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Human dignity – an autonomous or a heteronomous feature

Abstract

The subject of the work is an attempt to analyse the notion of dignity in legal sciences, especially in legal theory and philosophy of law. The author distinguishes autonomous and heteronomous version of the notion in question. The first way of conceiving human dignity, assumes that dignity, i.e. the worth of human life, is fully independent of social conditions in which people live their lives. This way of conceiving dignity epitomises Kant’s philosophy of moral autonomy as immanent trait of every human being. The second way of conceiving human dignity assumes that the worth of human life is fully dependent of social conditions in which people live their lives. Consequently, it is taken for granted that there are social conditions in which people can lose dignity as contingent trait of human being. In this case, in order to get back lost dignity, people ought to change social conditions by way of social revolution. This way of conceiving dignity epitomises Marxist philosophy of alienation. The author tends to point out, that a different way of conceiving dignity is followed by serious legal consequences.

Keywords: dignity, alienation, immanent trait of human being, contingent trait of human being, autonomous, heteronomous

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I understand human dignity as a value inherent in the life of a human being. I do not delve into the issue of human definition, which is always a matter of axiological choice. I understand autonomy of dignity as a view that assumes that human dignity is independent of the social conditions in which a person lives. On the other hand, I view heteronomy of dignity as an opposite view, according to which human dignity is a derivative of the social conditions of human existence.

The Constitution of the Republic of Poland assumes an autonomous understanding of dignity, pointing in the preamble to the “inherent human dignity” and in Article 30 to an “inherent and inalienable human dignity”. What is more, the Constitution provides for autonomy of dignity in the natural law version. This natural law feature has both an ontological and an epistemological meaning. The natural law approach to dignity in the ontological dimension assumes that the concept of dignity indicates an objectively existing feature of a human being. In other words, man has dignity (human life has value) regardless of what people think about it. On the other hand, the natural law approach to dignity in the epistemological dimension presupposes ethical cognitivism, i.e. that dignity (the value of human life) is cognisable.

Recognition of the autonomous nature of dignity means that human life is a primary – not a secondary (instrumental) – value, i.e. that a human has value by the very fact of being a human and not because of their usefulness as a means to achieve other values. On the other hand, recognition of the natural law character of dignity implies that dignity as being given by virtue of being human is only recognised by positive law, and not created by legislative actions. In this approach, dignity is a logically original state with respect to positive law because it is determined by a higher normative order. The autonomy of dignity also means that it is not available to positive law, which means that positive law not only does not impart dignity, but also cannot deprive or limit it. Article 30 of the Constitution stipulates: “It is inviolable, and its respect and protection is the responsibility of public authorities.” Let us note that while “inherent and inalienable” has a descriptive meaning, which means that these are terms describing the objective state of affairs available to human cognition, “inviolable” has a normative meaning, i.e. it is a prohibition to take action questioning the value of human life. What is inviolable must not be sacrificed in the name of other values. This means that the value of human life must not be weighed against other goods for the sake of which it would be limited. The Constitution provides for universality of human dignity, i.e. that recognition of

the value of human life as an objective and cognisable state of affairs is binding for everyone regardless of their views. Universality involves objectivity of dignity, which means it is independent of individual beliefs, choices or emotional reactions. Therefore, in terms of natural law, the universality of dignity assumes ontological solutions (objective existence) and epistemological ones (axiological cognitivism). The consequence of such philosophical assumptions is the recognition of the logical value of evaluative and normative statements that result from the cognition of the objective and universal dignity of humans.

Autonomous concepts of human dignity

Human dignity in the Christian doctrine is understood in a way similar to that provided in Article 30 of the Constitution of the Republic of Poland.² As regards the issue of dignity, this doctrine refers to the tradition of Judaism. The Old Testament contains the idea that the human is the only purpose of forming the world and that everything has been created for them. In the Book of Genesis, we can see the outline of the idea of human dignity: "Then the LORD God formed the man out of the dust from the ground and breathed the breath of life into his nostrils, and the man became a living being."³ This view is coherent with Christian axiology, which recognises that a human as a being created by God in God's image and likeness, is the same carrier of a part of the divine nature. In his Commentary on the Epistle to the Romans, St. Thomas Aquinas formulated the idea of dignity as follows: "This is the supreme degree of dignity in human beings, that they be led to the good by themselves and not by others."⁴ The dignity of a human is connected with the possession of reason, freedom, and immortal soul. Dignity is inherent and inalienable as a consequence of the act of God's creation, including in particular the provision of reason and an individual and immortal soul.

² A philosophical analysis of Article 30 of the Constitution of the Republic of Poland is performed by M. Piechowiak in: *Dobro wspólne jako fundament polskiego porządku konstytucyjnego*, Warszawa 2012, Chapter VII; see also: M. Policastro, *Godność człowieka wobec wartości konstytucyjnych*, [in:] S. Czepita, A. Choduń (eds.), *W poszukiwaniu dobra wspólnego*, Szczecin 2010, passim; see also: P. Czarny, *Konstytucyjne pojęcie godności człowieka a rozumienie godności w polskim języku prawnym*, [in:] K. Complak (ed.), *Godność człowieka jako kategoria prawna*, Wrocław 2001, passim. For more on the understanding of dignity in Christian doctrine, cf. M. Sadowski, *Godność człowieka i dobro wspólne w papieskim nauczaniu społecznym*, Wrocław 2010, Chapter I and Chapter II; see also: M. Piechowiak *Filozofia praw człowieka*, Lublin 1999, Chapter II § 3.

³ The Book of Genesis, 2, 7, see also: E. Soto Kloss, *Starotestamentowe podstawy godności człowieka*, [in:] K. Complak (ed.), op. cit., passim.

⁴ Św. Tomasz z Akwinu, *Wykład Listu do Rzymian*, Poznań 1987, p. 49.

The fundamental assumption of Christian anthropology is that God creates humans in his image and likeness. In pre-Vatican II teaching, these words were referred to the intelligent nature of humans, which makes them similar to God. Humans have both reason and will, thanks to which a human is a person. The personalist tradition refers to these qualities in Christian thought, for which the value of humans is based on reason and will. In the Book of Genesis, there is a constantly recurring motive implying that all human existence is understandable only on the basis of reflection on their reference to God.⁵

This theological dimension of human dignity emphasises their transcendence, indicates that they transcend nature, and highlights their special relationship with God. It is this bond that determines human dignity. The apex of dignity understood this way is the incarnation of the divine Logos, the consequence of which is the acceptance of human nature by the Son of God.

Creation in God's image emphasises the uniqueness and distinctiveness of human in relation to other creatures. The human as God's image and likeness surpasses other beings and is the culminating point in the creation of the world. In the Book of Genesis, there is also a concept of the human as God's partner for the management of earth. Therefore, human dignity flows not only from the likeness of human to the creator, but also from the fact that humans as collaborator of God are the creators of the still-emerging world.⁶

In the Christian doctrine, the dignity of every human can be considered in two aspects: a supernatural one and a natural one.⁷ In the supernatural aspect, dignity reveals man's participation in transcendent reality, in the life of God's people, while in natural terms it expresses humans' ability to take free and conscious action, to develop intellectually and morally.

A special thread in Christian doctrine is the dignity of humans as subjects of labour. This thread was most fully depicted in John Paul II's Encyclical "Laborem Exercens".⁸ A human as a subject of labour is the ultimate goal of every work, therefore every work should be adapted to human capabilities and needs. The preservation of human dignity as a subject of labour presupposes the primacy of the human over capital, i.e. the primacy of a person over things, in the process of work. The goal of work is always a human as a subject of labour. In the opinion of John Paul II, the fault of economism consists in preferring the primacy of capital over

⁵ For more on the idea of dignity in the personalist current of Christian thought, cf. M. Sadowski, op. cit., pp. 62 et seq.; see also: M. Piechowiak, *Filozofia...*, pp. 268 et seq.

