

Anastasija Jumakova

University of Latvia
e-mail: anastasija.jumakova@gmail.com

ORCID 0000-0003-4683-5188

DOI: 10.15290/mhi.2019.18.02.03

Historical preconditions for the development of “the right to a personal identity” in Western philosophy

ABSTRACT

Any discussion on a person's right to identity ought to start with a study of the content of a person's identity. While ascertaining the essence of a person's identity, the author was inclined to think that the development of a personal identity as a permanent concept was promoted by the genesis of the human dignity, individuality, autonomy and personality of a person. It is human dignity, the manifestation of which, inter alia, is to be found in the person's identity, which forms the basis of its legal protection, transforming the identity of a person into legal value and, accordingly, creating the right of a person to identity. Thus the article provides a legally philosophical insight into the historical circumstances in which the concept of personal identity arose, and that are essential for a comprehensive modern understanding of the concept.

Key words: Right to personal identity, personal identity, philosophy, human dignity, personal autonomy

Introduction

The already complex concept “a personal identity” in fact consists of two concepts – the term “a person” or a related term such as “a personality”, as well as “an identity”. Furthermore, each of these concepts is to be viewed in a major separate study, which is not the purpose of this article, so for the sake

of clarification of the author's position, these concepts will only be sketched according to the basic question of the article.

Namely, the term "person" is to be understood as a being that has certain abilities or qualities, such as consciousness or self-esteem or morality, and is part of a socially related cultural form. Personality defining traits, and thus the circumstances that make a social being a person, vary widely across cultures and contexts.¹

The term "personality", on the other hand, reflects a person's system of qualities, and forms the structure of a human being, and is considered to be the quality of the individual that he or she obtains through impartial action, and characterizes the social aspects of his or her life.²

The concept "identity" presented in the article is a product of relatively modern ideology. It was first defined only in the 1930s in the context of psychoanalysis, when the psychologist Erik Homburger Erikson (1902–1994) developed the theory of identity while studying the development and integration of the individual as a person.³

Determining reference points

Despite the fact that the term "personal identity" was defined only in the 20th century, it can be distinguished in almost all of human history, even though only as an idea. In addition, the author defends the view that an important role in the development of the concept was played by the genesis of related concepts such as human dignity, personal individuality, personality, as well as personal autonomy. Therefore, the excursus into the process of developing the concept of "a personal identity" should begin with clarifying the author's position on concepts such as "human dignity" and "personal autonomy".

As to the concept of human dignity, the legal literature holds that it has two aspects. On the one hand, it is viewed as one of the circumstances justifying fundamental rights, and, on the other hand, as a subjective right. The recognition of a person as a value is the basis nowadays of understanding democratic rights.⁴

Human dignity is a legal category that combines the social and biological elements of personality. It is human dignity that determines a person's existence and distinguishes him or her from other individuals. Human dignity is

¹ M. Carrithers, S. Collins, S. Lukes *The category of the person: Anthropology, philosophy, history*, Cambridge University Press, 1985, p. 15.

² *Terminu un svešvārdu skaidrojošā vārdnīca*, Autoru kolektīvs Valentīnas Skujiņas vadībā, Zvaigzne ABC, 2000.

³ E. Homburger, *Erikson Identity: Youth and Crisis*, Norton, 1968, p. 225.

⁴ В. Никитяева, *Достоинство личности – основополагающий признак социального государства*, Available at: <https://cyberleninka.ru/article/n/dostoinstvo-lichnosti-osnovopolagayuschiy-priznak-sotsialnogo-gosudarstva.pdf> (18.10.2019).

a category that defines a sense of the common action of a state, the person, and other individuals.⁵

Human dignity as a criterion that justifies human rights in general has a very long history. It is interesting that the philosophical understanding of human dignity, which is partly already mentioned in the ancient world, enters Western philosophy with Christianity, and was advanced into the modern concept by the German philosopher Immanuel Kant (1724-1804). Nonetheless it was reflected by international and national laws only after the end of World War II.⁶ It is only relatively recently that human dignity has begun to play a central role in international law. The concept of human dignity did not yet figure as a concept of rights in either the classic 18th century declarations of human rights or the codifications of the 19th century.⁷ The main UN document,⁸ which forms a link between human rights and human dignity, was clearly a response to the crimes and murders of the Nazis.⁹ But that does not mean that human dignity is complementing the idea of human rights with a moral burden only because of its historical links to the Holocaust?¹⁰

To answer this question, the outstanding German philosopher and legal scientist Jürgen Habermas argues that, contrary to the idea that human dignity was linked to the concept of human rights quite late, a close link between these concepts, although indirectly, had existed ever since the beginning – human dignity is not a classifying expression, but rather the moral beginning of fundamental rights (German: *Grundrechte*).¹¹

Similarly, the concept of personal identity is to be viewed in the context of the concept of personal autonomy, that is to say, the free will of man that has been the basic axiom of Western philosophy since the Enlightenment and which underpins the modern understanding of law and state.¹²

⁵ Д. Плетенёв, Е. Стаханова *Достоинство личности*, Available at: www.law.bsu.by/pub/26/Plete-nev_9.pdf (18.10.2019).

⁶ J. Habermas *The Concept of Human Dignity and the Realistic Utopia of Human rights*, In *Философия в диалоге культур. Всемирный день философии. Материалы*, Прогресс-Традиция 2010, p. 31.

⁷ Ch. McCrudden, *Human Dignity and Judicial Interpretation of Human Rights*, “The European Journal of International Law” 2008, Vol. 19, p. 655-724.

⁸ The preamble and 1st Article of the UN Universal Declaration of Human Rights states that all members of the human family reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person, and proclaims that all humans are born free and equal in dignity and rights. See.: Universal Declaration of Human Rights. Available at: https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/lat.pdf (18.10.2019).

⁹ Ю. Хабермас. *Расколотый Запад*, Весь мир, 2008, p. 148.

¹⁰ J. Habermas, *The Concept of Human Dignity and the Realistic Utopia of Human rights*, [in:] *Философия в диалоге культур. Всемирный день философии. Материалы*, Прогресс-Традиция, 2010, p. 31.

¹¹ Ibidem, p. 32.

