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# THE CONTROVERSIAL RELATIONSHIP BETWEEN ECONOMIC GROWTH AND HUMAN DIGNITY

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**Abstract**

*The relationship between economic growth and human dignity is a topic of great philosophical and ethical importance. Although economic growth can lead to an improvement in material living conditions, in many cases it can also lead to the violation of people's fundamental rights, such as the right to decent work, health and education. Moral philosophy – in the wake of the Kantian lesson according to which every man should be treated as an end and not as a mere instrument – asks to consider the intrinsic value of the human being and to place human rights at the heart of ethical reflection.*

**Keywords:** economic growth, human rights, dignity, moral philosophy, Kant

**JEL:** J81, J83, K19, K31, K33, K38, K39

## Introduction

Economic growth should be seen as a tool to guarantee human rights, rather than the main objective of economic action. In fact, without a fair distribution of resources, economic growth can only become a mechanism of enrichment of a few at the expense of the majority. The challenge, therefore, lies in being able to promote economic growth without neglecting the importance and value of human rights, always placing respect for human dignity, to be understood not as a simple anthropological premise or para-religious argument, but as an object of juridical claim.

The purpose of this brief article is to question the actual significance that is accorded to human dignity at the national and European level with regard to its conceptual roots[2]. The idea is to start with some recent data coming directly from the Italian National Institute for Statistics, and then to dwell on the attempt to outline the conceptual evolution of human dignity. Subsequently, it will be

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[2] This article draws inspiration from the lessons of Prof. Filiberto E. Brozzetti (*Legal Theory: On Human Dignity*), Prof. Antonio Punzi and Alessia Farano (*Methodology of Legal Science: A Focus on Human Dignity*) held in LUISS Guido Carli, Rome, from September to December 2022.

useful to verify the resilience and topicality of the Kantian approach and, finally, to conclude by mentioning some decisions of the Italian Constitutional Court concerning the attempt to balance the rights at stake with the '*super-principle*' of dignity.

## State of the art

Between work and dignity there is an institutionalized link, but also an exclusive one. It is institutionalized, since work is that public action through which citizens can publicly enjoy their dignity: obtaining a decent wage, contributing to general taxation through which they have access to welfare, guaranteeing a pension. Therein lies the transcendental nature of work. But the relationship is also exclusive. There is no other social fact capable of performing the same transcendental function, and this is why Western democracies have constructed a veritable social ontology of work: work is not simply linked to dignity, work produces dignity as social experience. But given that today's work is not able to maintain and guarantee adequate source of income for workers and their families, how is it possible that, when discussing the possible causes of the most problematic aspects of Western democracies, the idea that the erosion of stable labour relations may be among the main causes is hardly ever considered? Already for Arendt modern society annihilated every possibility of action by degrading man to *animal laborans*, a working animal (Arendt, 1958). The sharpening of activity into hyper-activity causes activity to spill over into hyper-passivity, in which one follows every impulse and stimulus without resistance. The performance society (*Leistungsgesellschaft*) promotes a sort of reification of human beings (*Vergegenstamdlichung*): man's action, which has always been goal-oriented, is resolved into a simple doing of actions prescribed by the technical apparatus, and man is no longer the artisan who reflects himself in the work, he is in the condition of the technician and his action is only a mere execution of an activity that flows from the rationality of the apparatus. It is not enough. French economist Bernard Maris – who was killed in the 2015 terrorist attack on Charlie Hebdo – has stated that "*The great cunning of capitalism lies in hijacking the annihilating forces and channeling the death drive towards growth*" (Maris, 2009). But let us proceed in order.

The European Economy Commissioner, Paolo Gentiloni**,** declared in mid-May that the EU economy had avoided recession and that Italy is expected to have the highest economic growth among the major European economies (RaiNews, 2023). The idea of *economic growth* is a macroeconomic phenomenon, a phenomenon that concerns modern economic systems, looking at a medium-long term and not at the immediate present. It is about looking at the return on capital and the growth of income levels. Economic growth is a quantity that can be measured

with equations, through mathematical models, known as the *Ramsey model*, the *Cass-Koopmans model*, the *Solon-Swan model*, and studies the relationships between GDP, private investment and public purchases of goods or services. But how is dignity measured?

