

Chapter 26: Prejudice in a Portuguese context

João Caetano

Restricted access

Category:

Chapter

Published:

15 Aug 2024

Page Range:

396–410

Collection:

[Sociology, Social Policy and Education 2024](#)

DOI:

<https://doi.org/10.4337/9781802209662.00036>

Keywords:

[Prejudice](#); [Portugal](#); [Social movements](#); [Human rights](#); [Legal order](#); [Communication of rights](#)

- **Abstract**

- **References**

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This chapter discusses how the Portuguese state and society have recognized and fought prejudice. The work is interdisciplinary in nature, drawing on knowledge from the social and political sciences, legal science, and communication studies. The study is composed of four parts. The first part is the description of the context and main concepts of the research plan. The second part is a theoretical analysis of the social and political relevance of prejudice. The third part is an analysis of the Portuguese situation based on some relevant cases. Although the study focuses on the long term, special emphasis is given to contemporary society. A qualitative methodology is used to identify and characterize the behavior of the main actors: social movements, people and the state as the lawmaker. It is concluded that Portugal is generally at the forefront in the fight against prejudice through the convening of discourses on human rights, although there are different interpretations of what they mean.

Prejudice; Portugal; Social movements; Human rights; Legal order; Communication of rights

Justification of the study

This essay aims to analyze the nature and impact of prejudice in the context of contemporary Portuguese society's evolution, as well as to reflect on the remedies that both society and public authorities have found to minimize various situations described in official and scientific documents as resulting from prejudice.

We start by assuming that the prejudices existing in Portuguese society must be understood to combat them effectively. It is essential to grasp the reasons why prejudices are fought against (Abrams, 2010). In the context of a plural society like contemporary Portugal, prejudices are confronted with justice, which is why we appeal to human rights (Cunha, 2014b). Far from being a panacea, human rights must function as resources for the humanization of society within a clear and consensual framework of values (Kessler, 1944), albeit one that evolves over time (Cunha, 2022). This forms the basis of our analytical framework to evaluate public policies aimed at combating prejudice.

In this chapter, we address some legislative milestones to combat discrimination in Portugal, shedding light on the political and social debate surrounding the origin and causes of prejudice in contemporary Portuguese society (Cunha, 2014b). It is also important to note that when we refer to the Portuguese context, we are not only talking about Portuguese individuals but also encompass all people living in Portuguese territory, as well as the relationships that the Portuguese state and society have with their counterparts in other countries (Teixeira & Pinto, 2012).

For the purpose of this study, prejudice is defined as any opinion that is not based on reason or actual experience. From a legal perspective, prejudice should be seen as harm or injury that results or may result from some action or judgment. According to the Merriam-Webster Dictionary (2023), the word "prejudice" can be understood in two senses. The first is "injury or damage resulting from some judgment or action of another

in disregard of one's rights". Specifically, prejudice is any action "detriment(al) to one's legal rights or claims".

In the second sense, prejudice is taken to mean: (a) "a prejudiced judgment or opinion"; (b) "an adverse opinion or leaning formed without just grounds or before sufficient knowledge"; (c) "an irrational attitude of hostility directed against an individual, a group, a race, or their supposed characteristics".

Characteristic of the first meaning is the violation, whether by a person or an institution, of another's right. The second meaning points to an irrational or hostile judgment of a particular individual position or situation by any person or entity.

The order of the presentation of the meanings in the Merriam-Webster Dictionary is meaningful and highlights prejudice as a judgment or action that undermines a right or legitimate claim of another. This signifies the author's awareness of the character of prejudice as a legal offense. Indeed, in constitutional states, most social manifestations are not regulated by law. This is only the case when it is necessary to protect a particular asset that is particularly valuable or threatened. This is particularly evident when criminal law comes into play, the application of which is a matter of *ultima ratio*, i.e., when there is no other less onerous remedy available (Kempen, 2019). Consider the criminalization of conduct against members of sexual minorities or those in a position of fragility in an emotional relationship. For centuries, there was no legal protection for homosexual victims of abuse because there was no social awareness of the offense (Sullivan, 1990; Abrams, 2010). And this awareness did not exist because of a prejudice (attitude of hostility) against homosexuals.

