
A Journey Toward Spatial Justice. On the Relevance of Independent Living in the Contemporary “Age of Rights”*

» MARIA GIULIA BERNARDINI**_***

ABSTRACT. The article analyses one of the possible trajectories within the *spatial turn*, focusing on the human right to independent living. The Author will consider the existing tensions, focusing on the emancipatory drive on the one hand and on the deep-seated cultural resistance to change on the other (in the latter case, with particular reference to the Italian context). The ultimate aim of the paper is to highlight how the recognition of this human right contributes today to fostering confidence in the emancipatory and inclusive function of human rights—and, along with it, in the very age of rights itself.

* Fecha de recepción: 5 de agosto de 2025. Fecha de aceptación: 5 de abril de 2026.

Para citar el artículo: Bernardini, M. G., “A Journey Toward Spatial Justice. On the Relevance of Independent Living in the Contemporary ‘Age of Rights’”, *Revista de Derecho Privado*, Universidad Externado de Colombia, n.º 51, julio-diciembre 2026, 17-36. DOI: <https://doi.org/10.18601/01234366.51.02>

** Universidad de Ferrara, Ferrara, Italia; profesora asociada de Filosofía del Derecho. Doctora en Derechos Humanos, Universidad de Palermo, Palermo, Italia. Contacto: mariagiulia.bernardini@unife.it Orcid: <https://orcid.org/0000-0003-1354-3613>.

*** The Author acknowledges financial support under the National Recovery and Resilience Plan (NRRP), Mission 4, Component 2, Investment 1.1, Call for tender No. 1409 published on 14.9.2022 by the Italian Ministry of University and Research (MUR), funded by the European Union – NextGenerationEU – Project Title “The right to independent living as a new frontier of justice: older people, urban spaces and the law” – P20228MERB – CUP F53D23011960001 – Grant Assignment Decree No. 1375 adopted on 01/09/2023 by the Italian Ministry of University and Research (MUR).

KEYWORDS: Independent living, deinstitutionalisation, spatial turn, “Age of Rights”, older persons, persons with disabilities, Article 19 of the Convention on the Rights of Persons with Disabilities.

Un itinerario hacia la justicia espacial. Sobre la relevancia de la vida independiente en la “Era de los Derechos”

RESUMEN. El artículo analiza una de las posibles trayectorias dentro del *spatial turn*, concentrándose en el derecho humano a la vida independiente. La autora examina las tensiones existentes, haciendo énfasis, por un lado, en el impulso emancipador y, por el otro, en la profunda resistencia cultural al cambio (en este último caso, con especial referencia al contexto italiano). El objetivo último del artículo es resaltar cómo, hoy en día, el reconocimiento de este derecho humano contribuye a fomentar la confianza en la función emancipadora e inclusiva de los derechos humanos y, con ello, en la propia era de los derechos.

PALABRAS CLAVE: vida independiente, desinstitutionalización, giro espacial, “Era de los Derechos”, personas mayores, personas con discapacidad, artículo 19 de la Convención sobre los Derechos de las Personas con Discapacidad.

SUMMARY. A premise: Confidence in human rights despite the crisis. I. The disorientation of law. II. Independent living as a right: between legal recognition and cultural resistance. III. Against independent living: the Italian case. IV. Promoting independent living: pieces of a mosaic under construction. Conclusions: Transforming the world. References.

A premise: Confidence in human rights despite the crisis

The twentieth century represented a crucial moment in the consolidation of public discourse centred on rights: after the unspeakable violence of the two World Wars and the Holocaust, it was to the rights proclaimed in the 1948 *Universal Declaration* that humanity entrusted its faith in the possibility that “never again” could not only be uttered but also realized in practice. The proliferation and increasing specification of human rights that have continued to characterize the “age of rights” can likewise be traced back to this trust in the moral progress of humankind.

This process has been far from linear. Since their very inception, human rights have faced a range of problematic fronts—from the alleged inadequacy of

the “discourse of rights”¹ often instrumentalized by those in power to legitimize their own claims by cloaking them in a veneer of universality² or by exploiting the performative nature of language³—to the political challenges surrounding their protection, which became particularly acute over the course of the twentieth century. For several decades now, scholars have persistently spoken of a profound crisis—or even the outright end—of the age of rights. However, despite ongoing contestations, rights have nonetheless thus far retained their foundational character, and they continue to constitute the horizon of contemporary politics and law⁴.

Though this may be true, it is also undeniable that the crisis has now reached an unprecedented level of severity. On multiple fronts, we are witnessing the *disappearance* of rights from public rhetoric and the rise of an “institutional culture of rights erasure”⁵. We are facing both a moral and political regression when it comes to the protection of human rights, accompanied by an alarming and unparalleled escalation of violence, which is increasingly being justified, if only on the grounds of its alleged inevitability. One need only think of the wars, conflicts, genocides, and the renewed arms race that characterize the international landscape today. It is therefore no coincidence that there is growing discourse around the very end of international human rights law.

Within this decidedly bleak context, however, a widespread sense of collective indignation has become more visible than ever in the recent past. Strikes, public demonstrations, and other forms of nonviolent action are multiplying in an effort to reaffirm the value of certain fundamental principles—above all, peace⁶, life, freedom, and self-determination. The massive presence of individual bodies in the public sphere, joining together in collective forms of protest, suggests that the conviction of the importance of rights remains deeply rooted and that their protection is now more urgent than ever⁷.

