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The Transnational Construction of a Possible Concept of Human Dignity in the United States Supreme Court and the Brazilian Federal Supreme Court through Legal Interactions*

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Abstract

Given the cognizance of collaborative transnational constitutionalism, it is imperative to scrutinize how nations with disparate legal frameworks incorporate human dignity into their constitutional jurisprudence. To apprehend the import of dialogue and judicatory interactions in forging a coherent comprehension of the constituents encompassing the construct of human dignity, this treatise undertakes a jurisprudential examination of the Supreme Courts of Brazil and the United States. Through a scanning of the decisions, it is conceivable to evince that legal interplays and conceptual exchanges pertaining to human dignity amidst constitutional systems unveil a trajectory characterized by influences, interactions, and discourses. The inquiry manifests that, notwithstanding the variances and idiosyncrasies of the analyzed constitutional frameworks, human dignity can be perceived as a conduit for convergence between them. The analysis of the United States Supreme Court's jurisprudence elucidates an evolutionary trajectory of the concept of human dignity, influenced by extrinsic factors, and discerns the potential impact of the German Lüth case in North American jurisprudence. Similarly, the survey of decisions rendered by the Brazilian Federal Supreme Court reveals an imminent influence stemming from United States jurisprudence. This article is warranted by the necessity to analyze how legal interplays and conceptual

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exchanges amidst divergent legal systems can shape a collective apprehension of momentous global concepts, such is the human dignity case.

Keywords

Transnational Constitutionalism, Human Dignity, United States Supreme Court's, Brazilian Federal Supreme Court, Jurisprudential Examination

1. Introduction

Human dignity constitutes a fundamental notion within philosophy, law, and politics, encapsulating the intrinsic and unalienable worth ascribed to every human being. While its roots can be traced back to classical times, it was only in the aftermath of World War II that human dignity attained prominence as a universally recognized legal principle, permeating constitutions on a global scale. Notably, this acknowledgment process did not occur in isolation; rather, it was intricately intertwined with a historical and political milieu characterized by collaborative endeavors and transnational perspectives.

The understanding that constitutions and legal systems operate within a transnational and collaborative framework, and are subject to transnational influences, constitutes a fundamental premise for comprehending the incorporation of human dignity in different countries. In this context, it is important to highlight that the incorporation of human dignity into German jurisprudence played a crucial role in shaping this possible concept on a global scale.

The Lüth case, judged in 1958, was a landmark in German jurisprudence and had a significant global impact on the understanding of the value of human dignity in safeguarding fundamental rights. Despite the doctrine not directly addressing the influence of German jurisprudence on the United States, it is undeniable that this transnational interaction contributed to the construction of this concept in the country.

From these perspectives, this article aims to examine the influence of transnational constitutionalism—specifically regarding the contribution and impact of international jurisprudence—on the development of a possible concept of human dignity in the Supreme Court of the United States and the Brazilian Supreme Federal Court. Ultimately, the objective is to assess whether human dignity can be viewed as a convergence point among different legal systems.

For the purpose of providing a more comprehensive contextualization of the subject, it is important to emphasize that, on one hand, the legal system in the United States is rooted in Common Law, referring to a body of laws developed from previous judicial decisions (precedents), in addition to statutes and regulations. Furthermore, the country operates under a federal structure, with legislative powers divided between the federal and state levels. The United States Constitution holds a hierarchically superior status over other norms of the nation and it delineates the powers and limits of the federal government.

On the other hand, the legal system in Brazil is founded on Civil Law, which is based on written and codified laws. The country employs a unified justice system, where the Federal Constitution serves as the supreme norm, and all other laws must align with it. Similarly, Brazil also features a federal and state justice system, with courts exercising jurisdiction over various types of cases.

Understanding these distinctions is essential for a thorough analysis of the influence of transnational constitutionalism in shaping the concept of human dignity within the Supreme Courts of the United States and Brazil.

It is imperative to underscore that the incorporation of the term "human dignity" as a central concept within the realm of human rights, as enshrined in the Charter of the United Nations of 1945 (UN, 1945) and the Universal Declaration of Human Rights of 1948 (UDHR, 1948), represents the culmination of a multifaceted historical process. The trajectory of this conceptual formation reveals a succession of seminal landmarks that have profoundly influenced the comprehension of dignity, both in philosophical and political spheres within the Western paradigm.

By exploring the transnational construction of human dignity in the jurisprudence of the US Supreme Court and the Brazilian Federal Supreme Court, this article aims to contribute to a better understanding of the evolution of this concept in their respective contexts.

2. Human Dignity: The Historical Retrieval of a Collaborative Transnational Construction

It is indeed possible to approach the topic of human dignity from a collaborative perspective grounded in a transnational historical framework which reveals several foundational notions that have shaped the development of the values comprising this concept. Firstly, of particular significance is the recognition of a universal human value within the Jewish, Christian, and Islamic religions. However, it is worth noting that these values do not always correspond to the usage of the term "dignitas" in ancient Rome, which carried a social connotation and organicist implications which are frequently depicted in Latin literature (Dal Ri, 2014).

