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Under the Sign of Janus
Rethinking Human Duties

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Abstract: The image of Janus – the Two-headed deity who could look in two opposite directions – constituting the archetype of the double side of things, is an appropriate key to understanding the dual nature of human duties. Just like the ancient Roman divinity, they seem to show two inseparable and apparently irreconcilable faces: the face of limit and restraint, and the face of solidarity. Each of them fulfils important tasks. The first aims to contain the possible anomic development of the activity of claiming. The second, on the other hand, by promoting solidarity as a fundamental good of every political community, is a condition of possibility for the implementation of rights and the persistence of democracies. The awareness of the coexistence of these two faces justifies the attempt to rethink duties and to reverse a trend which, with rare exceptions, has led to their marginalisation in legal discourse and in the political institutions of liberal democracies.

Keywords: Duties - Fundamental Rights - French Enlightenment - Limit - Solidarity

1. Introduction

Taking rights seriously[1] involves *taking duties seriously*, not only to prevent a misleading epistemological reductionism – due to the morphological and axiological link that frames this conceptual binomial – but also because the dialectic between these two polarities illuminates many legal and moral issues of our time. Unfortunately, the relevance of this dialectic has been questioned by a cultural trend that has marginalized duties. This trend, the result of a long historical process rooted in the French Enlightenment, has negatively affected the

[1] Paraphrasing the masterpiece of Dworkin 1977.

institutions of liberal democracies, creating clashes within the constitutional mechanisms for the protection of fundamental freedoms.

This scenario requires an in-depth analysis of the function of law in late-modern societies. Moreover, it demands a radical change of mindset that urges a return to enhancing the role of duties. The latter, however, should not be conceived as a conservative attack on liberties. They cannot turn into an ideological weapon against rights. This would constitute a mistake, since proclaiming duties in mere antithesis to rights would entail the rise of irremediable conflicts. Contrariwise, human duties can play a crucial role in understanding the goals of rights and their concrete implementation and enforcement. They can fulfil three precious tasks. First, they can operate as a general canon of reasonableness through which to limit and coordinate the spheres of influence of rights. Second, they can act as the keystone in the distinction between founded claims and mere desires that claim to benefit from the evocative power of the expression "human rights" without, however, sharing the ontological assumptions of universality that underlie its value. Third, they can prevent the culture of rights, unrelated to the community dimension and solidarity bonds, from drowning "in the icy waters of egotistical calculation" (Marx, Engels 2004: 64).

The present work sets out to emphasize these crucial aspects.

The paper will be structured as follows: Sections 2 and 3 will give an overview of the historical-ideological roots of the oblivion of duties, moving from the context of the French revolution. Section 4, through the metaphor of Janus, rethinks duties in the *Age of Rights*, analysing their twofold function of restraint and solidarity, and showing how these two functions express crucial needs for law and contribute to strengthening the implementation of rights. Section 5 offers some concluding remarks.

2. From Duties to Rights

The crisis of human duties occurred in France during the eighteenth century, when a radical criticism of old cultural orthodoxies, anthropological paradigms and institutional hierarchies took shape. In those years, an epoch-making change determined the transition from a "civilization founded on Duty - duty toward God, duty toward the sovereign" - to a "civilization founded on the idea of rights - rights of the individual, freedom of speech and opinion, the prerogative of man as man and citizen" (Hazard 2013: XVI). This change – explained by Hazard with the passage from Bossuet's theology to Voltaire's philosophy – was part of a wider historical route, the main stages of which were the decline of the *Respublica Christianorum*, the Protestant Reformation, the birth of the modern State, the rise and spread

of natural law doctrines, thanks to the philosophical works of great thinkers such as Grotius and Locke. These events influenced the future development of legal culture, at least from two important points of view. On the one hand, they destabilized the ancient alliance between *Throne* and *Altar* (speaking without metaphors: the alliance between *Empire* and *Papacy*), which for centuries had ensured the primacy of human duties, while relying on the strong metaphysical-religious support given by the Church to political power. On the other hand, by enhancing the prerogatives of the individual, they set the conditions for a general rethinking of the dialectic between subjective rights and political bodies.

Within this background, the Enlightenment – especially the French Enlightenment[2] – radically reconsidered human duties, questioning the ancient scheme that saw duty as the keystone of legal systems. The problem of the traditional primacy of the ethics of duties over those of rights, posed on a theoretical level by Kant[3], echoed in the legal field after the events of 1789. At that historical juncture, a long series of protests afflicted the social fabric of Paris catalysing the "indignation and resentment"[4]of the people against the French Crown. The "thymotic energies" (Sloterdijk 2012: 25) of the masses oppressed by the *Ancien Régime* were thus released, and the civil rebellions resulted in the *Declaration of the Rights of Man and the Citizen*, a powerful statement which became – together with the *United States Declaration of Independence* of 1776 – a milestone in the history of mankind. By proclaiming the inalienable and sacred rights of man and stating that the purpose of any political institution is the preservation of those rights, this *Declaration* pursued two significant goals. The first was certainly to oppose the despotism of the monarchist government[5]. Indeed, for the National Constituent Assembly, the enunciation of each right represented the antithesis of each abuse of power to be eradicated. The second was the regeneration of man with the advent of the post-revolutionary *homo novus*[6] and the foundation of a universal rights-based *ethos*. Precisely in accomplishing these two goals, the struggle for rights turned into a struggle against duties. Behind the civil conflicts that overwhelmed the Old Regime was a profound

[2] This clarification seems necessary because the Enlightenment was not a monolithic movement, as emerges from the monumental trilogy of Israel 2001; 2006; 2009. On this topic see also Ferrone 2017.

