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A (universal) culture of human rights?

The power of visual arts and the aesthetic of law, applied to the '*25 de Abril*' Portuguese democratic revolution

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‘*It is a fact too often forgotten – that law touches at some point every conceivable human interest, and that its study is, perhaps above all others, precisely the one which leads straight to the humanities*.’[1]

‘Fui e sou uma mulher determinada, escolhi o meu percurso sem esperar, nem requerer apoios familiares, sociais, políticos ou outros. Sempre me senti e fui livre nas escolhas que fiz…….

Sempre fui livre e democrata, portanto o que fazia era correspondente a quem eu era e ao que sentia. A minha principal bandeira foi e é a da Liberdade de Expressão e o direito à diferença, fossem de que índole fossem.’[2]

[1] Ernest W. Huffcut, ‘The Literature of Law’ (1892) *Indiana University School of Law* 52.
[2] Interview with Margarida Santos, conducted by the author (Vila Nova de Gaia, Portugal, 7 July 2025).

Drawing Margarida Santos in *Luz Intima* (Seda Publicações, 2017).

Acknowledgements

Before placing the final full stop on my years as a student, I would like to take a moment to acknowledge the events and experiences that have shaped my academic path—and, even more importantly, to express my deep gratitude to the people who have been indispensable throughout this journey.

Art has always been a great passion of mine, and this master thesis allowed me to delve deeper into the rich field of *Law and the Humanities* and thus combine art with my other passion: the law, as a tool for justice and a more equal society. However, throughout the years I have learned that the law alone does not necessarily lead to a lived reality in which human rights are guaranteed. The law is equally used as a tool of domination and operates to maintain power in the hands of those who respond to certain social and cultural norms. It should be reminded that law does not operate in a vacuum: law is a product and a creation of society and is subject to societal circumstances just as much as it impacts society itself. Law is a language and language matters. Especially when, until today the realisation of a universal culture of human rights is monopolised by legal language. Only by embracing an interdisciplinary approach can we begin to study the law in its full, contextual nature. Turning to the arts is fundamental to the degree that it '*feeds'* law: it raises awareness, triggers the mind and empowers people towards change. In this sense, this research is a call to a critical rethinking of the interaction between the artistic practice (visual arts) and the human rights discourse.

Being able to pursue my passion for human rights through the European Master's Programme in Human Rights and Democratisation has truly been—though it may sound a bit cliché—the realisation of a small dream I have cherished since the beginning of my academic journey. Beyond its academically rich, practice and policy-oriented curriculum, which shaped me in becoming a human rights practitioner, the EMA programme gave me something even more valuable. Being surrounded every day by the most inspiring and interesting people in beautiful Venice has given me love and support in a way I could have never imagined. This year was truly one of the most enriching experiences of my life: pursuing our shared passion for human rights and positive change from diverse disciplinary angles, cultural backgrounds and

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Candice Dalino,

10 July 2025

Coimbra, Portugal

Abstract

This thesis explores the extent to which (visual) arts can contribute to the enforcement of human rights, by promoting a (universal) culture of human rights and democratic citizenship. The central research question is: '*To what extent can the (visual) arts contribute to the realization of a universal culture of human rights and democratic citizenship?'* The interaction between art and law is part of the Law&The Humanities movement and shed a light on how art can play a crucial role in legal awareness and need for legal change.

The creation of a universal culture of human rights and democratic citizenship is monopolized by legal language, rooted in law. However, despite legal foundations, implementation of human rights in practice fails, revealing significant gaps between legal ideals and societal realities. Human rights face increasing threats, action is limited to rhetoric and human rights awareness is declining.

What if the ultimate tool to reach a (universal) culture of human rights lies within a force that goes beyond abstract laws and reaches the real factor to social change? What if instead of looking for solutions within the law -an abstract, rational system of objectively applicable rules- we turn to other disciplines such as arts, a subjective/individual appreciation towards original creations? This thesis researches the power of arts, as carriers of an intrinsic force that empowers/activates people for human rights through active/democratic citizenship and operates as engines of legal, political and social change.

Following this theoretical foundation, the thesis applies the conceptual framework to a concrete case study: the role of visual arts in Portugal's Carnation Revolution (25 de Abril 1974)**.** It will be examined how visual arts functioned under authoritarian rule, acted as a form of civic resistance, and contributed to the reimagining of law and justice before, during and after the revolution. Concretely, it will be researched how visual artists, under the constraints of dictatorship, were fuelled and inspired by the repressive political, legal, and institutional structures to create works that actively challenged the regime. These artists not only resisted authoritarian control through their art but also played a critical role in anticipating and empowering civic action in the lead-up to the Carnation Revolution.

Departing from Erwin Panofsky iconological methodology, the *oeuvre* from Portuguese sculptor Margarida Santos will be analysed. As a female artist working before and after the Carnation Revolution, she broke several established social, political, legal and cultural conventions. By deliberately creating sculptures that directly went against expected conventions, she exercised civic resistance and by this, imagined a path towards freedom. In doing so, her art became a form of civic engagement serving as both a medium of resistance and a catalyst for collective rupture with the dictatorial regime.

This research advances a critical rethinking of the relationship between the artistic practice (visual arts) and the human rights discourse and contributes to the rich and dynamic dialogue between art and law in the field of democracy, rule of law and human rights.

List of abbreviations

UN: United Nations

UDHR: Universal Declaration of Human Rights

HRE: human rights education

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1. Introduction: the art of law and the law of art

'*Law schools make tough law.'*[3]

Until the last year of my law studies this pretty well summed up the nature of the curriculum we received as law students. Law, we were told, is a system of abstract rules to be applied impartially. Aesthetic questions, questions of *feeling*, or *imagination*—these were at best peripheral, more often dismissed as irrelevant to the legal method. Apart from the *'en passant'* images of Lady Justice adorning textbooks, rarely—if ever—were we invited to reflect on the significance of these visual symbols, let alone on the role of the imaginal in law.

It was only much later, during an elective in my final year, that I was exposed to the discipline of legal iconography: a revelation that profoundly unsettled my understanding of the law. Why had we not studied how the law represents itself and what these representations mean for the authority of law? Why was there no space in our formation to ask how law could be *seen*, *felt*, or *imagined* differently?

This absence is not a pedagogical accident. It reflects a deeper epistemological narrowing that has come to dominate legal education and legal thinking. *Law* and *art* are represented as radically distinctive, and their separation would not allow people versed in law to appreciate beauty of art.[4] Some would even say that law only considers art when it becomes a matter of convention. Great art, on the other hand, breaks away from conventions and rules and expresses creative freedom and imagination, and '*is the antithesis of law*.'[5] Even more, law is presented as an autonomous world, operating distinctively from the society it regulates.

However, we can find a parallel between art history and legal history. [6] The aesthetic of law and the authority of art forms the starting point of this research. The *grandeur* and *gravitas* of legality largely comes down to the visual representation of the law. Justice has always been a theatrical presence, and lawyers have depended on and clung to the accoutrements and other

[3] F W Maitland, *English Law and the Renaissance* (Cambridge University Press, 1901) 25.
[4] Costas Douzinas and Lydia Nead, ' Introduction' in Costas Douzinas and Lydia Nead (eds), Law and the Image: The Authority of Art and the Aesthetic of Law (The University of Chicago Press, 1999) 1.
[5] *Ibid*.
[6] *Ibid*.

visible aspects of legal decorum and of the rituals of power.[7] '*Structures, it seems, go untutored and unseen*.': the importance of the *décor and decorum* for law students cannot be overlooked. Within the image archive Freud terms the unconscious, there exists a prior mental picture of the institutionalisation and authority of 'the law'.[8]

As opposed to abstract legal norms, images affect the soul, aesthetics trigger the mind and icons are a material likeness of spiritual prototypes and bridge the gap between body and soul, matter and spirit, form and content.[9] Douzinas and Nead aptly observe that: '*Images and icons are the support of our imaginary identifications; their importance and effects are too great for the law to say uninterested in them'.*[10]

Considering the immense power and thus potential of visual arts for the law, this research aims to explore the extent to which (visual) arts can contribute to the enforcement of human rights, by promoting a (universal) culture of human rights. This thesis will first delve deeper into the humanistic study of law by delving deeper into Law and the Humanities as a research field, proposing a shift beyond the legal paradigm towards and interdisciplinary understanding of the law.

The central aim of this thesis is to contribute to *a (universal) culture of human rights*, understood as a social reality of human activities, knowledge and practice, where human rights are *seen*, *felt*, *understood*, *guaranteed* and *acted upon* as the ultimate touchstone of human action in all aspects of life and inherent to all human beings. *In other words*: A 'culture of human rights' aspires to foster deep awareness and compassion for the fundamental rights of all human beings. Such culture could also be called a '*lived awareness'*. Drawing on the current legal monopolisation of the human rights discourse, this research goes further by analysing the nature and foundations of human rights outside of the law. This part will propose that only by breaking from the legal monopolisation of the human rights discourse we can tackle the '*problem'* of human rights and render visible the other existing dimensions of human rights.

[7] Peter Goodrich, *Legal Emblems and the Art of Law: Obiter Depicta as the Vision of Governance* (Cambridge University Press 2014) 2.
[8] *Ibid*.
[9] Douzinas and Nead (n 4) 1 4
[10] *Ibid*., 5.

For a lived awareness to happen, individuals must not only *understand* the law—they must also *feel* it and *adhere* to it. This necessitates a fundamental prerequisite: *social consciousness*. As will be observed, human rights education and democratic citizenship are strongly interlinked and play key roles in fostering awareness and thus contributing to a universal culture of human rights. As positioned by Martha C. Nussbaum, the arts are one of the primary tools to foster democratic citizenship and awareness. In the part 'Aesthetic of Human Rights', attention will be paid to images as engines of democratic change. Aesthetics have a force to move people to fight for rights, in order to contribute to a change in the social, legal, and political paradigm. Can aesthetics be seen as a force that is both reflective and capable of transforming societies and law through the exercise of citizenship?

'*Art is a weapon that could be used to this end*'[11]

Following this theoretical foundation, the thesis applies the conceptual framework to a concrete case study: the role of visual arts in Portugal's Carnation Revolution (25 de Abril 1974). It will be examined how visual arts functioned under authoritarian rule, acted as a form of civic resistance, and contributed to the reimagining of law and justice before, during and after the revolution. What renders this case study particularly unique is that it encompasses both *the art of law* and *the law of art*: the aesthetic of law and the authority of art were instrumental in shaping the authoritarian regime's ideological apparatus, while simultaneously, artistic practices emerged as powerful sites of resistance and, civic engagement. Concretely, it will be researched how visual artists, under the constraints of dictatorship, were fuelled and inspired by the repressive political, legal, and institutional structures to create works that actively challenged the regime. These artists not only resisted authoritarian control through their art but also played a critical role in anticipating and empowering civic action in the lead-up to the Carnation Revolution.

Building on Erwin Panofsky's iconological methodology, this thesis will examine the *oeuvre* of Portuguese sculptor Margarida Santos. As a female artist active both before and after the Carnation Revolution, Santos subverted entrenched legal, political, cultural, and gendered

[11] *Ibid*., 5.

norms through her artistic practice. Her sculptures, intentionally transgressive and provocatively unconventional, functioned as acts of civic resistance—visual interventions that defied the aesthetic and ideological expectations of the Estado Novo regime. In doing so, her work did not merely resist; it envisioned alternative imaginaries of freedom and contributed to a collective rupture with authoritarianism. Her art thus becomes legible as a form of civic engagement: simultaneously a medium of resistance and a catalyst for emancipatory transformation.

This research advances a critical rethinking of the relationship between artistic practice—particularly visual arts—and the human rights discourse. It argues that the traditional legal-doctrinal model is insufficient on its own and must be supplemented—some might even say corrected—by alternative methodologies that engage with the imaginal, the aesthetic, and the affective dimensions of rights.

In other words: the law's image is not a supplement, but part of its condition of existence.

2. Research question, research objectives and research methodology

2.1. Research objectives and research questions

The general objective of this research is to explore the extent to which (visual) arts can contribute to the enforcement of human rights, by promoting a (universal) culture of human rights and democratic citizenship. This general research objective aims to evaluate the human rights discourse, embedded in legal language. In order to achieve this broader (evaluative research) objective[12], the relevant (legal) concepts addressed will be analysed from a descriptive research objective.[13] The result of this evaluative research objective, through the formulated descriptive research objectives, will be applied on a case study about the authoritarian regime and democratic transition in Portugal after the '*25 de Abril'* revolution and used to (in a limited extent) formulate recommendations.[14]

However, the true (and personal) objective for this research departs from a need to contribute to the implementation of human rights, by exploring, from an interdisciplinary perspective, the force of visual arts, moving beyond a purely legal lens. The case of the Portuguese democratization process after the dictatorship and the role of visual artists therein will serve as a framework to apply and test the conceptual, theoretical framework.

To achieve these research objectives, the present research aims to answer the following research questions:

Central research question:

> '*To what extent can the (visual) arts contribute to the realization of a (universal) culture of human rights?'*

Sub research questions*:*

[12] Lina Kestemont, *Handbook on legal methodology. From objective to method* (Intersentia, Antwerp 2018) 17.
[13] *Ibid*., 9.
[14] *Ibid*., 17-18.

'*What role have images of law and iconography played in legal awareness in general and need for legal change in particular*?'

'*To what extent is the human rights discourse embedded in legal language and inherently limits its enforcement*?'

'*What role does human rights education and democratic citizenship play in the enforcement of human rights?*'

'*What role and force do the visual arts play in the enforcement of human rights and in the realization of a universal culture of human rights?*'

'*What are the sociological implications of the aesthetics of law, and how can art influence public perceptions of law and justice?*'

'*How did visual artists anticipate the Carnation revolution and empower civic engagement to break with the authoritarian regime and towards the democratic transition in Portugal?'*

'*How can the analysis of the visual arts in post-revolutionary Portugal inform our understanding of art's role in political change and human rights promotion*?'

2.2. Research methodology

This research adopts a normative and interdisciplinary methodological framework, combining legal analysis with empirical case study research and iconological interpretation. The methodologies are selected to match the multidimensional character of the research question, combining normative legal theory, socio-philosophical critique, and empirical-interpretive tools from art history and visual studies.

2.2.1. Theory of Law

The theory of law in this thesis is normative rather than purely positive. It seeks not merely to describe what the law is (*lex lata*), but to critique and reimagine what it should be (*lex ferenda*)

from the standpoint of human dignity, democracy, and rule of law. This distinction is central to human rights research, as it determines whether one merely interprets law as written or interrogates the ideological assumptions embedded within legal structures.

In line with this normative perspective, the thesis embraces a broader legal epistemology—that is, the study of how legal knowledge is formed, legitimized, and contested. Legal epistemology is relevant to this research because it exposes how law often claims neutrality and objectivity while being shaped by dominant cultural, political, and linguistic narratives. In the context of human rights, such epistemological awareness is crucial to understanding why legal norms alone may fail to generate rights-conscious societies. By integrating artistic, cultural, and aesthetic knowledge systems into the discourse, this research broadens the scope of what can count as valid contributions to human rights culture.

In contrast, the research critically addresses the constraints of legal formalism—a doctrine that views law as an autonomous, logically coherent system of rules to be applied mechanically, irrespective of social or historical context. Formalism reduces human rights to abstract categories, often severing them from the lived experiences of those they are meant to protect. This thesis argues that such abstraction contributes to the disconnect between law's aspirational language and its material enforcement. Legal formalism is thus interrogated not only as a theoretical position but also as a practice that marginalizes interdisciplinary and artistic interventions.

2.2.2. Legal Methodologies

Three legal methodologies will be applied, each aligned to different segments of the research:[15]

1. *Descriptive Legal Methodology*: Employed to map and analyse the legal discourse on human rights, particularly as it manifests in international and European human rights instruments. This includes a structural and doctrinal analysis of how legal language defines rights, duties, and their enforcement mechanisms.[16]
2. *Evaluative Legal Methodology*: Applied in assessing the effectiveness and limitations of legal structures in fostering a universal human rights culture. This includes evaluating

[15] Kestemont (n.12) 17.
[16] *Ibid*., 19-20.

whether legal norms succeed in promoting democratic citizenship and transformative justice.[17]

3. *Recommendatory Legal Methodology*: This component formulates normative proposals based on interdisciplinary findings, including the recommendation to integrate visual arts more formally into human rights education (hereinafter: HRE) and advocacy frameworks.[18]

2.2.3. Human Rights Methods

The human rights approach in this thesis draws on both legal and sociological methodologies. This thesis approaches human rights not as fixed legal norms tied to specific enforcement mechanisms, but as part of a broader political, historical, and philosophical project. It engages with the post-WWII international human rights framework while acknowledging its deeper roots in Enlightenment and natural rights traditions. Rather than applying human rights law in a doctrinal or jurisprudential sense, the research adopts a critical, interdisciplinary perspective. Human rights are thus understood as a dynamic and contested discourse shaped by historical struggle and cultural expression. When specific human rights mechanisms are addressed, this will be explicitly indicated in the relevant sections.

In this sense, it does not only rely on the textual interpretation of legal standards but also investigates their societal resonance, aesthetic representation, and educational potential—particularly through the lens of the arts.[19]

2.2.4. Case Study Methodology

A critical component of this thesis is its empirical engagement through a historical and visual case study: the role of visual arts in the Portuguese transition from authoritarianism to democracy following the 1974 Carnation Revolution. The methodology here draws from qualitative social science research, especially the case study approach as defined in contemporary human rights methodology literature.

[17] *Ibid*., 60-61.
[18] *Ibid*.,19-20.
[19] Fons Coomans, Fred Grünfeld and Menno T Kamminga, *Methods of Human Rights Research: A Primer* (Intersentia 2009).

The case study will incorporate:

- Archival research on visual artworks and cultural practices during the Estado Novo and post-1974 transition
- Content analysis of artworks as forms of political resistance;
- Limited semi-structured interviews with artists and curators to gain insight into artistic intentions and historical interpretations.

The case study methodology aims to illuminate how artistic practices interacted with legal and political regimes, functioning both as resistance and as catalysts for democratic imaginaries.[20]

2.2.5. Iconological Methodology: Panofsky's Three Levels

For the analysis of visual artworks, the research employs Erwin Panofsky's iconological methodology. His three-tiered approach will be instrumental in deciphering the deeper meaning of artistic representations of law, justice, and resistance:

1. *Pre-iconographical description*: The empirical inventory of visual elements and their formal characteristics.
2. *Iconographical analysis*: Interpretation of these elements within the cultural canon—what is depicted and according to which conventional motifs or allegories.
3. *Iconological interpretation*: The identification of the underlying cultural, political, and philosophical meanings, often latent even to the artist.

