



UNIVERSITÀ
DEGLI STUDI DI BARI
ALDO MORO



DIPARTIMENTO JONICO IN SISTEMI GIURIDICI ED ECONOMICI
DEL MEDITERRANEO: SOCIETÀ, AMBIENTE, CULTURE

JONIAN DEPARTMENT - MEDITERRANEAN ECONOMIC AND
LEGAL SYSTEMS: SOCIETY, ENVIRONMENT, CULTURES



ANNALI 2014 – ANNO II

(ESTRATTO)
FERDINANDO PARENTE

The human rights between war, peace and justice

DIRETTORE DEL DIPARTIMENTO

BRUNO NOTARNICOLA

COORDINATORE DELLA COLLANA

FRANCESCO MASTROBERTI

COMMISSIONE PER GLI ANNALI DEL DIPARTIMENTO JONICO

BRUNO NOTARNICOLA, DOMENICO GAROFALO, RICCARDO PAGANO,
GIUSEPPE LABANCA, FRANCESCO MASTROBERTI,
NICOLA TRIGGIANI, AURELIO ARNESE, GIUSEPPE SANSEVERINO, STEFANO VINCI

COMITATO SCIENTIFICO

DOMENICO GAROFALO, BRUNO NOTARNICOLA, RICCARDO PAGANO,
ANTONIO FELICE URICCHIO, MARIA TERESA PAOLA CAPUTI JAMBRENGHI,
DANIELA CATERINO, MARIA LUISA DE FILIPPI, ARCANGELO FORNARO,
IVAN INGRAVALLO, GIUSEPPE LABANCA, TOMMASO LOSACCO,
GIUSEPPE LOSAPPIO, FRANCESCO MASTROBERTI, FRANCESCO MOLITERNI,
CONCETTA MARIA NANNA, FABRIZIO PANZA, PAOLO PARDOLESI,
FERDINANDO PARENTE, GIOVANNA REALI, LAURA TAFARO,
SEBASTIANO TAFARO, NICOLA TRIGGIANI

COMITATO REDAZIONALE

STEFANO VINCI (COORDINATORE), AURELIO ARNESE,
MARIA CASOLA, PATRIZIA MONTEFUSCO, ANGELICA RICCARDI,
ADRIANA SCHIEDI, GIUSEPPE SANSEVERINO

REDAZIONE:

PROF. FRANCESCO MASTROBERTI

DIPARTIMENTO JONICO IN SISTEMI ECONOMICI E GIURIDICI DEL MEDITERRANEO: SOCIETÀ,
AMBIENTE, CULTURE

CONVENTO SAN FRANCESCO, VIA DUOMO, 259 - 74123 TARANTO, ITALY

E-MAIL: FRANCESCO.MASTROBERTI@UNIBA.IT

TELEFONO: + 39 099 372382

FAX: + 39 099 7340595

HTTP://WWW.ANNALIDIPARTIMENTOJONICO.ORG

Ferdinando Parente

THE HUMAN RIGHTS BETWEEN WAR, PEACE AND JUSTICE*

ABSTRACT	
<p>In modern judicial systems, based on the centrality of the value of the person, it is essential an advanced social state of law and it is a priority the objective of combining the <i>legality</i> of the behavior with the effectiveness of <i>social justice</i>. This organizational model, in addition to recognizing individual rights and social rights, requires a <i>peaceful</i> development of relations between states, which implies the right to <i>security</i>. The perspective allows to identify a close relationship between the sense of <i>justice</i> and <i>social peace</i>, even in the historicity of the principles and rules of law. As a result, from a historical point of view, the issues related to social injustice have always had as a contributory cause manifestations of dissatisfaction and helplessness, in the face of existential needs not respected, lesion of human rights and disrespect the dignity of the person. Therefore, the peace phenomenon takes not only a legal relief, but also an important economic, ethical, religious, moral and social one. In this perspective, the <i>right</i> to peace, as <i>iustitiae opus</i>, along with the traditional rights of the person –the life, integrity, health, dignity, identity, freedom, solidarity -, may be included among the fundamental human rights (article. 2 cost.), deserving of protection is absolute and unconditional.</p>	<p>Negli ordinamenti giuridici moderni, basati sulla centralità del valore della persona, è essenziale un avanzato Stato sociale di diritto e prioritario l'obiettivo di coniugare la <i>legalità</i> dei comportamenti con l'effettività della <i>giustizia sociale</i>. Questo modello organizzativo, oltre a riconoscere i diritti individuali e i diritti sociali, richiede uno sviluppo <i>pacifico</i> delle relazioni tra gli Stati, che presuppone il diritto alla <i>sicurezza</i>. La prospettiva consente d'individuare una stretta relazione tra il sentimento di <i>giustizia</i> e la <i>pace sociale</i>, sia pure nella storicità dei principi e delle regole giuridiche. Difatti, sul piano storico, le problematiche legate all'ingiustizia sociale hanno avuto sempre come concausa manifestazioni di insoddisfazione e di impotenza, a fronte di bisogni esistenziali disattesi, di lesione dei diritti umani e di mancato rispetto della dignità della persona. Perciò, il fenomeno della pace assume non solo un valore giuridico, ma pure un rilievo economico, etico, religioso, morale e sociale. In questa prospettiva, il <i>diritto</i> alla pace, quale <i>opus iustitiae</i>, insieme ai tradizionali diritti della persona – la vita, l'integrità, la salute, la dignità, l'identità, la libertà, la solidarietà -, può farsi rientrare tra i diritti inviolabili dell'uomo (art. 2 cost.), meritevoli di una tutela assoluta ed incondizionata.</p>
Peace - Social justice – Legality	Pace – Giustizia sociale – Legalità

* Essay submitted to refereed according to the system of double-blind.

TABLE OF CONTENTS: 1. The centrality of the person's value and the aim of combining the legality of behaviors with the effectiveness of social justice. The peaceful development of relations between States and the right to security. The relationship between the sense of Justice and social peace. – 2. The Law notion of peace and its delineation as well through the category against war. The prospect of reshaping the concept of Justice to *ius positum* and not to the values of the community. The importance of the words peace-war-justice in the Constitutional Charter. The need to rebuild the relationship between peace, security and law. – 3. The legal normativism. The monistic view of the legislative system and its unitary structure. The overcoming of state sovereignty and superiority of the international order: the Grund Norm. The *bellum iustum* as a coercive mechanism to protect peace. International law as a solution to the peace problem. – 4. Peace as a legal-political order rooted to the Earth. The *nomos* of the Earth as an event constitutive of the law. The border as territorial limit of legitimacy order. – 5. The ethic weakness of the idea of just war. War as a “locked away” and as antithesis to the legal order. Peace as the only way to justice. The principle *stare pacto* and the system of collective security. The right to peace as an inviolable human right.

1. - In modern judicial systems, based on the centrality of the value of the person¹, it is essential an “advanced social state of law²” and it is a priority the objective of combining the *legality* of the behavior with the effectiveness of *social justice*³.

In fact, the social state of law is characterized by two distinctive elements: a legitimizing structure and a function parameter⁴. The *structure* is formed by the plurality of rules governing social organization, or by the legal system as a whole, starting from the basic rule, which expresses the idea of the structure⁵; the *function* is identified with the priority interest safeguarded by the law⁶, identified in the man and his values.

¹ Comp. F. PARENTE, *La persona e l'affetto delle tutele costituzionali*, in G. LISELLA e F. PARENTE, *Persona fisica*, in *Tratt. dir. civ. CNN* Perlingieri, II, 1, Napoli, Esi, 2012, p. 1 ff.; P. PERLINGIERI e P. STANZIONE, in P. PERLINGIERI, *Manuale di diritto civile*, 7^a ed., Napoli, Esi, 2014, p. 135 ff.; V. SCALISI, *Ermeneutica dei diritti fondamentali e principio «personalista» in Italia e nell'Unione europea*, in *Riv. dir. civ.* (2010), I, p. 148; P. PERLINGIERI, *Il diritto civile nella legalità costituzionale secondo il sistema italo-comunitario delle fonti*, 3^a ed., Napoli, Esi, 2006, p. 24; P. STANZIONE, *Capacità, I) Diritto privato*, in *Enc. giur.* Treccani, V, Roma, Istituto della Enciclopedia Italiana fondata da Giovanni Treccani S.p.A., 1988, p. 1 ff.; P. PERLINGIERI, *La personalità umana nell'ordinamento giuridico*, in ID., *La persona e i suoi diritti. Problemi del diritto civile*, Napoli, Esi, 2005, p. 5 ff.; ID., *La personalità umana nell'ordinamento giuridico*, Camerino-Napoli, Esi, 1972, p. 183 ff.; D. BARBERO, *Sistema istituzionale del diritto privato italiano*, I, 5^a ed., Torino, Utet, 1958, p. 143.