Prejudice takes the form of mistrust, intolerance, and social discrimination (Zick et al., 2011). People generally know what prejudice is, particularly when they are victims of it (European Union Agency for Fundamental Rights, 2018). This is the case with prejudice based on race, which prevents black people from attending a particular school or using a particular mode of transport. This is a historical example that occurred in South Africa during the Apartheid regime (1948–1994) and in other countries where black people did not objectively have the same rights as white people.¹ Other times, discrimination based on race may be more subtle by not allowing people of a certain race into a particular school in practice. This prejudice can also exist because of a person's social income or other reasons. Prejudice affects people individually and as a group, although awareness of situations only influences society when there is organized action to combat prejudice itself.²

However, not all people or groups who are victims of prejudice are able to react effectively to unfavorable situations (Burke & Sommers, 2022). In fact, elderly people are often the victims of prejudice related to their physical or psychological frailty. The same is true for migrants or people belonging to ethnic or sexual minorities (European Union Agency for Fundamental Rights, 2018). However, the ability of these groups to react to discriminatory situations may be different. For example, older people and migrants have little capacity to react: in the first case, because of the age barrier; in the second case, because of the language barrier or the lack of legal attachment to the territory. In both cases, people are vulnerable and therefore tend to be hidden victims. Other groups, on the other hand, have greater resources and can be more visible and effective because their members are active and integrated in the public space.

In any case, situations of prejudice are difficult for any person or group affected in their dignity (Zick et al., 2011), which is why in recent decades many victims of prejudiced actions or judgments have organized themselves and sought support in society to change mentalities and, when necessary, also change the legislation in force (Sovacool, 2022; Pistor & Xu, 2003). In cases where physical or psychological harm has been caused, victims seek legal redress. This is the case for victims of pedophilic behavior in numerous cases that have been reported around the world (Kawamoto, 2013).

Portugal is a democratic country and historically open to the world. The country is fully integrated into the international community and welcomes people from all over the world with different lifestyles. Despite some cultural differences between regions, the people are generally cosmopolitan in their outlook. There are strong social movements with links to the outside world that convey the ideas in vogue. For all these reasons, most people living in Portugal are politically able to seek to change situations that they consider unfair (Freedom House, 2023; Teixeira & Pinto, 2012).

Portugal is a constitutional state with freedom of expression, association, assembly, and demonstration. The media operates independently and plays a crucial role in public scrutiny. The society is pluralistic, encompassing various and competing perspectives about reality (Fernandes et al., 2022). Over time, people's awareness and consciousness have evolved. The public morality of 2023 is significantly different from that of 1983. And since Portugal is a state governed by the rule of law, it is natural that people seek to ensure that their claims have an adequate legal definition (European Commission, 2023).

After the establishment of the democratic state in 1974, legislation changed considerably in several areas. In 1975, the right to divorce was guaranteed to all persons and, in 1977, family law was reformed, granting women equal status with men. Married women had been prevented from entering various professions and the law subordinated them to their husbands in various matters (e.g., to travel outside the country or to engage in independent professional activity women needed their husbands' authorization) (Oliveira & Cid, 1996). This discriminatory regime, based on the belief that women were inferior to men, was rightfully abolished.

In the subsequent decades, significant changes continued to shape Portuguese society. Some of these changes were widely accepted through consensus, such as the inclusion of women in all professions. For instance, today there is no prejudice against a woman joining the armed forces. Simply changing the law meant that new behaviors were accepted. In other cases, the change was not consensual but no longer contested, such as the legal recognition of same-sex marriage.

While changing laws is crucial in addressing injustices, it does not always eradicate discrimination entirely. Even today, Portuguese women have an unfavorable position in the labor market compared to men (Amâncio & Santos, 2021). This situation is not the result of the law, but of the decisions of employers, who see motherhood as a threat to good professional performance. It is a situation to which the Portuguese legislator has paid attention, not only by guaranteeing the possibility for men to benefit from parental leave but also by imposing the division of rights between parents (European Union, 2023).³

The examples provided illustrate the existence of prejudices and their consequences, highlighting the ongoing transformation of societies as they become increasingly aware of the need to eradicate biases. These prejudices often revolve around people's perceived characteristics or conditions, both by themselves and society at large. Combating prejudices requires recognizing individuals' positions in relation to the state and society (Cunha, 2014a, 2014b). Contemporary political and legal language has embraced the powerful concept of human rights, emphasizing the idea that rights are inherent to every human being rather than being granted by the State (Cunha, 2022).

In any case, it must be recognized that democratic states play a crucial role in combating all forms of discrimination affecting vulnerable groups without the capacity to intervene. In recent years, many states have passed specific legislation to address domestic violence, abandonment or ill treatment of the elderly, support for migrants and refugees, etc. (European Union Agency for Fundamental Rights, 2018, 2021).