[3] Kant 1996: 31, after having distinguished, on the basis of the possibility of external lawgiving, the *duties of rights* ("*officia iuris*") from the *duties of virtue* ("*officia virtutis sive ethica*") raises this question: "why is the doctrine of morals usually called (especially by Cicero) a doctrine of *duties* and not also a doctrine of *rights*, even though rights have reference to duties?".

[4]"Indignation and resentment" defined as "repositories of the general will" by Diderot 1992: 20.

[5] Lefebvre 2005: 172 highlighted this aspect by incisively describing the Declaration as "the death certificate of the Old Regime".

[6] On the close connection between the paradigm of the *homo novus* and the French revolutionary processes, compare the in-depth analysis of Burstin 2013.

hostility towards the authorities that had the power to impose duties: the King and, on behalf of God, the Clergy. This explains why the proposal for a declaration of human duties, supported by the nobility and the Clergy, was rejected. Actually, an overall look at the revolutionary experience shows the failure of the whole pro-duties line, despite the fact that the Thermidorian phase seemed to express a change of direction[7]. Baptiste-Henri Grégoire supported this political line with two arguments: that rights and duties operated on two different and not always symmetrical dimensions; and that it was necessary to think of duty as a limit to human action, in order to prevent the abuse of freedoms. These arguments, however, did not convince the members of the National Assembly. On the contrary, the liberal orientation inspired by the doctrine of Sieyes prevailed (Sieyès 1789). According to the Vicar of Chartres, proclaiming the duties of man was superfluous. Duties were already incorporated by the law, the expression of the general will, which, in declaring freedoms, set its limits at the same time. An explicit determination of duties would therefore have been redundant: the declaration of rights implicitly included a declaration of duties[8].

The contrast between Sieyès and Grégoire was more than just a legal dispute. It presupposed, upstream, a fracture between two anthropological models and, downstream, between two antithetical ways of understanding the passage from man's natural state to civil society. In other words, two opposing visions were in contrast. The first, inspired by liberal individualism, was based on the conviction that man was a subject-of-needs and that his existence had well-being as its goal. It, therefore, looked with enthusiasm to the proclamation of rights, seeing in it the ideal conditions for promoting equality and breaking the system of privileges that paralyzed the nation. The other vision, conservative and communitarian, showed, instead, scepticism towards freedom. It conceived of duty – influenced by a strong religious background – both as a pedagogical tool, an antidote to the innate selfishness of man, and as a physiological perimeter within which to contain the social risks and conflicts associated with the expansion of rights.

[7] The reticence towards duties was only apparently mitigated in the Thermidorian phase when, with the Constitution of the year III (22 August 1795), a "Declaration of duties" of the citizen was introduced: nine articles – although with a declamatory tone, with a vague and moralizing content, and therefore without a significant legal force – inserted in the plot of a normative document which, from the point of view of Troper 2006: 90-108, did not reveal any substantial discontinuity with respect to the previous Constitutions. Since the only real novelty would have been the provision of a list of duties, separated from that of rights.

[8] This idea was also expressed by Paine 2000: 126: «A declaration of rights is, by reciprocity, a declaration of duties also. Whatever is my right as a man, is also the right of another; and it becomes my duty to guarantee, as well as to possess».

The French Revolution and the Declaration of Rights of 1789 shifted the barycentre of law and public policy from the primacy of duties to the primacy of rights (see Bobbio 1999, 436). It was a great turning point because it presupposed a reversal in the relationship between rulers and ruled, the dominant and the dominated. This relationship – as Bobbio put it – was no longer to be considered *ex parte principis* but *ex parte populi*, that is, no longer by the absolute priority of the sovereign over the people but, on the contrary, postulating the needs of the individual as a priority over those of the state (Bobbio 1996: 35).

These events represented a "Copernican Revolution" (*ibidem*) in the history of political institutions. They also created the conditions for the serious error that has marked western constitutionalism: the separation of the rights of the citizens from their duties and subordinating their duties to their rights. This error, as Polin put it, has been shown to have conspicuously negative connotations (Polin 1971: 173). The clash between rights and duties and the neutralization of the latter constituted and still constitutes a danger for political communities: it dissolves social bonds, increases conflicts, and creates gaps in the systems of protection of fundamental rights. Well before Polin, two authoritative voices – Giuseppe Mazzini and Simone Weil – had highlighted the vulnerabilities associated with this error. They have both argued, albeit from different theoretical perspectives, for the centrality of duty, even for a more effective guarantee of rights (see Mazzini 1862; Weil 2005).

3. The Fading of Duty

Mazzini's and Weil's warnings have fallen on deaf ears. The decline of duty continued during the twentieth century. The "spectre of duties" (Gauchet 1989: 818) haunted the post-totalitarianism era. In those years, the need to re-found political institutions and to protect human dignity through fundamental rights gave renewed strength to two old arguments against duties.

The first argument was associated with undeniable matters of fact: the regimes that extolled duties did so at the expense of freedom. Duties have been used as instruments of domination, of the subjection of men to the State. They were conceived as a means of preserving the *status quo*, so as to avoid any questioning of unjust social structures, which were burdened by the unbearable weight of the caste system, inequality and the compression of the most common individual guarantees. They were therefore seen as vertical duties, imposing bonds of fidelity to the State, but not the reverse. They did not prescribe the obligations of the State towards its citizens. Nor did they give adequate importance to the horizontal dimension of duty, which enriched political obligation with solidarity.