² PERLINGIERI, *Il diritto civile nella legalità costituzionale secondo il sistema italo-comunitario delle fonti*, cit., p. 14.

³ Comp. *Ibidem*.

⁴ A. INCAMPO, *Metafisica di una pace tra i popoli*, in *Studi in onore di Vincenzo Starace*, III, Napoli, Editoriale Scientifica, 2008, p. 1928 ff.

⁵ *Ibi*, p. 1928.

⁶ *Ibi*, p. 1930.

This organizational model, in addition to recognizing individual rights and social rights⁷, requires a *peaceful* development of relations between states, which implies the right to *security*⁸: in the proposed model, security is a global value⁹, the basis of human rights and existential rights of the person.

The perspective allows to identify a close relationship between the sense of *justice* and *social peace*, even in the historicity of the principles and rules of law, and it involves a rethinking of the role of guarantor of world security entrusted to a single nation state in the era of globalization¹⁰.

The setting makes the current the problem of the relationship between national States' rights and international law, with the aim of strengthening of a supranational authority capable of ensuring social security, peace among peoples and the fundamental rights of every human individual¹¹.

2. - In the context of the sources, the concept of peace is well delineated by its antithetical category, namely the idea of the *war*; while, on the historical level, the concept of justice has often been erroneously conformed not to feel social values shared by the community, but to the formalism of positive law, namely as *ius positum*.

From the regulatory point of view, the idea of peace presupposes the answer to a crucial question: is it possible to achieve peace through law¹²? In other words, is it possible to consider the judicial system a *suitable* tool for the construction and maintenance of peace?

In the system of the sources, the Italian constitution, as a source hierarchical priority, uses the words *peace / war / justice* in several articles, including: art. 11, which provides: "Italy rejects *war* as an instrument of aggression against the freedom of other peoples and as a means of international dispute resolution " and allowing "the limitations of sovereignty necessary for an order that ensures *peace* and *justice* among the Nations "; Article. 78, which provides that "the houses decide the state of *war*";

⁷ The individual rights with a social value participate in the process of defining the person social relevance beyond the individual specificity, in the perspective of the integration of the single person in a more complex structure of life - the community - which interacts in the formation of human beings (F. PARENTE, *La persona e l'affetto delle tutele costituzionali*, cit., p. 17; V. SCALISI, *Ermeneutica dei diritti fondamentali e principio «personalista» in Italia e nell'Unione europea*, cit., p. 147; A. FALZEA, *Introduzione alle scienze giuridiche. Il concetto di diritto*, 6^a ed., Milano, Giuffrè, 2008, p. 385 ff.).

⁸ P. STEFANI, *Brevi note in tema di "diritto alla sicurezza" ed alla pace: il ruolo della (e) religione (i)*, in B. SITEK, G. DAMMACCO, M. SITEK e J.J. SZCZEBOWSKI (a cura di), *Diritto alla vita e qualità della vita nell'Europa multiculturale*, Olsztyn-Bari, Uniwersytet Warmińsko-Mazurski w Olsztynie, 2007, p. 528 ff.

⁹ P. BARCELLONA, *La costruzione dell'Europa e i diritti umani*, in A. CARRINO (a cura di), *Diritto e politica nell'età dei diritti*, Napoli, Guida Editori, 2004, p. 35 ff.; STEFANI, *op. cit.*, p. 528 ff.

¹⁰ STEFANI, *op. cit.*, p. 529.

¹¹ BARCELLONA, *op. cit.*, p. 35 ff.; STEFANI, *op. cit.*, p. 529.

¹² Comp. G. SACCONI, *Hans Kelsen, Carl Schmitt, Norberto Bobbio: la pace attraverso il diritto*, in *Mondo giud.*, 37 (2012), p. 350.