⁶ M. Krąpiec, *Człowiek i prawo naturalne*, Lublin 1999, pp. 140 et seq.

⁷ Z. Stawrowski, *Prawo naturalne a ład polityczny*, Kraków-Warszawa 2006, Chapter II.

⁸ John Paul II, *Laborem exercens, Powołany do pracy*, Wrocław 1983, passim.

work, which manifests itself in the treatment of work (humans) as a commodity that is a tool for the production of other goods (things). Work must not degrade a human being, but it is to serve the development or confirmation of their humanity, which means that through work, a human becomes more human.

It should be pointed out that contrary to the view of K. Marx, the encyclical strongly emphasises a view that even if there is a dominance of capital over work, this cannot lead to the loss of dignity by a subject of labour because their dignity as a “God’s child” is inherent and inalienable, not only in the sense that it cannot be renounced, but also in the sense that it cannot be completely negated by work performed under certain social conditions.⁹

Another philosophical concept that assumes an autonomous understanding of human dignity is the practical philosophy of I. Kant. According to I. Kant, the concept of dignity is closely related to the concept of human freedom.¹⁰ There is a relationship of logical primacy here because the concept of human dignity logically assumes human freedom. In other words, humans have the right to dignity because, as a transcendental moral agent, they have immanent freedom. This is because, according to I. Kant, the concept of dignity implies the ability of a human to make autonomous moral choices, i.e. to use free will and choose good. Let us note that in this concept, the human as a transcendental moral agent (*homo noumenon*, i.e. the idea of a human as a moral agent) is an agent with only good will because free will is in this case only good will. In other words, humans as transcendental moral agents – and therefore agents with absolute freedom – are somewhat destined to choose good. Freedom, and at the same time dignity, is materialised in the ability to choose only good, that is, to do only good deeds. Consequently, of all good things, only good will is absolutely good.¹¹

As J. Kant notes, all objects have a conditional value depending on the ability to meet needs, which causes that the expiration of the need eliminates the value of things. However, the value of the human person is unconditional – the human is an end in itself.¹² In the presented approach, the human as a transcendental moral agent (the idea of a human defined by practical reason) is oriented only towards the moral law and this way gains the ability to make autonomous moral choices,

⁹ Ibidem, pp. 28 et seq., 38 et seq.

¹⁰ I. Kant, *Uzasadnienie metafizyki moralności*, Warszawa 1984, pp. 36 et seq., in particular: pp. 70, 78 et seq. and 86 et seq.

¹¹ Ibidem, pp. 11 et seq.

¹² Ibidem, pp. 62 et seq.

thereby making practical use of their human freedom and, therefore, dignity as a human life value.¹³

The basic assumption is that every human being has the ability to learn moral law, i.e. that the ability to learn a universal and objective imperative is an immanent feature of every human being. Therefore, everyone has the ability to learn the objective moral truth, i.e. good, through moral intuition called the power of judgement.¹⁴ The entire Kant's ethics is based on the unshakeable conviction that it is possible to make only the right decision in every life situation. What is more, people who are guided by reason cannot have conflicting moral judgements about what is good and what is bad in the same situation. The contradiction of moral judgements (subjective maxims of conduct) indicates the abandonment of a categorical imperative in favour of a hypothetical imperative.¹⁵ Since every person can recognise moral law, dignity is also universal in effect, which means that as an inalienable right, it is vested in every human being. The human is free, and therefore capable of free acts, on the one hand through the ability to read a moral law, and on the other hand through the free will to choose an act to perform. There is one and universal moral truth, and humans arrive at it autonomously, and practice it on the basis of self-determination. Freedom as self-determination is the basis of responsibility. It is the universal and objectified morality, independent of all causality, that is eternal and always the same, that extends humans beyond the world of nature.¹⁶ It should be pointed out that moral law understood this way is in a state of constant conflict with selfishness, which characterises humans at the phenomenal level, that is, as part of nature.

In the ethics of I. Kant, humans define themselves as a being worthy of respect by the possibility of making a free deed, whose choice is subordinated only to universal moral law. The fundamental assumption of I. Kant's ethics is the thesis that the human does not lose such a conceived dignity regardless of social conditions in which they make use of their autonomous moral choices using a categorical imperative. The autonomy of the moral agent is therefore double. It is an autonomy towards nature because the human as a transcendental moral agent is free from nature's determinants. But it is also an autonomy towards social conditions in which a person makes moral choices. Therefore, it is the autonomy in the sphere of moral

¹³ K. Bał, *Kant i Hegel – dwa szkice z dziejów niemieckiej myśli etycznej*, Wrocław 1993, Chapter II.

¹⁴ I. Kant, *Uzasadnienie...*, p. 26.

¹⁵ *Ibidem*, pp. 40–49.

¹⁶ K. Bał, *op. cit.*, pp. 14–17.

choices that is the basis of human dignity. In other words, every human being has the right to dignity because of the participation in a common moral legislation.¹⁷

Obviously, the presented concept of humans as transcendental moral agents is a metaphysical perspective of humans. In this perspective, I. Kant perceives humans not as a concrete historical entities existing in the empirical dimension (*homo phaenomen*), but as a human ideas understood in the Platonic way, i.e. as pure moral consciousness. In the case in question, the idea of the human as a transcendental moral agent has the axiological justification in the accepted concept of individual freedom. In this concept of freedom, free will and self-determination (autonomy) has a metaphysical justification, i.e. a priori and intuitive justification. In other words, what determines the possession of inalienable dignity, and thus free will and self-determination in moral choices, is the feature of the human as an ideal being existing only in the rational (*noumenon*-based) dimension. In this dimension, humans are beings guided exclusively by practical reason, without any determination, both natural (human as part of nature) and social (human as part of society).¹⁸

In the *Groundwork of the Metaphysics of Morality*, I. Kant states: "In the kingdom of ends everything has either a price or a 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."¹⁹ Human value is therefore not only inalienable (immanent to the human person), but it is also an absolute value in the sense that it is not subject to estimation.

In this concept, dignity is associated with the ability to follow moral commands and with total indeterminacy (autonomy) in this regard both from nature and from society. In this concept, human beings have an inherent and inalienable dignity because: (a) guided by categorical imperative, they have the ability to determine universal moral principles, (b) they submit themselves to this law without any external environmental or social determination. This is the concept of a human as a rational being, i.e. one whose actions are determined only by orders of practical reason. A rational being in the understanding of Kant is one who, by making moral choices, overcomes both their biological (natural) and social (class or state) nature. A transcendental subject in the Kantian sense is one that transcends or goes beyond not only biological but also social determinants. Consequently, in this concept, no

¹⁷ The universalism of Kant's ethics is demonstrated in Z. Waleszczuk, *Wolność osoby ludzkiej w ujęciu Karola Wojtyły i Immanuela Kanta*, Wrocław 2014, pp. 134–138.

¹⁸ The *noumenon* dimension of human in I. Kant's philosophy is discussed in: M. Manelli, *Historia doktryn politycznych i prawnych XIX w.*, Part I, Warszawa 1964, pp. 33 et seq., in particular pp. 36–40.

