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Human and Fundamental Rights and Duties in Portuguese Constitution. Some reflections

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1. Epistemological questions

As often happens in the intellectual and spiritual worlds, chiefly in those matters treated in an abstract or methodological way, the first question it is normal to ask is a conceptual one, which very often implies, clearly, a conflict of terminology. One way of trying to solve the problem is by an almost statistical empiricism about the normal uses of words and concepts. So, we’ll begin by looking at the most prolific of generalisations, from the point of view of two separate authors.

Maybe we are not far from the truth if, on the one hand, like Paulo Bonavides, we say that the expression / concept of “Fundamental Rights” (Grundrechte) is typical of the German culture and its zone of influence, while, on the other hand, the expression / concept of “Human Rights” is closer to the cultural sphere of Anglo-Saxon and Latin countries. It is important to underline that the expression “Human Rights” derives from “Droits de l’Homme”.

On the other hand, we may synthetise this question saying that (and in a complementary way referring to the first approach) we have before us not only the previously mentioned linguistic and cultural frame, but also another set of paradigms, with an epistemic dimension. Furthermore, this new dimension is based on the interior/exterior approach about the different juridical orders. Besides, this is a point where the jusphilosophical and methodological division between “general” and
“special” epistemology, made by Miguel Reale, has a field of application. In fact, the question could be reduced just to an epistemological problem.

We could then say (starting from a tripartition in Portugal mentioned by Vieira de Andrade, but putting it in Real’s terms) that, in the general epistemological field, we could, prima facie, divide the approach to this quid into two: a philosophical approach of these entities would lead us to a consideration of these essential rights, more specifically human dignity, etc., as “Natural law”; while a positive approach, a juridical approach proprio sensu (but, curiously, more stricto sensu then proprio sensu), would lead us to an understanding of those rights as fundamental or human rights. At this point, the distinctive paradigm of the special juridical epistemology enters into the picture, and so we could say that in the different and in each juridical order of each country, i.e., at the Constitutional Law tout court or at the internal Constitutional Law of this or that flag, we would be in the presence of Fundamental Rights. Meanwhile, at the international level, in the relationship between different juridical orders or at the proto-international juridical order, we would be, instead, facing not Constituional Law but International Law. In more open and modern terms, we may also speak about Universal Constitutional Law, or International Constitutional Law, or Regional Constitutional law (as it is already the Constitutional Law of European Union, for example). But, at this more or less international level, we are always in the presence of pure Human Rights, and nothing else.

This means that Fundamental Rights are the Human Rights of Constitutional Law (internal, national, State Constitutional Law), while Human Rights would be the Fundamental Rights of International Law. As simple as that.

It seems to us interesting, and supporting, even if laterally, this perspective, that a champion non-governmental organisation fighting for Human Rights such as International Amnesty, seems to be strict in the application of a rule: Human Rights in a certain country are never supported by members of the local or national organisation, but by foreign members. This could be translated into our terms: in a concrete country, let’s say, grosso modo, “civil rights” are “merely” Fundamental Rights. But to general mankind they are Human Rights.

Of course, all these divisions are problematic and polemic. Sometimes we

2 Since ANDRADE, José Carlos Vieira de — Os Direitos Fundamentais na Constituição Portuguesa de 1976, Coimbra, Almedina, 1983.
face hybrid possibilities, such as “Fundamental Human Rights”, although in practice all these divisions face no problems in the same application. Or almost the same...

2. *Fundamental Rights and Duties in the Constitution*

We always have to interpret and understand a Constitution in context. The Portuguese Constitution came after a period of 48 years of authoritarianism and a closed society, in which some happy few enjoyed great privileges while the great majority of people were charged with heavy duties (let us recall Raymond Aron, advising us to call things by their real names, even when that breaks a certain *entente cordiale*, of a facade of political consensus: but only a facade...). So, by a very understandable law of human nature, the constituent law givers could not reasonably impose constitutionally many obligations, in an autonomous way. As rights and duties are the twin sides of the same coin, the juridical formulation under the sign of rights also implies obligations, related to those same rights. This is kinder and more pleasant to do by a liberating Constitution... and may be more correct in many ways.