Portugal largely aligns with progressive policy visions in various areas, yet it is not exempt from challenges. While the country has made significant strides in combating discrimination, there are still notable gaps in public intervention. Additionally, there are concerning signs of growing intolerance in certain segments of society. A prominent example of this is the increasing polarization in Portuguese politics, marked by the rise of a strong radical right-wing party called Chega. This party espouses an aggressive discourse towards certain communities and groups, including the Roma and refugees. For many years, Portugal stood as an exception in Europe, lacking such a party. However, this has changed, and it now has practical implications in daily life, particularly given the party's connections to important entities like the police and security forces (Marchi, 2020; Fernandes et al., 2022).

The current context is one of escalating radicalization in political discourses, making it crucial to analyze the issue of prejudice while examining the actions taken by both public authorities and society (Burke & Sommers, 2022). There is a pressing need to address these challenges, uphold democratic values, and foster a society that embraces diversity and inclusivity (European Union Agency for Fundamental Rights, 2021). By critically assessing the existing policies and promoting open dialogue, Portugal can continue its journey towards a more tolerant and just society.

<p:a_no indent>Who is interested in prejudice? Why? For what purpose?

<p:text>Contemporary democratic societies are characterized by a growing quest for freedom and equality by individuals (Fraser, 2003). To understand this reality, it is necessary not only to study the national and international instruments that define rights (constitutions; laws; declarations, charters, and international catalogs of rights) but also the complex phenomenon of the claim for rights by society.

In recent decades, many new causes have emerged in the public arena, driven by social movements, in defense of freedom and equality (Sovacool, 2022; Hutter, Kriesi & Lorenzini, 2019; Somek, 2011). These are old principles and rights that are being reconfigured in contemporary postmodern societies, progressively encompassing new situations.

Liberal democracies are living in a time that we can call a struggle for rights and against prejudice (Edmundson, 2020; Jerónimo & Monteiro, 2019). It is true that this struggle

has always existed in human history, but never in such a conscious and deliberate way as in the present moment, involving a vast array of actors and means. The struggle for rights has a global dimension, in the sense that it takes place on a global scale, notably in international organizations, but with local effects.

Throughout history, social movements have championed causes based on two distinct sets of values. The so-called “old social movements” centered around material concerns, advocating for labor rights, improved social security, and better health systems. While these causes were highly significant in the 20th century and remain relevant, their relative impact has diminished over time (Carroll & Ratner, 1995). On the other hand, the “new social movements” advocate for causes rooted in immaterial values, such as the pursuit of a clean, healthy, and sustainable environment or the fight against discrimination based on sexual orientation. These movements emerged in the latter half of the 20th century and have gained momentum in the 21st century (Sovacool, 2022).

Contestation, when well-planned, has two main types of effects.

First, contestations have political effects. Many of the causes end up being assumed by public authorities because the protesters gain a public voice or become politicians and rulers (DeCesare, 2013). In addition, some political parties emerge from social movements parties, i.e., parties born out of and depending on the dynamics of social movements to assert themselves, so they naturally defend their causes (Sherkat & Blocker, 1997).

Prejudices are always challenged from the perspective of the people involved, and this implies unfavorable social and legal individual positions. Even when defending diffuse goods such as the environment or quality of life, it must be recognized that these are individual interests.

Secondly, the contestation seeks to change existing law, both from national and international sources, including supranational ones. International institutions and organizations, such as the European Union, often protect new interests arising from emerging causes. Indeed, the main legal instruments of the European Union make a clear commitment against prejudice. Examples include Article 2 of the 2009 Lisbon Treaty, which sets the protection of the environment and the fight against all forms of exclusion as objectives of the Union, and the 2000 European Charter of Fundamental Rights, now an integral part of the Lisbon Treaty, which establishes a wide range of individual rights and protection against any form of discrimination.

Before delving into an understanding of what is happening in Portugal and analyzing concrete cases in which prejudice is being combated, it is important to understand who is interested in prejudice and why. One thing is evident: only those who are cognizant of prejudice can genuinely advocate for its eradication (Bloom, 2008; Vala et al., 2006).

We have already said that prejudices are unfavorable legal judgements or positions about certain persons or groups. In this sense, prejudices can also affect people’s ideas. This last note is important because sometimes prejudices are indirect. This is the case of prejudice towards the defender of nature as a person who despises the development of territories or the prejudice towards the person who is against war as someone who is in the service of foreign interests. Sometimes they are called pacifists, with an eminently negative connotation in respectable circles.

Given the intricate nature of prejudices, those who become most actively engaged in addressing them are often the victims themselves. These individuals may have experienced denial of access to essential resources, felt cheated and relegated to second-class citizenship, or suffered physical and psychological violations (Bloom, 2008).