Article. 87, n. 9, according to which the President of the Republic, "declares a state of war decided by the Chambers"; and more articles (Articles. 27, 60, 103, 111).

In summary, the Italian constitution, sometimes, makes a direct reference to peace; other times, calls the peace in an indirect way, by means of its opposite: the war, which, however, strongly rejects (art. 11). It stands, therefore, the need to rebuild the relationship between peace, justice and security¹³.

3. - As the theory of normativism, the legislative system has a hierarchical unitary structure¹⁴. Within the monistic vision, the judicial system has a source in the international order¹⁵, according to an approach that involves the crossing of the concept of national sovereignty (article. 11 cost.), and assumes the superiority of the international order compared the National one¹⁶.

In short, in opposition to the institutional theory of law¹⁷, the legislative system is considered unique by the normative theory and finds legitimacy in the basic norm - the *Grund Norm* - which is norm of customary international law at first instance¹⁸.

The focal point of the reconstruction is that international law has its own legality, endowed with self coercive measures¹⁹. In this context, the *bellum iustum* assumes the role of enforcement mechanism for the protection of peace: *correct war* is a legal sanction, a reaction to an internationally wrongful act detrimental to the peace and to the pre-established legal order²⁰.

International law, therefore, is taken as an essential tool for the maintenance of peace, as confirmed by Hans Kelsen in the famous *Peace through Law*²¹.

On this view, the problem of peace find the solution *only* in law, even in international law, and involves the creation of an executive power over the Nations - an international police force - and a transnational judicial power - an international court of justice²².

¹³ STEFANI, *op. cit.*, p. 529.

¹⁴ H. KELSEN, *Lineamenti di dottrina pura del diritto*, Torino, Einaudi, 1991, p. 227; ID., *Teoria generale del diritto e dello Stato*, Milano, Etas, 1945, *passim*.

¹⁵ Comp. SACCONE, *op. cit.*, p. 350.

¹⁶ H. KELSEN, *Il problema della sovranità e la teoria del diritto internazionale. Contributo per una dottrina pura del diritto*, Milano, Giuffrè, 1989, p. 469 ff.

¹⁷ S. ROMANO, *Lo stato moderno e la sua crisi. Saggi di diritto costituzionale*, Milano, Giuffrè, 1969, *passim*.

¹⁸ H. KELSEN, *La dottrina pura del diritto*, Torino, Einaudi, 1966, p. 242; SACCONE, *op. cit.*, p. 350.

¹⁹ H. KELSEN, *Teoria generale del diritto e dello Stato*; *cit.*, p. 101 ff.; ID., *Il problema della sovranità e la teoria del diritto internazionale*, p. 469.

²⁰ Comp. SACCONE, *op. cit.*, p. 350.

²¹ H. KELSEN, *La pace attraverso il diritto*, Milano, Giuffrè, 1944.

²² Comp. SACCONE, *op. cit.*, p. 350.

4. - In the reality in the concreteness of social and international relations, the idea of Kelsen seems utopian, where ignores the selfishness of national sovereignty, as demonstrated by Carl Schmitt²³.

According to this author, peace, such as legal-political order, is rooted to the earth, mother of the law. In the representation, it is crucial the combination between the *Ortung* (sorting) and the *Ordnung* (the location of the right): the right is *ownland* as referring to the earth and is born from the human *occupation* of the earth²⁴.

The *nomos* of the earth, based on the idea of dividing, indicating the original territorial occupation, the first form of measurement of the earth, as an historical event *constitutive* of the law and, therefore, an act of legitimacy order structure²⁵.

For this reason, every legal system has a spatial boundary, an area characterized by a boundary *line* that marks the limit of legality order, then its legitimate scope of application²⁶.

In this sense, there are significant historical experiences of the Roman *limes*, the Spanish *raya*, defined by Pope Alexander VI, in 1493, to adjust the spheres of influence on the new lands of Spain and Portugal, and the *Great Wall of China*, which outlining precise territorial boundaries to separate the peaceful order, in other words the peace, from the disorder without peace, namely the war²⁷.

In the peaceful order, “the correct war”, based on the *ius in bello*²⁸, is the instrument of peacekeeping, accredited by the mutual recognition of states. Conversely, in the territorial sphere of disorder, the only law is the strength of the war, leading to the occupation of the territory, as the first act of affirmation of the right²⁹.