Considering, as Álvaro D’Ords, Natural Rights as if they were the Mosaic Decalogue\(^3\), from a deep and dark perspective of duties and prohibitions, doesn’t fit at all in a time that symbolically inscribed the *pursuit of happiness* as one of its foundation constitutional texts: the Declaration of Independence of the USA.

We know that our time exaggerates rights, and claims to them, and ‘deresponsibilization’ (the relinquishing of responsibility) may be a serious social problem. Nevertheless, difficulties may be challenges in adversity that can improve ingenuity in order to solve these problems. Also, these questions may improve the sense of responsibility that, of course, has to involve duties.

3. *The regime of Fundamental Rights. The challenge of Social Rights*

The Portuguese Constitution considers, in its “Fundamental Rights and Duties”, first, the general principles (art. 12 et sq.) and, after that, two special parts, respectively on rights, liberties and guarantees (art. 24 et sq.) and economical, social and cultural rights (art. 57 et sq.). The reason for this division in speciality is due to a special way of treating different rights, already instituted in the general part. In fact, art. 18, 1 determines the general rule to fundamental rights, specific to rights, liberties and guarantees:

Article 18

(Legal force)

1. This Constitution’s provisions with regard to rights, freedoms and guarantees shall be directly applicable to and binding on public and private persons and bodies.

2. The law may only restrict rights, freedoms and guarantees in cases expressly provided for in this Constitution, and such restrictions shall be limited to those needed to safeguard other rights and interests protected by this Constitution.

3. Laws that restrict rights, freedoms and guarantees shall possess an abstract and general nature and shall not possess a retroactive effect or reduce the extent or scope of the essential content of the provisions of this Constitution.

This binding together is very important and the direct application for both public and private entities is very relevant. It happens with the other rights (economic, social and cultural), a contrario sensu, that they don’t bind together public and private entities (the question resides in the private entities, of course) at the direct application. Of course, from the moment they are really in operation, that binding together should exist. But, to this exception to the normal regime of the application of constitutional rights, a new exception is opposed. That is to say: an exception to the exception implies the normal rule again. This, of course, strengthens the importance of the normal regime (art. 17). We are referring to the case of fundamental rights being considered as having an “analogue nature” in relation to those of rights, liberties and guarantees (mostly political, non social, economic and cultural ones). These analogue rights have the same normal rules. We may say that the workers’ rights, liberties and guarantees (art. 58 sq.) are in these analogue rights, which has an important meaning, even a symbolical meaning.

The catalogue of rights is not closed, with a numerus clausus of constitutional formality. The text of the Constitution itself explicitly opens the door to rights with no formal constitutional place. For instance, those residing in the Universal Declaration
of Human Rights, a text which is promoted as a general hermeneutic criterion of the Constitution. As article 16 states:

**Article 16**

(Scope and interpretation of fundamental rights)

1. The fundamental rights enshrined in this Constitution shall not exclude such other rights as may be laid down by law and in the applicable rules of international law.

2. The provisions of this Constitution and of laws concerning fundamental rights shall be interpreted and construed in accordance with the Universal Declaration of Human Rights.

4. The application of Fundamental rights, between the principles of generalisation and antinomia

The concrete application of fundamental rights is not easy. Some authors complain about the vagueness of fundamental rights in constitutions, even in the more precise, such as Portuguese, Spanish, and Brazilian. It is the case of this curious text:

“Constitutional rules are very short of precise in some very relevant questions, although the worst thing, perhaps, is the comparative damage supposed by its precision in questions of less transcendence. (...) but it ((the Constitution)) is not so ((concrete)) when we talk about fundamental rights. In fact, Robert Alexy (...) emphasised in a very expressive way that the packing of meat products deserves a regulation by the European directives much more detailed than our fundamental rights in our ((Spanish)) constitution. Really if the care for making a rule would be, as seems reasonable, in accordance with the importance of the ruled question, it would seem inacceptable that the skin of a sausage should deserve more sophisticated regulation then the fundamental rights of a human being”