This methodology enables a rigorous and historically informed analysis of how artworks participated in or anticipated legal and political transformation, especially under authoritarian regimes.[21] (*See infra)*

[20] X., 'Case Study Research' (*ScienceDirect*) <https://www.sciencedirect.com/topics/social-sciences/case-study-research> accessed 4 May 2025.
[21] Erwin Panofsky, *Studies in Iconology: Humanistic Themes in the Art of the Renaissance* (Oxford University Press 1939); Roelof van Straten, 'Panofsky and ICONCLASS' (1986) 7 *Artibus et Historiae* 165.

3. Framework of concepts:

3.1. Law and the Humanities

3.1.1. Introduction: On the Meaning of the '*Law'*, *Art'* and *the Interaction Between Art and Law'*

'*Law is as much a matter of culture as it is a system of rules. Law has its own aesthetic and may be envisioned as a creative art form as much as a science'*.[22]

Art and law? Two disciplines that appear to fulfil almost contradictory roles in the life of each individual and, more broadly, within our society? At first glance and considering the traditional disciplinary boundaries that have long compartmentalized the fields, the intersection between art and law may appear limited—if not entirely non-existent. However, this presumed disjunction reveals more about the rigidity of disciplinary conventions than about the actual nature of each domain, making it even more necessary to clarify what we mean when we speak of 'the art of law'. Defining what concretely the art of law means does not prove to be a walk in the park. The '*law'* already functions as a broad terminological umbrella encompassing a wide spectrum of notions. It ranges from everyday expressions and scientific principles to its more formal manifestation in juridical frameworks. '*Art'* on the other hand, arguably denotes an even broader and more ambiguous domain, marked by a conceptual vagueness that resists precise delimitation.[23]

The *law* in this research refers to the set of rules and institutions used by the authorities to order society.[24] It can be said that law forms a rather rational system, composed of objectively applicable rules, open for interpretation, but clear to most jurists because of its repetitiveness.[25] Law manifests across multiple levels—local, regional, national, and international—and in various forms. It encompasses both abstract legal theory and the concrete realities of everyday legal practice. In Western legal systems, law is primarily shaped by the legislator, though

[22] Sionaidh Douglas-Scott, *Law after Modernity* (Hart 2013) 253.
[23] Georges Martyn and Stefan Huygebaert, 'Chapter 1: Twenty New Contributions to the Upcoming Research Field of Historical Legal Iconology' in Stefan Huygebaert, Georges Martyn, Vanessa Paumen, Eric Bousmar and Xavier Rousseaux (eds), *The Art of Law - Artistic Representations and Iconography of Law and Justice in Context, from the Middle Ages to the First World War* (Springer, 2018) 4.
[24] *Ibid*.
[25] Georges Martyn, 'Can Art Inspire and Guarantee Better Laws and Law-Making?'(2022) 4(2) *Humanities and Rights Global Network Journal* 73.

judges, particularly within the common law tradition, play a significant role in its interpretation and development.[26] '*Law is the prominent institutional tool in all three branches of the trias politica*.'[27] While law extends well beyond the confines of justice administration, courtroom proceedings remain the most emblematic—and publicly recognizable—expression of legal practice.[28]

Art, on the other hand, is the work of 'artists'.[29] Art manifests in various forms—visual, auditory, performative, literary—and spans the individual and the collective, the ephemeral and the permanent. In this research, the focus lies specifically on the visual arts, encompassing painting, sculpture, photography, installations, murals, and other visual media that interact with the public sphere and legal-political discourse. *(See infra)* As opposed to law, art could be seen as a subjectively appreciated feeling of beauty towards original creations to be appreciated by each beholder individually.[30] Art, as an aesthetic phenomenon, embodies beauty rooted in creativity and originality. It serves as a medium for expressing thoughts and emotions, the value of which is determined through individual interpretation and appreciation. Across its diverse forms, art constitutes a deeply human form of communication, capable of resonating with the human soul and imbuing life with profound meaning.[31]

So what, then, constitutes the '*art of law"*? Do these two disciplines truly belong to such fundamentally distinct spheres of human life? In this research, *the art of law* refers to visual artworks—broadly understood as creative, aesthetic, and material forms of expression—that engage with legal themes, concepts or institutions. The relationship between art and law can be distinguished into two distinct parts. The *law on art*, on the one hand, refers to the ways in which legal systems have shaped, used, restricted or *tout court* regulated images and art. The *art on law* on the other hand, alludes to the representation of law, justice and other legal themes in art.[32] These artworks may be commissioned by jurists, state authorities, or legal institutions, but they may equally emerge independently as (critical) responses to law, justice, or its absence.

[26] Martyn and Huygebaert, (n 23)4.
[27] *Ibid*.
[28] *Ibid*., 5.
[29] *Ibid*.
[30] Martyn, (n23) 73.
[31] Jacques Rancière, *The Politics of Aesthetics: The Distribution of the Sensible* (Gabriel Rockhill, Verso 2004); John Dewey, *Art as Experience* (Minton, Balch & Co 1934).
[32] Douzinas and Nead, (n 4).

Whether monumental, ephemeral, institutional, or insurgent, these artistic forms perform juridical work: they *represent*, *reinterpret*, *visualize*, *question*, or *instruct* legal meaning and authority.

Such works do not merely decorate legal spaces; they contribute to the construction of law. They may reinforce normative ideals—such as justice, equality, and order—or they may also contest the legitimacy of legal authority. In either case, these images do not exist outside the law—they participate in its cultural life, visual memory, and democratic resonance. In this sense, the grandeur and gravitas of legality largely comes down to the visual representation of the law. Justice has always been a theatrical presence, and lawyers have depended on and clung to the accoutrements and other visible aspects of legal decorum and of the rituals of power.[33] As Peter Goodrich aptly argues:

> '*The first facet of law, the initial dogma that the subject encounters, is neither text, nor letter – the litera mortua of the rule – but image, what is more strictly termed anima legis, the living and breathing spirit of law, the visible depiction of legitimacy, the dignity of legality enacted through the figure of justice being done. In more formal terms, the image of justice is the condition of possibility of law*.'[34]

In this thesis, the interaction between *art* and *law* is approached not as a neutral historical phenomenon but as a conceptual and methodological entry point for analysing the intersection of legal meaning and visual culture. These artworks are read as visual *sites of legal consciousness* : legal meaning is not argued through text, but communicated through form, image, and affect. They are where law is made visible, intelligible, and emotionally legible to society: where it is *seen*, *felt*, and *imagined*.

According to Martyn and Huygebaert, a crucial aspect lies in the fact that: '*Knowledge of the law helps to understand the art, but knowledge of the art also contributes to a better understanding of law's original intent and social effects*.'[35] This ongoing dialogue between art and law is not merely decorative or illustrative. It reveals how legal systems depend on visual

[33] Goodrich (n 7) 2.
[34] *Ibid*., 25.
[35] *Ibid*., 6.

and symbolic expression to communicate legitimacy, authority, and justice to broader society. At the same time, artworks offer a powerful medium for interrogating law's assumptions.

In what follows, the interaction between art and law within this research will be situated within the broader research field of law and the humanities. This by firstly, *c*ontextualizing the Law & Humanities movement as a field, defining its relevance, and situating visual arts within legal thinking. The final sections provide conceptual clarity by exploring the distinction and relatedness between legal iconography on the one hand, and legal iconology on the other. The conclusion will end by reflecting on the normative potential of aesthetics to challenge, reimagine, and enrich our understanding of law.

3.1.2. The Art of Law Within the Broader Law and the Humanities

3.1.2.1. What?

The interaction between art and law must be situated within the much wider research field of *Law and The Humanities*. *Quid est* 'Law and the Humanities'? Isn't the law meant to exist and be thought as a discipline, a world autonomous in and of itself? We cannot deny that the topic is both highly intriguing and undeniably complex, perhaps even perceived as somewhat 'unsettling'. One might ask: why should the law turn to the 'other humanities' at all? Indeed, a central feature of many Western legal theories is that the law is an autonomous and objective entity, operating distinctively from the society it regulates.[36] In view of this theory, a legal system is regarded as different from a political or economic system because it would operate on the basis of abstract rationality, and therefore it is universally applicable and capable of achieving neutrality and objectivity.[37] Legal science is even divided in different subbranches of law. So, what else does the law possibly need?[38]

[36] Avril Chanel, 'How "gendered" is the international Law? Feminist critiques of the international legal system' (2022) Gender In Politics Institute < https://igg-geo.org/en/2022/12/23/how-gendered-is-the-international-law-feminist-critiques-of-the-international-legal-system/> accessed 9 April 2025.
[37] Brian Bix, 'Law as an Autonomous Discipline' in Peter Cane and Mark Tushnet (eds), *The Oxford Handbook of Legal Studies* (Oxford University Press 2003) 975.
[38] Luigi Lacchè, '(History of) Law and Other Humanities: When, Why, How' in Virginia Amorosi and Valerio Massimo Minale (eds), *History of Law and Other Humanities: Views of the Legal Worlds Across The Time* (Dykinson, 2019) 25.

When we take a closer look at the nature of the legal education, for example, law is traditionally instructed as a self-contained system, capable of being examined independently from other disciplines. Legal education served to fossilise the law, bestowing a sacred aura upon what would otherwise seem archaic.[39] In other words: '*Law schools make tough law'*.[40] Although exceptions exist, legal education remains largely rooted in a legal-doctrinal approach.[41] Students are trained to 'think like lawyers' and thereby some even say that in order to '*become a law student the student must forget who he or she is'*.[42]

However, this 'though' law presented autonomously and archaically, has often little to do with the realities encountered when law is applied in real-life scenarios. The foregoing ignores the fact that law does not operate in a vacuum: law is a product and creation of society and is subject to societal circumstances just as much as it impacts society itself. What one perceives as *just* is never universal or fixed, but rather, shaped by specific socio-historical circumstances. It is therefore essential to contextualize the law as product of cultural, historical, and subjective frameworks**.** Law must be understood not as an abstract world of its own, detached from lived experience, but as an instrument (of power) that is historically contingent and culturally embedded. In other words: the broader social and cultural context cannot be separated from the legal system because it shapes it:

> '*It is a fact too often forgotten – that law touches at some point every conceivable human interest, and that its study is, perhaps above all others, precisely the one which leads straight to the humanities*.'[43]

'Law and the Humanities', just like 'Law and Economics', 'Law and Ethics' and the many nowadays existing 'Law ands…', is a way of looking at legal rules and institutions, and more in general, products of legal culture, from another point of view.[44] It situates itself within the essentially interdisciplinary fields of study, exploring law's interaction with the world through the humanistic disciplines of classics, literature, philosophy, theology, and even poetry, music,

[39] Daniel Newman and Russell Sandberg, 'Introducing Law and Humanities' in Daniel Newman and Russell Sandberg (eds) Law and Humanities (Anthem Press, 2024) 1-3.
[40] Maitland (n 3) 25.
[41] Newman and Sandberg, (n 39) 2.
[42] Anthony Bradney, 'Law as a Parasitic Discipline' (1998) 25(1) *Journal of Law and Society* 77.
[43] Ernest W. Huffcut, 'The Literature of Law' (1892) *Indiana University School of Law* 52.
[44] Martyn and Huygebaert, 7.

cinema etc.[45] At the dawn of the twenty-first century, interdisciplinarity has become the watchword in education and scholarship in general and the field of law in particular, has not remained uninfluenced by this shift. Among the most recent additions to the expanding constellation of these 'law ands…' movements is the rapidly emerging field of Law and the Humanities.[46] It essentially explores the way in which doctrinal methods are complemented and corrected by methods, ideas and approaches that arise from the humanities.[47] For further explanation, due to space constraints, reference is made to appendices 3.1. (A).

Indeed, whereas most legal scholars examine law from within a predominantly legal or juridical paradigm, scholars in the field of *Law and the Humanities* adopt a more distanced, reflective stance—analysing law's structures and functions through the methods, concepts, and interpretive frameworks of other social and cultural disciplines.[48] Martyn and Huygebaert emphasize the critical lens brought by law and the humanities, noting that:

> *'Looking at law from various points of view enriches the very idea of what law and legal science are, pretend to be, and often fail to be. The point of view from the field of Law and the Humanities is a critical one. Time and time again, it questions assumptions and aspirations ascribed to law.'*[49]

At its core, the Law and Humanities movement is deeply humanistic. It takes as its starting point the principle that the human being—*woman and man alike*—is both the source and the aim of legal reasoning, interpretation, and education. Law is not an end, but a tool for advancing human dignity. This anthropocentric orientation aligns closely with the framework of human rights.[50] *(See infra)* Martha Nussbaum, for instance, insists that legal education must strive to **'***cultivate humanity***'**, fostering in future jurists the capacity for critical reflection, empathy, and

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[45] *Ibid*.
[46] Austin Sarat, Matthew Anderson and Cathrine O Frank, 'Introduction: On the Origins and Prospects of the Humanistic Study of Law' in Austin Sarat, Matthew Anderson and Cathrine O Frank (eds), *Law and the Humanities: An Introduction* (Cambridge University Press 2010) 1.
[47] Newman and Sandberg, (n 39) 3.
[48] Martyn and Huygebaert, (n 23) 7.
[49] *Ibid*.
[50] Hannah Arendt, *The Human Condition* (2nd edn, University of Chicago Press 1998) 5.; Martha C Nussbaum, *Cultivating Humanity: A Classical Defense of Reform in Liberal Education* (Harvard University Press 1997); Sarat (n 46) 2-3.); Martha C Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Belknap Press 2006) 18.

moral imagination.[51] Similarly, James Wigmore, one of the early American legal theorists, emphasized that the jurist has a '*duty to be a cultivated man*' : to be broadly educated in literature, philosophy, and the arts, not merely trained in technical legal analysis. These views underscore a vision of legal practice grounded not in proceduralism, but in humanism, making the Law and Humanities movement naturally aligned with the broader project of human rights.[52] *(See infra)*

3.1.2.2. The Modern Origins of Law and the Humanities: Law and Literature

Law and the Humanities has grown into a recognized field of study, not only in the United States, where the *Yale Journal of Law and the Humanities* became the first scholarly journal[53] dedicated exclusively to it, but also increasingly within European academic discourse.[54] The overarching aim, as articulated in the introduction to the inaugural issue of the *Yale Journal of Law and the Humanities* is '*to restore to legal studies a proper place for the question of values'*.[55] In particular, the editors aimed for the study of law to be informed by an examination of the socio-cultural narratives that shape legal meaning and empower legal norms.[56]

Some may raise the question of whether this humanistic study of law is not, in fact, a long-lasting, ancient approach? Indeed, legal scholars—dating as far back as the Roman period—have long engaged with humanistic thought.[57] While this is undoubtedly true, the focus here is on the contemporary methodological approach that began to take shape at the start of the twentieth century. Within that perspective, in law and humanities '*critical impulses abound, not looking to save or humanize law or lawyers, but to expose their hidden assumptions that structure their work, the values that privilege some views and silence others, the identities that*

[51] Nussbaum, *Cultivating Humanity (n50)* 8–12, 291.
[52] Walter Marilyn R., 'Erasing Lines Between the Law School and the Liberal Arts Curricula' (2008) Journal of the Association of Legal Writing Directors 154 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1095533> accessed 11 June 2025.
[53] In 1988, the *Yale Journal of Law and the Humanities* was launched as the first scholarly journal devoted exclusively to the field.
[54] Newman and Sandberg, (n 39) 2.
[55] Owen M Fiss, 'The Challenge Ahead' (1988) 1 *Yale Journal of Law and Humanities* viii, x.
[56] Note from the Editors' (1988) 1 *Yale Journal of Law and the Humanities* v.
[57] Lacchè (n38) 26.

law privileges and those it pushes to the margins and, in doing so, to call law and lawyers to account'.[58]

Notably, the initial origins of humanistic approaches to legal study in the modern era can be traced to the exploration of the interaction between law and literature[59]: an intellectual turning point marked by the publication of James Boyd White's groundbreaking *The Legal Imagination.*[60] This resulted in a significant focus on the language of law and on law as a language. White's central these departs from the idea how lawyers are trained to think, write, and speak. He advocates for a form of legal education that fosters in students a self-reflexive awareness of how they engage with legal forms as they become acculturated to the language and processes of law.[61] The following aptly captures the essence of his argument:

> *'Law is a language and language matters. Another way to put it would be to say that the education of lawyers should include the cultivation of a meaningful appreciation of law as a rhetorical practice – not just in the sense of an art of persuasion, but of a disciplined, textured, self-directed habit of reading, speaking and, above all, writing, that has at its root a critical understanding of the links among language, consciousness, and power.'*[62]

If there is a concern that consistently underpins and animates the field of law and literature, it is a deep awareness of what becomes of legal language and consequently, of the human lives shaped by it when legal actors are confronted with the law's fragmentariness, internal contradictions, in commensurabilities, and the pervasive uncertainties that accompany them.[63] In this regard, the study of literature can offer a fundamental way to restore the integrity of legal language: not only because it can help us cultivate a sensibility and a voice as writers, but also

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[58] Sarat, (n 46) 2.
[59] The field of *Law and Literature* is originally divided into two principal strands between '*law in literature'* (the examination of 'the possible relevance of literary texts as texts appropriate for legal scholars') and '*law as literature'* (which 'seeks to apply the techniques of literary criticism to legal texts'). This distinction shows the two objects of study and the frames of analysis: law and literature include the study of literature through the frame of law ('law in literature') and the study of law through the frame of literature ('law as literature'). (*See*: Norman P Ho, 'Literature as Law? The Confucian Classics as Ultimate Sources of Law in Traditional China' (2019) 31(2) *Law & Literature* 173; Richard Weisberg, 'The Law-Literature Enterprise' (1989) 1(1) *Yale Journal of Law and the Humanities* 1.)
[60] James Boyd White, *The Legal Imagination* (University of Chicago Press 1973).
[61] *Ibid*.
[62] Sarat (n 46) 4.
[63] *Ibid*.

because the psychological intimacy it affords, generates moments of sympathetic identification with people whose experiences and contexts may differ profoundly from our own.[64] This capacity for cultivated sympathy, in turn, allows literature to function as a counter-hegemonic force by raising awareness of the power dynamics and the enduring legacies of oppression, exploitation, and marginalization. In this sense, literature can give lawyers a sense of the complex nature of the human condition.[65] Literature can help us see, understand, and identify the lives and experiences of individuals that are too often unacknowledged within the law.[66]

Nevertheless, the strong literary focus in the law and humanities movement has been countered. There has been a call for perspectives that move beyond the literary, urging inquiry into broader questions. When going back to the essence of law and the humanities, it *in se* comes down to an attitude towards learning and teaching which is open and sensitive to not so much (and certainly not only) to the regular and patterned, but instead to the irregular and unpatterned'.[67] In the authoritative *Oxford Handbook on Law and the Humanities,* Simon Stern et al. clarify that '*to practice the humanities is to approach, with certain attitudes and sensitivities, a multitude of practices of making (of making things, making meaning, making senses) including relations between those practices of making and the values that may be at stake in such practices and their relations to each other'*.[68] They stress that while conventionally a law and humanities approach has associated law with legal doctrines and rhetoric, in particular, and have looked to the humanities for representations of legal actors and questions, humanities needs to be more widely drawn to encompass not only history, literature, art, and philosophy but the whole range of fields that use interpretative methods to study creativity, expression, and the imagination.[69]

As will become apparent to the reader, the far-reaching and encompassing scope of what the study of law and the humanities entails, makes it difficult to offer a precise, workable definition.

