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HUMAN DIGNITY AS A STATUS VS. HUMAN DIGNITY AS A VALUE. A DOUBLE NATURE

abstract

My paper provides an analysis of two antithetical theories about the nature of human dignity: human dignity as a status, human dignity as a value. Strengths of the theories consist in having developed two relevant traits of human dignity, respectively: human dignity as an object of rights, human dignity as a ground of rights. Weaknesses of the theories consist in both having excluded one of the two elements. A third paradigm will be provided, which tries to explain human dignity both as a status and as a value.

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Purposes

My paper is intended to provide an analysis of two antithetical paradigms about the *nature* of human dignity, that Constitutions and Charters of Rights, European and non-European, have progressively treated as ground of rights, almost starting from the second half XX century. Two of the most important examples are the *Basic Law* for the Federal Republic of Germany, come into effect on 23rd May, 1949; and the *Charter of Fundamental Rights* of the European Union, come into effect on 1st December, 2009.

The paradigms are the conception of human dignity as a *status* and the conception of human dignity as a *value*.

I found an exemplification of these paradigms in the theories of two contemporary philosophers, respectively Jeremy Waldron (*1953), an American philosopher of law[1], and Herbert Spiegelberg (1904-1990), a German philosopher, who played a prominent role in the advancement of the phenomenological studies in the United States[2].

Strengths and weaknesses of human dignity as a *status* and human dignity as a *value* will be highlighted and a third paradigm will be provided. This last one tries to overcome the weaknesses of the previous theories, providing a conception of human dignity which explains it as characterized by a double nature, both as a *status* and as a *value*. An exemplification of this theory can be found in the works of Aurel Kolnai (1900-1973), a Hungarian philosopher, who studied ethics and axiology, influenced both by phenomenological tradition and by British analytic philosophy[3].

1.
Human Dignity as a Status

1.1. A Juridical Idea

Waldron argues that dignity is born as a *juridical idea*, as a *status*, tied up with *rank*, conferred to some individuals only, in virtue of their offices (Waldron 2009, 2). He points out that, in modern time, starting from Kant, the concept has changed its *nature*: it turns into a *moral idea*, conceived as an *intrinsic worth*, recognized to *every single* human being, in virtue of their *humanity*. According to Waldron the thesis that human dignity is an intrinsic worth is

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1   See Waldron (2009). Waldron is Professor at the New York University School of Law.
2   See Spiegelberg (1971). Spiegelberg studied at the universities of Heidelberg, Freiburg, and Munich. In Freiburg he met Edmund Husserl, who influenced the prosecution of his studies. Spiegelberg's doctoral dissertation was written under the direction of the phenomenologist Alexander Pfänder and was titled Gesetz und Sittengesetz. Spiegelberg applied the phenomenological method to the analysis of law and morality, promoting an "ontological deontology".
3   See Kolnai (1976).

wrong: the concept of human dignity has a *legal* recognition and *no need of an underlying moral dignity* is required (Waldron 2009, 9).

Placed as ground of human rights, the term "dignity" has changed in extension, but not in intension: it still denotes a *status*, assigned no longer to some individuals only but to everyone (Waldron 2009, 28-29).

It expresses the idea of a high-ranking *status*, comparable to a rank of nobility – assigned now *equally* to every person (Waldron 2009, 12).

1.2. General Rules vs. Particular Rules

Explaining human dignity as a *status*, Waldron makes a distinction. He says:

> *If human dignity is regarded as a status, there remains a duality between general norms establishing that status and particular norms like those that prohibit degradation (Waldron 2009, 6).*

Waldron distinguishes between *general norms* and *particular norms*: general rules *create* human dignity *status*; particular rules *protect* that *status* (Waldron 2009, 7).

Some of particular rules are *affirmative*; some are *negative.*

An example of the affirmative ones is the controversial provision of the Universal Declaration of Human Rights, which says that "everyone who works has the right to just and favourable remuneration ensuring for him and his family an existence worthy of human dignity" (*Universal Declaration of Human Rights*, Article 23 (3))[4].

An example of the negative ones is the *ban* on degrading treatment.

According to Waldron both kinds of particular rules are important, but they do not exhaust the *status* of human dignity, *established* by general norms, which carries many other rights and duties (Waldron 2009, 6-7).

In my opinion Waldron's *general norms* can be treated as Searle's *constitutive rules*[5]: Waldron's account of human dignity as a *status*, something *created* by norms, is in agreement with Searle's thesis that human rights are *deontic powers* deriving from an assigned *status* (Searle 2010, 176).