1 Ansuátegui Roig, F., “L’età dei diritti al di là dei doveri”, in Ballarini, A. (ed.), *Novecento del diritto*, Torino, Giappichelli, 2019, 10.

2 Echoing an expression by John Elster, Aldo Schiavello speaks of the “civilizing force of hypocrisy” (see Schiavello, A., “La fine dell’età dei diritti”, *Etica & Politica / Ethics & Politics*, vol. XV, No. 1, 2013, 143).

3 On performativity see Austin, J., *How To Do Things with Words*, London, Oxford University Press, 1962; more recently, Butler, J., *Precarious Life: The Powers of Mourning and Violence*, New York, Verso, 2004.

4 On the point see Rodotà, S., “L’età dei diritti. Le nuove sfide”, in AA. VV., *Lezioni Bobbio*, Torino, Einaudi, 2006, 79.

5 Sciarba, A., “Quale scontro ‘culturale’? L’urgenza di risignificare l’universalità dei diritti (e di salvarli)”, *Ragion Pratica*, vol. 64, No. 1, 2025, 121.

6 The idea that peace constitutes *the principle* and the ultimate aim to which law itself is bound to contribute is the central thesis of legal pacifism, which famously counts among its exponents figures such as Kant, Kelsen, Bobbio, and Ferrajoli. On peace as principle, see the recent work Greco, T., *Critica della ragion bellica*, Roma–Bari, Laterza, 2025.

7 Butler, J., *Notes toward a Performative Theory of Assembly*, Cambridge (MA), Harvard University Press, 2015.

The same passion for rights also animates other struggles: individuals—particularly those in conditions of vulnerability—are often the protagonists of genuine rights-based movements aimed at achieving a real equal recognition, before the law and within society as well. Human rights continue to be invoked as instruments of resistance against exploitation, denial, and hierarchization of subjectivities. Appeals to rights persist because, despite ongoing violations, there is still a prevailing trust in their inclusive function and their emancipatory potential. Rights continue to preserve their connection with political and ethical utopia—a connection which, even according to their critics, prevents any definitive declaration of their demise⁸.

The focus of the reflections that follow is precisely an area in which it is still possible to discern this connection with utopia—namely, *spatial justice*, with particular reference to the right to independent living and being included in the community, enshrined in Article 19 of the *Convention on the Rights of Persons with Disabilities* (CRPD).

This choice may at first appear somewhat unconventional in light of the preceding considerations: indeed, reflections on spatial justice are not ordinarily preceded by observations concerning the context of peace. This tendency, however, is because we are not accustomed to conceiving of peace as a *principle*, but rather as an objective—often portrayed as an unreachable utopia. Yet it is undeniable that peace constitutes a prerequisite, a true horizon of meaning for spatial justice. Within a framework where the nexus between peace, democracy, and human rights is central, war constitutes the very antithesis of law and of rights⁹. Its presence, in fact, precludes *a priori* the very possibility of conceiving the existence of a co-constitutive relationship between law and space—a relationship that, by contrast, lies at the heart of the well-known *spatial turn*.

For this reason, having left peace in the background and briefly retraced the path that has led to a radical transformation in the way the relationship between law and space is conceived, I will turn my attention to one of the possible trajectories within this *turn*: the one concerning independent living.

In this analysis, I will consider the existing tensions, focusing on the emancipatory drive on the one hand and on the deep-seated cultural resistance to change on the other (in the latter case, with particular reference to the Italian context). The ultimate aim of the paper is to highlight how the recognition of this human

8 The literature on vulnerability is very extensive, also with regard to the relationship between conditions of vulnerability and human rights. See at least Casadei, Th. (ed.), *Diritti umani e soggetti vulnerabili. Violazioni, trasformazioni, aporie*, Torino, Giappichelli, 2012; please allow me to refer also to Bernardini, M. G., and Lorubbio, V. (eds.), *Diritti umani e condizioni di vulnerabilità*, Trento, Erickson, 2023.

9 This is a fundamental thesis of legal pacifism. See Giolo, O. “Iusfeminismo y pacifismo jurídico. Teorías críticas del derecho y el repudio incondicional de la guerra”, *Derechos y Libertades. Revista de Filosofía del Derecho y Derechos Humanos*, vol. 53, 2025, 53-85.

right contributes today to fostering confidence in the emancipatory and inclusive function of human rights—and, along with it, in the very “age of rights”¹⁰ itself.

I. The disorientation of law

In recent years, urban studies and critical geography have gained increasing prominence within the legal sphere, to the point where it can be argued that the spatial turn which has long influenced the other social sciences has also taken place within the legal domain. As a result, there has been a growing awareness that the neutrality of physical and symbolic space is an illusion, and that space plays an *active role* in many dynamics that may be traced back to the realm of justice. This awareness has led to growing attention to spatial justice, a topic that for a long time had attracted little interest among legal scholars¹¹.

Since the notion of spatial justice is a construct developed outside the field of law¹², it has caused a genuine sense of disorientation among jurists traditionally trained to regard law as a regulatory practice exercised upon an empty space¹³. What characterizes the spatial turn is precisely the way in which the relationship between law and space is interpreted: it rejects the notion of an empty or neutral space, in favour of a conception according to which law and space both play active and co-constitutive roles¹⁴.

