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## Personal Dignity in the European Legal Culture

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### Abstract

The article presents the genesis of the origins of forming the legal mechanisms to protect the personal dignity in the European legal culture. It is noted that the legal content of dignity is predetermined by the moral aspect of consideration. In addition, the definition of "dignity" was transformed under the influence of the development of legal norms, doctrine and practice of protecting a person's rights and freedoms, the foundations of civil society and legal awareness. The chronological period of research was limited to the XIII-XIX centuries, within which the authors, using a comparative legal method, defined the directions of conceptualization and formalization of the personal dignity by scientists and legislation in the European countries. As a conclusion, it is shown that the observance of the right to personal dignity by the state will not only promote the exaltation of human dignity, but also simultaneously initiate the expansion of public law compensated by increasing the subjective rights.

**Keywords:** Personal dignity, Law, Constitution, State, Society, Morality, Will.

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## **Introduction**

The personal dignity is seen in philosophy as awareness by human and society of the fact of having certain moral qualities and reputation parameters [1, p. 76-83].

From the legal point of view, dignity is the subject of protection by the state and the potential opportunity for everyone to assert their rights in any way not prohibited by law [2, p. 848-854; 3, p. 217-224].

Dignity often resists the empirical causal relationship of events and dictates a law to a human that does not coincide with his material interests and practical expediency, asserting itself against the supposedly obvious and necessary logic of the facts [4]. The reason for this paradox lies in the widest possible scale of the phenomenon under consideration and causes a search for new methodological approaches to ordering views on the understanding of dignity phenomenon [5, p. 2452-2455], including, in the chronological aspect.

## **Methodology**

The application of the analysis and synthesis methods (with the author's specification of the personal dignity definition), as well as the historical legal (in comparing the approaches to interpreting the person in the chronological period from the XIII to the XIX centuries) and the comparative legal methods (in terms of doctrine and formalization of the personal dignity by the scientists and legislation in the European countries).

## **Results and discussion**

The European legal culture in its modern understanding began to form during the Middle Ages. At that time, the most important feature of the world outlook in the European countries was the orientation toward the God and the related idea of salvation. Vision of human dignity was based on the religious-mystified notions about the equality of all before the God and the creation of human in a divine image and likeness. The Christian church emphasizes humility, taming of "flesh and arrogance" as opposed to the cult of reason and human's will in ancient times.

The Italian theologian and philosopher Thomas Aquinas believed that the welfare of a person, society and the universe was determined by divine design and the violation of divine laws by human was an act directed against his own good. At the same time, he defined the law as any manifestation of reason, which was proclaimed for the common good to those who cared

about the society. Aquinas limited the dignity with the conscience opposing an unjust law [6, p. 58].

The worldview of T. Aquinas was formed on the ancient ideas of natural law, so he argued that the state's goal was to create decent living conditions for the population. In his opinion, the natural law was destined to respect the human dignity as each of them had a divine origin and natural rights to dignity.

The Spanish researcher K. Valverde, belonging to the Society of Jesus (the intellectual nucleus of Catholicism), characterizing the views of that time, notes that "...God-likeness determines the human value and dignity. The God converses with him, directs him, explains that there is good and evil, helps him, honors his freedom, rewards or punishes. The God affirms the human dignity by all that" [7, p. 249].

He criticizes the attempts to assess the right to personal dignity depending on his property status, calling it "an ominous error", and stresses that the values of human spirit must be higher than the bodily values.

Reflecting the crisis and the contradictory nature of the historical conditions of the Middle Ages, the notion of dignity itself proves to be conjugate from the internal contradictions. Nevertheless, the right claims certain "volume" of dignity determined on the basis of social stratification and is gradually formalized acquiring the legal parameters exactly in the Middle Ages. From the legal point of view of that time, the human dignity reflected the social class of its bearer. The division into social classes was considered to be God-established and seemed to be a sufficiently functional way of governing the society.

According to M.Yu. Brazhnikov, the feudal social class system was perceived by the majority of population "not only as fairly just, but also as the only possible" [8, p. 64-66].

Nevertheless, the "Salic Truth", which was a case study of medieval legislation, fixed sanctions for diminishing the human dignity, depending not only on the social class, but also on the insult severity. Section XXX of this document contains the specific penalties applicable to the guilty person: "if anyone calls another a freak, he is awarded to pay 3 thess. If anyone - man or woman - calls a free woman a harlot and does not prove this, he/she is awarded to pay 45 thess" [9, p. 246].

In the XV century, the overcoming of church restrictions in the Renaissance makes the topic of human dignity central. The attitude towards a person, moving to the forefront, is radically changed, marking the secularization process. The anthropocentrism establishes a link between the human dignity and the universality of the creative abilities of each person, which "equate" him with the God, making it equal with him. The progressive thinkers of the Renaissance

made a great contribution to the development of the theory of human rights. There is H. Grotius, T. Hobbes, J. Locke, B. Spinoza, etc. among them, according to which the law becomes the main regulator of relations in the society and the priority of human rights is proclaimed.

As noted by the famous humanist of the time J. Manetti, "if we admit that other living beings have been created exclusively for the sake of human, then we can conclude that the world was created and organized by the God for the sake of human as well" [10, p. 8-68].

The theological and political treatise of the rational philosopher B. Spinoza is aimed at the scientific comprehension of the Holy Scripture, identification and elimination of the "theology prejudices". The author calls into question the blind worship of religion, arguing that the freedom of opinions and confession in the state is an obligatory criterion for the state's existence, and the absence of these freedoms entails "the destruction of the very state's balance and piety" [11, p. 38]. He called the laws in such a state a blessing of the whole people, and not of the ruler, and consequently the person who acts within the framework of law will no longer be a weak-willed slave, but will be a citizen living "by the order of reason" [11, p. 40].

