2. HUMAN RIGHTS AND PANDEMIC

Ana Margarida Gaudêncio

1. Pluralisms, pandemic and rights

The pandemic crisis that has been surprising and plaguing the world for more than a year now, has re-exposed and sharpened, in multiple ways, the signalling of weaknesses and limitations in today's plural-*pluralistic*, heterogeneous, and complex societies… *Pluralism* – of demands, convictions, ideologies, identities, vulnerabilities... –, as contemporarily affirmed – and, thus, prior to and independent of the current pandemic –, mirrors the growing pulverization of the material foundations of social interaction, progressively widening the individualistic affirmation of rights and freedoms in intersubjective relations, in an increasingly complex web of options and meanings which, potentially, may peacefully coexist as long as they are procedurally made possible with a minimal degree of delimitation. This may imply the impoverishment, if not the annihilation, of the specifically normative dimension that is attributed to the law as a crucial historical-cultural dimension, selectively valuing and regulating intersubjective *praxis*. Gradually fading the dimensions of the *absolute* in pluralist cultures, multiple diverse cultural options battle with each other in different societies[1].

The word *pandemic*, now as a metaphor for *reality*, has been crossing the planet and humanity as a storm: a tiny, invisible, *virus*,

---

[1] See Hans-Jörg Sandkühler, "*Pluralism, Cultures of Knowledge, Transculturality, and Fundamental Rights*", *in* Hans-Jörg Sandkühler/Hong-Bin Lim (Ed.), *Transculturality: Epistemology, Ethics and Politics*, Peter Lang, Frankurt, 2004, p. 79-100, p. 93.

unknown and unexpected, like an event-*Ereignis*, to say it with Heidegger[2]... quickly installed, together with the astonishment, the (un)understanding, the fear, and the plurality of speeches ... and forcing the fastening of multiple *masks*... and these, after all, do not always, and not necessarily, make the human *persona*, but increasingly show, at least, as a *means*, of physical protection, or not, or of discretion, or of isolation...

The urgency of juridical and political regulation of the exceptional situation caused by the COVID-19 pandemic generated multiple doubts within the juridical systems, on the one hand, and multiple criticisms, on the other, which manifest themselves, after all, as other pandemics, able to hinder, if not to block, the understanding of the seriousness of the situation and the adequate mobilization of means for the respective confrontation. It must be mentioned, before any other, and still only in an exemplary way, the *pandemic of disinformation*. The constitutionally enshrined freedom of expression and of information, a human and fundamental principle and right, as the right to inform as well as the right to be informed, has spread the circulation of (dis) information content on an unprecedented scale, both officially and unofficially, directly challenging the also constitutionally enshrined security, also a fundamental principle and right, directly as such, and still as workers, consumers, users of public services, including those of health... In addition, it must also be considered the *pandemic of exceptionality*, still only in an exemplary way. At the intersection between pandemic and law, threatening to become tenuous, if not diffuse, the *limitations* to the *limitations*, it will be necessary to reinforce that, within the framework of a Democratic Rule of Law, the discussion on the delimitation of rights and duties is sustained in and through the assumption that restrictions on citizens' rights and freedoms, even if they put the right(s) in an exceptional situation, will not constitute a situation of exception to the right(s).

---

[2] See Martin Heidegger, *Beiträge zur Philosophie. Vom Ereignis* (1936-1938), *in* Friedrich-Wilhelm von Herrmann (Hrsg.) *Gesamtaugabe*, *III. Abteilung: Unveröffentlichte Abhandlungen*, Band 65, Vittorio Klostermann, Frankfurt am Main, 1989, 1994, 2003, p. 7, 23-35, 73-78, 80-83, 84-87.