Furthermore, the concept of dignity was originally associated with the political and social position held by individuals in estate-based societies. It is important to highlight that institutions were also qualified based on their supremacy, such as the crown, sovereign, and state. These entities enjoyed a general privilege of honor, respect, and deference (Barroso, 2012).

Throughout history, the concept of human dignity has evolved within the Latin context, with a particular focus on rationality as a defining aspect. Marcus Tullius Cicero's contribution to Stoic philosophy is noteworthy in this regard, as he played a crucial role in reevaluating the usage of the term within Latin discourse (Barak, 2015). Consequently, rationality came to occupy a central position in the understanding of human dignity, surpassing earlier notions (Barak, 2015; Sarlet, 2015).

Furthermore, philosophers adopted a series of criteria to incorporate different conceptions of the term, including the influence of other philosophical movements and the Renaissance appeal exemplified by Pico della Mirandola (1463-1494), the theory of natural law developed by Francisco de Vitoria (Anghie, 1996; Parente & Rebouças, 2015), and finally, the proposition of Kantian ideals based on the premises of rationality and autonomy (Kant, 1980) and Hegelian ideals, with an emphasis on the elements of ethicality and social recognition (Hegel, 2003), (as a possible inheritance from Greek stoicism).

Political philosophy contributed directly to the popularization of the term "human dignity" since the notions brought by the concept were closely linked to the growth of republicanism. During the French Revolution, the "dignities" (which were granted only to the nobility, in terms of the meaning of the term that was intended to justify aristocratic privileges) were extended to all citizens, through the Declaration of the Rights of Man and of the Citizen (France, 1848; McCrudden, 2008).

While the philosophical discourse of the time incorporated central ideas about human dignity, it was not without its critics. In 1837, Schopenhauer (2005) offered negative remarks regarding Kant's theory, contending that the expression masked a lack of a philosophically and ethically meaningful foundation. Karl Marx asserted that human dignity was the "refuge of history in morality" (Marx, 1847), Lastly, Nietzsche argued that the dignity of man, associated with work, perpetuated a sense of a hierarchical society within the masses (Ansell-Pearson, & Nietzche, 1994).

It's noteworthy that although the concept of human dignity underwent extensive philosophical discussions in the 18th century, its incorporation within the legal discourse was still in its infancy, with the constituent ideas of the concept taking their initial steps.

3. The First Appearances of the Term "Dignity" in the Supreme Court of the United States

Human dignity is not explicitly mentioned in the United States constitutional text. However, the term is not unfamiliar to its constitutional framework. The Supreme Court, through its rulings, recognizes the inherent value and significance of dignity by incorporating it into its opinions and votes.

Nevertheless, similar to the legal discourse, there has been a redefinition and expansion of the term's usage over time. The early references to "dignity" in the Supreme Court conferred immunity and status (which still holds true today) to the State, the federal constitution, the American flag, legal processes and procedures, the government itself, and its institutions. In this regard, the term "dignity" was first utilized by the Supreme Court during the Chisholm (Chisholm v. Geórgia, 1793).

In this precedent, the Court ruled that the constitutional clause established in Article III, which allowed legal actions between a state and an individual from

another state (in the state sphere), could also be applied, by analogy, to allow citizens to sue those same states. In the court's decision, the word "dignity" was mentioned multiple times, with Judge Wilson's opinion being notable for arguing that one of the factors that makes the State superior to the people is precisely the fact that the institution is endowed with dignity.

Throughout the 18th and 19th centuries, the precedent set by the Chisholm case continued to be followed. The U.S. Supreme Court maintained the understanding of "dignity" in relation to entities. It could refer to a comparative sense that the federal government is more important than, for example, the states or carry a protective connotation, as seen with the dignity of things, which tends to immunize them from certain invasions. According to this premise, an institution with dignity cannot be degraded or violated, for instance.

In this sense, dignity was attributed to laws (Marshall v. Gordon, 1917), Congress (Anderson v. Dunn, 1821; Kilbourn v. Thompson, 1881), the presidency (Kentucky v. Dennison, 1861; Nixon v. Warner Communications, 1978), to the government (Ex Parte Virginia, 1880; Adair v. United States, 1908), the American flag (Texas v. Johnson, 1989), American citizenship (Plessy v. Ferguson, 1896; Marchie Tiger v. Western Investment Co., 1911; Buchanan v. Warley, 1917), and even the country itself (United States v. Hosmer, 1869).

Through the decisions of the Supreme Court, it is possible to observe that the word "dignity" was frequently used to bestow importance and significance upon these entities.

