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The Prism of Human Dignity in the Techno-Science Age¹.

Every philosophical term is a hardened scar of an unsolved problem.

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Abstract

The Prism of Human Dignity in the Technoscientific Age. Food for Thought. First, this essay deals with the concept of human dignity in the twentieth century, the age of totalitarianism. Second, it reflects on human dignity in the technoscientific age, asking what is happening to human nature. Third, it examines the relation between human dignity and the constitutional state. And, finally, it discusses some philosophical issues relating to dignity.

Keywords: Dignity, Technology, Totalitarianism, Human Rights, Life.

1. Human Dignity at the Dawn of the XX Century.

Among the fundamental concepts that legal philosophy shares with other legal disciplines in the modern age, is that there is no concept such as Human Dignity, which urgently needs a clear definition, that is impossible to define. Roberto Andorno (2001) points out the paradox that contemporary society feels the need for unconditional values just when it seems not to believe in the possibility of a rational foundation of values: dignity, which seems to be a common sense notion, a basis of decency, seems instead impossible to justify theoretically without referring to metaphysics.

It should be emphasized first of all that the term “Human Dignity” represents an auto-antonym, a semantic condition that occurs when a term, through its historical development, has taken on a meaning opposite to the original² one: for centuries, “dignity” was infused with the idea of hierarchy and ranks (courtiers) and had an *excluding* feature. It took on a meaning opposite to the original one only during the modern revolution and the Enlightenment, when the moral prerogatives and

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² Azzoni 2012; Waldron 2012; Rosen 2013.

excellence attributed to the few became instead the heritage of many, and eventually of "everybody" in modern democracies. As compared to the original meaning tied to rank, today's notion of dignity expresses instead a kind of equality with a human 'face.'

1.1. "It is disappointing to study the discussions on Human Dignity. The fringe is so thin that you can shed light only with arguments as sharp as a knife," says W. Hassemer (2007, 57). He also underlines the risk of this indetermination, a real rhetorical inflation: it seems that when every other rational argument against a certain practice of genetic engineering or cloning fails, one can win the game by dropping the Human Dignity 'trump', (Hofmann, 620). Again Andorno (2001), emphasizing the extraordinary results that occur when humans apply technology to science in the pursuit of prevention and treatment of disease, raises the fundamental question: is it *just* to allow everything that scientific research is doing or will make possible in the near future by intervening with the human genome simply because it is *technically possible*? Does being able to do something authorize it? The paradox lies here. There is a clear gap between the practical and theoretical level: experience—intuitively—makes it much easier to understand what we consider to be unworthy, rather than helping us to positively define dignity. So, faced with the crippling plurality of concepts of the good now existing in the world, a 'minimum' agreement on what is bad seems simpler. In this way, Habermas (2011, 21), in an analysis of Hart's "minimum content of the natural law," takes Human Dignity as a "seismograph," that indicates what is truly constitutive in legal democratic law: rights that the citizens of a democratic political community must concede to each other in order to be considered free and equal members of an association.

However, the Enlightenment ended up considering Human Dignity as a "conceptual hinge" that would historically unify a morality of equal respect for everyone with the positive law of democracies, thereby assuming the content of dignity to be homogeneous. Unfortunately, this assumption was, is, and ever will be, tenuous at best.

1.2 "Every era finds its redemptive word. The terminology of the XVIII century culminated in the concept of Reason, the XIXth in the concept of Evolution, and the current in the concept of Life," (Plessner 2006, 27). This latter term can encompass both a "demonic game" and an "unconscious creation." Two major events of the last century—totalitarianism and technologically-infused science innovations applied to humans, from which we would like to start our discussion on dignity—seem to embody, to some extent, exactly those characteristics given by Plessner to our time, in which individual lives are constantly at stake. The indelible consequences of both these factors have helped to reopen the theoretical discussion and inform Parliament and Court decisions around the idea of human dignity. On the one hand we have the authoritarian involution of the Nation-State in the twentieth century and the aberration of totalitarianism: according to Arendt, the project that inspired totalitarianism was just a 'mutation' of human nature. On the other hand, the dramatic progress of technology in science shows itself able to transform the roots of life itself—the human genome.

Both of these events—despite their differences—put into question the idea of the deception of human nature and therefore also the idea of human dignity. “Humanity has no value in itself,” Capograssi wrote in 1950: the individual becomes “an abstract capacity for obedience, a purely passive power. What is worthwhile is the end, the goal that the dominant groups want to achieve, and towards which they want to lead the individual.” He concluded, “Humanity is a raw material, onto which direction, form, final ends, are imprinted [...] humanity is open and available as pure potential, totally passive in the face of any type of experience or direction” (Capograssi 1959a, 155). So, it seems to overturn the faith of Kant, who adhered to an ethics of duty, seeing dignity as an expression of individual self-determination, “I may well be forced by others to carry out certain actions, which as means can lead to achieve a certain end, but I will never be forced to *have an end*: I can only offer myself something like an end” (Kant 1991, 229). Here is dignity as the root of a problem of our time: the amount of Human Dignity is determined by the singular character of the action, while huge political and contemporary economic forces, that from totalitarianism onwards, overwhelm any possibility of control, induce a much larger *expropriation* of the ability of a singular *novum* to realize what has been called “the common anonymous statistical individual” (Capograssi 1959b, 487). What is lost in this transformation is the “dual character of equality and distinction” which connotes plurality as a fundamental condition of our perception of humans, “the paradoxical plurality of being unique³” in which equality and distinction *must* coexist, and what remains fundamental is our concept of constitutional democracy. But, as shown in our Constitutional Charter, the rights and duties of citizens can be guaranteed and implemented only if the public space is made to enhance the capability of individuals.

1.3 Giorgio Agamben, in an essay written several years ago, defined ethics in the following way:

Any conversation about ethics must start from the fact that man has no imperative essence, historical vocation or spirit, no biological destiny. This is the only reason why an ethics of man can exist: clearly if man were obliged to be a certain way or take a certain form, if he were predestined in one way or another, it would be impossible for him to have any self-made experiences—he would have only duties to perform.(Agamben 1990, 30).

Here the *need for experience* is promoted as the antidote to ontology, or as a definition *a priori* of the concept of humanity, so far as we can define an ethics. Ethics—as is well-known—can be written in Greek in two ways and has two different meanings: the habit, “the eternal yesterday,” as explained by Max Weber, and the abode (i.e., the existence of a man). Here we assume this second meaning: as long as there is the abode—the possibility of a public place in which to share difference—and the necessity of *experiencing what is different from me*, or what does not belong to me. It is a space in which I exist as a stranger (Waldenfels 2002); without a *narrative* identity (Ricoeur 1990)—which departs from ontology —without experience, and therefore without ethics. I can only get experience if I expose

³ Arendt 1994, 157-158; Ciaramelli 2013.

myself to that which does not belong to me as my 'own' —to that which *has never been mine to know*— and will never belong to me completely, and yet it makes sense to/of me insofar as it is me, the part of me that is not mine. And the experience of this 'negation' is, in this way, always and only singular. Therefore, "an ethics of man is recognized by the fact that it is interested in beings in their singularity, and perhaps from the fact that it distinguishes them in relation to varying levels of existence." (Deleuze 2,007.75). In this essay we would like to draw a conceptual map in order to show how the concept of Human Dignity may be referred to not as an exclusive/excluding attribute of the individual, but above all as inter-individuality, as *recognition*. Otherwise any realization of "abode" becomes impossible. The Contemporary appears as the realization of this impossibility: events come to us, it is not we who go to them, the world is "provided" to us (Anders 2003, 132-133). In fact, the recognition of difference—in experience—leads more and more often to misunderstanding. Unlike any ontological and universal ideology, contemporary Human Dignity seems to be an outcome of a *process* in which identification and misunderstanding inevitably take turns, confront, clash. The law and politics have a vital role in this conflict, having the power to decide every time which legal name to give to this principle.

