
Human Dignity in Portugal

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Abstract

Stressing the special resonances of human dignity as a founding principle in the juridical (especially constitutional) discourse in Portugal, the chapter considers the following points: meaning(s) of human dignity; human dignity as a principle; the juridical subjects of human dignity and the refusal of different dignities; human dignity and temporality; human dignity, the Constitutional state and some constitutional principles; human dignity: history, texts and conceptions; human dignity: the insight of the Constitutional Court; human dignity and the “jurisprudence of crisis”. Last but not least, some challenges to human dignity are mentioned as well.

Keywords

Human dignity • Fundamental rights • Portuguese Constitution • “New rights”

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1 Introduction

The dignity of the human person has special resonance in the cultural and constitutional discourse in Portugal, a country that shares the legacy of Western European values, as part of its Constitutional State type (Häberle 2006, pp. 39–40). For those unfamiliar with the Portuguese legal culture, it is useful to stress that Portugal is part of the Roman-German family of law. The dialogue with foreign scholarship plays a key role in university teachings¹ and the development of jurisprudence, and it is quite normal to find quotations of foreign cases in judicial decisions (Ramos 2014). Portuguese scholarship plays an important role in the countries of the so-called Lusophone world; a look at their constitutional texts proves that they recognize human dignity as a core value, despite the discrepancy between the text and the reality in some cases.

Unlike the German Basic Law (*Grundgesetz*), but following the example of the Universal Declaration of Human Rights, the Portuguese Constitution prefers to use the formula “dignity of the human person”, instead of “human dignity” (with one exception, as mentioned below). In this text, both expressions will be used as synonymous. However, this is not consensual: Jorge Miranda, one of the Founding Fathers of the Constitution and himself a Professor of Constitutional Law, stresses that “dignity of human person” refers to the “concrete and individual” human being; differently, “human dignity” means either a quality of every human being (*humanitude*) or humanity as a collective subject (Miranda 1978, p. 349, n. 128).

Apart from the introduction, this chapter is divided into nine sections: meaning (s) of human dignity (2); human dignity as a principle (3); the juridical subjects of human dignity and the refusal of different dignities (4); human dignity and temporality (5); human dignity, the Constitutional state and some constitutional principles (6); human dignity: history, texts and conceptions (7); human dignity: the insight of

¹Concerning the influence of German Basic Law (*Grundgesetz*), Costa (1989), on the importance of the Italian order and scholarship, see Marcos (2011), in general, dealing with the influence of German legal culture in the Portuguese law and juridical scholarship, see Loureiro (2011), pp. 544–552.

the Constitutional Court (8); human dignity and the “jurisprudence of crisis” (9); concluding remarks: listening to the future(s)?(10).

2 The Dignity of the Human Person: Meaning(s)

Human dignity is a foundational principle of the Portuguese Constitution. Despite its centrality being recognized by scholarship² and despite being present in public debate (“the open society of constitutional interpreters”: Häberle 1975), it is no easy task to define the concept. An influence of scholarship and jurisprudence from German-speaking countries on the making of the concept has been strong, especially in the last decades. For instance, the famous object formula (*Objektformula*) proposed by Günter Dürig – “it would infringe human dignity if the state treated a human being as a mere object of its actions”³ – has an important resonance among Portuguese scholarship (e.g., Costa 1989; Canotilho and Moreira 2007, p. 198; Novais 2016, pp. 111–123, 272–274).

However, if we move from the abstract level of consensus (the reification of human beings is forbidden) to the enforcement of the formula into concrete cases, dissent becomes visible. For instance, one question discussed by Portuguese scholarship dealing with the human dignity principle arose in connection with reality shows like *Big Brother* (a Dutch format exported to a lot of countries around the world). In light of the objective dimension of human dignity, some voices have defended the prohibition of such TV programs, which seems far from uncontroversial because of the relevance of the participant’s consent.⁴

In jurisprudence, the formula has been mentioned in a few cases, but it cannot be considered the decisive reading taken by the Portuguese Constitutional Court on human dignity.⁵

Here we will put aside some points, namely the different perspectives of dignity (Loureiro 2013, pp. 137–138), some objections that have been levelled against this principle [e.g., the charge of ethnocentrism: Loureiro 2015, p. 71], the controversy

²Human dignity is a frequent *topos* in scholarship: in addition to other titles quoted in the text, see, inter alii, Botelho (2015), esp. pp. 41–52, Mac Crorie (2013), pp. 75–92, Martins (2010), pp. 499–537, Miranda (1999), Miranda and Cortês (2010), pp. 73–90, Miranda and Silva (2008), Moderne (1996), Novais (2004), pp. 51–68, Pereira (2002), Sampaio (2014), pp. 587–601. Unfortunately, due to lack of space, it is not possible to discuss the contributions just mentioned. These can function as research clues for those interested in delving into the subject.

³I use the translation proposed in Nigel Foster and Satish Sule (2010), p. 236.

⁴Canotilho and Machado (2003), pp. 44–50 and 67–72, criticizing, for instance, the famous German Peep-show case (see also Mac Crorie 2013, pp. 292–294).

⁵Amaral (2007), p. 5, and Alexandrino (2006), p. 564, criticizing the “objet formula” as a tool to determine the content of “human dignity”, Mac Crorie (2004), pp. 172–173, proposing a differentiated and multidimensional model of human dignity, going beyond the object formula, Brito (2012, 2013).

over certain conceptions of human dignity (e.g., the tripartite model advanced by Hasso Hofmann⁶ has impact among Portuguese scholarship).

Within the deeply divided societies, the lesson of an “overlapping consensus” proposed by John Rawls (1993, p. 15 and pp. 133–172) seems to show some potentialities. Against the critics that see human dignity as a useless concept that is bound to its religious roots, one should remember that a genesis is not to be confused with a justification. It is possible to embrace a concept of human dignity without resorting to a religious foundation. In this point, Portuguese scholarship is divided. Gomes Canotilho (1999), one of the most influent constitutionalists within the Ibero-American world, attacks the thesis of Robert Spaemann. To the German philosopher,

Dignity signals something sacred. The concept is a fundamentally religious-metaphysical one. (Spaemann 2012, pp. 40–41)

Canotilho challenges this perspective saying that in:

a polycentric and pluricultural world [the dignity of the human person] is more than a religious experience; it is a *mathesis* of human experiences. (Canotilho 1999, p. 422)

This is the common view among Portuguese scholars. However, Jónatas Machado defends just the opposite: he claims that without the Jewish-Christian foundation human dignity cannot be sustained, even if in the Preamble to the Constitution God is not referenced (Machado 2013, pp. 35–38).