5. - However, from the point of view of Value theory, both theories – the normativism and the ownland right - are affected by the inherent weakness of their ethnicity, that is, from the same idea of a *correct war*, which was based on the traditional distinction between legitimate and illegitimate wars³⁰.

In the nuclear and post-nuclear era, war is a “locked away”³¹, which not only makes it impossible to pursue peace, but it can even lead to a universal catastrophe³².

²³ C. SCHMITT, *Il nomos della terra nel diritto internazionale dello “Jus publicum europaeum”*, Milano, Adelphi, 1991.

²⁴ Comp. SACCONI, *op. cit.*, p. 350.

²⁵ Comp. *Ibidem*.

²⁶ Comp. *Ibidem*.

²⁷ Comp. *Ibidem*.

²⁸ On the relationship between *jus in bello* and *jus ad bellum*, and proportionality as an element of connection between the two notions, Comp. E. CANNIZZARO, *La proporzionalità nello ius ad bellum e nello ius in bello: riflessioni in margine all'intervento israeliano in Libano*, in *Studi in onore di Vincenzo Starace*, III, Napoli, Editoriale Scientifica, 2008, p. 27 ff.

²⁹ Comp. SACCONI, *op. cit.*, p. 350.

³⁰ Comp. *Ibidem*.

³¹ N. BOBBIO, *Il problema della guerra e le vie della pace*, Bologna, Il Mulino, 1997.

As a result of the indiscriminate arms race does not ensure peace, nor eliminates the causes of war; indeed, it risks aggravating them, as the use of weapons in the accumulation of substantial wealth hinders the development of peoples and multiplies reasons for conflict³³. The production and trade of weapons indiscriminately affecting the common good of nations and of the international community and undermine the global legal order³⁴.

In today's social and international contexts, war, especially nuclear energy, as uncontrollable phenomenon, antithetical to the legal order, it is never correct, but it is out of any parameter of legitimacy and legality. Conversely, peace appears more and more as a necessary condition to govern the relations between peoples and as the only way to justice³⁵.

As a result, from a historical point of view, the issues related to social injustice have always had as a contributory cause manifestations of dissatisfaction and helplessness, in the face of existential needs not respected, lesion of human rights and disrespect the dignity of the person³⁶.

Therefore, the peace phenomenon takes not only a legal relief, but also an important economic, ethical, religious, moral and social one.³⁷

Indeed, peace is not merely the absence of war, or simple balance of opposing forces, representing, which "ordered harmony" or "tranquility of order"³⁸, is the result of social justice and is obtained with respect for the dignity of persons and peoples, with free communication between human beings and the protection of their property³⁹. Conversely, injustice and excessive economic and social imbalances threaten peace and cause wars⁴⁰.

The relevance of the phenomenon *cross*, therefore, requires that men will return to dialogue and to walk together, on the premise of sharing a minimum of human values capable of supporting motivate choices⁴¹.

This reasoned synthesis allows us to capture the intensity of the *link* between peace and the legal system and its substrates and to identify in the law and in the legal

³² Comp. SACCONI, *op. cit.*, p. 362.

³³ CATECHISMO DELLA CHIESA CATTOLICA, CITTÀ DEL VATICANO, Libreria Editrice Vaticana, 1992, p. 568.

³⁴ *Ibidem*.

³⁵ GIOVANNI PAOLO II, *Il progetto di Dio. Decalogo per il terzo millennio*, Casale Monferrato (AL), Piemme, 1994, p. 183.

³⁶ GIOVANNI PAOLO II, *op. cit.*, p. 191.

³⁷ E. MOUNIER, *Manifeste au service du personnalisme*, in *Oeuvres*, I, Paris, Seuil, 1961, p. 630.

³⁸ SANT'AURELIO AGOSTINO, *La città di Dio*, 3ª ed., Roma, Nba, 1963, p. 1055.

³⁹ CATECHISMO DELLA CHIESA CATTOLICA, *op. cit.*, pp. 565-566.

⁴⁰ *Ibi*, p. 568.

⁴¹ GIOVANNI PAOLO II, *op. cit.*, p. 191.

order, key instruments to satisfy the request for social justice and peace in post-modern society⁴².