1.4 To reflect on the semantic transformation of Human Dignity, we must follow two events from which we started; it also seems necessary to dwell on some of the *effects* that, beginning at the second half of the last century, have occurred and begun to involve totalitarianism tragedy in the European framework, *in primis*, Nazism. People wonder how language can reflect or recompose in ontology what happened to humanity. Why did Primo Levi write "*If this is a Man*"? Why do we have doubts after the Shoah, that something like an image of Man can be reassembled in a shared dimension? The damage is irreparable. Behind Levi's "*If*" there is a collapse of faith into an unshaken substance, there is the loss that the experience of the immeasurable violence of the Shoah represented. According to the philosopher Theodor Adorno:

After Shoah no poetry, no art, no creative statement is possible any more. The relationship between the things cannot stand on a solid ground, but on a kind of philosophical 'no man's land.'⁴

The contempt for legality consumed by Nazism, its claim to total domination, had as its goal the transformation of the "human species into an active and sure carrier of the law which otherwise individuals would reject with a passive reluctance" (Arendt, 2004, 632 -633). Therefore it is no coincidence that with the Nuremberg trials, Humanity becomes a subject of law because it is humanity itself as a whole, not just an individual, who was and can still be violated, as shown by post-war developments in social policy and economy. The Shoah was the greatest crime but certainly not the last. On the one hand, in fact, with the "world civil war" lately returning in other forms, the horrors of totalitarianism and of world wars make the cosmopolitan dream of "peace through law"

⁴ Adorno 2004, 326.

which Kelsen had dreamed of with the birth of the UN in 1945, fade away. The war was not overcome, which presents, in fact, an *endemic* factor of indiscriminately engaging political behaviour, and now we can say that with the additional effects of growing global terrorism and “imperial” reactions from the West, not only armies, but millions of innocent civilians are becoming “the technical features of a technical war and have as indeclinable subject individual and civil life in all corners of the earth” (Capograssi 1959a, 161). Arendt, in 1950, foresaw this development: “Today for the first time in foreign policy in a certain sense life is at stake, or rather the survival of humanity.” Because that’s what it is: forced mass migrations that deeply affect the “bare existence of all of us” (Arendt, 1995, 55) even before the political balance of a growing number of States. As a result, socio-economic inequality grows disproportionately, in geometric progression; on the eve of the last *World Economic Forum* in Davos, Oxfam presented the “Large Inequalities Report,” which states that more than one billion people today live on less than \$1.25 a day, 1 out of 9 does not have enough food, and in 2016, 1% of the planet’s richest will possess a wealth superior to that of the remaining 99%.

Despite the attempt to build an “international law of food security,”—proven to be unrealistic—our world economic system includes today about 800 million starving people⁵. As stated by J. Ziegler, former UN Special Spokesman on the right for food, “the desperate condition in which more than one-ninth of the world’s population live, is not a fatality emerging from a free and unconstrained interaction of human multitudes, but the consequence of an ‘organized crime’, a ‘mass extermination of the poor’ produced by a global economic system whose mechanisms and main beneficiaries are well-known” (cit. Gradoni in 2015, 465).

1.5 Within the Universal Declaration (1948) and *Grundgesetz* (1949), Human Dignity is recognized as the foundation of human rights, as a super-value⁶. After the end of the war, due to the horrors of totalitarianism, this principle seemed self-evident and its general acceptance was shared throughout the West. At the same time, it was urgent to assert this principle, but without the need to *demonstrate* it (McCrudden 2013, 2). Even if the generalized *concept* of Human Dignity is shared, *conceptions*, however, differ greatly. There is neither political nor philosophical consensus about how a *minimum content* should be understood: an intrinsic value of the human being, recognized and respected by others, with the *logic* supplied by the ability to identify some those forms of treatment that deny this intrinsic value (McCrudden 1998, 679). This becomes evident both in the preparatory drafts of the Universal Declaration, and in the examined decisions of various Courts (McCrudden 1998, 675 ff.). The core of the Universal Declaration shows it clearly; in the absence of a theoretical common basis, Human Dignity serves as a *placeholder*. It is not a linguistic *Placeholder* empty of content, on the contrary. The cultural stratification on this topic was huge, but had differing geopolitical roots, colliding deeply. One could agree, for example, about the prohibition of torture,

⁵ Cfr. Gradoni 2015.

⁶ Schmitt 2008, 46.

but this agreement vanished in the process of clarifying the reasons for the prohibition (McCrudden 1998, 677-78).

1.5.1 Assuming dignity as a fundamental element, the reached verdicts are widely divergent among the different national jurisdictions, tending to a “Common Enterprise” (McCrudden 1998, 696), as shown by decisions on several crucial issues, including abortion, incitement to racial hatred, obscenity, and social economic rights (McCrudden 1998, 698). Dignity appears as a ‘crossroads’ of contradiction as different languages collide, strongly impregnated and influenced by their axiological roots. One might consider the *Bundesverfassungsgericht* (*Federal Constitutional Court*) statement on the constitutionality of a law concerning air safety⁷ which provided in § 14.3 the shooting down by the direct use of military means of the aircraft hijacked by terrorists and used as weapon in crimes against humanity. On the basis of their competence, the Court ruled that lawmakers could not authorize military action that would have involved innocent people present on the plane with terrorists, as missions undertaken by the armed forces in non-war situations do not conform with the right to life and the duty of the state to respect and protect Human Dignity (art. 2.2 1 c. and 1.1 Grundgesetz). The Court used the argument (Kantian) of Dürig *Objekformel* to declare the above article unconstitutional:

...the passengers and the crew of a hijacked plane are in an extreme situation, forced into a limited space without a way out or a possibility to take decisions on their living conditions [...] which already makes them objects in the hijackers' hands. By contesting the enforcement of the law, the State would also treat them as mere objects of its action aimed to save the others' lives [...] Treating them this way means completely ignoring these people as subjects, endowed with dignity and inviolable rights. Killing them as a means of saving other lives exploits and deprives them of their rights. By using their lives unilaterally, the State denies the plane passengers (who are victims and would instead need protection themselves) that value that belongs to any other human.

However, one wonders whether this decision, embedded in a context of tragic choices, does not obscure the fact that if one refuses to find a balance between collective security and Human Dignity and decides to save the passengers, whose dignity—refusing utilitarian logic—cannot be calculated, do they in turn become the means to save the dignity of these known passengers, so that the lives of an indefinite number of unknown citizens will subsequently become the targets of the plane? On the one hand, Article. 14.3 certainly sacrifices the lives of the innocent on board, but it does so, on the other hand, with the goal of rescuing the unknown number of victims on the ground (Lepsius 2006, 772).

It is rightly pointed out that the dilemma—denied—is symmetrical and therefore requires an assumption of institutional responsibility (Nitrato Izzo 2013, 238).

⁷ BverfGe, 15.2.2006.

1.5.2 Contradictions abound. The United States, in the Eighth Amendment of the Constitution, bans “cruel and unusual” punishment, but in the Fifth and Fourteenth Amendment contemplates the death penalty with the guarantee of *due process of law*. In West Germany, we have the case of abortion.⁸ In 1975, the *Bundesverfassungsgericht*—representing as justification that the State-community is the sole guarantor of the dignity of human life—referred to Article. 1 c. 1 of the Constitution (“Human Dignity is inviolable”) and Art. 2 C.2 (“Everyone has the right to life and physical integrity”) so as to veto a legislative proposal to legalize abortion in certain cases, “The duty of protection guaranteed by the State not only prohibits the State from directly interfering with life development, but imposes a duty to promote and protect it.” (BVerfGE, 39.1.)