The second argument, instead, concerns the double-edged nature of duty: the latter was like a chrysalis that germinated in the moral field and, transforming itself, produced effects in the legal field. It followed that the juxtaposition of rights and duties was not only useless but also unfounded and harmful. They were heterogeneous entities, not comparable, belonging to two distinct universes. To combine them, as Jean Rivero put it, meant conceiving a "false diptych" (Rivero 1988: 178) and therefore creating a dangerous confusion between the ethical and legal spheres. So, in a sizeable part of western legal culture, the conviction that the system of constitutional rights was sufficient to constitute public ethics was consolidated.

In recent decades, however, this conviction has fallen into a state of crisis. Rights-based constitutionalism has shown many weaknesses[9]. On the one hand, its promises of emancipation and progress have not been completely fulfilled. This is demonstrated by the striking contrast between the solemn declarations of rights and their systematic violation in many areas of the world. On the other hand, the frequent clash between freedom and responsibility has often changed rights into "insidious gifts" (Pintore 2001: 200), destabilizing the very democracy from which they originate. This *milieu* prompted Norberto Bobbio to reconsider critically the Age of Rights, described as a "prophetic sign" (*signum prognosticum*)[10] of the moral progress of humankind. For Bobbio, the unconditional primacy of individual aspiration over society and the State presented, in fact, a potential *vulnus*: by neglecting duties, it risked reducing constitutional rights to a "list of pious desires" (Bobbio, Viroli 2001: 40). Thus, within the framework of a paradigm that excludes any absolute foundation, the Italian philosopher has made an appeal to duty, animated by a clear practical aim: to make rights concrete and effective.

Unfortunately, this appeal has resonated in a world that has rejected the primacy of the deontic dimension. Hypermodernity experiences the "twilight of duty" (Lipovetsky 1992). In the collective consciousness, even before democratic institutions, the "Sublime and mighty name" (Kant 1997: 73) of duty is ousted by a minimalist and hedonistic ethic. The rigidity of the Kantian imperative appears to recede with respect to Sadian libertinism which postulates the unlimited will of enjoyment. Thus, the guiding principle inspiring human behaviour seems to be not so much good as well-being. The ancient cult of duty and morality based on self-sacrifice gives way to hedonistic values. This metamorphosis affects the psychic field where *jouissance* is elevated to the rank of duty. It is the triumph of an "autistic jouissance", that is,

[9] For an exhaustive overview on this topic, see Pino 2017: 13-76.
[10] See Bobbio 1996: 35.

"a jouissance of the One without the Other, a jouissance that does not imply any symbolic exchange" (Recalcati 2012: 92)[11]. This also explains, in the socio-political dimension, the "collective narcissism" (Lipovetsky 1983: 10) that animates post-deontic societies and that leads democracies to structure themselves beyond duty.

This scenario, reflecting the crisis of contemporary mankind, would require a *supplément d'âme* with respect to an analysis anchored only to the problems of legal systems. The point of observation should in fact be extended to the anthropological model[12] that inspires the eclipse of duty: the archetype of the "man with no bonds" (Bauman 2003: 7) – the postmodern successor of Musil's *man without qualities*– a man without the sense of transcendence, intolerant of all limits, self-referential, incapable of becoming a neighbour. This subject conceives of freedom as *dominium*, reducing it to the mere dimension of non-interference. Moreover, he sees rights as instruments that are immunized from the political community. This is, in other words, a "depoliticized subject", "the perfect atom of a neoliberal gaseous biosphere" (Preterossi 2015: 28), which has lost all sense of duty. The consequences of this loss affect the proper functioning of democracies, requiring a profound reflection on the opportunity of rethinking the role of duty.

4. The Janus Faces of Duty

In the following sections, I will use the image of Janus as a key to rethinking the role of duties. Before proceeding with this task, I wish to explain, albeit briefly, the reasons for this choice. In particular, I would like to illustrate the salient features of this mythological figure and then show the sense of the metaphor suggested here.

Janus was one of the earliest and most important gods of the Roman pantheon[13]. The etymology of his name referred to *ianua*, which means 'door'. In turn, *ianua* derives from the Indo-European root '*ei*' which indicates the concept of transition (Dumézil 1996: 328) . This derivation, therefore, symbolically expressed the idea of motion, the transition present in everything that opens and closes. This explains why this deity was also called *Clusius* (the one who closes) and *Patulcius* (the one who opens). Janus, in fact, was the patron god of gateways and passages, the god of beginnings and endings. He was also "the porter of heavenly court" (Ovid 1989: 13). In Ovid's 'Fasti', Janus, reaffirming his enormous power,

[11] On the connection between the pathological exaltation of the Ego and the marginalization of the Other, compare Han 2018.

[12] On the anthropological implications related to human rights and duties see Scillitani, 2011

[13] As remarked by Eliade 1982: 123-126.

showed his crucial role: "Whatever you see – sky, sea, clouds, earth – all things are closed and opened by my hand. The guardianship of this vast universe is in my hands alone" (ivi, 11). Moreover, he presided over the beginnings and endings of conflicts. For this reason, in ancient Rome, the gate of his temple was opened wide when war was declared and barred in time of peace (ivi, 21).

Janus had two faces looking in opposite directions simultaneously. He could scrutinize the inside and the outside of all things. Moreover, for having given hospitality to Saturn he received from the latter the gift of knowing the past and the future. His gaze, therefore, had the strength of a wholeness of vision in both the spatial and temporal dimensions. Because of his skill, Janus has been defined as a "God of totality" [14], the icon of the *complexio oppositorum* and the need to bring opposites into harmony.