¹⁹ I. Kant, *Uzasadnienie...*, p. 70.

social conditions of human existence can deprive them of dignity because humans are consistently perceived as transcendental moral agents able to overcome all external determinants.²⁰

Heteronomous concepts of human dignity

Let me remind you that I understand heteronomous concepts of dignity as those in which the dignity (value) of human life is a derivative of social conditions in which a person lives. The concept of dignity understood this way should be associated with the broadly understood Marxist trend in philosophical thought. The distinguishing feature of this current, which brings together various views and makes it possible to speak of one current, is the concept of alienation of social being, linked to the dialectical understanding of history.²¹

Traditional Marxism

There is no doubt that Marx adopted all the basic assumptions of dialectical thinking about social being from Hegel. What I mean here is the idea of dialectics as the interaction of the subject and the object of history, which, through the creation and overcoming of contradictions, tend towards unity (eschatology of ultimate reconciliation of being). Both Hegelianism and Marxism assume that history is a purposeful (meaningful) process because freedom as a lack of subject's limitations on the part of foreign objectivity is not only a state that is actually achievable but also a necessary goal of the historical process. Both Hegelian and Marxian philosophy of history is based on the distinction between two levels of existence, which have different ontological qualifications as a lower and a higher form of social being.²² In both cases there is a division of human history into two periods, which Marx referred to as "prehistory" and "actual history". "Prehistory" is the phase in which the social being is affected by alienation, i.e. in which foreign and antagonistic objec-

²⁰ Analogies between the notion of transcendental beings in the philosophy of I. Kant and the notion of an idea in the philosophy of Plato are offered in: Z. Stawrowski, op. cit., pp. 294–296.

²¹ I have discussed the meaning of the category of alienation of being in Marxism in: *Struktura poznania filozoficznego w prawoznawstwie*, Wrocław 2004, pp. 61–94; see also: B. Baczko, *Hegel, Marks i problemy alienacji*, "Studia Filozoficzne" 1957, 1, passim; see also: L. Kołakowski, *Główne nurty marksizmu*, Vol. I, Warszawa 2009, pp. 134–137, and 168–169.

²² Cf. analysis of the Hegelian roots in Marxism in: D. Aleksandrowicz, *Hegel i konsekwencje*, Wrocław 1990, Chapter I and Chapter II; cf. also idem, *Filozoficzne założenia Lukacsa teorii wiedzy*, Wrocław 1983, passim.

tiveness is opposed to the subject. It is referred to as a “false” being, in the sense that it is an accidental and transient being in which the empirical form of being contradicts its essence. In Hegel’s view, such being is a contradiction to its concept. In the Marxian view, it is a being in which the essence of the human is contrary to their empirical existence. In both cases, the lower form of being is affected by alienation, consisting in contradictions between the subject and the object of history. On the other hand, a higher form of being, i.e. a being corresponding to its concept (Hegel), or “actual history” (Marx), is the final and necessary phase of historical development in which the lack of unity of being is finally overcome. In other words, a higher form of being is a being free of alienation, which – as a necessary phase of historical development – is a real being.²³

Although the category of alienation of being in both cases is the central category of analysis of the historical process, some differences in its perception should be pointed out. In the case of Hegel, dialectics boils down to the idea of a spiritual element evolving in history (God, the Absolute Spirit, Historical Reason). In this process, the Absolute Being brings from itself the world of finite objects, that is, forms of culture and institutions of social life – in particular the state and law, in which the objectivisation of the Absolute Spirit takes place through human activity. Cultural forms of human socialisation, which are the exteriorisation of the spiritual element in history, belong to “factual”, i.e. accidental, existence doomed to fall and passing. The randomness of “things”, i.e. a respective inadequacy of a concept (what it should be) to its real existence (what the thing actually is), is revealed in passing. The return to the spiritual absolute means the elimination of this contradiction, and thus achieving a state in which the reality (actual existence) is consistent with its concept (a potential or a duty inherent in being). Therefore, the state of the de-alienation of a being assumes the unity of the being and the duty.²⁴

For Hegel, the de-alienation of being takes place as a result of the constant progress of reason in history, which is expressed in the development of knowledge (consciousness). In Hegel’s view, true knowledge is the self-knowledge of a subject, and true cognition is the self-knowledge of a subject of history (the subject is the truth). As is known, this process achieves the final state in the state from the time of Hegel, in which freedom is conceived as a conscious necessity, i.e. a state of unity of public and private interest. In other words, the de-alienation of social being in a state consists in a voluntary implementation of public interest, perceived by citizens

²³ I have reconstructed the Marxian model of dialectic knowledge in: *Legitymizacja państwa w prawoznawstwie*, Wrocław 1996, Chapter I.

²⁴ Cf. R. Panasiuk, *Dziedzictwo heglowskie i marksizm*, Warszawa 1979, pp. 194–226.

as identical with their private interest, and whose implementation is a conscious necessity.²⁵

However, it should be pointed out that in the Hegelian approach, the dialectical perception of history as a process of creating and overcoming the alienation of being is a constant process of the progress of reason in history through a continuous development of self-knowledge of freedom. The subject (the Absolute Spirit) must become the object in order to gain consciousness thereof and subsequently to abolish the objective (factual) form of its existence. Dialectics as a description of the subject and the object of history tending towards unity is a continuous process of progress in which the human never loses their dignity as a subject that always, to a larger or smaller extent, participates in a spiritual absolute, understood as the Historical Reason (Absolute Spirit). In other words, when living also in conditions of a false being, a human does not lose contact with the spiritual absolute by participating in the process of developing the self-knowledge of freedom. Consequently, the reification expressed in the fact that humans do not fully realise what their freedom is, does not deprive humans of dignity (value) because as an instrument of Historical Reason, a human participates in a constant process of the progress of reason understood in history as a process of realising freedom.²⁶ Therefore, dignity is an immanent and inalienable ontological (anthropological) feature of human beings as beings participating in the Logos of history.

In the Marxian view, human history is also a process of creating and overcoming alienation. In this case, history is also a deliberate process and involves a transition from a lower form of social being (class society affected by alienation) to a higher form of social being, which is a communist society free from alienation. In other words, human history also in this case is a process of transition from “pre-history”, in which a subject’s objectivisation is opposed to the subject, to the “actual history”, in which the previous lack of unity of being is finally overcome. However, whereas in the case of Hegel, the drama of fall and salvation is depicted in the language of theology, i.e. the process of humanity departing from God (the Logos of History) and returning to communion with God (spiritual absolute), in the case of Marx, the alienation of being is described in the language of political economics. In the description of the process of creating and overcoming alienation, terms such as: God, the Absolute Spirit, Historical Reason are replaced with terms such as:

²⁵ G.W.F. Hegel, *Zasady filozofii prawa*, Warszawa 1969, Part Three, Chapter 3; cf. also, M. Manelli, op. cit., pp. 100–122; see also: Z. Stawrowski, op. cit., pp. 404 et seq.