This is the case of the slaves who, in various political revolutions, wars, and movements for social change in the past, allied themselves with the political elites to put an end to slavery (Castelo, 2017; Maxwell, 2013), or the case of the disenfranchised workers of the first and second industrial revolutions in England who participated in trade union demonstrations during the 19th century (Boyer, 1988).

Of course, people's awareness and ability to protest depend on their level of education and the relationships they establish (Amâncio & Santos, 2021). The awareness of discrimination of slaves working on coffee plantations in Brazil in the early 19th century is different from the awareness of the descendants of slaves in Brazil today. These people are still discriminated against in terms of access to education, for example, but in general their educational resources are better today than those of their ancestors, so their ability to intervene in the public arena is greater (Jucá & Mattos, 2021).

Public authorities are also interested in prejudice, as they have the legal and administrative capacity to shape it, which is essential to combat the phenomenon. The reasons why they intervene in each matter (see the historical processes of eliminating the slave trade and ending slavery) are not always very clear or convincing, but their role is decisive. For example, the political and legal process of abolishing slavery in Portugal was long and gradual (Jerónimo & Monteiro, 2019). Their roots, on the other hand, are to be found in earlier events, namely in political and intellectual persons and processes that raised collective awareness of the dignity of persons and their rights. Any history of human rights must consider the long period of their maturation, marked by many episodes of clamoring injustice.

In contemporary democratic societies, the interest of scientific and cultural elites and the media in defending and disseminating new ideas against prejudice is also noteworthy. Even in autocratic societies, we find conditions for raising awareness against prejudice, depending on the level of cultural and civic education of the people. As we will see below, in Portugal during the dictatorship (1926–1974), many intellectuals and liberal professionals played a very important role in denouncing the perversities of the political regime and in seeking to establish a framework of effective individual rights.

In its etymological origin, the word “interest” (from the Latin *inter* + *esse*) means what is between the person and the goods; that is, it is a question of access. As Habermas points out (Brunkhorst et al., 2018; Habermas, 2012), access is the main category for understanding contemporary societies, and access to rights is the way many groups seek to stop being discriminated against.

When we said earlier that, to understand reality, it is not enough to look at the instruments proclaiming rights, but at the social dynamics of contestation and claiming rights, we wanted to emphasize that these instruments are seen as provisional, because they are necessarily incomplete.

The way in which rights are constructed and communicated is crucial to understanding contemporary society, and there are different perspectives on how this should happen (Cunha, 2022). The fundamentals of human rights are the grammar of contemporary democracies, in the sense that common coexistence can only be understood in the face of a set of rights recognized for all individuals (Cunha, 2014b).

It could be said that we are faced with an ambivalent situation regarding individual rights. In democratic societies, most people recognize the importance of individual rights, but not everyone defends or interprets them in the same way. In countries like the United States, we see strong tensions on this issue, and the same is true in Europe (George, 2002; Amâncio & Santos, 2021). These debates on rights inform the Portuguese reality because of communication networks. This is also to say that it is possible to analyze the Portuguese situation in terms of combating prejudice, but that there is not a single perspective on reality or about what needs to be done. Proof of this are the different approaches and rhetoric on the role of rights in the defense of people. To give an example, the words “tolerance”, “respect for differences”, or “integration” are not always used in the same way or even accepted by all citizens or academics (Zick et al., 2011).

Therefore, it is crucial to understand the motivations behind individuals’ interest in prejudices and their connection to discourses on rights. During the onset of the Second World War, legal philosophy recognized the necessity of adopting a jurisprudence of values (Dror, 1957), leaving behind the traditional jurisprudence centered on interests. The primary objective was to establish a new context of human coexistence characterized by a shared framework of values. This vision led to the creation of entities such as the United Nations, the European Communities, and NATO, whose charters emphasize the importance of upholding fundamental rights and values.

Despite these noble aspirations, the reality presents a stark contrast, as these values and rights often remain unheeded. A glaring example is the ongoing conflict in Ukraine, fueled by a set of entrenched mutual prejudices that foster hatred, overpowering the international law commitments that both Russia and Ukraine have made to respect. One of the central prejudices perpetuated is the portrayal of the enemy as having Nazi-like behavior, a notion that only serves to exacerbate prejudice and intolerance further.