¹² E. Levits, *Cilvēktiesības un valsts drošība: aktuālās problēmas privātās dzīves aizsardzības jomā Eiropā tiesu spriedumu gaismā: Eiropas Savienība un tiesiska valsts: Latvijas pieredze*, Rīgas Juridiskā augstskola, 2009, p. 17.

According to the author, the most effective definition of personal autonomy can be found in rulings of the European Court of Human Rights (ECHR). For instance, as recognized by the ECHR, personal autonomy is linked to human dignity and freedom, and is of a dual nature. On the one hand, it is a fundamental principle, alongside human dignity and freedom, and is necessary to identify a specific catalogue of rights.¹³ This is illustrated, for example, by the ECHR's finding in *Pretty v. United Kingdom*: “the concept of personal autonomy is an essential principle to be taken into account when interpreting protected values”.¹⁴ On the other hand, the ECHR tends to classify personal autonomy as an autonomous right deriving from an expanded interpretation of human dignity and freedom.¹⁵

Summarizing the findings of the ECHR, it can be concluded that although the notion of the “self-determination of an individual” is essentially similar to the notion of personal autonomy, no sign of equality can be placed between them. Personal autonomy should be understood as the ability of a person to determine or even live his or her life according to his or her wishes and choices.¹⁶

The provided reference points in relation to a person's identity are interrelated and not to be studied in isolation. However, the relationship between these concepts is not merely a feature or side effect of law. In fact, the symbiosis of human dignity, personal individuality, autonomy and identity is a historical phenomenon. Therefore, in the following, it will be necessary to look at all the above -mentioned concepts, and the history of their symbiosis.

Genesis of related concepts

First of all, it should be mentioned that initially we should only talk about the idea of human dignity, which is the origin of the above-mentioned concepts both by content and in time. Namely, the idea of human dignity came from the moment when one began to realize his existence in nature and in interaction with other individuals in society. Some legal philosophers and historians tend to associate the beginning of human dignity with the ancient world, specifically with the understanding of ancient Greek and ancient Roman philosophers of law (7th–5th centuries B.C.).¹⁷

¹³ Ch. McCrudden, *Human Dignity and Judicial Interpretation of Human Rights*, p. 681.

¹⁴ ECHR rulling 2346/02 *Pretty v. United Kingdom*, para, p. 61.

¹⁵ N. Koffeman, (*The right to*) *personal autonomy in the case law of the European Court of Human Rights*, Leiden 2010, p. 55.

¹⁶ ECHR rulling 2346/02 *Pretty v. United Kingdom*, para., p. 62.

¹⁷ For example, see: Ch. McCrudden *Human Dignity and Judicial Interpretation of Human Rights*, p. 655-724, as well as: А.Н. Кокотов, *Достоинство человека в ретроспективе философско-правовой мысли*, [in:] *Конституционное право России*, ред. А.Н. Кокотов, М.И. Кукушкин, Норма, 2003, p. 115.

It should be noted that in the ancient world mainly the concept of honor was studied, namely, the concept of honour and honour as a concept of morality and ethics had developed earlier than the

However, in the author's view, it is the Bible that should be referred to as the conceptual point of reference of human dignity as it reflects the premise

concept of human dignity. One of the first who spoke of honour was Homer, stating that everyone (god or man) has *timē* (ancient Greek: *τιμή* – honour), hence the protection of individual rights.

See: A. Preus, *Historical Dictionary of Ancient Greek Philosophy*, Scarecrow Press, 2007, p. 292, as well as: *История политических и правовых учений. Учебник для вузов*, под общ. ред. В.С. Нерсесянца, Норма, 2003, p. 42.

The idea of human dignity or rather a certain description of honour can be seen in Hessian's poem "Works and Days", specifically the rules of moral life in a politically organized society. For example, one of the hallmarks of a respected man is his desire to work. The poem also contains a call for respect for a non-national, as well as a link between the dignity or loss of dignity of the king and the consequences it has for the people.

See: С. Дробышевский, Т. Протопопова, *Идея человеческого достоинства в политико-юридических доктринах и праве: монография*, ИПК СФУ, 2009, p. 9.

In ancient Greece, the term "honour" was associated with morality and rights, human dignity, and on the other hand, with justice. For example, Plato believed that honour was inextricably linked to rights, so that loss of honour also meant loss of rights; honour meant striving for the ideal, to "follow the best and improve the worst."

See: Платон, *Диалоги*, Мысль, 1986, p. 75.

Political scientist Aristotle defined honour as the science of the highest good of man and of the state; its purpose is the well-being of man and politics. In his works, especially in "Nicomah's Ethics", Aristotle considered honour to be of the highest good, while at the same time he understood a respectable person to be a virtuous person, capable of moderately accepting everything – poverty or wealth, success or failure, etc. Thus, the role of honour and dishonour in every person's life was emphasized.

See: Aristotelis, *Nikomaha ētika*, Zvaigzne, 1985, p. 56.

The various forms of honour and respect expressed by the ancient Greeks were also perceived by the Romans, and this is most evident in the two basic political directions of Ancient Rome: Stoicism and Epicureanism. It was united by a common theoretical understanding that dignified life consists of acting according to nature, yet human behaviour according to it was understood differently by Stoics and Epicureans. According to Roman Stoics, an honourable life means serving a country that is a community of individuals. One has to learn a profession, start a family, and try to help one's loved ones in the best possible way to meet their needs in the best possible way. As Seneca wrote, if a person has helped his relatives, he has also helped himself, because the interests of both the individual and the state ultimately coincide.

See: *История политических и правовых учений*, p. 71-73, as well as: С. Дробышевский, Т. Протопопова, *Идея человеческого достоинства*, p. 18.

Yet, according to the Epicureans, a dignified life manifests itself in the pursuit of private affairs rather than in the work of the state. The individual should not struggle with others for material gain, but should live on a small amount of food, simple clothing and housing, and befriend others.

See: В. Нерсесянц, *Философия права. Учебник для вузов*, Норма, 1998, p. 421.