It is perhaps worth pointing out that this awareness is the result of a process. Space has assumed significant importance at least since the advent of legal modernity, when it came to be regarded as a fundamental element of state sovereignty, conceived precisely in territorial terms. In this respect, it has been observed that the initial assumption of an empty, passive space upon which law could act represented a genuine necessity¹⁵. The natural law theorization of human rights,

10 Bobbio, N., *L'età dei diritti*, Torino, Einaudi, 1990.

11 Clearly, space in itself cannot be just or unjust—rather, it is the relationships that unfold within a given territory that may be so. Including the spatial dimension within reflections on justice thus means complementing and enriching existing explanatory and normative perspectives on justice.

12 Dussart, V., and Lérique, F. (eds.), *Justice spatiale et politiques publiques territoriales*, Paris, Mare & Martin, 2023.

13 Nicolini, M., “La produzione degli spazi giuridici come pratica ideo-logica”, *Ars Interpretandi*, No. 2, 2024, 47.

14 On the *spatial turn* see Harvey, D., *Social Justice and the City*, Athens–London, University of Georgia Press, 1973; Soja, E. W., *Seeking Spatial Justice*, Minneapolis, University of Minnesota Press, 2010. With reference to law, see Philippopoulos-Mihalopoulos, A., “Law’s Spatial Turn: Geography, Justice and a Certain Fear of Space”, *Law, Culture and the Humanities*, vol. XX, No. x, 2010, 1-16.

15 Capone, N., “Diritti, Stato e territorio tra primo e secondo Novecento. I contributi di Santi Romano e Tomaso Perassi e la svolta costituzionale di Alberto Predieri”, *Politica del diritto*, vol. LII, No. 1, 2021, 113-146, in particular 116-120. The Author refers also to Costa, P., “I diritti dell’Uomo fra spazialità ‘newtoniana’ e ‘territorializzazione’ coloniale”, in Preterossi, G., and

and their subsequent positivization, required the denial of any reciprocal relationship between law and space in order to overcome the feudal order and to ensure equality before the law. *Uprooting* rights—thus detaching them from their spatial dimension—made it possible to conceive of them as universal and to overcome the old *status*-based distinctions¹⁶.

With the advent of nation-States, the relationship between law and space underwent a profound transformation. On the domestic level, it became evident that the universalism of rights necessarily—and contradictorily—clashed with their localization within the boundaries of the State. On the international level, territory acquired significance through its connection with colonial policies, understood as instruments for the appropriation of extra-territorial space. In this dual process—of nationalization on the one hand and colonization on the other—rights came to be situated within a space expressly conceived as a site for the materialization of power, and consequently, one that became contested. The occupied people engaged in acts of resistance and asserted their rights by appealing to a space that had to be restored to emptiness—that is, freed from power and from colonial injustice¹⁷. By invoking their innate rights, the dominated subjects thus lay claim to a space of freedom—a tendency that would later come to characterize the twentieth-century struggles for rights, and that would ultimately concern the Western world as well.

Finally, with the 1948 *Declaration*, human rights famously acquired a universal significance. The sole reference point of the national State was replaced by a plurality of spaces and territories, powers multiplied, and law assumed an increasingly complex character, ultimately taking the forms with which people engaged in daily life. Since then, what has stood out is not only the irreducible tension between the universalistic dimension of rights and the strong spatial grounding required for their realization (i.e. their *glocal* character), but also the emergence of new spaces with which power must contend¹⁸—most notably the global and the urban, the latter now representing the most significant form of sub-national space.

The current tendency to jointly address issues of spatial and urban justice—which, from an analytical perspective, constitute distinct domains—can be seen

Solidoro, L. (eds.), *Diritti senza spazio?*, Milano–Udine, Mimesis, 2019, 13–32, to whom the readers can refer for a detailed analysis of the issue, which I recall here in a necessarily simplified manner.

16 Costa, P., “I diritti dell’Uomo fra spazialità ‘newtoniana’ e ‘territorializzazione’ coloniale, cit.; Marella, M. R., “Note critiche in tema di soggettività giuridica e diversità”, *Politica del diritto*, No. 4, 1998, 581–599.

17 For a more extensive discussion of the three modes of existence of human rights, see further P. Costa, *Ibidem*.

18 The reference is to three phenomena that can only be briefly mentioned here: globalization, which brings new forms of de-territorialization; de-materialization, which introduces unprecedented forms of de-spatialization; and the conquest of outer space. A deep analysis is contained in Garapon, A., *La despaializzazione della giustizia*, Milano–Udine, Mimesis, 2021.

as part of this process, where rights are framed as the expectations of individuals conceived primarily as inhabitants of a city¹⁹.

It is therefore no coincidence that contemporary claims concerning the right to housing, to ageing in place, to independent living, or to the city—each with its own specificities and distinct legal significance—represent some of the struggles for rights that carry the greatest weight. Thanks also to the theoretical framework provided by critical legal theories²⁰, these claims have made clear the active role of space both in the recognition of individuals and in the reduction of social inequalities, as well as in the dynamics that produce the opposite effects²¹. Emblematic of this interaction is the case of the right to independent living, which warrants a more detailed examination.

II. Independent living as a right: between legal recognition and cultural resistance

Among the emerging rights that have gained legal recognition is the *right to independent living*—that is, the right to live freely and autonomously within the community. The CRPD elevates this entitlement to the status of a human right under Article 19, by virtue of which the primary beneficiaries of this right are persons with disabilities. The Convention, however, adopts an intersectional approach that also encompasses considerations of age: for this reason, older persons with disabilities are also entitled to the right to independent living.