The gap between proclaimed values and real actions highlights the challenges of combating prejudices and safeguarding human rights worldwide. It calls for collective efforts to bridge the gap between stated ideals and tangible actions, promoting understanding, tolerance, and empathy across nations and cultures. Only through a concerted commitment to dismantling prejudices and fostering respect for human rights can we strive for a more just and harmonious world. A concern arises when the silently inculcated and received prejudice becomes dogma. As Paul Watzlawicz (1977, p. xii) says,

<p:quotation>Our everyday, traditional ideas of reality are delusions which we spend substantial parts of our daily lives shoring up, even at the considerable risk of trying to force facts to fit our definition of reality instead of vice versa. And the most dangerous delusion of all is that there is only one reality. What there are, in fact, are many different versions of reality, some of which are contradictory, but all of which are the results of communication and not reflections of eternal, objective truths.</p:quotation>

The Portuguese situation

Countries such as the United States, Germany, Italy, and Poland, among others, represent diverse realities in terms of combating prejudice and defending individual rights, reflecting different moral positions.

The United States is a mosaic of differences, given the broad autonomy of the federal states in defining public policies, without prejudice toward the powers of the federation. The European countries mentioned are part of the European Union, which means they are subject to a common legal framework, but they also have different public policies on sensitive issues (from immigration to gender equality policies, including the protection of fundamental rights and the rule of law) (European Union Agency for Fundamental Rights, 2018). The European Commission (the executive body of the European Union) opened proceedings against Poland for breach of EU law, and Poland was ordered to pay a large fine.⁴ The procedure eventually lost media relevance in view of Poland's crucial support to Ukraine after the Russian invasion of 24 February 2022, but the problem of non-compliance with the rule of law remains.

Portugal also has its peculiarities, and its reality is constituted of differences, both at the political and partisan level as well as at the social level, but it has made remarkable progress. Throughout its recent history, several social causes have led to legislative changes in various fields, with an identifiable orientation.

In comparative terms, Portugal is at the forefront in recognizing individual rights in difficult cases (European Union Agency for Fundamental Rights, 2018). This was not always the case, but the reality has changed.

One example is the social and political struggle for legal recognition of same-sex marriage. Same-sex marriage has been allowed in Portugal since June 2010. Approved by Law No. 9/2010, marriage is now defined as a contract signed between two people intending to start a family. There was an essential change to the definition of marriage in the Civil Code of 1966 (approved during the dictatorship), which required the union to be between two persons of different sexes. However, the duties of marriage remained the same. According to Article 1672 of the Portuguese Civil Code, spouses are reciprocally bound by the duties of respect, fidelity, cohabitation, co-operation, and assistance. Polygamy is still not legally possible.

The legislative amendment guaranteeing access to same-sex civil marriage was approved by the Portuguese parliament on 8 January 2010 with 126 votes in favor, 97 against, and 7 abstentions. After the Constitutional Court verified the constitutionality of some of the law's provisions, the President of the Republic, Aníbal Cavaco Silva, promulgated the law, which entered into force on June 5.

The legislation of 2010 did not allow adoption by homosexual couples. That was changed in December 2015 by a new law passed by parliament. President Aníbal Cavaco Silva vetoed the law, but in February 2016, parliament confirmed it, overriding the presidential veto.

In both cases, parliament was divided, with the laws being passed with the left-wing parties (Socialist Party, Left Bloc, Communist Party, and Ecologist Party ("Os Verdes")) voting in favor and the right-wing parties (Social Democratic Party and

Social Democratic Centre Party) voting against. The largest parties (Socialist Party and Social Democratic Party) gave their MPs freedom to vote, with some of them voting differently from the dominant line in their respective parliamentary groups.

The Social Democratic Party presented an alternative marriage bill, which provided for a civil union under another name, but it was rejected. Portugal then became the eighth country in the world to allow same-sex civil marriage, after the Netherlands, Spain, Belgium, South Africa, Canada, Norway, and Sweden.

This example is paradigmatic because, once the new legislation was approved, it was consolidated in the legal order, given the conviction of the majority support of the population for the changes, as indicated by several opinion polls. While it is true that the change in legislation was preceded by a strong challenge to the law in force at the time, one wonders whether the change in mentalities is either a cause or a consequence of it.

There is no doubt that mentalities have changed in this matter. Thirty years ago, a law student in Portugal learnt that marriage was a civil contract between two persons of different sexes. They also learnt that a possible marriage between two persons of the same sex would not only be legally invalid but non-existent; i.e., a logical impossibility.

This student's experience was not isolated. In all liberal democracies, law students learnt the same thing, because not only national legislators but also most authors had this understanding. Of course, there were already individual positions, both in society and in academia, in favor of recognizing rights for homosexual unions, but they were in the minority.