After nearly twenty years, in 1993, the Federal Court reconsidered the issue, reaffirming the general principle “*Menschenwürde kommt schon zu dem ungeborenen menschlichen Leben*” (Unborn human life also has human dignity) and affirming that the right to life is absolute. Therefore regardless of maternal consent, it must be protected in its primary evidence, as a “primary and inalienable right that emerges from Human Dignity,” going beyond any philosophical or religious belief, even if the State abstains from any secular judgment, because “where there is human life there exists dignity” (BVerfGE, 88.203). But—in the light of the reunification process taking place in the former DDR, public opinion became more forgiving—it made a ‘political’ compromise: while reaffirming the illegality of abortion, impunity was established under certain conditions (abortion during the first twelve weeks and the participation of pregnant women to counseling sessions). So, reserving the right to establish “legal limits beyond which this apparent abdication of constitutional duties by the State could not go”, the Court allowed that the dignity of the fetus was not protected absolutely (Rosen, 2013, 103). The theoretical rigidity of the *Bundesverfassungsgericht* tended towards a communitarian conception, opposing the American liberal constitutionalism, in which dignity is connected to individual self-determination, the *right to be let alone* in the choices that come out of individual *privacy*. This radically changes the axiological *pivot*. In the verdict in *Planned Parenthood v. Casey*⁹ case, state influence—according to the Fourteenth Amendment—is considered unjustified in areas such as the procreative choice of the individual and his freedom of decision¹⁰.

These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. These beliefs about matters could not define the attributes of personhood were they formed under compulsion of the State.

⁸ Rosen, 2013, 100 ff., McCrudden, 1998, 709.

⁹ *Planned Parenthood of Southeastern Pa. v. Casey* (91-744), 505 U.S. 833 (1992).

¹⁰ McCrudden 1998, 688, 699.

Finally, according to *Makwanyane*¹¹ (McCrudden, 1998, 688 ff.), considering the decision on the constitutionality of the death penalty to be essential, the South African Constitutional Court had to assess whether this punishment represents a cruel and degrading treatment. In an examination of American legal practice, the Court “highlights the fundamental contradiction according to which, on the one hand the US Constitution prohibits cruel and *unusual punishment*, on the other poses no obstacle to the death penalty imposed in respect of the guarantees of the accused” (Lollini 2007.492). So, while recognizing the importance of the contribution of foreign laws in the reconstruction of South African democracy, it stresses that “*we can derive assistance from public international law and foreign case law, but we are in no way bound to follow it.*” Certainly, in this judgment there is an amalgamation of South African cultural traditions and rationale (of a Community nature) with the demands of modern liberalism: axiological reference is given neither by the State nor by the individual. The casting vote is given instead by communities, united in that “rainbow heritage” which emphasizes the diversity of the various South African ethnic strains. The concept of *ubuntu*, which has played an important role in the construction of the South African democracy and is one of the fundamental values of the constitutional order “does not match any entry in the Indo-European languages and is therefore untranslatable either into English, or into Italian” (Dau 2011.35); it plays a key role in determining the decision of the unconstitutionality of the death penalty:

In its most intrinsic sense, it can be translated as human dignity and ethics. As a metaphor, *ubuntu* is expressed in *umuntu ngumuntu ngabantu*, describing the significance of group solidarity on matters of survival, so important for the community’s survival. It includes the core values of group solidarity, compassion, respect, Human Dignity, compliance with basic standards, and the unity of the community, and in its primary meaning it indicates humanity and morality (Dau 2011, 36).

2. Techno-Science and Human Nature.

The second event, referred to at the beginning of this text, relates to the manipulation of the roots of organic life: what is implied for Human Dignity when, like a work of art, human life itself, at its foundation, becomes reproducible? From the moment it became possible to intervene on the genome by altering it, the path was opened for a re-definition of human nature. But what do we really know of human nature¹²? Dignity is a universally recognized legal conquest, but of what kind of human nature? How does philosophy reflect the image of humanity today, and also of dignity? What is “evolution” now, as compared to the past, when scientific techniques were not yet capable of manipulating the origins of life? We must explore why—and this is an essential point for us—the *opportunity* to manipulate our origins implies a decadent ontological faith, traditionally sustained in

¹¹ *State v. Makwanyane and Mchunu*, 1995 (6) BCLR 665 (CC).

¹² Chomsky, Foucault, 2005.

our image of Man. From now on there is no longer an indisputable common root, while a limitless horizon is opening, illicit and therefore difficult to consider¹³.

The task comes from the knowledge that—as Kant argued—“a person is not only an object, but is always a relationship.”¹⁴ “Being with others,” said Kaufmann, “does not subsume part of the object, but forms within me a social and spiritual space, which contributes to the constitution of my being a person.”¹⁵

2.1 “It is very unlikely that we, who can learn, determine, and define the natural essence of all the things around us, of all that we are not, can ever do the same for ourselves: it would be like jumping over our own shadow” (Arendt 1994, 9-10). Genetic engineering, in fact, claims to reproduce life technically, so in a certain sense to cancel out that shadow that we also are. Is this ethically relevant? What exactly is the shadow Arendt spoke about? The need to invent one’s own way of life, the risk and the freedom people are connected to, and from which no one can escape. The moment we can take action on the cellular level, we establish a technique of transitive relationship between human nature and the human condition so that a mutation in the first means mutating the second. The risk is of turning *who* into *that thing* (Arendt 1994, 10). If before, until the 50s, a philosopher like Heidegger could say: “science calculates, philosophy thinks,” intending a “division of labour” in which science would defer to simple data, accepting them as such without questioning, while philosophy would question on the fundamentals, today this is no longer true. If ever it did, that division of labour certainly does not exist anymore. Today, with the help of genetic engineering, science is more than ever the locus for a conception of being, designing future life, future beings. A new anthropology is developing through genetics: *the post-human* (Marchesini 2002, 510 ff.). In the Western tradition, Man has always been aware of himself—since the “Earth, holy mother,” the first stasimon of Sophocles’ *Antigone*—as the center of the Universe, the element that transforms the environment in which he lives, but by which he is always dominated. The scientific and technological revolution that we are witnessing has instead made the world an available object—just as the body once was: a Subject that has as ‘objects’ the world and his own body; the more one thinks of it as Subject, the more the objective world and the body (Andorno 2001) are reduced to *projects* for any transformation.

2.2 Man is old-fashioned, Günther Anders said in the 50s: despite all his skills, he is obsolete in the era of techno science. Why? The human being feels inferior to his production capacity and his products. The progress imposed by techno science has led to an advantage over the human being as he was once known, before he became the site of transformation. And Man, says Anders, in his imperfection, is ashamed in front of his products. The “Promethean shame” (Anders 2003, I, 37 ff.) of he who stole fire and cannot control the perfect power inside it. The human being is understood

¹³ Kaufmann, 2003, 153 ff.

¹⁴ Kaufmann, 2013, 166.

¹⁵ Kaufmann, 2013, 166. Ulfrid Neumann (1984, 56).

especially by his ability for imagination. In the face of techno-science power—just like a sorcerer's apprentice—he is no longer able to use this power that distinguishes him principally, to predict the long-term consequences. There is an ignorance about the impact on the future—on the lives of future generations—to form the backbone of contemporary power, and so comes the sense of inferiority, a sense of 'delay', the *Antiquiertheit* (outmoded) Man characterized by Anders. Although the human imagination appears infinite, a comparison with the unlimited potential of production reveals great limitations (Anders 2003, I, 37 ff.). And since techno-science is an integral part of the life form of the human being, this profoundly affects his self-understanding, even his dignity.

2.3 How can human dignity be configured in the techno-science age? Where can we set the limit, once organic life depends on technology and therefore is virtually without a pre-determinable border dominated by techno-scientific progress? This is the crucial problem that involves the form of life and social group responsibility. But first, is there only a gradual difference between human nature and other species as the human instinct evolves to intelligence, or is there rather a continuous solution? Non-human living organisms are genetically predisposed to react uniquely to one predetermined signal, while other signals are treated as 'noise.' For humans, however, beings exposed to the entire world, literally disoriented, not only is the number of perceptible signals vastly superior to that of lower species, but, above all, these signals are not predetermined, so that the difference between a signal and a noise is structurally vague (Gehlen 2010, 69 ff.); it constantly forces the individual to revise and experimentally adjust the relation between them—to choose each time, giving space to a new, more provisional constitution of senses, and therefore of his world. For this reason, the opening up to the world gives the human being a *Mangelwesen* (Gehlen 2010.45 et seq., 127 et seq.) a freedom of disproportionate capacities, unlike an animal that is bound by instincts, but perfect as is, as Pico said in *Oratio*. He, unlike the lower animals, lives in a variety of spheres and so *acts*—in the stream of surging stimuli—as one who is free to organize his own pulses, but at the same time is forced to make a plan to satisfy them.