Marcus Tullius Cicero (106 AD – 43 AD, the statesman and lawyer of the ancient Roman Republic), having summarized the views of ancestors, defined human dignity as a constituent of nature and as a characteristic of a social being. Namely, the dignity which was predominantly enjoyed by the full-fledged and free inhabitants of Rome is an inherent characteristic of any human being, which distinguishes him from other living entities; it characterizes a person only according to his or her position in society, which is manifested in respect, authority and social status. Likewise, Cicero felt that there was no insult as significant as a violation of human dignity; there is nothing more humiliating than slavery. Human dignity and human freedoms are inherent in the people (meant for the full-fledged and free people of Rome) and must be respected or therefore die with dignity.

See: *Энциклопедия мысли: сборник мыслей, изречений, афоризмов, максимов, парадоксов, эпиграмм*. Сост. Н. Хоромин, Прапор, 2001, p. 129, as well as: А.Н. Кокотов, *Достоинство человека в ретроспективе философско-правовой мысли*, p. 116.

of human dignity, i.e. that human dignity stems from the likeness of man to God. Although the term “human dignity” is not explicitly defined in the Old Testament, the fact is that each person has dignity, and what is included in this concept can be inferred from several Old Testament rules. For example Genesis chapter 1, verse 26 states, “Then God said, “Let us make mankind in our image, in our likeness (...).”¹⁸ Chapter 5, verse 1: „This is the written account of Adam’s family line. When God created mankind, he made them in the likeness of God.” Thus, respect for a man as a person means respecting a man as God’s creation. All human beings are created in the sole image of God and are endowed with a reasonable soul; all human beings have one nature and one origin. Redeemed by the sacrifice of Christ, everyone is called to participate in divine bliss, so that all people are entitled to equal dignity.¹⁹

It is Christianity, as a world religion, spreading the idea of human dignity, which is common to all without exception, which has promoted the further development of the concept of human dignity.²⁰ Christian ideology has promoted the self-interest, self-esteem, and the idea that “I am a man” of a religious person.²¹ The Christian understanding of human dignity has profoundly influenced contemporary insight, and its main issue is how to balance human freedom and dignity. The idea that a man himself is a value because he is the first image of God is the basic concept of the Christian culture.²²

In the Middle Ages, the concept of human dignity was associated with the human mind, which reflects the so-called eternal law or principles of the Divine Mind. In particular, in the Middle Ages, particular attention had been drawn to the teaching of the theologian and philosopher St. Thomas Aquinas (ca. 1225–1274), who asserted that human rights and dignity derived from God, and were of decisive or supreme value.²³ According to the theory of law by Thomas Aquinas, all human laws (*ius humanum*) are interconnected. All laws are based on the eternal law, and had been derived from God (*ius divinum*). Eternal law is

At the same time, in the classical period of Ancient Rome, the notion that everyone has dignity, regardless of their private or social status (Seneca, Ulpian, Modestine) had also been developing. Classical Roman law largely reflected Stoic ideas for a dignified life. For example, Ulpian, describing Roman law, said that it meant living an honourable life, not harming one another, and giving everyone what was due.

See: *История политических и правовых учений. Учебник для вузов*, p. 102.

¹⁸ Hereinafter, the text of the Bible is used and available at: <https://www.biblegateway.com> (18.10.2019).

¹⁹ Catechism of the Catholic Church. Available at: http://www.vatican.va/archive/ENG0015/_INDEX.HTM (18.10.2019).

²⁰ С. Дробышевский, Т. Протопопова, *Идея человеческого достоинства...*, p. 28-29.

²¹ Э. Ренан, *Жизнь Иисуса*, Амрита-Русь, 2004, p. 107, 131.

²² М. Гаскарова, *Правовая защита чести и достоинства личности (Вопросы теории)*, Дис. канд. юрид. наук, Москва, 1999, p. 32. Available at: <http://www.dslib.net/teoria-prava/pravovaja-zawita-chesti-i-dostoinstva-lichnosti.html#965981> (18.10.2019).

²³ Ibidem

reflected in the human mind as natural law (*ius gentium*).²⁴ While interpreting natural law, Thomas Aquinas mentioned human dignity, among other things. Natural law obliges man to seek righteousness (God) and to respect human dignity.²⁵

The views of Thomas Aquinas also contributed to the self-awareness of the human personality, which accordingly contributed to the development of a sense of human dignity and autonomy.²⁶ He believed that individuality is the harmonious connection of the human soul and body. It is a gift of God, and therefore it is an invaluable value in itself. This interpretation of Thomas Aquinas rehabilitates the human flesh, as well as contributes to the development of insight into person's understanding, autonomy and individuality inherited in Western culture.²⁷

A significant contribution to the further development of the concept of human dignity can be seen in the so-called Renaissance era.²⁸ Renaissance philosophers associate human dignity with a variety of human talents and abilities, while recognizing that one should not feel humiliated or sinful, but instead be proud of one's achievements in science and art, conquests and discoveries.²⁹

The issue of human dignity as a subject of research arose directly in the philosophy of European humanism in the 14th-16th centuries.³⁰ The basic idea behind the political and legal doctrines of the Renaissance era was to consolidate the value of human dignity in public consciousness, to recognize the autonomy of each individual, to provide conditions for the free development of man, and

²⁴ В. Нерсисянц, *Философия права. Учебник для вузов*, р. 442.

²⁵ М. Гаскарова, *Правовая защита чести и достоинства личности...*

²⁶ В. Иванов, *История этики средних веков* Лань, 2002, р. 420.

²⁷ M. Küle, R. Külis, *Filosofija, Zvaigzne ABC*, 1998, р. 231.

²⁸ Among philosophers of humanity the work of the Italian philosopher Giannozzo Manetti (1396–1459), namely, "On the dignity and superiority of man" should be mentioned, which states that there is the principle of the highest human mission. Man is the creator of his own image. It is his will and desire that determines whether he will be a superior creature above others or will degenerate into a lower creature. Man is not based on God or his own origin, but only on himself, his own dignity. See: *Культура Возрождения. Энциклопедия в двух томах*, Т. 1, Отв. ред. Н. Ревякина, РОССПЭН, 2007, р. 480.

According to the work of Giovanni Pico della Mirandola (1462–1494) "Oration on the dignity of man", which characterizes the analyzed period, human dignity was based on the ability of the human mind to explore nature and the world creatively. Describing human dignity, the philosopher wrote, "We have made you a creature neither of heaven nor of earth, neither mortal nor immortal, in order that you may, as the free and proud shaper of your own being, fashion yourself in the form you may prefer. It will be in your power to descend to the lower, brutish forms of life; you will be able, through your own decision, to rise again to the superior orders whose life is divine."