Recently, Jorge Reis Novais dedicates a significant number of pages to attack what he calls a theological concept of human dignity that, according to him, is illegitimately overloading the juridical one in terms unbearable for secular societies (Novais 2015, pp. 125–153).

3 Human Dignity as a Principle

This perspective is not sufficient to grant an operative meaning to the concept. Leaving aside some details of the discussion, it is useful to clarify different juridically relevant uses of the term «principle» under a tripartite approach:

(a) First, principles have an axiological dimension (or, at least, they work as heuristic tools), even in cases where they are not relevant to ground direct answers.

(b) Secondly, principles will be jurisgenerative, if they have autonomous ability to establish new norms.

⁶Namely, dignity as a gift or endowment (*Mitgifttheorie*), illustrated by the Jewish-Christian idea of *imago Dei* and the Kantian perspective; dignity as an achievement (*Leistungstheorie*), as the result of the personal process of building one’s own identity (e.g., Luhmann’s theory); finally, dignity as recognition (*Anerkennung*), seen as a relational or communicative concept (Hofmann 1993). On the Portuguese reception: Loureiro (1999), pp. 280–281, Brito (2013), pp. 176–177, Alexandrino (2008) pp. 490–493, 496–499.

(c) Finally, under a methodological perspective (mode of enforcement), principles are seen as a kind of norms that, unlike rules, are not all-or-nothing, but require maximization – or a balancing process – when a conflict among principles exists.

In addition to a legitimatory function (Marques 2012, pp. 416–419), the principle fulfils at least two dogmatic functions⁷: (a) hermeneutic or interpretative, to determine for instance the scope of fundamental rights; (b) rights-generative, i.e., grounds autonomous rights (the problem of the so-called “new rights”). This, if one takes seriously the vast list of fundamental rights in the Portuguese Constitution, seems to be something very exceptional.

3.1 Dignity as an Axiological Principle: Values and Principles

3.1.1 Human Dignity as a Foundational Principle

Human dignity is the principle that founds the whole juridical system and ensures the systemic unity of the legal order. But dignity finds expression mainly through the core of particular fundamental rights, i.e., the different rights harbour some “content of human dignity” and, as a rule, this dignity is operative mediately through each of the fundamental positions. In the case of the Portuguese Constitution, the vast list of rights therein recognized only in a subsidiary and exceptional mode allows us to speak of autonomous violation of dignity. However, as we will see, this does not mean that under the Portuguese constitutional order human dignity “is juridically meaningless”.⁸

Although the value order (*Wertordnung*) theory – constitution as a hierarchical and closed system – is no longer appealing, there is no doubt that for a polity the Constitution is the *locus* of fundamental values (*Grundwerte*), a “reserve of justice” (Canotilho 2006a, p. 28). Human dignity is regarded as the axiological foundation of both the constitutional order and the juridical system.

As a principle – i.e., an axiological principle and not a strictly technical one, a principle that brings wisdom and not only knowledge (Canotilho 2006b) –, it is not a *passepartout* formula devoid of juridical effects, a simple proclamation of beautiful ideas. The Constitutional Court⁹ has already affirmed that the principle is “an axial and core value”,¹⁰ a “supreme value”,¹¹ a “juridical fundamental principle that

⁷For a more complex model that identifies three functions – restrictive (as foundation for the limitation of rights), integrative (paving the way to new fundamental rights norms) and instrumental (as criterion for interpretation) – in addition to a matricial one, quoting jurisprudence, see Alexandrino (2008), pp. 570–571.

⁸Tiedemann (2012), p. 72, n. 104. According to Tiedemann, in Portugal, Spain and Italy the principle “is not taken seriously” (p. 71, n. 104).

⁹The jurisprudence of the Court is published in *Diário da República*. The decisions are available at the Portuguese Constitutional Court webpage (www.tribunalconstitucional.pt). Summaries of selected Judgments are published in English; see also <http://www.codices.coe.int>

¹⁰Judgment No. 105/90.

¹¹Judgment No. 318/99; also quoted in Judgment No. 177/2002.

regulates the very interpretation of constitutional norms”¹²; an “axiological structural vector of the Constitution itself”,¹³ a “structural principle of the Portuguese Republic”,¹⁴ a “supreme fundamental principle”.¹⁵

The Constitutional Court stresses that the principle requires a certain degree of *vagueness* to it:

The analysis of the invocation of the principle of human dignity as a parameter of validity applicable to the case, will be dispensable, given the lower precision recognized to the principle.¹⁶

Axiological value does not mean that human dignity is ahistorical, having the status of a platonic idea. It is definitely not a context-blind principle. The Constitutional Court voiced this perspective in Judgment No. 105/90, stressing the cultural development of the principle; its openness is a key in that regard.

In Judgment No. 101/2009, the Court ruled out the idea that the principle of human dignity could be viewed as a subjective right:

the principle of human dignity arises not as a specific fundamental right that could be the basis for invocation of subjective juridical positions, but as a legal principle that can be used in the implementation and the delimitation of the content of constitutionally enshrined fundamental rights or the revelation of unwritten fundamental rights.

3.1.2 Dignity of the Human Person as a Principle of Interpretation

In addition to the generative function (below Sect. 3.2), one has to discuss the hermeneutic role played by the principle of human dignity. We can speak of an interpretation of fundamental rights (constitutional norms, in general) in accordance, or in harmony with, the dignity of the human person. The jurisprudence of the Portuguese Constitutional Court illustrates that role of the principle: in Judgment No. 25/84 (Abortion case I), the Court recognizes that the human dignity of the person is “the fundamental juridical principle that regulates the interpretation even of constitutional norms”. Discussing the protection of unborn life, an interpretation of articles 24/1 (“Human life is inviolable”) and 25 (right to personal integrity), in harmony with the mentioned principle, is defended.

As a principle of interpretation, human dignity has contributed to delimit the scope of rights. Maria Lúcia Amaral shows that kind of relevance of human dignity by quoting cases relating to the crime of causing, or incitement to, prostitution for gain (*lenocínio*)¹⁷ (Amaral 2007, p. 16). Nowadays, the debate focuses on whether

¹²Judgment No. 25/84.

¹³Judgment No. 318/99; also quoted in Judgment No. 177/2002.