The *UN Agenda for 2030* mentions, among its designated goals, the promotion of decent work that reduces inequalities and increases resilience. Economic growth cannot be achieved without the creation of new jobs: by 2030, more than 6 hundreds million new jobs will have to be created (namely 40 million for each year), and the conditions of the 8 hundred million women and men who, despite working, do not earn enough to lift their families out of poverty will have to be improved. Worldwide, barely half of women are in the labour force compared to 80% of men, and on average women earn 23% less than men.

In 2014 more than 73 million young people globally were looking for work, one in five were not engaged in any activity between study, work and training; 21 million people are victims of forced labour (11 million are women and children, and 168 million children are victims of child labour). Every day six thousand and four hundred people die from work accidents or occupational diseases (2.3 million deaths per year). I want to quote some data directly from the statistics compiled by ISTAT for my country, Italy. In 2020, the gross domestic product suffered an exceptional fall, the GDP per inhabitant fell by 8.4%. In 2020, the unemployment rate rose to 62.6%; in 2018, undeclared workers amounted to 13% of the total employed. The critical condition of youth is highlighted by the share of young people aged 15 to 30 who are not in education, employment or training, which reached 23.1%, the highest average in the European Union.

In 2020, 72% of the employed perceive the presence of at least one risk factor for physical or psychological health in the workplace, including: visual impairment, lifting or moving heavy loads, exposure to dust, gases, fumes or chemicals, risk of falling, noise pollution, excessive workload, lack of communication, lack of autonomy, bullying or harassment, threats or physical violence.

In 2021, 9.4% of Italians are in absolute poverty, 6 million below the threshold, and 20% of the residents are at risk of poverty: this risk is 33% in the Islands and 30% in the South, compared to the North (16%) and the Centre (9.5%). In the same year, the cost of housing is a burden that is difficult to bear for 7.8% of the population, and the population that can afford to heat their homes adequately is 8%. Finally, the share of young people under the age of 25 who leave the education and training system without a diploma or qualification is 13% (517,000 young people); the share of the population aged 30-34 who have completed tertiary education is 26% (Italian National Institute for Statistics, 2022/2023).

We live in an era in which Big Data and Artificial Intelligence represent the functional equivalent of the sphere of public discourse and would like to dissolve

politics into a data-driven managerial system: of course, numbers do not tell the whole story, but certainly in recent years scholars have focused more on the question of intelligence than on the concept of the person (Punzi, 2023). It is formally true that throughout the twentieth century the value of the person was increasingly recognized – both by national and European legislators and by the courts of justice themselves – also by going beyond the formalist approach and interpreting the law by looking at the principles, using general clauses. However, we find ourselves in a horizon marked by many uncertainties and some pitfalls, and it is crucial to start considering our being-person as a task rather than an ontological quality.

## A definitional attempt

As the philosopher Remo Bodei has clearly said, if on one hand it is true that "*dignity acts as a protective ethical and juridical armour to safeguard the inviolability of individuals and the freedom of people by rescuing them from oppression and humiliation*", on the other hand it is also true that, outside of any classical natural law-type philosophy, it is very difficult to find a solid and convincing foundation for dignity and to consider it an intrinsic, constitutive and irreplaceable element of human nature, like sight or thought (Bodei, 2019).