1.3. Status vs. Intrinsice Worth

Explaining human dignity as a *status*, Waldron gives an answer to Jeremy Bentham's objection that the reasoning supporting the justification for rights is *incoherent.*

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4   John Searle highlights the controversial character of positive rights: "Against whom exactly does one have all these rights?" (Searle 2010, 184).

5   About the concept of constitutive rules, see Searle (1969, 1995, 2010).

Bentham refers to *freedom*, but the same objection may work for *human dignity*, as Waldron says: the defenders of rights cite freedom or human dignity as the ground of their demands; but freedom or human dignity, which are cited as the *existent ground* of rights, are also *what is demanded*[6]. The subject of objection is interchangeable, it depends on what is specified both as ground of rights and as right demanded: freedom, in Bentham's theory; human dignity, in Waldron's theory.

According to Waldron the objection of incoherence is dispelled if human dignity is treated not as an *intrinsic worth*, as Bentham does with freedom, but as a *status*. Conceived as a *status*, human dignity can be treated both as an *existent ground* and as a *right demanded*: a *status*, something *accorded*, can be *violated* and, at the same time, *demanded*; conversely, an *intrinsic worth*, something *inherent*, cannot be violated nor demanded (Waldron 2009, 5). Waldron's distinction between human dignity as a *right* and human dignity as a *ground* of rights is linked with Waldron's distinction between general rules and particular rules: *general rules* establish the general *status* of human dignity, which provides the *ground* of rights; *particular rules* specify the general *status*, concretizing it in an *object* of rights.

Waldron agrees on Bentham's refusal of natural rights. Nevertheless, contrary to Bentham, who bars freedom from the feature of existence in reason of his refusal of natural rights, Waldron is allowed to assign an existence to human dignity explaining it as *status*. Waldron agrees with Bentham on the fact that something as an intrinsic worth does not exist, but he says that human dignity exists as a *status*, while Bentham does not actually consider "status" as something existent.

Waldron's analyses are in agreement upon those of John Searle, who states that, once we get clear about the ontological status of a juridical entity, its existence ceases to be mysterious (Searle 2010, 176).

1.4. An Objection to Waldron's Thesis

My objection to Waldron is that while he can grant human dignity an existence as an object of rights, he cannot justify it as a ground of rights. He adopts the concept of *status* both for granting human dignity an existence as an object of rights, and for justifying it as a ground of rights. But while the concept of *status* is a necessary condition to grant human dignity an existence as an object of rights, the same concept is neither a sufficient nor a necessary condition to justify human dignity as a ground of rights.

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6   "Men ought to be free because they are free, even though they are not" is the reasoning of defenders of rights, called by Bentham "absurd and miserable non-sense" (Bentham 1987, 50).

Waldron's distinction between *general rules* and *particular rules* does not overcome Bentham's objection: the *general status* quoted by Waldron as an the *existent* ground for rights is *also* what is *demanded.* Waldron's distinction between *object* of rights and *ground* of rights means, at most, that rights are being put forward as *self-justifying.*

According to Bentham, the accusation of incoherence is grounded on the fact that human rights *do not have* an *independent justification.* He says about freedom: "It is from beginning to end so much flat assertion: it neither has anything to do with reason nor will endure the mention of it. It lays down as a fundamental and inviolable principle whatever is in dispute" (Bentham 1987, 74).

The same objection of incoherence is raised by Max Scheler to Kantian foundation of ethics: this last one is incoherent since it does not provide an independent basis for justification of duties[7].

I argue that a necessary condition to grant human dignity an existence as a ground of rights is to consider it not only as a *status*, but also as a *value.*

Searle states that we can grant an existence to human rights trough a *status* and, then, justify human rights considering a *conception* of *human nature*[8].

In my opinion his approach is faulty since he does not consider that granting human dignity an existence as a ground of rights requires, firstly, to consider it as a *value.*

The thesis according to that human dignity can be explained as a *value* is argued by Herbert Spiegelberg.

2. Human Dignity as a Value

2.1. Potential of Linguistic Phenomenology

Herbert Spiegelberg agrees with Waldron upon the fact that human dignity is something that Charters of Rights recognize *equally* to every single human being, but in addition he states the opposite thesis that human dignity is an *intrinsic worth.*

He argues his thesis applying the method of *linguistic phenomenology*, a method of analysis of concepts, shared by the analytic philosopher John Langshaw Austin and the phenomenologist Alexander Pfänder[9].

Spiegelberg highlights the potential of a linguistic phenomenology.