¹⁴Judgment No. 16/84.

¹⁵Judgment No. 232/2004.

¹⁶Judgment No. 141/2015.

¹⁷The seminal case is Judgment No. 144/2004.

the criminalization of such conduct should be considered unconstitutional. The argument draws on the constitutional guarantee of freedom of conscience and freedom of profession. In order to solve the question concerning the scope of protection, the Constitutional Court considered that these kinds of conducts do not fall under either article. The key argument advanced was the incompatibility of this lucrative sexual intermediation with the requirements of human dignity taken as a prohibition of instrumental treatment.

3.2 Dignity as a Foundation of “New Rights”: The Genetic Moment

Human dignity as a door for opening the system to “new rights” is a classical *topos* in some legal orders. One needs therefore, to discuss the possibility of appealing to the dignity of the human person in a generative way. Can the principle operate as a tool to directly ground new fundamental positions?

Given the broad list of fundamental rights in the Portuguese Constitution and the hermeneutic possibilities of a creative reading of these rights, there is little room for an affirmative answer. Moreover, in discussing the “fundamental rights innovation”, one should stress that the Portuguese Constitution affirms a “*numerus apertus* principle”. Actually, Article 16/1 lays down:

1. The fundamental rights enshrined in the Constitution shall not exclude any others set out in applicable international laws and legal rules.

In a nutshell, one can say that concerning the scope of this norm there are thin and thick readings. The latter present a relevant list of rights that, despite being absent from the Portuguese constitution in a formal sense (they are not mentioned in the constitutional text), should be considered due to their relevance as part of the material constitution. I am talking about the so-called merely material or constitutional fundamental rights, that according to the mainstream view include rights similar to the two kinds enshrined in the Portuguese Constitution: rights, liberties and guarantees, as well as economic, social and cultural rights.¹⁸

Following Baldassarre, Gomes Canotilho proposes an “open understanding of the scope of the [...] fundamental rights norms” in order to evaluate the candidates to the fundamental status (Canotilho 2003, 379–380). This methodological step points towards an expansion of the list of rights having a formal and material fundamentality. In my opinion, the open clause enshrined in Article 16/1 is an important signal of a willingness to constitutional openness in the field of fundamental rights, a kind of systemic valve. According to this reading, merely material fundamental rights are more of a possibility than a reality, a view not shared by mainstream scholarship. Since some authors recognize a diminished rather than an

¹⁸For a restrictive reading, excluding the social rights, see Mota (1989).

equal protection status to merely material fundamental rights, the impact of this controversy could be more than just theoretical.

In this text, it is noteworthy that the main criterion used to identify these rights is human dignity. This *topos* is also used to defend the existence of a very controversial category: that of merely formal fundamental rights. According to Vieira de Andrade (2012a, pp. 76–77), there are rights that, although they are part of the material constitution, belong to the “catalogue of fundamental rights” without sharing the material fundamentality (Andrade 2012a, pp. 76–77). For those who support this sort of rights, merely formal fundamental rights do not fulfil the “intentional element of the proposed criteria, namely, a reference to the principle of the dignity of the human person”.¹⁹

To sum up, the hermeneutic tools that allow for an open reading of the formal and material constitutional norms and the generous list of fundamental rights enshrined and Article 16/1 limit the need to appeal to human dignity as an autonomous and independent foundation of new subjective fundamental positions.

A look at the jurisprudence of the Constitutional Court shows that, in association with other norms, the Court has used the dignity of the human person as a tool to “discover” autonomous rights. As a source of “new rights”, the importance of Judgment No. 509/02 cannot be underestimated, as it reaffirms²⁰ a “right to a dignified minimum existence” (Andrade 2004b, p. 29) in association with the right to social security.

A close examination of the jurisprudence shows, however, some inconsistencies concerning the construction of this right, and that a direct appeal to human dignity is not needed (Canotilho 2006a, p. 82; Loureiro 2010, pp. 198–200; Novais 2010, pp. 387–389; Alexandrino 2011, p. 215). Moreover, among Portuguese constitutional scholarship some fear that this argumentative rhetoric, which uses the principle of human dignity, in the area endangers the force of social rights. Canotilho (2006a, p. 82) speaks of a “eidetic reduction of sociality, putting between brackets the economic, social and culture rights”. In contrast with the German Basic Law, in the Portuguese text there are plenty of social rights, and this should not be ignored in the argumentative procedure.

3.3 Human Dignity as a Methodological Norm: Principle or/and Rule?

From a methodological perspective, principles and rules are distinguished as two different kinds of norms.²¹ Robert Alexy’s *Theorie der Grundrechte* had a great

¹⁹Andrade (2012a), p. 92, criticizing this perspective as “an ideological distinction”, Canotilho (2003), pp. 406–407.

²⁰The first decisions concerning the right date back to 1991: Judgement No. 232/91 and Judgement No. 349/91 (for further information, see Amaral (2007), pp. 12–13).

²¹Alexy (2010), pp. 62–64, originally published in 1985; especially on “the normative structure of human dignity”, see also Alexy (2015), pp. 508–513.

impact in Portugal and also in Brazil. Due to space constraints, only a short reference to the discussion can be made here. In a nutshell, one points towards the absolute value of the human dignity, free from the balancing process²² that is usually undertaken in the fundamental rights field. So, from a methodological stance, the so-called principle of human dignity operates as a rule (“all-or-nothing”), and not as a principle (“optimization command”), being subtracted from the weighing procedure.²³

4 Human Dignity: Juridical Subjects and Unity

Concerning the juridical subjects of dignity, among Portuguese scholars and jurisprudence, the discussion is along similar lines as in other jurisdictions. More or less under fire are the two following propositions: (a) dignity as an attribute applying only to human beings; (b) every human being (including embryos and fetuses) is a subject of human dignity and a rights-holder.

The first thesis is challenged in two ways: shall one recognize collective dignity? and are animals subjects of dignity?

Since its new edition in 2007, the oldest and most important commentary of the Portuguese Constitution extends the constitutional guarantee to collective entities such as humanity, ethnic groups and peoples (Canotilho and Moreira 2007, p. 200). This is far from being undisputed.