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4 GARCÍA FIGUEROA, Alfonso – *Norma y Valor en el Neoconstitucionalismo*, in “Revista Brasileira de Direito Constitucional”, n." 7, vol. 2, p. 111: “Las normas constitucionales son muy poco precisas en algunas cuestiones muy relevantes, si bien lo más grave quizá sea el agravio comparativo que supone su precisión en cuestiones de menor trascendencia. (...) Pero no lo es tanto [precisa] cuando hablamos de derechos fundamentales. De hecho, Robert Alexy (...) ha destacado de forma muy expresiva que el empaquetado de productos cárnicos merece una regulación por parte de las directivas europeas mucho más detallada que nuestros derechos fundamentales en la Constitución. Realmente si el cuidado con el que se dicta una norma fuera, como parece razonable, acorde con la importancia de la materia regulada, parecería inaceptable que el envoltorio de una salchicha mereciera una regulación más sofisticada que los derechos fundamentales de un ser humano.”
More precisely, principles, and principles connected and near to values, cannot have the concreteness of more solid items such as foodstuffs like sausages. *Est modus in rebus*...

Among many of the doctrinal contributes we could invoke in favour of this necessary and useful generality of constitutional principles, we may more precisely present this example (in exactly the same journal where we found the previous quotation):

“(…) the word ‘principle’, juridically employed, is referred, in distinct conceptual plans, to norms (or legislative dispositions that show norms) having a high degree of generality, and indetermination, of a ‘programatic’ essence, whose position in the Law sources hierarchy is very high: having thus a fundamental role in the political and juridical system, considered as a whole (…) and, after all, those rules are commands to the people who apply them, those in charge of the choices of the norms applicable in the different cases”.

We agree with this last author, and his inspiring sources (Paulo Bonavides and Ricardo Guastini).

Much more relevant than the invocation of the lack of precision or vagueness of the constitutional principles and norms, is the possibility of effective oppositions, antinomias, mainly between or among rights. In general, in spite of some journalistic or profane considerations, that emphasise the oppositions, prudence makes us arrive at the conclusion that most contradictions are nothing but an illusion. Rights are in a context, a system, and the contradiction is an exception. If we use, then, the several mechanisms of constitutional hermeneutics, then most of the problems would vanish. Conciliation is possible in matter of rights.

Doctrine has undergone a marked evolution, especially after the introduction of Fundamental Rights chairs in Portuguese Universities, other than Constitutional Law ones, and much work has been done.

We still have some desagreement among scholars and among politicians about

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5 GUERRA, Gustavo Rabay — *Estrutura Lógica dos Princípios Constitucionais*, in “Revista Brasileira de Direito Constitucional”, n.º 7, vol. 2, p. 224: “(...) o vocábulo ‘princípio’, juridicamente empregado, se refere, em planos conceituais distintos, a normas (ou disposições legais que exprimem normas) providas de um alto grau de generalidade, indeterminação, de caráter ‘programático’, cuja posição na hierarquia nas fontes de Direito é muito elevada: desempenhando, assim, uma função fundamental no sistema jurídico político unitariamente considerado (...) e que enfim, são dirigidas aos órgãos de aplicação, incumbidos de fazer a escolha dos dispositivos aplicáveis nos diversos casos”.
the reality and application of social rights. But it is more an ideological than a juridical question. Let us be positivist, once in a while. If social rights are in the Constitutional text, and if they were resistant to so many constitutional revisions, that means they are, in fact, a real and uncontroversial part of the Constitution. We may say they belong to the material Constitution itself. So, if they are constitutional, what has the constitutionalist to do with then, unless to take them seriously, to recall the work of Ronald Dworkin⁶, and, in Portugal, that of Gomes Canotilho⁷?

This is not the place to develop these questions, anyway⁸. We should keep a certain tranquilitas animi on this. Social rights and antinomia in the Constitution are not problems. On the contrary, they are challenges.