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[64] *Ibid*.
[65] Lacchè (n 38) 26.
[66] Boyd White (n 60.)
[67] Personal course notes *Recht in de Cultuurwetenschappen* by Georges Martyn at University of Ghent, 2023.
[68] Simon Stern, Maksymilian Del Mar and Bernadette Meyler, 'Introduction' in Simon Stern, Maksymilian Del Mar and Bernadette Meyler (eds), *The Oxford Handbook of Law and Humanities* (Oxford University Press 2020) xxi, xxii.
[69] *Ibid*., xxiii- xxiv.

Despite the rich and much needed perspectives it brings to the study of law, the greatest challenge seems to provide a definition of its field of inquiry, or to answer the question of domain and definition.[70] For further explanation, due to space constraints, reference is made to appendices 3.1. (B). This '*plague of interdisciplinarity'* creates a space where every researcher constructs their own intellectual playground, often without sufficient grounding in either legal doctrine or the relevant humanities disciplines.[71]

3.1.2.3. Law and the Visual/ Law and the Image

During the 25th International Roundtable for the Semiotics of Law[72] on Legal Evidence in the Age of Techno Societies and Visual Jurisprudence at the University of Coimbra Institute for Legal Research, it became apparent: the imaginal aspect of law is crucial, and the interdependence between visual and legal representation is constitutive.[73]

As I sat in the renowned cultural and historical setting of the *Colégio da Trindade* of the University of Coimbra and, listening to Peter Goodrich unfold his characteristically provocative reflections, one line etched itself sharply into my thoughts: the judiciary, he reminded us, has always been hostile to theatre and performance as illicit competitors with law. Drawing on the legacy of the Church Fathers and classical jurists alike, Goodrich illustrated how legal discourse historically condemned theatrical performance as a threat—citizens who dared to act on stage were sentenced to civil death, to *infamia*. This suspicion lingers in today's courtrooms, where movement, rhythm, and visual display are tightly regimented under the austere weight of legal formalism.[74] Goodrich drew our attention to the high-profile Australian case regarding the

[70] Sarat (n 46) 9.
[71] *The plague of interdisciplinarity'*: the lawyer writing about literature without literary sensitivity or acquaintance with the relevant literary scholarship, and the literary scholar writing about law without proper understanding of the law. *See*: Lacchè (n 38) 26; Desmond Manderson, 'Introduction: Imaginal Law' in Desmond Manderson (ed), *Law and the Visual: Representations, Technologies, and Critique* (University of Toronto Press, 2018) 7.
[72] The semiotics of law refers to the study of law as a system of signs—how legal meanings are produced, communicated, and interpreted through symbols, language, rituals, and visual representations. It applies semiotic theory to understand law not just as a system of rules, but as a *cultural and communicative practice*. (See: Bernard S. Jackson, *Semiotics and Legal Theory* (Routledge, 1985).
[73] *See* Roundtable Book of Abstracts: 'The 25th International Roundtable for the Semiotics of Law (IRSL 2025)-Legal Evidence in the Age of Techno-Societies and Visual Jurisprudence', 7th-9th May 2025, Colégio da Trindade 1 University of Coimbra Institute for Legal Research (UCILeR) Faculty of Law – University of Coimbra PROGRAMME.
[74] *Ibid*. 31.

'Ladies Lounge' at Tasmania's Museum of Old and New Art : a women-only exhibition space originally curated as a symbolic and experiential response to the historical exclusion of women from male-dominated spaces. The purpose of the exhibition was to offer a '*flipped objective'*. However, following a complaint by a male visitor and a ruling by the Tasmanian Tribunal deeming the exclusion discriminatory, the museum provocatively relocated a collection of Picasso's to a women's restroom.[75] During the case, uniformly costumed women in the courtroom performed choreographed gestures and moves before dancing out of the court building in a conga line to eventually win their appeal, five months later, before the Supreme Court of Tasmania. The Court initially looked at the case from the wrong angle, failing to recognise the 'performance' enacted by the museum and the women, whose intention was to promote equal opportunity by drawing attention to both present and historical oppression through the creation of a '*flipped universe'*. A *remediated law*, Goodrich further argued, emerges in the interstices where jest meets justice, where the evidence of the image no longer merely illustrates but *acts*.[76] This chapter begins from that moment: a danced disruption of legal decorum, a reminder that the visual is not just aesthetic but epistemological, not merely illustrative but constitutive of law's operation in society.

Even Peter Goodrich's visual performance itself formed lived evidence of the indissociable and essential role of images and the discourses they realize, legitimate or set in motion. After several sessions of panel speakers, seated and engaging in the expected academic tone and format, he delivered a (literally) colourful and resonant intervention, capturing the attention of every participant present and transforming them from passive listeners into active spectators. Even though, this intervention and its presented content would be more situated within what is nowadays called '*Law and Performance*'[77], the link to law and the visual/image is evident.

[75] The '*Ladies Lounge'* at MONA was conceived as a feminist intervention, referencing Australia's history of gender-based exclusion, particularly the prohibition of women from pubs prior to 1965. Intended as a symbolic reversal of structural discrimination, the installation restricted access to women only. Acting justice Stephen Marshall of the supreme court overturned the tribunal's order, ruling that the *Ladies Lounge* was not discriminatory. (*See*: Francesca Aton, 'Tasmania's Supreme Court Overrules Closing of Women-Only Art Installation' *ARTnews* (27 September 2024).

[76] See n73.

[77] The field of *Law and Performance* draws on the rich interdisciplinary tradition of performance studies to explore how law is enacted, staged, and embodied in ways that move beyond the written text. Rather than treating theatricality as a mere metaphor, this approach emphasizes the affective, embodied, and iterative dimensions of law as it is lived, perceived, and legitimized. *See*: Austin Sarat, Lawrence Douglas, and Martha Merrill Umphrey, *Law and Performance* (Amherst, MA: University of Massachusetts Press, 2011).

'*Forget thinking in terms of visual evidence for some external fact that could be conceived as being separate from it. Think instead of visual discourse, a network of the symbolic expression of values, ideas, and feelings, in which we are always already enmeshed*.'[78] This is what Bottici defines when speaking of the 'imaginal'. Hereby she refers neither to the individual faculty of imagination, nor the social context of the imaginary, but instead to the real domain of meaning: to something that lies in the space between the two.[79] Indeed, the use of the word imaginal acknowledges the enormous power of images to communicate ideas and norms, to frame experiences, to constitute relations and to generate the emotions that construct the world we live in.[80] Legal discourse is articulated in the realm of and through the medium of images.[81] Notably, the term *imaginal* compels us to consider not only the conceptual force of images—a tendency toward immateriality and abstraction that it shares with both imagination and imagery—but also their physical presence as artworks, photographs, representations, and much more.[82] The focus on visual media as essential to the discursive frameworks that structure and interpret normative, aesthetic, and legal orders around us and recognising the material impact and embodied presence of these visual forms, invites the type of intriguing and specific case studies on the interaction between legal and visual discourse that lies at the heart of this research.[83]

Explaining law and the visual from an academic perspective can perhaps be more confusing than if we were to speak about it from its core: it makes no more sense to treat a specific image or set of images as evidence of a particular legal idea, than it does to treat the stars as evidence of the night. They are manifestations of a common reality.[84] The legal/social understanding of art has been and can be studied from different perspectives. Erwin Panofsky researched it from his three-part analysis and called it 'iconology'[85], while for Mieke Bal it is 'cultural analysis'.[86] Starting from the German term *Bild* and distinguishing between (material) pictures and (mental)

[78] Manderson, (n 71) 4.
[79] Chiara Bottici, *Imaginal Politics* (Colombia University Press, New York, 2014), chapter 1.
[80] *Ibid*.
[81] *Ibid*.
[82] Manderson, (n 71) 4.
[83] *Ibid*.
[84] *Ibid*., 4.
[85] Panofsky (n 21)
[86] Mieke Bal, *Image-Thinking-Artmaking as Cultural Analysis* (Edinburgh University Press, 2022); Mieke Bal, The Practice of Cultural Analysis (Stanford University Press, 1999).

images, Carolin Behrmann, on the other hand, illustrates how Anglo-American visual studies approach the interaction between art and law in ways that diverge from continental traditions. She further argues that art history as *Bildgeschichte*, alongside legal culture, which engages with the images, objects, architecture, and visual signs within legal contexts, operates on a methodological premise that such visual forms 'reflect' the law. This leads her to formulate what she terms the 'mirror axiom'...[87]

However, this 'imaginal law', understood as the relationship between images and the (legal) discourses they realize, legitimate or set in motion, is anything but novel. The iconography of an image has always operated as an enduring stamp of legitimation and authority.[88] Justice forms a theatrical presence, and lawyers have depended on and clung to the accoutrements and other visible aspects of legal decorum and of the rituals of power.[89] It provides a sense of safety, establishes distance, and thus offers the comfort of a certain degree of impersonality. These aspects of justice appear psychologically, anthropologically, and symbolically self-evident.[90] Drawing on a recent study carried out at New York University School of Law, Peter Goodrich aptly explains the imagery of the law or legal practices and the mutual influence between legal and visual discourse. For further explanation, due to space constraints, reference is made to appendices 3.1 C.

The foregoing makes it clear that images and visual media both influence and shape questions of legitimation, authority, and power. The importance of the visual and imagery aspect of law is fundamental to our understanding of law in society but to the same extent to its actual and psychological operations. The authority of art and the aesthetics of law are central to a consciousness of the effects of legal concepts on individual and collective experiences. Thus, as Manderson aptly phrases, the meeting of minds has not simply 'applied' visual studies 'to' the problem of law, as one applies an old method to a new object but has compelled a deeper understanding of each area of human life by the other.[91]

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[87] Carolin Behrmann, 'Chapter 3-The Mirror Axiom: Legal Iconology and The Lure of Reflection' in Stefan Huygebaert, Georges Martyn, Vanessa Paumen, Eric Bousmar and Xavier Rousseaux (eds), *The Art of Law - Artistic Representations and Iconography of Law and Justice in Context, from the Middle Ages to the First World War* (Springer, 2018) 43-55.
[88] Manderson (n 71) 5.
[89] Goodrich (n 7) 2.
[90] *Ibid*.
[91] Manderson (n 71) 7.

3.1.3. The Aesthetic Turn in Legal Analysis or the Legal Turn in Aesthetic Analysis? Panofsky's Three Levels as Starting Point

The intersection of law and visual culture has undergone a remarkable reconfiguration in recent decades, prompting what some have termed the 'aesthetic turn' in legal theory. Yet, this development might equally be interpreted as a *legal turn in aesthetic analysis*—an inversion that foregrounds the juridical embeddedness of art, image, and visual representation. As the study of law and the humanities matures into a more pluralistic and epistemologically ambitious field, the relationship between legal meaning and visual culture demands more than supplementary engagement. It requires critical tools to decipher how visual forms not only reflect, but constitute legal and political authority.

One of the most rigorous and enduring frameworks for such analysis remains Erwin Panofsky's tripartite model, originally developed within art history but increasingly influential in legal iconology. In *Studies in Iconology*, Panofsky distinguishes between three levels of interpretation:

1. *Pre-iconographical description*: The first layer is that of the 'primary or natural subject matter, constituting the world of artistic motifs'. In this phase, Panofsky wants to give a pure description of what we see in a work of art: figures, objects, activities, situations, etc. Thus, a sort of summing up of what is seen *prior* to interpretation, based on shared cultural literacy and immediate perception.[92]

2. *Iconographical analysis*: the second layer of meaning in Panofsky's theory is that of the '*secondary or conventional subject matter, constituting the world of images, stories, and allegories*'. This involves the decoding of established visual conventions—Lady Justice with her scales and blindfold, the figure of the judge, or architectural spaces of

[92] Panofsky(n 21) 5-9.

authority.[93] Iconography focuses on the analysis of signs, symbols, allegories, and attributes, aiming to '*explain what one sees*.' Many of the contributors to the following chapters, however, extend this inquiry by situating images within their broader historical, institutional, and social contexts—thereby entering the realm of *iconology*.[94]

3. *Iconological interpretation*: the third and last layer is the '*Intrinsic meaning or content, constituting the world of (symbolical values)*'. Here we try to discover '*deeper'* meanings in works of art, which means that we should ask ourselves how cultural-historical developments are reflected in a representation. This level uncovers the cultural, philosophical, and political assumptions embedded in visual representation, including those not consciously intended by the artist.[95] Legal iconology, in this regard, examines the dynamic interplay between the social worlds of jurists and those of artists, exploring how both law and art are deeply embedded within societal structures.

Legal scholars and art historians alike have increasingly turned to this framework to address the layered meanings inherent in legal imagery. As Van Straten notes in his commentary on Panofsky, iconological interpretation provides a hermeneutic bridge between historical context and symbolic form, allowing us to view images not as static reflections, but as sites of epistemic negotiation.[96] This is crucial for legal analysis, where visual representations—far from being neutral—participate in the construction of legal authority, legitimacy, and power. For further explanation, due to space constraints, reference is made to appendices 3.1 D.

This method is particularly relevant to the central research question of this thesis. If we are to assess how visual arts contribute to a culture of human rights and democratic citizenship, we must interrogate not only the content of images, but their legal-affective force. Can images *act*—that is, provoke, mobilise, or bear witness? As Panofsky warned, iconology should avoid aesthetic formalism and instead aim to uncover the historical consciousness latent in visual

[93] *Ibid*., 10-12.
[94] Martyn and Huygebaert (n 23) 6.
[95] Panofsky (n 21) 14-17.
[96] van Straten (n 21) 165-167.

expression. This aligns with contemporary concerns in legal aesthetics: the image does not merely illustrate the law; it *performs* it, *disturbs* it, or *reimagines* it.

Thus, integrating Panofsky's method into legal scholarship does not simply enrich our understanding of images. It offers a deeper challenge: to reconceive law itself as a visual and symbolic practice. To focus solely on text is to ignore the affective and perceptual registers through which legality is experienced. As the field of legal iconology shows, the legal and the visual are not parallel domains—they are interwoven structures of meaning.

In this light, the distinction posed at the outset—whether we are witnessing an aesthetic turn in legal analysis or a legal turn in aesthetic analysis—may ultimately be false. These are not opposing trends but complementary shifts. Legal meaning is increasingly shaped through visual codes, just as visual culture is saturated with legal significance. The challenge lies in reading both not only for what they show, but for what they do.

Panofsky's tripartite framework will therefore serve as the methodological entry point for analysing the visual artworks in the case studies of this research, enabling a layered interpretation of how images engage with law, justice, and democratic imagination.

3.1.4. Conclusion: Why a Humanistic Approach to Law?

To conclude this chapter, let's return to the starting point of the need to open the legal studies to the humanities. Sometimes it resonates that the interdisciplinary study of law and thus including the field of Law&the Humanities, is a trend *à la mode* of the 21st century. If by this, we mean the opening of the study of law - moving beyond the confines of the legal paradigm, towards a contextual approach, that incorporates views from other disciplines inherently shaping the concept of law - then yes, it may well be *a* trend *à la mode*. Not because of the fancy echoing sound of '*interdisciplinarity'* in research, but because of the much needed critical and broader socio-legal approach to law as a product of cultural, historical, and subjective frameworks. Law must be understood not as an abstract and archaic world of its own, detached from lived experience, but as an instrument (of power) that is affecting individuals just as much as other disciplines. To capture the complex 21st century reality individuals are subject to, research must address the broader context, of which law is both part and product of. Since society itself is multifaceted, the disciplines and forms of research that seek to understand that

world must also be multi- and interdisciplinary. Legal research, therefore, must be complemented by insights from other fields—not as something additional or inferior, but as a necessary response to the complexity of the world. Only by embracing this interdisciplinary approach can we begin to study the law in its full, contextual nature.

This is by no means, a call to reject the (doctrinal) legal education and study. It holds undoubtably significant value as it is intellectually rigorous and equips students with essential analytical and applicable skills. Nevertheless, the traditional model needs to be *supplemented* – some might say, *corrected* – by other methods. This chapter has argued that law schools still '*make tough law'* and that interdisciplinary corrections are needed in legal education and research to correct the prevalent 'legalism' perpetuated by doctrinal legal study.[97] In this sense, this vision recalls and returns to the ideal of the *homo universalis*[98]: the scholar who bridges disciplinary domains in pursuit of holistic understanding.[99]

We could extend the debate by questioning what we see as valuable and necessary. Indeed, ongoing scepticism about the value of the humanities to and within the field of law calls us either to broaden our understanding of what is useful, meaningful, and significant in legal scholarship (a revalorization not just of the humanities as they pertain to law but of the humanities *tout court*), or that we at least suspend the notion of usefulness with a degree of good faith.[100]

This chapter started by referring to the somewhat unsettling, disruptive or intriguing nature of the field of law and humanities. It is exactly that personal, subjectively appreciated feeling and inner reflection towards creations, where the richness of the humanistic approach to law lies. *In short*: the humanities trigger the mind, raise consciousness and touch our soul. The primary aim of a legal system is for it be respected and implemented by individuals in a given state in order to protect citizens. But for that to happen, individuals must not only *understand* the law—they

[97] Newman and Sandberg, (n 39) 18.
[98] The term *homo universalis*, meaning universal man or polymath originates in early modern humanism and refers to an intellectual ideal: a person proficient in a wide range of disciplines—arts, science, philosophy, and more—who approaches the world holistically. This ideal valorises integrative**,** interdisciplinary thinking, and informed the educational models of the Renaissance period. (See: Peter Burke**,** *The Polymath: A Cultural History from Leonardo da Vinci to Susan Sontag* (Yale University Press 2020) 1–5.)
[99] Personal course notes *Recht in de Cultuurwetenschappen* by Georges Martyn at University of Ghent, 2023.
[100] Sarat (n 46) 12.

must also *feel* it and *adhere* to it. This necessitates a fundamental prerequisite: social consciousness. And it is precisely here that the humanities are not merely complementary to legal studies, but equally important: they cultivate awareness, empathy, and critical reflection necessary for individuals to meaningfully engage with law. Where the legal system strives for rational coherence and normative authority, the humanities—grounded in *personal appreciation* and *feeling* rather than abstract science—remind us that respect for law cannot be achieved through logic and institutional frameworks and authority alone. In this sense, the humanities bring into legal thought what abstract science cannot: a space for subjective resonance and reflection, which are essential to understanding how law is experienced, internalised, and ultimately legitimised by those it seeks to govern. Citizens namely feel, therefore are. Art (*a subjectively appreciated feeling of beauty towards original creations*) is all about personal appreciations, feelings, unlike law (*a rational system of objectively applicable rules).* As aptly stated by Guido Calabresi, former dean of Yale Law School, turning to the humanities is important to the degree that it 'feeds' law.[101]

The overall aim of this research is to provide an accessible exploration that offers an accessible and compelling entry point into the field of Law and the Humanities, demonstrating the interdisciplinary approaches to law extend. By engaging with case studies addressing the interaction between art and law, this study reveals a tapestry idea that can enrich legal understanding while also showing that a legal perspective can return the favour by transforming in turn the other disciplines studied. Law is namely ever present in textual, audio and visual arts: it is a constant across time and space. This research rests upon the premise that a law and humanities approach is mutually beneficial: placing law in the context of the humanities allows the humanities to transform our understanding of law and vice versa.[102]

[101] Guido Calabresi, 'Introductory Letter' (1988) 1 *Yale Journal of Law and the Humanities,* vii.
[102] Newman and Sandberg, (n 39) 18.