See: В. Гулиев, Ф. Рудинский, *Демократия и достоинство личности*, Наука, 1983, р. 41, as well as: Giovanni Pico della, *On The Dignity of Man*, Translated by Ch.G. Wallis, P.J.W. Miller, Hackett Publishing Company, 1998, р. 5.

²⁹ С. Дробышевский, Т. Протопопова, *Идея человеческого достоинства...*, р. 42.

³⁰ Ж. Деломо, *Цивилизация Возрождения. Серия: Великие цивилизации*, Перевод с фран.; отв. ред. Ирина Эльфонд, У-Фактория, 2006, р. 400.

to give everyone the opportunity to achieve happiness. Most thinkers believed that a person's destiny should not be determined by his nobility, origin, title or denomination, but by his courage, activity, and generosity. The topical thesis was that one of the components of individual dignity is citizenship – selfless and active service for the common good.³¹

In the age of Renaissance and Reformation,³² the concept of human dignity was freed from religious dogma. From now on, the notion of formal equality before the law was increasingly established as a way of ensuring human dignity. Many modern legal theorists believe that the guiding concept during that era concerning the divine beginning of natural rights promoted guarantees of human equality.³³ At the same time, practical issues were addressed on how to embed natural rights into positive rights, and the state into a guarantor of natural rights.³⁴

In order to understand the further development of the concept of human dignity, the works and thoughts of Hugo Grotius (1583–1645), a Dutch lawyer of the early New age (17th–18th centuries), should be analyzed.³⁵ Grotius, one of the founding fathers of the natural and international law of the New Age, noted that natural rights consist of human life and human dignity.³⁶

Simultaneously, it should be noted that at the same time in the New age, at least formally, the individual's right to be a human and to respect him as such, was declared.³⁷

³¹ *История политических и правовых учений. Учебник для вузов*, p. 169.

³² The leader of the Reformation movement and author of the treatise “*Institutio Christianae religionis*” Johannes Calvinus (1509–1564) believed that God had originally divided people into two categories according to their dignity, one part is worth being saved and blessed, while the other is doomed to death. Humans are not capable of changing God's will, but can understand it by the way their life on earth is shaped. If one's professional activities (as determined by God) are successful, if he is faithful and virtuous, diligent and subject to the kingdom (as determined by God), then God is favourable to man. If one is fully devoted to his profession and is utterly frugal, hates pleasure and waste, only then can he hope for the salvation of God; his lineage and privileges are irrelevant.

See: *История политических и правовых учений. Учебник для вузов*, p. 181.

It should be noted that many contemporary law scholars believe that the understanding of human dignity as an almost sacred value, which is at the heart of the European legal tradition, is precisely a formulation of Protestant ethics with its individualism and rationalism, postulated by French reformer Jean Calvin during the Protestant reformation.

See: R. Panikkar, *Is the notion of Human Rights a Western Concept?* in Alston, P(ed) *Human Rights Law*, New York 1995, p. 76-77.

³³ С. Дробышевский, Т. Протопопова, *Идея человеческого достоинства...*, p. 44.

³⁴ *Ibidem*

³⁵ В. Нерсесянц, *Философия права. Учебник для вузов*, p. 448.

³⁶ Д. Антисери, Д. Реале, *Западная философия от истоков до наших дней*, Т. 2. *Средневековье*, Пер. с итал. С. Мальцевой, Науч. ред. Э. Соколов, Петрополис, 1994, p. 321.

³⁷ For example, the Dutch philosopher Benedictus de Spinoza (1632–1777) defended the so-called secular interpretation of human dignity. Spinoza had reflected his understanding of human dignity in his interpretation of democratic rule because he believed that only such a form of government respects human dignity in the best possible manner. In his view, a democracy provides citizens with the right to work for the state. However, foreigners, women, slaves and minors, as well as those

The above-mentioned period is also remarkable for the following occurrence. Namely, the British philosopher John Locke (1632–1704), while defining the processes taking place in an individual, established the doctrine of personal identity, namely, for the first time, a person's sense of self-awareness was conceptualized into a person's identity.³⁸ Thus, from the retrospective of philosophy and history of law, it is only from this moment on that one could talk about a person's identity as a separate phenomenon.

In the following, it is worth mentioning separate thoughts found in the works of the great philosophers of the Enlightenment era,³⁹ stating that human dignity is the combination of human moral and virtuous qualities that distinguish one individual from another and transforms them into impersonal nature; human dignity symbolizes human freedom and equality.⁴⁰ Thus, political and legal doctrines sought to enshrine values based on the respect for human dignity into the legal consciousness of people, believing that the same is inseparable from man.⁴¹

In this era, one must also talk about the development of the understanding of the concept "individuality", which, according to the author, influenced by the doctrine of individualism and collectivism, culminated in the ideology of socialism. Although the founders of socialism did not provide an exhaustive definition of individuality, it can be inferred from the concept and guiding views of the said socialism movement. Namely, individuality is something that is in denial because it goes against collectivism, communion, and, solidarity or, as the French utopian Gracchus Babeuf, in real life, François-Noël Babeuf (1760–1797),

convicted of crime or immoral lifestyle, should not be involved in government work; that is, honour is considered to be a component of human dignity.

See: С. Дробышевский, Т. Протопопова, *Идея человеческого достоинства...*, р. 47.

³⁸ J. Locke, *An Essay Concerning Human Understanding, Book II*, Penguin Classic, 1998, p. 434-440.

³⁹ For example, in the opinion of the French philosopher Jean Jacques Rousseau (1712–1778), renouncing freedom means renouncing the highest dignity, human rights and even duties. In particular, there is no reward which can replace the renunciation of the listed values, since such a renunciation is incompatible with human nature.

See: J.J. Rousseau, *The Social Contract and The First and Second Discourses* Edited by S. Dunn, Yale University Press, 2002, p. 168.