Human dignity is a central and ambiguous category in contemporary constitutionalism. It has been debated for decades whether it is an innate quality or the source of an ethical obligation. Does dignity have purely empirical or also normative connotations? A distinction is made between the *endowment theory* (according to which dignity is an original endowment) and the *performance theory*, according to which dignity is the object of a conquest by subjectivity (Philosophical Encyclopedia, n.d.). The performance theory has been advocated over the centuries by Thomas Hobbes in *Leviathan* but also by Niklas Luhmann, in open polemic with the ontological and substantial view of human dignity: for Luhmann, it is a product of social recognition and becomes a "*performance gain*", just like identity (Luhmann, 1999). To the vocation for universality of the endowment theory, Luhmann opposes a conception of dignity from the perspective of the relationship with Otherness, whereas Descartes would have thought of dignity as a perception of personal well-being, thus in the relationship of a human being with himself. In his famous discourse *De Dignitate hominis*, Pico della Mirandola defined it as "*something that, at the same time, one has and must also conquer*" (Pico della Mirandola, 1486). An enlightening contemporary essay by Prof. Dietmar von der Pfordten reports another very fashionable conception, which would identify dignity as a subjective right, or rather as a nucleus of indispensable rights, including the right to dispose of the goods necessary for biological existence, the right to be free from severe and constant

suffering, the right to self-respect, the right to self-determination and respect for physical integrity, freedom and property: dignity would constitute a true '*meta-phenomenon'* (von der Pfordten, 2018).

Dignity is generally conceived as the ultimate value that gives coherence to human rights. But the truth is that the concept of dignity is itself vacuous. As a legal or philosophical concept, it is without bounds and ultimately is one incapable of explaining or justifying any narrower interest. The term is so elusive as to be virtually meaningless. The concept of human dignity does not give us enough guidance, it has different meanings and has long been investigated from heterogeneous perspectives. Dignity is a fuzzy concept and appeals to dignity are often used to substitute for empirical evidence that is lacking or sound arguments that cannot be mustered. Is it a transcendental norm or a formal background value? What is sure is that we find this world everywhere, but we won't find a definition. The Universal Declaration of Human Rights of 1948 crystallized a process of social learning about the fate of human dignity in the modern world, highlighting how crucial is the "*recognition of the inherent dignity of all the members of human family*", and so the International Covenant on Economic, Social and Cultural Rights, that of Civil and Political Rights. In the Vienna Declaration of the 1993 World Human Rights Conference, we read that: "*All human rights derive from the dignity inherent in the human person*", while Article 22 states as it follows: "*Everyone, as a member of society, has economic, social and cultural rights indispensable for his dignity and free development of his personality*".

I could mention hundreds of soft law documents, but we do not find an explicit definition of the expression *"dignity of the human person*" in international instruments or national laws; given that "*omnis definitio in iure periculosa est*", its intrinsic meaning has been left to intuitive understanding, conditioned in a large measure by cultural factors. The questions are: should we consider it a premise of rights, a postulate; and its intangibility is ontological or deontic, which is its foundation, to what extent does dignity operate in accordance with other legal rights? Is it a theological legacy or the product of a rational argumentation that is completely the effect of the most secularized enlightenment?

**A quick historical-philosophical excursus**

Historically, dignity has usually been ascribed to an elite group, it has been tied particularly to high status or position and public recognition of rank. Prior to the late 17th and 18th century, it was typically an attribute of the few, either inherently or because it was considered to be a virtue that could only be realized through extended practice. The "*dignitas*" of the Ancient Romans was a solely political concept, but typical of the members of the upper class. In 27 before Christ, Ottaviano became "*augustus"* and so *worthy of veneration* because he deserved

it; dignity was a term of hierarchical distinction, an attribute of a distinguished few (patricians or '*optimates*'), it was a status that dignitaries had, namely a quality that demanded reverence from the ordinary common person (the '*vulgar*'), it was seen as a virtue. Dignity, in Latin usage, refers to that aspect of excellence that makes one worthy of honour, it related to public appearance: in Rome, it was referred in origin to an acquired social and political status implying important personal achievements in the public sphere and moral integrity. "*Dignitas*" was a manifestation of personal authority, greatness, gravity, decorum and moral qualities. Like the Romans, the Greeks saw the world in fundamentally hierarchical terms, drawing a key-distinction between Greek people and barbarians.

Then, the Christian tradition emphasized that man was created "*in the image of God*": the source of human dignity is man's dependence on God and so, in Christian understanding, dignity is in some sense universal, something that none of us has by merit, that none of us can receive from others, and that no one can take from us. But Christian doctrine also presupposes free will, so we can choose whether to act sinfully or not: dignity is granted at birth, but it is constantly challenged, tested, we must not sit back on it.