This phenomenology consists in a linguistic analysis of the ordinary meanings, that provides the indispensable and preliminary means to access to the phenomena, not yet the direct study of the phenomena themselves. Language furnishes the means to direct our attention to the facts which

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7   According to Scheler, an independent basis for justification of duties is given by values, not by the form of a moral law, as Kant argues. See Scheler (1916).

8   A conception of human nature is "a conception of what is valuable, actually or potentially, about our very existence" (Searle 2010, 190).

9   See Spiegelberg (1981).

constitute our experience, which, without it, we would tend to overlook (Spiegelberg 1981, 84).

Moreover, linguistic phenomenology allows to remove the inconsistencies of our everyday talk about concepts (Spiegelberg 1971, 189).

Applying linguistic phenomenology, Spiegelberg introduces some relevant distinctions.

2.2. Something Inherent and Something to be Achieved

Firstly, Spiegelberg distinguishes between three different meanings we use to confuse in ordinary talk:

1. Dignity *itself*;
2. *Expression* of such dignity in the behaviour;
3. *Recognition* of both by outsiders.

Differently from Waldron, Spiegelberg argues that calling human dignity *inherent* and yet something to be *achieved* is not inconsistent, because we *mean* two different things. In the first case we mean something which man do not need and cannot "strive for"; in the second case we mean two possible things, both the *manifestation* of the inherent dignity by the attitude of its owner and the *recognition* of inherent dignity by its erstwhile deniers (Spiegelberg 1971, 189-190).

Moreover, Spiegelberg distinguishes between:

1. Dignity *itself*;
4.   *Claims* issuing from dignity.

He argues that talking about human dignity as *unassailable* and yet as *violated* is not inconsistent, since we still mean two different things: in the first case we mean that in an ultimate sense human dignity cannot be destroyed by any attacks; in the second case we mean that violations are in conflict with human dignity since they do not fulfill the *claim* to respect issuing from it (Spiegelberg 1971, 190).

2.3. Intrinsic Worth and Worthiness of Respect

Spiegelberg investigates the distinction between (1.) and (4.), noticing that, in ordinary talk, there are two special connotational definitions of the term "human dignity":

1. Human dignity as *intrinsic worth*,

5.   Human dignity as *worthiness of respect*.

Human dignity as *intrinsic worth* means *inner, self-sufficient* worth of beings by themselves, which does not call for any outside complement.

Human dignity as *worthiness of respect* means an attitude that demands a *complement*: in virtue of *worthiness of respect* human beings have something like a *claim* to attention, approval, support, and they call for the *fulfilment* of a claim.

While human dignity as intrinsic worth is a matter of mere *contemplation*, human dignity as worthiness of respect *calls for action.*

Anyway, it is in virtue of the first sense of dignity, that human beings are worthy of respect: the intrinsic worth provides the *ground* for the *claim* to respect and for its *fulfilment*, through *rights* (Spiegelberg 1971, 192-193).

In this way Spiegelberg can explain human dignity as a *ground* of rights: human dignity is a ground of rights as much as it is a *value* that provides the ground for *worthiness* of respect and for its *concretization*, through rights. Spiegelberg also distinguishes between:

4.   *claims;*
6.   *rights.*

A claim is the *act* directed toward obtaining certain things due to the individual *regardless* of all artificial regulations.

Rights are the *instruments* that give the possibility of *doing* something (Spiegelberg 1939, 347).

2.4. An Objection to Spiegelberg

Differently from Waldron, Spiegelberg gives an account of human dignity as a ground of rights, but he does not explain human dignity as an object of rights. He suggests that one of the best approaches to concretely see human dignity is to start from the experience of *indignation* at the *indignities* suffered by human beings in concrete situations and to ask what revolt us most in what they have to undergo (Spiegelberg 1971, 195).

This approach allows to face the concrete situations out of which the outcry for human dignity was born, such as: being tortured and forced to make confessions; being segregated because of skin color or other native racial characteristics; being packed into overcrowded prison cells.

But this approach does not explain human dignity as an object of rights yet. Spiegelberg cannot explain human dignity as an object of rights, since he considers human dignity as an intrinsic worth only, but not as a *status.*

**3.
Human Dignity:
A Double Nature**

3.1. Strengths and Weaknesses of Previous Paradigms

The theories of Waldron and Spiegelberg point out two different traits of human dignity: human dignity as a *status* and human dignity as a *value.*
I found out two strengths in Waldron's theory:

> 1.   Contrary to Bentham, who bars freedom from the feature of existence in reason of his refusal of natural rights, Waldron grants human dignity an *existence.* Waldron agrees on Bentham's refusal of natural rights, but he is anyway allowed to assign an existence to human dignity explaining it as a *status.*

> 2.   The definition of human dignity as a *status* allows to grant human dignity an existence in *law,* to concretize it as an *object* of rights, to *define* its content. This allows to overcome the problem of vagueness, typical of a *general clause*, such as human dignity, and to satisfy *rule of law* principle.