²⁶ Cf. G.W.F. Hegel, *Fenomenologia ducha*, Warszawa 1963, Vol. I, pp. 23–27, 31; cf. also analysis of the Hegelian dialectic in the work by: L. Kolakowski, op. cit., Vol. I, pp. 11–79; see also: B. Baczeko, op. cit., pp. 44 et seq.

commodity, money, market, capital, labour, etc.²⁷ For example, the concept of commodity points, according to Marx, to the basic social relation in which the essence of work alienation is expressed. The concept of commodity assumes a contradiction between social form and private content of labour. According to Marx, this is the fundamental contradiction of capitalism, which consists in a domination of objectified labour accumulated in the form of capital over living work, i.e. the work actually performed by working entities. In other words, it is the dominion of abstract work expressed in the exchange value (social form of work) over concrete work expressed in the utility value (private content of work). The domination of the abstract (social form of work) over the concrete (private content of work) means that the producer of goods treats the social nature of their work, i.e. its connection with the work of other entities, as a foreign and hostile force taking the form of cumulative exchange value, which is capital. This is so because concrete work gains social significance through the market, whereas abstract work it takes the form of exchange value objectified in commodities. As a result, particular entities do not control the consequences of their work for the entirety of the social production process, which results in work and its products in the form of capital becoming foreign and hostile to humans. The source of this phenomenon is the separation of work from property in connection with private ownership of means of production.²⁸

According to Marx, alienation of work in a capitalist society leads to a denial of humanity instead of confirming it. In other words, the catastrophic effects of work alienation completely deprive humans of dignity in a capitalist society. On the grounds of Marxism, assuming that the essence of humans as species is the need for work understood as a spontaneous creative act, it should be recognised that capitalism is a radical negation of the human essence understood this way, making work a tool of their enslavement and reification. Therefore, capitalism is a situation in which a human being remains in a radical contradiction to their empirical existence. This is the basic rupture (contradiction) in the structure of social existence in class societies, i.e. in the phase of “prehistory” affected by alienation. In the “prehistory” phase, humans are subject to alienation (reconciliation), which can be considered in two aspects: (a) the form of socialisation of humans in the production process in the form of commodity exchange is alien and hostile to humans because it creates capital, i.e. the power over which no one has control and which as a cumulative exchange value (abstract work) is a source of misery for those who perform concrete

²⁷ It is pointed out by: D. Aleksandrowicz, *Hegel...*, pp. 80–81; see also: Z. Pulka, *Legitymizacja...*, p. 15.

²⁸ K. Marks, F. Engels, *Dziela*, Vol. XXIII, Warszawa 1968, pp. 39 et seq.; see also: *ibidem*, Vol. XXVII, Part 2, Warszawa 1981, pp. 657, 692–693.

work by producing utility values, (b) the empirical way of human existence is a denial of its species' essence because work becomes a slavish necessity serving to satisfy biological needs instead of being a spontaneous creative act. In the "pre-history" phase, work is a form of human enslavement. In this phase, when a human being exists on a social level, they are a slave in the work process, becoming free outside of work, when they exist on a natural level, fulfilling their biological needs. Therefore, instead of confirming the dignity of a human being as a being capable of creative acts, work is a denial of dignity as a form of enslavement of a human subjected to capitalist exploitation. Theses about the loss of dignity in the work process refer to the whole period of "prehistory", but Marx emphasises that in a capitalist formation, the domination of capital over work, i.e. objectified work in the form of cumulative exchange value, over living work leads to the most radical negation of dignity of a human as a subject of labour. In the period of "prehistory", the existing social conditions, especially those related to the work process, lead to a situation that humans cannot live according to their axiological rank as beings with the highest value. In other words, in the period of "prehistory", people cannot live in a man-worth manner, in accordance with the ideal of humanity assumed by Marx, which assumes that the essence of humans determining the value of their life is the ability of self-fulfilment in the process of work understood as a creative act. The tragedy of an individual in the conditions of private property consists in the fact that the real existence of a human is a denial of the ideal of humanity understood this way. This is because work in the conditions of private property ceases to be a form of development of creative opportunities, and becomes a means of satisfying biological needs. The paradox of development in conditions of private property is that people as individuals are the poorer the more wealth they produce on the social scale. "Pauperisation" in this case means a radical degradation, not only a material but also a spiritual one, because human needs are reduced to satisfying animal biological needs. As Marx says: "...the human essence objectifies itself in an inhuman way...".²⁹ This means that humans create a world that deprives them of dignity, bringing them to an animal level.

Therefore, whereas in the case of Hegel, in the period of "prehistory", the lack of full self-knowledge of freedom does not deprive humans of dignity as an instrument of spiritual absolute, in the case of the Marxian concept of alienation of social being, the period of "prehistory" is a radical denial of humanity, which lost in capitalism becomes only a potentiality (duty) that can be fulfilled in a future communist

²⁹ K. Marks, F. Engels, *Dziela*, Vol. I, Warszawa 1960, p. 620; see also: analysis of alienation of being in the capitalist society conducted in: M. Fritzhand, *Mysł etyczna młodego Marksa*, Warszawa 1978, pp. 144–157, 195–212.

society.³⁰ Therefore, in Marx's view, in order to regain dignity, the human must overthrow (abolish) the existing social relations and create new ones, free of private property, thus overcoming the alienation of social existence. On the other hand, in the Hegelian approach, human dignity conceived as self-knowledge of freedom is self-fulfilled by manifesting itself in the continuous and objective process of the embodiment of the Historical Logos.³¹

Feminism

It can be assumed that contemporary feminism has clear Marxist roots.³² Contemporary feminism is not limited to demanding equal rights for women and men, but assumes that in conditions of a capitalist society based on Christian culture, the world of women is the area of radical alienation depriving women of dignity.³³ Therefore, a recovery of dignity (emancipation) requires an overthrow of the patriarchal and sexist relations, and a creation of a new society free of alienation of being, which is manifested in oppression against women.³⁴

A sexist and patriarchal social system is a system in which women are subject to exploitation and reification in forms such as: patriarchal family, prostitution, pornography, sexist advertising, beauty contests, semantic violence, i.e. the use of concepts that assume a dominance of men.³⁵ Deprivation of dignity, reification, and cultural alienation of women results from the fact that the contemporary capitalist culture based on Christianity assumes an enslavement (exploitation) of women by men. Reification and alienation are mainly cultural (religious) in nature, for example, the Christian family model assumes that domination-based relationships between men and women are natural, i.e. biologically determined. A form of reification is a social coercion to act as a wife (getting married) and as a mother (compulsion to have children). According to contemporary feminists, both of these roles are not

³⁰ Cf. M. Fritzhand, op. cit., pp. 212–235.

³¹ Cf. L. Kołakowski, op. cit., Vol. I, pp. 56 et seq.

³² Cf. E. Kochan, *Feminizm i ideologia, na marginesach książki Kazimierza Ślęczki*, [in:] *Od marksizmu do feminizmu*, Katowice 2009, passim; see also: K. Ślęczka, *Feminizm*, Katowice 1999, pp. 109 et seq., 140, 383 et seq.; see also: A. Elliot, *Współczesna teoria społeczna*, Warszawa 2011, Chapter 7; see also: J. Helios, W. Jedlecka, *Wpływ feminizmu na sytuację społeczno-prawną kobiet*, Wrocław 2016, Chapter I.

³³ For women's dignity in the feminist thought, see: M. Kasztelan, *Simone de Beauvoir o godności kobiety*, [in:] M. Piechowiak, T. Turowski (eds.), *Szkice o godności człowieka*, Zielona Góra 2012, passim.

³⁴ Cf. L. Rodak, *Dekonstrukcja podmiotu według feministycznej jurysprudenji*, [in:] M. Paździora (ed.), *Postanalityczna filozofia prawa*, Wrocław 2015, passim.