At the end of the eighteenth century, France was experiencing severe revolutions fuelled by the Jacobin movement, which at the same time influenced the content of future human rights law. However, all political ideologies of that time were based on the belief that a human has dignity. One of the leaders of the Jacobin movement, Jean-Paul Marat (1743–1793), considered the human rights deriving from dignity to be sacred. This, according to Maximilien François Marie Isidore de Robespierre (1758–1794), could be achieved if the ruling person was virtuous, including honest and "pure", and to secure these sacred rights coercive measures shall be justifiable.

See: С. Дробышевский, Т. Протопопова, *Идея человеческого достоинства...*, 2009, р. 50, as well as: *История политических и правовых учений. Учебник для вузов*, р. 394.

⁴⁰ А.Н. Кокотов, *Достоинство человека в ретроспективе философско-правовой мысли*, р. 116.

⁴¹ *История политических и правовых учений. Учебник для вузов*, р. 340.

noted: “Human individuality is a hindrance to a democratic republic, [because] the spirit of collectivism prevails in the republic.”⁴²

Subsequent philosophers, especially so-called German classical philosophers, having synthesized the philosophy of the New Age and the Enlightenment era, while studying the understanding of human dignity, shifted the emphasis from the contradistinction of man to nature (reasonable – unreasonable) to the separation of the universal category of existence into true and false.⁴³

The idea of human dignity as the value of every human being is most effectively addressed in the works of the German philosopher Kant. Moreover, it was addressed in the view of natural rights.⁴⁴ In his teaching, human dignity is considered to be an absolute value, by which one compels others to respect him, at the same time comparing himself with others and valuing himself. The existence of human dignity gives a person the right to demand that others respect it, the right to self-esteem, while also imposing an obligation to respect other people. Kant believed that personality reflects the dignity of all mankind. Treating yourself as a means to an end means diminishing the dignity of humanity.⁴⁵ In particular, the philosopher wrote: “Act in such a way that you treat humanity, whether in your own person or in the person of any other, never merely as a means to an end, but always at the same time as an end.”⁴⁶

Moreover, “everything in the kingdom of ends has either price or dignity. What has a price can be replaced by something else as its equivalent; what on the other hand is raised above all price and therefore admits of no equivalent has a dignity.”⁴⁷ With this in mind, the philosopher developed the idea of destroying the dependence of personalities on members of society, promoting personal freedom and equality before the law, as well as removing all legal privileges.⁴⁸

Similarly, unlike his predecessors, Kant, without rejecting the common beginning of personality, expressed the view that the common man does not promote one’s natural individuality or personal interests. Autonomy is the foundation of human dignity and of any reasonable nature. The state does not have to intervene in this sphere of personality as long as one does not break the law.⁴⁹

There is no systematically assessed and determined place for human dignity in Kant’s teaching; its justification is based on the moral philosophical

⁴² В. Нерсесянц *Философия права. Учебник для вузов*, р. 403.

⁴³ А. Спиркин, *Философия: Учебник для технических вузов*, Гардарики, 2000, р. 171.

⁴⁴ С. Дробышевский, Т. Протопопова, *Идея человеческого достоинства...*, р. 56.

⁴⁵ М. Гаскарова, *Правовая защита чести и достоинства личности...*

⁴⁶ И. Кант, *Собрание сочинений в восьми томах*, Т. 4, под общ. ред. А.В. Гулыги, ЧОРО, 1994, р. 205.

⁴⁷ Ibidem, р. 212.

⁴⁸ С. Дробышевский, Т. Протопопова, *Идея человеческого достоинства...*, р. 56.

⁴⁹ М. Гаскарова, *Правовая защита чести и достоинства личности...*

interpretation of autonomy,⁵⁰ namely, “autonomy is thus the basis of human dignity and of every rational nature.”⁵¹

It was Kant who developed the ethical concept of human dignity, according to which its realization is impossible without granting rights and freedoms to the individual, and at the same time serving as the basis of the universally recognized concept of human rights and promoting further development of the rule of law.⁵² As can be seen, Kant as much as the French philosopher of the Enlightenment era, Rousseau, links the recognition of human dignity with the granting of rights and freedoms to the individual, that is, freedom is to be regarded as a necessary precondition for the existence of human dignity.

From this the question arises that if freedom is already an integral part of human dignity, does that mean that by limiting the same, for example, as provided by criminal law, a person at the same time loses his or her dignity.⁵³ The answer to this question can be found in the teachings of the German philosopher Georg Wilhelm Friedrich Hegel (1770-1831), who expressed the view that “man is an end in himself only by virtue of the divine in him – that which we designated at the outset as Reason, or, insofar as it has activity and power of self-determination, as Freedom.”⁵⁴ This significant “divine beginning” allows everyone to understand what is bad and what is good, and gives them the free will to choose the first or the second. Thus, if the offender, of his own free will, chooses to violate the law, the punishment is therefore a means to restore the law and the offender’s own right, that is, the act of his own free will.⁵⁵ In this way, Hegel’s idea of respect for the human dignity of the offender is reflected in one of the principles of modern criminal law, namely that the purpose of punishment is not to degrade human dignity.⁵⁶

Hegel believed that the greatest human dignity is related to freedom, and that the dignity of the state depends on the dignity of those who make it.⁵⁷ As the philosopher wrote, “Be a person and respect others as persons.”⁵⁸

The German philosophers of the above-mentioned period also associated the concept of human dignity with the problem of freedom in other ways – it was defined as freedom of the spirit.⁵⁹ For instance, Friedrich von Schiller

⁵⁰ J. Habermas, *The Concept of Human Dignity and the Realistic Utopia of Human rights*, p. 42.

⁵¹ И. Кант, *Собрание сочинений в восьми томах*, Т. 4, под общ. ред. А.В. Гулыги, ЧОРО, 1994, р. 205.

⁵² М. Гаскарова, *Правовая защита чести и достоинства личности...*

⁵³ *Ibidem*

⁵⁴ Г.В.Ф. Гегель, *Философия права*. [Автор вступительной статьи и примечаний В.С. Нерсесянц], Мысль, 1990, р. 13.

⁵⁵ *Ibidem*, р. 19.

⁵⁶ М. Гаскарова *Правовая защита чести и достоинства личности...*

⁵⁷ С. Дробышевский, Т. Протопопова, *Идея человеческого достоинства...*, р. 57.