The Portuguese Constitution, a politically compromising text with checks and balances among conflicting parties, as it is, should not surprise anyone with its crashes and conflicts, because it has to solve all these problems. Many solutions are at our disposal: practice concordance of norms, minimal circle rights preservation within that conciliation, according to the unity of the Constitution: and that unity means the coherence of a constitutional project, of its message and a certain constitutional differentia specifica.

At the same time, the Portuguese Constitution is the Constitution of a Constitutional State, with a deep social dimension: the Social State. In a Social State, social rights are not a juridical aleluiah. They have to be real, effective, felt as if alive by concrete people. If classical juridical theories don’t consent to, or even dream of that possibility, then nothing else will do but those theories themselves have to be changed.

Social rights cannot be safeguarded by mere single measures, contradicting one another, without a consistent dogmatic common basis. But they have to be guaranteed at least on a minumum level. We leave that task, so noble and urgent, to the juridical imagination in the near future. Social rights are not, as some people think

and insistenty proclaim, an easy problem to solve by forgetting them, as if they were a mere grain of socialist sand in the perfection of a liberal dogmatic machine. They are a serious general challenge, and stand above all ideologies. Social-liberals are among the first to know that as well. This is a challenge that must be solved with juridical imagination, and the necessary **prudentia**, as is obvious, and really natural, in Law problems.

5. **Duties**

5.1. *The general problem of duty in Portuguese Constitution*

As we have already indicated, the circumstance that some constitutions, like the Portuguese one, come to be covered with the veil of law and legality, a liberal-democratic revolution that put an end to an anti-democratic and cadaveric regime (a grey power, without any flame or hope), reacting against a close-minded, guilty-making, imposing political situation, immediately forged some limitations on the constitutional legislator. Just to give an example, this previous situation (and an ultra-liberal complex) deprived the new law-givers from the understanding of the republican pedagogical role of the State. Fearing the ghost of totalitarianism in education and the media, the new political order is now unarmèd with values, and without many vital elements for a real citizenship. It is minimalist in even civic education, and the education of the more elementary rules of being together in society. Let’s consider art. 43, 2:

Article 43 (Freedom to learn and to teach)

(...)  
2. The state shall not lay down educational and cultural programmes in accordance with any philosophical, aesthetic, political, ideological or religious directives.

This is a question of symmetry. As the common Portuguese people seemed, before the revolution of the 25th April 1974, only to have obligations and very few and always limited rights, it didn’t appear to the members of the Constituent Assembly to be very urgent or proper to determine many duties in the Constitution.
And they were right, in general. So many rights were suffocated before... The important thing was to open the closed doors, and the locked windows.

Of course, as we all know, in a certain dimension, the consacration of rights is immediately reflected in the creation of the respective rights in the counterpart. But this synalagma does not always function literally, or in an absolute symmetrical way. First of all, because the passive subject, the debitor, may be universal, and diffuse, imposing a duty of general respect that is not always the object of a sanction in the case of prevarication. Or, in some other cases, not always does the jurical system have the means to catch or to punish all the offenders...

Let us just consider social equality and dignity in the law, that is engraved in golden capitals (or blood capitals – with blood from the liberation martyrs) in the art. 13, 1. How many attacks are suffered by many, every day, even today? And, even more tragic, without even thinking of complaining about these atrocities – because they are bound up in the dependency of prejudice, shyness, fear, psychological or economic dependence, etc...

Maybe this constitutional proclamation should be written inversely: instead of “Every citizen shall possess the same social dignity and shall be equal before the law,” should be written, instead: “Every one has the strict duty to respect in others their dignity (and his own) and act according to the equality between all”.

But, with one or another formula, what counts, what matters, is not the legal speak, the normative technique concretly used, but the roots of the values and principles in action in a society and in each one of its citizens.

*Human Rights* talk, and the vindication of Human Rights were exaggerated a lot during the first years of the revolution in Portugal. This demagogic misuse of Human Rights was not a Portuguese singularity. Many important scholars, like Michel Villey, reacted against this demagogy. Although, sometimes, they over-reacted...