Dutch lawyer and statesman H. Grotius, who laid the foundations of international law, stated that the state was "a perfect union of free people, concluded for the sake of observing the law and common good" in a well-known treatise "On the Law of War and Peace" [12, p. 72]. When developing a secular legal theory, he distinguished the natural right and the right of will, which "varies in time and is different in different places". Depending on the source, the law of will was classified by him for the divine and human right, divided, in turn, by the interstate right and the right of peoples.

The British liberal theorist J. Locke believed that the state was based on a variety of personal (private) interests, and the purpose of law was not to destruct and limited, but to preserve and expand the freedom. He conditioned the dignity by the inalienable human rights to life, liberty and property [13, p. 256]. The freedom, in his words, exists where everyone is recognized "the owner of his own personality" [13, p. 312]. The famous triad of J. Locke (the right to life, liberty and property) later became the cornerstone of the constitutions of many states.

According to a just remark of E.Yu. Solovyev, the Lockean construction of natural law is a direct declaration of inalienable rights, "the totality of which is conceived as the basic law of a newly established (reasonable) social system" [14].

The French philosopher of the Enlightenment period J.J. Rousseau found the sources of personal dignity in freedom, which most people lost with the occurrence of inequality and

property. Nevertheless, he was sure that there could be no freedom without laws: "Even in his natural state, the human is free only due to the natural law that governs all. A dignified human obeys, but does not serve, he is ruled, but he has no masters, he follows only the laws and is therefore not subject to people" [15, p. 117].

Ensuring the existence of law and order in the state is not achieved by a combination of private interests, but through a person's common interest, which is mediated both by the interests of the social group and the society as a whole.

Around the same time the teaching of I. Kant considered accessory to the human race as a dignity, and the right to dignity, in his opinion, had an absolute nature, since the person "has the right to claim respect for his loved ones and should also respect for others in turn" [16, p. 96].

According to reasoning of the founder of the German classical philosophy, the human should never be a mean of achieving a goal, but should always be the goal. By defining the human dignity as a criterion of his inner freedom, Kant believes that it (the freedom) is practically exercised by the person in two different orders of consciousness - in choosing an act according to a rational basis and in choosing the very basis, the general principle of action by the subject. So a person becomes the final goal of social movement from a mean (a trivial agent of expedient activity), and the personal freedom becomes the basic principle of law. The person behavior determinant is a free will that allows a person making a choice. Involving the ethical side of the right to dignity, Kant drew his attention to the fact that the actions of many people often did not deserve respect in life situations.

However, he stressed in his concept of absolute dignity that "to despise others, that is, to deny them to respect, with which one should treat a person in general, is like a duty in all cases, as they are people. The internal disregard for them as a result of comparison with others is inevitable sometimes, but its external expression is still an insult" [16, p. 101].

According to the provisions of idealistic ethics, the person has greater freedom from the life conditions, which sometimes leads to a contradiction with the "moral codes" formed in the society. The basis of dignity is based on a certain other-worldly, extra-social essence here. This direction contrasts the personal dignity with the normative prescriptions and the requirements of society.

Therefore, G.W.F. Hegel solved the problem of combining two opposing approaches to the consideration of dignity - metaphysical (Kant) and comparative-historical (French enlighteners) in the "Philosophy of Law". Here the significance of Hegel's analytic perception of the dialectical contradiction was clearly manifested, which, in his opinion,

"should not be considered an abnormality that occurs only here and there: it is negative in its essential definition, the principle of all self-movement, consisting not more than in the contradiction depiction" [17, p. 272].

As a result, he comes to the process of historical singling out the personal dignity in a legal sense from the archaic customs and traditions. On the example of Socrates' philosophy Hegel considers the gradual transition from morality to law. The public authority is, by the prevailing mass habit, which has been established spontaneously, the practice of behavior, which acquires the force of "existing, effective law" [17, p. 275].

According to Hegel the personal dignity consists of a respectful attitude both from the side of the individual and the state. He argued that the human dignity was in freedom, which made it possible to abstract from the external and internal prejudices and realize the true destiny. In his opinion, it is morals and laws that are the basis for maintaining the spirit of the people.

The fusion of human with society, which Hegel meant in his views on the essence of dignity, was represented in his theory through the romantization and idealization of the past, the communal forms of social life eliminated with the onset of civilization. Morality was identified with the state's life as a whole, with the functioning of social classes, corporations and other social institutions. In this sense, Hegel thought that it was enough to be "a citizen of a state in which the good laws rule" in order to have dignity [17, p. 276].

In summary, the historical experience shows that ignoring the right to dignity can lead very quickly to a situation where the interference in the private life will become the norm of daily activities of the state apparatus, entail major abuse of power and official position. Dignity often resists the empirical causal relationship of events and dictates a law to a human that does not coincide with his material interests and practical expediency, asserting itself against the supposedly obvious and necessary logic of the facts. The reason for this paradox lies in the widest possible scale of the phenomenon under consideration.

## **Conclusions**

Observance of the rights and freedoms of the human and citizen should be an obligatory criterion for any social transformation at all costs. The rights forming the basis of the legal status of a person should take precedence in every theory that seeks to develop a relationship between the population and the government.

The compliance with this right will contribute to the elevation of personal dignity in every possible way, while simultaneously initiating the expansion of public law, compensated by increasing the subjective rights.

Thus, the legal content of dignity is predetermined by the moral aspect of consideration. The definition of "dignity" was transformed in the European legal culture under the influence of the development of legal norms, doctrine and practice of protecting a person's rights and freedoms, the foundations of civil society and legal awareness.

## Footnotes

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