Something similar happened in 2023 with the approval of the euthanasia law. In fact, Portugal has a legal regime that allows both assisted suicide and euthanasia. After a long process in which the Constitutional Court declared several times the unconstitutionality of rules of successive legal diplomas that were approved, the law was promulgated by the President of the Republic, Marcelo Rebelo de Sousa. Opinion polls suggest that in this matter also most Portuguese are in favor of the new legal regime.

Previous legislative changes, such as regarding abortion, which recognized women's freedom to abort under certain specified conditions or by choice, have generated greater social resistance, so much so that Portugal was one of the last countries in the European Union to implement them.

In 1984, parliament passed legislation allowing abortion in three specific situations: danger of death or serious and irreversible injury to the body or to the physical or mental health of the pregnant woman; serious illness or malformation of the fetus; and rape of the woman.

In 1998, parliament passed legislation allowing abortion by the woman's decision up to 12 weeks of gestation, but the law was rejected in a referendum by a slight difference in votes and a significant abstention. In 2007, Parliament again passed legislation allowing abortion on request up to 10 weeks, regardless of the reasons. Subject to a referendum, the new legislation was passed with approximately 60% in favor (albeit with a low voter turnout, as was the case in 1998).

In 2023, the questions regarding abortion are whether the legislation is fully implemented and whether improvements are needed. There seems to be resistance to its implementation in several regions of the country, either due to lack of means or unwillingness of health professionals.

The country's Catholic culture contributes to this resistance. Also, the fact that there are many doctors and nurses who are conscientious objectors makes it more difficult for women to get timely access to the national health service for abortions.

An important debate has begun about the nature of the right to conscientious objection and whether it should ever give way to the right of every woman to have an abortion freely until the legal deadline.

In 2023, there was no political party that wanted to change the current abortion law, at least to make it more restrictive, which indicates a change of mentality in the Portuguese population. However, the issue of conscientious objection as an individual right (against a potential prejudice) has gained citizenship status.

Reinforcing the idea that the Portuguese population has become more respectful of individual freedom is the fact that other legislation has changed without much social fanfare. This is the case with legislation on surrogate motherhood and gender identity. Still, it is worth noting that, despite the greater fragmentation of the parliamentary vote, there remains a notorious division between left and right, and there is a Europe-wide reorganization of political forces with conservative positions on customs that has implications for Portugal. Although Chega, a new radical right-wing political force with parliamentary representation since 2019, has so far taken a relatively cautious stance on these issues, it will tend to welcome positions like those of its counterpart parties in Europe, several of which are opposed to legal developments such as those just reported.

In this context, it is worth emphasizing the historical position of the Portuguese state in the context of the European integration process. The country has always had a pro-European position, fully complying with the requirements of the European Union, including the guidelines of specialized agencies. The European Union Agency for Fundamental Rights (FRA) has given strong support to the realization of the rights of LGBTIQ+ people within the framework of the implementation of the European Union Charter of Fundamental Rights.

New debates are being announced on topics where prejudice is very present, such as drugs and prostitution. These are subjects on which Portugal has historically been less open than other countries. These issues have been regulated for decades, for example, in the Netherlands. If there are likely to be changes in this area in Portugal, there will be a contentious debate, beyond the division between left and right. The context in which these issues are debated is likely to become more complex as stakeholders in different countries become more connected in the context of a network society.

The future must be thought from the knowledge of the present and the past. Portugal is the second oldest country in Europe, with a long history. In the 15th century, the saga of maritime expansion began and changed the human vision of the world, but also of the country of itself (Fernandes et al., 2022). Successive generations of Portuguese did some extraordinary things and others that, in our eyes in the 21st century, were horrible

mistakes. Slavery is surely one of the most serious mistakes, based on terrible prejudices.

However, always in its history there have been those who have sought to see reality in a fairer and more humane way. Think of authors such as Francisco Suárez, a Spanish theologian and political thinker from the School of Salamanca who lived in Portugal and theorized about the people's rights, or the Jesuit priest António Vieira, who theorized about the need to protect indigenous populations and slaves.

In 1761, Portugal pioneered the abolition of the slave trade in the metropolis by declaring slaves entering Portugal free. It was a first step towards the abolition of slavery. In 1867, Portugal was the first country in the world to abolish the death penalty for common offenses. In 1852, it had already abolished the death penalty for political offenses. Political elites played an important role, but it was a collective endeavor. On 15 July 1867, the French writer Victor Hugo wrote a letter to the Portuguese writer Brito Aranha in which he said: "Since today, Portugal is at the head of Europe. You Portuguese have never ceased to be intrepid navigators. You are always going forward, once in the Ocean, today in the Truth. To proclaim principles is even more beautiful than discovering worlds."⁵

In the search for truth and justice, prejudices are always fought. In the present day, the struggle is fundamentally in the name of human rights, in contexts that are not always easy or obvious, because there are different perspectives on human rights (both on the catalogs of rights and on the content of rights).