There is one last feature of Janus worthy of consideration here. The two-headed deity was depicted holding a *staff* in the right hand, and a *key* in the left (Ovid, 1989: 12). These attributes, on the one hand, were emblems of royal and sacerdotal power, and on the other hand, they indicated his task of guarding the thresholds. However, they can express a further allegorical meaning. In fact, the key, in allowing access to places, can symbolize the dimension of openness. On the contrary, the staff, the tool for protecting the border from intruders, can represent restraint. This symbolism, along with the dual shape of Janus, can be extended to the legal sphere. In particular, Janus, in constituting the archetype of the two sides of things, can be an appropriate key to understanding the dual nature of duties. Just like the ancient Roman god, the latter presents two inseparable and apparently irreconcilable faces: the face of limitation and restraint, and the face of openness and solidarity.

4.1 The Face of Limit

Rethinking duties involves addressing the highly problematic issue of limit. This issue opens two analytical horizons. The first, concerning the general question of the *law as a limit*, leads to the heart of the conflict between the powers struggling in the agony of our time, where the *ordo ordinans* of law is challenged by the normativity of the market and technology. The second is more specific and concerns the question of the *limit of human rights*. These two analytical horizons, although interconnected, deserve to be examined individually. However,

[14] Bonvecchio 2002: 104 highlights this aspect, comparing, on a symbolic level, the unifying figure of Janus with the Jungian archetype of the 'Self' (*das Selbst*), which involves the unification of consciousness and unconsciousness in a person, representing the psyche as harmonious whole.

only the second one will be discussed here, as it is more closely related to the subject of the paper.

Theorizing human duty as a limit means unmasking an insidious illusion that has permeated Western legal culture: the naive idea that the universe of rights is *sine fine et sine finibus*. A boundless and limitless universe, which evolves only by "accumulation" (Rodotà 2012: 62), that is, by incessantly adding new rights. This idea is misleading and counterproductive. It goes against the culture of rights that it means to promote because, by supporting the proliferation of rights, it reduces their effectiveness and raises several theoretical uncertainties about their juridical nature. The inflation of rights, entailing the difficulty of placing individual claims in a unified and harmonious legal framework, heightens conflicts and ultimately leads to a paradoxical phenomenon: "the denial of rights in the name of other rights" (Palombella 2006: 5).

This negative outcome justifies the importance of the limit-face of human duties. In fact, just as the banks of a river prevent the dispersion of water and, by channelling it, allow it to flow with greater vigour and even be productive of energy, so human duty – or rather, a human duties doctrine enhancing both the "duties of justice" and the "duties of virtue"[15] – can contribute to containing the anomic development of human rights, ensuring their full possibility of protection. This doctrine restores a holistic vision of the juridical universe. Likewise, it acts as a clearinghouse between the demands of the individual and the common good, between freedom and responsibility. In so doing, it performs a crucial function of restraint which, drawing on the categories of political theology, could be defined as *Katechontic.*[16]

In today's legal context, the function of this restraint can be appreciated in at least three dimensions.

Firstly, it can preserve the significance of fundamental rights, by providing a conceptual framework based on rational self-limitation criteria that would allow for the coherent and efficient implementation of constitutional freedoms. These criteria are indispensable in order to contain, within reasonable boundaries, the activity of claiming and the excessive expansion of the catalogue of rights. The latter, often supported by the case law of the courts, has given rise to a strange phenomenon, the implications of which are underestimated: it is the extension of the area of what can be considered 'fundamental'. This phenomenon conceals a dark side: the loss of the sense of the concept of a fundamental right.

[15] See the in-depth and enlightening analysis of Boot, 2017.

[16] According to the insightful interpretation given to the biblical concept of *katéchon* by Cacciari, 2018.

As Danilo Zolo has rightly stated: "If everything is fundamental, then nothing is fundamental" (Zolo 2005: 15). This is not a mere theoretical matter. It shows several empirical implications, putting jurists, courts and political institutions at a crossroads: whether to establish a hierarchy of values – perhaps in terms of a "scale of fundamentality"[17] – by which to resolve disputes among the many 'fundamental' demands, or whether to find, case by case, a difficult and contingent balance between them. Both of these hypotheses have their drawbacks. On the one hand, the creation of an axiological hierarchy is extremely controversial, especially in the age of the polytheism of values. On the other hand, if it is true, as Alexy points out, that "human rights inevitably collide with other human rights and with collective goods […] stand[ing] in need of balancing" (Alexy 2014: 61), it is also true that the growth of the predicate 'fundamental' complicates the balancing process, entailing the ongoing effort to relativize claims which are deemed absolute.[18] This last aspect, to a certain extent, should not give rise to particular concern. Law ordinarily operates within the sphere of the limitation and clash between interfering and conflicting interests. It is therefore physiologically linked to conflict, its aim being to regulate it. The true problem, rather, lies in preventing the negative impact of a potentially pathological degeneration of conflict, safeguarding "agonistic democracy" (see Mouffe 2005) from the risk of anomic antagonism. This is why acknowledging that the universe of rights is constantly expanding is not enough. Instead, it is necessary to think about the conditions for their systematic and harmonious development, through a prognostic judgement about their compatibility with the entire legal system and with the social fabric.

Secondly, the doctrine of human duties can mitigate the negative effects of the normativization of desires. This new trend has emerged in recent years. Indeed, there is no longer just an inflationary spiral in the legal field. Rights are not only proliferating but are also changing and expanding the essence of protected expectations, to the point that they intercept less and less with the narrow sphere of human fundamental needs and increasingly encompass the vast and magmatic sphere of individual appetites. An overview, albeit brief, of the fluxes of demands reveals the growing demand for the legal recognition of desires, especially in the biolaw field.[19] The race for the juridical recognition of desires – also thanks to the connection between an absolute and self-referential declination of freedom and the use of the immense potential of technology – poses a series of questions related to the

[17] As suggested by Picard 1998: 6-42.