The turning point is represented by Immanuel Kant. Kant's claim is that humanity in itself is a dignity: here we see the move from the Roman-medieval conception to the modern one: the old notion of dignity as a special status of the nobility and clergy has been universalized to all men. The Kantian concept of dignity is often associated with the second formula of the Kantian categorical imperative, the fundamental principle of morality: "*Act in such a way that you treat humanity, whether in your own person or in the person of another, always at the same time as an end and never simply as a means*" (Kant, 1785). Kant does not speak of man's dignity but of a '*quality that belongs to a rational being who obeys no law except the law he gives himself*'. If the Christian tradition identified the source of human dignity in dependence on God, Kant constructs the concept the other way around, as a partial equation of man with God as a moral lawgiver. Kant did not assign human dignity any significance in the political and legal sphere, because it only concerns the core of internal, moral action. In the *Groundwork of the Metaphysics of Morals* we read at the end: "*Neither science nor philosophy nor codes are necessary to know how one should behave in order to be honest, wise and virtuous*". In his *Anthropology from a Pragmatic Point of View*, he writes that man's existence has in itself the supreme purpose: there is absolute coincidence between metaphysics and morality. If for Hobbes the value of a man consisted in his price, Kant overcomes any contractual conception of dignity and paves the way for Fichte: "*Man's being is the ultimate purpose of his being, no purpose can be sought in his being. He is because he is. This character of being for its own sake is its distinctiveness and its mission*" (Fichte, 1794).

***From Kant to Hegel***

Already in the middle of the 17th century, Samuel Pufendorf, one of the most eminent exponents of natural law, had considered dignity an eminent characteristic of the human soul (Pufendorf, 1672). However, it is the magnum opus of the philosopher from Königsberg that contains a very fine analysis of the category in question. As just mentioned, the term "dignity" illuminates the entire Kantian reflection. If the mention of the "human dignity" (*Würde des Menschen*) is very rare, related expressions such as "dignity of humanity" (*Würde der Menschheit*), "dignity of a rational being" (*Würde eines vernünftigen Wesens*), "dignity of morality" (*Würde der Sittlichkeit*), "dignity of precept" (*Würde des Gebots*), "dignity of duty" (*Würde der Pflicht*) are recurrent.

At the end of the 18th century, Kant entrusts his theory on the subject to the *Metaphysics of Morals*. "*Humanity itself is a dignity; for man cannot be used by another (neither by others nor by himself) merely as a means but must always be used at the same time as an end, and in this consists precisely his dignity, the personality* (*Die Menschheit*). *Through it he elevates himself above all other beings who are not men and who can also be used, i.e., he elevates himself above all things*" (Kant, 1798). Even before the identification of the dignity of the individual man with his being an end in itself, we read in the *Critique of Judgment*: "*Man will be the ultimate end of creation, because only in man, but in man as the subject of morality, is this unconditional legislation on ends to be found, which makes him the only living being capable of being an ultimate end, to which nature is teleologically subordinate*" (Kant, 1790).

While studying theology at Tübingen, immersed in the investigation of Kantian philosophy, Hegel wrote to his companion and friend Schelling in a letter dated 16 April 1795: "*Why has it come so late to elevate the dignity of man and to recognize that faculty of freedom which is in him, and which places him in the same order as all spirits? I believe there is no better sign of the times than this: that humanity is represented as worthy of esteem in itself. Philosophers will demonstrate this dignity, peoples will learn to feel it, and they will no longer be satisfied with demanding their rights – until now trampled in the dust – but they will take them back and appropriate them*" (Hegel, 1795). In the same year, in the work *The Life of Jesus* – a kind of recasting of the four Gospels based on Kantian concepts and categories – the father of German idealism developed an argument according to which man as man was not simply an entirely sensible being. "*There is also a spirit in him, a spark of the divine essence, he possesses within himself a force raised above nature, whose elevation and development is the true destination* (*Bestimmung*) *of his life"* (Hegel, 1795). Hegel would show in his work how in the course of history the '*universal spirit*' finds progressive realization and thus not only the principle, but the actual reality of human dignity and freedom is