2. *Human rights* in *pandemic*

At the centre of such vicissitudes, the COVID-19 pandemic introduced, in the multiple strands in which it developed, the questioning of the very cultural assumptions of intersubjectivity. As a consequence, the reflexive plasticity assumed by the legal regulation in face of the demand for speed and efficiency regarding the progression of the pandemic is projected in the questioning of the very foundations, meanings and limits of the juridical referencing of the *idea of law* and *human rights*, and, thus, subjectively, of *juridical person* – as *holder* of *rights* and *duties* –, and, objectively, of *juridical normativity* – as the practical and substantially autonomous rationalization of a specific domain and sense of intersubjectivity. In this context, in light of a re-perspectivation of the substantially densifying determinations of so-called *human rights* in the current circumstances, the traditionally called perspectives on the *nature* of the so said *human rights* are effectively at stake – starting from the distinction between *naturalist* and *political* perspectives, and, essentially intermingled in that, the distinction between human rights as moral, political and legal rights – and from the respective sphere of relevance – based on the distinction between *universalism(s)* and *relativism(s)*, and therefore exposing the problem of the *culturality* or *aculturality* of human rights.[3]

Between an *extreme relativism* and an *irreducible universalism*, the attempts to discern a common core and a differentiated ramification of human rights, in view of the difficulties of presenting universalizable densifications, aim nowadays to assimilate the material concretization of the *sense* of *humanity*, within the innumerable synchronic and diachronic perspectives in presence. Which is to say that, around a *core* of *common humanity* – despite the necessary and absolutely variable evolution and content, and without reduction to a *common* defined by any *cosmopolitanism* –, multiple *peripheries* of particularized densification, hardly decontextualizable, of *positive* affirmations

---

[3] Rowan Cruft, S. Matthew Liao, Massimo Renzo, The Philosophical Foundations of Human Rights: An Overview, *in* Rowan Cruft, S. Matthew Liao, Massimo Renzo (Ed.), *Philosophical Foundations of Human Rights*, Oxford, Oxford University Press, 2015, p. 1-41.

of rights – but also, in its verse, and still *positively*, of *duties* – will develop[4]. And, still, affirmed as *rights*, and *human*, as the representation of the highest reference to *humanity* and to its *dignity*, which the institutionalization of the 1948 *Universal Declaration of Human Rights*[5] *– later complemented by the International Covenant on Civil and Political Rights*[6] *and the International Covenant on Economic, Social and Cultural Rights*[7]*, both from 1966 –, came to restate and emphasize in the issue of human rights*, replacing the modern *Déclaration des Droits de l'Homme et du Citoyen*, in the light of the World War II events, and therefore opening their *new generations*[8]*, whilst establishing the notions of humanity* and *dignity* as a fundamental pillar – as stated in its article 1/1: «All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood».

In the current pandemic situation, focusing the human rights *issues* and *discourses* in public health, nationally and internationally, it is the very notion of health as a *human right* that is called into question, decisively emphasizing the relevance, in its content and in its structure, of international public health law[9]. The basis for supporting the relevance of health as a human right can be found in the Universal Declaration

---

[4] *Vide* José Carlos Vieira de Andrade, *Os direitos fundamentais na Constituição Portuguesa de 1976*, Coimbra, 1987, 6.ª Ed., Coimbra, Almedina, 2019, p. 31-37; Guy Haarscher, *Philosophie des droits de l'homme*, Bruxelles, Éditions de l'Université de Bruxelles, 1987 (Ed. revisée 1993), especially p. 41-45 and 119-124; Patrícia Jerónimo, *Os Direitos do Homem à escala das Civilizações*, Coimbra, Almedina, 2001, p. 259-260.

[5] *Universal Declaration of Human Rights* (https://www.un.org/en/about-us/universal-declaration-of-human-rights; http://undocs.org/A/RES/217(III)).

[6] *International Covenant on Civil and Political Rights* (https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx).

[7] *International Covenant on Economic, Social and Cultural Rights* (https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx).

[8] See Mário Reis Marques, *Introdução ao Direito I* (Figueira da Foz, 1992), 2nd. Ed., Almedina, Coimbra, 2007, p. 217-224; Mário Reis Marques, *"Direitos fundamentais e afirmação de identidades", in Economia e Sociologia*, n. 80, Évora, 2005, p. 157-169, p. 163-166. *Vide* ainda Ghislain Waterlot, *"Human Rights and the Fate of Tolerance", in* Paul Ricoeur (Ed.), *Tolerance Between Intolerance and the Intolerable*, Providence, Oxford, Berghahn Books, 1996, p. 53-70, p. 60-65.