[18] On the theoretical and practical difficulties in balancing human rights, see Smet 2017: 83-138.

[19] See Zanuso 2015. For an overview of the social and political implications of desire, in the light of an original reconstruction that combines a psychoanalytic and philosophical approach, see Ciaramelli, Thanopulos 2016.

thaumaturgical significance attributed in the collective imagination to rights. This trend – the paradigmatic expression of which process was defined by Elias Canetti as "the modern frenzy of increase" (Canetti 1978: 465) – can generate institutional short-circuits, stimulating the activism of the Courts towards which it conveys – also because of external factors (lack of credibility of the political system, crisis of representative democracy, etc.) – the *magna pars* of demands. The osmosis between the social projection of individual desires and the judicial creation of rights, while expressing the important and vital function of updating the Charters to changing human needs, removes new rights from democratic control. Furthermore, it gives rise to a constant erosion of the prerogatives of the legislator, destabilizing the framework of the division of the powers of the State and endowing the jurisdiction with an overly propulsive character[20]. Faced with this range of questions posed by the normativization of desires, the doctrine of human duties can play a crucial twofold role. On the one hand, by enhancing the principle of reasonableness (See Bongiovanni, Sartori, Valentini 2009)[21], this doctrine can act as a keystone in the distinction between founded claims and mere desires that aspire to benefit from the evocative power of the label 'human rights', but without sharing the ontological assumptions of universality that underlie its value. On the other hand, by limiting the juridical recognition of all desires, it can offer a fertile regulatory framework for individual freedom[22], placing it within the connective tissue of society and moulding it to the relational and co-existential nature of human beings.

Finally, the third dimension of restraint refers to the field of effectiveness and is linked to the relationship between human rights and fiscal duties. A right exists *de jure* and *de facto* only if the subjects of the legal relationship, the correlative duty, the judicial procedures and the financial budgets to implement it are clearly defined. Outside the complexity of this system, the solemn proclamations of rights constitute only forms of collective hypocrisy. They satisfy declamatory vanities. However, they do not have the force to protect human dignity and to guide the processes of governance of democracies. Rights cost money[23]. If they are not confined to the abstractness of an enunciation but aim to affect the social fabric, they must be transformed into powers protected by the force of the political community. This

[20] On this aspect and on the problems related to the transfer of the unprecedented amount of power from representative institutions to judiciaries, see Hirschl 2007.

[21] In particular, with specific reference to the use of the principle of reasonableness in the biolaw field see Faralli, 2009: 327-336.

[22] The risks involved in the *absolute* declination of freedom are highlighted by Moro 2013: 121-164.

[23] See Holmes, Sunstein 2000: 15: "Both the right to welfare and the right to private property have public costs. The right to freedom of contract has public costs no less than the right to health care, the right to freedom of speech no less than the right to decent housing. All rights make claims upon the public treasury".

entails having institutions capable of protecting and implementing them. Of course, these institutions cannot function without public funding and support. It follows that enforcing rights means distributing public resources (Holmes, Sunstein 2000: 131) as well as addressing the problems related to budgetary constraints and fiscal duties through which state revenue is raised. Consideration of the budgetary implications of rights is crucial (see Corti 2017: 351-374). On the one hand, it breaks with the entrenched idea of juridical modernity, i.e. that rights stand as barriers against the State. In so doing, it also relativizes the traditional division between negative rights, which immunize from State interference and positive rights, which postulate its intervention. In both cases, there are costs for the public treasury. On the other hand, linking rights with budgetary costs and fiscal duties encourages additional weighting in the choices of the strategic allocation of public resources, ensures the concrete sustainability of the system of rights, and reminds communities not to extend the catalogue of rights lightly but to calibrate them, taking into account the resources available.

4.2 The face of solidarity

The face of limit, while expressing crucial needs for the functioning of democratic institutions, does not encompass the multiform essence of duty. It shows one side of it, probably the most evident and the most contested. However, it does not grasp its full scope.

Duty, in fact, presents another face. It is the face that preserves human dignity, when a human being experiences pain and vulnerability. It is the face that concretizes rights, removing the individual from insularity which generates indifference. It is the face that promotes the high value of the good and of a good life, making the political community, way beyond the Foucaultian circuit of disciplinary power, a place for the protection of the person. In other words, it is the solidarity face of duty. Seen from this perspective, duty does not mirror the despotic shadow of Leviathan. On the contrary, it seems to reflect the compassionate sight of the Good Samaritan. Therefore, it does not constitute a force that overwhelms the human will. Rather, it expresses the value of the proximity as an alternative to the logic of individualism and utilitarianism spreading in an era of "techno-nihilist capitalism" (Magatti 2009).