There is also controversy over extending dignity to animals. Unlike the Swiss Constitution, the Portuguese Constitution does not provide for the protection of the “dignity of the creature” (*Würde der Kreatur*).²⁴ Although the issue is not ignored by scholars, it should be stressed that the basic law uses the expression “dignity of the human person” (Loureiro 2006a, b, pp. 710–711). Of course, it is undeniable that, through the right to environment (Article 66), a certain degree of constitutional protection of animals does exist, though not as individual beings.²⁵ If one intends to use the term dignity, we should be aware of the limits of the concept: human beings and animals do not enjoy the same status.

Turning to the second issue: is every human being (including embryos and fetuses) a subject of human dignity and a rights-bearer?

As expected, the same kind of controversies and positions in other jurisdictions are shaping the juridical panorama on this question, as will be seen below.

²²Miranda (2016), p. 280, supports an absolute value of human dignity. He considers that the Constitution allows for a balancing of the dignity of a person and the dignity of another, but “not with any other principle, value or interest”.

²³Recently, on this issue, see Novais (2016), especially pp. 143–199.

²⁴Article 120/2 Swiss Constitution.

²⁵A reform is under way in order to change the Civil Code and consider animals a *tertium genus* (neither persons, nor things).

5 Human Dignity: Times

The distinction between objective and subjective protection plays a key role in the temporal relevance of human dignity. As in other jurisdictions the status of the embryo (both in utero and in vitro) and the foetus is a controversial issue that is debated within a framework of “clashing of absolutes” (Tribe 1992). At least it is recognized that they are not “juridical nothings” (nothingness status), even though most authors argue that the protection is only objective. To protect human dignity, following the German doctrine of pre-effects (*Vorwirkungen*), a protection before the beginning of life is discussed, in order to avoid hybrids and chimeras. After death, human dignity operates (e.g., in harvesting organs for transplants) through the objective dimension. Since personality ceases with the death, it would be meaningless to appeal to the idea of a juridical personality after death.

6 Human Dignity, the Constitutional State and Some Constitutional Principles

As pointed out before, scholars recognize that human dignity provides a unity of meaning, not only to the fundamental rights (Andrade 2012a; Canotilho 2012, pp. 288–289; Miranda 2015, p. 243, 2016, pp. 277–280) order (really, a partial constitution with relative autonomy: Andrade 2012a, 78–79) but also to the constitutional and legal order in general.

A look at a few points is due: the constitutional state, the principle of universality and other constitutional principles.

6.1 The Institutionalization: Human Dignity and the Constitutional State

The influence of human dignity is not limited to the fundamental rights realm. The principle has implications in the organisational dimensions of the state also.

Linking human dignity and democracy, Peter Häberle (2007, p. 22) exemplifies with Article 1 of the Portuguese Constitution:

Portugal is a sovereign Republic, based on the dignity of the human person and the will of the people (...).

And according to Article 2,

The Portuguese Republic is a democratic state based on the rule of law, the sovereignty of the people, plural democratic expression and political organisation, respect for and the guarantee of the effective implementation of the fundamental rights and freedoms, and the separation and interdependence of powers, with a view to achieving economic, social and cultural democracy and deepening participatory democracy.

This connection between human dignity and the constitutional state, understood as an “adjectival state” (Rule of Law, democratic state, social state: Canotilho 2008), is stressed by Portuguese scholarship: Gomes Canotilho (2003, 248–249) presents the “system of fundamental rights” as a dimension of the Rule of Law (*Estado de direito*). Cardoso da Costa (1999, p. 50) deduces from the human dignity principle that the mission of the state is to serve the human person, which is politically translated into a “state of citizens”.

Human dignity is really a cornerstone or “anthropological concept or *presupposition*”²⁶ of the constitutional state.

6.2 The Principle of Universality and Other Constitutional Principles

The Portuguese Constitution lays down the principle of universality, i.e., everybody is a right-holder and not only the Portuguese citizens (Articles 12/1; 15/1). The equal status of Portuguese and foreigners has been presented as an expression of human dignity both in scholarship and jurisprudence. Concerning the status of foreigners living illegally in Portugal, one reads in Judgment No. 296/2015 that human dignity requires:

the respect of at least ‘a core set of (universal) rights derived from the constitution or international law. In the first case (rights derived from the constitution), those rights are grounded on the principle of the dignity of the human person and comprise, at least, those that the constitution lists in n. 6 of article 19, rights that cannot be affected, under any circumstance, by the declaration of the state of siege or emergency – and perhaps with regard to others that are rooted in the dignity of the human person’.²⁷

In a former decision (Judgment N. 962/96), the Court declared the unconstitutionality of legal norms that denied the right to legal aid to those who want to challenge an administrative act that refused them the right to asylum. Actually, these norms only recognized this right if the foreigners had a residence permit (*autorização de residência*) and a minimum period of residence (at least one year). The principle of the dignity of the human person was expressly mentioned:

The principle of universality, though being open to exceptions determined by the legislature (Article 15/2), cannot be limited to the point of perverting the constitutionally settled status of foreigners (Article 15). Such a status is grounded on the dignity of the human person as a moral subject and subject of rights, as a «citizen of the world».

²⁶Costa (1999), p. 54 (emphasis in original).

²⁷The Court quotes Maria José Rangel Mesquita. 2013. Os direitos fundamentais de estrangeiros na ordem jurídica portuguesa: uma perspetiva constitucional. Almedina: Coimbra, p. 130.

And in order to guarantee foreign and stateless persons in irregular situation with an effective access to health care, the Court stresses in Judgment No. 767/2013:

[...] Under the principle of universality, and the basic principle of human dignity, a minimum content of gratuity must be safeguarded when the economic and social conditions of foreigners or stateless persons in an irregular situation does not allow them to bear the costs of provision of health care.

Another example of the relevance of the principle concerns the principle of equality. On a case²⁸ concerning the different premiums awarded to Olympic athletes (the legal framework laid down a smaller amount for participants in Paralympics Games), the Court decided by a majority vote that the difference of treatment of handicapped persons was not unconstitutional. However, one reads in the dissenting opinion (Maria Fernanda Palma) that the arguments presented by the majority were not convincing since the Constitution draws on

the principle of the equal dignity of the human person and the principle of non discrimination of handicapped citizens.