³⁵ The phallogocentric and oppressive nature of the subject category in law is indicated in: L. Rodak, *ibidem*, p. 148.

determined biologically, but subject to cultural coercion. A form of objectification (reification) is the prohibition of abortion (restrictions on access to abortion), which assumes that the society (men) is the owner of the woman's body (the foetus is treated as a part of a woman's body and not a separate entity). Another manifestation of reification is also the cultural condemnation of women's homosexuality. The main source of objectification is consciousness (culture), which assumes a reification of women through the prevalence of thought stereotypes with their roots in Christianity.³⁶

The sphere of private relationships between a man and a woman in contemporary feminism is of a political (public) nature – it is a manifestation of a brutal sexual policy based on instrumentalisation and objectification of women.³⁷ A woman as a sexual object is not a subject, but an object deprived of dignity. There is a clear reference to Marx here, who pointed to the commodification of women in a capitalist society in the *Economic and Philosophic Manuscripts*.³⁸ Sexual relations are political in nature because they are relations of power and domination on a social scale. The relations between the sexes are compared to the relations between the white and black race during the period of slavery – hence “sexism” generating associations with “racism”. Domination in the private sphere (sexual relations) is considered the basis of patriarchal domination in all other social spheres such as: the army, police, industry, finance, universities. In conditions of a global patriarchy, power is based on culturally determined violence and consent to violence against women.³⁹

Emancipation of women calls for an overthrow of patriarchy and sexism through a cultural revolution involving such institutions as: family, school, church, economy, state. In other words, it is a programme to restore women's dignity through a revolutionary overthrow of the “men's world”. Patriarchy can only be put to an end by a total cultural revolution that goes far beyond the current emancipation movements. In particular, the revolution presupposes an elimination of the family in its current shape, where a woman is the property of a man, and where a woman's duty to bear and take care of children is tyrannically presumed as obvious.

Emancipation and recovery of the lost dignity is about liberating women from biological determinism, which is considered cultural determinism in contemporary feminism. This means that biologically a woman is not determined to act as a mother, i.e. to bear and raise children. On the biological level, a woman is not determined to anything – there is no such thing as biological determinism. It is persuaded to

³⁶ K. Ślęczka, op. cit., pp. 113 et seq.

³⁷ Ibidem, p. 121, in particular pp. 131 et seq.

³⁸ K. Marks, F. Engels, *Dziela*, Vol. I..., pp. 611–612; cf. also, M. Fritzhand, op. cit., p. 185.

³⁹ Cf. K. Ślęczka, op. cit., p. 131.

women on the gender level, i.e. on the cultural level. Therefore, the recovery of dignity requires liberation from role determinism, which is defined on the social (cultural) level and not the biological one. At this point, one can also see a reference to Marx, who considered all biological manifestations of human life determined by social relations. In Marx's view, biological determinism in relation to humans is only one of the forms of manifestation of social determinism. Liberation from biological determinism is possible at the current level of technological advancement, which offers solutions such as not only *in vitro*, abortion, and contraception but also extracorporeal pregnancy.⁴⁰

The tyranny of social roles depriving women of dignity is explained by means of a gender dialectic (war of the sexes), in which the conflict of sexes is considered more fundamental than the conflict of economic classes.⁴¹ The biological reproduction conflict associated with the emergence of antagonistic sex classes is considered fundamental here.

The first and the most basic conflict is about the division of labour based on sex, which only later developed into a system of economic classes based on the ownership of the means of production. Technological development enabling extracorporeal pregnancy creates technological conditions for the revolution and the abolition of sex classes, i.e. the removal of sex differences by eliminating sex as a socio-cultural phenomenon.⁴²

Postmodernism

It can be assumed that the modernist concept consisted in organising the society in accordance with the principles of reason, i.e. in accordance with the indications of science and technology, and to base social institutions on the idea of freedom understood in the Kantian spirit, i.e. as an individual's autonomy in deciding on the choice of their own way of life. This concept was born in the Enlightenment. The modernist image of the world is logocentric and as such it is based on the assumption that the world is a coherent, orderly, and determinate whole that is subject to constant regularities. These regularities make social processes predictable and controllable. The logocentric image of the world and society also assumes the important role of science and technology as a factor of social transformation. Modernism is also about methodological naturalism, i.e. the unity of the method in the natural and social sciences in which the same logical and empirical methods of scientific

⁴⁰ Ibidem, p. 143.

⁴¹ Ibidem, p. 140.

⁴² Ibidem, pp. 104 et seq.

cognition are used as well as the same criteria of legitimacy of statements. In legal theory, a manifestation of modernist thinking is the model of rational law creation and the theory of a rational legislator. This is connected with the concept of scientific law policy, which assumes that thanks to science, legislators can plan social development and control and guide social processes.

A feature of the modernist programme is the assumption that science and technology are to serve the emancipation of individuals and societies.⁴³ This element of the programme is subject to criticism by neo-Marxism in the version presented by the so-called Frankfurt School.⁴⁴ For example, according to J. Habermas, affiliated with this school, subordination of social life to the principle of technological rationality has become a source of human enslavement. This author formulates a thesis about colonisation of the world of life (family, culture) by systemically integrated areas of social life such as politics and economics, which act through power, law, and money.⁴⁵ On the other hand, T. Adorno and M. Horkheimer point to the Dialectics of Enlightenment, or the internal contradiction of modernism, in which the increase of dominion over nature was achieved as a result of enslavement of humans in a society subjected to the dictates of instrumental reason.⁴⁶ In the neo-Marxist and postmodernist interpretation, the Nazi program of social engineering implemented through genocide was the ultimate disgrace of modernism.⁴⁷ In both interpretations, the picture of the modern and postmodern reality is the image of an alienated reality, in which there is a radical and dignity-depriving contradiction between the essence of humans and their existence, or – in other words – between the essence of humanity and the real existence of human beings.⁴⁸

Postmodernism is not a homogeneous direction. One can say that there are as many postmodernisms as there are postmodernists. They share one thing – a negation of the modernist programme combined with a recognition of the period of modernity and postmodernity as an alienated reality. Under the postmodern current in jurisprudence, one can indicate such variations as: Critical Legal Studies, feminist theory, ecological theory.⁴⁹ They share the rejection of legal positivism,

⁴³ M. Horkheimer, T. Adorno, *Dialektyka oświecenia*, Warszawa 2010, pp. 15 et seq.

⁴⁴ Cf. describe of the programme of the Frankfurt School in: L. Kołakowski, op. cit., Vol. III, Warszawa 1989, pp. 1061–1104.

⁴⁵ I have offered an analysis of J. Habermas' theory in: *Rozum totalny w poszukiwaniu legitymowanego prawa*, [in:] J. Helios (ed.), *Autonomia prawa ze stanowiska teorii i filozofii prawa*, Wrocław 2003.

⁴⁶ M. Horkheimer, T. Adorno, op. cit., passim.

⁴⁷ Z. Bauman, *Nowoczesność i Zagłada*, Warszawa 1992, Chapter 2 and 3.

⁴⁸ E. Gellner, *Postmodernizm, rozum i religia*, Warszawa 1997, pp. 45–56.

⁴⁹ Cf. L. Morawski, *Podstawy filozofii prawa*, Toruń 2014, pp. 339–354.

in particular the positivist assumption that law as an expression of a rational legislator's will is a tool to implement objectives in a way determined by scientific law policy. Coming to accept that social processes are indeterministic leads postmodernists to reject the concept of a rational legislator and scientific law policy.