progressively affirmed. Hegel's metaphysics had significant anthropological and political consequences: from this perspective, the Absolute lives in history, and the State is the incarnation of the Absolute. The State constitutes the end of the person. At the beginning of the 20th century, taking up St. Thomas' view that man would not be ordered to the State in his entirety (his ultimate goal would be a communion of life with God), Jacques Maritain ended up conceiving of the State as a totality whose parts are themselves totalities, precisely because of that transcendent vocation that is what constitutes their dignity (Maritain, 1964).

**The modern notion of dignity**

The modern notion of dignity drops the hierarchical elements implicit in the meaning of *dignitas* and uses the term so that all human beings must have equal dignity, regardless of their virtues, merits, actual social and political status, or any other contingent features. Nonetheless, we must not lose sight of the fact that the concept of human dignity evolved historically out of the idea of social honour. In the passage from legal liberalism to contemporary Constitutionalism, dignity is a principle inspiring the entire constitutional system of values, so dignity deserves a super-national protection, it becomes a meta-principle. Today human rights and human dignity have increasingly become fused. Although one can think of human dignity independently of human rights, that is becoming infrequent, the prominence of human rights increases and the link between human rights and human dignity is increasingly seen as normative rather than accidental. The mutual co-constitution of human rights and human dignity is to be emphasized. Human rights reflect a particular specification of certain minimum preconditions for a life of dignity in the contemporary world. The majority of continental legal philosophy sees a two-way correspondence between human rights and human dignity in the sense that these normative concepts imply and justify each other. But here lies the core of the question. What is their relationship? German constitutional law is in no doubt. In Article 1 of the German Grundgesetz it is written: "*The human dignity is untouchable. To defend it, is a duty of the authority of the State*" (Bundesministerium der Justiz, 1949). Human dignity – following the atrocities of the Nazi abomination – is conceived as an intrinsic value, disengaged from contingency. The German Constitutional Court embraced the so-called *object-formula*, according to which human dignity is violated if the concrete person becomes an object, an instrument, a fungible quantity. "*Human dignity as such is violated if a human being is treated as an object in a legal proceeding*", says the Court (Dürig, 1956). As Hassemer states, in this case the Constitution attempts to fix a fundamental value of common living in time, and the great novelty is that it is an unconditional norm, which cannot be subject to balancing. Germany opted for the absolute theory of dignity, opposing a strand of

thought that wanted to interpret Article 1 in combination with Article 2, according to which "*Everyone has the right to the free development of his personality*". Even the ECJ has recognized the increasing sensitivity of Germany in matters related to dignity, and there are a lot of different declinations in practice. In the *Omega Decision* it was stated that there is a common ethical minimum shared by the society as an ethical foundation (Judgment of the Court (First Chamber) of 14 October 2004).

If in Germany there was a clear transformation of a theological concept into a concept belonging to the doctrine of the State, the Italian legislator has been much more prudent and judicious. The role of dignity in the Italian Constitution is circumscribed. While the Constitutional Court in its ruling 293/2000 recognized it as a constitutional principle that incorporates the positive law in force, the three references expressed in the Constitution do not construct dignity as the keystone of the system. Article 3 recognizes the equal social dignity of all citizens, Article 36 prescribes that workers have the right to a remuneration that is commensurate to the quantity and quality of their work and in any case such as to ensure them and their families a free and dignified existence, and Article 41 states that private economic enterprise may not be carried out in conflict with social utility or in such a manner that could damage human dignity. It is now time to move to a fast study of the Italian context.

***The domestic scenario***

In the face of a historic quantitative reduction of subordinate work, and a growing impoverishment and a simultaneous growth of self-employment heading towards the fourth generation (for which the number does not correspond to an increase in protection), the value of dignity takes on ever greater attention.