Furthermore, by interpretive extension, this right may also be understood to include older persons, even in the absence of a condition of disability²². Indeed, certain commonalities between these existential conditions, as well as similarities in the forms of discrimination experienced—most notably medicalization and the denial of legal capacity—have given rise to suggestions that the CRPD should be provisionally applied to older persons as well, pending the adoption by the United Nations of an international convention specifically devoted to the protection of their rights. In this respect, the United Nations system clearly differs from the Inter-American human rights system, where such a convention has existed since

19 Giolo, O., “I diritti contro la città. Spazio urbano, soggettività e sfera pubblica”, in Bernardini, M. G., and Giolo, O. (eds.), *Abitare i diritti. Per una critica del rapporto tra giustizia e spazi urbani*, Pisa, Pacini, 2021, 51.

20 Please allow me to recall Bernardini, M. G., and Giolo, O. (eds.), *Le teorie critiche del diritto*, Pisa, Pacini, 2017, and Bernardini, M. G., and Giolo, O. (eds.), *Abitare i diritti*, cit.

21 Therefore, space has once again come to be conceived as “full”, precisely because it is traversed by power relations.

22 Cf. Kanter, A., “The United Nations Convention on the Rights of Persons with Disabilities and its Implications for the Rights of Elderly People under International Law”, *Georgia State University Law Review*, vol. 25, No. 3, 2009, 527-573.

2015²³. Moreover, with specific reference to independent living, older persons are recognized as holders of the right to lead a dignified and independent life and to participate in social and cultural life (Art. 25 of the *Charter of Fundamental Rights of the European Union*).

The right to independent living provides a compelling example of how the process of specifying rights does not necessarily entail the recognition of entirely new rights, but may rather represent the evolutionary articulation of pre-existing ones²⁴. It may be worth recalling that the concept of *independent living* emerged in the 1960s within the political activism of persons with disabilities at the University of California, Berkeley, under the leadership of Ed Roberts. Initially, the assertion of this right had a relatively limited scope: it concerned the educational segregation of persons with disabilities, which at the time still characterized the American context in adherence to the well-known principle of *separate but equal*²⁵.

However, the claim soon acquired a far broader scope: *independent living* became the expression through which persons with disabilities claimed their right to access spaces and services on an equal basis with others and to exercise self-determination in that regard. What began as a social and political demand gradually evolved into formal legal recognition, ultimately culminating in Article 19 CRPD, through which, as mentioned, the right to independent living was elevated to the status of a human right.

Beyond the originality of the expression itself, at first sight Article 19 CRPD might seem to affirm what is self-evident: if all human beings are born free and equal in dignity and rights, as proclaimed in Article 1 of the 1948 *Universal Declaration of Human Rights*, and if no distinction or discrimination is permitted on the basis of disability (or old age, in light of the considerations expressed above)²⁶, then it necessarily follows that persons with disabilities and older persons alike are entitled to choose freely where, how, and with whom to live within the community, on an equal footing with others. This apparent self-evidence is closely linked to a conviction now widely shared within legal culture and reflected

23 Cf. *Inter-American Convention on Protecting the Human Rights of Older Persons*, June 15, 2015, O.A.S. Doc. A-70. Article 7 of the Inter-American Convention on Protecting the Human Rights of Older Persons contemplates the right to independence and autonomy; the content of Article 7—read in conjunction with Article 8—mirrors that of Article 19 of the CRPD (this is especially true in relation to letters b and c, while letter a can be related to Article 12 of the CRPD, which, not coincidentally, constitutes the basis for the recognition of the right to independent living).

24 Both among disability law scholars and within the civil rights movement for persons with disabilities, it is widely believed that the Convention does not introduce new human rights but rather clarifies existing rights in relation to disability.

25 The historical and logical core of independent living can therefore be traced back to criticism of segregationism. In this regard, one might also question whether this logic has truly been overcome—in North America and beyond.

26 As a rule, the open clause “any other condition” applies in this regard.

across multilevel public policy frameworks: namely, that *inhabiting*—understood in a sense that transcends the mere notion of housing and encompasses access to public space—plays a central role in securing the right to live a dignified life free from discriminations²⁷.

Ensuring the conditions that enable each individual to lead a flourishing life requires guaranteeing effective access to a variety of spaces: not only the domestic sphere, which a person can regard as their own and in which they are rooted, but also the public one, which allows for social interaction and participation in community and cultural life within a given context, thereby countering isolation and invisibility. In short, the concept of *inhabiting* places the relational dimension of human existence—in all its forms—at the very centre of concern.

The right to independent living moves precisely in this direction. It recognizes the need to live within a freely chosen context—spatial, relational, and social—as a fundamental human need and raises it to the level of a genuine human right. In practice, the right to independent living is the legal framework through which the *right to inhabit* is explicitly recognized as belonging to specific groups—persons with disabilities and older persons—whose needs have historically been perceived as atypical, owing to their alleged divergence from the paradigmatic subject of liberal conception. Guaranteeing this right requires promoting the recognition and validation of these needs and identities, as well as ensuring equal access to goods, services, and resources (and to the rights connected thereto). In doing so, the right to independent living directly challenges spatial arrangements that operate in exclusionary terms.

This is the reason why Article 19 CRPD proclaims anything but a self-evident truth. Indeed, the history of the rights of persons with disabilities²⁸—to a large extent, the history of the rights of older persons remains yet to be written²⁹—reveals not only that the struggle of these individuals to claim space has begun only in recent decades, but also that it is still ongoing and far from linear in its progression.