3.2. A Universal Culture Of Human Rights

3.2.1. Introduction: Human rights as *Praxis*: Rethinking the Foundations of a Universal Human Rights Culture

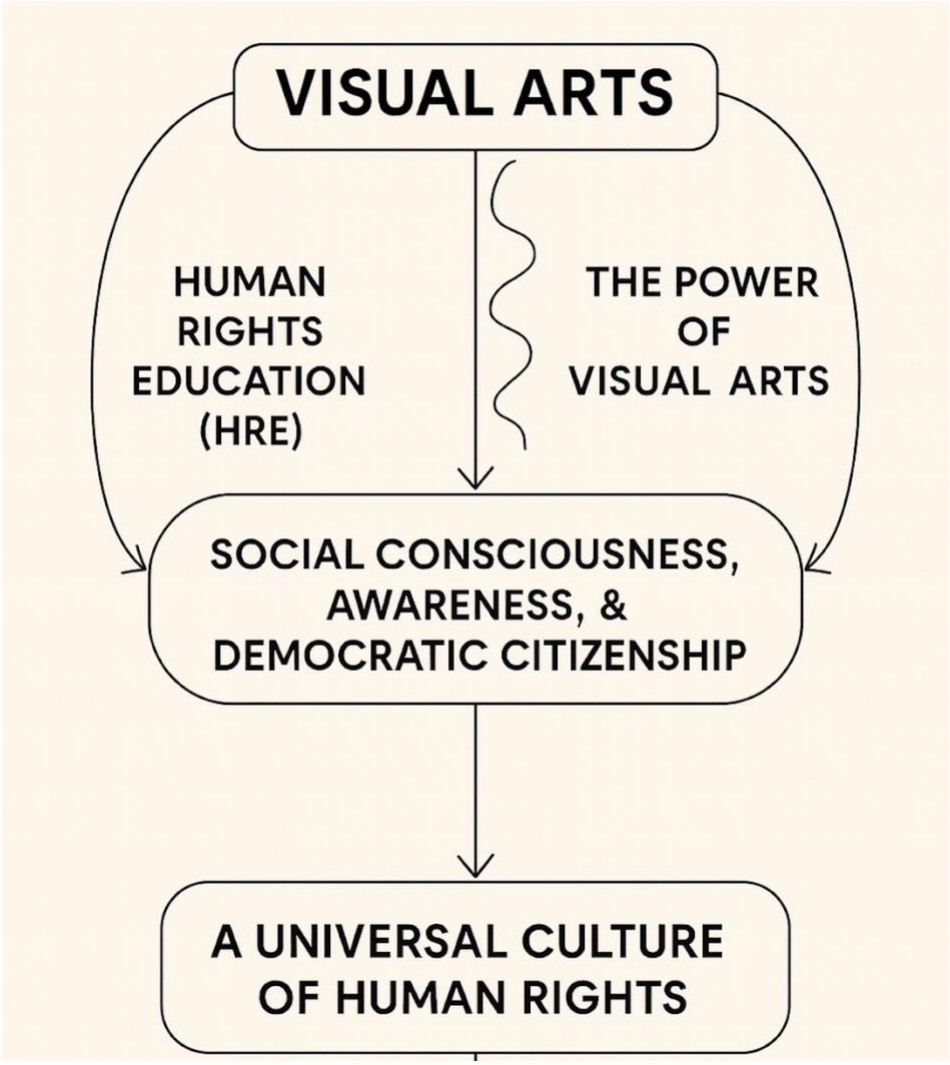
As early as the 19th century, Alexis de Tocqueville[103] identified that the strength of democratic societies lies not only in their formal institutions, but in what he called '*les habitudes de corps et d'esprit'*[104], '*l'esprit public'*[105] and '*les mœurs'*.[106] By this, Tocqueville refers to the shared cultural values, emotional attachments, and civic practices that sustain democracy beyond law. He argued that democracy is not preserved by laws alone, but by a civic culture: the values, attitudes, and collective identity that support democratic participation, solidarity, and respect for rights. Tocqueville's reference to *les mœurs*[107]—the shared beliefs, customs, and civic habits of a society—points to a profound, yet simple truth: laws alone cannot sustain democracy or rights. What matters just as much, if not more, is the existence of deeply rooted cultural dispositions that orient people toward equality, civic responsibility, and human dignity. *In other words*: for rights to function meaningfully, they must be embedded in collective consciousness and everyday life. While he did not speak of human rights *per se*, his insight that law must be sustained by a deeply rooted public spirit and shared moral commitments anticipates contemporary efforts—especially in HRE and cultural engagement—to internalize the values of dignity, freedom, and equality beyond legal texts. This insight resonates deeply with the aim of fostering a universal culture of human rights.

If there's one overarching proposition underpinning this research, it is exactly this focus on addressing the whole societal environment and consciousness in order to come to a reality where human rights are recognized, respected, protected, and promoted in all aspects of life. To help understand and build a culture of human rights. In this chapter we will delve deeper

[103] Alexis de Tocqueville (1805–1859) was a French political thinker, historian, jurist, and statesman, best known for his seminal work *Democracy in America* (1835–1840). His analysis of American political and civic life emphasized the importance of social customs, civic associations, and moral habits in sustaining democratic institutions and values. Tocqueville's work remains foundational in political theory, sociology, and democratic studies.

[104] Alexis de Tocqueville, *De la démocratie en Amérique II (1re et 2e parties)* (1840) 12, 189, 201, 206.
[105] *Ibid*., 90.
[106] *Ibid*., 100, 134-135, 161,
[107] *Ibid*.

into the elements needed to realise a universal culture of human rights, schematically presented as follows.



3.2.2. Defining The Ultimate Aim of 'A Universal Culture of Human Rights'

'A 'culture of human rights' seeks to cultivate a high level of consciousness and compassion for the inalienable rights of all beings. Such growing consciousness within communities around

the world will form a universal lens through which we are able to inform our legal, political and moral decisions.'[108]

The aspiration toward a *universal culture of human rights* did not originate from a single foundational moment but emerged gradually through evolving international discourse on HRE and internalization. The phrase '*universal culture of human rights'* was first used in a UN context in a 1989 Secretary-General's report as part of World Public Information Campaign on Human Rights. (*See infra*) However, it was only with the 2011 UN Declaration on HRE and Training that the explicit phrasing of *'a universal culture of human rights'* was introduced into the normative vocabulary of international human rights law.[109] This declaration identifies as one of its core aims the development of *'a universal culture of human rights*.'[110] From this point onward, the concept becomes formalized as a shared global ambition: to ensure that human rights are not merely legal norms codified in international treaties, but values that are *internalized*, *lived*, and defended across all levels of society.

The notion of a human rights culture reflects a turn beyond legal positivism towards a normative, cultural paradigm—one in which the values underpinning rights (dignity, equality, freedom) become embedded in social consciousness and behaviour. As emphasized by Katarina Tomasevski, former UN Special Rapporteur on the right to education, the project of human rights implementation must also address the fostering of a common language, to signify the importance of cultural, moral and social internalization of human rights norms.[111]

Yet, what does '*a universal culture of human rights'* truly mean?

The concept of a universal culture of human rights strives towards a societal environment where human rights are recognized, respected, protected, and promoted in all aspects of life. It involves a shared understanding and commitment to human dignity, equality, and fundamental freedoms, influencing individual behaviours, social norms, and public policies. This culture

[108] Donna Habsha, contribution to Human Rights Education Association Discussion on defining a culture of human rights (University of Windsor) <http://www.hrea.org> accessed 23 June 2025.
[109] United Nations Declaration on Human Rights Education and Training' (19 December 2011) UN Doc A/RES/66/137
[110] *Ibid*. art. 4 (b).
[111] Katarina Tomasevski, Education *Denied: Costs and Remedies* (Zed Books, London, 2003); Katarina Tomasevski, *Preliminary report of the Special Rapporteur on the Right to Education*, UN Doc. E/CN.4/1999/49 (13 January 1999) 5-7.

goes beyond legal frameworks, integrating human rights principles into daily practices and decision-making processes. Developing a universal culture of human rights involves promoting awareness, understanding, and respect for these rights, as well as fostering attitudes and behaviours that uphold human dignity and equality.[112] Or to phrase it simply: a culture where human rights are *learned*, *lived* and '*acted'* for.[113] Until today, there is no universally accepted definition of the concept of a human rights culture. No legally binding definition in the body of international law can be found. As mentioned above, the term of a universal culture of human rights has become embedded in legal discourse, but it has not been formally defined as such.[114]

Indeed, only limited international legal documents address the notion of a universal culture of human rights. Among these, the UN Secretary-General, in his report to the 45th session of the Commission on Human Rights in 1989 has articulated the creation of a '*universal culture of human rights' as* a major objective of the world campaign.[115] Rooted as it is in the recognition of the organic oneness of mankind, a 'universal culture of human rights' would form the very foundation for a world in which all could feel safe and secure: a world in which a violation of the rights of one would be felt as a violation of the rights of all.[116] However, the proposed definition remains insufficient, as it is overly superficial and leaves numerous questions unresolved. An additional reference can be found in the 1993 Vienna World Conference on Human Rights which reaffirmed the universality, indivisibility, and interdependence of human rights.[117] While the Vienna Declaration does not explicitly use the phrase *universal culture of human rights*, it places strong emphasis on HRE, training, and awareness-raising as essential tools to promote and implement human rights in practice.[118] This emphasis laid important

[112] Council of Europe, 'Introducing Human Rights Education' (Compass: Manual for Human Rights Education with Young People, revised edn, 2020) <https://www.coe.int/en/web/compass/introducing-human-rights-education#Towards%20a%20culture> accessed 23 June 2025.
[113] *Ibid*.
[114] Christina Wurzinger, 'Human Rights Education and the Creation of a Culture of Peace (2007) *EMA Theses* 36 < https://polovea.sebina.it/SebinaOpac/resource/human-rights-education-and-the-creation-of-a-culture-of-human-rights/VEA02272159?locale=eng> accessed 23 June 2025.
[115] United Nations Economic and Social Council, *Report of the Secretary-General, Development of public information activities in the field of human rights*, Commission on Human Rights 45th Session 1989, E/CN.4/1989/21, §64.
[116]X., 'Creating a Universal Culture of Human Rights' (*Bahá'í International Community*, 10 December 1998) <https://www.bic.org/statements/creating-universal-culture-human-rights> accessed 23 June 2025.
[117] World Conference on Human Rights, *Vienna Declaration and Programme of Action* (25 June 1993) UN Doc A/CONF.157/23., Part I.
[118] *Ibid*., Part II, para. 33, 34, 38, 68, 69, 78, 80.

groundwork for later conceptual developments related to conscious civic practice as a constitutive element of human rights enforcement.

Nonetheless, it was not until the adoption of the UN Declaration on HRE and Training in 2011 that the concept was formally articulated in a normative, though non-binding, legal instrument, thus giving it recognized standing in the international human rights framework.[119] The declaration positions the creation of a universal human rights culture as both a goal and a guiding principle of HRE, stating in article 2 (1) that such education aims '*to empower them to contribute to the building and promotion of a universal culture of human rights'*.[120]This formulation marks a significant evolution in the international discourse: it transcends the traditional legalistic framing of rights as entitlements enforceable against the state, and instead promotes a civic, cultural, and pedagogical paradigm—one that seeks to embed human rights into the moral fabric and daily practices of societies.[121] Article 4 (b) moreover stresses the '*Developing a universal culture of human rights, in which everyone is aware of their own rights and responsibilities in respect of the rights of others, and promoting the development of the individual as a responsible member of a free, peaceful, pluralist and inclusive society*.'[122] In this sense, the 2011 Declaration elevates the idea of a universal human rights culture from aspirational rhetoric to a recognized objective within the UN human rights system. Besides that, it is primarily within the work of UNESCO that the concept of a universal culture of human rights has been articulated and operationalized. The World Programme for HRE, established in 2004 by the General Assembly's resolution has been instrumental in articulating and operationalizing this vision.[123] OHCHR provides global coordination of the World Programme.[124] In its foundational document the *Plan of Action*[125] the programme emphasizes

[119] Declaration on Human Rights Education (n 109).
[120] *Ibid*., art. 2(1).
[121] *Ibid*.
[122] *Ibid*., art. 4(b).
[123] UN General Assembly, Resolution adopted by the General Assembly on 10 December 2004, World Programme for Human Rights Education (A/RES/59/113).
[124] Office of the United Nations High Commissioner for Human Rights, 'World Programme for Human Rights Education' <https://www.ohchr.org/en/resources/educators/human-rights-education-training/world-programme-human-rights-education> accessed 23 June 2025.
[125] The World Programme for Human Rights Education, coordinated by the OHCHR and UNESCO, is structured into consecutive phases, each focusing on distinct target groups and thematic priorities: First phase (2005–2009) focused on HRE in primary and secondary schools; Second phase (2010–2014) on higher education and training of teachers, civil servants, law enforcement, and military personnel; Third phase (2015–2019) on media professionals and journalists while consolidating the first two phases; Fourth phase (2020–2024) centres on youth

in each of the phases as the primary objective of HRE the need '*To promote the development of a culture of human rights*'.[126] In this sense, HRE is seen as the primary tool to achieve this culture. (*See infra*) It is nevertheless of importance to emphasise that neither UN nor UNESCO ever precisely define what constitutes this *culture* in terms. They describe *goals* and *components*, not a conceptual framework. For further explanation, due to space constraints, reference is made to appendices 3.2. A.A.

Considering that the notion of a human rights culture has so far not been the object of any legally binding or authoritative definition and the limited attempts to define it in the academic or scientific field, let's cut the concept of a '*universal culture of human rights'* down in view of the proposed meaning within this research. The notion of a universal culture of human rights will be dismantled etymologically and conceptually and then rebuild critically and deliberately. The main conceptual elements of '*universal'*, '*culture'*, and '*human rights'* will be described.

Firstly, the notion of *universality* in human rights is perhaps the most celebrated and simultaneously most contested. Human rights are, by definition, the rights of all human beings. The name of the mother text of international human rights, the Universal Declaration of Human Rights (hereinafter: UDHR) speaks for itself: from the very beginning, the concept of human rights is inseparably linked to a claim of universality.[127] At the International Interdisciplinary and Transdisciplinary Conference in honour of the 75th anniversary of the UDHR, the outline of the treaty came out clearly: a very ambitious project; a set of norms presented as the ultimate touchstone of human action everywhere in the world.[128] In 1948, the international community chose to draw up a catalogue of fundamental norms that should apply to all people everywhere in the world. Or as Prof. Dr. Eva Brems emphasises *'I see universality rather as a goal, not as*

empowerment; and the ongoing Fifth phase (2025–2029) prioritizes youth (including children), digital technologies, environment and climate change, and gender equality.

[126] Art. 9 (a) World Programme for Human Rights Education: Fourth Phase (2020–2024); Art. 8(a) World Programme for Human Rights Education: Plan of Action – Second Phase (2012); Art. 7(a) World Programme for Human Rights Education: Plan of Action – First Phase (2006).

[127] UN General Assembly, *Universal Declaration of Human Rights* (adopted 10 December 1948) UNGA Res 217 A (III).

[128] University of Ghent, 'Conference Program International Inter- and Transdisciplinary Conference - The Universal Declaration of Human Rights at 75: Rethinking and Constructing its Future Together' (Human Righs Research Network, 6-8 December 2023) <https://hrrn.ugent.be/conf2023/wp-content/uploads/2023/12/BROCHURE-CONFERENCE-5-12.pdf> accessed 20 June 2025.

a description of the situation at that time in 1948. Human rights are dynamic and flexible.' [129] Concretely, it refers to the idea that human rights apply equally to all individuals, irrespective of nationality, culture, religion, or any other particular identity marker. Yet this notion has been extensively critiqued—particularly by postcolonial and critical legal scholars—for its historical anchoring in Western liberal thought, often masking power imbalances and exclusions. In this thesis, universal is not understood as uniform or monolithic, but rather as a shared ethical horizon: a pluralistic, dialogical commitment to fundamental human dignity across cultural and political boundaries, open to contestation, reinterpretation, and expansion.

The term *culture* can cover many meanings and can be understood in both a broad and a restricted sense. In its broader meaning, 'culture' concerns the sum of human activities, the totality of knowledge and practice. In its restricted sense, however, it mainly is understood as the result of creative activities and the highest intellectual achievements, such as music, literature, art or architecture.[130] A culture of human rights should be understood in its broader sense. This interpretation is supported by several UNESCO documents. One emphasizes '*that culture is not merely an accumulation of works and knowledge which an élite produces . . . but is at one and the same time the acquisition of knowledge, the demand for a way of life and the need to 'communicate'*.[131] Likewise, the *World Conference on Cultural Policies* affirmed that 'culture' encompasses the ways people think and organize their lives. Culture, therefore, is not only a knowledge of certain values but also a commitment to uphold and embody them in daily life.[132] It is a deeply embedded system of values, symbols, meanings, and practices that shape how societies understand themselves and others. In this context, it refers to a condition in which the principles of human rights are known, felt, internalized and acted upon**.** A deeply shared, collectively felt, and widely adhered system of meaning, embedded in social knowledge and practices of a community**.**

[129] Heleen Debeuckelaere, 'Eva Brems, beschermheilige van de mensenrechten: 'Ik blijf hoopvol. Het is mijn opdracht' *De Standaard* (Brussel, 25 November 2023).
[130] Janusz Symonides, Kishore Singh, 'Constructing a culture of peace-challenges and perspectives-an introductory note' in UNESCO, *From a culture of violence to a culture of peace- Conflict And Issues* (Unesco Publishing, 1996) 12-13.
[131] UNESCO, Records of the General Conference, 19th session, Nairobi, 26 October to 30 November 1976, v. 1: Resolutions, 29.
[132] UNESCO, World Conference on Cultural Policies: final report, Mexico City, 1982, CLT/MD/1.