In fact, soon a counter-speak arouse, a counter-attack, a reaction.

A middle position seems to be better. Not all the claims and only sentimental or ideological cries, not all the invocations of rights were and are pure exercises of subversion and demagogia. Not every shout or vindication is Utopial and order-demolishing. On the other hand, not all the voices of moderation and attempts at

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‘responsibilisation’ (the imposition of responsibility) are reactionary and supported by Constitutional enemies.

As in everything, in the interpretation of these entities with a constitutional dimension, it is necessary to face these realities on the inventory, without naive enthusiasms, in one way or another.

In the future, no doubt, we shall have again right and wrong vindications of freedom, and wrong and right claims to order. There is exaggeration in compromising rights invoking needs and duties, and there is also exaggeration in enlarging prerogatives, privileges, under the cover of real rights. Jurists should seek, among this conflict of interests, what is the rigorous sense of justice that is traced out (though large: and it has to be so) in the Constitutional text.

5.2. Formally Constitutional Duties in the Constitution. Some Examples

In spite of the general problems we have already discussed, the constitutional legislator still assigned some duties in a clear, express way and the revisions of the Constitution still give us some material to help us achieve a better interpretation of the problem.

So, and merely as an example, we may find in the Constitution two kinds of duties, according to their respective degree of concreteness: we have those found in the articles titles, and related to rights — underlining this technique the connection between rights and duties; and we have also those specifically considered, “autonomous” duties, duties a se.

5.2.1. “Rights and duties” in articles titles

Among the first group of duties, we count those of the III title of part I of the Constitution: in its epigraph and divisions. Title III is about “economic, cultural and social rights and duties”, and its respective chapters successively treat economic rights and duties (art. 58 sq.), social rights and duties (art. 63 sq.) and cultural rights and duties (art. 73 sq.).

Of course, the strategy when writing the constitutionalisation of these rights
and duties is done much more from the perspective of rights, the very star of the constitutional literary plot. We even think that a discourse strategy that would emphasise duties would be difficult and complex, in modern constitutional terms (in fact, contradictory to the general constitution style, since the liberal revolutions). It would be certainly difficult to identify precisely the passive subjects or “debtors”, those bound to those duties (specially those having the State or the Community as “creditor” or active subject). May be the general style could be depressing and shadowed with dark clouds.

The heaviness of duty is – we must recognise – barely compatible with the literary style of constitutions, whose generosity and Utopian aim (Utopianist at least – based on Bloch’s free wind of thought: principle of hope11), on the contrary, is all about giving and recognising rights and promising good futures.

But it would be interesting to imagine a “constitutional transcription” or re-writing always done from the perspective of duties and obligations. Many problems would be involved, that might clarify certain constitutional vaguenesses: that we must recognize. Mainly, it should clarify if certain obligations should be considered as belonging to the State or to society, or if they should be committed to common citizens or companies, etc. The indefinition of the passive subject, the debtor, in our current constitutional style, leaves more latitude, even to the interpreter, but has, as a consequence, the possibility of leaving rights without duties – as in the message of the old revolutionary song, The Internationale...

5.2.2. Rights-Duties constitutionally formalised

Among the individual rights-duties, we may find: the fundamental right-duty to defend the Father/Motherland (art. 276), the right-duty to educate and care for one’s children (art. 36, 5), and the rights-duties connected with health protection and environmental care (respectively, art. 64, 1 and art. 66, 1).

There remains, nevertheless, the problem of knowing if the voluntary character that the Portuguese military service has acquired quite recently (after the constitutional revision of 1997) doesn’t place this juridical entity more under the sign

of rights then under the one of duties.

Some critics may argue that, with this measure, we have lost an important element of citizenship, and one of the more elementary and historically based, having old roots (from the republican legacy of classical Greece): from this point of view, it would be a lost fundamental right. The deeper counter-argument to this objection (although it may have others, e.g. those of efficacity), so in favour of the voluntary military service, may be that of a the promotion of a wider respect (in fact, upgrading as a principle what was before but an exception) for conscientious objection, or the respect for an eventual diffuse pacifism or “civilism” of the citizen mass. The question is naturally controversial.