[9] Brigit Toebes, "International Health Law: An Emerging Field of Public International Law", *in Indian Journal of International Law*, 55(3), 2015, p. 299-328 [DOI 10.1007/s40901-016-0020-9].

of Human Rights, in its article 25/1, as a starting point: «Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control». In turn, the International Covenant on Civil and Political Rights states, on its article 6/1: «1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life». And, additionally, the article 12/1 and 2 c) and d) of the International Covenant on Economic, Social and Cultural Rights establishes: «1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (…) (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness».

Assuming the right to health as a *human right* the understanding of the meaning(s) of "human right" that underlies it, it will be emphasized here, specifically, Brigit Toebes' proposal concerning this notion – in the assumption of the notion of human rights presented by Charles C. Beitz –, considering human rights as *norms* that reflect "urgent individual interests", that is, interests whose protection is sufficiently relevant to the point that the absence of such protection is an issue of international relevance[10]. In this sense, it is the very notion of "health", or "good health", that is discussed, assumed as an *urgent individual interest*, and whose protection is of decisive relevance both for individuals and the international community[11]. This is confirmed by the fundamental role played by the World Health Organization in global health management, and has been particularly highlighted

---

[10] Brigit Toebes, "International Health Law: An Emerging Field of Public International Law", p. 302-303, referring to Charles C Beitz, *The Idea of Human Rights*, Oxford, OUP, p. 137.

[11] Brigit Toebes, "International Health Law: An Emerging Field of Public International Law", p. 303, referring Brigit Toebes, "Introduction", in Brigit Toebes et al., *Health and Human Rights in Europe*, Antwerp, Intersentia, 2012, 13, 15-16.

since the declaration of COVID-19 as a pandemic, on March 11, 2020[12].

Gradually and arguably accentuating the relevance of public health as a global problem – in terms of access to health facilities, treatment and vaccination – the COVID-19 pandemic involves multiple other consequences in terms of the protection of human rights, in many other dimensions and with very different repercussions in different locations around the globe. Naturally, the polysemy of the word *health*, and thus the reach of the notion of *health*, as a point of reference, will require, from the point of view of human rights, an inevitable multilevel structural consideration and a specific treatment of each issue, in its social and cultural relevance, which is differently understood and realized, depending on the cultural matrices[13].

More than a discussion on the value and relevance of human rights, what will now be at stake is the reflection on the existence of formal and material conditions to assure the maintenance of the objectives civilizationally assumed as the concretization of human rights in very diverse cultural and political environments. There is now a profound review of human habits, both individually and in social relations, in projection of political discourses, also on human rights, and of the effectiveness of public policies related to the pandemic, far beyond the direct implications of the contagion, the treatment and the vaccination.

In a systematic critical-reflective (re)positioning of problems related to human rights, the following problematic cores will be mainly involved, and crucially under scrutiny: on the one hand, the right to health[14] – physical and mental –, and, consequently, the right to education[15] – from the access to education to the (im)possibility of distance learning – and to social protection[16] – concerning work, abandonment, isolation, criminality... –; and, on the other hand, and decisively, the

---

[12] *Vide* https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020. See also, exemplarily, the Human Rights Watch reports on the pandemic situation: https://www.hrw.org/world-report/2021.

[13] James R. May/Erin Daly, "Dignity Rights for a pandemic", *in Law, Culture and the Humanities*, 2020, 1-20 (DOI: 10.1177/1743872120944515).

[14] Article 25/1 of the *Universal Declaration of Human Rights*.

[15] Article 26 of the *Universal Declaration of Human Rights*.

[16] Articles 23 and 25 of the *Universal Declaration of Human Rights*.

rights to freedom[17] – concerning politics, information, expression, movement... – and security[18] – *of* the law and *before* the law.