Human rights are universal, inalienable, and indivisible entitlements inherent to all human beings, simply by virtue of being human. They are rooted in the principle of human dignity and affirm that every person, regardless of race, gender, nationality, belief, or status, is entitled to fundamental rights and freedoms. This modern conception was most authoritatively articulated in the UDHR after the Second World War.[133] (*See infra*) However, many views prevail on the nature and origins of human rights and it can be observed that there is a lack of agreement on what human rights concretely are.

Hence, synthesizing the three concepts, in this research *a universal culture of human rights* is defined as a social reality of human activities, knowledge and practice, where human rights are seen, felt, understood, guaranteed and acted upon as the ultimate touchstone of human action in all aspects of life and inherent to all human beings. In other words: A 'culture of human rights' aspires to foster deep awareness and compassion for the fundamental rights of all human beings. This expanding consciousness, rooted in communities across the globe, aims to serve as a universal lens through which legal, political, and moral decisions are informed and evaluated. Such culture could also be called a '*lived awareness'* of the principles of human rights forming the foundation of all human action and present in the everyday life of each individual. To refer to '*les habitudes de corps et d'esprit*', '*l'esprit public'* and '*les mœurs',* which Tocqueville spoke about, what a universal culture of human rights is about is the strength of democratic societies not only in their formal institutions, but in the shared cultural values, emotional attachments, and civic practices that sustain democracy beyond abstract law. For human rights to function meaningfully, they must be embedded in collective consciousness and everyday life.

A universal culture of human rights requires that people everywhere learn this 'common language of humanity' and embody it in their daily lives. Eleanor Roosevelt's call for education on the UDHR remains as urgent today as it was decades ago. The role of HRE in the realisation of a universal culture of human rights cannot be overlooked and will be elaborated in more detail below. (*See infra*)

[133] Article 1 UDHR

3.2.3. Human rights: a legal nature?

3.2.3.1. Introduction

What are human rights? Where can we trace back its nature, origins and grounding? In today's global society, if one can speak of a shared moral vocabulary, it is most clearly articulated through the language of human rights.[134] Notwithstanding, at the same time, human rights discourse continues to face criticism as an empty rhetoric, lacking tangible action and effective implementation. The understanding of what human rights are, and how they position within the broader normative framework and the (international) legal order, varies greatly depending on the perspective from which one approaches the question. There is no dominant legal, philosophical or political consensus even on fundamental issues such as the very definition of a human right. In the present author's view, this diversity is valuable: the nature, foundations, content, and existence of human rights are not matters of universally accepted or uncontested dogma. Rather, they are marked by a range of competing, well-developed positions—a sign, will be suggested, of the intellectual, cultural, and political vitality of the very notion of human rights.[135] The main red threat to be kept in mind is the enduring reality that the concept of human rights is based on the notions of the human dignity and the limitation on the power of the State as a phenomenon which has been present, albeit in many different manifestations, practically throughout modern history.[136] This chapter will argue that the modern human rights project as such has a legal nature and emerged post the two World Wars within a body of political nature. By this, we refer to the embedding of human rights in international legal frameworks. However, the ideas and foundations underpinning the human rights discourse have deep philosophical roots and can be traced continuously throughout modern history.

On the one hand we can observe that human rights have become '*a fact of the world'*[137] with a reach and influence that would astonish the framers of the international human rights project.[138]

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[134] Charles R. Beitz, *The Idea of Human Rights* (Oxford University Press 2009)1.
[135] Rowan Cruft, S. Matthew Liao and Massimo Renzo, 'Introduction: the Philosophical Foundations of Human Rights' in Rowan Cruft, S. Matthew Liao, and Massimo Renzo (eds) *Philosophical Foundations of Human Rights* (Oxford University Press, 2015) 4.
[136] Felipe Gómez Isa, 'International Protection of Human Rights' in Felipe Gómez Isa, Koen de Feyter (eds) *International Human Rights Law In a Global Context* (University of Deusto, Bilbao, 2009) 21.
[137] Richard Rorty, 'Human Rights, Rationality, and Sentimentality' in Stephen Shute and Susan Hurley (eds) *On Human Rights: The Oxford Amnesty Lectures* (New York, 1993)134.
[138]Beitz (n134) 1.

Indeed, human rights has become an elaborate international practice.[139] Another important observation is that both the discourse and practice of human rights can provoke a paralyzing scepticism, even among those who genuinely support its underlying ideals.[140] Some believe that this scepticism is part of the idea that there should be some mechanism in place for its effective enforcement.[141] However, international human rights practice notoriously lacks a consistent and standing mechanism to enforce many of the rights articulated in major treaties. Even where enforcement mechanisms do exist, they are often applied selectively and typically operate only with the consent, or at the discretion, of the very states they are meant to hold accountable. Beitz moreover argues that it is not even clear how we should conceive of 'enforcement' in relation to some of the requirements of human rights doctrine.[142] This challenge is compounded by another form of scepticism: the concern that human rights cannot be genuinely universal unless they are justifiable from all cultural and moral perspectives.[143] Moreover, even when powerful states express genuine concern for human rights, their actions often reflect strategic interests, leading to selective application and inconsistent protection. [144] These disparities in power have, in practice, shaped both the content and implementation of human rights in ways that appear to benefit the powerful at the expense of the vulnerable. At its most critical, this scepticism suggests that human rights risk becoming tools of domination rather than instruments of emancipation. [145]

Beitz draws on these two key observations—the status of human rights as a *'fact of the world'* and the persistent scepticism surrounding them—to frame his introductory reflection on '*why there is a problem*' with human rights'.[146] Let us delve deeper into the nature, foundations and current discussion to locate the root of this '*problem'*.

[139] *Ibid*.
[140] *Ibid*., 2.
[141] *Ibid*., 3-4.
[142] *Ibid*., 4.
[143] *Ibid*. 5-6.
[144] *Ibid*.
[145] *Ibid*.
[146] *Ibid*., 1.

3.2.3.2. Modern international human rights law as a legal framework created within a political body

Modern international human rights, as we know them today, refers typically to the specific legal norms that emerged from the political project initially undertaken after World War I in the minority rights treaties and then continued on a larger scale after World War II with the adoption of the UDHR in 1948. This political project, embodied in the contemporary human rights movement, aspires to formulate and enforce international norms that will prevent governments from doing horrible things to their people and thereby promote international peace and security.[147] However, the concept of human rights—grounded in the principles of human dignity and the limitation of state power—has been a recurring phenomenon throughout modern history, though manifested in diverse forms. The struggle to affirm human dignity has been a continuous thread, from the early, tentative recognition of the rights of Indigenous peoples during the Spanish conquest of the Americas, to the more formalized articulation of the rights of man and citizen in the aftermath of the French Revolution.[148]

The contemporary idea of human *rights* we have is therefore the legal embedding in (international) *legal* frameworks that emerged post-World War I and II within a *political* body. Indeed, the specific wording 'human rights' only became common in English usage in the 1970s.[149] Felipe Gómez Isa observes that '*we are currently in a phase of internationalisation of human rights, in other words now that most domestic legal systems have started to recognise fundamental rights and freedoms, a new phase has begun in which human rights have been proclaimed in both universal and regional international organisations*.'[150] For further explanation, due to space constraints, reference is made to appendices 3.2. A.

The pivotal moment marking the beginning of the internationalisation of human rights is 1945, following the Second World War and the establishment of the UN.[151] This reflects a paradigm

[147] James W. Nickel, *Making Sense of Human Rights* (Blackwell Publishing, 2007)1.
[148] Gómez Isa (n 136) 21.
[149] Cruft (n 135) 2.
[150] *Ibid*.
[151] It is however important to mention that during the inter-war period, and mainly through the League of Nations, there was an upsurge of a broad movement in favour of the international recognition of human rights. Even before the internationalisation of human rights, Classic International Law did have some institutions which protected certain groups of people and which can therefore be cited as close precedents for such international protection of human rights. (See: Gómez Isa (n 136) 22-29.)

shift from a purely State-centric system with a Westphalian origin[152] towards an international community recognizing the citizen (and its well-being) as legitimate subjects of international law.[153] This development from an 'international law of co-existence to an 'international law of cooperation' has been accompanied by a globalizing expansion of the (State) activities and possible infringements resulting from the disregard of these in relation to individuals' rights.[154]

After the San Francisco Conference[155] and the commitment to promoting human rights in the UN Charter of 1945[156], the UN was charged with writing an international bill of rights and emerged in 1948 as the UDHR.[157] The declaration opens with a preamble affirming the '*inherent dignity'* of human beings as a foundational basis for human rights. It acknowledges that '*disregard and contempt for human rights'* have led to '*barbarous acts'*, which could be prevented in the future if such rights are '*protected by law'*. The preamble further asserts that respect for human rights would contribute to the development of friendly relations among nations. It presents the declaration as articulating '*a common standard of achievement for all peoples and all nations*' and calls upon individuals and institutions to take both national and international action, through '*progressive measures'*, to secure these rights. What follows is a catalogue of rights, broadly organized according to the types of interests they are intended to protect.[158] The declaration calls for '*a social and international order*' in which human rights '*can be fully realized*' and concludes with the admonition that '*everyone has duties to the community in which alone the free and full development of his personality is possible*.'[159] Broadly speaking, the preamble of the Declaration articulates two central themes underlying its justificatory aims: first, that the international recognition of human rights is essential for the protection of the equal dignity of all individuals; and second, that the respect for human rights

[152] Edward Okeke Chukwuemeke, *Jurisdictional Immunities of States and International Organizations* (Oxford University Press, New York 2018) 5.
[153] *Ibid*.
[154] *Ibid*.
[155] United Nations Conference on International Organization, *Charter of the United Nations* (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI.
[156] Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, Preamble and art 1(3).
[157] UDHR
[158] *Ibid*., preamble.
[159] *Ibid*.

constitutes a foundational condition for fostering friendly relations among states.[160] Relatedly, Beitz aptly observes that:

> '*It should be observed that the preamble does not seek to locate the universality or significance of the value of equal human dignity in further considerations of human nature or divine gift; it is simply asserted as a fundamental value in its own right*.'[161]

At this point it is primordial to stress that although there was a shared commitment to the idea and legal embedding of human rights, there was no shared philosophical view about the reasons why it should be thought urgent that these rights be given some form of international recognition and protection. For example, there was no consensus that human rights should be understood as the legal expression of a deeper, pre-existing order of rights inherent to human beings—whether grounded in nature or bestowed by a divine creator.[162] The drafters, considered that adopting either notion would introduce a parochial theological stance, incompatible with the aspiration to a broad international acceptability.[163] A member of the UNESCO Committee on the Theoretical Bases of Human Rights, reported that '*we agree about the rights but on condition that no one asks us why*'. He further described international human rights as '*practical conclusions which, although justified in different ways by different persons, are principles of action with a common ground of similarity for everyone.'*[164] In this sense, it should be noted that the UDHR, which lacks implementation provisions and does not have the legal force of a treaty, was promulgated as '*a common standard of aspiration'*.[165]

After all, this embedding of human rights in international legal frameworks reveal that human rights are rights. But what does it mean to posit that human rights are rights? For further explanation, due to space constraints, reference is made to appendices 3.2. B.

A vast part of the rhetorical appeal of the concept of a right is that having a right to something usually means having a strong claim than can outweigh competing claims. The assertion that

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[160] *Ibid*.
[161] Beitz (n 134) 20.
[162] *Ibid*. 21.
[163] UN General Assembly, Third Committee, 96th 100th Meetings, OYcial Records, October 7-12, 1948 (A/C.3/SR 96-100), 95-125.
[164]Jacques Maritain, "Introduction," in UNESCO, Human Rights: Comments and Interpretations (London: Allan Wingate, 1949), 9, 10
[165]Beitz, (n 134*)* 22.

rights are powerful normative concepts can form one of the reasons why human rights are embedded in rights rather than, for example, goals. The former is namely more suitable for enforcement because there are identifiable holders, scopes and addressees.[166] Rights are distinctive not only in their high priority and definiteness, but also in their mandatory character. It is exactly these three characteristics– high priority, definiteness and bindingness- that make the legal language of rights attractive in formulating the human rights message.[167]

However, there is also another side of the coin to the legal language of rights. Rights are never perfect guarantees since they depend on concrete implementation. Besides, rights vary greatly in degree of specificity: the delineation of a right depends on the implementation and is subject to a considerable degree of discretion.[168]

This lack of implementation of the legal theoretical framework stands at the essence of this critical analysis. The paradigm of legal implementation for human rights at the national level has two parts: on the one hand, enactment in abstract terms in a constitution or bill of rights and on the other, enactment in more specific terms in statutes that become part of the day-to-day law of the realm.[169] While the enactment of human rights into national or international law remains one of the most effective mechanisms for their implementation, it is neither a necessary nor a sufficient condition for their realization. Legal codification alone cannot guarantee real compliance. In fact, legislation and persuasion are not mutually exclusive: human rights laws often aim to educate the public in sound moral and political principles. Ultimately, the effective compliance of human rights depends largely on voluntary adherence, grounded in societal acceptance and internalization.[170]

3.2.3.3. The (non-legal) foundations of human rights

While modern human rights are often identified with the international legal framework that crystallized after World War II, their foundations extend far beyond legal codification as rights. The concept of human rights is rooted in a broader and deeper intellectual tradition, drawing on philosophical, moral, and political thought that long predates their institutional formalization—

[166] *Ibid*. 24-25.
[167] *Ibid*. 26.
[168] *Ibid*., 26.
[169] *Ibid*, 50- 51.
[170] *Ibid*.

particularly in ideas of natural law, human dignity, and universal moral obligations**.** Two recent trends in academic debate will be mentioned and afterwards attention will be paid to the naturalistic view and the political conception of human rights. Given the scope and space constraints of this research, the focus will be limited to the broader academic debate on the philosophical foundations of human rights, without delving into the detailed positions of individual authors or schools of thought.

John Rawls[171] put the notion of human rights firmly on the map of contemporary political philosophy by assigning them a specific role and definition in *The Law of Peoples*.[172] At the same time, a growing body of work began to engage directly with the question of what human rights are and how they might be justified. Seminal contributions by James Griffin and Charles Beitz marked a turning point.[173] These works, alongside others[174] helped establish a distinctive and self-sustaining philosophical discourse on human rights.

In parallel, a distinct but increasingly intersecting body of literature has developed around what is now known as the *capabilities approach*. Grounded in the pioneering work of Amartya Sen and Martha Nussbaum, this framework offers its own conceptual lens, focusing on what individuals are able to do and be. While emerging from a different theoretical tradition, the capabilities approach has frequently overlapped with key concerns in the philosophical debate on human rights—particularly the idea of identifying a threshold of essential goods or opportunities necessary for a minimally decent human life, and the related emphasis on human functioning as a foundation for normative claims.[175] For further explanation, due to space constraints, reference is made to appendices 3.2. C.

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[171] John Rawls (1921–2002) was an American political philosopher best known for his influential work *A Theory of Justice* (1971), in which he developed the concept of "justice as fairness." He is widely regarded as one of the most important political theorists of the 20th century, and later extended his ideas to the international realm in *The Law of Peoples* (1999).

[172] John Rawls, 'The Law of the Peoples' (1993) *Critical Inquiry, Autumn* 36-68.

[173] Beitz (n 134) 20.

[174] James Griffin, *On Human Rights* (Oxford: Oxford University Press, 2008).;Nickel (n 147) 1.; John Tasioulas, 'On the Nature of Human Rights', in Gerhard Ernst and Jan-Christoph Heilinger (eds), *The Philosophy of Human Rights* (Berlin: de Gruyter, 2012), 17–60.; Lynn Hunt, *Inventing Human Rights: A History* (Norton&Company, New York, 2008) 15.

[175] See, eg, Martha Nussbaum, *Creating Capabilities: The Human Development Approach* (Cambridge, MA: Harvard University Press, 2011); Martha Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge: Cambridge University Press, 2001); Amartya Sen, 'Elements of a Theory of Human Rights', *Philosophy and Public Affairs*, 32 (2004): 315–56.

The idea that human rights are grounded in natural rights theory represents one of the most enduring and influential conceptual foundations. In this view, human rights are understood as moral rights that exist independently of legal recognition, derived from the nature, reason, or dignity of human beings.[176] Thinkers like Locke, Grotius, and Pufendorf maintained that these are rights that all human beings possess simply in virtue of their humanity and which can be identified simply by the use of ordinary moral reasoning ('natural reason'), as opposed to the sort of conventional reasons created within particular social or institutional contexts.[177] Concretely, departing from this naturalistic conception of the nature of human rights, they are (a) moral rights that (b) all human beings possess (c) at all times and in all places (d) simply in virtue of being human and (e) the corresponding duty bearers are all able people in appropriate circumstances.[178] Nonetheless, despite its normative power, this moral conception also faces important criticisms. Some argue that it risks moral absolutism, insufficiently attentive to cultural particularity, political context, or evolving social values. Moreover, grounding rights solely in moral philosophy raises questions of practical authority: if rights are not politically negotiated or legally codified, what mechanisms ensure their enforcement? This leads to a turn in the discourse toward more pragmatic, institutional approaches, such as the political conception of human rights.

The political conception of human rights responds directly to these challenges. Instead of defining human rights as timeless moral entitlements, it focuses on their role within international political practice. This approach, as outlined in the introduction to *Philosophical Foundations of Human Rights*, views human rights not primarily as moral rights and as based on certain features of humanity , but rather as standards that regulate how states behave toward their populations and how other states and international institutions may respond to violations.[179] As evidenced by Rawls : '*Human rights are a class of rights that play a special role in a reasonable Law of Peoples: they restrict the justifying reasons for war and its conduct, and they specify limits to a regime's internal autonomy.' [180]* In the view of Rawls, a defining feature of human rights is that their violation may, under certain conditions, justify external interference in a society's internal affairs—whether through economic or political sanctions,

[176] Cruft (n) 4.
[177] *Ibid*.
[178] *Ibid*.
[179] Cruft (n 135) 6.
[180] Rawls (n 172) 79.

or, in some cases, even coercive intervention.[181] Beitz similarly conceives of human rights as safeguarding individual interests whose protection rises to the level of international concern, rather than being limited to intra-state affairs or matters of personal morality. In addition, he challenges the naturalistic conception of human rights as a subset of moral rights: by arguing that '*we understand international human rights better by considering them sui generis*.'[182] In this view, this conception is moreover seen as 'statist' in the sense that human rights standards are directed primarily at states and secondly, states are regarded as the principal agents responsible for their protection and enforcement.[183] This conception has significant institutional and pragmatic advantages: it reflects how human rights function in the international legal and political order, and it acknowledges the political realities of state sovereignty and pluralism. Nevertheless, it also carries risks. Critics warn that anchoring human rights too closely to the practices of international institutions could limit their effective potential**,** letting them being monopolised by the political interests of powerful actors or limiting their scope to what is politically convenient.