Portugal is no exception to the rule, and there has been a long-term evolution, as can be seen from the following examples.

At the beginning of the 20th century, the struggle of Portuguese women for the right to vote became famous and was resisted by so-called progressive governments during the First Portuguese Republic (1910–1926) (Sardica, 2011).

During the dictatorship (1926–1974), various groups and individuals fought for new political, social, and cultural rights. This was the case for working people, but also for women. In fact, the 1933 Constitution (of the Estado Novo) established a broad framework of individual rights but did not respect them. And the inequalities in access to goods were significant.

In the early 1960s, armed struggle began in the Portuguese colonies for political, social, and cultural emancipation. Among the leaders of the national liberation movements were prominent social theorists, such as Amílcar Cabral, leader of the African Party for the Independence of Guinea and Cape Verde (PAIGC), who in 2020 was named the second greatest world leader of all time by the BBC in a list drawn up by historians.⁶ Cabral reflected extensively on the causes of discrimination against black people and, in particular, black women, developing his own thinking about the rights of people in a reinvented social structure.

In 1969, Marcelo Caetano, who had succeeded Salazar as president of the Portuguese government, inaugurating what became known as the "Marcelist Spring" (i.e. a period of hope for the opening of the regime to democracy), sought to be innovative by choosing the first woman to be part of a government in the country. What's more, she

was a black woman from Mozambique, then a Portuguese colony. However, that was not enough. At the time, the poet Sophia de Mello Breyner denounced the iniquity of the Estado Novo for not respecting human dignity. Her poem “The Old Vulture”⁷ (D’Eça, 2019) is famous for portraying the dictator Salazar (the poet does not name him, but readers realized she was referring to him) as a man without kindness. After the democratic revolution of 1974, Sophia (the poet was always known by her first name, which she liked) continued to denounce what she considered to be the political and social damage of not considering the contribution of African literature and culture in Portugal’s development strategy.

Other intellectuals and opponents of the Estado Novo also drew attention to the injustice resulting from the lack of respect for people’s rights. This was the case for the writer Jorge de Sena, who was successively exiled in Brazil and the United States, and who, physically removed from his homeland, wrote particularly harsh texts against the regime, which he considered to be an emasculator of individual freedom.

In a text entitled “O nada que se vive, que se escreve. Jorge de Sena” (“The nothingness that is lived, that is written. Jorge de Sena”), Lopes (2012) wrote about the function of poetry as an instance of denouncing oppression in Sena’s literary work.⁸ According to Lopes,

<p:quotation>Fidelity to the nothingness that is lived will be another name for poetry, the name of listening and addressing others, dying and being reborn without the infamous fear that drives the will to power. Because life is not an end unto itself; the world is vast, it does not exist, but in its always presenting itself through a signature, unfaithful to the instituted by fidelity to the event. This is fidelity to destiny as essential solitude, another life, in which pain, not being consolable, is a connection, because it is only a question of responding to the call of the interlocutor, a call to the impossible attention that aims at nothing, to the word of nothing that is given.</p:quotation>

<p:text>The democratic Constitution of 1976 is a milestone in safeguarding the equality of all before the law. The original version of Article 13 stated that “All citizens have the same social dignity and are equal before the law” (paragraph 1) and that “No one may be favored, benefited, disadvantaged, deprived of any right or exempted from any duty on grounds of descent, sex, race, language, territory of origin, religion, political or ideological convictions, education, economic situation or social condition” (paragraph 2). To paragraph 2 was added, in the 2004 constitutional revision, the reference that no one may suffer prejudice on the basis of their sexual orientation.

At the same time, the Constitution defends individual freedom through a generous catalog of rights. Freedom of individual self-determination and equality before the law have served as a basis for the development of law in complex and socially divisive matters such as abortion, gay marriage, or euthanasia.

Understanding the conditions for the creation of innovative legislation in the Portuguese context is important. In general, law follows reality, and in these matters, the adoption of new – sometimes disruptive – legislation has been subject to lengthy legislative processes, usually with verification of the constitutionality of laws and, in the case of the law regulating abortion, referendums.

Several of the legislative changes concerned rules in the Civil Code and the Penal Code. Some recent reflections emphasize the need for these matters to be approached from a different legal perspective, with less state intervention and dispensing with criminal law as a solution of *ultima ratio*.