The setting recalls the metaphysical foundation of any legal system and the rights of peoples, according to Kant formula named *apriori* law⁴³, which involves reference to principles that are not derived only by empirical experience, but also by the concepts of reason⁴⁴.

At the international level, therefore, for peace keeping is necessary to tie states not to "undertake conquests", like the ancient principle *stare pacto*, which implies not only the respect of the fundamental duty *stare pacto*⁴⁵, but also the "prohibition of any interference prior 'and' any unilateral action of conquest by a State"⁴⁶, as the essential content of a "public right of peoples"⁴⁷.

The reconstruction is consistent with the positive system of *collective security* that emerges from the Charter of the United Nations approved June 26, 1945 and entered into force on October 24, 1945. In fact, for the maintenance of peaceful international relations, based on the comparison and dialogue⁴⁸. The paper considers unavoidable for states the unilateral use of force, also the principle that the use of force must be approved by the Member representing all political tendencies of the international community⁴⁹.

This involves, on the one hand, a dynamic configuration of the relationship between the right to freedom and the right to social security and the balance of these values legally relevant⁵⁰; on the other hand, the overcoming of the idea of sovereignty as an attribute of the national state⁵¹ and the recognition of the superiority of the international order, no longer based on the formal scheme of the *Grund Norm* kelsesiana, but rooted in the fundamental rights of the person and the fact of the observance of the rights of peoples and ethnic and religious minorities⁵².

⁴² About the point, Comp. A. GORGONI e A. PANICO, *Una società vulnerabile. Dalle previsioni ai possibili rimedi*, Roma, Carocci, 2011, p. 89.

⁴³ INCAMPO, *op. cit.*, p. 1925 ff.

⁴⁴ *Ibi*, p. 1923.

⁴⁵ *Ibi*, p. 1940.

⁴⁶ INCAMPO, *op. cit.*, p. 1941.

⁴⁷ *Ibi*, pp. 1941-1942.

⁴⁸ G. DAMMACCO, *Diritti umani e fattore religioso nel sistema multiculturale euro mediterraneo*, Bari, Cacucci, 2000, p. 169 ff.

⁴⁹ INCAMPO, *op. cit.*, p. 1941; V. STARACE, *Diritto e forza nelle relazioni internazionali contemporanee* (Keynote Address at the inauguration of the Academic Year 2000-2001, Bari 26 marzo 2001), Bari, Cacucci, 2001.

⁵⁰ STEFANI, *op. cit.*, p. 534; B. DE JOUVENEL, *La sovranità*, Milano, 1971, p. 51 ff.

⁵¹ STEFANI, *op. cit.*, p. 530.

⁵² *Ibidem*; C. CARDIA, *Genesi dei diritti umani*, Torino, Giappichelli, 2003, p. 200 ff.

In this perspective, the *right to peace*, as *iustitiae opus*⁵³, along with the traditional rights of the person – the life⁵⁴, integrity⁵⁵, health⁵⁶, dignity⁵⁷, identity⁵⁸,

⁵³ Comp. l'Enciclica *Redemptor hominis* del 4 marzo 1979.

⁵⁴ The right to life is a fundamental human right which includes the right to exist, to integrate into the social fabric, to relate and to evolve (F. PARENTE, *La «biogiuridicità» della vita nascente tra «libertà» della ricerca biomedica e «dinamismo» della tutela dei valori esistenziali dell'uomo*, in *Rass. dir. civ.* (2009), p. 457, nt. 21) and, as such, is related to both horizontal relationships, both vertical relationships, given that life is a form of manifestation of the dignity and a inherent right (F. PARENTE, *La persona e l'assetto delle tutele costituzionali*, cit., pp. 23-24, nt. 73).

⁵⁵ The parameter integrity is relevant both in terms of physical and psychological, from the perspective of the protection of the person (P. PERLINGIERI, *Il diritto civile nella legalità costituzionale*, cit., pp. 730-731; F. PARENTE, *La persona e l'assetto delle tutele costituzionali*, cit., p. 24, nota 74). Article. 3 of the Charter of Nice, in codifying the right to integrity, reminiscent of the regime of the protection of health as a "fundamental right of the individual and collective interest" (art. 32, paragraph 1, of cost.). On this point, since the art. 3 of the Nice Charter uses the term "individual", it seems reasonable to extend the system of protection to every individual, even in the process of formation, to recognize all "embryo" a system of protection similar to that provided in the "born": if the man is the person from the moment he begins to exist [L. PALAZZANI, *La dignità dell'embrione umano come problema*, in R. ROFFANO e S. SIBILLA (a cura di), *La tutela giuridica della vita prenatale*, Torino, Giappichelli, 2005, p. 134; F. PARENTE, *La persona e l'assetto delle tutele costituzionali*, cit., pp. 23-24, nt. 73].