However, the possibility to choose, and the deferral of responses, leads the individual in most cases to exonerate himself from this task (Gehlen 2010, 100 ff.), hiding behind the routine and the institutions that 'work' for him. So, by thinking about technology, he avoids taking a decision and the decision is formed artificially. In this way the technical device becomes the domain of 'sense', which in the results of recent genetic research opens up unpredictable possibilities that require responsibility, government, politics, discussion, and decisions.

2.4 In the margins of a reflection by Rodotà on the centrality of the random factor as an imminent moment of existence, the 'value' to defend, (for example in the field of cloning or genetic improvement) Paolo Becchi¹⁶ wonders what argument could oppose the glowing triumph of choice—which, thanks to genetic engineering tends to remove the random from individual existence—if it is true that man is able to take up his own destiny to determine himself fully. So why take chances?

¹⁶ Becchi 2007, 17; Becchi and Rodotà 1995, 160.

How to protect indispensability? Here, the difference between nature (*non facit saltus*) and human existence remains intact. Science is the most powerful form of prediction because it is based on the continuity of nature and its laws, but the human, in Western culture, is characterized as unpredictable, because of his unexpected character. The *exaiphnes*, the moment in which he comes to understand, was mentioned by Plato as the human number that approaches the world. Nature needs eternity, and if it is true that the human participates in the extraordinary form of generation (Plato, Symposium), this must be able to retain any traits of a singularity that is always relative, ephemeral, vulnerable.

2.4.1 There is another aspect of this matter, discussed by Habermas:

When adults can consider the genetic endowment of their children to be controllable, able to be modeled, and they can therefore feel free to fashion an acceptable “blueprint” for them, then they will exercise the power of design on their genetically manipulated products [...] a power that had previously appeared to be legitimately exercised only on things, and not people (Habermas, 2002, 16).

This implies, for Habermas, the appearance of a genetic dependence, as such unchangeable, from the parents to the child, formed to their specifications. In this case it would be less a case of ‘inborn’ character, which Kant called the fundamental freedom of the individual. What is part of a birth is unexpected? Certainly not the ‘protocols’: the birth event is largely programmable, predictable, preventable, benefitting from health care and parental assistance, where the random tends to disappear. But in the case of genetic manipulations, the situation changes radically: why is it not acceptable to program individuals? Why is reproductive cloning prohibited?

2.4.2 Where is the essential element, the value to guarantee in the case of Habermas, and where should it be stored? At risk is that which is most precious: the newly born child has the freedom to be the first and only one to give shape to the unexpected because it transforms its not-knowing, *thanks to its ‘ignorance’*, into a form of life. Individual existence is an irreducible singularity in a ‘biographical’, not a biological sense. There where, genetic engineering allows us to predetermine physical and psychological characteristics, precisely in this case the unborn child remains unaware of her/his future meanwhile others, ultimately, choose her/his genes. In the case of genetic improvement, the ‘secret’ of biographical development is kept and developed by others as an organic secret. This reductionism would be the *vulnus*. The violation of this basic principle and right of freedom should stand as an unbreachable limit. The “humanistic” arguments by Habermas against liberal genetics have raised many questions. In the first place, it seems impossible to place a definite limit between therapeutic and enhancement genetics. In fact the line shifts continuously within scientific research, and is a result of political decisions. Only a naive determinism—rejected, moreover, by Habermas himself—can maintain that genetic heritage remains immutable once exposed to the environment in which it exists, and therefore immune to social relations and historical effects. And what is more definitive than birth? What appears more determinative than the educative process? The asymmetry between parents and children—as Habermas acknowledges—cannot be eliminated.

Nevertheless, this is only a starting point, established later by personal experience exposed to mutations. Because there is no chasm between nature and history. From this point of view Habermas' argument seems strongly ideological. In fact, at the end he consents to the *slippery slope* theory from which the pre-implanting diagnosis for therapeutic purposes begins, and in the end enhancement genetics are legitimated.

I think that precisely and only in this sense can we understand the *intrinsic* character of Human Dignity. The only feature intrinsic to it is its being extrinsic. This is the dimension of identity that must be preserved because it regards the individual in its insularity, but the individual as inter-subject, the individual as a social being:

Only the human being can relativize himself, put distance between himself and his own subjectivity, and place his own interests within a context in which other interests (human and non human) come into play. (Spaemann, 1987 295-313).

In a secular way, Plessner also says that by virtue of the “*eccentricity*” of human intentionality, Man can relate both to the body as well as to the spiritual dimension, to the outside world as well as to the internal one. In other words, Man himself has and is himself. This is in contrast to the animal, which becomes aware of its body only in some occasional situations, while Man is not only a body, but also *has* a body. For Man, being in an “*eccentric*” position means being decentralized, losing his centrality to the things and the people around him, to the point of becoming a thing among things of the world. It is only in the act of alienating, “*placing himself behind himself*” (Plessner 2006, 314) that Man can see himself and his situation in the universe, the temporary centre that he occupies and from which he then is decentralized.

2.5 Based on research of autopoiesis by Maturana and Varela, as well as research on mirror neurons developed by a Parma group led by Rizzolatti and Gallese, neuroscience has arrived in the last twenty years at some surprising results, revealing how to build the pre-linguistic identity of a person, and confirming certain philosophical insights; overcoming the subject/object dichotomy, placed at the origin of individuality, is not an abstract *a priori*, rational and unchangeable reality, but rather—from Spinoza to Husserl to Merleau-Ponty—the body-mind device constitutes *intersubjectively*. Representing the subject's reality implies the adoption of an interactive model: “Conscience is not some sort of internal and private event. This is because its basis has the same kind of existence as the outside world, but without the consciousness” (Varela, 78). One could say that in the beginning was the action. And every action has a purpose, an intention directed outwards. Thus, tangible individuality

...that which exists purely in myself and for myself as an exclusive property, includes every intentionality, including those that are externally directed [...] *The other*, because of his constitutive quality, refers to me; *the other* is the reflection of me, and yet not an exact reflection, or analogue of me (Husserl 2009, 117).

In this sense, each experience becomes the context in which subjectivity is continually redefined in connection with the environment that surrounds it. A key to understanding these mechanisms has been identified through empathy. However, empathy does not come from an intellectual effort to understand the other, but is rather a part of the genetic makeup of the species as an inborn and pre-programmed ability to internalize and imitate the state of another person. Developmental psychology has shown that the mind is born as a *shared* mind. Early imitation observed in infants—and the formation of a common other-self—shows that interpersonal relationships are established even in the absence of a self-conscious subject, “when a subjective representation of the world is still not available” (Gallese 27). Mirror neurons discovered by the research team from Parma revealed the basis of this capacity: whenever we observe the actions of others, our motor system resonates along with that of the observed agent. So even if not activated, “the same logic that governs the modeling of our actions applies also to the actions of others. Perceiving an action—and understanding the content—coincides with internal simulation” (Gallese, 304). This research, redefining individuality, helps us to reflect on human dignity in a new way: it emerges ever more clearly that the mechanism of mirroring is not at all a Pavlovian reflex:

...there is a level that still binds us to others through the mechanisms of neural resonance; however, these mechanisms are recorded in the individual history of the person and in the phylogenetic history of the species; which widens the horizon even more. We must, therefore, keep these two dimensions together. We are naturally keen to resonate with others, but this resonance mechanism is exposed to the modulation that comes from the experience we got in our first encounter with others (Gallese 2010, 12-13).

We can say that we are our neurons, it is true, but this has little sense. And again biology should continuously contribute to biography. Above all, no individual biography exists far from its surroundings: according to Maturana and Varela existing means knowing. And knowing involves action directed into its environment. So the action implies, exposing itself, an *understanding* and this mainly occurs through *simulation*. It seems that,

...our brain is created to reflect, and that only through this reflection, or in other words through the simulation of the experiences lived by others in our brain, can we fully understand what other people feel (Iacoboni 2008, 111-112).