27 It should nevertheless be recalled that, at present, there are no legal sources that formally recognize a right to *inhabit* in this fuller sense; rather, what is recognized is the right to *housing*. The latter is primarily addressed in Article 25 of the 1948 *Universal Declaration of Human Rights* and Article 11 of the 1966 *International Covenant on Economic, Social and Cultural Rights*. Considered a fundamental component of the right to health and individual well-being, the right to housing is also enshrined in other international human rights instruments, and in particular in various international conventions that form part of the historical process of specifying human rights and their holders. Among these are, first and foremost, the *International Convention on the Elimination of All Forms of Racial Discrimination* (1965), the *Convention on the Elimination of All Forms of Discrimination Against Women* (1979), the *Convention on the Rights of the Child* (1989), and the *Convention on the Rights of Persons with Disabilities* (2008).

28 Cf. De Jong, G., “Independent Living: From Social Movement to Analytic Paradigm”, *Archives of Physical Medicine and Rehabilitation*, vol. 60, 1979, 435-446.

29 I have explored some of these reasons, albeit from a different perspective, in Bernardini, M. G., “La edad senil desde una perspectiva crítica: en busca de una teoría”, in *Derechos y Libertades. Revista de Filosofía del Derecho y Derechos Humanos*, vol. 53, No. 1, 2025, 115-137.

On one hand, we witness the formal affirmation of a new emancipatory culture of disability, aimed at overcoming the logic of segregation and enshrined in countless multilevel sources that, beginning with their preambles, expressly invoke the CRPD and the principle of independent living, pledging to ensure its implementation. On the other hand, persistent cultural, social, and economic resistances continue to render this path exceedingly arduous, to the point of raising concerns about possible regressions in the protection of this right.

III. Against Independent Living: The Italian case

The processes through which the right to independent living is being eroded and its substantive content progressively emptied are numerous, demonstrating that the new emancipatory culture of disability cannot yet be regarded as fully established. Some of these regressive tendencies can be observed precisely in the Italian context, where the strategies adopted appear to promote a subtle return to a past that was believed to have been gradually overcome—one marked by the use of confinement and segregation as ordinary means of managing this segment of the population, primarily through forms of institutionalization, often of a non-voluntary nature. Thus, people with disabilities and the elderly seem to represent a new “deviant majority”.

It is well known that, in referring to what they called the *deviant majority*, Franco Basaglia and Franca Ongaro Basaglia sought to highlight the contradiction whereby the category of those who are assigned no socially meaningful function—and who are therefore relegated to the margins of society—tends to expand progressively, culminating in the paradox of a *universal deviance*³⁰.

This perspective aptly applies to persons with disabilities and to the elderly. Indeed, despite the undeniable achievements in terms of formal recognition that have been made in the fields of both disability and aging, the perception of the differential value of the lives of such individuals remains deeply entrenched. Within public discourse, this perception continues to justify their marginalization, “containment”, confinement, and, in the most extreme cases, even suppression. In this respect, it is sufficient to recall the cyclical reemergence—particularly in connection with so-called *tragic choices* and beyond—of arguments invoking these individuals’ alleged inability to contribute meaningfully to the economic or social sphere, or the “burden” they are said to impose on families and society

30 Cf. Basaglia, F., and Ongaro Basaglia, F., *La maggioranza deviante. L'ideologia del controllo sociale totale* (1971), Milano, Baldini e Castoldi, 2024. It should not be forgotten, in this regard, that the logic of confinement is applied to other individuals deemed to be deviant, and consequently to other spaces of separation from the norm: “the spaces for rejecting ‘waste lives’ are all total institutions—not only asylums and prisons, but also migrant and refugee camps”. (Saraceno, B., *Un virus classista. Pandemia, diseguaglianze e istituzioni*, Merano, Alphabeta, 2021, 68, my translation).

at large. Such arguments are by no means new: they were already widespread in the 1930s, when the notion of “lives unworthy of being lived” was theorized, i.e. lives deemed devoid of value and thus stripped of their status as legally protected goods, rendering their suppression permissible³¹.

Although the current legal, political, and social landscape is markedly different from the one just recalled, it is nonetheless undeniable that there is still a widespread tendency to institutionalize persons with disabilities and the non-self-sufficient elderly. This institutionalization is widely accepted in our culture: it is portrayed as normal, natural, ordinary, and ultimately inevitable. In this respect, one must agree with those who have recently observed that such a model of “people management”, which can be traced back to different forms of social solidarity, raises two distinct sets of issues—concerning both the individual and society as a whole³².

At the individual level, the question of *freedom* emerges in at least three respects. The first concerns the freedom that may be improperly restricted within institutional settings, even solely as a consequence of rigid organizational protocols³³. The second relates to the freedom that is constrained by the absence of the conditions necessary to enable independent and community living, effectively forcing individuals to choose a dramatic “uprooting” from the context in which they live³⁴. The third affects the freedom denied to those who, as involuntary residents of such facilities—whether initially or after having resided there voluntarily for some time—are deprived of the right to leave, notwithstanding their capacity for self-determination³⁵.

In all these instances, disability and old age come to serve as grounds for derogating from the principle of equal recognition of personal liberty and

31 Binding, K., and Hoche, A., *Die Freigabe der Vernichtung lebensunwerten Lebens: Ihr Maß und ihre Form* (1920), Berlin, Bwv Berliner Wissenschafts Verlag, 2002.