This solidarity face of duty, arising from the contemplation of the face of the Other (Lévinas, 1991), from a caring feeling towards his needs, far from erasing freedom, calls upon it to assume its responsibility (ivi, 197). This responsibility reverberates in that sphere defined by Lévinas as the "asymmetry of the interpersonal" (ivi, 215). The face-to-face relation, in fact, leads to setting the fraternal and social bond in an asymmetrical space. In this non-

correlative space, duty becomes *diakonia*, unconditional and indeclinable service. It therefore overcomes the synallagmatic logic that nevertheless orients a key part of the *ordo iuris*. However, it is a kind of *Aufhebung*: this overcoming incorporates without eliding the importance of reciprocity. The need for reciprocity, in fact, is not erased but rather perfected by agapeistic love. After all, this need cannot be completely eluded because the third party interferes in the Self-Other relationship[24]. And this interference, on the one hand, reminds the subject of the possibility of experiencing conflicting claims, that is, two faces that invoke incompatible necessities, thus generating a dramatic conflict of duties; and, on the other hand, precisely in order to face this eventuality, it postulates the primacy of justice over love. This primacy implies the recognition of the richness of a wider proximity that lies beyond the Ego-Alter dialectic. It is that multitude of subjects, who are themselves neighbours, whose demands call for a shift in the responsibility from the ethical level to the juridical-political one. This shift aims to mitigate the absoluteness of the injunction that emanates from the face of the other, taking into account the whole dimension of *alteritas*. Thus, the duties towards the other, placed in the political space ruled by law, are harmonized with the duties towards "others", through the unremitting tension between ethics and justice which marks the function of the State which, however, does not rise to stem the *bellum omnium contra omnes* but rather to limit responsibility for the Other. It is the value of proximity, not the neutralization of the conflict that gives rise to it.

There is, however, a further aspect worth highlighting. This solidarity dimension of duty emphasizes the ontological status of man, since it is not totally enclosed within the formal sphere of *Sollen*. Indeed, this duty reveals itself as a "duty of being", as a "duty to conform existence to the truth of man's being, to his structure"[25]. It links ontological and juridical perspectives, by focusing on the intrinsic indigence of the human condition. This indigence – constituting a structural, ineradicable element of man who experiences vulnerability, the presence of physical and spiritual limitations that make him permanently in need – necessitates the conception of existence as coexistence. Therefore, it entails the creation of social bonds which, on the one hand, demonstrate the relevance of relationality and, on the other hand, express the problematic side of interdependence. Coexisting, in fact, implies the ongoing effort to recognize others, to overcome the indifference which paralyzes

[24] On this point, Lévinas 1998: 82 remarks: "In the relationship with another I am always in relation with the third part. But he is also my neighbor. From this moment on, proximity becomes problematic: one must compare, weigh, think; one must do justice, which is the source of theory".

[25] Following the juridical onto-phenomenology of Cotta 1985: 96.

human life and which remains – as Gramsci put it – "the dead weight of history" (Gramsci 1971: 47). Coexisting, moreover, means taking care of human fragility[26]. This is true not only in the sphere of private relationships. The need for care also permeates social institutions and law. The principles of care theory, in fact, present many social and legal implications. In particular, far from being limited to the private domain, they can help to integrate and enhance justice.[27] Proof of this is the recognition of the fundamental duties of social, political and economic solidarity, which concretely represent the attempt to achieve, in the juridical sphere, a fruitful interaction between care and justice[28].

Fundamental duties of solidarity – as the result of a long process that has led to the gradual transition of solidarity from a moral virtue to a juridical principle[29] – constitute a cornerstone of many modern constitutions. These duties are increasingly invoked as standards for regulating social relationships, as well as representing a guiding principle in the international field, conveying the vital need for cooperation between States. Their scope, albeit controversial, covers a wide range of topical issues. Even the fate of liberal democracies is closely linked to their fulfilment. Without them, in fact, States are merely simulacra of democracy, as it is the concrete presence of the duties of solidarity that makes a political system "truly democratic" (Rodotà 2014: 7). This is evident especially in today's geopolitical scenario, challenged by epochal problems (from the worrying growth of poverty and inequality to the crisis of the Welfare State, from the rise of populist sovereignism to the enormous impact of the phenomenon of migration) and marked by the affirmation, at the heart of ordoliberalism, of the "Financial Prometheus" (See Ferrarese 2017: 13-61) which undermines the primacy of politics and shakes the foundations of democracies.

Against this background, the fundamental duties of solidarity underpin democracy and broaden the paths of citizenship. By proposing responsibility as a horizon of meaning within which to rethink freedom and social bonds, they become "the inner cement" (Bayertz 1999: 9) holding together a political community and making it inclusive. Moreover, they help to

[26] [26] On this topic and, in particular, on the inseparable link between coexistence and compassion see Amato 2002: 167-193.

[27] In this perspective see Engster 2007: 5: "the principles of care theory are central to any adequate theory of justice. There would be no individual liberty or equality, community values or good life without the caring practices necessary to sustain and foster human life and society. As such, the aims and virtues of caring may be said to precede and underlie all other theories of justice. No theory of justice can be said to be consistent or complete without integrating the institutional and policy commitments of care theory".

[28] On the importance of rethinking the relationship between care and justice, see *inter alia* Garrau, Le Goff 2010; Pulcini, 2013: 221-252; Grace Clement, *Care, Autonomy and Justice. Feminism and the Ethic of Care* (Routledge 2018) 109-121.