Two corollaries derive from the fact that – according to Article 1 of our Constitution – Italy is a Republic *founded on labour*: the first allows us to consider the protection of work a founding value and not ancillary to the reasons of enterprise (Constitutional court of the Italian Republic, 1947). This is not to be taken for granted, given that European Union legislation has always conceived labour protection as instrumental to the reasons of enterprise and the market, and only at the beginning of the century did it equate social rights with the rights of the enterprise (the first chapter of the Nice Charter is entitled "Human Dignity"). The second corollary allows us to consider the Constitution as programmatically oriented to protect the worker as the weak subject of the employment relationship. In the civil code, Article 2087, the worker's physical integrity and moral personality are protected, so that the article is considered the normative foundation of the protection of the worker's dignity. The introduction of the prohibition of discrimination in the Workers' Statute is important, but now the injury to the

worker's dignity also happens outside the employment relationship, so the Dignity Decree included measures to combat precariousness: the law wants to protect the dignity of the worker's person insofar as it recognizes that the temporality of the relationship can lead to precariousness. In fact, the 2018 Dignity Decree included the obligation to convert fixed-term contracts into permanent contracts after 12 months. Fixed-term contracts continue to be the most common in Italy, rising from 7.7 million in 2021 to 8.5 million in 2022, and only 35 per cent of workers with fixed-term contracts manage to obtain a permanent contract.

The intention of the Dignity Decree was to incentivize permanent hirings, but it did not include a ban on fixed-term contracts. Thus, the current government announced the introduction of specific incentives for permanent hirings, such as the under-30 hiring bonus. The recent Work Decree of April 2023 will increase the maximum duration of contracts from 12 to 24 months in public administration sectors, private universities, and public research institutes; it will also introduce new obligations regarding health and safety at work.

The coronavirus has disproportionately increased smart-working, a flexible way of performing work, but companies should now evaluate work performance not in terms of time, but in terms of the performance achieved by the individual and the group. Today, the policy of Austerity is being replaced by a Keynesian policy of increased spending to boost consumption and investment with a large state participation also as a shareholder. The Recovery Fund that Europe has allocated to Italy to the tune of 209 billion euros is proof of a more solidarity-based European policy. However, it would be advisable to envisage appropriate rules to counter the widespread practice of the sequence of temporary contracts prior to employment, and to envisage supply and demand through the training and retraining of workers seeking their first job or who have lost their jobs, as well as the ongoing training of workers who have qualified jobs. This is an indirect but effective way of safeguarding human dignity. As Santoro-Passarelli pointed out, the core value of labour law must be the dignity of the worker, the protection of the worker's human freedom (Santoro-Passarelli, 2023).

***The continental scenario***

However, extending our gaze to the continental scenario, the new Article 6 of the Treaty on European Union states that the Union recognizes the rights enshrined in the Nice Charter, which has the same legal value as the treaties, but the Nice Charter, unlike the European Convention on Human Rights, contemplates freedom of enterprise and consumer protection as fundamental principles, given the persistent centrality of the market in the European Union's view. In contrast, the Italian Supreme Court and our Constitutional Court have only in recent years metabolized the values of competition and the market. While

in Italy fundamental rights enjoy absolute primacy among the sources of law, in the EU Treaties they are placed on the same level as the other values of EU law. In the European Treaties the word 'fundamental' is combined not with 'rights' but with freedoms, and not only of movement, assembly, association, but above all of establishment, freedom to provide services and free movement of capital[3]. In the national courts and the European Court of Human Rights, man is firmly at the centre of protection, while in the philosophy of the EU Court of Justice, the proper functioning of the market is still pre-eminent, and the right of economic initiative is restricted, in favour of the consumer, by means of open clauses such as social utility, security, and human dignity. Our Constitutional Court, in Judgment 238/2014, reiterated that the fundamental principles of the constitutional order and the unalienable rights of the person constitute a limit to the entry of generally recognized international standards to which Italy conforms (by virtue of Article 10 of the Constitution). Judgement 85/2013 stated that the Italian Constitution requires a continuous and reciprocal balancing of fundamental principles and rights, without any claim to absoluteness for any of them, in compliance with the canons of proportionality and reasonableness. At the same time, economic initiative was considered, by the Constituent Fathers, free but – unlike many civil liberties – not as inviolable: the Constitutional Court has never qualified economic initiative as a fundamental right. The jurisprudence of the Italian Constitutional Court has shown that in our legal system there is a hierarchy of sources whereby in first place we find fundamental rights (judgement 170/1984), in the second place European Union norms, in the third place the norms of the Constitution that do not have the rank of fundamental rights, in the fourth place the norms of the European Convention of Human Rights (twin judgements: 348-349/2007), and in the fifth place acts having the force of law (laws, legislative decrees); and the prevalence of fundamental rights over EU rules is affirmed in the *Alitalia judgment* (270/2010). Already in 2005, in addition, the Constitutional Court had affirmed that the needs of public finance cannot assume, in the legislator's balancing of interests, such a preponderant weight as to compress the irreducible core of the right to health, protected by the Constitution as an 'inviolable sphere of human dignity' (432/2005).