32 Tarantino, C., “Il pensabile e l’inenunciabile. Note sull’*h-apartheid*”, in Valtellina, E. (ed.), *Sulla disabilitazione. Introduzione ai Disability Studies*, Milano, UTET Università, 67-79.

33 Some indicators of segregation are identified in the 2022 document issued by the UN Committee on the Rights of Persons with Disabilities, *Guidelines on Deinstitutionalization, Including in Emergencies*, point No. 14, related to *General Comment No. 5*, on the right to independent living.

34 The issue concerns “free choice” and the conditions that make its exercise possible.

35 Still with regard to the Italian legal system, the case involving Carlo Gilardi, which occurred a few years ago, is well known. The older man had been confined in a social care home against his will on the recommendation of his court-appointed support administrator. The case, brought before the European Court of Human Rights, resulted in a condemnation of the Italian legal system because, according to the Court, Gilardi had been placed under the complete dependency of his support administrator, without any limit on the duration of the measures adopted. This circumstance therefore constituted an abuse of power under the support administration system: although the interference with Gilardi’s liberty pursued the legitimate aim of protecting his well-being, the measures adopted were deemed neither proportionate nor appropriate to his individual situation. See ECHR, *Calvi and C.G. v. Italy*, C-46412/21, judgment 6 July 2023.

self-determination, revealing that, beneath the appearance of equal consideration and respect, some lives remain “less equal” than others, and that hierarchies of bodies continue to be deeply entrenched.

The same holds true at the collective level, where the existence of social care homes materializes in space the normative and value-laden dimension underlying a society’s conception of what forms and quality of care and assistance are deemed acceptable. These spatial manifestations, in turn, reflect the differential value attributed to human lives and the hierarchies of human beings that processes of institutionalization both expose and render (in)visible. The adoption of “innovative” legislative drafting formulas can also contribute to the process outlined above. In this regard, Legislative Decree No. 62 of 2024, implementing Delegated Law No. 227 of 2021 on disability, is noteworthy. Chapter III of the Decree regulates personalised and participatory individual planning, which aims to restore the centrality of persons with disabilities, recognised as competent to make choices that affect them, with a view to emancipation. In defining the life plan, in which the person with disabilities also participates, the tools and resources necessary to guarantee social inclusion and ensure the necessary support are identified with the aim of promoting the participation of the individual in all areas of life (such as education, health, independent living, social life and work), in light of the provisions of the CRPD.

While the emancipatory logic of the life project is evident, the few Italian scholars who have sought to analyse it have highlighted the tensions underlying a text permeated as much by the yearning for freedom as by the attempt to effectively “contain” it³⁶. One of the clearest expressions of this conflict is the legislative technique adopted in the legislative decree. While the enabling law was peremptory in its terms regarding the need to fully guarantee the right to independent living and did not contemplate the possibility of delays³⁷, Article 20 of the delegated decree states that “the life plan aims to promote the freedom of persons with disabilities to choose where to live and with whom to live [...]”³⁸.

The wording of the provision (“aims to promote”) not only waters down the original provision, but even ends up creating a new legal concept, that of

36 Tarantino, C., Marchisio, C., “Gli spiriti della legge. Sulle tensioni istituenti del decreto legislativo 62/2024 in tema di progetto personalizzato per le persone con disabilità: uno studio di animismo giuridico”, *Sociologia del diritto*, vol. 52, No. 1, 2025, 353-371; Lovece, A., and Verga, M., *La vita indipendente per le persone con disabilità. Un diritto fondamentale*, Milano, Ledizioni, 2024.

37 Article 2, paragraph 2, letter c, number 4 of the enabling law in fact required “the development of an individual, personalized, and participatory life plan, identifying the supports and reasonable accommodations that ensure the effective enjoyment of fundamental rights and freedoms, including the possibility, free from discrimination, to choose one’s place of residence and an adequate housing solution, also promoting the right to receive care and social-assistance support at home.” (my translation).

38 Italics added.

the “aspirational right”.³⁹ Through the wording crystallised in the decree, it is established at the regulatory level that, in the case of persons with disabilities and older persons—as opposed to individuals without disabilities or who are old—freedom of residence is not absolute, but can be legally graded: freedom is not guaranteed to these individuals, but is rather a future and indeterminate aim which may never be achieved. In other words, despite being a human right, the right to independent living is considered negotiable from the outset, regardless of any balancing that may be necessary in practice. However, if the life project only *strives towards guaranteeing* freedom—and is thus not aimed at full guaranteeing it—the right to independent living ends up being relegated to the status of a mere aspiration, precisely.

Furthermore, as if to preclude the possibility that this right might nevertheless be implemented in practice, the decree also provides for a trial period for life projects within certain sample territories and a further postponement of its application on a national level⁴⁰. As a result, it gives a decisive push towards a practical implementation, which, however, in light of what has just been observed, does not really appear to be aimed at guaranteeing the effectiveness of the right in question, but rather at lessening (perhaps even neutralising) its regulatory significance. In short, freedom is not for everyone, or at least for some people it is a deferrable objective⁴¹.

IV. Promoting Independent Living: pieces of a mosaic under construction

Despite the presence of significant obstacles to the protection of the right to independent living, confidence in its inclusive function and transformative potential has not waned. In recent times, the struggle for this right seems rather to have intensified⁴² in response to the tendency to attribute the emancipatory aspects

39 Tarantino, C., and Marchisio, C., *Gli spiriti della legge*, cit., 367.

40 See Articles 33 and 40 of the decree. At national level, the postponement was further extended in February 2025, essentially passing unnoticed in political circles and public debate, and contested almost exclusively by a small number of legal scholars and some associations representing persons with disabilities.

