

REGARDING DIGNITY

By Eligio Resta

When dignity enters the regulatory scene, it has already a long story behind itself that has made it a wide semantic field from the very beginning. From ancient philosophy to modern thinking, from epics to ethics, from politics to religion – no analysis has ever done without referring, albeit indirectly, to *dignity*.

Why it has become the great narration of Constitutions, Declarations and supranational Conventions is a daunting question that is impacted by numberless historical and cultural factors. One may argue that the pivotal role taken on by dignity from the second half of the past century onwards has to do directly with other cultural unifiers such as humanity, individuals' fundamental rights and – last but not least – brotherhood. That an unbreakable link exists between dignity and the notion of human community is narrated by the major regulatory instruments that were enacted one after the other in the aftermath of WWII. Dignity also mirrors the self-observation of the human community – a community that is human rather than merely national. It is through dignity that the fundamental shift takes place from being a citizen to being a human person and belonging to a community.

Testimony to this story, which resulted ultimately into replacing 19th century equality, is borne by the deep reflections that underlie major instruments such as the Preamble to the UN Charter and, above all, to the Universal Declaration of Human Rights of December 1948. Having said “never more” to the barbaric violence of war and its holocausts, it mentions the “mindness” of belonging to the human community as “the recognition of the inherent dignity of all members of the human family and of their rights” – which “is the foundation of freedom, justice and peace in the world.” An explicit equation is made: it “is” the foundation.¹ Barbarism arises immedi-

1 Translator's note: The Italian wording could not be translated literally into English as the English text of the Declaration does not use the verb “constitute”.

ately dignity is violated; it is no chance that Article 1 refers to the inviolability of the dignity of all human beings, which goes hand in hand – on a far from secondary level – with the statement that they “should act towards one another in a spirit of brotherhood.” Dignity is the in-depth link between the human community and the negation of the wild powers that give rise to barbarism and aberrations. Dignity does not include any longer only the right not to be subjected to suffering and humiliations, as it also entails “the right to recognition as a person”.²

The social and cultural, therefore “political”, awareness of dignity is grounded in the recognition that “being persons” and “mankind” do not necessarily coincide – exactly like the chasm opening between “being brothers” and “brotherhood”. Indeed, it is in mankind that barbarism arises; still, it is only in mankind that remedies can be found. The performative nature of the “right to dignity” conjures up this key assumption: it is everyone’s duty to recognize and protect everyone’s dignity. It is no chance that the public sphere comes into play, in particular those public powers that may only be legitimated if they pursue the objective of recognizing and protecting the dignity of all human beings – not just “citizens”. Article 1 of the 1949 German Constitution lays down the principle that “human dignity is inviolable” and then goes on to add that “respecting and protecting it is the duty of all State’s authorities.” No less incisive than the German *Grundgesetz* is the provision contained in Article 3 of the Italian Constitution, which refers to the equal *social dignity* of every individual and places an obligation on the Republic to do away with all factual obstacles that impede its development. This is translated into the provision of Article 36, which is meant to ensure a *free and dignified* existence to workers thanks to their wages. The whole framework of fundamental rights in constitutional charters lets one glimpse the overall pattern of the legal and political definition of human dignity – from self-determination to the ban on discrimination, up to liberty and equality. This same pattern can be easily described

2 Translator’s note: The Italian wording is not translatable in English as no reflexive verb is used in the English text of the Declaration.

in the 2009 Treaty of Lisbon, which takes up the legacy of the Charter and defines human dignity as intangible and inviolable. Legal instruments tellingly reveal the huge challenge the law has to take up in order to release individuals from the slavery of need. E. Bloch had recalled this in his work on *Natural law and human dignity*; the same had done H. Arendt with her well-known reference to the right to have rights, and also S. Rodotà.

By the way, the Constitutional juridification of human dignity cuts short with the emptily academic dispute on whether it is “natural law”, which remains the province of ethical and political discussions. It is known that, freed from its ideological undercurrents, natural law is made up of the values that are grounded in the experience of communities. This is the case of dignity, which cannot but be recognized as the foundation of itself. Thus, it is neither an intellectual trend, nor an ideology, as it is rather an imperative: the norm does not *mean* anything, because the norm *is* the meaning – to quote Hans Kelsen.

Thus, recognition and protection are the words used in legal texts; it is no chance that protection goes hand in hand with the “declarative” form of recognition. Recognising can be traced back to a dimension that already exists in human nature, in the fact of existing, being part of the human community: of this the law merely takes note as if it were a sort of notarial deed. Conversely, protection postulates violation along with the commitment by those in power to restore the contents of such protection. Ultimately, the legal notions of recognition and protection – which are related to different semantic fields – are the focus of all major dilemmas in the philosophical disputes on dignity. The imperative norm is the synthesis of those notions, to be fleshed up by courts – as is currently the case.

First and foremost, the issue is settled as to whether dignity is grounded in human rights or it is the other way round - whether human rights are grounded in dignity. It is most of all in the concept of a right to dignity that all the semantic variants of dignity can be

summed up. Dignity has been referred to as a virtue to be learned; a gift or a privilege to be acquired; a task or an obligation to be fulfilled; an inherent quality or the legitimation for the holding of rights. Once again, these are frivolous disputes, in which the concept of dignity as the sum of fundamental rights is set against the notion of dignity as a prerequisite. Law is not free to choose one meaning over the remaining ones; the norms where it is set forth would not be such – that is, they would be neither universal nor general. All the dichotomies that have featured in the century-old philosophical discussion of dignity remain fully viable – is it an attribute or an acquisition; a (natural) gift or an objective to be achieved; a statutory or a subjective principle, which only takes shape from the entities it is factually to be recognized in; is it a container or – conversely – a specific content? At all events, human dignity is the vindication of the self-recognition as a human person vis-à-vis the powers that unrelentingly violate it. Its empirical benchmark may change, its factual dimension may vary – still, there remains unchanged the notion of a human community to be designed in such a way that the least privileged have the right to the recognition and protection of equal dignity, and therefore to be part, on an equal footing, of mankind as a “human family” – from time to time, never once and for all. The least privileged are those that happen to be, given the specific historical circumstances, in a situation imposed by the violence and humiliation practiced by the wild powers on the “naked life” of individuals who are living beings rather than simply “citizens”.