So, understanding the actions of others, the emotions felt by people like us, is not based solely on cognitive strategies that involve applying sophisticated inferential processes but is also, if not more so, founded on an embodied simulation in which mechanisms reflect the mirror neurons forming the neural basis.

This occurs thanks to the presence of neural networks that are formed in the course of the relationship with the outside world. Only in this way can we understand the experiences of others from within. Inter-subjectivity is inter-corporeity, as ingeniously anticipated by Spinoza. Classic cognitive science has completely reified the body size of the psyche and its cognitive processes,

enrolling it in a solipsistic reality, forgetting entirely the influence of intersubjectivity on the construction of subjectivity. Helmuth Plessner wrote:

Each realization of an ego, a person in a single body, is the premise of the sphere of you, of him, of us. [...], in order that a single man arrives to the idea of not being alone and not being only a thing, but having as companions other sentient beings like him, he does not have as a basis a special act, to project his way of life towards the outside, but he belongs to the assumptions of the human existence sphere (Plessner 2006, 325).

3. Human Dignity and the Constitutional Rule of Law.

The ontological conception of Human Dignity corresponds to an image of a homogeneous society, based on shared values and free of irreducible conflicts. This is how we can describe the society of the Rule of Law in the 1800s. Contemporary democratic societies are based on the rule of constitutional law and are characterized by an irreducible element—the "fact of pluralism"—that requires instead of impossible and final solutions, mediation, politics, and sovereign authority. In fact, "policy is built on the fact of men's plurality," as a means of "cohabitation and commonality of differences" (Arendt 1995, 5). It is possible only if people are convinced that the object of politics is not Man but the World. According to Hobbes, the place of politics—as a space for collective action—is empty, it is a space for events and invention, space that consolidates people in it and at the same time separates them from each other (Arendt 1995, 18): this is why political governance—or Authority—appears to be a difficult, but necessary task. "Politics is born *among* men," outside of Man its essence is preconceived to be protected: Man "created in the image of God's loneliness" is *inhumane*, and therefore apolitical (Arendt 1995, 7). Politics, in fact, does not move Man, or change men - it is concerned instead with the world, with changing it. Where is the place of dignity in this picture?

3.1 In the Constitutional Rule of law based on the irremediable plurality of principles and values—*especially* that of dignity—prone, as it is, to disputes between moral convictions, there is the inescapable problem of their evaluation (Celano 2005, 427 ff.). If it is true that we live in a world of ethic non-cognitivism, these issues cannot be decided with a final argument, but will always be "in need of revision" (Celano, 433). Contemporary constitutionalism appears paradoxically built on two non-harmonic bases, 'defenses'—as Celano suggests (434-436)—in two classical works of legal thought. On the one hand, Rule of Law has sovereignty: "...only the law can be a source of law [...] since it is law that regulates its own production." (Kelsen 1975, 286). On the other hand, the rules should be interpreted as a last resort; in this way their sovereignty turns out to be *relative*. *Nomos Basileus* is a palindrome expression—explains Carl Schmitt:

Just as *Nomos* is "king," so is "king" *Nomos* [...] But *Nomos*, like "law," does not mean statute, rule or norm, but rather *Recht*, which is norm, as well as decision and, above all, order. [...] Even if one endeavors to designate a judge as a pure organ of the pure norm, who is only dependent upon the norm and 'only

subject to the law,' and in this manner permit only the norm to govern, one still proceeds along orders and a hierarchical sequence of authorities and subjects oneself not to a pure norm but to a concrete order. For a law cannot apply, administer or enforce itself. It can neither interpret, nor define, nor sanction itself; (Schmitt 2004, 50-51).

In most of the cases of fundamental constitutional principles—because of their vague nature and abstract formulation—juridical rules should be interpreted. They are not, as related by Kelsen, *immediately* applicable:

In all these cases, the law to be applied constitutes only a frame within which several applications are possible, whereby every act is legal that stays within the frame. (Kelsen 1976 351).

The next problem is the identification of the organ authorized to interpret/apply the rule. On important issues such as Human Dignity in a constitutional state of law it would seem logical that it is the legislative body to decide (Celano 2005.438). But since the constitutional state applies double legality, the lawmaker is subject to constitutional review. So who has the last word? Because that is the point: on the one hand it is the Lawmaker, and on the other hand, the Constitutional Judge. On the one hand there is the risk of the tyranny of the majority, on the other hand the *counter-majoritarian Dilemma*. And on the subject of dignity, the comparison of legal practices with technoscience appears today a place where more clearly than ever we can see the crisis of law and the 'will of the lawmaker' as interpreter of the general will. The fundamental values of pluralism are at stake, coexistence cannot be cancelled with the sword, because it concerns questions of freedom of thought and of differences. What does the rest of the system mean if we do not coordinate and unite a plurality of different positions? This is the challenge. Schmitt (2008, 50) saw a new interpretation of the democratic *bellum omnium contra omnes*, "The valorization of value is grounded in it. Who sets up values?" An *inexhaustible* dialectic between powers comes in action: on the one hand the legislative power of the Parliament, which "has the power to amend the constitution so as to neutralize any unconstitutional interpretations by the Constitutional Court" (Celano 440). On the other hand, the Constitutional Court in the landmark judgment 1146/1988 declares itself "competent to judge the conformity of the constitutional amendment and the other constitutional laws also regarding the supreme principles of the constitutional order." We could say that the form of the constitutional state of law constitutes a decision that is reborn every time from a synthesis in where no power can have the final word, but always and only a *penultimate* word.¹⁷ And yet we must decide. But how? In rights the form is the substance, that is, in contemporary legal systems all decisions are procedural, and "a juridical rule applies by virtue of the fact that it was created according to a decisive rule and only by it." (Kelsen 1966, 114).

¹⁷ Veca 2001; Häberle 2003.

Here lies an uncertainty principle which, of course, can be a *vulnus*—because it tends to make the decision asymptotic—but, also creates *the* possibility of democracy. The wish to procrastinate, fear of decisions (Heller 1987, 387 ff.), or “democratic iterations” (Benhabib 2006, 137 ff.)? Interpreting the rules is never, by its nature, a mere repetition of an 'original' meaning: and iteration consists in giving to the original—depending on contexts that are always new—a meaning that in its actualization, changes it; as well as, on the contrary, that meaning degenerates when “creative appropriations” of the original are exhausted and it loses legitimacy. If, therefore, the basic principles must be thought of as transcendent compared to the transient political majorities, on the other hand these political majorities transform those principles, “and integrate them into the process of formation of the democratic will, through argument, contestation, revision and rejection.”¹⁸

4. Philosophical Genealogies.

With regard to that goal, the famous opening words of Aristotle’s *Metaphysics*—that the human being is often thought of as originally incomplete, and “by nature desires to know”—gives a useful contradiction to our discussion. In fact, if on one side Human Dignity tends to define Man once and for all—according to an inviolable principle—on the other side, the way in which man sees the possibilities of the future as indefinitely open thanks to science, the fact that only man builds his “own” world such that he can be called a *Weltbilder* (Heidegger 1999, 350 ff.)—seems to imbue Human Dignity with an endless search for limits, a unique asymptotic definition. Finding the limits—now more than ever, in the era of techno-science applied to life—is necessary as a protection against ambiguous and threatening possibilities because, in its unpredictability, possibility is constantly revolutionizing life forms. *In this synergy*, the tendency to overreach and to simultaneously search for limits together constitute the problematic side of Human Dignity, the contradiction that makes it indeterminable.

4.1 In order to fully understand the thickness of the semantic concept of Human Dignity and its epochal transformation today, we must deal with conditions already provided in the Western ‘humanistic’ tradition. The above mentioned concerns take their origin from this tradition, inscribed in two classic strains of thought: *Protagoras* by Plato and *Oratio* by Pico. The human being is *defectivus* because he is completely undetermined in his power to be master of his nature¹⁹. In Pico’s story—which was inspired by Plato’s *Protagoras* and by *Symposium*, and which abandoned, for the first time in Modernity, the identification of dignity with the status of privilege—the human being is a homeless Adam, the only one among animated beings to not have any “quality”, or place, or face, or “prerogatives”, other than those that God as Epimetheus in *Protagoras* has, and has already

¹⁸ Benhabib 2006, 143 ff.; Luther 2006 ; Lieto 2013.