In any case, in our days it seems less and less meaningful to frame the hierarchical relationship between the sources or their respective spheres of competence: in fact, the distinction between constitutionally recognized rights, fundamental rights, rights recognized by the Nice Charter and therefore forming part of the European Union and those guaranteed by the European Court of Human Rights is now less and less decisive, given that constitutional jurisprudence has repeatedly affirmed the existence of a reciprocal integration between the sources,

[3] For a more accurate and in-depth analysis read Russo (2017).

among which the one offering greater protection of the fundamental right tends to prevail (the so-called '*plus protection*' criterion). The Court expressed itself in this direction when, in Judgement 219/2008, it established that '*the ultimate aim of social organization is the development of each human person, its value lies at the heart of the constitutional order*', emphasizing that it is up to the legislature to provide the most effective of protection systems so that human dignity is not compromised.

In general, the orientation is emerging in our country that market rules are indeed rules to regulate the market, but at the same time they must also stand in safeguard of fundamental rights, which can be linked to human dignity. In today's scenario one must first of all take note of the mutual interference between market values and fundamental rights, then focus on the most appropriate procedure to achieve a balance between values that does not end up excessively frustrating market values and the needs of economic growth, and keep well in mind the persistent relevance of the person in commercial negotiations, which must induce the interpreter not to overlook, in addition to pecuniary damage, also the non-pecuniary damage resulting from the violation of fundamental rights, and in this sense the trend in case law that recognizes such damage not only in non-contractual liability, but also in contractual liability, must be particularly welcomed.

**Closing proposal: treating dignity seriously**

According to the well-known philosopher Byung-Chul Han, in its drive towards a life without death, capitalism erects necropolises, aseptic purified death-spaces in which vital processes are transformed into machinic procedures. The total adaptation of human life to the concept of *function* is already, in itself, a culture of death and an annihilation of dignity. The excess of work and performances increases to the point of self-exploitation: we experience a "*coercive freedom*" to maximize performance, but in this system victim and perpetrator are no longer distinguishable (Han, 2012). If the 1948 Universal Declaration of Human Rights understood according to Kantian categories is valid, human dignity should be an unconditional endowment: the human being can never be disfigured to the point of not being recognized as en end. But it is precisely in trying to apply this principle to the modern labour that an irreducible aporia emerges. Firstly, how is it possible to promise social dignity through capitalist labour, whose condition is precisely instrumentality? Can that necessary share of alienation not be defined ad a de-finalization of the human being involved in labour? Secondly, if human dignity coincides with the self-legitimization of the human being as such, how is it possible to imagine that it must be socially produced and not simply recognized?

Human dignity, as the keystone of the system of principles, rights and powers of the legal system of the State, is prior to it. What must be avoided is a merely

rhetorical-argumentative use of dignity as an *a-priori* winning card over every other argument against it: the principle has a connotation which is evocative of the sociality of man and his self-determination, of the vulnerability of his actions, but it also possesses an expressive characterization of an instance of protection referable to the right to honour, to the idea of dignity as an unavailable possession. This duality of senses must be safeguarded: on the one hand it is an unalienable asset against the deprivation of rights, on the other an end to strive for.