2.1 Health

In fact, it is, first of all, a health problem, that is at issue, as an essential reference and conditioning point of the other matters in the current circumstance. In addition to the multiple direct effects caused by the contagion with the SarsCov-2 virus, it is the health, physical and mental, individual and global, of human beings that is at stake. Although the World Health Organization defines "health" as "complete physical, mental and social well-being" [19], the concept of "health" is multifaceted and complex – "having health" and "being healthy" constitute references with multiple and contextually very different meanings.

Exemplarily, starting from the affirmation of a "capability to be healthy", within the "capabilities" approach proposed by Martha Nussbaum and Amartya Sen, and due to the influence of the specification introduced by Sridhar Venkatapuram, Brigit Toebes emphasizes the meaning of health as a vital need, decisively requiring protection under international law. Differently, then, from the definition of "health" proposed by the World Health Organization, for aiming at a broader sense, Brigit Toebes emphasizes that guaranteeing access to health services is not enough, it is be necessary to establish basic conditions conducive to health – such as access to drinking water and sanitation, health-related information and education, safe and healthy working conditions, and healthy living environments[20]. Making such *capacity-capability* a

---

[17] Articles 2, 3, 18 and 21, 26, 28 to 30 of the *Universal Declaration of Human Rights*.

[18] Articles 3, 22, 25 of the *Universal Declaration of Human Rights*.

[19] Preamble to the Constitution of the World Health Organization, 22 July 1946 (entry into force 7 April 1948).

[20] «All in all, health is a vital need that requires strong protection under international law. For international health law, it would be important to focus on the individual's capacity to function adequately in society and to pursue one's life plans. Moving away from the absolute WHO definition prevents persons with chronic diseases or disabilities from being labeled as 'unhealthy'. It also implies that emphasis needs to be placed not only on ensuring access to healthcare services, but also on creating conditions for being healthy, including access to safe drinking water and sanitation, health-related information and education, safe and healthy working conditions, and

"right" will therefore involve international institutions in its structuring and consolidation: if the "right to be healthy" is a *human right* as an urgent individual interest – the right "to the highest standard of health possible", or the "right to health" – it is no less an urgent collective need, and at the same time inseparable from the circumstantial social and economic development. It is also this the broad sense of *health* which is fundamentally at issue in the pandemic crisis of COVID-19[21], accentuating the weaknesses in promoting and protecting human rights on all continents.

2.2 Freedom and security

Critically reflecting on freedom and security in these circumstances, from the juridical point of view, there shall be clarified the axiological-normative meanings of the principles of freedom and security as foundations of current juridicity, and their constitutively pertinent dialectical tension, primarily as foundations of current juridicity , and, therefore, as effective *normative principles*[22].

---

healthy living environments». – Brigit Toebes, "International Health Law: An Emerging Field of Public International Law", p. 304 (*vide* p. 303-304), referring to Amartya Sen, *Development as Freedom*, Oxford, OUP, 1999; Martha Nussbaum, *Creating Capabilities: The Human Development Approach*, Cambridge, Harvard University Press, 2011; Sridhar Venkatapuram, *Health Justice: An Argument for the Capabilities Approach* Cambridge/Malden, Polity Press, 2011.

[21] Brigit Toebes, "International Health Law: An Emerging Field of Public International Law", p. 304.

[22] See, especiallly, António Castanheira Neves, "A unidade do sistema jurídico: o seu problema e o seu sentido", *in Digesta – Escritos acerca do Direito, do pensamento jurídico, da sua metodologia e outros*, vol. II, Coimbra, Coimbra Editora, 1995, p. 95-180, 172-175; Fernando José Bronze, *Lições de Introdução ao Direito*, Coimbra Editora, Coimbra, 2002, 3rd. Ed., 2019, Coimbra, Gestlegal, p. 627-650; José Manuel Aroso Linhares, "Na 'coroa de fumo' da teoria dos princípios: poderá um tratamento dos princípios como normas servir-nos de guia?", *in* Fernando Alves Correia, Jónatas E. M. Machado, João Carlos Loureiro, *Estudos em Homenagem ao Professor Doutor José Joaquim Gomes Canotilho*, *STVDIA IVRIDICA*, 106, *Ad Honorem* – 6, *Volume III – Direitos e interconstitucionalidade: entre dignidade e cosmopolitismo*, Coimbra, Coimbra Editora, 2012, 395-421, 413-421; José Manuel Aroso Linhares, *"Validade comunitária e contextos de realização. Anotações em espelho sobre a concepção jurisprudencialista do sistema"*, 2009, *in Revista da Faculdade de Direito da Universidade Lusófona do Porto*, 1/1, 2012, 30-35 (https://revistas.ulusofona.pt/index.php/rfdulp/article/view/2966).