¹⁹ Pico della Mirandola, 1994; R. Marchesini (2002, 33); De Carolis (2004, 214).

distributed to all other living beings: “*Nec certam sedem, nec propriam faciem, nec munus ullum peculiar tibi dedimus .*” Thus the human being was forced to form himself experimentally; with nothing of his own, he was a common being destined by God to collect “everything he had individually assigned to others.” New Proteus, the human being, was able to sovereignly take the prerogatives anyway, building his own nature. But this 'built' human nature—unrestricted by any law or principal—what else is it if not technology?

4.2 In *De jure belli ac pacis* Grotius²⁰ explores the right of burial to *jus gentium*, but then—tracing the genealogy of the ‘ancients’—showed the definition given by Euripides in *Le Supplici*: the right of burial is “*the law of men.*” And if the ancients—in order to legitimize it—considered this right to be established by the gods, Grotius considered it easier to say that through this right, people affirm Man's superiority over all other beings, so as to make it seem unjust that his lifeless body becomes food for animals. But the unburied body would *in any case* violate human dignity; it is guarded by those who survive, because, as Ambrose says,²¹ “There is nothing higher than the duty to do good for those who are not in a position to repay.” An approach based on duty does not imply a 'humanist' position.²² A token act made on behalf of the body is not for his being-dead, but for what continues to live in him, still being, in his memory, a part of humanity. Vico—just like Grotius—joins the burial with the etymology of the verb *inhumare*, the root of “human things”, to civilization²³ according to those human ‘marks’, marriage and religion. It expresses through the funeral urns the belief of the human race in the immortality of the soul. And, to demonstrate

how great a human achievement the sepultures are, imagine a feral state where human corpses remain on the ground unburied as bait for crows and dogs; because certainly this beastly behavior could lead to uncultivated fields and deserted cities, and men, that like swine would be left to eat acorns, trapped in the rot of their dead relatives (Vico, 1953, § 337).

And, like Grotius, Vico speaks about the burial of the dead as *jus gentium*, a “sublime expression *foedera humani generis.*” For Vico therefore, compassion—or *pietas* that leads to the burial of the dead—took shape only after individuals had become sedentary and formed the family. The human being and his dignity began only *after* individuals came together in a society—once the legal capacity of coming to agreements had developed—and therefore does not relate to an ontological characteristic of the human.

4.3 As a large erratic boulder in the history of Western thought Baruch Spinoza appears, and taking his grounding from the Cartesian tradition, he cuts the knot of the “essence of man” (Spinoza, 1993, III, P. IX, Sc.). Contrary to the tradition, this essence shows no *fundamentum inconcussum*, and is

²⁰ See Grotius 1999, 435 ff.; McCrudden 1998, 658-9.

²¹ S. Ambrogio, *De Tobia*.

²² Rosen 2013, 127-129.

²³ Vico 1953, § 12; §§ 333, 337, 537; G. Vico, *De Uno*, c. CIV.

instead a simple *existence*, a goal to be achieved through the exercise of his own singular power recorded in his nature. In Spinoza therefore, we do not find “abstract notions or valid formula for Man in general. What matters - is only the power of each one” (Deleuze 2007, 58).

Indeed, “substance does not make the form of man” (Spinoza 1993, II PX). And in the *Preface* to the third part of *Ethics* he says peremptorily:

Most of those who have written about the affects, and men's way of living, seem to treat, not of natural things, which follow the common laws of Nature, but of things which are outside Nature. Indeed they seem to conceive man in Nature as a dominion within a dominion. For they believe that man disturbs, rather than follows, the order of Nature, that he has absolute power over his actions, and that he is determined only by himself. (Spinoza 1993, II PX).

That’s why the “essence of man” can only be existence, a life that is coming to its end by exercising its own unique power to act. And in the second part of *Ethics*, “*Nature and origins of the mind*,” he explained this title with the first, surprising definition, “By body I mean a mode which expresses in a certain determinate manner the essence of God, in so far as he is considered as an extended thing.” (Spinoza 1993, II, P. XIII). With this he breaks the hierarchy—between the unextended (Mind) which only he can know, and the extended (the Body) as a subordinated subject, including both of them *in the same way*.

4.3.1 In the ‘liberal’ tradition, from Descartes to Locke to Mill, the subject of law *has* a body, but *is not* a body, this way it is the absolute owner. It preserves this original duplicity in another form: the person is rational and fully human, and makes the irrational animal a substrate.²⁴ The body is a mechanism devoid of ethical dimension: what concerns him, can therefore be only an object of *dominium*, result of *ius utendi et abutendi*. Spinoza, instead—remaining at strict immanence level—restored dignity to corporeal matter: “The object of the idea constituting the human mind is the body, in other words a certain mode of extension which actually exists, and nothing else.” (Spinoza 1993 II, P. XIII). So there is perfect *synchrony* between the Mind and Body, to the point that we can say that,

...mind and body are one and the same thing, conceived first under the attribute of thought, secondly, under the attribute of extension. [...] the order of states of activity and passivity in our body is simultaneous in nature with the order of states of activity and passivity in the mind (Spinoza 1993, III, P.II, Sc.).

Against the Cartesian idea that man through the sublimation of the body can reach an absolute dominion over his passions, Spinoza shows the fundamental isomorphism between Mind and Body, thanks to which our knowledge of the world may become appropriate.

²⁴ Esposito 2007, 80 ff.

4.4 As we know, “in the kingdom of ends, everything has a price or a dignity” (Kant 1994.103): that which has a price can be replaced, while that which has no price—which has an end in itself, an intrinsic value—has *dignity*. The imperative that requires me to treat others with dignity—never as a means, but always as ends—implies good will, the only thing in the world, said Kant, that can be considered good “without limitations” (Kant 1994, 15). This will, however, *as good in itself*, is “not good for what it effects or accomplishes” (Kant 1994, 17). Certainly we claim our commitment to implementing it, but it “would still shine like a jewel for its own sake as something which has its full value in itself.” Beyond the useful and the useless, beyond any calculation, good will exists. And that ‘existing’ is essential.

4.4.1 In Section II of Kant's *Groundwork* (1994, 109) he stated that the rational nature is distinguished from the others because it puts an end to itself. But what is the nature of this end? For the good there is no 'object' of this end. In fact, Kant said, “*here the end should not be thought of as an end to happen, but as an end in itself, so only negatively, i.e., as an end against which you should never react.*” The end in itself becomes real when the other human is never just a tool of our action. When we respect a person as a subject of law, a human being towards whom we have absolute duties, then we attribute dignity. This must therefore be understood as the relationship with otherness in a form to which the other is irreducible to me: the end itself is this space that forms Human Dignity as inviolable. This because Kant considered dignity to be one of the ideals of Reason, which even without Plato's “creativity capacity” have a *practice* and serve as the foundation of the possibility of perfection of certain actions.

Moral concepts are not entirely pure concepts of reason, because they are grounded on something empirical (pleasure or displeasure). [...] and we have in us no other standard for our actions than the conduct of this divine human being, with which we can compare ourselves [...] These ideals, even though one may never concede them objective reality (existence), are nevertheless not to be regarded as mere figments of the brain; rather, they provide an indispensable standard for reason, which needs the concept of that which is entirely complete in its kind, in order to assess and measure the degree and the defects of what is incomplete. (Kant 1967, 463).