4. Dignity Applied to Humans: From the Abolition of Slavery to the Purposes of the State

It can be observed that despite the term "dignity" being present in the legal discourse of the Supreme Court in terms of hierarchy and honorability of things, the use of the term "dignity" in the legal context applied to human beings or their nature emerged only decades later, closely related to a communal value (McCrudden, 2008), serving as the foundation for social and political movements.

Not by coincidence, the first usage of the term "human dignity" (dignité humaine) in a legal document is found in a French infra-constitutional norm dated 1848, which declares the abolition of slavery in all French colonies, considering slavery to be an attack on human dignity[1].

The use of the term "human dignity" further emerges in 1851 in the writings of John Adams, the second President of the United States, through the expression "dignity of human nature," when discussing the purposes of the State:

> We ought to consider what is the end of government, before we determine which is the best form. Upon this point all speculative politicians will agree,

[1]In this sense: "The provisional government, considering that slavery is an attack on human dignity […]". France. Décret du 27 avril 1848 relatif à l'abolition de l'esclavage dans les colonies et possessions françaises.

> that the happiness of society is the end of government, as all divines and moral philosophers will agree that the happiness of the individual is the end of man. From this principle it will follow, that the form of government which communicates ease, comfort, security, or, in one word, happiness, to the greatest number of persons, and in the greatest degree, is the best. All sober inquirers after truth, ancient and modern, pagan and Christian, have declared that the happiness of man, as well as his dignity, consists in virtue. Confucius, Zoroaster, Socrates, Mahomet, not to mention authorities really sacred, have agreed in this. If there is a form of government, then, whose principle and foundation is virtue, will not every sober man acknowledge it better calculated to promote the general happiness than any other form? (Adams, 1851)

The new connotation of the term's usage by John Adams aligns with the Kantian ideal and the first use of the term "human dignity" (dignité humaine) in the French law a few years prior.

Following its inclusion in the French legislative context and the American political discourse in 1848 and 1851, there is a temporal gap of almost 50 years where the term ceased to be prominently featured in global legal and political discussions, only reemerging in Germany in 1919 with the Weimar Constitution.

5. Human Dignity in the Global Constitutionalism

Attribute to the Mexican Constitution of 1917 (which is still in force) as the first mention of human dignity in a constitution, it is noteworthy that the term is completely absent from its original text. However, it is observed that the expression "dignity of the person" was only included in 1946, through amendment 30/XII/1946, to Article 3, which addresses the education provided by the State (Brandalise & Dal Ri, 2022):

> It will contribute to a better human coexistence, both for the elements that contribute to strengthening the student, together with the appreciation of the dignity of the person and the integrity of the family, the conviction of the general interest of society, as well as for the care it takes to uphold the ideals of fraternity and equal rights for all men, avoiding the privileges of races, sects, groups, sexes or individuals. (Mexico, 1917)[2]

Thus, it was only in 1919, with the Weimar Constitution in Germany, that the concern for human dignity, expressed through the concept of a "dignified life," found a home in its first constitution. As one of the earliest constitutions worldwide to include a list of specific social, economic, and cultural rights, it was also

[2]In this sense: The Mexican Constitution of 1917 did not include references to human dignity, but in 1946 a constitutional amendment was made to add this reference, after the UN Charter of 1945. Article 3 of the amendment of December 19, 1978, article 123, returns if to the context of social right: "Everyone has the right to decent and socially useful work; for this purpose, job creation and the social organization of work will be promoted, under the terms of the Law" (Mexico, 1917).

the first to enshrine the term "dignified life" in its fundamental law. In its original text, the framers identified a "dignified life" as the objective of the State's economic organization (Germany, 1919)[3].

In a potential transconstitutional influence, it is evident that several countries followed the German path. The 1934 Federal Constitution of Brazil was one such example, which closely resembled the German context in its text (Dal Ri, 2016). It stated that "the economic order must be organized according to the principles of justice and the needs of national life, in a way that enables a dignified existence" (Brazil 1934).

Therefore, it is evident that in the early 20th century, all European (and American) countries had abolished slavery, paving the way for a redefinition of the concept of "dignity" in the human sphere, going beyond freedom and reflecting the idea of material living conditions. This redefinition incorporated the importance of socio-economic conditions for human dignity, including access to consumer goods, labor standards, and basic sustenance. Thus, the concept of dignity came to encompass not only individual aspects but also a communal dimension related to social justice and ensuring a dignified existence for all[4].

In the historical sequence of the acts that followed the construction of the possible concept of human dignity, the doctrine mostly understands[5] at the time it was included in the texts of the Charter of the United Nations in June 1945 UN, 1945), in the Universal Declaration of Human Rights of UN (UDHR, 1948; and in the American Declaration of the Rights and Duties of Man (Organization of American States, 1948), influenced globally a movement to elevate the notions that comprise the value-laden concept of human dignity.

However, this paper puts forth a unique transnational collaborative perspective for the United States case, which will be explored further in the subsequent

[3]See: "The economy must be organized based on the principles of justice, with the aim of achieving life with dignity for all. Within these limits, the economic freedom of the individual must be secured." (Germany, 1919).