[29] On this process, see Peces-Barba Martinez, 1999: 263-282 who distinguishes the "Solidarity of Ancients" from the "Solidarity of Moderns". See also Stjernø 2005.

accomplish one of the essential tasks of advanced democracies: the protection of human dignity through the systems of constitutional rights. In achieving this task, the duties of solidarity are essential[30]. Experience shows that any claim to separate the duties of solidarity from the implementation of rights is illusory. Indeed, the effective enjoyment of rights depends on mechanisms of solidarity cooperation between the public and private sphere, between the State and individuals. After all, the bearer of rights is not a monad, but a subject in relation with other subjects, placed in society, at the centre of a dense network of interactions. The protection of his/her rights, consequently, is the outcome of the interplay between the demands of sociality and individual and institutional responsibility. It follows that the best implementation of rights is not achieved through a "molecular" schema – centred on an insular conception of the individual, closed in the ivory tower of his own selfishness and therefore indifferent to the reasons of others – but rather through a "solidarity" schema, which combines rights with social bonds, making both individuals and institutions responsible, calling upon them to take into consideration the general interest and the common good.[31] From this point of view, the duties of solidarity – in their twofold dimension: both "paternal" solidarity duties, closely linked to the activity of the State oriented towards supporting the person and the social relationships in which the human personality expresses itself; and "fraternal" solidarity duties[32], which animates the conception of man *uti socius* and sustains the dense network of social bonds in which the logic of gratuitousness and gift are also relevant – far from opposing rights, concretize and strengthen them.

VI. Conclusion

As I have tried to demonstrate with this article, using the two-faced Janus metaphor, duties have two inseparable faces: the face of the limit and the face of solidarity. Each of them fulfils important tasks. The first aims to contain the possible anomic development of the activity of claiming, to preserve the significance of the notion of fundamental rights and to avoid the negative implications linked to the normativisation of desires. The second, on the other hand, by promoting solidarity as a fundamental good of every political community, is a condition of possibility for the implementation of rights and the persistence of democracies.

[30] In this regard, Corradini H. Broussard 2008: 300 stated that "The civilization of human rights is a consequence of the fundamental duties of solidarity", pointing out that solidarity constitutes a *prius* with respect to human rights.

[31] The comparison between the "molecular" and the "solidaristic" approach is sharply outlined by Pastore 2007: 132-135.

[32] The distinction between the dimension of 'paternal' (vertical) and 'fraternal' (horizontal) solidarity goes back to Galeotti 1996: 1-23.

Seen from this perspective, the appeal for duty does not remain closed within the perimeter of a conservative approach. Nor does it act as an implacable indictment against the culture of rights. Besides, it would make no sense to promote a duty-based approach to engage in a reactionary and anti-modern struggle against rights. On the contrary, enhancing duties may help to reinvigorate the 'Age of rights', reducing some of its critical aspects, but without betraying the hopes and expectations of which it is the bearer. After all, I believe that this was the sense of the "Age of duties" that Noberto Bobbio hoped for in the last years of his life[33].

BIBLIOGRAPHICAL REFERENCES

Alexy, Robert. 2014. *Constitutional Rights and Proportionality*, Revus. Journal for Constitutional Theory and Philosophy of Law, 22: 51-61

Amato, Salvatore. 2002. *Coazione, coesistenza, compassione*, Torino

Bauman, Zygmunt. 2003. *Liquid Love. On the Frailty of Human Bonds*, Cambridge

Bayerzt, Kurt. 1999. *Solidarity*, Dordrecht

Bobbio, Norberto. 1996. *The Age of Rights*, Cambridge (ed. or. 1990)

Bobbio, Norberto. 1999. *Teoria generale della politica*, Torino

Bobbio, Norberto. Viroli, Massimo. 2001. *Dialogo intorno alla Repubblica*, Roma-Bari

Bongiovanni, Giorgio. Sartori, Giovanni. Valentini, Chiara. (eds) (2009), *Reasonableness and Law*, Dordrecth

Bonvecchio, Claudio. 2002. *La maschera e l'uomo. Simbolismo, comunicazione e politica*, Milano

Boot, Eric. 2017. *Human Duties and the Limits of Human Rights Discourse*, Cham

Burstin, Haim. 2013. *Révolutionnaires. Pour une anthropologie politique de la Révolution française*, Paris

Cacciari, Massimo. 2108. *The Withholding Power: An Essay on Political Theology*, London (ed. or. 2014)

Canetti, Elias. 1978. *Crowd and Power*, New York (ed. or. 1960)

[33] See Bobbio, Viroli 2001: 40.

Ciaramelli, Fabio. Thanopulos, Sarantis. 2016. *Desiderio e Legge*, Milano

Clement, Grace. 2018. *Care, Autonomy and Justice. Feminism and the Ethic of Care*, London

Corradini H. Broussard, Domenico. 2008. *Date manibus. Aforismi sull'etica dei diritti umani e dintorni*, in *Studi in memoria di Enzo Sciacca*, Milano

Corti, Horacio. 2017. *Fundamental Rights and Financial Constraints: Four Aspects of the Budgetary Issue*. Ragion Pratica 2: 351-374

Cotta, Sergio. 1985. *Il diritto nell'esistenza. Linee di ontofenomenologia giuridica*, Milano

Diderot, Denis. 1992. *Droit naturel*, *Articles from the Encyclopédie*, in Id: *Political Writings*, Cambridge

Dumézil, Georges. 1996. *Archaic Roman Religion. With an Appendix on the Religion of the Etruscans*, Baltimore

Dworkin, Ronald. 1977. *Taking Rights Seriously*, Cambridge

Eliade, Mircea. 1982. *A History of Religious Ideas. From Guatama Buddha to the Triumph of Christianity*, Chicago

Engster, Daniel. 2007. *The Heart of Justice: Care Ethics and Political Theory*, Oxford

Faralli, Carla. 2009. *Reasonableness, Bioethics, and Biolaw*, in Bongiovanni, Giorgio. Sartori, Giovanni. Valentini, Chiara (eds), *Reasonableness and Law*, Dordrecht

Ferrarese, Maria Rosaria. 2017. *Promesse mancate. Dove ci ha portato il capitalismo finanziario*, Bologna