The Constitution lays down that “The Portuguese Republic is a democratic state based on the rule of law”. Rule of law (*Estado de direito*, *Rechtsstaat* in Germany) is a structural principle of the basic law and comprehends different subprinciples. Among them the principle of legal security, and *res judicata* is the rule. Still, in a vote one of the judges of the Constitutional Court (Lino Ribeiro) stresses that, exceptionally, a case could be reopened if very important principles are at stake:

Only in situations of greater damage to constitutional principles such as the human dignity or other fundamental principles can the demand for justice irreparably sacrifice the stability of the judicial decision.²⁹

7 Human Dignity: History, Texts and Conceptions

7.1 History: Brief Remarks

Dignity understood both as an intrinsic or as an extrinsic value has a long history. The latter reading was widespread, for instance, in nineteenth century Portuguese legislation, where we find references to the dignity of his Majesty the King. In our analysis, when speaking of the dignity of human person, an intrinsic reading is assumed, the roots and background of which are well-known: the Jewish-Christian vision of *imago Dei*, the contribution of Renaissance authors (e.g., Pico della

²⁸Judgment No. 486/03. See Andrade (2004a).

²⁹Judgment No. 680/2015 (Lino Ribeiro).

Mirandola) and the Kantian perspective, to mention only a few of the greatest examples. Concerning Portuguese legal scholarship, a brief look at some books on legal philosophy published during the nineteenth century reveals the presence of Kantian teaching (Laranjo 1871, p. 19).

Turning to the constitutional consecration (and putting aside the Irish Constitution of 1937, that expressly mentioned dignity in its Preamble), only after the tragic experience of Second World War barbarism did human dignity find its way to the constitutional level (paradigmatically, the 1949 Basic Law of the Federal Republic of Germany). Under the Constitution of 1933, the basic law of Salazar's dictatorship (the so-called *Estado Novo* period), we find references to human dignity both in the text and at a scholarship level.³⁰ Following an amendment in 1951,³¹ the Constitution recognized human dignity as a state imposition "to ensure the improvement of the conditions of the most disadvantaged social classes, seeking to ensure that they have a proper level compatible with human dignity"³²; in 1971, a new constitutional amendment changed the wording: "To promote social welfare, seeking to ensure all citizens a level of life in accordance with human dignity". The *topos* of human dignity was used as an argument to contest the political regime: for instance, an act of deviation of a cruise ship (*Santa Maria*), in order to draw attention to the Iberian dictatorships of Salazar and Franco, was justified as a "redemption of the dignity of the human person" (Galvão 1961, 95).

But the decisive step concerning the relevance of human dignity is a result of the 1976 Portuguese Constitution, following the so-called Carnation Revolution (April 25th).

7.2 Human Dignity and (Inter)Textuality: (Inter)Constitutional and Legal Norms

Concerning the relevant texts for discussion, one must bear in mind that a national constitution is part of a normative network, where interconstitutionality (Canotilho 2004; Loureiro 2007; Rangel 2012; Vale 2015) plays a role (the so-called "multilevel approach"). The Portuguese Constitution is the starting point of our analysis, but a few words on its international and supranational intertextuality are essential for a better picture of the principle in times of constitutional pluralism. At present, the concept of the constitution has cut the umbilical cord with the State.³³

³⁰For example, Queiró and Melo 1967, 235 ("moral dignity").

³¹Law No. 2048 (June, 11, 1951).

³²Article 6/3.

³³This reading is not uncontested among Portuguese scholars: refusing the existence of an European Constitution in its proper sense, see Miranda 2010, p. 46.

7.2.1 The Constitution of the Portuguese Republic

The Portuguese Constitution³⁴ recognizes the dignity of the human person as a foundational principle. Article 1 lays down:

Portugal shall be a sovereign Republic, based on the dignity of the human person and the will of the people and committed to building a free, just and solidary society.

There are other constitutional norms that should be taken into account as well, even if a narrow approach (explicit uses of dignity) is used:

- (a) Concerning the principle of equality (Article 13/1), clearly inspired by the Italian Constitution, the text ensures that:

Every citizen shall possess the same social dignity and shall be equal before the law;

- (b) Concerning a right to protect the privacy of personal and family life, following Article 26/1, the subsequent number lays down:

2. The law shall lay down effective guarantees against the improper procurement and misuse of information concerning persons and families and its procurement or use contrary to human dignity.

- (c) On the technological constitution, especially relevant for the biomedical field, the 4th constitutional revision (Constitutional Act 1/1997) inserted a new number³⁵ into Article 26:

The law shall guarantee the personal dignity and genetic identity of the human person, particularly in the creation, development and use of technologies and in scientific experimentation (See Loureiro 1999; Otero 1999; Canotilho and Moreira 2007, pp. 473–474)

- (d) Regarding the rights of workers, the idea of respecting the social dignity plays a role:

That work be organised in keeping with social dignity and in such a way as to provide personal fulfilment and to make it possible to reconcile professional and family life. (Article 59/1/b)

- (e) On the domain of medically assisted procreation, Article 67/2/ letter e)

Regulating assisted conception in such a way as to safeguard the dignity of the human person.

³⁴We use the English translation available at http://app.parlamento.pt/site_antigo/ingles/cons_leg/Constitution_VII_revisao_definitive.pdf

³⁵Article 26/3.

(f) Finally, there is a reference in Article 206 (court hearings)

Court hearings shall be public, save in the event that in order to safeguard personal dignity or public morals, or to ensure its own proper operation, the court in question rules otherwise in a written order setting out the grounds for its decision.

Moreover, we find a mention to a “condign existence” in Article 59/1 letter a:

1. . . .] every worker has the right: a) To the remuneration of his work in accordance with its volume, nature and quality, with respect for the principle of equal pay for equal work and in such a way as to guarantee a condign existence.

7.2.2 The Internormative and Supranational Network

There is also an internormative international network that binds the Portuguese state. This is part of the so-called multilevel approach, an expression that still remains controversial (Häberle: 2009, pp. 204–205). For those who in the “post-national constellation” (Habermas: 1998) dissociate constitution from State, we now live under a “composite constitutional” (Pernice) framework. At least one must recognize that the Portuguese Constitution is “international law-friendly” (Canotilho: 1996). According to Article 16/2 of the Portuguese Constitution,

2. The constitutional precepts concerning fundamental rights must be interpreted and completed in harmony with the Universal Declaration of Human Rights.

Due both to space constraints and the existence of autonomous chapters in this *Handbook*, I will not delve into the internormative network. We should not forget other international conventions, both world (e.g., the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights³⁶) and European (especially the European Convention on Human Rights) ones. Despite their supralegal rank (Article 8/2), these normative instruments have no constitutional status.