[4]However, it is important to emphasize that the term "dignity of the human person" was initially present (and ironically) in documents of periods of restriction of rights (in this sense Barroso, 2012 provides), as can be seen in the draft of the Constitution by Marechal Pétain (France, 1944) and in the Constitution by Francisco Franco (Spain, July 1945): España, 1945. Fuero de los españoles, 1945. "Artículo primero. El Estado español proclama como principio rector de sus actos el respeto a la dignidad, la integridad y la libertad de la persona humana, reconociendo al hombre, en cuanto portador de valores eternos y miembro de una comunidad nacional, titular de deberes y derechos, cuyo ejercicio garantiza en orden al bien común. Artículo veintitrés. Los padres están obligados a alimentar, educar e instruir a sus hijos. El Estado suspenderá el ejercicio de la patria potestad o privará de ella a los que no la ejerzan dignamente, y transferirá la guarda y educación de los menores a quienes por Ley corresponda. Artículo veinticinco. El trabajo, por su condición esencialmente humana, no puede ser relegado al concepto material de mercancía, ni ser objeto de transacción alguna incompatible con la dignidad personal del que lo presta. Constituye por sí atributo de honor y título suficiente para exigir tutela y asistencia del Estado. Artículo veintisiete. Todos los trabajadores serán amparados por el Estado en su derecho a una retribución justa y suficiente, cuando menos, para proporcionar a ellos y a sus familias el bienestar que les permita vida moral y digna." Available on: http://www.e-torredebabel.com/leyes/constituciones/fuero-espanoles-1945.htm. Acess on: 08 apr. 2023.

[5]In this sense: Barroso, 2012; Barak, 2015; Sarlet, 2015.

sections.

6. The Concept of Human Dignity in the Rulings of the United States Supreme Court: An Individual Perspective

As the prominence of human dignity in global constitutionalism increased during the early 20th century, the Supreme Court of the United States started considering dignity from an individual perspective in its judicial decisions, thereby aligning with the French legal perspective and the political milieu of 19th-century America[6]. In this regard, the case of Glasser v. United States (1942) marked the first instance in which the Supreme Court truly addressed this new axiological dimension of human dignity.

Of significant importance, in that same year, Justice Jackson mentioned the word "dignity" in his opinion in the case of Skinner v. State of Oklahoma (1942), an important case involving forced sterilization laws on prisoners. Justice Jackson asserted in his dissenting opinion that there are limits to what a majority can impose and that biological experiments on a minority violate their dignity and personality. The outcome of the Skinner v. Oklahoma case was the invalidation of the forced sterilization law, with the Supreme Court reaffirming the significance of human dignity as an inherent attribute of the human condition and a fundamental principle to be protected by the State.

The vote delivered by Justice Robert H. Jackson in the mentioned case marked a decisive milestone in the development of a possible concept of human dignity within the scope of the United States Supreme Court. Three points deserve emphasis regarding his vote: firstly, it was the first time that human dignity was mentioned in a Supreme Court argument as an inherent attribute of the human condition, alluding to individuals as a consequence inherent to their most primary nature, and no longer linked to nobility or prominent positions in society, clearly influenced by the thinking of the German philosopher Kant. Secondly, the judge recognized the interference of external factors on human dignity, and lastly, the arguments woven about the role of the Federal Constitution regarding the duty to protect citizens against threats to their dignity. These premises ended up significantly influencing the Supreme Court's understanding of the subject in subsequent cases (Daly, 2013).

It is important to emphasize that, according to the doctrine (Goodman, 2006; Daly, 2013; Barak, 2015), Judge Frank Murphy was the Supreme Court justice who had the most elaborate theory on human dignity and its constitutional implications, even though most of his votes were written in dissent.

In Korematsu v. United States (1944), Justice Murphy, in a dissenting vote, disagreed with the majority on the decision imputing the applicant's internment in a concentration camp (judgment which, consequently, ended up reaffirming

[6]These first cases, however, were related to the dignity of sovereigns and people from social classes with greater purchasing power. In this sense, emphasis is given to the judgments of the cases: *Florida Bar v. Went For It, Inc.*, 1995 (Kennedy J. dissenting) and *Zauderer v. Office of Disciplinary Counsel of Supreme Court*, 1985 that considered the dignity of lawyers and legal professionals.

the legality of the internment of more than one hundred thousand people), because of his Japanese ancestry. In his vote, Murphy argued that condemning someone for their nationality was a cruel form of degradation of human dignity and paved the way for discrimination against other minorities.