After having outlined the different conceptions of human rights, it is perhaps necessary to make the reflection that the differences between the naturalistic conception and the political conception have been overdrawn. It was put forward that on the naturalistic conception, human rights are understood as entitlements we possess solely by virtue of being human, while the political conception views human rights either as constraints on a society's internal sovereignty, or as legal norms that the international community has a responsibility to safeguard. Are these two attributes so distinctively different or conflicting? The main divergence between the two conceptions and a way to understand that they do not need to be in conflict is the following: the political conceptions primarily focus on questions of responsibility (who bears the duty to protect and promote human rights), whereas naturalistic conceptions are primarily concerned with identifying the fundamental aspects of human life that serve as the basis for human rights.[184] What if the ultimate understanding of the grounds and questions about the ways to implement human rights lies within a convergence of both conceptions? It seems in principle possible for one to accept both a naturalistic and political conception of the formal features of

[181] *Ibid*. 79.
[182]Beitz (n 134) 197.
[183] *Ibid*. 128.
[184] Cruft (n) 135 8.

human rights. One might suggest that human rights must be understood as those rights that are both rooted in our humanity and entail obligations with a specific role in the international sphere.[185]

3.2.3.4. Conclusion: Rethinking the Legal Monopoly: A Necessary Shift Beyond Legal Language of Human Rights

In conclusion, while ongoing debates on the nature and foundations of human rights reveal a rich plurality of perspectives — legal, political, and philosophical — they nonetheless all inherently come down to the same core principles: the inherent dignity of the human person and the limitation of state power. The legal tradition provided the post-WWII framework through which human rights were legally codified and promulgated, while the political foundations reflect the choices made by states to embed these rights within new international structures, most notably the UN. Notwithstanding, the philosophical roots of human rights reach much further back, drawing on centuries of ethical reflection and normative theory.

Put simply: the framework of human rights consists of rights and is therefore legal in nature; the institutions through which they emerged are inherently political; yet their foundational roots can be traced back to philosophical thought. The nature, foundations, content, and existence of human rights are not matters of universally accepted or uncontested dogma but instead, they are marked by a range of positions of intellectual, cultural, and political vitality. It is fundamental to be aware of this pluralistic, layered nature of human rights. Although there was a shared commitment to the idea and legal embedding of human rights in the UDHR of 1948, there was no consensus on the foundational philosophical justifications underpinning them. On top of that, it was made clear that it is possible for one to accept both a naturalistic and political conception of the formal features of human rights.. That said, in the present author's view one essential assertion remains: we must confront the limits of a strictly legal institutional approach and embrace this diversity and non-homogenous nature of human rights in society.

Human rights are rights. This gives it a strong normative standing while, at the same time, a conceptual burden. The importance of the concept of rights to human rights must be acknowledged but it must not turn into an over fetishism of rights. International human rights

[185] *Ibid*.

practice lacks a consistent and standing mechanism to enforce many of the rights articulated in legal texts. A central challenge facing the human rights framework lies not in its normative foundations, but in the persistent gap between theory and practice. While the conceptual architecture of human rights is well-developed, their enforcement and practical implementation is urgently lacking. Bridging this gap requires moving beyond abstract commitments to ensure that rights have tangible effects in the everyday lives of people. In fact, education of the population in sound moral and pollical principles is often one of the main goals of human rights legislation. *(See infra*)

In this sense, human rights are overly monopolized by legal language and accordingly, its inherent limits. As such, the language of human rights has become reduced to legal formalism.

Related to this, Douzinas presented one of the most sustained critiques of the modern human rights paradigm, particularly its legal formalism. He argues that contemporary human rights discourse has become dominated by a bureaucratic, legal language, which reduces human rights to an administrative exercise rather than a transformative ethical practice.[186] Douzinas presents a radical and rigorous critique of the legal framing of human rights by exposing the paradox that while human rights have triumphed rhetorically, they have failed practically. As he puts it, our age has witnessed more violations of human rights' principles than any of the previous and less 'enlightened' epochs,' marking a 'twilight of reason" in which the legal discourse of rights is increasingly detached from justice.[187] For further explanation, due to space constraints, reference is made to appendices 3.2. D. Despite these sharp critiques, Douzinas does not reject the idea of human rights entirely. Rather, he argues for a reimagining of human rights as ethical narratives, rooted in cultural, emotional, and historical experience, rather than constrained by legal formalism. For rights to recover their critical and emancipatory potential, we must challenge the epistemological monopoly of law and re-engage the ethical and symbolic imagination of human dignity.[188]

It is precisely here that the field of law and the humanities becomes essential. By bridging legal practice with its deeper philosophical foundations and engaging the other dimensions of rights,

[186] Costas Douzinas, *The End of Human Rights. Critical Legal Though At The Turn of The Century* (Hart Publishing, Oxford 2000).
[187] Ibid., 2.
[188] *Ibid*., 353-357.

it allows us to articulate and transmit the human rights message beyond legal language and formalism. Rather than relying solely on the abstract language of legal rules, this interdisciplinary field explores how human rights values are narrated, visualised, felt, and embodied. *(See supra)* The emergence of law and humanities as a field can be read against the backdrop of a philosophical crisis of value that goes well beyond legal studies, one that still encompasses much of Western thought – what Jean-Francois Lyotard calls 'The Post-Modern Condition'.[189] The crisis of legal formalism and positivism played a significant role in developing the emergence of law and the humanities. In this sense, a humanistic approach can contribute to the mirroring of the 'living law'.[190]

Therefore, to move toward a *universal culture of human rights*, we must first loosen the grip of legal formalism and open ourselves to the full spectrum of human expression. Only then can human rights become not just enforceable, but *enacted*, *shared*, and *lived***.** Only by breaking from the legal monopolisation of the human rights discourse we can tackle the '*problem'* of human rights and render visible the other existing dimensions of human rights.

3.2.4. Human rights education

'Where, after all, do universal human rights begin? In small places, close to home—so close and so small that they cannot be seen on any map of the world. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world.'[191]

This quote by Eleanor Roosevelt aptly catches that the pursuit of a universal culture of human rights cannot be realised solely through the enactment of legal norms. Law may declare rights,

[189] The *postmodern condition*, as defined by Lyotard, signals a fundamental crisis in the legitimacy of knowledge and authority within Western modernity. It is marked by scepticism toward grand narratives which are increasingly viewed not as objective truths but as culturally situated and often politically instrumental. Postmodernity favours a fragmentation of knowledge, privileging plurality**,** difference, and localised epistemologies over totalizing claims. Truth is no longer anchored in universal reason, but is produced through discourse, power relations, and language games (as Michel Foucault would argue), and legitimated by communities of interpretation rather than transcendent norms. *See*: Jean-Francois Lyotard, *The Postmodern Condition* (Minneapolis: University of Minnesota Press, 1984).; Sarat (n 46) 13-14.
[190] Lacchè (n 38) 29-30.
[191] Eleanor Roosevelt, *'In Our Hands: The Universal Declaration of Human Rights',* speech delivered at the United Nations, New York, March 27, 1958. Reprinted in United Nations, *Human Rights: A Compilation of International Instruments* (New York: UN, 1988), or available at: https://www.ohchr.org/sites/default/files/Documents/Publications/Human_rights_indicators_en.pdf (p.21)

but it is human consciousness that enacts them. In this regard, HRE emerges not as a peripheral policy goal but as a central, indispensable precondition for embedding human rights within society. As noted in article 26(2) UDHR, education '*shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms*.'[192] This educational imperative lies at the very heart of the project to construct a universal culture of human rights.

HRE can be defined as education, training and information aimed at building a universal culture of human rights. A comprehensive education in human rights not only provides knowledge about human rights and the mechanisms that protect them, but also imparts the skills needed to promote, defend and apply human rights in daily life. HRE fosters the attitudes and behaviours needed to uphold human rights for all members of society.[193]

Reference can be made to the outline above under 3.2.2. The creation of a universal human rights culture was stated as a goal and a guiding principle of HRE. Accordingly, HRE can be seen as the primary instrument to realise this culture. The expression 'All roads lead to Rome' captures the idea that multiple paths can lead to the same destination. Similarly, there are various approaches to delivering HRE. What ultimately defines HRE, however, is not the method but its aim: the cultivation of a culture in which human rights are understood, actively defended, and consistently respected.[194] For further explanation, due to space constraints, reference is made to appendices 3.2. E.

HRE is not an end in itself but a foundational tool in cultivating social consciousness. A citizen cannot participate meaningfully in the democratic process without a fundamental understanding of her rights and responsibilities, or without the ability to critically assess the legitimacy of political and legal authority. In this sense, HRE is strongly connected to democratic citizenship and could be seen as the educational engine of the latter. As will be exposed later, the integration

[192] UDHR
[193] United Nations, Plan of Action World Programme for Human Rights Education-First Phase (New York and Geneva, 2009) <https://www.ohchr.org/sites/default/files/Documents/Publications/PActionEducationen.pdf> accessed 1 July 2025.
[194] Compass Manual for human rights education, 'Introducing Human Rights Education' (*Council of Europe*, 2002, updated in 2023) <https://rm.coe.int/compass-2023-eng-final-web/1680af992c> accessed 1 June 2025.

of visual arts into HRE offers a powerful pedagogical tool: art enables emotional engagement, critical reflection, and civic imagination.

3.2.5. Democratic citizenship

Given its historical roots, the connection between citizenship and democracy is hardly surprising. The term *citizenship* originated in ancient Greece, and since then its meaning has remained essentially contested and continuously evolving.[195] When Aristotle addressed the notion of '*citizen'* in *Politics*, he presented it as 'a *man who shares in the administration of justice and in the holding of office*'. From this perspective, citizenship requires active participation in judicial and governmental functions, and it is not sufficient to possess the right to hold office: one must exercise it. However, this reflects a narrow conception of citizenship, tied closely to specific institutional functions and exclusions.[196] Even more, it does not form an accurate description of democratic involvement in today's modern societies. At the essence, Aristotle's view on citizenship gives us a base to start from: to understand citizenship as a form of social relationship.[197] Notwithstanding, it is not just any type of social relationship: it refers to one between an individual and a state or society.[198]

Democratic citizenship has been described as a *'polysemous and contested concept'*. At its core, citizenship is always a matter of belonging to a community, which involves politics and rights.[199] Citizens belong to communities—understood as groups of individuals who recognize a shared identity or commonality. This sense of unity may stem from an acceptance of the legitimacy of the state, or it may be rooted in deeper affective bonds forged through shared history, ethnicity, religion, or collective purpose.[200] This implies that, in theory, nationals and

[195] Isin Engin, 'Citizenship in flux: The figure of the activist citizen' (2009) *Subjectivity* <https://oro.open.ac.uk/25861/> accessed 3 July 2025.
[196] *Markus Bayer, Oliver Schwarz and Toralf Stark, '*Citizenship in flux: Introduction and a conceptual approach' in Markus Bayer, Oliver Schwarz, Toralf Stark (eds), *Democratic Citizenship in Flux. Conceptions of Citizenship in the Light of Political and Social Fragmentation* (Transcript 2021) 8.
[197] *Ibid*.
[198] Richard Bellamy, *Citizenship. A Very Short Introduction* (Oxford University Press, 2008) 15.
[199] Hugh Starkey, 'Democratic citizenship, languages, diversity and human rights. Guide for the development of Language Education Policies in Europe From Linguistic Diversity to Plurilingual Education' (2002) *Council of Europe* 7 <https://rm.coe.int/democratic-citizenship-languages-diversity-and-human-rights/1680887833> accessed 4 July 2025.
[200] *Ibid*.

non-nationals living within a state can exercise citizenship. Hence, citizenship does not stand or fall with nationality of a certain state: although citizenship is usually closely associated with nationality, it is a freestanding and independent concept. The nation is only one possible (imagined) community within which citizenship is exercised.[201] Citizenship is most experienced at local levels and exists at supranational levels such as Europe. Recent discussions on citizenship posit a new term *'world or global citizenship'*.[202]

Within the realm of the Council of Europe, citizenship in the member states is based on a commitment to justice, human rights, and the rule of law.[203] Relatedly, the Committee of Ministers reaffirmed that education for democratic citizenship aims to instil a culture of human rights.[204]

In her book *Cultivating Humanity*, Nussbaum offers a model of education for democratic citizenship.[205] Concretely, Nussbaum stipulates three essential capacities to the cultivation of democratic citizenship in today's world: (1)capacity for critical examination of oneself and one's traditions, for living what, following Socrates, we may call '*the examined life', (2)* ability to see themselves as not simply citizens of some local region or group, but also, and above all, as human beings bound to all other human beings and (3) narrative imagination. Notable, Nussbaum argues that the narrative imagination is cultivated, above all, through literature and the arts. (*See infra*) Reliance on the arts is essential for both freedom and community, in an open and non-hierarchical manner. For further explanation, due to space constraints, reference is made to appendices 3.2. F.

At the heart of all three capacities lies *freedom*. Which, according to Nussbaum, arts can foster most meaningfully. Democratic citizenship is not merely a legal status granted by the state, but a cultivated identity grounded in the capacity for critical reflection, empathetic recognition, and narrative imagination. In other words: a deep sense of reflected, aware and nuanced/reflexive democratic belonging.

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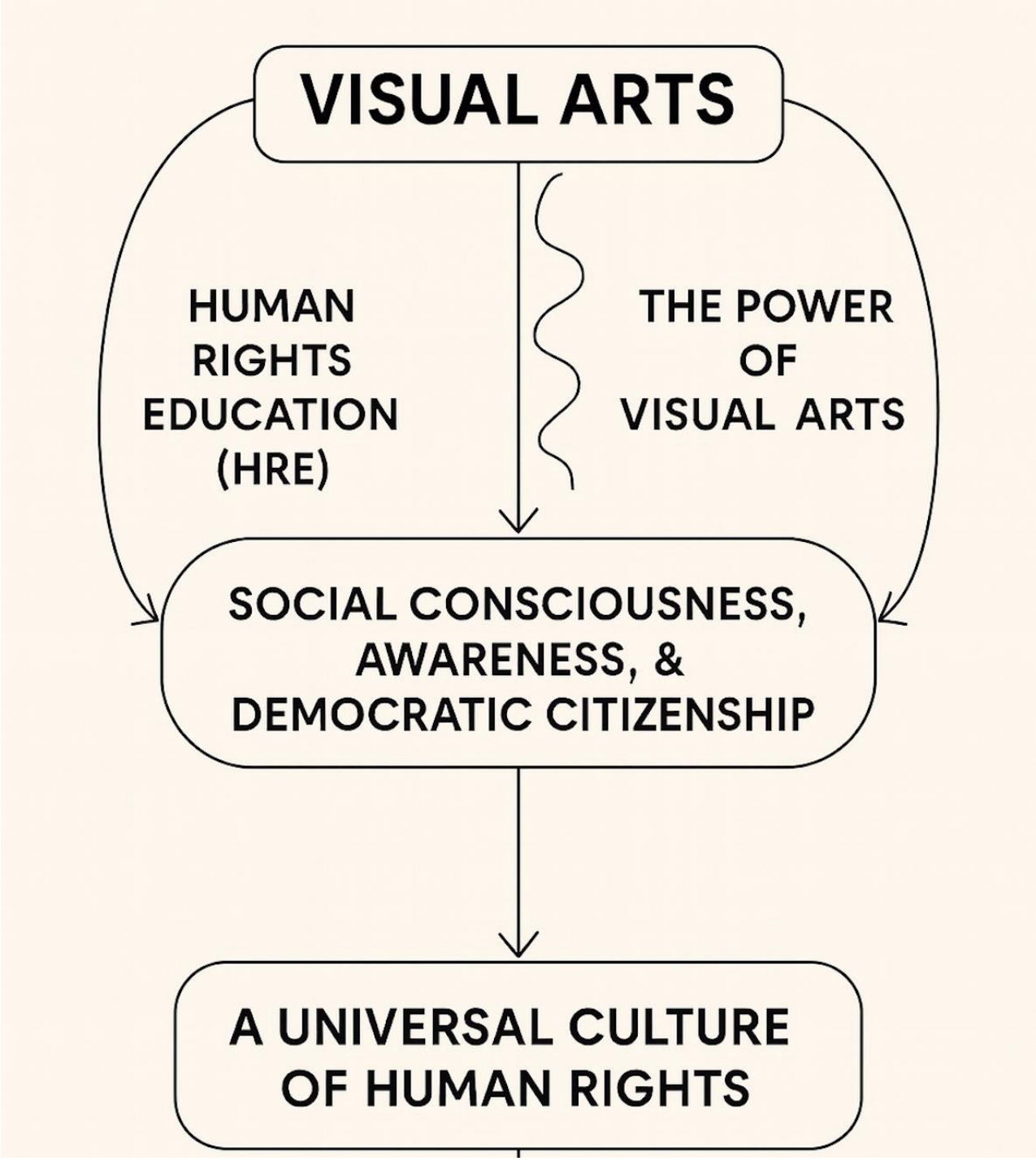
[201] Benedict Anderson, *Imagined. Communities Reflections on the Origin and Spread of Nationalism* (Verso, 1983).
[202] *Ibid*.
[203] *Ibid*.
[204] Council of Europe, *Declaration and Programme on Education for Democratic Citizenship, Based on the Rights and Responsibilities of Citizens* (7 May 1999) CM Decl(07/05/99/4).
[205] Martha C. Nussbaum, *Cultivating Humanity (n 50) 352*.

3.2.6. Concluding Reflections on the Realisation of a Universal Culture of Human Rights

In this chapter it was made clear what concretely a (universal) culture of human rights entails, and it was positioned as the central goal of this research. In this research *a universal culture of human rights* was defined as a social reality of human activities, knowledge and practice, where human rights are seen, felt, understood, guaranteed and acted upon as the ultimate touchstone of human action. Such culture could also be called a '*lived awareness'*.