The reciprocal delimitation of fundamental principles and rights, namely freedom and responsibility, in question here, thus poses a problem of practical-normative adequacy, specifically of practical agreement[23]. Between *ethical virtues*, on the one hand, and *legal rights* and *duties*, on the other, far from unanimity, the dialectic between freedom and responsibility implies that the boundary between *self* and *other*, and thus between freedom and responsibility, which are specific qualities of law – as the reciprocal enforceability, to the *Other* and to the *I*... –, assume contradictory contours, depending on the contexts, from the most individual responsible to the most collectively repressive.

Freedom, as a manifestation of autonomy, a socially coined category, constitutes a rational referencing of action, which corresponds, within the concept of the bilateral character of law, to a respectively intrinsic dimension of responsibility[24]… Next to this, security constitutes also a fundamental value, conjoining a materially densifying understanding of law with a materialized, contextualized, meaning of justice. Whilst assumed, then, upstream, as components of the set of founding principles of law, freedom and security will not be less, downstream, effects of the juridicity in force, as practical consequences of the character and effectiveness of the law. And they both produce effects sustained in those fundamental assumptions – built and revealed as *positive* and *negative* freedom, on the one hand, and as security *of* the law, *through* the law, and *before* the law, on the other[25].

In the current pandemic situation, divergences around the tension between the need of confinement and of freedom of movements have led to discussions about the (un)equilibria of intersubjectivity, namely in terms of the relationship between freedom and responsibility, and, more than that, the sense of *co-responsibility*. It is, exemplarily, a matter

---

[23] *Vide* José Joaquim Gomes Canotilho, *Direito Constitucional e Teoria da Constituição*, 7th. Ed., Coimbra, Almedina, 2003, p. 1161-1162, 1225.

[24] Please refer to the reflexion presented in Ana Margarida Gaudêncio, "Responsabilidade como princípio e limite(s) da(s) intersubjectividade(s) jurídica(s): reflexões em torno da proposta de Castanheira Neves", Revista de Direito da Responsabilidade, Ano 2, 2020, p. 771-790 (https://revistadireitoresponsabilidade.pt/2020/responsabilidade-como-principio-e-limites-das-intersubjectividades-juridicas-reflexoes-em-torno-da-proposta-de-castanheira-neves-ana-gaudencio/).

[25] António Castanheira Neves, *"Justiça e Direito", in Digesta – Escritos acerca do Direito, do pensamento jurídico, da sua metodologia e outros*, vol. I, Coimbra, Coimbra Editora, 1995, p. 241-286.

of understanding the character, the foundations and the criteria for determining confinement in the face of freedom of movement, on the one hand, and the confrontation between the demand for information and the needs to supply goods and services in view of the demands presented within the protection of privacy rights and of personal data, on the other[26]. As if there was an insurmountable gap between self--accountability *models* and hetero-accountability *models*, between consideration and inconsideration of the capacity for self-discipline and autonomy, and, therefore, of self-discretion and self-control… and, as far as it concerns to law, between (in)capacity for self-definition and self-imposition of limits.

3. Consubstantiation of human rights *in/as* law, beyond the *pandemic crisis*

The mobilization of the *human rights* "*discourse*" as the definition of an ideal human condition, determined as *universal*, within the context of the current pandemic crisis, plays a crucial role in the raising of the awareness of different cultural and juridical approaches to the relationships between human living conditions and strategies for political and economic expansion[27]. Which, being increasingly evident in the face of this global health and humanitarian crisis, is associated with multiple other crises, which, meanwhile, have not dissipated, and have even become more acute – exposing, in one way or another, more or less serious vulnerabilities, on all continents, associated with social, political and economic crises, and consequently, humanitarian crises, far beyond the confrontation of the COVID-19 pandemic[28].