Soon after, in a clear influence of the language of the preamble of the Charter of the United Nations, Murphy incorporated the speech in a series of votes. In his dissenting opinion in re Yamashita, the justice wrote:

> The immutable rights of the individual, including those secured by the due process clause of the Fifth Amendment, belong not alone to the members of those nations that excel on the battlefield or that subscribe to the democratic ideology. They belong to every person in the world, victor or vanquished, whatever may be his race, color or beliefs. They rise above any status of belligerency or outlawry. They survive any popular passion or frenzy of the moment. No court or legislature or executive, not even the mightiest army in the world, can ever destroy them. Such is the universal and indestructible nature of the rights which the due process clause of the Fifth Amendment recognizes and protects when life or liberty is threatened by virtue of the authority of the United States.
>
> [...] If we are ever to develop an orderly international community based upon a recognition of human dignity it is of the utmost importance that the necessary punishment of those guilty of atrocities be as free as possible from the ugly stigma of revenge and vindictiveness (re Yamashita, 1946).

In his vote, Justice Murphy encouraged countries advocating for the rule of law to meet the minimum requirements of human dignity, summarizing the principles of the United Nations Charter. He emphasized that this should be done regardless of political pressures, considering the premise that the recognition of human dignity was not only a moral mandate but also a political imperative. This recognition was crucial for the world to move away from the barbarism of war and for the United States to lead by example in the new world order (Daly, 2013).

In the years that followed, the votes delivered by Justice Murphy that referenced human dignity were followed by other justices, albeit mostly in dissenting opinions.

7. The Shift in the Stance of the Supreme Court of the United States: The Influence of the Luth's Case

It was not until 1966 that the constitutional significance of such behaviors started to be considered, following an incident of particularly brutal police conduct in the state of Arizona that shocked the population at the time (Daly, 2013).

The case is the landmark Miranda v. Arizona (1966), which is considered a pivotal moment regarding the admissibility of confessions obtained during police interrogations in criminal trials. The majority ruling, delivered by Chief Justice Earl Warren, was primarily influenced by the shifting public opinion on the

human dignity of the accused. The Court determined that the privilege against self-incrimination would be compromised whenever an individual was interrogated while in custody, as the interrogation environment exerted undue pressure and undermined the individual's dignity. This perspective was held even in the absence of physical intimidation, as highlighted by Justice Warren: "This atmosphere carries its own badge of intimidation. To be sure, this is not physical intimidation, but it is equally destructive of human dignity." (Miranda v. Arizona, 1966).

Regarding the timeline surrounding the development of a possible concept of human dignity in the U.S. Supreme Court, two factors stand out. First, there is a clear influence observed from the United Nations Charter on Justice Murphy's votes. Second, up until the year 1966, there was no landmark case specifically addressing human dignity in the Supreme Court.

Indeed, it is important to highlight that on the international stage, the first significant case on human dignity had recently gained worldwide attention: the Lüth Case (BVerfGE, 1958) decided by the German Federal Constitutional Court in 1958. This case dealt with freedom of expression and the protection of human dignity. The Lüth Case is considered a historical landmark case in German jurisprudence and had a significant impact on the protection of fundamental rights in Germany and other countries. The court's decision in the Lüth Case introduced important advancements regarding human dignity.

Although there is not much study on the influence of German constitutionalism on US constitutionalism, it should not be seen as mere coincidence that the concept of human dignity appeared predominantly in dissenting opinions throughout the 1950s. It is noteworthy that it was only in 1966, exactly eight years after the German case gained worldwide prominence, that the term "human dignity" was cited as an argument in a landmark case of the United States Supreme Court. This timing suggests a potential influence and cross-pollination of ideas between legal systems, even if indirect or subconscious, regarding the significance of human dignity in constitutional jurisprudence.

8. The Dignity in the Brazilian Judgments of the Federal Supreme Court

In Brazil, human dignity within the realm of law is configured as a foundational and fundamental principle of constitutional norms, being enshrined in its Article 154[7]. The hermeneutical and interpretative role of human dignity has the primary objective of maintaining unity of meaning, value, and consistency in the juridical-constitutional praxis within the legal system of the country. Human dignity serves as the guiding principle for the interpretation of fundamental

[7]Article 1, Section III, of the Federative Republic of Brazil, comprised of the indissoluble union of States, Municipalities, and the Federal District, establishes itself as a Democratic State of Law and has as its fundamental principles: 1) sovereignty; 2) citizenship; 3) dignity of the human person; (emphasis added); 4) social values of labor and free enterprise; 5) political pluralism. (Federal Constitution of Brazil).

rights, ensuring the protection and promotion of these rights in accordance with the dignity of each individual (Brandalise, 2021).

Regarding both public and private governmental spheres, human dignity is understood as both a limit and a task. In other words, it represents a fundamental value to be observed in the actions of public powers and private institutions, ensuring that their actions and decisions are aligned with the preservation of individual and collective dignity of citizens. Furthermore, human dignity is considered a principle applicable to both the fundamental rights expressly enumerated in the Constitution and to unenumerated rights (those arising from the inherent dignity of the human person and which must be protected and respected by the legal system) (Brandalise, 2021).