Both neo-Marxism and modern postmodernism are critical theories in which criticism means a more or less radical negation of capitalism in its modern and post-modern stage of development. Criticism understood this way is connected with the demand of emancipation abolishing the alienation of social being and restoring dignity to the individual by reconciling the human essence with their empirical existence. It is typical of postmodernism to assume that social reality is made up of statements and their systems, i.e. discourses that perform a function of perpetuating class domination – and thus serve political goals rather than seeking the truth. Both a scientific discourse that uses the true/false concept and a moral discourse that uses the concept of good and evil have a political sense and are regarded as tools of class rule (political rule). The political meaning of discourses, combined with the image of alienated postmodern reality, highlights the Marxist roots of postmodernism. A typical Marxist theme in postmodernism is the deconstruction of discourses understood as 'shattering' of mass illusions, which, embedded in the accepted systems of meanings, are to serve as a tool of political domination. Postmodernism like Marxism also assumes that an individual is trapped in perpetuated systems of meanings that allow class domination or are an instrument of political domination. A typical motive in post-modern thinking is the assumption that the domination in the sphere of meanings and symbols, that is, dominion over consciousness, is the basis of political domination. In Marxism, this motif is particularly typical of works by A. Gramsci.⁵⁰ Postmodernism like Marxism also assumes that the deconstruction of narratives or discourses, performed under the slogan of combating semantic violence or hate speech, is to perform emancipation functions because it is supposed to overthrow class (political) domination in the sphere of language, or – more broadly – in the sphere of symbolic culture. To emancipate (de-alienate) through a deconstruction of meaning systems means in this case to overthrow the rule of alienated meanings and symbols serving political oppression. For example, Z. Bauman deconstructs the Enlightenment Reason (instrumental reason), demonstrating that its most perfect incarnation is Auschwitz.⁵¹

In the view of Z. Bauman, the object of such a criticism is the reality of late modernity, described by the author as "liquid modernity", in which globalisation and related IT revolution, migration crises, the ecological crisis, the crisis of the idea

⁵⁰ A. Gramsci, *Zeszyty filozoficzne*, Warszawa 1991, pp. 457–470.

⁵¹ Z. Bauman, *Nowoczesność...*, pp. 33–41.

of a nation state, in general, the crisis of Western civilisation based on the modernist cult of knowledge and technology and the dictates of instrumental reason are the main sources of alienation of social existence.⁵² In the liquid phase of modernity, the world is not a logocentric and determinate whole, but resembles more and more a marketplace where different cultures meet.⁵³ The role of social sciences is not to determine universal regularities (legislative function) but to explain cultural differences (interpretation function).⁵⁴ Science (sociology) does not give up the emancipatory function.⁵⁵ By revealing the causes and manifestations of an individual's alienation in the world of "liquid modernity", sociology is to perform an important function in the process of overcoming alienation and reification.⁵⁶

The postmodern image of the world is radically indeterministic, i.e. it assumes that the world is ruled by chance, and social processes are unpredictable. A manifestation of such a perception of "late modernity" is found in Z. Bauman's thesis on the "liquid" or "soft" reality.⁵⁷ The crisis and the final abandonment of the modernist concept offers a liberation from the tyranny of instrumental reason, but leads to instability, uncertainty, and a loss of trust in social relations. Departure from the logocentric perception of the world results in a "liquefaction" of the reality in the present (postmodern) phase of capitalist development. The main source of "liquidity" of being is the insecurity of employment resulting from globalisation. The uncertainty of being is comes mainly from the unpredictability of global financial flows, made instantly thanks to IT technology. It was indicated, among others, by S. Ehrlich, using the term "digital economy".⁵⁸ This results in mass unemployment, enormous wealth stratification, criminalisation of poverty, mass social exclusion of victims

⁵² Idem, *Globalizacja*, Warszawa 2000, p. 27; cf. also idem, *Płynna nowoczesność*, Kraków 2006, Chapter 1.

⁵³ The progressing heterogeneity of postmodern societies is covered in: L. Morawski, *Główne problemy współczesnej filozofii prawa. Prawo w toku przemian*, Warszawa 2005, pp. 64–77; cf. also idem, *Co może dać nauce prawa postmodernizm*, Toruń 2001, pp. 36–41; cf. also idem, *Podstawy filozofii...*, pp. 21–29; See also: Z. Bauman, *Globalizacja...*, pp. 71 et seq.; cf. also idem, *Ponowoczesność jako źródło cierpień*, Warszawa 2000, pp. 44 et seq.; cf. also idem, *Płynna...*, *Przedmowa*; see also: A. Giddens, *Nowoczesność i tożsamość*, Warszawa 2002, Chapter I.

⁵⁴ Z. Bauman, *Prawodawcy i tłumacze*, Warszawa 1998, passim.

⁵⁵ For the emancipatory function of neo-Marxism, see: L. Kołakowski, op. cit., Vol. III, pp. 1069–1082; cf. also, Z. Bauman, *Płynna...*, Chapter II.

⁵⁶ Cf. Z. Bauman, *Płynna...*, pp. 61–64, 79, 327; cf. also idem, *Globalizacja...*, p. 27.

⁵⁷ Idem, *Płynna...*, *Przedmowa*, passim.

⁵⁸ S. Ehrlich, *Norma, Grupa, Organizacja*, Warszawa 1998, pp. 176, 207–208, 215.

of globalisation, and bursting of public space into closed enclaves of wealth surrounded by zones of poverty.⁵⁹

In late capitalism, referred to as “liquid modernity”, the alienation of a social being manifests itself in a dramatic contradiction between the de jure formal and legal autonomy (freedom) of an individual and the de facto lack of autonomy (freedom) of an individual.⁶⁰ De jure, i.e. in accordance with numerous catalogues of fundamental rights, an individual as a person with legal capacity is equipped with ever more sophisticated human rights systems that ensure the right to self-fulfilment. On the other hand, de facto, that is in an actual empirical being, an individual does not exercise any control over social conditions that exclude the exercise of these rights and, as a result, is deprived of the possibility of taking a real decision on their fate. This is reminiscent of the Hegelian opposition (criticised by Marx) between the freedom of an abstract citizen of a state and the enslavement of a real member of a civil society.⁶¹ At the late stage of capitalism, the inability to depict the drama of alienation of being in terms of collective (e.g. class) interests (problems) is also common. In late modernity, alienation of being is expressed only in terms of individual failure, that is, the failure of individual life strategies. Consequently, the only acceptable strategy for dealing with problems is not to fight for group interests, but to opt for personal training.

The image of a lonely individual drifting in liquid modernity, as constructed in Z. Bauman’s works, that de jure can do everything, but de facto must not do anything, is a depressing image of an alienated human radically deprived of dignity by losing control over their fate.⁶² It is a picture in which the loss of dignity is manifested through economic exclusion, in particular consumption exclusion, existential isolation associated with the inability to establish lasting bonds, and through a total helplessness towards alienated global social players who are not controlled by anyone and are not subject to any global legal regulations. The global corporate law adopted by corporations in their mutual relations is a so-called soft law, which by definition is not enforceable by supranational jurisdictional authorities.⁶³ In addition, the main purpose of corporate law is to let transnational corporations determine the strategy of operation in conditions determined by legal regulations

⁵⁹ Z. Bauman, *Życie na przemiał*, Kraków 2005, pp. 13–16, 22 et seq., 69, 199; cf. also idem, *Płynna...*, pp. 48 et seq.

⁶⁰ Idem, *Płynna...*, p. 61.

⁶¹ K. Marks, F. Engels, *Dzieła*, Vol. I..., pp. 429 et seq.; see also: R. Panasiuk, op. cit., pp. 194–224.

⁶² Z. Bauman, *Ponowoczesność...*, pp. 65, 92 et seq.; cf. also idem, *Życie...*, pp. 13 et seq., 199.