Projecting, within and beyond this framework, the realization of *human rights* as *rights*, as effectively *juridical*, turning the axiological--normative presuppositions that they contain into normative effectiveness, will imply more than seeing them as demands for the protection of citizens before the States, and even as differentiated levels of protection

---

[26] Mart Susi (Ed.), *Human Rights, Digital Society and the Law. A Research Companion*, Routledge 2019; Council of Europe (Ed.), *Human Rights Challenges in the Digital Age: Judicial Perspectives*, 2020.

[27] James R. May/Erin Daly, "Dignity Rights for a pandemic", p. 6-7.

[28] Equally essential at this point are the continuous updates provided by Human Rights Watch reports (https://www.hrw.org/).

and/or of intervention by the States, in a potentially universalizable movement. It will imply determining them historically and culturally, and viewing them from the specific contextualization of legal intersubjectivity. This is proposed here essentially on the basis of the proposal presented by Castanheira Neves, when affirming the juridicity of human rights beyond the constructions that project them as pretensions, essentially justified by political demands, and exactly through the accentuation of what this character of *juridicity* decisively introduces to them as a differentiating factor: the fact that, assuming a juridical character, they imply, in the consideration of the *other*, the counterpoise of *duty*, and, thus, both the affirmation of *rights* and of (*corresponding*) *duties*, in a *communally* assimilated dialectic between *autonomy* and *responsibility*[29] – *with which the mentioned cultural contextualization of juridical intersubjectivity will lead to different balances, assuming the dialogical basis of the construction of juridicity. In an opening of the meaning of law, in the dialectical conjugation between the suum* of each one and an integrative *commune*, simultaneously as a condition of reciprocal delimitation of action and of convergence of human realization[30].

Proposing a reflection on the meaning of law which admits a material basis for the juridicity of human rights and the recognition of a *minimum* core, or threshold, of common values – at this point referring to the proposal presented by Mário Reis Marques[31] –, it is pointed out the possibility, beyond a first threshold, a *minimum*, as a common

---

[29] See António Castanheira Neves, *"Uma reconstituição do sentido do direito – na sua autonomia, nos seus limites, nas suas alternativas"*, 2009, *in Revista da Faculdade de Direito da Universidade Lusófona do Porto*, vol. 1, n. 1, 2012 (http://revistas.ulusofona.pt/index.php/rfdulp/issue/current/showToc, p. 20-21); António Castanheira Neves, *"O direito interrogado pelo tempo presente na perspectiva do futuro"*, *in* António Avelãs Nunes/Jacinto de Miranda Coutinho (Coord.), *O Direito e o Futuro. O Futuro do Direito*, Coimbra, Almedina, 2008, p. 9-82, p. 42-51.

[30] António Castanheira Neves, *Curso de Introdução ao Estudo do Direito: lições proferidas a um curso do 1.º ano da Faculdade de Direito de Coimbra, no ano lectivo de 1971-72*, Coimbra, 1971-1972, p. 125-130; António Castanheira Neves, "O princípio da legalidade criminal. O seu problema jurídico e o seu critério dogmático", *in Digesta – Escritos acerca do Direito, do pensamento jurídico, da sua metodologia e outros*, vol. I, Coimbra, Coimbra Editora, 1995, p. 349-473, p. 416. See the reflection proposed in Ana Margarida Gaudêncio, "Responsabilidade como princípio e limite(s) da(s) intersubjectividade(s) jurídica(s): reflexões em torno da proposta de Castanheira Neves", p. 4 ff.