41 The field of mental health appears to be moving in the same direction. Bill No. 1179, adopted as the reference text for the reform of the mental health sector and currently under discussion in the relevant Senate Committee, presents numerous regressive aspects compared to Law 180 of 1978, inspired by Basaglia, which was hailed as a genuine civilizational achievement. By providing for the extension of the duration of compulsory medical treatment, the codification of mechanical restraint, and the introduction of widespread residential and semi-residential facilities, the reform effectively anticipates a return to an asylum-based, security-focused model that, at least in the Italian context, was thought to have been definitively overcome.

42 Around the world, the activities of independent living centres and advocacy efforts continue unabated and have at times even contributed to the emergence of new civil rights movements. For example, in Italy in 2023 the Anti-Ableist Movement was founded, with the primary objective of

relating to disabled and older persons to a level of aspiration that is almost impossible to achieve, and to which the attempts at neutralization mentioned above can also be attributed.

One could even argue that the right to independent living is a contemporary “utopia of reality”⁴³. With this expression, used in relation to the possibility of implementing the closure of Italian psychiatric hospitals in favour of a community-based approach, Franco Basaglia emphasised that the contrast between utopia and realism should not be traced back to that between the world of ideas and that of practicality, but rather to different practical options, supported by antithetical values and aimed at achieving objectives that are often irreconcilable⁴⁴.

From this point of view, the only partial affirmation of the emancipatory perspective leads us to believe that the right to independent living is still a utopia. At the same time, this right also indicates concrete (and not utopian) paths to the emancipation of people with disabilities and the elderly, which require a radical reorganisation of space. At present, in fact, there are many obstacles preventing these individuals from living freely within the community: space plays an active role in the processes aimed at recognising individuals and guaranteeing their rights.

The change required to enable independent living mainly affects urban areas, where we see an abundance of projects, policies and experiments that promote the development of “new” models of housing and welfare⁴⁵ and the redevelopment of urban spaces and public housing stock in an inclusive manner according to criteria differing from “traditional” social housing, or which aim to ensure universal accessibility in order to guarantee the autonomy and independence of persons with disabilities and older persons.

In this regard, it should be noted that, as a rule, in all these projects, policies and experiments there is no reference to independent living in terms of a *right*, but rather an emphasis on the need to guarantee the autonomy and independence of these individuals. Often, legal language is evoked through reference to the *right*

achieving the full realization of the right to independent living and, along with it, the elimination of institutionalization as a possible form of residential care. Following the closure of asylums, the goal is now to achieve the closure of social care facilities.

43 The expression appears in Basaglia, F., *Conferenze brasiliane*, Ongaro Basaglia, F., and Giannichedda, M. G. (eds.), Milano, Cortina, 2018, 139.

44 Ciro Tarantino draws an analogy between the two foucauldian “discourses”, suggesting a line of continuity which goes from Basaglia’s work to the contemporary emancipationist approach. See Tarantino, C., “Il pensabile e l’inenunciabile. Note sull’*h-apartheid*”, cit.

45 In the Italian legal system, the emergence of “solidarity living” as a new housing model is prompting scholars to consider the most appropriate forms of legal regulation. On this point, see Morozzo della Rocca, P., “Solidarity, Cohabitation and Senior Cohousing”, *Legal Policy & Pandemics*, vol. 2, Nos. 2-3, 2022, 103-119; Leo, M., “Accordi di convivenza solidale tra anziani”, *CNN Notizie*, 189, 14 October 2024. Among the new welfare models (whose novelty could, however, be open to discussion), the territorial and proximity-based approaches stand out.

to the city⁴⁶ which, however, cannot yet be recognised as having any real legal significance and is therefore essentially rhetorical.

Nonetheless, there are numerous points of convergence between the right to the city and the right to independent living. Henry Lefebvre defined the former as a higher form of rights⁴⁷ that is expressed primarily in the right to freedom, to individualization in socialization, to habitat and to inhabit. Considering what we have observed, these elements are also fundamental in relation to the right to independent living. At first glance, therefore, it would seem that one could use the terms right to the city and right to independent living interchangeably. However, between the two, only the latter has real legal significance and, as such, allows us to find a legal basis for the corresponding obligation of protection.⁴⁸

In particular, there is an obligation of responsiveness, which falls primarily on institutions⁴⁹; they are not only faced with an *ethical imperative*—as is often mistakenly believed—but are also *legally required* to put in place conditions conducive to guaranteeing freedom and independent living. These conditions include, first and foremost, home support services (residential or community-based) and mobility aids⁵⁰. The former are aimed at creating the conditions for domestic habitability that make it possible to combat isolation, allow people to remain in their preferred home (which is usually the one where they have spent their life) and prevent residential care from becoming the only realistic option. The latter are designed to ensure that persons with disabilities and the elderly can also access urban spaces and move freely within them, thus gaining recognition of their individuality, the opportunity to participate in community life and maintain relationships, and to exercise their rights on an equal basis.