⁵⁶ Health is the condition for the free development of the person and covers the integrity of biophysical mental health (art. 32 cost.) [F. PARENTE, *La persona e l'affetto delle tutele costituzionali*, cit., p. 25, nt. 75; R. ROLLI e A. PINNA, *Il diritto alla salute*, in P. PERLINGIERI e M. SESTA (a cura di), *I rapporti civilistici nell'interpretazione della Corte Costituzionale*, I, Napoli, Esi, 2007, p. 153 ff.; P. PERLINGIERI, *Il diritto alla salute quale diritto della personalità*, in ID., *La persona e i suoi diritti. Problemi del diritto civile*, cit., p. 103 ff.; ID., *La personalità umana nell'ordinamento giuridico*, cit., p. 183; ID., *La tutela giuridica della «integrità psichica» (A proposito delle psicoterapie)*, in *Riv. trim.* (1972), p. 768 ff.; ID., *Il diritto civile nella legalità costituzionale secondo il sistema italo-comunitario delle fonti*, cit., p. 728 ff.; E. DE PALMA RAINONE, *La tutela della salute come diritto pubblico soggettivo*, in *Probl. sic. soc.* (1968), p. 17].

⁵⁷ The dignity is the foundation of the constitutional state (L. LONARDO, *Il valore della dignità della persona nell'ordinamento italiano*, in *Rass. dir. civ.* (2011), p. 776 ff.; P. HÄBERLE, *Stato costituzionale. I. Principi generali*, in *Enc. giur. Treccani*, XXX, Roma, Istituto della Enciclopedia Italiana fondata da Giovanni Treccani S.p.A., 1993, *Agg.*, 2000, p. 1 ff.; ID., *La dignità umana come fondamento della comunità statale*, in ID., *Cultura dei diritti e diritti della cultura nello spazio costituzionale europeo. Saggi*, Milano, Giuffrè, 2003, p. 1 ff.) and, as a shared value system is the mainstay of the Italian-Community sources [P. PERLINGIERI, *Il diritto civile nella legalità costituzionale secondo il sistema italo-comunitario delle fonti*, cit., p. 436 ff.; G. RESTA, *La disponibilità dei diritti fondamentali e limiti della dignità (note a margine della Carta dei diritti)*, in *Riv. dir. civ.* (2002), II, p. 819 ff.]. The dignity is relevant in all legal relationships, which limit the activities that affect the development of the person [L. LONARDO, *Il valore della dignità della persona nell'ordinamento italiano*, cit., p. 761 ff.; F. PARENTE, *La «biogiuridicità» della vita nascente tra «libertà» della ricerca biomedica e «dinamismo» della tutela dei valori esistenziali dell'uomo*, cit., p. 457, nota 20; P. ZATTI, *Note sulla «semantica della dignità»*, in E. FURLAN (a cura di), *Bioetica e dignità umana. Interpretazioni a confronto a partire dalla Convenzione di Oviedo*, Milano, Giuffrè, 2009, p. 105 ff.; G.M. FLICK, *Dignità umana e tutela dei soggetti deboli: una riflessione problematica*, in E. CECCHERINI (a cura di), *La tutela della dignità umana*, Napoli, Esi, 2008, *passim*; P. MOROZZO DELLA ROCCA, *Il principio di dignità della persona umana nella società globalizzata*, in *Dem. dir.* (2004), p. 209 ff.]. It is protected by the constitutional precepts (art. 3, comma 1; 36, comma 1; 41, comma 2, cost.), by the Charter of Fundamental Rights of the European Union (art. 1) [Comp. P. RESCIGNO, *Convenzione europea dei diritti dell'uomo e diritto privato (famiglia, proprietà, lavoro)*, in *Riv. dir. civ.* (2002), I, p. 325; U. DE SIERVO, *I diritti fondamentali europei e i diritti costituzionali*

freedom⁵⁹, solidarity⁶⁰ -, may be included among the fundamental human rights (article. 2 cost.), deserving of protection is absolute and unconditional, depending on the humanization of the legal order and peace of mankind⁶¹.