Although the European Convention on Human Rights does not mention human dignity,³⁷ there is no doubt that this principle is the cornerstone of the document. The Constitutional Court uses the Convention and the jurisprudence as an auxiliary instrument of interpretation (Costa 2006, p. 84), not as part of a “constitutional block”.

I will not address human dignity in the European Union.

³⁶Article 131.

³⁷Only Protocol No. 13 mentions “the inherent dignity of all human beings”.

7.2.3 The Statutory Level

Coming to the statutory level, it is not an easy task to list the norms relevant to human dignity. Limiting the research to the provisions that expressly mention human dignity, some examples can be given. To begin with, the Preamble to the Penal Code³⁸ recognizes that the principle of respect for the dignity of the human person requires:

The realization of the ideals of humanity and social reinsertion [...] demand nowadays, indisputably, the assumption of the prisoner as a subject of rights or subject of execution, a status to which the principle of respect for his human dignity points immediately towards.

The very idea of re-education is not compatible with the existence of hard and degrading prison regimes or application of corporal punishment; on the contrary, it presupposes the defence of the dignity of the human person and thus it encourages the prisoner's sense of responsibility, indispensable basis for a resocialization-oriented thought.³⁹

Criminal law is an area with a long history of quoting of human dignity. For instance, one finds 1863 provisions concerning the transport of Navy sailors in carriages that guarantee the invisibility of the prisoners during the journey⁴⁰ and human dignity expressly grounds this measure.

Nowadays, the Code of Execution of Penalties and Custodial Measures (*Código de Execução das Penas e Medidas Privativas da Liberdade*)⁴¹, has some norms mentioning human dignity:

Article 3/1: The execution of penalties and custodial measures ensure respect for the dignity of the human person and the other fundamental principles enshrined in the Portuguese Constitution, the instruments of international law and the laws.

Article 16/5: The prisoner is subject to personal inspection, with respect for his dignity and integrity and his sense of prudence.

The Civil Procedure Code (Law 41/2013, June 26) lays down limits to the publicity of the process when “the communication of its contents may cause damage to the dignity of the persons” (Article 164/1). According to Article 490/1, judicial inspections shall respect human dignity too; Article 606/1 lays down limits to the normal publicity of the judicial audience if there is the need to ensure, inter alia, the dignity of the persons.

³⁸Decree-Law 400/82, September 23 (last modification: Law 103/2015, August 24).

³⁹For those who read German, a translation is available at MPI webpage (*Das portugiesische Strafgesetzbuch*: translation and introduction by João Manuel Fernandes: <https://www.mpicc.de/de/forschung/publikationen/uebersetzungen/g122.html>) another unofficial translation (not the whole Code) is available in English: *The Portuguese Penal Code (General Part – Articles 1–130)*, by Énio Ramalho and William Themudo Gilman.

⁴⁰Decree-Law No. 210, September 19, in: *Colecção oficial de legislação portuguesa – Anno de 1863*, Lisboa: Imprensa Nacional, 1864, 471.

⁴¹Law No. 115/2009, October 12.

Putting aside a close look at the different norms, one should stress that human dignity is mentioned and protected in a vast array of legal sources: Code of publicity⁴², Code of Administrative Procedure⁴³ and Labour Code⁴⁴.

There is also a significant number of explicit references to human dignity in other statutes, from media law (e.g., Law of television⁴⁵) to health law,⁴⁶ environmental law⁴⁷ and new technologies,⁴⁸ to give a few examples.

8 Human Dignity: The Insight of the Constitutional Court

Already in 1911, Portugal had expressly accepted the judicial review according to the American model – every court functions as a constitutional organ of control –,⁴⁹ under the present constitution (1976) an abstract control, both preventive and successive, of the constitutionality of the norms was recognized (there is even a process to control the so-called unconstitutionality by omission). Starting in 1976 with a Constitutional Commission, only after the first constitutional revision (1982) was a Constitutional Court established (in 1983). The Court plays a central role in the Portuguese political system, one that has been enhanced by the economic and financial crisis.

Despite the presence of human dignity in the jurisprudence of different courts, our analysis will focus on the Judgments of the Constitutional Court.

⁴²Decree-Law 330/90, October 23: Article 7/2 letter c) prohibits publicity against the dignity of the human person.

⁴³Decree-Law N. 4/2015, January 7, Article 178/2.

⁴⁴Labour Code (last amendment: Law 8/2016, April 1).

⁴⁵Law No. 27/2007, July 30, Articles 6/2, 27/1, 34/1.

⁴⁶Health law is an area where human dignity is expressly mentioned in significant statutes. According to Article 5 of the *Mental Health Act (Lei de Saúde Mental)*, the person has a right to: “b) Receive treatment and protection, based on the respect for his/her individuality and dignity” (Law No. 36/98 of July 24, revised by Law No. 101/99 of July 26 (English translation available at <http://www.gddc.pt/legislacao-lingua-estrangeira/english/lei-da-saude-mental.html>.) The dignity of human person is also expressly mentioned as a basilar principle that shall be observed in the field of clinical research (Law 21/2014, April 16, Article 3, that affirms the primacy of human person, n.1).

⁴⁷Law 14/2014 [Framework for environmental policy], April 14, underlines the importance of “the protection and management of water resources” (Article 10/b) for ensuring human dignity.

⁴⁸Law 32/2010, September 2, concerning the use of electronic devices in long distance surveillance in the criminal law field: The implementation of electronic surveillance ensures respect for the dignity of the human person” (Article 3/1).

⁴⁹For an account of the history and the functioning of the Portuguese constitutional control, see Amaral and Pereira (2016).

8.1 The Human Dignity Principle: Some Remarks

As anticipated, there is a significant number of decisions of the Constitutional Court in which the principle of human dignity is mentioned.⁵⁰ In some cases, violation of human dignity is claimed only by the parties, and is not even considered by the Court; in other decisions, the argument is expressly rejected by the judges.⁵¹ It is common for the principle to be used in association with specific fundamental rights.

In some decisions, human dignity plays a key role in the argumentation of the case. So, for instance, it was based on the principle of human dignity that the Court recognized the right to a dignified minimum existence (*direito ao mínimo de existência condigna*), a right that has a negative and a positive dimension. The negative dimension sets limits to the possibility of seizure of revenues; the positive dimension, following the steps of the German jurisprudence and scholarship, which play a very important role in the Portuguese legal panorama, entails a recognition of a minimal content of social rights, not dependent on political and legislative options. Although social rights are considered to be under a “reserve of possibility” (*Vorbehalt des Möglichen*), one can say that here we face a “reserve of the necessary” (Andrade 2012b, p.184).