[31] Mário Reis Marques, *Introdução ao Direito I*, p. 227. *Vide idem*, p. 227-242.

minimum of universalizable subjectivity, of a peripheral multiplicity of substantializations, non-coincident, rather of variable density, depending on the contexts and goods-rights-*pretensions* in question, and thus enhancing protection in differentiated levels. There is, therefore, essentially a specific intersubjectivity culturally underlying the perception of *human rights*, as concerned here, and, above all, paying attention to the *otherness of the Other*, which, now with inspiration in Douzinas – and, therefore, in Levinas[32] –, may provide an *inter*-subjective confrontation, rationally erected from a responsibility dimension (in this sense, *ethical*), able to convoke contents of specific cultural determination for its underpinnings[33].

Even if *human dignity* is a signifier with as many meanings(-contents) as the civilizational experiences considered – since the generic category *human dignity* will only make sense if it is substantially densified, in concrete[34] –, only the *reciprocal recognition* of that dignity – understood as a constitutive element of juridical *subjectivity* and *intersubjectivity*, and of their respective realization – may constitute, considering Castanheira Neves, the support of a *materially autonomous meaning of law[35], which, without resigning to affirm a validity* – and not

---

[32] See Emmanuel Levinas, "*Interdit de la représentation et 'droits de l'homme'*", *in* Emmanuel Levinas, *Altérité et transcendance*, Montpellier, Fata Morgana, 1995 (Le Livre de Poche, 2010), p. 127-135; Emmanuel Levinas, *"Les droits de l'autre homme"*, *ibidem*, 149-153; Emmanuel Levinas, *"Droits de l'homme et bonne volonté"*, *in* Emmanuel Levinas, *Entre nous. Essais sur le penser à l'autre*, Paris, Grasset, 1991 (Le Livre de Poche, 2010), p. 215-219.

[33] See Costas Douzinas, *The End of Human Rights*, Oxford, Portland, Hart, 2000, especially 13. «*The Human Rights of the Other*», p. 343-369, especially p. 348-351, and 14. «*The End of Human Rights*», p. 371-380. See also the developments proposed in Costas Douzinas/Ronnie Warrington, *Justice miscarried. Ethics and Aesthetics in Law*, Hemel Hempstead, Harvester Wheatsheaf, 1994, mostly p. 80, and *ibidem* n. 183, p. 84, n. 200, p. 85, and *ibidem*, n. 201.

[34] Mário Reis Marques, "A dignidade humana como prius axiomático", *in* Manuel da Costa Andrade/Maria João Antunes/Susana Aires de Sousa (Org.), *Estudos em Homenagem ao Prof. Doutor Jorge de Figueiredo Dias,* vol. IV, Coimbra, Coimbra Editora, 2009, 541-566

[35] See António Castanheira Neves, "Coordenadas de uma reflexão sobre o problema universal do Direito – ou as condições da emergência do Direito como Direito", *in* R. M. Moura Ramos, C. Ferreira de Almeida, A. Marques dos Santos, P. Pais de Vasconcelos, L. Lima Pinheiro, M. Helena Brito, D. Moura Vicente (Org.), *Estudos em homenagem à Professora Doutora Isabel de Magalhães Collaço*, vol. II, Coimbra, Almedina, 2002, p. 837-871, p. 869-870.

forgetting the contributions of other normatively relevant practical dimensions – confers to law the role of an indispensable instance, at the same time normatively regulating and reflexively critical of social *praxis*.

Beyond the exceptional situation we are experiencing, will there be a post-pandemic society – will the so-called *new normal* remain? What role will freedom and security, and, consequently, responsibility and justice, play in the so-said *new normal*? Scientific means promise a *return*... In such a prophesied *return*, what *mask* will be buckled? A *mask* that, as for now, appears more and more also as a manifestation of responsibility and solidarity – or, even more, of *care*... – for oneself and for the other(s)… Or a mask as a means of affirming a protective *individualism*, of isolation and social sectorization, as others, already known, in a reduction, if not actually a substitution, of convivence, admitting an aseptic coexistence, the same still in the name of a selective protection of certain meanings of freedom and security…

Among the *pandemics of facts*, of *speeches*, of *fear*, and juridical normativity, there are decisive challenges, of an eventual reconstruction of the contents and the boundaries of intersubjectivity. And, consequently, of the reflections on the meaning and on the realization of *human rights as right(s).*