⁶³ For more on corporate law, see: J. Jabłońska-Bonca, *Korporacyjne regulacje pozaprawne a systemowość prawa. Zarys problemów*, [in:] Z. Pulka (ed.), *Systemowość prawa*, Wrocław 2016, passim.

applicable in local national markets. Therefore, there is no global law that would determine what is lawful and what is unlawful in the sphere of global, extra-territorial financial flows. A manifestation of the dictate of global capital is the gradual abandonment of the welfare state model and the gradual privatisation of the public sphere, e.g. in the form of privatisation of security, which increases the sense of personal danger.⁶⁴ According to Z. Bauman, in the phase of “liquid modernity”: “Capital of fear from which you can derive economic and political benefits is unlimited”.⁶⁵ The condition of an individual in liquid modernity is characterised by irresolvable loneliness, an awareness of being fated to resort to one’s own powers, a sense of total helplessness towards global and anonymous social forces, which contrasts with juridical constructs of the individual as a person with legal capacity with increasingly sophisticated human rights systems (fundamental rights). This state of permanent alienation generates a chronic existential fear, which deprives humans of dignity, and therefore this dignity must be regained, mainly thanks to Critical Legal Studies, whose task is to abolish the alienation of social being by transforming social consciousness.

The emancipatory functions of critical theory are as follows: (a) revealing the causes of reification in late capitalism by revealing the mechanism of functioning of global capital, (b) deconstruction of the imposed narrative in which individual failures and restoring the perception of contemporary problems in terms of conflict of collective interests are the source of problems, (c) emphasising the need to overcome existential fear by building an open and universal human community, following the example of Kant’s universal confederation of peace.⁶⁶ Critical theory aims also to abolish the opposition between the *de jure* subjectivity and the *de facto* lack of subjectivity, which consists in a contradiction between the apparent fullness of legal subjectivity and the actual deprivation of any opportunity for making authentic and autonomous choices in deciding on one’s fate. To this end, it is necessary to stop the colonisation of the public sphere by the private one and to revive authentic politics as the art of articulating and implementing collective interests. In other words, it is necessary to revive real communities and overcome the atomisation of society. The task of Critical Legal Studies is to reveal the sources of social evil, in particular the extraterritorial (global) financial elite mechanisms that use effective methods of subordination of local governments through the threat of capital flight, poorer performance of local companies, currency weakening, denial of loans, and

⁶⁴ For more on the privatisation of security, see: J. Jabłońska-Bonca, *Prywatna ochrona bezpieczeństwa*, Warszawa 2017.

⁶⁵ Z. Bauman, *Europa niedokończona przygoda*, Kraków 2005, p. 169.

⁶⁶ *Ibidem*, pp. 205–212.

military intervention taking the form of a deregulated war through privatised armies.

The effect of the activity of the global and anonymous financial elite is the mass production of human waste, i.e. the excluded and chronically unemployed, degradation of local environment, and exploitation of natural resources. Human waste is deprived of dignity because such people are permanently excluded from consumption, participation in which is the main form of socialisation at the late stage of modernity. Exclusion from consumption also means permanent exclusion from social communication.⁶⁷ Modern landfills for “human waste” are prisons and poor neighbourhoods in cities, transforming into ghettos or hyper-ghettos, in which people permanently deprived of dignity – victims of globalisation – vegetate. According to Z. Bauman, “human waste” are people permanently deprived of liberty conceived as the right to choose their own identity and of responsibility for this choice, which is considered the basic determinant of humanity and human dignity.⁶⁸ These people as unnecessary must be removed from the society, their degradation is permanent (irrevocable). The image of the society of “liquid modernity” includes two social groups: those subject to the imperative of consumption and those permanently excluded from consumption. Both groups have been deprived of dignity, i.e. humanity conceived as the ability to choose one’s own identity. Following a slightly different approach, in which the criterion of division is represented by the relation to space, the division occurs between the extraterritorial elite, for which space is not a barrier, and excluded people who, doomed to locality, are a modern version of people bound to land.⁶⁹ In both cases, empirical existence is contrary to the essence of humanity conceived as the ability of an individual to fulfil oneself through the free choice of their own identity.

Conclusions

The main question that arises is one about the significance of a distinction between an autonomous and a heteronomous understanding of human dignity for the understanding of positive law and for the resolution of legal issues of interpretation and application of law. This question is all the more important because the two presented concepts of dignity assume, in fact, two different – or rather opposing – concepts of the human being.

⁶⁷ Idem, *Życie...*, p. 69.

⁶⁸ Idem, *Ponowoczesność...*, p. 65.

⁶⁹ Idem, *Globalizacja...*, pp. 124 et seq.

The autonomous understanding of dignity considers a human as a being who always maintains a certain margin of independence of the social conditions of their existence and cannot be reduced to a sum or a resultant of social relations. In this approach, a human must not be perceived as a product of social relations, i.e. as a being totally determined by the social conditions in which they live. In this approach, a human never loses their autonomy, i.e. the ability to make autonomous decisions and bear both moral and legal responsibility for them. Human dignity, their freedom understood as the ability to determine their own identity, is always – at least to some extent – immunised to the social conditions in which a person lives. In this approach, human always retains the ability to choose their identity and take responsibility for this choice. Consequently, the lack of control over the social conditions of human functioning – and hence what Marxists consider alienation of social beings – not only does not deprive an individual of the ability to choose their own way of life, but also does not release humans from responsibility for the choices they make.

Recognising a human as a “resultant” of social relations, in particular economic relations, is rejected both in the Christian social teaching and in Kant’s practical philosophy.⁷⁰ According to both the philosophy of I. Kant and Christian thought, humans cannot lose their dignity regardless of social conditions in which their empirical existence takes place. In both cases, even in the most radical alienation of social being, a human does not lose the ability to make autonomous moral choices, which is decisive for maintaining their dignity.

On the other hand, the adoption of a heteronomous concept of dignity implies the concept of a human being as a product or effect of social relations. In this view, the lack of control over social living conditions, and hence what Marxists define as alienation of being, results in a lack of freedom in the choice of one’s own identity, which is determined by the social conditions of an individual’s functioning. In other words, in conditions of alienation of being, identity is imposed upon an individual by a socially shaped form of life, or determined by social relations that are oppressive, foreign to the individual, and objective towards the individual. An individual is a victim of alienation of social being, which largely reduces their responsibility for the choices made in life. The heterogeneous approach to dignity implies that an individual who does not control the conditions of their socialisation, e.g. in the process of work (alienation of work), must not be held responsible for the consequences of accepting an alienated identity that has been imposed on them and is contrary to the essence of humanity.

⁷⁰ This issue is clearly demonstrated by John Paul II in encyclical *Laborem Exercens*, p. 40.

It can be therefore assumed that in the case of autonomous concepts, the essence (value), and thus human dignity, is either a practical reason making it possible to distinguish between good and evil (I. Kant) or a connection with God through the act of creation (the Christian concept). In both cases, these are immanent elements to the human, which create human nature and define what a human as a kind of being is. In these approaches, the concept of human dignity has clearly an ontological (anthropological) meaning. This is because the category of human dignity asserts that humans exist here and now independently of social conditions, and in some probable hypothetical reality determined by the adopted ideal of humanity, whose implementation depends on social relations.

