unemployment and the obstacles that global crisis put in place, elements that imply an increase of contractual inequality between employers and employees. Indeed, notwithstanding the widespread distrust towards continental legal systems on labour sector reform, some positive signals are taken by revision proposal to a better collective bargaining, or on a broader level to a realization from the world economic system that best way to reintroduce money on international market to revitalize production is to aim for a strengthening of citizens purchasing power, target accessible only placing *human dignity at the centre of every perspective and action: other interests, even if legitimate, are subordinate*.

2.5. Deviance and welfare

Until the birth of modern juridical systems, the punishment of deviance was subjected to authoritative mechanisms which often lend to arbitrary abuses made by justice courts. Suspect-based Penal Law, in place of a legal security principle (Bloustein 1964) is an haunting spectre that humanity haven't yet succeed to banish, not only referring to dark ages and totalitarian drifts, but even relating to a worrying contemporary trend to populist condemnation. The increase of so called media judgement, promoted by a media strategy feeding of public opinion sensibility to catch more *audience*, brings the risk of a throw-back to primitive mechanisms in a pursuit for scapegoats which can personify the social matters, people which one can point out the finger against as public enemies whom dignity is trampled upon without any possibility, in numerous cases which ones is proved innocent, to redevelop their credit, except for the innovative safeguard mechanism offered by the *right to be forgotten* (Sebastio 2013). A possible solution to that involution is identifiable through a two-track strategy: on one hand, safeguard of dignity in every phase before or after the judgement (Pope Francis 2014) on the other hand the implementation of welfare measures of support which can limit criminogen pressures generating anti-judicial behaviours.

2.6. Advance health care directives

With regard to *End-of-Life care* there are two deeply held opposite conviction. The first, more traditional, is based on romanistic and kantian inspiration, consisting in considering human dignity as universal and objective value, undisposable for individual people. The patient so can't refuse *life saving* and *life sustaining* treatments, because he can't act in a way that cannot be universalized (Kant 1785) dignity so it's not an individual liberty synonymous, but means belonging to whole humanity which leads to the application of generally agreeable principles more than personal beliefs. Fundamentally opposed to that, the second school of thought based her belief on informed consent principle as respect manifestation to the human being in personal entirety, structured according to his autonomous development and his freedom of choice even with regard to approval of medical practices on which can depend his own life. In accordance to this orientation is quotable, by way of example, the judgement of Italian Supreme Court n. 21748 enacted in 16 October 2007 which affirms a negative meaning in the right to health: an opening to the choice of treatments refusal and even to let himself to die. Extending that hypothesis to interdicted subjects, whom care is entrusted to a tutor which have to take place, in extreme cases, last known wills about treatments, suggest a deep thinking about the effectiveness of advance health care directives in that moment (Parente 2011), especially in view of the newest scientific discoveries, among all the medical three-dimensional printing, in specific it's unpredictable the future potential.

3. RESEARCH

3.1. Dignity theories

In order to find an independent positioning to the dignity, in the law-positive juridical systems, two opposite conceptions have been delineated: someone stated that *because dignity cannot be quantified, it cannot be managed*, so that thinking of this separately wouldn't be possible. Another one thought stated that *right to dignity has to be shapeless by its very nature*, so there should be no doubts about its conceptual autonomy. Moving from the last orientation, should be taken into account four possible approaches to human dignity:

- first of all, the *positive rights approach*, which consists of considering the right to dignity an independent right (Schachter 1983), subject to a special discipline and base for autonomous court actions. Such a reconstruction would entail the State's responsibility to provide for the basic necessities of life, so that each individual can have a dignified life;
- a second perspective is founded in the *negative rights approach*, that means a prominent respect to human dignity assumed to be the source of human rights, so that nobody, even the State, can denigrate it (Réaume 2002). In this way, dignity becomes a counter of all other rights, and it mustn't be gone beyond by them;
- a third scheme consists in a *proxy approach*, that means an heuristic use of right to dignity finalized to the fulfillment of another right, through the invocation of a dignitary interest in that circumstance;
- last but not least, there's an *expressive approach* to the role of human dignity. In this way, according to the rhetorical effect inspired by the considerations on dignity, we can assume that

through an hortatory language is possible to find a value that is the base of democracy, so *the assignment of the right [to dignity] has meaning without provision for a judicial office to adjudicate its violation.*

3.2. International examples

After the Second World War and with the end of the inexpressible horrors still troubling people's mind in the depth (ARENDT 1951), it was begun, little by little, to admit dignity as inviolable value, through specific regulations to this purpose by several legal arrangements (Pritchard 1972). The most striking example about how the war has influenced the western legal sense of justice is represented by the article 1 section 1 of the German Basic Law, that states *The dignity of man is inviolable. To respect and protect it shall be the duty of all public authority.* Such a regulatory change (Klein 2002) implies the support to a *positive right approach*, especially regarding the concept of duty, conferred to the government, not only to respect mankind's dignity, but also to protect it. The lack of any reference to the notion of citizenship is intentional, since it is possible to extend to everyone the scope of rule, making no distinction. The reverberation of that constitutional principle goes, on one side, towards the postulation of a State's responsibility to assure that nobody falls below a dignified level of existence, even through the application of direct aid measures, on the other side it is aimed at recognizing the absolute supremacy of individual dignity, not comparable to the other legal interests.

In South Africa, too, the right to dignity is the subject of a decision pursuant to Section 10 of the Constitution, which provides that *everyone has inherent dignity and the right to have their dignity respected and protected.* The concept of dignity is so important that the South African Constitutional Court has held that the right to dignity should not be subject to abrogation or subordination to another right.

Internationally, among several conventions and lectures making the world arranging on the inviolable human rights, must be underlined the Preamble of the founding charter of the United Nations (Van Aggelen 2000), which affirms that the peoples of the United Nations have faith in fundamental human rights that include, among others, the dignity and worth of the human person.

4. CONCLUSIONS

We should not underestimate the importance of the right to dignity (McCrudden 2008). In spite of the considerable improvements at National and International level, the regulation of this right has often been passing and arbitrary, according to the moral single contests believes, or referred to particular historical and social circumstances. Each possible approach to human dignity leads, inevitably, to its increase in value as foundation of democracy and of the very concept of humanity, but probably the most important demonstration of separate right ensures all the members a greater protection. So, the positive right approach is surely better, even if it implies a restatement whether of the dignity rights, or of the equilibrium among various rights realized by modern democracies. According to this approach, it would be possible to solve all the doubts about application limits, simply because a right properly controlled has more chances of being respected. Undoubtedly, even if there is no agree about the minimum content of right to dignity, its value won't be called into question. It is to hope for a growing up change in global perspective, with the rethinking of international law assuming the right to dignity as major reference, a constant inspiration for the future legislative action in whole world.

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