⁵⁸ Г.В.Ф. Гегель, *Философия права*, р. 98.

⁵⁹ С. Дробышевский, Т. Протопопова, *Идея человеческого достоинства...*, р. 57.

(1759–1805) wrote: “Control of impulses through moral strength is spiritual freedom and its expression in appearance is called dignity [Würde].”⁶⁰ Whereas, Johann Gottlieb Fichte (1762–1814) believed that human dignity is manifested only when freedom is granted.⁶¹

In the first half of the 19th century, a liberal legal-political ideology spread in Western Europe, which, inter alia, postulated the protection of human dignity.⁶² The main conclusion of this ideology is the notion that freedom or its suppression is a criterion of respect for human dignity in society. The greater the restriction of a person’s freedom, the greater the prejudice to human dignity. However, complete personal autonomy and freedom in society is not possible; the question is how to strike a fair balance between the freedom and oppression of personality.⁶³

Simultaneously, it seems that the scientific progress, which had begun in the eighteenth century and flourished in the nineteenth century was the point of reference when the concept of “personal identity” in its current understanding appears, not only in the works of philosophers, but it also becomes a legal entity acknowledged and protected by the state. This is evidenced by several factors. First, for example, as anthropologists state, it is only from the eighteenth century that one can note the first credible, comprehensive and nationally supported census figures.⁶⁴ Secondly, in the 19th century the idea was increasingly spreading that the method of describing the physiological characteristics of the

⁶⁰ Ф. Шиллер, *Собрание сочинений в семи томах*, Т. 6, *Статьи по эстетике*, Гослитиздат, 1957, р. 156.

⁶¹ И. Готтлиб Фихте, *О достоинстве человека. Сочинения в двух томах*, Т. 1, Сост. и примеч. В. Волжского, Мифрил, 1993, р. 437–441.

⁶² For example, Jeremy Bentham (1748–1832), the founder of this ideology, while defending human dignity, argued that this debate should instead focus on the interests and security of the individual and not the individual’s freedom, that is to say, a person has to take care of himself and his welfare and does not rely on external assistance; only he can determine what his interests are and what makes them useful. Bentham also expanded the justification that the respect for the property of a state citizen is a guarantee of his human dignity.

See: С. Дробышевский, Т. Протопопова, *Идея человеческого достоинства...*, р. 58.

Whereas, the British philosopher John Stuart Mill (1806–1873) believed that human dignity is most respected in a democratic state, but in a democracy human dignity is at the same time threatened by the despotism of public opinion, which suppresses individuality.

Utilitarianism. On Liberty. Essay on Bentham together with selected writings of Jeremy Bentham and John Austin. [Edited with an Introduction by Mary Warnock]. (Blackwell Publishing, 2008) 79.

Similarly, the French politician Benjamin Constant (1767–1830) expressed the view that the freedom of a European, namely, his independence, autonomy, security, and the right to influence the government, contributes to the guarantee of human dignity. The purpose and regime of the state must be subordinate to these values.

See: *История политических и правовых учений. Учебник для вузов*, ред. В.С. Нерсесянца, Норма, 2003, р. 656–657.

⁶³ М. Гаскарова, *Правовая защита чести и достоинства личности...*

⁶⁴ J.C. Russell, *Population in Europe*, [in:] *The Fontana Economic History of Europe*, Vol. I: *The Middle Ages*, ed. C.M. Cipolla, Collins/Fontana, 1972, p. 25.

human personality (Anthropometric Human Identification System or Bertillon System) and later scientific discoveries on the person's fingerprints, could be used to enumerate criminals and prevent crime as such.⁶⁵

Thus, during this period, for the first time, personality was considered not only as an individual's process of self-identification, self-awareness or a person's expression, but also as an independent legal phenomenon. Namely, the state had begun to admit that personality is indeed a value. Moreover, a value which is to be protected as itself.

It should be noted that the understanding of human dignity, personal autonomy and identity continues to develop and evolve nowadays, and it still occupies the minds of various scientists. Moreover, in recent decades the said concepts have been studied in legal science from different perspectives, such as the preservation of natural human qualities in the context of technological progress, human dignity and bioethics, etc.⁶⁶

While defining the role and purpose of man in nature, society and state, mankind's guiding minds for centuries go back to the idea of the exclusive nature and value of man, which is manifested in developing the notion of human dignity throughout the centuries. In fact, human dignity evolved from philosophical and Christian concepts into the fundamental principle of the constitutions of most states.⁶⁷ As Habermas wrote: "human dignity forms the portal through which the egalitarian and universalistic substance of morality is imported into law (...)"] The idea of human dignity is the conceptual hinge which connects the morality of equal respect for everyone with positive law and democratic lawmaking in such a way that their interplay could give rise to a political order founded upon human rights, given suitable historical conditions.⁶⁸ (...) Respectively, changing historical circumstances had led to a certain understanding of something that has been recorded from the outset, albeit indirectly, in human rights, and in particular the normative substance of human dignity."⁶⁹

Conclusions

1. The origin of personal identity is human dignity, which is ahead of the same both by content and in time.

2. The ideological understanding of personal identity, especially the need to protect it, even though indirectly, has existed from the beginning of humanity. In fact, the contribution of Western law philosophers, as well as the genesis

⁶⁵ O. Arājs, *Daktiloskopija*, red. A. Kavalieris, Latvijas Vēstnesis, 2005.

⁶⁶ For example, see: K. Bayertz, *Human Dignity: Philosophical Origin and Scientific Erosion of an Idea*, "Philosophy and Medicine" 1996, Vol. 52, p. 73-90.

⁶⁷ А.Н. Кокотов, *Достоинство человека в ретроспективе философско-правовой мысли*, p. 118.

⁶⁸ J. Habermas, *The Concept of Human Dignity and the Realistic Utopia of Human rights*, p. 36.

⁶⁹ Ibidem, p. 33.

of concepts such as human dignity, individuality, personality and individual autonomy and their interaction, has evolved and developed the concept of “personal identity” as an independent term. The named concepts are inextricably linked, so their symbiosis serves as a measurement of personal identity.

3. The 19th century is to be considered as the starting point of when the concept of personal identity or personality was firstly recognized by a state as a legally protectable value. Nevertheless, the right to a personal identity itself did not yet exist, it would appear much later.