The progressive disarticulation of the model of the open-ended subordinate employment relationship in recent decades, with processes of systemic precariousness and impoverishment of labour, now leads in Italy to the '*de-constitutionalization*' of the subject, to the disarticulation of a concept of citizenship connected to a job capable of ensuring a free and dignified existence. The demand for dignity resurfaces – fuelled by its negation – through those contractual forms that now define performance. A problem of the dignity of work, understood as the dignity of the person, may exist in certain forms of precarious work, but also in permanent employment that is economically impoverished, to the point of not allowing the provider to be economically self-sufficient or to meet the minimum needs of the family unit, and legally in rights, to the point of making the provider become a pawn to be paired with a contractual format. In many cases, the real problem is not stability to be reintroduced, but, on the contrary, a working condition nullified in the channel of odd jobs or jobs that fully engage the worker without giving him or her equal social dignity and the possibility of professional development, as in the case of the damned humanity of call-centers in a sort of paradoxical stability in precariousness.

The dignity of labour is thus also freedom from the labour market. What re-emerges from a past that has never really passed is the illegal recruitment, which is the very image of dignity denied and of a labour law completely circumvented, and not only in the fields. From a free and dignified existence there is a tendency to move to a sort of 'degree zero' of existence, to remuneration as a mere survival threshold. The lesion of dignity can be traced back to the loss of substantial bargaining power of the worker with respect to the forms imposed by the employer: the succession of contracts or the brutal interruption according to a formal register held by the employer that does not reflect the substance of the relationship even when it does not reach forms of outright exploitation with peaks of overt slavery.

The social dignity of work must be reinterpreted from the contractual point of view, but also in the broader perspective that comes before and after the relationship. One example is the working time of working women and its implications for the reconciliation of family and work: contractual weakness is produced by the initial social weakness that fuels further weakness. Another

example is domestic work, which is much more than domestic work and is considered much less than a labour contract, carried out by the caregivers (or in-home nurses), where there is a short-circuit between two demands for dignity, that of the care recipient (the object rather than the subject of the relationship) and that of the woman worker with minimum rights often denied, reasonably insurable only through public intervention measures.

In the depersonalization of labour relationships that characterizes the economy produced by the digital revolution that is still in progress, it is necessary to rethink the dignity of the person, which can be configured before and after the labour relationships, acting on the conditions that lead to the lesion of the social dignity of work and in work, thus looking at the citizen-worker more than at the provider. And these conditions recall social and conceptual aspects and disciplinary areas that are often distant from the historical perimeter of all that once constituted labour law, such as the right to study, effective gender equality, the right to health, which are increasingly entering the labour law discourse.

The approach is to see human dignity as a "foundational" concept; there are different accounts of human dignity but they are sufficiently convergent that they allow human dignity to serve as an "accepted principle of shared morality"; on the other hand, the inherent worth of human beings must not be left in an abstract philosophical or religious domain but rather must be expressed in everyday life through practices that respect and realize human rights.

If it is true, drawing from the poet Hölderlin, that where the danger is, also grows the saving power, bravery is required: the bravery to rethink our philosophical and anthropological dictionary and to start considering our being-person not in a mere static manner, but as something that we have to daily create; the bravery to begin a reflection on technology that, in the name of defending human dignity and centrality, adopts a backward stance towards technological innovation.

It is not a question of defining dignity at all costs or arbitrarily filling it with content, but to adopt a flexible and collaborative legislative approach involving all relevant actors, to let the law itself assume a realistic attitude, allowing it the opportunity and time to observe phenomena, constantly adjust regulations, while keeping its gaze oriented toward principles. While keeping its gaze open to the future, the law must first and foremost lend its ear to human dignity if, even in times of outstanding technological innovation, it really wants to continue taking the person seriously.

Probably, today, such an approach appears utopian, but as Eduardo Galeano wrote, utopia is like the horizon: I walk two steps, it recedes two steps. The horizon is unreachable. So what is utopia for? It is for this, for walking.

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