8.2 Human Dignity and Some Domains of Application

According to Portuguese scholarship, all fundamental rights, or most of them at least,⁵² are founded in human dignity. Usually, as already stressed, appeal to the principle is superfluous. As a matter of fact, human dignity operates through the essential content of every fundamental right constitutionally enshrined. In order to illustrate the role played by the dignity of the human person in the field of constitutional jurisprudence, I propose a look at three important domains of application and branches:

- (a) Criminal law, a very sensitive branch, since it touches on human freedom.
- (b) Biomedical law, a field marked by some challenges, especially those resulted from “technoscience”, dealing with bioconstitutional issues such as embryos in vitro or transplants.
- (c) Social security law and labour law, a domain that deals with the material basis of human life.

⁵⁰Until August 31, 2016, human dignity is mentioned in 600 decisions (ca.) by the Portuguese Constitutional Court. Although the figure is impressive, one should bear in mind that the relevance for the case is very different. As we read the pieces through, it is easy to see that in many cases the principle plays no role in grounding the decision.

⁵¹Judgment 105/90.

⁵²For example, according to Canotilho (2013) (pp. 538–539), some fundamental rights are not grounded in the dignity of the human person, such as the rights of workers’ committees (*comissões de trabalhadores*) and of trade unions (*associações sindicais*).

8.2.1 Criminal Law

One of the traditional domains in which human dignity is relevant is criminal law and criminal procedure law. Since our constitutional framework has a large partial constitution on the field, no one should be surprised that the *topos* is invoked in a significant number of Judgments from the Portuguese Constitutional Court.⁵³

To give only a few examples:

- (a) Human dignity requires that guilt be regarded as the basis of criminal law, which grounds the prohibition of criminalization of conducts without “ethical resonance”.⁵⁴ So the use of a person “as a mere means to pursue prevention purposes” is ruled out.
- (b) On the purposes of penalties, the Court stressed that the dignity of the human person points to the “recovery and social reintegration of the offender”.⁵⁵
- (c) Concerning sanctions, the Court decided that it is not possible to confer by means of a statute automatic effects to a conviction, i.e., the idea that a criminal penalty could produce, without autonomous intervention of a court, the loss of civil, professional or political rights is ruled out.⁵⁶
- (d) The Portuguese Constitution expressly bans the death penalty (Article 24/2) and life imprisonment (Article 30/1). This constitutional framework impacts on extradition jurisprudence. The Court decided that extradition is prohibited in cases where the person, if extradited, could be sanctioned with those penalties forbidden by the Portuguese law:

“the Judgment No. 474/95 located it in «the preeminence of the dignity of the human person and its reflection on the production of the aims of the penalties, where the social recovery and reintegration of the wrongdoer necessarily take pride of place.

The German Federal Constitutional Court (BverfGE, 45, 187 [245]) finds in the protection of human dignity and the principle of the Rule of Law. With this last Court, one should say that «the core of human dignity is affected if the condemned, with no regard for the development of his/her personality, has to forsake all hope of recovering his/her freedom».⁵⁷

8.2.2 Biomedical Law

As in many other countries, some of the fundamental controversies concerning biomedical issues spread into the Constitutional Court. The Judgments on abortion, transplants and medical assisted procreation are especially worth mentioning. The

⁵³For an overview, see Amaral (2007), pp. 8–11.

⁵⁴Judgment No. 426/91.

⁵⁵Judgment No. 474/95.

⁵⁶Judgment No. 16/84.

⁵⁷Judgment No. 1/2001.

principle of the dignity of the human person is mentioned in each one of these decisions.

To begin with, in Judgment No. 130/88, the Court affirmed the constitutional status of the

person's right to oppose the use of his own body for the collection of tissues or organs, at least when grounded on ethical, philosophical or religious reasons

After mentioning some of the possible ways to find the right anchored in the constitutional text (right to personal integrity – Article 25/1; freedom of conscience and of religion – Article 41/1; right to conscientious objection – Article 41/6), it underlines that whatever its precise ground, at the root of it one finds

the very idea or principle of law, illuminated by the relevance that the dignity of the human person has (Article 1 and 2 of the Constitution).

The rulings on abortion are significant since the early times of the Constitutional Court, as they have kept up with the transformation of the legislative framework.

To give one example, on Judgment 617/2007 it is stressed that:

the whole of the axiological charge of the principle of human dignity is not on the side of intrauterine life. It also invests the juridical-constitutional position of women, and in this sphere it concerns not only the objective value of human life but its personal value to someone, a person, a subject already recognized as a fundamental rights holder.

In a subsequent decision (Judgment No.75/2010), the Court reaffirms the position that the “dignity of the human life” roots the idea that intrauterine life is a “good worthy of penal protection”.

Still, in dealing with assisted medical procreation (Judgment No 101/2009) ⁵⁸, one finds a problematic thesis concerning human embryos in vitro: the Court decided that they are not covered by the scope of constitutional protection of human life. ⁵⁹

8.2.3 Social Security

A decision that stands out is Judgment 509/2002 by the Portuguese Constitutional Court on the social insertion revenue (*rendimento social de inserção*), a key measure to fight poverty. A new statute reduces the scope of the benefit, excluding (with a few exceptions, that include pregnant women) persons under 25 years, covered by the prior statute. The Court ruled that this legislative move was unconstitutional, violating the right to a dignified minimum existence. According to this decision, the principle of human dignity expressly mentioned in Article 1 and implicit in the idea of Rule of Law (*Estado de direito*) and with projection in Article 63/1/3,

⁵⁸With a critical stance, see Costa (2009), p. 125, n.15; on the issue, also Antunes (2010), pp. 87–88.

⁵⁹It is noteworthy the very critical dissenting vote of Maria Lúcia Amaral.

“implies the recognition of the right or the guarantee to a dignified minimum existence” (*existência condigna*).

In another Judgment (No. 289/05), the “direct connection with human dignity” of the right to social security is stressed. Other cases include Judgment No. 3/2010:

when at stake is the very minimum of subsistence, and, therefore, the socially dignified existence, the right to social security gains urgency.