After defining the overarching aim of a universal culture of human rights, its essential components were subsequently identified and examined: the nature of human rights, HRE and democratic citizenship. All these concepts are inherently linked and form the foundational elements of the overarching aim: the realisation of a culture of human rights. Put simply: to realise a universal culture of human rights, we need a culture in which human rights are learned, lived, and 'acted' for. A *lived awareness*. This lived awareness requires that citizens possess an awareness of human rights as the ultimate touchstone of human action. Democratic citizenship is a form of awareness, understanding of democratic belonging to a community that entails both politics and rights. This awareness can primarily be fostered in individuals through HRE. Therefore, HRE is strongly connected to democratic citizenship and can be seen as a key tool to realise the latter. What follows will make clear that the visual arts are not merely complementary, but constitute a vital, perhaps even ultimate, medium for cultivating that awareness, fostering democratic citizenship, and embodying the very spirit of HRE in the aim of achieving a culture of human rights. Schematically, this can be presented as follows.


VISUAL ARTS
HUMAN RIGHTS EDUCATION (HRE)
THE POWER OF VISUAL ARTS
SOCIAL CONSCIOUSNESS, AWARENESS, & DEMOCRATIC CITIZENSHIP
A UNIVERSAL CULTURE OF HUMAN RIGHTS

3.3. The Power of Visual Arts

3.3.1. Introduction: Where The Authority of Law Ends, the Authority of Art Can Save Us?

Where the authority of law ends, the authority of art can save us?

As became apparent in the previous chapters the realisation of a human rights culture comes down to a social reality of human activities, knowledge and practice, where human rights are *seen*, *felt*, *understood*, *guaranteed* and *acted upon* as the ultimate touchstone of human action. A 'culture of human rights' aspires to foster deep awareness and compassion for the fundamental rights of all. Such culture could also be called a '*lived awareness'*.

Social consciousness or a *lived awareness* is not only an element in the realisation of a culture of human rights, it forms a prerequisite. For that to happen, individuals must not only understand human rights—they must also feel it. And it is precisely here that the arts are not merely complementary, but equally important: they cultivate awareness, empathy, and critical reflection necessary for individuals to meaningfully engage with human rights.

Where a legal system strives for rational coherence and normative authority, the arts—grounded in *personal appreciation* and *feeling* rather than abstract science—remind us that respect for law cannot be achieved through institutional frameworks and authority alone. In this sense, the arts bring into legal thought what abstract science cannot: a space for subjective resonance and reflection, which are essential to understanding how law is experienced, internalised, and ultimately legitimised by those it seeks to govern. Citizens namely feel, therefore are. Art (*a subjectively appreciated feeling of beauty towards original creations*) is all about personal appreciations, feelings, unlike law (*a rational system of objectively applicable rules).* Turning to the arts is indispensable to the degree that it '*feeds'* law. Considering the power that art has on individuals, the authority of art emerges where the authority of law ends. In the following chapter the driving forces behind the power of arts will be unveiled.

3.3.2. The Aesthetic of Human Rights: Images As Engines of Democratic Change

The aesthetic of law and the authority of art has been observed through various angles. Goodrich argued that the grandeur and gravitas of legality largely comes down to the visual representation of the law. Martyn and Huygebaert furthermore approached the interaction between art and law from a historical legal iconological lense. Manderson drew our attention to the fact that legal discourse is articulated in the realm of and through the medium of images. (*See supra)* These theories, though varied in perspective, converge in affirming that aesthetics play a meaningful role in the formation, interpretation and legitimacy of law. However, the way in which art contributes to this process is less documented. These articulations do not say anything about the underlying force or power of (visual) arts. Up to this point, the focus has primarily been on the *what*—the value of studying law through the lens of the humanities. What follows will shift attention to the *how*: an exploration of the way in which the value of law and the humanities manifests and operates.

The research question to be answered in this part is what role and force do (visual) arts play in the enforcement of human rights? More particularly, what are the (sociological) implications of the aesthetics of law, and how can art influence (public) perceptions of law and justice? It will be explored how aesthetics have a force to move people to fight for rights, in order to contribute to a change in the social, legal, and political paradigm. Can aesthetics be seen as a force that is both reflective and capable of transforming societies and law through the exercise of citizenship? After having recognized that human rights extend beyond their legal nature and is composed of philosophical and imaginal elements, this part explores how aesthetics can contribute to the realisation of a culture of human right.

Various theories address the explanation of how images as carriers of intrinsic force moves people and how art becomes power for change within individuals. Nevertheless, it is first of importance to distinguish the different spaces, realms of action.

Three realms of action: three loci

We can make a differentiation between three distinct, yet interrelated spheres of agency involved in this aesthetic dynamic of power. First, there is the *image* itself, which contains iconographic and aesthetic elements: the representation, imbued with symbolic, affective, or critical content. Second, the *spectator* plays a vital role, as the image's meanings are never fixed but are subject to personal, social, and contextual interpretation. This interpretive process is not incidental but fundamental: it is in the reception of the image that its juridical or political force is activated, transforming the viewer from passive observer to potentially active protagonist or more: citizen. A third, often underexamined dimension is that of the *creator or artist*, whose intentionality, positionality, and socio-political context shape the visual discourse and influence how the image intervenes in the public sphere. Together, these three *loci*—the *image*, the *viewer*, and the *creator*—form a relational aesthetic circuit that enables images to become agents of legal consciousness and engines of democratic action, especially when they challenge legal narratives or visualize injustice that legal language fails to address.

Theories on the power of aesthetic

In his text '*Aesthetics of Human Rights: Images that Provoke Citizenship'*, João Motta Guedes, develops an understanding of how aesthetic creation, i.e. images and artworks, can contribute to moving (or motivating) people to fighting for human rights, through active citizenship and political participation. He develops a theory of the legal image as part of a concept of aesthetics of human rights, to show the importance of images and artworks as factors that may play a role in the formation of the law, creating a theory within the scope of philosophical, sociological, anthropological and artistic reflections of the law.[206]

Within this exploration, a necessary mention has to be made to the explanation that configures images as carriers of an intrinsic force that moves people, the '*energeia'*, as argued by

[206] João Motta Guedes, 'Aesthetics of Human Rights: Images that Provoke Citizenship' (2022) HUMAN(ITIES) AND RIGHTS GLOBAL NETWORK JOURNAL 209-210 <https://www.google.be/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.humanitiesandrights.com/journal/index.php/har/article/download/74/61&ved=2ahUKEwjRrYmF2KiOAxVHRaQEHRMFIh4QFnoECBoQAQ&usg=AOvVaw03kDf21BG9qug0FoesW7pF> accessed 30 June 2025.

Bredekamp in this theory of '*the image act'*.[207] Bredekamp conceptualizes the image as an act, underlining the latent force and ability to provoke action in the observer. At the heart of this theory lies the idea of image autonomy, and its inherent '*energei*a': the intrinsic force embedded in the image itself, activated trough the engagement with the observer. This energeia enables the viewer to derive individualized meaning from the image, so that it leaves a state of latency and directly causes an *action* in the sphere of the observer. It is through this idea that the '*iconic act theory'* is founded. This theory directly contributes to an idea of discourse as something generated in the relational space between image and observer.[208] Hence, although acknowledging the operation in the realm of the observer, Bredekamp places the centrality of his theory on the side of the image, attributing to it a power going beyond the mere subjective interpretation of the observer.

The way in which images of law and justice are represented in legal aesthetics as contributing factors to the justification of law, is furthermore observed by Fischer-Lescano, in '*Sociological Aesthetics of Law'*.[209] He outlines various ways in which aesthetics intersect with legal practice and underscores the significance of aesthetic perception for a self-critical legal theory. Fischer-Lescano emphasizes that the subjective reception of images can have profound social, political, and legal implications, showing how aesthetic dimensions shape and influence the content of law. In this sense, images and artworks become an element within the construction of ideas of law in society: either reinforcing or contesting notions of justice and thus forming what he refers to as a 'sociological aesthetics of law', a framework that reveals the inherent connection between aesthetics, law, and society.[210]

Another essential point of view, forms the interpretation by Koskenniemi, who emphasizes how the aesthetics of law are essential for the creation of critical negativity which will over time change the law.[211] The authors dwells on the (negative) aesthetic of law and questions if it will

[207]Horst Bredekamp, *Image Acts. A Systematic Approach to Visual Agency* (De Gruyter, 2018).

[208] *Ibid*., 36.

[209] Andreas Fischer-Lescano, 'Sociological Aesthetics of Law' (2016) *Law, Culture and the Humanities 268-293* <https://journals.sagepub.com/doi/10.1177/1743872116656777> accessed 1 July 2025.

[210] *Ibid*.

[211] João Motta Guedes, 'Aesthetics of Human Rights: Images that Provoke Citizenship' (2022) HUMAN(ITIES) AND RIGHTS GLOBAL NETWORK JOURNAL 211-216 <https://www.google.be/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.humanitiesandrights.co

save law and society? Images can namely play an important role in the formation of critical negativity and in the replacement of hegemonic values by other values that become dominant, such as human rights and their evolving formulations through time. mages can play a pivotal role in exposing violence and injustice, mobilizing individuals to advocate for rights, and shaping them as active agents of citizenship.[212]

In his work, João Motta Guedes, incorporates parts of these several theories and comments on them to deliver a theory of the legal image as part of an aesthetics of human rights, capable of explaining how the received images move people to fight for rights. Hereby he focuses on the observer's role because the image can only exist and hold meaning in the relationship with the one who sees it. Additionally, he applies the '*theory of the iconic* act' to the political and legal meanings that images invoke, empowering the observer to take political action and to exercise rights of citizenship. Through the 'sociological aesthetics of law', he considers both the power and the anti-power of images fundamental in the dynamic that moves people to exercise citizenship and contribute to legal, political or social change. The importance of aesthetics of human rights as part of a theory of the legal image reveals how the legal meanings of images move people to fight for rights through the strength of images and their powerful emotional impact on people.[213]

As a conclusion, this research adheres to João Motta Guedes' interpretation of the aesthetic of human rights and images that provoke citizenship. By bridging several theories, he aptly catches the importance of both the image and viewer, the positive and negative aesthetic of human rights, in order to foster citizenship in people and fight for change in the legal, political or social paradigm.

The addition this piece wants to offer is the strength of the aesthetic that departs from a combination of the three realms of power, the three *loci*: the *image*, the *viewer*, and the *creator.*

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m/journal/index.php/har/article/download/74/61&ved=2ahUKEwjRrYmF2KiOAxVHRaQEHRMFIh4QFnoECBoQAQ&usg=AOvVaw03kDf21BG9qug0FoesW7pF> accessed 30 June 2025.

[212] Martti Koskenniemi, 'Law"s (Negative) Aesthetic: Will it save us?', *Philosophy and Social Criticism* 1039-145 < https://journals.sagepub.com/doi/10.1177/0191453715576770> accessed 1 July 2025.

[213] *Ibid*.

All three form a relational aesthetic circuit that enables images to become agents of legal consciousness and engines of democratic action.

These three *loci* are essential in fostering the lived awareness, which is happening in the sphere of the viewer and brings the viewer, through this process of lived awareness from unconscious to conscious.[214] In other words: the aesthetic of human rights operates as carriers of an intrinsic force that directly causes an action (*shock, process of lived awareness*) in the viewers' sphere and brings them to a higher consciousness. This higher consciousness then contributes to a change in the legal, social or political paradigm and by this contributes to a universal culture of human rights since human rights are lived, conscious in the realm of this viewer.[215]

Where the authority of law ends, the authority of art can save us? This chapter confirmed this reflection since an aesthetic of human rights can change an unconscious viewer into a conscious viewer and by this, an individual in an active citizen acting upon a universal culture of human rights.

[214] Candice Dalino, 'René Magrittes 'Les jours gigantesques' Un féministe avant la lettre?' (2025) *ProMemorie* <https://www.aup-online.com/content/journals/10.5117/PROM2025.1.006.DALI> accessed 10 June 2025.

[215] *Ibid*., 156-158.

4. Case study: The Portuguese Carnation Revolution (*25 de Abril)* and (visual) arts

4.1. Introduction: '*interpreting their profound sentiments, overthrew the fascist regime'*

'On April 25, 1974, the Armed Forces Movement, crowning the long resistance of the Portuguese people and interpreting their profound sentiments, overthrew the fascist regime. Liberating Portugal from dictatorship, oppression, and colonialism represented a revolutionary transformation and the beginning of a historic turning point for Portuguese society.

The Revolution restored to the Portuguese people their fundamental rights and freedoms. In exercising these rights and freedoms, the legitimate representatives of the people convened to draft a Constitution that corresponds to the aspirations of the country.

The Constituent Assembly affirms the Portuguese people's decision to defend national independence, to guarantee the fundamental rights of citizens, to establish the foundational principles of democracy, to ensure the primacy of the democratic rule of law, and to pave the way for a socialist society, in respect of the will of the Portuguese people, with a view to building a freer, fairer, and more fraternal country….'[216]

The preamble of the Portuguese constitution stands out as a *unicum* in western European constitutions. The first sentence clearly points out the historical and legal importance to the state of Portugal of the overthrowing of the fascist regime, crowning the long resistance of the Portuguese people and interpreting their profound sentiments. Central stands the condemnation of fascism in strong terms and its commitment to building a socialist society. In general, constitutional preambles serve as interpretive guides to the constitutionals itself and express the

[216]Preamble Portuguese Constitution, 2 April 1976,<https://www.parlamento.pt/Legislacao/PAGINAS/CONSTITUICAOREPUBLICAPORTUGUESA.ASPX> accessed 3 July 2025.

founding values and identity of the policy. In the 1976 of Portugal, that focus laid on liberating Portugal from dictatorship, oppression, and colonialism representing a revolutionary transformation and the beginning of a historic turning point for Portuguese society. Compared to other constitutions in Europe, the Portuguese constitution is uniquely social and ideologically open**,** especially in its protection of socio-economic rights.

This nature can easily be explained given the fact that it represents the '*profound sentiments'*, as even stipulated in the preamble, among Portuguese people after having lived in the longest-lasting authoritarian regime in 20th-century Europe.

The conceptual framework elaborated before will be applied to a case study: the role of visual arts in Portugal's Carnation Revolution. This section will begin with a historical overview of Portugal's authoritarian regime and the democratic transition that followed. It will then examine how visual arts functioned under authoritarian rule, acted as a form of civic resistance, and contributed to the reimagining of law and democracy before, during and after the revolution. Concretely, it will be researched how visual artists, under the constraints of dictatorship, were fuelled and inspired by the repressive political, legal, and institutional structures to create works that actively challenged the regime. These artists not only resisted authoritarian control through their art but also played a critical role in anticipating and empowering civic action in the lead-up to the Carnation Revolution. Art became a form of civic engagement, serving as both a medium of resistance and a catalyst for collective rupture with the dictatorial regime.

The *oeuvre* of Margarida Santos, an artist who lived through both the dictatorship and the revolution will be analysed in greater detail departing from the three-partite analysis of *Panofsky*. The selection of artworks departs from the artist's rupture with established conventions: as a female artist, as a sculptor, as a woman in a male dominated world, and as an artist living under an authoritarian regime.

4.2. Portugal's authoritarian regime

Say 'Estado Novo' out loud, and most Portuguese people still get chills. To this day, the term evokes the memory of the dictatorship and is commonly used to refer to the authoritarian regime. However, the authoritarian path of Portugal spanned a longer period. For further explanation, due to space constraints, reference is made to appendices 4.A.

The Estado Novo, established under António de Oliveira Salazar, was a clerical-conservative authoritarian regime that dictatorially governed Portugal over four decades. Its longevity and stability was grounded on a paradox: it utilized a legal order to restrict fundamental freedoms while legitimizing itself as the guardian of national unity and moral order. The law stood central as the tool to implement the authoritarian regime, restricting Portuguese' fundamental rights.

The institutionalisation of the Estado Novo hinged on the drafting of a new Constitution. [217]Salazar understood that the legitimacy of his regime would not rest on force alone but on a carefully constructed legal edifice, one that could invoke constitutionalism while hollowing out its democratic core. The 1933 Constitution thus represented the formalization of an authoritarian state under the premise of legal order.[218] It outwardly retained references to democracy but in substance, it restructured the state around a concentration of executive power, a one-party system (*União Nacional*), and extensive powers to govern by decree. Political pluralism was abolished; civic rights were subordinated to vague qualifiers such as 'public morality' and 'national interest'; and the judiciary was rendered politically subordinate. The appearance of legality masked a reality of near-complete executive autonomy.[219] The Constitution adopted the principle of the separation of powers—executive, legislative, and judiciary—but in practice, it was constructed to centralize authority in the executive, neutralize parliamentary competences, and subordinate the judiciary to the ideological project of the state. The State's repressive system was improved through the creation of a new political police and with censorship, which allowed for the regime to legitimise itself through 1934 elections to the

[217] *Ibid*.
[218] *Ibid*.
[219] *Ibid*.

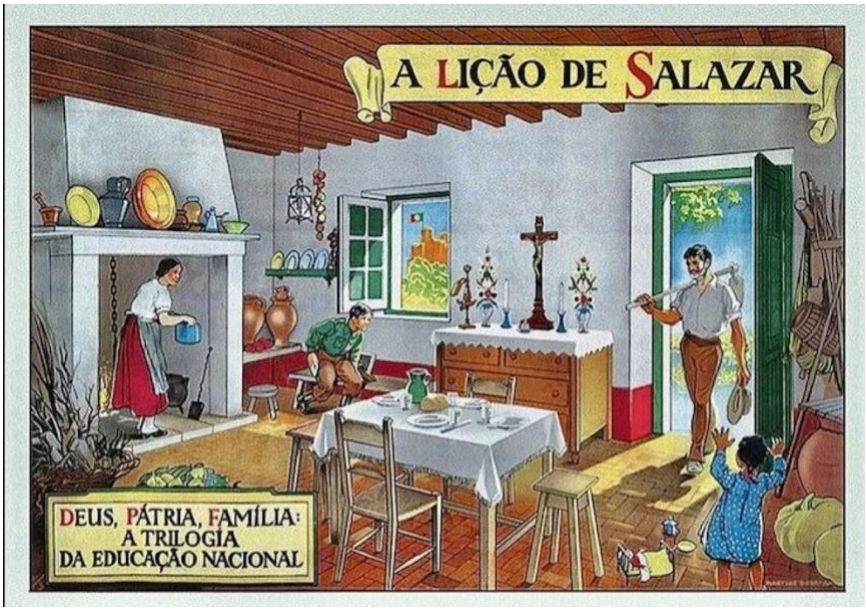
new National Assembly.[220] The Secretariado da Propaganda Nacional (SPN), later the Secretariado Nacional de Informação (SNI), exercised extensive control over cultural and intellectual life, enforcing aesthetic and moral conformity. PIDE, the political police, operated as a pervasive surveillance apparatus, targeting dissent with arrests, censorship, and forced exile, albeit with a preference for 'controlled repression' over spectacular violence.[221]

This 'Estado Novo', grounded on the constitution, was essentially a Catholic authoritarian regime.[222] Based on the pattern on building a 'new state' that would prioritize the nationalist ideal and build a society with Catholic pillars offering a conservative vision, based on the restoration of traditionalism and its values. [223] One of Salazar's notable contributions was his call to '*living normally'*—that is, to preserve and reproduce inherited habits and values from previous generations.[224] The defence of rurality and catholicity served the restoration of a supposedly ancient, mythical order, replacing citizenship and the right to be one's own master and master.[225] Its ideological hard core came down to, as Salazar said himself:

> '*Antiparliamentarians, antidemocrats, antiliberals. We are opposed to all forms of internationalism, communism, socialism and syndicalism.'*[226]
>
> *'To govern is to protect people from themselves'*.[227]

[220] *Ibid*. The 1934 elections in Portugal, conducted under the new Estado Novo regime, were not free, competitive, or democratically legitimate by any reasonable standard. Instead, they were designed to legitimate the emerging authoritarian state under Salazar while preserving the façade of constitutionalism.
[221] Tom Gallagher, 'Controlled Repression in Salazar's Portugal' (1979) *Journal of Contemporary History* (SAGE, London) 386.
[222] Kenneth Maxwell, *The Making of Portuguese Democracy* (Cambridge University Press, 1995) 16.
[223] Daniel Melo, ''Living Normally': Everyday Life Under Salazarism' (2022) European History Quarterly 202 < https://journals.sagepub.com/doi/epub/10.1177/02656914221085129> accessed 5 July 2025.
[224] *Ibid*.
[225] *Ibid*.
[226] Maxwell (n 222) 18.
[227] *Ibid*.