In heteronomous concepts, in turn, the essence of a human being that determines their value, and hence dignity, is perceived as the ability to become self-created, i.e. as the ability to become a specific being whose concept is embodied in the form of the ideal of humanity, defines what a human should be as a potential being. A human's dignity is in their ability to transcend beyond the way of existence imposed by social conditions. In other words, a human's dignity is included in their ability to transform potentiality (what human should be) into reality (real empirical existence). The assumption that the value of human life is a derivative of social conditions in which a human lives implies that under certain conditions, a human may lose their dignity if the empirical being of a human, and thus their existence, stands in opposition to the accepted ideal of humanity that points to its essence (contradiction between being and existence). In this case (alienation of being), in order to regain a lost dignity, a human must change their social conditions to those in which the accepted ideal of humanity can be materialised. Therefore, regaining dignity requires changing one's social conditions to those in which the state of conformity of a human being with its empirical existence is possible. Such a way of understanding human dignity can be found in Marxism and Marxism-related variants of feminism and postmodernism, which, as critical theories, speak of a necessity of global social reconstruction in order to abolish the alienation of social existence and let an individual regain their dignity. In classical Marxism, a human regains dignity when they can fulfil the need for work understood as a spontaneous creative act. In feminism inspired by Marxism, a human (woman) regains dignity when, through elimination of patriarchy, they abolish the coercion to perform their social roles. On the other hand, in the postmodernism inspired by neo-Marxism, humans regain dignity when they regain control over the conditions of their socialisation by rejecting the dictates of globalised capital.

The adoption of an autonomous or a heterogeneous concept of human dignity has important legal consequences.

In the case of an autonomous concept of dignity, the basic function of law is to protect the inherent and inalienable value of human life. An example of this is the Christian and Kantian concept of positive law as determined by natural law, i.e. a higher normative order having an axiological justification. Law is perceived here as a way of protecting the value of life determined by a higher normative order, whose contemporary manifestation is the demand for a legal protection of life from conception to natural death, and a prohibition of genetic engineering. In Christian social science, adoption of an autonomous concept of human dignity results in a postulate of subsidiarity of the state and law. The consequence of this view is the demand for family autonomy, which assumes that law should protect the independence of the family from public authority, and the interference of the state and law with the family life should be exceptional. This leads to a rejection of the paternalistic concept of constant control and supervision of the state over the family, e.g. under the pretext of combating domestic violence or sexual offenses. According to the demand for family autonomy, poverty does not legitimise state interference with family life either. As a consequence, family law should be free from administrative methods of regulation.

On the other hand, adoption of a heteronomous concept of dignity results in the conclusion that law should perform emancipation functions, serving the purpose of restoration of lost dignity. An example of such an approach may be a communication vision of law referring to the philosophy of J. Habermas, in which law is perceived as a set of procedures of communicating in a manner consistent with speech ethics.⁷¹ Law, as a set of ethical criteria for communication, is to emancipate humans from the dictate of instrumental reason in a welfare state that implements extensive social programmes, in which the world of life (family, culture, science) is protected from progressive colonisation by an oppressive political and economic system. Law is seen here as a way to regain dignity lost as a result of colonisation of the world of life.

In feminist law and Critical Legal Studies (CLS), law is seen as a tool for emancipation and restoration of dignity to victims of social exclusion and deprivation, i.e. victims of social exclusion related to economic or cultural degradation, which in the case of feminism is referred to as sexism or patriarchy.⁷² The liberation of women from patriarchy requires a profound, administrative-based, juridical interference in the functioning of the institution of patriarchal family, for example in the form of anti-violence programmes and regulations to combat incest and paedophilia. The recovery of women's dignity lost in a patriarchal society also requires juri-

⁷¹ Cf. Footnote 45.

⁷² Cf. Footnote 34.

dical interference with education programmes in order to deconstruct the socialist awareness of sexist and phallogocentric narratives on which patriarchy is based.

Understanding and considering dignity in an autonomous manner usually justifies conservative programmes, which results in a systemic perception of law and a demonstration of the function of social control through law (protection of law and order). What is demonstrated is a static understanding of law and of interpretation of law, as constructs implementing static values, i.e. legal certainty, legal security, and behavioural effectiveness of law understood as compliance of the behaviour of the addressees of law with the models defined by legal standards. On the other hand, heteronomous approaches to dignity provide a justification for an asystemic perception of law, which goes hand in hand with the demonstration of the function of law as a tool for conversion of social consciousness. This results in a dynamic perception of law as a tool for emancipation (recovery of dignity) of excluded social groups, e.g. victims of patriarchy or globalisation. Law is required to be effective in finitist terms understood as achieving the assumed emancipation goals.

In the area of criminal law, the adoption of an autonomous concept of dignity results in programmes aiming to tighten criminal policy, including the application of elimination fines – which is associated with the demonstration of the function of retribution penalty. A perpetrator is perceived as a subject who questions the inherent and inalienable dignity of the victim through crime. On the other hand, the adoption of a heteronomous concept results in the demonstration of the educational (social rehabilitation) function of punishment, i.e. special prevention in particular, and demands for mitigation of criminal policy. This is related to the perception of perpetrators as victims of social deprivation and exclusion, who must be helped to regain lost dignity through social rehabilitation programmes.

As Z. Bauman points out, alienation of a being in the phase of liquid modernity takes the most severe form by reducing an individual to the role of a compulsive consumer.⁷³ A consumer's maimed identity displays a strongly marked opposition (gap) between the *de jure* subjectivity and the *de facto* lack of subjectivity. In Z. Bauman's view, the maimed and one-dimensional identity of a consumer is the negation of the ideal of self-fulfilment of an individual. Let us note that in this case, the ideal is understood in the Marxist way as a comprehensive and creative development combined with overcoming the feeling of being alien to others and the ability to create authentic communities. Contemporary economic exclusion takes mainly the form of exclusion from consumption, from "consumption feast", as Z. Bauman says.⁷⁴ Consumer as a subject affected by alienation is characterised by a total lack

⁷³ Z. Bauman, *Ponowoczesność...*, p. 92; idem, *Życie...*, p. 192.

⁷⁴ Idem, *Ponowoczesność...*, pp. 66–67.

of opportunity to actually make authentic choices and decide on their fate. It is a subject subjected to the actual dictate of consumption forced by the market. The only real need of a consumer is the need to make new acts of consumption, providing immediate but elusive satisfaction.⁷⁵ On the other hand, exclusion from consumption means a radical social degradation, which is typical of unnecessary people, “waste people”, pushed to an ever further and criminalised social margin.

The concept of an individual who loses their dignity under certain social conditions, e.g. a consumer whom the late (liquid) capitalism deprives of an actual opportunity to decide about their fate, underlies a number of paternalistic legal regulations in the area of consumer law. These regulations include a clearly encoded form of a consumer as a victim of market manipulation, who, deprived of the ability to make rational choices, is motivated by irrational impulses related to a compulsive pursuit of immediate satisfaction. A similar paternalism is visible in some branches of administrative law, for example, ones governing access to firearms or defining the position of an investor in construction law, etc. On the other hand, the status of unnecessary people, i.e. permanently excluded from consumption, is defined by paternalistic regulations of social support law, e.g. ones that argue for substitution of financial support with non-cash support, or make such support dependent on submitting oneself to a humiliating control mechanism. Therefore, it can be said that paternalism in law is often justified in adopting a heteronomous concept of the dignity of an individual, in which the scope of rationality of an individual understood as the ability to make autonomous life choices is radically reduced by prevailing social relations. The examples of loss of dignity in late capitalism provided by Z. Bauman, accompanied by regrets about the dismantling of the paternalistic welfare state, indicate that paternalism in law is associated with heteronomy in the issue of the dignity of an individual. In other words, paternalistic legal regulations often view the concept of a human deprived of dignity by the social conditions they function in as an ability to decide about one’s own identity and take responsibility for that choice. It should be pointed out that paternalism in Polish law cannot be justified in the Constitution of the Republic of Poland, which clearly refers to the autonomous concept of human dignity both in the preamble and in Article 30.

⁷⁵ Idem, *Razem czy osobno*, Kraków 2003, p. 180.