4.4.2 In the *Idea for a Universal History from a Cosmopolitan point of View* (Kant 1995 29ss.) Kant determined Reason as the specific gift of nature in Man tracing, however, absolute limits. If in fact it is “a faculty for extending the rules and purposes of the exercise of all its powers far beyond natural instinct; and it is illimitable in its plans,” these can nevertheless be achieved only through a long and slow process of learning and “*it would be necessary for each man to live and inordinate length of time,*” which of course he does not have, to “*learn how to make perfect use of his natural tendencies.*”

What makes any individual action worthy cannot be its perfection, an unattainable ideal. Man is “crooked wood” who can only steadily progress towards the better. In fact, to achieve its goals—concludes Kant—human nature would “require an incalculable series of generations.”

And it is to this end that every individual must aim his efforts - since otherwise the quality that nature has provided for him vanishes, leaving the suspicion that it has only “played a childish game with the man.” However within these limits it becomes evident that,

Nature does nothing superfluously [...] having given to Man reason, and freedom of will grounded upon reason, she had hereby sufficiently made known the purpose which governed her [...] Thus provided, he had no need for the guidance of instinct, or for knowledge and forethought created to his hand; for these he was to be indebted to himself (Kant 1995 31).

Nature obliges the human being, in his nakedness, to build his own ‘shelter,’ “and the whole superstructure of delights which add comfort and embellishment to life were to be the work of his own hands ... he should ever toil upwards from a condition utterly savage...” As if, concludes Kant agreeing with Pico, Nature’s purpose with Man was “that by a strenuous wrestling with those difficulties he might make himself worthy of living in pleasure.” (Kant 1995, 32).

4.4.3 The “nobility” of man is therefore in the *praxis* :according to Aristotle, not having external limits (*poiesis*) but keeping its end in itself, this reveals the divine part of man. Perhaps it is not a coincidence that in a passage of *the Doctrine of Virtue* entitled *On servility*, Kant outlines the specific difference between the two ‘kinds’ of humanity. As *homo phaenomenon*, “in the system of nature, man is a being of mediocre importance” (Kant 1991, 294). The intellect and actions that unite in him do not make the human being (Kant 1995, 294ss.), in his lonely animal nature, the *homo dignus*. So far, the individual shows an external value, linked to its ‘production’, for which he has a price in relation to his usefulness, being still only an object worth less than the general equivalent, considered the only eminent value, since the market allows you to exchange anything, and in this way become absolute master. This sovereignty of money and the market comes to an end just in front of the *person*: “*the homo noumenon* must be evaluated not only as a means for the purposes of others, but also as his own, and also as “a goal in and of itself,” and this breaks the mercantilist logic. That is why he possesses a dignity (an absolute inner value) which “impels him to procure distinction for himself amongst his fellows.” ((Kant 1995, 294).

4.4.4 How can there be a constriction in the realm of freedom? Because Kant says it is “constraining” (*abnöthigt*), to fix the relationship between individuals. In the *Groundwork for the Metaphysics of Morals* he firmly supports the distinction between law and morality—between laws that govern “just outside” actions and internal laws that instead “also claim to be the decisive causes of actions.”

However—in an apparently contradictory way—he declines the concept of dignity building an isomorphism between the outer forum (legal) and the internal (ethical) one, introducing man’s duty toward himself as an inborn judge of himself:

But the internal imputation of a deed, as a case falling under a law (in meritum aut demeritum), belongs to the faculty of judgment (*iudicium*) which, as the subjective principle of imputing and action, judges with

rightful force whether the action as a deed (an action coming under a law) has occurred or not. (Kant 1991, 298).

So in the model of *external*, legal constraint, Kant places an internal constraint that is also a self-constraint (Kant 1991, 228), but of a particular kind. Consciousness in fact is nothing to Kant but the awareness of having “a court of inner justice in front of which his thoughts accuse or exonerate each other.” Consciousness is a real authority (*Gewalt*) “which watches over him through the law, the man does not *produce* it (arbitrarily) himself, but it is embedded in his very being; it follows him like a shadow when he tries to run away from it” (Kant, 1991, 298). So even though—traditionally—the conscience is a “deal that man has with himself, he finds himself forced by his reason to act as if by an injunction *from another person*” (Kant, 1991, 299). Because, in fact, the same person cannot be both the accused and the judge; in order to judge his own actions, the individual will must imagine being a defendant, another person, different from a general man (i.e., *homo noumenon*) (Kant, 1991, 228)

...A human being who accuses and judges himself in conscience must think of a dual personality in himself, a doubled self which, on the one hand, has to stand trembling at the bar of a court that is yet entrusted to him, but which, on the other hand, itself administers the office of judge that it holds by innate authority. (Kant 1991, 299).

There is the abstract (rational) man, but next to him there is the particular man who is on trial before the Court for his sins, “as if it were a legal dispute before a court.”²⁵

4.4.5. Nine days before his death, Immanuel Kant was visited by his doctor. Although old, ill, and nearly blind, he rose and stood up, shaking with weakness, mumbling incomprehensible words. Eventually his faithful friend understood that he would not sit until the doctor himself sat down. After he did that Kant let himself be taken to his armchair observing: “*Das Gefühl für Humanität hat mich noch nicht verlassen*” (The sense of humanity has not yet left me).

Bibliography

- Abignente Angelo, Scamardella Francesca (a cura di) 2013, *Dignità della persona. Riconoscimento dei diritti nelle società multiculturali*, Napoli: Editoriale Scientifica.
- Adorno, Th. W. 2004 *Dialettica negativa* (1966), Torino: Einaudi.
- Agamben, Giorgio 1990, *La comunità che viene*, Torino: Einaudi.
- Anders, Günther 2003, *L'uomo è antiquato. 1. Considerazioni sull'anima nell'epoca della seconda rivoluzione industriale* (1956), Bollati Boringhieri: Torino.
- Andorno, Roberto 2001, <http://www.revistapersona.com.ar/Persona09/9Andorno.htm>

²⁵ Kant 1991, 299.

- Arendt, Hannah 1994, *Vita activa. La condizione umana* (1958), Milano: Bompiani.
- Arendt, Hannah 1995, *Che cos'è la politica ?* Milano: Edizioni di Comunità.
- Arendt, Hannah 2004, *Le origini del totalitarismo* (1948). Torino : Einaudi.
- Azzoni, Giampaolo 2012, "Dignità umana e diritto privato" in *Ragion pratica* 38 : 75-97.
- Becchi, Paolo. 2007 "Dignità umana". In Ulderico Pomarici (a cura di) *Filosofia del diritto. Concetti fondamentali*, Torino: Giappichelli, 153-181.
- Benhabib, Seyla, 2006, *I diritti degli altri. Stranieri, residenti, cittadini* (2004), Milano: Raffaello Cortina.
- Capograssi, Giuseppe. 1959a. *Il diritto dopo la catastrofe* (1950) in Giuseppe Capograssi, *Opere*. Vol. V, Milano: Giuffrè.
- Capograssi, Giuseppe 1959b, *Su alcuni bisogni dell'individuo contemporaneo* (1954/6) in Giuseppe Capograssi *Opere*, Vol. V, Milano: Giuffrè.
- Cappuccio, Massimiliano 2006 (a cura di), *Neurofenomenologia. Le scienze della mente e le sfide dell'esperienza cosciente*, Milano: Bruno Mondadori.
- Celano, Bruno, 2005, "Diritti fondamentali e poteri di determinazione nello Stato costituzionale di diritto", *Filosofia politica* XIX, 3: 427-441.
- Chomsky, Noam, Foucault, Michel 2005, *Della natura umana. Invariante biologico e potere politico*, Roma: DeriveApprodi.
- Ciaramelli, Fabio, 2013. *Dignità e unicità*. in Angelo Abignente, Francesca Scamardella 2013: 103-115.
- Dau, Francesca Romana, 2011, *Costituzionalismo e rappresentanza. Il caso del Sudafrica*. Milano: Giuffrè editore.
- De Carolis, Massimo 2004, *La vita nell'epoca della sua riproducibilità tecnica*, Torino: Bollati Boringhieri.
- Deleuze, Gilles, 2007, *Cosa può un corpo ? Lezioni su Spinoza*, Verona: ombre corte.
- Esposito, Roberto, *Terza persona*, Torino: Einaudi.
- Gallese, Vittorio, 2003, "La molteplice natura delle relazioni interpersonali: la ricerca di un comune meccanismo neurofisiologico" *Networks*, 2003 - didattica.uniroma2.it: 24-47.
- Gallese, Vittorio 2006, "Corpo vivo, simulazione incarnata e intersoggettività. Una prospettiva neurofenomenologica", in Cappuccio 2006: 293-326.
- Gallese, Vittorio 2010, http://www.tsm.tn.it/documenti/varie/20100428_Intervista_Morelli_Gallese.pdf
- Gallese, Vittorio. 2010. "Post-fazione", in Ugo Morelli (a cura di), *Mente e bellezza. Arte, creatività e innovazione*. Torino: Umberto Allemandi Editore.
- Gehlen, Arnold 2010, *L'uomo. La sua natura e il suo posto nel mondo*. (ed. or. 1940), Mimesis: Milano-Udine.
- Gradoni, Lorenzo 2015, "La spettacolarizzazione della lotta alla fame ovvero l'impotenza delle organizzazioni internazionali di fronte alla sfida della sicurezza alimentare mondiale", in: *Il futuro delle organizzazioni internazionali. Prospettive giuridiche / L'avenir des organisations internationales. Perspectives juridiques*. Napoli: Editoriale Scientific, 461-505.
- Grotius, Hugo 1999, *Le droit de la guerre et de la paix*, édité par D. Alland et S. Goyard-Fabre. Paris: PUF.
- Habermas, Jürgen 2002, *Il futuro della natura umana. I rischi di una genetica liberale* (2001). Torino: Einaudi.
- Habermas, Jürgen 2011, *Zur Verfassung Europas. Ein Essay*. Berlin: Suhrkamp Verlag.
- Häberle, Peter 2003, *La giurisdizione costituzionale nell'attuale fase di sviluppo dello statocostituzionale*. www.cortecostituzionale.it/documenti/interventi.../HaeberleRom.doc
- Hassemer, Winfried 2007, "Argomentazione con concetti fondamentali. L'esempio della DU", in *Ars interpretandi*: 57-70.