The weakness of Waldron's theory is that while it can grant human dignity an existence as an *object* of rights, it cannot explain human dignity as a *ground* of rights.
Being unable to explain human dignity as a ground of rights, the theory does not provide the necessary condition that ensures to the system of rights full *normativity,* the *justification* for rights existence and for their respect.
On the other hand, I found out these two strengths in Spiegelberg's theory:

> 1.   It can explain human dignity both as a *ground* of rights and as *a claim*, thanks to the potential of a phenomenological analysis of language, which shows two relevant traits of human dignity: human dignity as a *value* and human dignity as a *worthiness of respect.*

> 2.   Providing an account of human dignity as a *ground* of rights, Spiegelberg's theory provides the necessary condition to ensure for the system of rights full *normativity.*

Weakness of Spiegelberg's theory is that it does not provide an account of human dignity as a *status.* In this way, it cannot provide the necessary condition to ensure to human dignity an *existence* in *law,* a *determined* content, in order to satisfy *rule of law* principle.
I argue for an integration of Waldron's theory and Spiegelberg's theory is

possible. It tries to explain human dignity as characterized by a *double* nature, both as a *status* and as a *value*, in order to ensure both rule of law principle and normativity.

An exemplification of this paradigm can be found in the analysis of Aurel Kolnai.

3.2. Kolnai's Account: Both a Status and a Value

Kolnai argues that human dignity can be considered both as an *ascriptive* concept and as a *descriptive* concept.

It can be treated as an ascriptive concept, since it is something we *ascribe* to the person. As *ascriptive* human dignity is a *status* (Kolnai 1976, 258).

It can be treated as a *descriptive* concept, since we regard it as an inchoate *quasi*-quality, we ascribe to the person *as such*, independently of its distinctive qualities, modes of bearing, mental levels and attitudes, which can be *impaired* and *destroyed*, temporarily or irreversibly. Differently from the other qualities, such as dignity only, human dignity is not a matter of more or less, not a matter of virtue, and it "seems to be something 'inalienable'" (Kolnai 1976, 258). It is simply regarded as "the *basic quality of being-a-person*" (Kolnai 1976, 259)[10], thus it *demands* respect (Kolnai 1976, 258).

It "seems to be something 'inalienable'" like a right, but not in the same manner (Kolnai 1976, 258). Whereas rights can be *disregarded*, *negated*, *violated* or *suppressed*, human dignity can be *impaired*. Nevertheless it can be impaired not *as a quality*, but as the correspondent *claim*. Since the claim to *respect* can be impaired, human dignity has to be protected as an *object* of rights (Kolnai 1976, 258-259).

So, according to Kolnai, human dignity has a *double nature*: it is "a kind of half-way house between a set of *prescriptive claims* and the *basic quality* of being-a-person", a "semi-fictitious, semi-real status *'ascribed'* to the person *as such*" (Kolnai 1976, 259)[11].

It has both the nature of a *status* and the nature of a *value*: as a *status* it has *ascribed* and *prescribed* as an *object* of rights; as a *value* it is recognized as the *basic quality of being-a-person*, *ground* of rights, which is to be specified in an *object* of rights.

As last analysis, human dignity is something *ascribed* to the person *as much as* it is *recognized* as the *basic quality of being-a-person*: "human rights are specified rules for other people's conduct towards a person, *grounded in* human dignity" (Kolnai 1976, 259)[12].

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10   Emphasis added.
11   Emphasis added.
12   Emphasis added.

3.3. Conclusion

In conclusion, my work tried to develop an explanation of human dignity as characterized by a double nature, both as a *status* and as a *value*.

This is a possible way to explain human dignity both as an object of rights and as a ground of rights, as it is treated by the Charters of Rights, and to ensure to the system of rights both rule of law and normativity.

Nevertheless, the question concerning the relationship between a *status* and a *value* remains open: is human dignity reducible to the totality of rules, which *constitute* it as a *status*, providing the conditions for its existence in legal systems; or does a *concept* of human dignity as a *value*, preexisting to these rules, exist?

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