Today prejudice is studied by several scientific disciplines – for example, anthropology, bioethics, and law. We have said that law always follows reality, and this is true in the Portuguese case. While there are still relatively few legal texts that address the issue of prejudice, some authors have delved into the subject. Notably, Paulo Ferreira da Cunha's book *Desvendar o Direito. Iniciação ao Saber Jurídico* ("Unravel the Law. Initiation to Legal Knowledge") from 2014 (Cunha, 2014a) and his article "Concept(s) and Prejudice(s). Socio-anthropological Bases for Human Rights Education" (Cunha, 2014b), published in the *Brazilian Journal of Fundamental Rights and Justice*, have contributed to the legal debate on these matters, gaining relevance in the Portuguese-speaking area and crossing perspectives from several countries.

As we have said, legal studies tend to analyze the issue of prejudice from the point of view of discrimination. The use of words is relevant, because the legal fight against discrimination may not eliminate prejudice, which refers to the internal causes (cultural, psychological even) of the judgements people make about each other or the way they relate.

For example, public policies to support older people seek to ensure greater access to essential goods, but do not necessarily provide the care that people need to avoid feeling marginalized. The change of mentalities may only be the acceptance of the difference, without implying an effective commitment to the fate of the neighbor.

It is for this reason that Paulo Ferreira da Cunha emphasizes the need for a change of legal paradigm, from legal positivism to what he calls Fraternal Law. It is about adding to the dimensions of freedom and equality in the legal system the dimension of real interest in the other, seen as close, a neighbor or brother.

According to the author (Cunha, 2014a, p. 195), humanity finds itself "in the crepuscule of a possible paradigm shift, with many new promises, and even already names for currents, movements, enclaves of possible future in the present Law, still based, of course, on much of the past". Reflecting on the contemporary Portuguese reality, the author recognizes that "From the moment, however, that human rights enter the Law, it cannot escape concerns with the essential features of humanity and justice, it can no longer take refuge in purity, purification, or rigor against the cry of those who scream for justice, who hunger and thirst for it".

The challenging acceptance of this new paradigm in academia shows that there is still a long way to go to make society fairer. Interestingly, Cunha, who has been an academic all his life, became a judge of the Portuguese Supreme Court of Justice a few years ago, where he seeks to apply his principles of justice in the complex area of criminal law.

The presence of renowned academics in the superior courts (with the exception of the Constitutional Court) is a novelty in the Portuguese panorama, which suggests a new era of qualified debates on the assumptions and requirements of the rule of law.

<p:a_no indent>Conclusion

Prejudice exists, it is felt by people, it shapes political communities. Historically, many people have fought against prejudice in a spontaneous and organized way with results that are visible, not only in mentalities, but also in legal frameworks. This is a general description of liberal democracies, which applies to Portugal.

We set out to analyze the nature and impact of prejudice in the context of the evolution of contemporary Portuguese society, as well as the solutions that public authorities have found for various problems.

In this chapter, we address the positioning of the Portuguese state and society in relation to various historical prejudices, reaching the conclusion that the country has advanced, and sometimes been at the forefront. This was the case for slavery. Portugal went from a slave-owning state to one that defended the end of the legal regime of appropriation of people by other people. This was also the case in periods of limited democracy (First Republic) and dictatorship (Estado Novo), in which groups and people fought for the establishment of political, economic, social, and cultural rights.

After the revolution of April 25, 1974, it was possible to establish a democratic and pluralist society, confirmed by the 1976 Constitution, which allows for a permanent public debate on difficult issues.

The fight against prejudice in Portugal resulted in a drive for change. We refer to several examples of laws that altered the existing legal regimes, enshrining the pretensions of numerous social movements in various matters. These changes place Portugal at the European and world front for the consecration of new human rights.

We also saw that the study of prejudices is possible since the legal order embraces human rights, and the theme has become current in public opinion. In Portugal, there are no tensions regarding the legislative changes that have occurred, but it is expected that the achievements of rights by individuals may be contested in the future, considering there are different perspectives on the subject in several countries.

It is necessary to see the results of the debate on new topics under discussion, such as the liberalization of prostitution and soft drugs, or even the development of difficult themes, such as acceptance and the rights of migrants and refugees.

In what some see as a promising increase in the possibilities of individual self-determination, others see as a dangerous and growing influence of subjectivism in social relations. This is the context in which the discussion of prejudice will take place in the coming years in Portugal and in the world.

NOTES

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 8. This idea is in line with the poem “Fidelity”, written by Sena on 26 August 1956: “Tell me something slow like this: / what death would say if it listened,/ or what the dead would say if they came back”.