- Heidegger, Martin 1999, *Concetti fondamentali della metafisica. Mondo- finitezza - solitudine* (1983), Genova: il nuovo melangolo.
- Heller, Hermann 1987, "Osservazioni sulla problematica attuale della teoria dello Stato e del diritto" (1929), in *La sovranità e altri scritti sulla dottrina del diritto e dello Stato*. Milano: Giuffrè Editore.
- Hofmann, Hasso 1999, "La promessa della dignità umana. La dignità umana nella cultura giuridica tedesca". *Rivista internazionale di filosofia del diritto*: 620-649.
- Husserl, Edmund 2009, *Meditazioni cartesiane*, Milano: Bompiani.
- Iacoboni, Marco 2008, *I neuroni specchio. Come capiamo ciò che fanno gli altri*. Torino: Bollati Boringhieri.
- Kant, Immanuel 1967, *Critica della ragion pura* (1787). Torino: Utet.
- Kant, Immanuel 1991, *La metafisica dei costumi*. (1797). Roma-Bari: Editori Laterza.
- Kant, Immanuel 1994, *Fondazione della metafisica dei costumi*. A cura di Vittorio Mathieu. Milano : Rusconi Libri.
- Kant, Immanuel 1995, "Idea per una storia universale dal punto di vista cosmopolitico", in Immanuel Kant, *Scritti di storia, politica e diritto*, Roma-Bari: Laterza.
- Kaufmann, Arthur 2003, "Riflessioni per un fondamento ontologico dell'ermeneutica giuridica" (1982)., in A. Kaufmann, *Filosofia del diritto ed ermeneutica*, Milano: Giuffrè.
- Kelsen, Hans 1966, *Teoria generale del diritto e dello Stato* (ed. or. 1945), Milano: Etas Libri.
- Kelsen, Hans 1967, *Pure Theory of Law* (1952). Berkeley and Los Angeles: University of California Press.
- Kelsen, Hans 1975, *La dottrina pura del diritto* (1952), Torino: Einaudi.
- Kelsen Hans 1976, *Lineamenti di dottrina pura del diritto* (1937), Torino: Einaudi.
- Lepsius, Oliver 2006, "Human dignity and the Downing of Aircraft: The German Federal Constitutional Court Strikes Down a Prominent Anti-Terrorism Provision in the New Air-transport Security Act.", in *German Law Journal*. 7: 761-776.
- Lieto, Sara 2013, "Dignità e 'valore' tra etica, economia, diritto" in *Rassegna di diritto pubblico europeo* 12, 1: 163-194.
- Lollini, Andrea 2007, "La circolazione degli argomenti: metodo comparato e parametri interpretativi extra-sistemici nella giurisprudenza costituzionale sudafricana" in *Rivista di diritto pubblico comparato*, I: 479-523.
- Luther, Jörg 2006, *Dignità umana e ragionevolezza*. Alessandria: POLIS Working Papers 79.
- Marchesini, Roberto, 2002, *Post-human. Verso nuovi modelli di esistenza*. Torino: Bollati Boringhieri.
- McCrudden, Christopher 2008, "Human Dignity and Judicial Interpretation of Human Rights," in *The European Journal of International Law*, Vol. 19,4.
- McCrudden, Christopher 2013, "In Pursuit of Human Dignity.: An Introduction to Current Debates", in Ch. McCrudden (ed.), *Understanding Human Dignity*, Oxford: Oxford University Press,
- Neumann, U. 1984, "Zum Verhältnis von philosophischer und juristischer Hermeneutik", in A. Kaufmann (Hrsg), *Dimensionen der Hermeneutik; Arthur Kaufmann zum 60. Geburtstag*, Heidelberg: Decker & C.F. Muller.
- Nitrato Izzo, Valerio 2013, "Scelte tragiche e dignità umana: sulla giustificazione del rischio in situazioni estreme", 217-242, Napoli: Editoriale Scientifica.
- Pico della Mirandola, Giovanni 1994, *Oratio de hominis dignitate*, a cura di Eugenio Garin. Pordenone: Edizioni Studio Tesi
- Plessner, Helmuth 2006, *I gradi dell'organico e l'uomo. Introduzione all'antropologia filosofica* (1975). Torino: Bollati Boringhieri.
- Ricoeur, Paul 1990, *Sé come un altro*, Jaca Book: Milano.

- Rodotà, Stefano 1995, *Tecnologia e diritti*. Bologna: Il Mulino.
- Rosen, Michael 2013, *Dignità. Storia e significato* (2012), Torino: Codice edizioni.
- Schmitt, Carl. 1972. "I tre tipi di pensiero giuridico" (ed or. 1934), in *Le categorie del politico*, Bologna: Il Mulino.
- Schmitt, Carl 2004, "On Three Types of Juridic Thought"(1934), Westport: Praeger Publishers.
- Schmitt, Carl 2008 *La tirannia dei valori* (1960). Milano: Adelphi.
- Spaemann, Robert 1987. "Über den Begriff der Menschenwürde", in *Menschenrechte und Menschenwürde. Historische Voraussetzungen - säkulare Gestalt - christliches Verständnis*, Hrsgg. E. W. Böckenförde e R. Spaemann, Stuttgart : Klett-Cotta, 295-313.
- Spinoza, Baruch 1993. *Etica. Dimostrata con metodo geometrico*. (1677). A cura di Emilia Giancotti, Roma : Editori Riuniti
- Varela, Francisco 2006, "Neurofenomenologia. Un rimedio metodologico al 'problema difficile'" (1996), in Cappuccio 2006: 65-93.
- Veca, Salvatore 2001, *La penultima parola e altri enigmi*, Roma-Bari: Laterza.
- Vico, Giambattista 1953, "Principj di Scienza Nuova"(1744). In G. Vico, *Opere*, Milano-Napoli: Riccardo Ricciardi Editore.
- Waldenfels, Bernhard 2002, *Fenomenologia dell'estraneità*. Napoli: Vivarium.
- Waldron, Jeremy 2012, *Dignity, Rank, & Rights*. Ed. By Meir Dan Cohen, Oxford : Oxford University Press.

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