In a subsequent decision (Judgment No. 400/2011) concerning the Fund for Guaranteeing the Maintenance Due to Minors (*Fundo de Garantia de Alimentos Devidos a Menores*), the Court decided that:

The structuring limit in which the right to protection of children by benefits in kind or in cash by the State is resistant to the legislator can only be (judicially) achieved from other constitutional parameters of a principled nature, among which the principle of the dignity of the human person stands out. In fact, unless the solution affects the legislative achieved core that is rooted in the general juridical conscience as the core of the right considered, a wide margin in the enforcement or conformation of social rights ought to be preserved for the democratic legislator (...).

In 2015, the Court decided on important social insertion revenue cases. In Judgment No. 141/2015, the issue at stake was the different treatment of Portuguese citizens. Under the statute, at least 1 year residence is required for entitlement to that benefit. In his request for the control of the constitutionality, the Ombudsman:

argued that exclusion of certain Portuguese citizens from the right to the RSI [social insertion revenue] was contrary to the principle of universality and a breach of the principle of equality because it illegitimately discriminated against resident Portuguese citizens, and denied the right to a minimally dignified standard of living.⁶⁰

Nevertheless, the Court held that since there is a violation of the right to emigrate,⁶¹ it was unnecessary to analyse the other grounds presented by the Ombudsman. Specifically on the principle of human dignity, it was underlined, as previously mentioned, that it would not be dealt with “given the lower precision that is recognized to the principle”.

Some months later, another decision of the Court (Judgment No. 296/2015) was based on the right to a dignified minimum existence as well. Again the norms under review were part of the social insertion revenue framework. The Court decided that the 3 years requirement for access to the benefit was unconstitutional, on the grounds that it is disproportionate.

⁶⁰We quote the English summary of the decision available at <http://www.tribunalconstitucional.pt/tc/en/acordaos/20150141s.html>

⁶¹Article 44/2: “Every citizen is guaranteed the right to emigrate or to leave Portuguese territory and the right to return thereto”.

As I have briefly outlined, under the scope of fundamental rights and duties the Portuguese Constitution enshrines a principle of equivalence between Portuguese citizens and foreigners or stateless persons. The decision stresses that, in general, the equivalence is not incompatible with constitutionally-grounded restrictions (in this case, e.g., the financial sustainability of social security). However, the right to a dignified minimum existence is based not only on the right to social security (Article 63), but also directly on human dignity, being understood as “an autonomous right”. Therefore, it carries special weight in the balancing process, “only a very strong reason, a clear need, c[ould] justify imposition of a three years delay” (Judgment 296/2015).⁶²

9 The “Jurisprudence of Crisis” and Human Dignity

The connection between crisis and human dignity deserves a brief mention at least. The structural problems of the Portuguese Republic became more serious after the 2007/8 crisis. The crisis of sovereign debts had a special impact in Portugal. The intervention of the so-called Troika (International Monetary Fund, the European Commission and the European Central Bank) led to the adoption of many reforms and budgetary cuts that touched on social rights rooted on human dignity. The jurisprudence of crisis deals with some principles,⁶³ especially equality, the protection of legitimate expectations, proportionality. At present, as confirmed by the decisions, human dignity is not the key argumentative principle.⁶⁴ However, it is not absent. In Judgment No. 187/2013, the Court considered unconstitutional a contribution imposed on sickness and unemployment benefits, arguing that, since the statute did not establish in addition to the violation of the principle of proportionality a protective clause in order to avoid the burden of the socially more vulnerable, the right to a dignified minimum existence is not ensured. Another case included in the so-called “jurisprudence of crisis” and one in which the principle of human dignity is expressly mentioned, is Judgment No. 575/2014, on the special sustainability contribution. The contribution actually aimed to reduce the amount of retirement pensions already being paid, a very controversial issue both in jurisprudence and scholarship. After considering the possibility of doing so, the Court stresses the constitutional limits imposed on the “cutting” process. In addition to the principles of equality and protection of legitimate expectations (protection of confidence), one of the barriers to the legal changes in retirement pensions that is mentioned, is the dignity of human person.

⁶²Pedro Fernández Sánchez (2015) analyses and contrasts both decisions.

⁶³For a principlist approach to the jurisprudence of crisis, see Ribeiro (2014).

⁶⁴For an overview of some key decisions concerning austerity, see Canotilho et al. (2015).

10 Concluding Remarks: Listening to the Future(s)?

To close this brief introduction to the dignity of the human person in the Portuguese juridical order, let me underline some conclusions and uncertainties. By looking at the text of the Constitution of the Portuguese Republic one realizes its importance as a principle that is at the core of our legal order. But in a constitution with so many rights, human dignity plays a much more limited role in practice, although it should not be seen as a “mere style clause”.⁶⁵ Despite its hermeneutic force, only rarely is it used by the Constitutional Court to define the scope of fundamental rights or found a “new right”. In the areas strongly marked by the “clash of orthodoxies” (George 2001) – e.g., bioconstitutional⁶⁶ or biomedical issues –, the chances of the Portuguese Constitution to work as an anchor of certainty will become more and more scarce, even for those who have not subscribed to the idea that nowadays we are living in societies of “moral strangers” (Engelhardt 1996). Societal fragmentation and radicalization pose relevant challenges to the “constitutional culture”. We hear about the “erosion of constitutional presuppositions” (Engel 2009): important demographic and economic challenges are putting pressure on the realization of economical social and cultural rights and paving the way to a doctrine that takes the scarcity of resources seriously. The public or sovereign debt burden, huge as it is, is challenging the appropriate realization of social dimensions of human dignity in one of the poorest countries of the European Union.

Within the horizon of possibilities, the new challenges arising from the different types of post-humanism are probably lying ahead. Should constitutions – and the Portuguese one as well – give up affirming the primacy of the human person and open doors to an inclusive concept of dignity (including animals)? And what can I say about cyborgs and robots? Is the time mature for a “post-human dignity”?

To conclude, I would like to stress the importance of human dignity and recall that its content is made clearer to us from the experiences of its violation. As Kyo said in André Malraux’s book, *La condition humaine*,⁶⁷ when asked: “Qu’appelez-vous la dignité? (. . .) Le contraire de l’humiliation, dit Kyo”.

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⁶⁵To quote a question raised in Marques (2012), 427–429.

⁶⁶“Bioconstitution is the set of norms (principles and rules) formally and/or materially constitutional, which has as its object actions or omissions either from the state or from private entities, mainly centred on the protection of life, on identity and personal integrity, and on the health of today’s or future human beings, especially as biomedical threats are at stake”. For more developments, see Loureiro (2013).

⁶⁷In English, published as *Man’s fate*.

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