Ferrone, Vincenzo. 2017. *The Enlightenment: History of an Idea*, Princeton

Galeotti, Serio. 1996. *Il valore della solidarietà*, in Diritto e Società, 1: 1-23

Garrau, Marie. Le Goff, Alice (sous la direction de). 2010. *Care, justice, dépendance: introduction aux théories du care*, Paris

Gauchet, Marchel. 1989. *Rights of Man*, in Furet, François. Ozouf, Mona (eds), *A Critical Dictionary of the French Revolution*, Harvard

Gramsci, Antonio. 1971. *Scritti politici*, Roma

Han, Byung-chul. 2018. *The Expulsion of the Other: Society, Perception and Communication Today*. Cambridge

Hirschl, Ran. 2007. *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism*, Harvard

Holmes, Stephen. Sunstein Cass. 2000. *The Cost of Rights: Why Liberty Depends on Taxes*, New York

Israel, Jonathan. 2001. *Radical Enlightenment: Philosophy and the Making of Modernity, 1650-1750*, Oxford

Israel, Jonathan.2006. *Enlightenment Contested: Philosophy, Modernity, and the Emancipation of Man, 1670-1752*, Oxford

Israel, Jonathan. 2009. *Democratic Enlightenment. Philosophy, Revolution, and Human Rights 1750-1790*, Oxford

Kant, Immanuel. 1996. *The Metaphysic of Morals*, Cambridge

Kant, Immanuel. 1997. *Critique of Pratical Reason*, Cambridge

Lefebvre, George. 2005. *The Coming of the French Revolution*, Princeton

Lévinas, Emanuel. 1991. *Totality and Infinity: An Essay on Exteriority*, Dordrecht

Lévinas, Emanuel. 1998. *Of God Who Comes to Mind*, Stanford

Lipovetsky, Gilles. 1992. *Le crépuscule du devoir*, Paris

Lipovetsky, Gilles. 1983. *L'Ère du vide: essais sur l'individualisme contemporain*, Paris

Magatti, Mauro. 2009. *Libertà immaginaria. Le illusioni del capitalismo tecno-nichilista*, Milano

Marx, Karl. Engels, Friedrich. 2004. *The Communist Manifesto*, Toronto (ed. or. 1848)

Mazzini, Giuseppe. 1862. *The Duties of Man*, London

Moro, Paolo. 2013. *Libertà indisponibile. Un percorso critico*, in Zanuso, Francesca (a cura di), *Custodire il fuoco. Saggi di filosofia del diritto*, Milano

Mouffe, Chantal. 2005. *On the Political*, New York

Ovid. 1989. *Fasti*, Harvard

Paine, Thomas. 2000. *Rights of Man, Being an Answer to Mr. Burke's Attack on the French Revolution*, in Id., *Political Writings*, Cambridge (ed. or. 1791)

Palombella, Gianluigi. 2006. *The Abuse of Rights and the Rule of Law*, in Sajo, Andres (ed.), *Abuse: the Dark Side of Fundamental Rights*, Utrecht

Pastore, Baldassarre. 2007. *Pluralismo, fiducia, solidarietà. Questioni di filosofia del diritto*, Roma

Peces-Barba Martinez, Gregorio. 1999. *Curso de derechos fundamentales*, Madrid

Picard, Etienne. 1998. *L'émergence des droits fondamentaux en France*, L'Actualité juridique. Droit administratif 6-42
Pino, Giorgio. 2017. *Il costituzionalismo dei diritti*, Bologna

Pintore, Anna. 2001. *Diritti insaziabili*, in Ferrajoli, Luigi. (a cura di), *Diritti fondamentali. Un dibattito teorico*, Roma-Bari

Polin, Raymond. 1971. *L'obligation politique*, Paris

Possenti, Vittorio. 2017. *L'età delle pretese*. Soveria Manelli

Preterossi, Geminello. 2015. *Ciò che resta della democrazia*, Roma-Bari

Pulcini, Elena. 2013. *Care of the World. Fear, Responsibility and Justice in the Global Age*, Dordrecht

Recalcati, Massimo. 2012. *Ritratti del desiderio*, Milano

Rivero, Jean. 1988. *Droits, devoirs: un faux diptyque*, in De Raymond, Jean-François (sous la direction de) *Les enjeux des Droits de l'Homme*, Paris

Rodotà, Stefano. 2012. *Il diritto di avere diritti*, Roma-Bari

Rodotà, Stefano. 2014. *Solidarietà. Un'utopia necessaria*, Roma-Bari

Scillitani, Lorenzo. 2011. *Antropologia filosofica del diritto e della politica*, Soveria Manelli

Sieyès, Emmanuel-Joseph. 1789. *Préliminaire de la Constitution Françoise. Reconnaissance et exposition raisonnée des Droits de l'homme et du Citoyen*, Paris

Sloterdijk, Peter. 2012. *Rage and Time. A psychopolitical investigation*, New York

Smet, Stijn. *Resolving Conflicts between Human Rights: The Judge's Dilemma*, Oxford

Stjernø, Steinar. 2005. *Solidarity in Europe: The History of an Idea*, Cambridge

Troper, Michel. 2006. *Terminer la Révolution. La Constitution de 1795*, Paris

Weil, Simone. 2005. *The Needs for Roots. Prelude to a Declaration of Duties towards Mankind*, London

Zanuso, Francesca. (ed) (2015), *Diritto e desiderio. Riflessioni biogiuridiche*, Milano

Zolo, Danilo. 2005. *Humanitarian Fundamentalism*, Jura Gentium, 1: 12-27