4. Human dignity is inevitably linked to human freedom, and thus freedom is a necessary condition for the existence of human dignity.

5. Human dignity is the actual justification of human rights, and therefore a universally protected value. However, human dignity is not a fundamental right, because it is instead a part of every fundamental right. Thus, linking a person's identity with human dignity alone is not sufficient to ensure the automatic legal protection of a personal identity. Nevertheless, the close connection between personal identity and human dignity as one of its expressions forms the basis for the legal protection of a person's right to identity.

Bibliography

- Arājs O., *Daktiloskopija*, red. A. Kavalieris, Latvijas Vēstnesis, 2005.
- Aristotelis, *Nikomaha ētika*, Zvaigzne, 1985.
- Bayertz K., *Human Dignity: Philosophical Origin and Scientific Erosion of an Idea*, “Philosophy and Medicine” 1996, Vol. 52.
- Bible text. Available at: <https://www.biblegateway.com> (18.10.2019).
- Carrithers M., Collins S., Lukes S., *The category of the person: Anthropology, philosophy, history*, Cambridge University Press, 1985.
- Catechism of the Catholic Church*. Available at: http://www.vatican.va/archive/ENG0015/_INDEX.HTM (18.10.2019).
- Erikson E., *Homburger Identity: Youth and Crisis*, Norton, 1968.
- Habermas J., *The Concept of Human Dignity and the Realistic Utopia of Human rights*, [in:] *Filosofijā v dialoge kul'tur. Vsemirnyj den' filosofii. Materialy*, Progress-Tradiciā, 2010.
- Koffeman N., *(The right to) personal autonomy in the case law of the European Court of Human Rights*, Leiden, 2010.
- Kūle M., Kūlis R., *Filosofija*, Zvaigzne ABC, 1998.
- Levits E., *Cilvēktiesības un valsts drošība: aktuālās problēmas privātās dzīves aizsardzības jomā Eiropā tiesu spriedumu gaismā: Eiropas Savienība un tiesiska valsts: Latvijas pieredze*, “Rīgas Juridiskā augstskola” 2009.
- Locke J., *An Essay Concerning Human Understanding*, Book II, Penguin Classic, 1998.

- McCrudden Ch., *Human Dignity and Judicial Interpretation of Human Rights*, "The European Journal of International Law" 2008, Vol. 19.
- Mirandolla Giovanni Pico della, *On The Dignity of Man*, Translated by Ch.G. Wallis, P.J.W. Miller, Hackett Publishing Company, 1998.
- Panikkar R., *Is the notion of Human Rights a Western Concept?*, [in:] *Human Rights Law*, ed. P. Alston, New York 1995.
- Preus A., *Historical Dictionary of Ancient Greek Philosophy*, Scarecrow Press 2007.
- Rousseau J.J., *The Social Contract and The First and Second Discourses*, ed. S. Dunn, Yale University Press, 2002.
- Russell J.C., *Population in Europe. In The Fontana Economic History of Europe*, Vol. I: *The Middle Ages*, ed. C.M. Cipolla, Collins/Fontana 1972.
- Terminu un svešvārdu skaidrojošā vārdnīca. Autoru kolektīvs Valentīnas Skujiņas vadībā*, Zvaigzne ABC, 2000.
- Utilitarianism. On Liberty. Essay on Bentham together with selected writings of Jeremy Bentham and John Austin*, Edited with an Introduction by M. Warnock, Blackwell Publishing, 2008.
- Антисери Д., Реале Д., *Западная философия от истоков до наших дней*, Т. 2: *Средневековье*, Пер. с итал. С. Мальцевой; Науч. ред. Э. Соколов, Санкт-Петербург, 1994 // Antiseri D., Reale D., *Zapadnaâ filozofiâ ot istokov do naših dneĭ*, Т. 2: *Srednevekov'e*, Per. s ital. S. Mal'cevoj; Nauč. red. È. Sokolov, Sankt-Peterburg, 1994.
- Гаскарова М., *Правовая защита чести и достоинства личности (Вопросы теории)*, Дис. канд. юрид. наук, Москва, 1999. Available at: <http://www.dslib.net/teoria-prava/pravovaja-zawita-chesti-i-dostoinstva-lichnosti.html#965981> (18.10.2019) // Gaskarova M., *Pravovaâ zašita česti i dostoinstva ličnosti (Voprosy teorii)*, Dis. kand. ūrid. nauk, Moskva, 1999. Available at: <http://www.dslib.net/teoria-prava/pravovaja-zawita-chesti-i-dostoinstva-lichnosti.html#965981> (18.10.2019).
- Гегель Г.В.Ф., *Философия права*, Автор вступительной статьи и примечаний В.С. Нерсесянц, Москва, 1990 // Gegel' G.V.F., *Filozofiâ prava*, Avtor vstupil'noj ctat'i i primečanij V.C. Nersesânc, Moskva, 1990.
- Гулиев В., Рудинский Ф., *Демократия и достоинство личности*, Москва, 1983 // Guliev V., Rudinskij F., *Demokratiâ i dostoinstvo ličnosti*, Moskva, 1983.
- Делюмо Ж., *Цивилизация Возрождения. Серия: Великие цивилизации*, Перевод с фран.; отв. ред. И. Эльфонд, Екатеринбург, 2006 // Delûmo Ź., *Civilizaciâ Vozroždeniâ. Seriâ: Velikie civilizacii*, Perevod s fran.; отв. red. I. Èl'fond, Ekaterinburg, 2006.
- Дробышевский С., Протопопова Т., *Идея человеческого достоинства в политико-юридических доктринах и праве: монография*, Красноярск, 2009 // Drobÿševskij S., Protopopova T., *Ideâ čelovečeskogo dostoinstva v politiko-ūridičeskikh doktrinah i prave: monografiâ*, Krasnoârsk, 2009.
- Иванов В., *История этики средних веков*, Санкт-Петербург, 2002 // Ivanov V., *Istoriâ êtiki srednih vekov*, Sankt-Peterburg, 2002.