46 Lefebvre, H., *Le droit à la ville*, Paris, Anthropos, 1968.

47 *Ibid.*

48 According to the Hohfeldian theory of rights, the existence of a right corresponds to an obligation.

49 Without any claim to exhaustiveness, on this topic—extensively addressed particularly in feminist literature—see The Care Collective, *The Care Manifesto*, New York, Verso, 2020; Fineman, M., and Spitz, L. (eds.), *Law, Vulnerability and the Responsive State. Beyond Equality and Liberty*, New York, Routledge, 2023. In the Italian context, a legal analysis is provided by Pioggia, A., *Cura e pubblica amministrazione*, Bologna, il Mulino, 2024. The implications for legal policy are clear: the issue is fundamentally that of the alliance between services and local community, which continues to view the public authority as the primary provider of services, even in the context of the increasingly widespread formation of public-private partnerships. On this point, and specifically with regard to the re-structuring of the Italian socio-health system, see Caruso, E., “Profili organizzativi e tendenze evolutive nei servizi sociali alla persona”, in Bernardini, M. G. (ed.), *Anziani e diritto all’abitare. Bisogni, diritti e prospettive tra locale e universale*, Milano, Angeli, 97-128.

50 From this perspective, the rigid separation between the private and the public spheres is clearly dissolved, with their interdependence and continuity duly recognized.

Conclusion: Transforming the world

In light of what has been observed, it is easy to understand why people with disabilities and older people (together with their carers) have such faith in the right to independent living that they continue to fight tirelessly for their emancipation and for the transformation of their living conditions. After the struggles to obtain legal recognition of independent living as a subjective and human right, the fight today is to obtain its effective protection. This is no easy task, not least because the notion of independent living as a right places other rights and entitlements at the forefront of multiple crises. The first concerns the theoretical level, where the right to independent living calls into question the logical priority of civil rights and the traditional idea that there do not exist theoretical and practical implications involving both civil liberties and social rights⁵¹.

In this regard, it has been aptly observed that it is precisely the condition of vulnerability—and, in particular, that of an older person deemed non-self-sufficient—that makes it clear that human rights constitute a coherent and indivisible system⁵², so much so that interdependence is one of its defining characteristics. This aspect appears to be particularly perceptible in relation to independent living, which is a form of freedom that, unlike freedom in the traditional liberal conception, *explicitly*⁵³ requires the presence of personal and relational supports in order to be fully realized. We are confronted with a hybrid subjective legal situation⁵⁴, where the structural connection between social rights and freedom becomes evident. Indeed, with regard to the right to independent living, the entitlement to a service—that is, to the support which is necessary to guarantee the ability to make autonomous choices regarding one's choice of a dwelling and with whom to live with—not only coexists with decision-making autonomy concerning the means

51 As is well known, the literature on this point is particularly extensive. I will therefore limit myself to citing the critiques of Ansuátegui Roig, F., *Rivendicando i diritti sociali*, Napoli, Edizioni Scientifiche Italiane, 2014, and Casadei, Th., *I diritti sociali. Un percorso filosofico-giuridico*, Firenze, Firenze University Press, 2012.

52 In relation to the older person, cf. Bobbio, N., “Prefazione”, in Santanera, F., and Breda, M. G. (eds.), *Vecchi da morire*, Torino, Rosenberg & Sellier, 1987. The point is addressed in Greco, T., “I bisogni degli anziani tra vulnerabilità e radicamento”, in Velo Dalbrenta, D. (ed.), *Invechiamento della popolazione e passaggi generazionali. I. Questioni critiche*, Napoli, Edizioni Scientifiche Italiane, 2022, 167-178, 171.

53 Upon closer examination, in fact, the human being does not stand alone: freedom of movement is possible only insofar as the infrastructures that enable its exercise are in place, just as freedom of expression requires the necessary conditions. In other words, every form of freedom is supported—albeit through mechanisms that, being considered “within the norm”, are taken for granted and, as such, often become invisible. On the point, see Butler, J., *Notes Toward a Performative Theory of Assembly*, cit.

54 Although not explicitly referring to independent living, Daniele Piccione dwells on this point. See Piccione, D., “I diritti sociali come determinanti di libertà nello Stato costituzionale. Il paradigma del rapporto tra libertà e condizioni di disabilità”, *Materiali per una storia della cultura giuridica*, No. 2, 2021, 391.

and modalities of the provision of that support, nor can it be regarded merely as a precondition for the exercise of freedom; rather, it is a genuinely constitutive element of that freedom itself.

The second crisis concerns the cultural and political sphere, where the right to independent living intersects with the previously described crisis in at least two ways. The first has already been widely noted: independent living is a right that is itself experiencing a crisis, given its high rate of ineffectiveness and the numerous measures adopted to obstruct its realization. Yet there is also another highly significant aspect. Like other connected rights, the right to independent living is tied to the possibility for social change. It is an issue that allows us to discern existing conflicts, prevailing values, and hierarchies of human beings, both past and present. In this regard, it can be understood as a right that challenges the *status quo*, because its full realization requires both the abandonment of the most familiar paradigm—namely, the segregationist model, which is responsible for the symbolic and physical confinement of persons with disabilities and the elderly—and the construction of a new order (social, political, legal, and urban) that guarantees equality in the access to rights and spaces.

In this regard, it is necessary to recognise that the deprivation of liberty affecting a vast number of persons with disabilities and older persons is not merely a “matter of space” but pertains to the protection of a right that has been formally recognized as a human right for approximately twenty years. For this reason, it is “important to address the material and cognitive constraints that hinder the fullest expression of inhabitation, its values, and its rights”⁵⁵, in order to *transform* the world by translating into spatial terms the journey toward equality among differences that also characterizes the contemporary age of rights.

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