In a similar fashion to the United States Supreme Court, the first known case in which the term "dignity" was mentioned in the Brazilian Federal Supreme Court dates back to 1941[8] and furthermore, it also addresses the dignity of things, specifically the dignity of the courts (RE 4670, Brazilian Supreme Court).

The Extraordinary Appeal 4670 from Paraiba addresses the case of a farmer who was considered absent from a hearing due to the simplicity of his attire, which was deemed inappropriate for the judicial proceeding. Reversing the decision of the lower court, the Supreme Court understood that in this case: "The clothing worn by the jurors during the sessions should be deemed consistent with the dignity of the people's court, as long as it does not offend public morals and does not display blatant signs of disarray and untidiness". (RE 4670, Brazilian Supreme Court)

In 1945, continuing the practice of attributing dignity not only to procedures but also to the courts, Justice Philadelpho Azevedo, on behalf of the Supreme Court, ruled on a jurisdictional conflict mentioning the term: "The military justice has jurisdiction over offenses against the administrative order of the army, involving military dignity." (CJ 1535, Brazilian Supreme Court)

Soon after, the Supreme Court reiterates the term to address the dignity of justice in the Appeal by Instrument 14.683, decided in 1951: "Fine to a lawyer: courtesy and good manners are implicit in the law regarding the treatment that judges, lawyers, members of the Public Prosecutor's Office, and litigants should mutually provide for the greater dignity of Justice." (AI 14,683, Brazilian Supreme Court) Similarly, in 1966, when the impartiality of a jury raised concerns, leading to a change of venue for the trial, the term was once again linked to the legal proceedings and the competence of the jurors:

> The mere assertion of doubt regarding the impartiality of the jury is not sufficient grounds to transfer a trial from one district to another. [...] Both the Prosecutor who requested the change of venue and the judge emphasize the competence and dignity of the jury in Barbacena, without any reserva-

[8]In this sense, it is important to emphasize that the jurisprudential research available in the Brazilian Federal Supreme Court considers the search for the term in the entire content of the document only from the year 2012. Before that, the research is carried out in the judgment of the decisions.

> tions. Now, if we are dealing with a competent and dignified jury panel, […]. (HC 43,196, Brazilian Supreme Court)

It is important to contextualize that in 1946, the newly promulgated Federal Constitution listed the guarantee of work as a social instrument that enabled a "dignified existence"[9]. In this regard, it can be observed that such notions align with a line of thought close to the post-Enlightenment current that embraced the view of human dignity from a communal perspective (thus maintaining the same stance adopted by the 1934 Federal Constitution). In this perspective, the judicial decisions of the Supreme Federal Court also absorbed these conceptions in their rulings, as was the case with the Extraordinary Appeal 16,553 from the Federal District in 1950. Although the court addresses the individual dignity of the employer, it is possible to perceive that it is placed within a work context: "An employee who publicizes an offense committed against the reputation, dignity, or decorum of the employer in court is committing an act of insubordination." (RE 16,553, Brazilian Supreme Court)

In 1954, in the Extraordinary Appeal 24,391, and in 1963, in the Extraordinary Appeal 52,700, respectively, the Supreme Federal Court continued addressing dignity from an individual perspective, this time within the marital relationship. Firstly, by stating that requesting the interdiction of a spouse does not constitute the crime of defamation, as long as there is no bad faith or intention to offend the dignity of the other party[10]. Furthermore, it is possible to observe, for the first time, the influence of a Kantian perspective; and subsequently, in another decision that stated: "the husband has the duty to maintain the wife in dignity, naturally, according to his resources and her needs." (RE 52,700, Brazilian Supreme Court) However, it should be noted that intrinsic meanings are attributed differently in each of the cases: if in the first decision, there was an approximation with the Kantian maxim for human dignity, in the latter it is clear the use of the term in a sense closer to that of the economic order, referring to *social status*.

It is important to emphasize that the Brazilian penal code promulgated in 1940, brought in its article 140[11], the crime of injury, which deals with the term "dignity" directly related to the personality and the intrinsic value of the being, in a possible influence of the Kantian thought, and in this sense, some decisions of the Brazilian Federal Supreme Court, as well as Extraordinary Appeal 24,391, continued to treat the term in the same way (RHC 58,953, Brazilian Supreme Court; HC 59,449, Brazilian Supreme Court).