Commenting on the fourth constitutional revision, Gomes Canotilho and Vital Moreira ended their text with this words:

“Finally, one of the most significant republican principles – military service duty – has ceased to have constitutional-positive support, in favour of the voluntary nature of military service”12.

The right-duty to educate and care for one’s children has two aspects. If the second one, the duty of care is, tant bien que mal, in general fulfilled, in our society of professional over-occupation (workaholism), solitude, and the over-confidence of families in the educational role of schools, we might ask ourselves if parents really take this duty seriously because they are the specific debitors of it: in the eyes of the State, their children and themselves. Furthermore, it is pertinent to ask if, in some cases, we are not mixing up all these aspects, asking other passive subjects (debitors), namely teachers and schools, to play a constitutional role that – we are tempted to say by the simple natura rerum, even remembering the first words of the Digesto on Natural Law – is a matter of parenthood, belonging specifically to parents. Although a busy life doesn’t allow them to fulfill it, at least not properly. But that is a matter of civilization, or, better still, of our civilized barbarianism13.

Duties of health and environmental care acquire great importance when

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13 OTTONELLO, Pier-Paolo — La Barbarie Civilizzata, Gênova, Edizioni dell’Arcipelago, 1993.
considering crimes against public health and environmental crimes. The limiting question would be, in the former case, suicide. A crime in which the agent attacks his or her own health so deeply that it puts an end to his or her own life. So we understand that suicide is not a merely private question, but a matter of society, and a public crime. However the euthanasia question cannot be so easily treated. Those who suffer without hope are listening to the pharisaical maxims of those who figure never to be in that terrible situation. Don’t *cast the first stone*.  

### 5.2.3. Individualized Constitutional Duties

As individualized constitutional duties, we may consider the comparatively soft duties of cooperating with the electoral authorities in such ways as the law may lay down, and to register in order to vote (art. 113). The heaviest duty among these is that of paying taxes. But this latter implies an accessory right, that is the one of refusing to pay unconstitutional taxes.  

What is more interesting, and goes with the general spirit and style of the post-dictatorship and demo-liberal constitutions we have already talked about *supra*, is that even in such a basic question for the State, like tributes, the constitutional approach underlines precisely the right to refuse to pay unconstitutional tributes, and the duty to pay them results, thus, from a deduction *a contrario sensu*. This says a lot about the writing of the Constitution and about the sense of citizenship contained in these Constitutions. Let’s remember the article itself:

Article 103  
(Fiscal system)  

3. No one shall be obliged to pay taxes that are not created in accordance with this Constitution, are retroactive in nature, or are not charged or collected as laid down by law.

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14 John, VIII, 7.
15 Cf., *e.g.*, CASALTA NABAIS, José — *O Dever Fundamental de pagar Impostos*, Coimbra, Almedina, 1999.
5.2.4. Duty to work?

Art. 58, in the revised version of the Constitution, proclaims the universality of the right to work. But, contrary to what the old (original) art. 51, 2 stated, it doesn’t constitutionalise, at least formally, any duty to work.

Paul Lafargue (1842-1911) is the author of an interesting opuscule: *The right to be Lazy* (1883). Shall we conclude from this constitutional change that from now on this new right is constitutionalised in the Portuguese juridical system? By no means.

Our societies, inspired by paradigms, topics and even prejudices in many aspects issue from the protestant ethic that founded the spirit of capitalism (although Portugal doesn’t belong to the evangelical or protestant cultural area), as Max Weber put it\(^\text{17}\), are still not prepared for the prophetism of names like Lafargue or Agostinho da Silva (1906-1994). This last Portuguese philosopher foresaw a society almost without labour and a world of unemployed. So, in order to face that future new world, we should create more and more creative *otium*... But that is another question.