italiani (a proposito della «Carta dei diritti fondamentali»), in G. ZAGREBELSKY (a cura di), *Diritti e Costituzione nell'Unione Europea*, Roma-Bari, Laterza, 2003, p. 258 ff.] and the Oviedo Convention of 4 April 1997, ratified by Italy with the law March 28, 2001, n. 145 [Comp. P. D'ADDINO SERRAVALLE, *Questioni biotecnologiche e soluzioni normative*, Napoli, Esi, 2003, pp. 29-30; G. CATALDI, *La Convenzione del Consiglio d'Europa sui diritti dell'uomo e la biomedicina*, in L. CHIEFFI (a cura di), *Bioetica e diritti dell'uomo*, Torino, Giappichelli, 2000, p. 267 ff.; C. PICIOCCHI, *La Convenzione di Oviedo sui diritti dell'uomo e la biomedicina: verso una bioetica europea?*, in *Dir. pubb. comp. europeo* (2001), p. 1301 ff.; A. GITTI, *La Corte europea dei diritti dell'uomo e la Convenzione sulla biomedicina*, *Riv. int. dir. uomo* (1998), p. 720 ff.; A. BOMPIANI, *Aspetti rilevanti per la trasposizione nell'ordinamento italiano della Convenzione sui diritti dell'uomo e della biomedicina*, in C.M. MAZZONI, *Un quadro europeo per la bioetica?*, Perugia, Morlacchi, 1998, p. 209 ff.].

⁵⁸ By long tradition, the identity of the person is associated with the right to "name" (art. 6 ff. c.c.) [A. DONATI, *Diritto alla propria identità: verso l'absolute individual right?*, in *Vita not.* (2011), I, p. 3 ff.; L. VALLE, *Il diritto all'identità personale*, in P. PERLINGIERI e M. SESTA (a cura di), *I rapporti civilistici nell'interpretazione della Corte Costituzionale*, I, cit., p. 197 ff.; L. CAROTA, *Il diritto al nome e all'immagine*, in P. PERLINGIERI e M. SESTA (a cura di), *I rapporti civilistici nell'interpretazione della Corte Costituzionale*, I, cit., p. 181 ff.], as an identifiable individual element in the context of social relations (art. 29, d.P.R. 3 novembre 2000, n. 396) (F. PARENTE, *La persona e l'affetto delle tutele costituzionali*, cit., p. 25, nota 76; F. VITALI, *Lo stato civile*, Milano, Giuffrè, 2003, p. 183 ff.; P. PERLINGIERI, *Il diritto civile nella legalità costituzionale secondo il sistema italo-comunitario delle fonti*, cit., p. 783 ff. e p. 800 ff.).

⁵⁹ The Rights of freedom are necessary to accomplish the person (P. PERLINGIERI e L. LONARDO, in P. PERLINGIERI, *Manuale di diritto civile*, cit., pp. 209-210). The traditional system of protection of freedom has recently been supplemented by law 2 luglio 2010, n. 108, in *G.U.* 15 luglio 2010, n. 163, that has ratified the Convention of the Council of Europe Convention on Action against Trafficking in Human Beings, signed at Warsaw, 16 May 2005 (Comp. F. PARENTE, *La persona e l'assetto delle tutele costituzionali*, cit., p. 26, nota 77).

⁶⁰ In the Italian Constitution solidarity is an essential value that emerges when it is repudiated war as an instrument of aggression against the freedom of other peoples in accordance with the achievement of peace and justice among nations (art. 11 cost.). Solidarity is also protected by the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations December 10, 1948, and the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome 4 November 1950 it involves the recognition of alterity or otherness individual group, which involves a horizontal relationship between individuals and groups or a vertical relationship between individuals, groups and the State (F. PARENTE, *La persona e l'affetto delle tutele costituzionali*, cit., pp. 20-22).

⁶¹ Comp. H. KÜNG, *Essere cristiani*, Milano, Rizzoli, 2012, pp. 802-803.