The tendency to deal with the term dignity correlated with honor remained in

[9]In this sense: "The economic order must be organized according to the principles of social justice, reconciling the freedom of initiative with the valorization of human labor. Sole paragraph - Everyone is guaranteed work that enables a dignified existence. Work is a social obligation. (Brazil, 1946)

[10]In this sense: The decision challenged by the extraordinary appeal did not contravene the provisions of the Civil Code, Article 317, III, nor did it diverge from the interpretation of another court that holds that requesting the interdiction of a spouse without malice or intent to offend dignity does not constitute an offense. (RE 24391, Brazilian Supreme Court)

[11]See Brazilian penal code: "Art. 140 – Offending someone, offending their dignity or decorum: Penalty – detention, from one to six months, or a fine." (own tradition). In: Brazil, 1940.

the Brazilian Federal Supreme Court until 1992, 4 years after it was elevated as one of the foundations of the democratic State of Law, listed in the first article, item III in the Brazilian Federal Constitution (Brazil Constitution, 1988), when it acquired a broader meaning and aimed at the protection of human rights.

In this context, we observe the decision of Habeas Corpus 69,303 judged in 1992, dealing with the custody of 3 minors, in which the Federal Supreme Court ruled:

> The 1988 Charter imposes on the family, society and the State the duty to ensure, with priority, the child and adolescent, the right to life, health, food, education, leisure, professionalization, culture, dignity, respect, freedom and family and community life, and to protect them from all forms of negligence, discrimination, exploitation, violence, cruelty and oppression. (HC 69,303, Brazilian Supreme Court)

And soon after, the judgment of Habeas Corpus 70,389 dealt with the criminalization of torture practiced against children and adolescents, judged in 1994, and mentioned human dignity in the same sense. The decision is the first landmark case on the "dignity of the human person" in the Brazilian Federal Supreme Court when two military police officers were accused of assaulting a young man in order to obtain a confession and that court should decide whether the defendants would be tried by the Common Justice or by the competence of the Military Justice.

In this regard, the court decided:

> The simple normative reference to torture, contained in the typical description embodied in art. 233 of the Statute of Children and Adolescents, externalizes a conceptual universe impregnated with notions with which people's common sense and sense of decency identify the demeaning behaviors that translate, in the concreteness of their practice, the ominous gesture of offense to the dignity of the person human. Torture constitutes the arbitrary denial of human rights, as it reflects—as an illegitimate, immoral and abusive practice—an unacceptable test of state action tending to asphyxiate and even suppress the dignity, autonomy and freedom with which the individual was endowed, in an unavailable way, by the positive order. (HC 70,389, Brazilian Supreme Court)

Indeed, the decisions of the Supreme Federal Court in the cases of Habeas Corpus 69,303 and 70,389, which addressed human dignity in contexts related to the protection of children and adolescents and the criminalization of torture, represented an important milestone for Brazilian constitutionalism. The term "dignity" underwent a change in its evaluative weight, and its position in the jurisprudence of the Supreme Court was reallocated, increasingly aligning with fundamental rights, a position it still holds today.

Punctually, it is important to highlight that human dignity results from a dual process: beyond international influence in jurisprudence, the potential concept

also emerges from a process of national legal construction within a constitutional framework that sought inspiration from foreign constitutions (Brandalise & Dal Ri, 2022).

Before the 1988 Constitution, a significant milestone in which human dignity was elevated to a foundational principle of the republic, noteworthy events endorsed its significance: the incorporation of the term in the Weimar Constitution in 1919 (Germany, 1919), and subsequently its echoes in the Brazilian Federal Constitution of 1934; the publication of the United Nations Charter in 1945, which emphasized human dignity as a central element, leading to the use of the term "dignified existence" in the Brazilian constitution of 1946. Moreover, the Universal Declaration of Human Rights in 1948 recognized human dignity as a universal notion, and later the term "human dignity" was ultimately enshrined in the 1967 Federal Constitution.

From this synthesis, it is possible to comprehend that human dignity in the Brazilian legal system cannot be solely understood as a direct outcome of a transnational process, but rather as the outcome of a historical and constitutional process that sought references both from foreign constitutions and the national legal tradition (Brandalise & Dal Ri, 2022).

9. Is It Possible to Consider Human Dignity as a Channel of Convergence?

The transnationalization of law encounters obstacles in American constitutional exceptionalism. However, Tushnet discusses the process of "globalizing domestic constitutional law" as an inevitable gradual development, suggesting that the tradition of American exceptionalism will weaken over time (not necessarily abruptly, but gradually abandoning the authoritarianism imposed by constitutionalism and the rule of law). The author does not specifically address constitutional transnationality in a theoretical sense but rather observes the existence of a process of convergence among national constitutional systems—both in their structures and in the rhetoric regarding the protection of fundamental rights (Tushnet, 2008).

The transnational influence is a central feature of references to global convergence, where there is a model of international migration of fundamental rights that involves an intermediate stage of transfer: constitutional concepts are transferred from a specific local context to a global center, and only after this transnationalization process will the idea be adopted in its new location (Frankenberg, 2010). This convergence can occur at different levels of abstraction, such as the declaration of constitutional principles at high or intermediate levels, or in very specific details as is the case here with human dignity.