If we stay with the logic of employment and work (*tripalium*, the latin root for “work” in Latin languages, was the name of a torture instrument) of course the right to work is one of the most sacred. A presupposition, a requisite, of the right to life itself, as Gomes Canotilho and Vital Moreira consider with radical objectivity\(^\text{18}\). Because, the survival of the great majority of people depends precisely on work, on employment and on salary.

The dispossessed still see themselves today as workers. In the future, eventually, a large part of them will be out of work, unemployed, but we hope that the paradigm changes and they may be socially regarded in a different light. Let’s hope these massive groups of people are not considered to be sub-human or pariahs. The stigmatising word “loser” is a menace of our times. The fact is that the evolution of


machinery, so sophisticated nowadays, may end all the chances for many to work for a salary at all during their entire lives... That reality is invading us already.

So, the right to work, more and more under threat, symbolically deserves to be considered autonomously and glorified. But it may be happy anticipation to think that the constitutional revision that eliminated the duty to work did so while taking into consideration the new and troubling situation: where one may want desperately to satisfy his or her duty to work, without having the opportunity to do so. If we face now the situation where many rights are ineffective\(^\text{19}\), in the near future we may face one of difficulties corresponding to our duties.

Of course, at an ideological level this is a very sensitive question, a real \textit{pierre de touche}. There is a labour mystique in every totalitarianism, from right to left, and a real love of work (at least for the idea of work...) in many materialistic and economic thinkers and theoreticians. Someone said: “they love work - they may contemplate it for hours”... Even more moderate observers cannot defend easily the right to be lazy, and think it is civically useful to proclaim the duty of working. Few remember that work is a burden imposed because of sin, a penalty on mankind at the expulsion from Eden\(^\text{20}\), and maybe because of that, it doesn’t seem to be in our own nature. This beautiful biblical myth has more wisdom than many may have dreamed of. If we are able to alleviate much pain on giving birth (the other penalty, but inflicted only on women), why think of labour as an eternal punishment for all the human race?

And... after all, in the face of so much carelessness, absenteeism, unprofessional work, real and unproductive and uncreative laziness, etc., here and there, the moderate citizen cannot but vindicate the duty to work, and the obligation to work well, professionally, with care and with efficiency. This is not a contradiction, just the natural complexity of human and social matters.

José Magalhães wrote about this constitutional change, underlining its lack of value, by the “obscure scope” of the original rule: that norm, in his opinion, was not

\(^{19}\text{CARBONNIER, Jean — Effectivité et ineffectivité de la règle de droit, in “L’Année Sociologique”, 3.ª série, Paris, P.U.F., 1957-1958, p. 3 ss}\)
\(^{20}\text{Gén. III, 17-24.}\)
able to impose either on workers’ zeal, nor on lazy forced labour, because it would contradict personal autonomy.\(^1\)

If we understand that personal autonomy, personal dignity itself, doesn’t imply necessarily salaried work, or even work *tout court* (and a more modern perspective – even with biblical support - seems to tend towards that) then it shouldn’t be a “duty to work”. But, on the contrary, we imply that in human nature a dimension, a necessary connection between responsibility and work should be made. But who is entitled to say what human nature really is?

One of the slogans of many politicians is work. In the Portuguese Constitution it is no longer a formal duty. But let’s not make a tragedy out of this. We don’t work less because of it. On the contrary: it seems we are working more and more, and still not very sure about our human and fundamental rights, especially social ones.

The final question is this: in spite of so many human rights and a generous and even utopian Constitution, the reality is that of a strict “reserve of the possible”. Without decisive economic growth, and a commited social policy, the promises in the Constitution are almost only duties and only a few rights - and this problem is not only about social rights. Even classical political rights may be affected when a society lives just to survive, or almost. Democracy itself implies a large population with time and leisure... and a Republican Education..... like it all began in Classical Athens.\(^2\)

\(^1\) MAGALHÃES, José — *Dicionário da Revisão Constitucional*, Lisboa, Editorial Noticias, 1999, p. 113.