- История политических и правовых учений. Учебник для вузов*, Под общей ред. В.С. Нерсесянца, Москва, 2003 // *Istoriâ političeskikh i pravovuh učenij. Učebnik dlâ vuzov*, Pod obšej red. V.S. Nersesâncâ, Moskva, 2003.
- Кант И., *Собрание сочинений в восьми томах*, Т. 4, Под общ. ред. А.В. Гулыги, Москва, 1994 // Kant I., *Sobranie sočinenij v vos'mi tomah*, Т. 4, Pod obš. red. A.V. Gulygi, Moskva, 1994.
- Кокотов А.Н., *Достоинство человека в ретроспективе философско-правовой мысли*, [in:] *Конституционное право России*, ред. А.Н. Кокотов, М.И. Кукушкин, Москва, 2003 // Kokotov A.N., *Dostoinstvo čeloveka v retrospektive filofsfsko-pravovoj mysli*, [in:] *Konstitucionnoe pravo Rossii*, red. A.N. Kokotov, M.I. Kukuškin, Moskva, 2003.
- Культура Возрождения. Энциклопедия в двух томах*, Т. 1, Отв. ред. Н.Ревакина, Москва, 2007 // *Kuľtura Vozroždeniâ. Ėnciklopediâ v dvuh tomah*, Т. 1, Otv. red. N. Revâkina, Moskva, 2007.
- Нерсесянц В., *Философия права. Учебник для вузов*, Москва, 1998 // Nersesânc V., *Filosofiâ prava. Učebnik dlâ vuzov*, Moskva, 1998.
- Никитяева В., *Достоинство личности – основополагающий признак социального государства*. Available at: <https://cyberleninka.ru/article/n/dostoinstvo-lichnosti-osnovopolagayuschiy-priznak-sotsialnogo-gosudarstva.pdf> (18.10.2019) // Nikitâeva V., *Dostoinstvo ličnosti – osnovopolagaûšij priznak social'nogo gosudarstva*. Available at: <https://cyberleninka.ru/article/n/dostoinstvo-lichnosti-osnovopolagayuschiy-priznak-sotsialnogo-gosudarstva.pdf> (18.10.2019).
- Платон, *Диалоги*, Москва, 1986 // Platon, *Dialogi*, Moskva, 1986.
- Плетенёв Д., *Стаханова Екатерина Достоинство личности*. Available at: www.law.bsu.by/pub/26/Pletenev_9.pdf> accessed (18.10.2019) // Pletenëv D., *Stahanova Ekaterina Dostoinstvo ličnosti*. Available at: www.law.bsu.by/pub/26/Pletenev_9.pdf> accessed (18.10.2019).
- Спиркин А., *Философия: Учебник для технических вузов*, Москва, 2000 // Spirkin A., *Filosofiâ: Učebnik dlâ tehničeskikh vuzov*, Moskva, 2000.
- Фихте И.Г., *О достоинстве человека. Сочинения в двух томах*, Т. 1, Сост. и примеч. В. Волжского, Санкт-Петербург, 1993 // Fihte I.G., *O dostoinstve čeloveka. Sočineniâ v dvuh tomah*, Т. 1, Sost. i primeč. V. Volžskogo, Sankt-Peterburg, 1993.
- Хабермас Ю., *Расколотый Запад*, Пер. с нем., Москва, 2008 // Habermas Ū., *Raskolotyj Zapad*, Per. s nem., Moskva, 2008.
- Шиллер Ф., *Собрание сочинений в семи томах*, Т. 6: *Статьи по эстетике*, Москва, 1957 // Šiller F., *Sobranie sočinenij v semi tomah*, Т. 6: *Stat'i po èstetike*, Moskva, 1957.
- Энциклопедия мысли: сборник мыслей, изречений, афоризмов, максимов, парадоксов, эпиграмм*, Сост. Н. Хоромин, Харьков, 2001. // *Ėnciklopediâ mysli: sbornik myslej, izrečenij, aforizmov, maksimov, paradoksov, èpigramm*, Sost. N.H Horomin, Har'kov, 2001.
- Эрнест Р., *Жизнь Иисуса*, Москва, 2004. // Ėrnest R., *Žizn' Iisusa*, Moskva, 2004.

SUMMARY

Historical preconditions for the development of “the right to a personal identity” in Western philosophy

The goal of the article is to clarify the content and essence of personal identity, which can be achieved by carrying out an analysis of the genesis of related concepts such as “personal autonomy”, “individuality” and “human dignity”, thus assessing the preconditions for the formation of the concept. A descriptive method was therefore used to mark the keywords and the related concepts.

Stating that it is the symbiosis of human dignity, individuality and autonomy that constitutes a contemporary conceptual understanding of a person’s identity, the author, using the historical method, starts a relevant excursion not only into the history of the concept and preconditions for its formation, but also an analysis of the genesis of the above-mentioned concepts.

The analytical method has allowed the author to make logical, substantiated and reasoned conclusions. For instance, the essential grounds for the formation of the concept were mainly promoted by Western philosophers and thinkers. Special contributions were provided by philosophers as such Thomas Aquinas, Giannozzo Manetti, Giovanni Pico della Mirandola, Iohannes Calvinus, Hugo Grotius, Benedictus de Spinoza, John Locke, Jean Jacques Rousseau, and Immanuel Kant, as well as Georg Wilhelm Friedrich Hegel, Friedrich Schiller, Johann Gottlieb Fichte and many others.

Having concluded that the basic question is inextricably linked to the understanding of human dignity, the author, without denying the beginning of the genesis of human dignity in the ancient world, considers that it is the Bible, norms of the Old Testament, that should be regarded as the first source of conceptual meaning.

For the better understanding of these concepts, the author found it helpful, and was therefore assisted by, the study literature, such as “Philosophy of Law”, “Philosophy”, “History of Political and Legal Studies”, “History of Medieval Ethics”, “Anthropology of Law”, etc., as well as the monographs of several contemporary historians and philosophers (including law philosophers).

Summarizing the provided legal, philosophical and historical analysis, it can be concluded that the history of the emergence of the concept of personal identity overlaps with the emergence of the concepts of human dignity, individuality and personality, as well as personal autonomy. In fact, the interaction of these concepts, as well as the contribution of several legal philosophers, promotes the formation of a person’s identity as an independent term. In the author’s opinion, the same also serves as a yardstick for assessing personal identity.