The classical model of judicial interactions (Neves, 2009), assumes that there is an explicit citation of the precedent being referenced. However, the present study aims to highlight the existence of a possible construction of the concept of human dignity in the U.S. Supreme Court within a context more closely related to the theory of cross-fertilization (Slaughter, 2000), a collaborative global

movement among judges that seeks to foster not only a global community but also the existence of a global jurisprudence that serves as an influence (though not necessarily binding) in judgments and cases on the subject.

According to such notions, there is Top-Down Processes of the Globalization of Constitutional Law from Tushnet (2008) which addresses the trend of convergence of different nations in relation to judicial decisions, institutional structures and human rights, a space in which it is also necessary to place the human dignity. One of the main means of convergence is through the formation of networks of judges from constitutional courts of different countries, who gather in conferences and collaborate in transnational organizations.

These processes of convergence, including convergence around the concept of human dignity, demonstrate a movement towards a shared understanding of fundamental rights. As exchanges of ideas and practices between constitutional systems take place, opportunities for cross-fertilization of concepts and collaborative construction of global jurisprudence arise.

However, it is important to recognize that convergence does not imply absolute uniformity. Each constitutional system has its own peculiarities and cultural contexts, which influence how human dignity is understood and applied. Convergence doesn't seek to eliminate these differences but rather to find points of dialogue between diverse approaches, without diminishing the sovereignty or identity of a constitutional system.

In this way, the human dignity can be seen as a channel of convergence, a shared principle that unites different constitutional systems around the protection of fundamental rights. Through transnational interactions in constitutional matters, countries can contribute to the construction of global jurisprudence that promotes human dignity as a universal value.

10. Conclusion

The analysis carried out on the transnational construction of a possible concept of human dignity in the jurisprudence of the United States Supreme Court and the Brazilian Federal Supreme Court through legal interactions reveals a trajectory marked by influences, dialogues and convergences.

Initially, the history of this collaborative transnational construction of human dignity was rescued, which dates back to the classical period, but gained prominence as a universal legal principle after the Second World War. With regard to the elevation of the core of human dignity as a legal concept, two factors may have been relevant to this process: first, the period of recognition of the rights of the people due to their essence of individuality, (which marked in history a paradigm shift regarding the generalization of fundamental rights); and second, the codification of law itself with the institutionalization of the legal positivism movement.

An egalitarian social vision that sought to equate the prevailing hierarchies in society at the time, together with the notions of the universality of rights and duties of the people, led in history, the movement to abrogate status privileges and

the establishment of legal models of coexistence valid for all citizens at that time, in a tendency to incorporate human rights into the legal systems of national states.

Throughout the 20th century, the dignity of the human person underwent a redefinition of its axiological significance, due to a process of rationalization and secularization, becoming not just an echo of social movements but also a political and state objective. As a result, the process of constitutionalization of the term began, with various constitutions around the globe initially including the expression "dignified life" in their texts. This historical revival has allowed us to understand the importance of a collaborative and transnational context in the enshrinement of this concept in numerous constitutions worldwide.

In the context of global constitutionalism, the incorporation of human dignity has been identified as a fundamental principle in constitutions across the world, reflecting transnational influence and the pursuit of a shared understanding of fundamental rights.

The analysis of Supreme Court cases in the United States initially revealed a perspective of human dignity related to things or property. However, over the years, with the influence of external factors, the term has been redefined to encompass a more individual perspective of protecting citizens against threats to their physical and moral integrity. When examining the trajectory of the term "dignity" in the Supreme Court of the United States, a possible influence from the German case Luth was identified, highlighting transnational interaction and cross-fertilization of concepts between legal systems.

Similarly, when analyzing the use of the term "dignity" in the rulings of the Brazilian Supreme Federal Court (Supremo Tribunal Federal), it was initially observed—prior to the promulgation of the Brazilian Federal Constitution of 1988—that the jurisprudence of the United States had a strong influence on the Brazilian jurisprudence, particularly regarding the attribution of dignity to material things.

In conclusion, the question of whether human dignity can be considered as a channel of convergence was examined. The analysis demonstrated that, despite the differences and particularities of each constitutional system, human dignity can be seen as a shared principle—in terms of legal interactions and jurisprudential matters—that unites different legal systems in the protection of fundamental rights. Through transnational interactions and the exchange of ideas and practices among constitutional systems, there is an opportunity for the collaborative construction of a shared understanding in global jurisprudence that promotes human dignity as a universal value.

It is important to emphasize that convergence does not aim to eliminate differences and cultural contexts, but rather seeks to find points of dialogue between different approaches. In this sense, human dignity serves as a link between constitutional systems, strengthening the protection of fundamental rights in the era of transnational constitutionalism.

Thus, the transnational construction of a possible concept of human dignity

in the jurisprudence of the United States Supreme Court and the Brazilian Supreme Federal Court through legal interactions has demonstrated a historical sharing of jurisprudential concepts regarding the topic of human dignity. This reinforces the importance of a collaborative and dialogic approach between constitutional systems.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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