At the heart of Salazar's vision lied the central doctrinal idea of :'*God, Fatherland and Family'*.[228]



A Lição de Salazar ('Salazar's Lesson') (1938) Source: Wikimedia Commons

Given the space constraints, the regime's central ideological values will shortly be described from four main domains: legal, political, social, and economic. Given the scope of this research, particular attention will be paid to the targeted groups of women and the artistic sector.

Politically, the regime was profoundly anti-liberal and anti-parliamentarian. Parliamentarism was depicted as corrupt, fractious, and ultimately un-Portuguese: a foreign import incompatible with national character.[229] Salazar condemned liberal democracy and instead elevated the authority of the executive as the centre of the state. Political parties were banned under the 1933 Constitution, replaced by the *União Nacional*, a single-party structure devoid of ideological contestation or policy debate.[230]

Economically, the regime rejected both Marxist ideas and liberal *laissez-faire* capitalism in favour of a corporatist model. The 1933 Constitution established state-controlled

[228] *A Lição de Salazar* ("Salazar's Lesson")—was part of a set distributed in schools in 1938 to promote the core values of the Estado Novo regime. Each poster combined idyllic images of rural renewal and modernization with moral instruction. One featured your scene with "God, Fatherland, Family: the trilogy of national education. (Melo (n 223)
[229] *Ibid*.
[230] *Ibid*

'*corporations'* in which workers and employers were obliged to participate through vertical syndicates (*sindicatos nacionais*) and where social rights were banned.[231]

Legally, the Estado Novo was authoritarian, but not anarchic. In contrast to fascist or military regimes that ruled through direct coercion, Salazar's dictatorship relied on a formalized legal structure**,** in which law served as a vehicle for obedience. Rights existed in theory but were systematically undercut by vague limitations. *In other words*: Salazar ruled not despite the law, but through it**.** His authoritarianism did not abolish legal institutions—it weaponized them. The law became the silent architecture through which repression was rendered ordinary, and obedience was turned into virtue. It was not only the judiciary, police, and legislature that preserved the Estado Novo, but the very discursive structure of law that made its ideology liveable, enforceable, and narratable.

Socially, the Estado Novo constructed an image of Portuguese identity grounded in Catholic values, rural conservatism, and patriarchal order with the ideal of the traditional family. The regime's moral foundations were heavily shaped by Catholicism. The Catholic Church emerged as one of the most powerful institutional allies of the regime, enjoying protection and extensive influence over education, censorship, and family policy. Salazar's authority was given as it was by God himself, always depended upon confirmation by the Church.[232] In this sense, the Roman Catholic Church did not merely support the regime; it actively endorsed Salazar, serving as a principal pillar of authoritarian rule. By lending its moral and spiritual authority, the Church legitimised and reinforced the regime's ideological foundations—not solely to preserve its own influence, but also to entrench a mutually beneficial alliance with dictatorial power. The Church's influence naturally extended into other conservative and traditional worldviews, affecting even more individuals who were (already) socially discriminated. Particularly, women were discriminated against, as well as artists. [233]

[231] Philippe S. Schmitter, 'The "Régime d'Exception" That Became the Rule: Forty-Eight Years of Authoritarian Domination in Portugal' in Lawrence S. Graham and Harry M. Makler (eds), *Contemporary Portugal The Revolution and Its Antecedents* (University of Texas Press, 1979) 23.
[232] *Ibid*.
[233] Melo (n 223) 210.

4.2.1. A Targeted Nationalism: Women Under Salazar's Dictatorship

Within Salazar's regime women were seen as complementary and solely seen in their role of passive wife and mother within the traditional family as the cornerstone of society. This view was even constitutionally embedded. The 1933 Constitution generally foresaw in the equality of all citizens, except for women, who's *'Differences result from their nature and their duty towards the good of the family.'*[234] Hence, Salazarism used the '*female nature'* to (constitutionally) subordinate women to men and thus deny equality.[235] Women were instrumentalised as a tool to realise male dominated society with the family as cornerstone of society and to perpetuate traditional social norms:

> '*This had far-reaching social implications, perpetuating a notion of women's inferiority and relegating them to a secondary role in society and the family structure, in a legacy that continues to outline our understanding of gender roles in the 21st century*.'[236]

In this way, Salazar stayed true to his Catholic endorser, the Church, who proclaimed that 'nature' intended that women stayed at home, bear children and do housework in texts such as Rerum Novarum(1891) and Quadragesimo Anno(1931).[237] In patriarchal manner, the Constitution furthermore declared the man as '*the head of the family'* and attributed him full authority, while the mother only was imposed full devotion of the family.[238]

On top that, women were subordinated to stereotypical social roles: '*of caring for the home, of procreator and servant of the husband, family and nation, fearing God*.'[239] Salazar's regime represented a systematic and reactionary response to evolving gender dynamics, actively pushing women back into the domestic sphere—except for duties such as shopping, religious participation, education, or caregiving—and subjecting them to ideological indoctrination. In parallel, the regime systematically limited women's civil rights (restricting suffrage to certain groups, requiring husband's permission, limiting access to divorce), while undermining their

[234] Article 5 Portuguese Constitution 1933
[235] Anne Cova and Antonio Costa Pinta, 'Women Under Salazar's Dictatorship'(2002) *Intellect* 129.
[236] Calouste Gulbenkian Foundation – Art Library and Gulbenkian Archives, 'The labour of our Women' (2025)<https://gulbenkian.pt/biblioteca-arte/en/collections/galerias-e-exposicoes/the-labour-of-our-women/> accessed 7 July 2025.
[237] *Ibid*.
[238] *Ibid*. 130.
[239] Melo (n 223) 210.

economic and emotional autonomy and enforcing their sexual invisibility.[240] Improvements of women's legal status within family law and divorce law achieved during the First Republic were nullified by Salazar.[241] If Salazar's legal order spoke about the women at all, it was to discriminate against them or subordinate them to an inferior position.

4.2.2. Culture as Indoctrination, Control and Repression

Culture, in particular visual arts and images were specifically targeted by Estado Novo. Salazar must have understood the power of art, given the central role it played in his policies. This operated in two ways: *on the one hand*, by using images as a tool to disseminate his nationalist and conservative ideology and, *on the other*, by strictly controlling and censoring any artistic expression that posed a threat or challenged the regime's dominant ideology.

4.2.2.1. Art as a Tool of Ideological Propaganda

Under Salazar the arts became a site for the political education: a tool of propaganda. Though ideological indoctrination permeated all official institutions, the *Secretariado de Propaganda Nacional* (SPN) and later the *Secretariado Nacional de Informação* (SNI), stands out for shaping a nationalist self-image. Modeled on Nazi and fascist propaganda offices and led by António Ferro, head of SPN and SNI, , it orchestrated exhibitions, festivals, and performances.[242] Ferro believed that art should serve the nation and were the 'politics of the spirit'. [243]

The state orchestrated massive visual campaigns, including *editorial projects* such as books, posters, brochures, and museum exhibitions that propagated its ideology. For example, the 1940 *Exposição do Mundo Português* was a propagandistic spectacle, celebrating the so-called glories of the Portuguese imperial past. With such events, Ferro intended to '*raise awareness of the activities of the Portuguese State and nation*'.[244] Visual propaganda extended into museums as well. The creation of the *Museu de Arte Popular* and regional ethnographic museums in the 1940s followed the regime's ambition to '*educate the people'* trough a glorified

[240] *Ibid*.
[241] *Ibid*.
[242] *Ibid*., 206.
[243] Filomena Serra, Paula André, Sofia Leal Rodrigues, *Projectos editoriais e propaganda. Imagens e contra-imagens no Estado Novo* (Análise Social, 2020) 24-25.
[244] *Ibid*.

image of popular culture. Exhibitions were designed to exalt a ruralist and patriarchal vision of Portuguese identity. [245] This was not culture for critical reflection, but for nationalist indoctrination.

What concretely was represented in all of this was very homogenic and in line of and to the enforcement of the social, political, legal and economic policies stipulated above. Above all, Salazar's propaganda represented the ideal of a conservative, Catholic, nationalist, imperialist and patriarchal Portugal. A display of imperial Portugal, an orderly and immobilized oasis in the heroic time of the Lusitanian 'race', as opposed to 'secular ideologies. Art glorified and mythologised Portuguese identity and past, rooted in the aesthetics of nostalgia, and timelessness.[246]

4.2.2.2. Suppression and Repression of Artistic Freedom

Parallel to the regime's instrumentalization of art, was an extensive system of cultural repression that strictly controlled and censored any artistic expression that posed a threat or challenged the regime's dominant ideology. Salazar's ultranationalist cultural policy aimed to conserve and control all spheres of cultural life. This involved censorship across media, repression of dissent, selective promotion of approved content, and ideological control of libraries—undermining public debate and critical thought. As a result, nationalist literature was amplified.[247] Censorship of professional activities related to the country's intellectual and cultural production was consolidated in 1933, through Decree-Law nr.22,469 of 11 April 1933.[248]

No area of expression escaped the control of the censors' blue pencil and red stamp. The qualification of subversive content, undesirable and capable of corrupting public opinion against the '*fundamental principles of the regime'*, rested entirely on the subjective judgment of individual censors. Additionally, the range of topics that could fall under these classifications went far beyond politics. In a society governed by the triad of '*God, Fatherland, and Family*',

[245] *Ibid*.
[246] Melo (n 223) 207.
[247] *Ibid*.
[248] X., 'Books censored and banned by the Estado Novo' (*Calouste Gulbenkian Art Library*, 2024) <https://gulbenkian.pt/biblioteca-arte/en/read-watch-listen/books-censored-and-banned-by-the-estado-novo/> accessed 8 July 2025.

themes considered to be offensive to morals and good customs included erotic, nudity and/or pornographic content, as well as work going against the Catholic religion.[249]

Salazar's cultural oppression could be described departing from the following *modus operandi*. The censorship services exercised censorship *a priori* (press, films, theatre, radio and television) and *a posteriori* (most books, by gradual official concession). Both techniques were perfected, under the logic of the greatest deterrent effect at the lowest political and resource cost. This was reinforced by *ad hominem* censorship targeting dissenting individuals, extended to the media and to control public discourse. Social censorship operated as another weapon, as was self-censorship.[250]

Notable, *when* censorship red lines were crossed, a range of repressive measures came into place, including fines, suspensions, closures of publishers and cultural associations, book seizures, and imprisonment. Some cases were politically driven through the courts, highlighting the close link between censorship and state-controlled information policy.[251]

[249] *Ibid*.
[250] Melo (n 223) 207.
[251] *Ibid*.

4.3. *Revolução dos Cravos : '25 de Abril sempre, fascismo nunca mais'*

Carnation flower at the 25 de Abril 2025 manifestation' , Lisboa, Portugal. (Author's picture)

'25 de Abril sempre, fascismo nunca mais'.

This powerful sentence resounds strongly through the streets of Lisbon and other parts of Portugal every year on April 25th, echoing not merely as a commemorative slogan but as a living embodiment of Portugal's enduring collective memory and its uncompromising rejection of authoritarianism. It stands as both a celebration of democratic renewal and a defiant vow that the shadows of fascism will never again darken the nation's future.

25 April and it's peaceful civilian revolution towards democracy *forever*, *fascism never again*.

The Carnation Revolution of 25 April 1974 stands as a singular event in the history of modern revolutions: a nearly bloodless uprising born not of violent insurrection but of conscience, fatigue, and a democratic longing. Orchestrated by the *Movimento das Forças Armadas* (MFA), a group of officers disillusioned with the Estado Novo regime's colonial wars and the ossified

autocracy of the government, the revolution unfolded in silence and discipline—without the chaos that typically accompanies the collapse of long-standing dictatorships.[252]

The origins of the military revolt lay in the deep fractures within the armed forces, whose officers had borne the brunt of a futile and morally discredited colonial campaign across Africa. Their resistance, however, was not driven by the thirst for power but by an ethical refusal to continue a war that had long lost legitimacy, both domestically and in the international community. Salazar could maybe control Portugal but he could not control the world.[253]As a captain later recalled, 'it *was the contact with the people [of Guinea-Bissau]... that aided me immensely in opening my eyes to see the injustice of the colonial war and the illegitimacy of the fascist government in Portugal and the consequent necessity to overthrow it*.'[254]

On the morning of 25 April, Lisbon awoke not to gunfire, but to the sound of *Grândola, Vila Morena*—a banned song that had become a covert signal for the coup.[255]As tanks rolled through the city, civilians flooded the streets not to confront but to support.

'25 de Abril 2025 manifestation' Avenida da Liberdade, Lisboa, Portugal. (Author's picture)

[252] Jonathan Story, 'Portugal's Revolution of Carnations: Patterns of Change and Continuity' (1976) 52(3) *International Affairs* 417, 421<https://www.jstor.org/stable/2616554> accessed 7 July 2025.
[253] Maxwell (n 222) 18.
[254] *Ibid*., 30-31.
[255] *Ibid*.; Helena Pinto Janeiro and Carla Baptista, *As Mulheres do 25 de Abril* (Bertrand, 2004) 45–48.

In a spontaneous act of poetic defiance, red carnations were placed into the barrels of soldiers' rifles and on their uniforms—turning symbols of violence into emblems of peace. One of the most iconic images to emerge from that day was that of Celeste Caeiro, a female worker who offered *cravos* to the soldiers: her gesture transforming into a powerful visual metaphor for a revolution rooted in hope, dignity, and non-violence. The aesthetic force of this image—flowers in guns, civilians arm in arm with military men—etched itself into the political imagination, becoming a visual symbol of peaceful rupture. It encapsulated the essence of the revolution: not just a military coup, but a civic awakening performed and communicated through images, gestures, and symbolism.[256]

The MFA swiftly dismantled the old order and paved the way for a civilian-led transition to democracy. It was not merely a change of government but 'the dismantling of institutions and policies associated with the old regime and the search for new formulas'.[257] The symbolic and real victory lay in the people's reclamation of the *polis*: through flowers, not bullets. For further explanation, due to space constraints, reference is made to appendices 4 B.

[256] Agência Lusa, Celeste Caeiro, a mulher que 'deu os cravos à Revolução' (*Expresso*, 8 March 2025) <https://expresso.pt/50-anos-25-de-abril/2025-03-08-celeste-caeiro-a-mulher-que-deu-os-cravos-a-revolucao-condecorada-a-titulo-postumo-pelo-presidente-da-republica-817e5d39> accessed 7 July 2025.
[257] Alfred G. Cuzan, 'Democratic Transitions: The Portuguese Case' in Marco Rimanelli (eds), *Comparative Democratization and Peaceful Change in Single-Party Dominant Countries* (St.MartinsPress, New York, 1999) 120.

'25 de Abril 2025 manifestation', Lisboa, Portugal. (Author's picture)

4.4. The *Art of Law* and the *Law of Art* Before, During and After the Carnation Revolution

In the previous part the restrictions Salazar's regime imposed on the artistic world were exposed. The sole existence of a controlling mechanism, limiting a (possible) countering message departing from images, proves art's potential in contesting certain dominant, social, political or legal values. What was discussed until now could be seen as '*law on art'*: the impact of the restrictions of the authoritarian regime on artists and their artistic expression. However, artists were not solely *passively* subject to certain measures, but equally *actively* reacted against the regime. The role of the various Portuguese artists in resisting the dictatorships was

fundamental in offering a counter voice and for opposition intervention. They functioned as a vital beacon of resistance and an alternative to Salazar's totalitarian regime.[258]

The following parts aim to give an answer to the question of how, beyond the impact of *law on art*, even more, artistic practice and expression served as catalyst for change in the legal paradigm. On the one hand, how legal and political restrictions also served as some inspiration for artist to contest these limitations in their creative expression?' How did artistic practice act as a form of resistance—political, social, or legal?

On the other hand, this *art on law*, this can be seen from another angle, *prior* to the Carnation Revolution. By contesting the regime's restrictions, artists could namely give visual image to social unrest and the longing for an alternative world. In that sense, art functioned as an *inspiration*, *imaging* and a form of *civic empowerment*. In what follows, it will be analysed how artists and their work during the authoritarian regime inspired change and empowered people towards the Carnation Revolution and towards democracy.

4.4.1. Visual Arts as Civic Engagement: Anticipating the Revolution and Empowering Civic Action

The *25 de Abril* revolution emerged out of civilian action and social discontent with the gross malfunctioning authoritarian regime. The crescendo of social resentment within the Portuguese population was shaped by a confluence of factors. One thing is clear: under Estado Novo the legal system did not offer any remorse towards justice for individuals as it was inherently part of the dictatorship. It operated as a *tool* of legal dominance of the dictator and not as a *tool* of legal protection of the citizens. Where the rule of law is absent, the path to justice can only occur outside of the controlled state structures and judiciary.

[258] Ana Gabriela Macedo, Márcia Oliveira, Joana Passos, Margarida Esteves Pereira, 'Introduction' in Ana Gabriela Macedo, Margarida Esteves Pereira, Joana Passos and Márcia Oliveira (eds) *Women, the Arts, and Dictatorship in the Portuguese-Speaking Context* (DeGruyter,2024) 2-3.

An important field to engage in the path towards justice during the Estado Novo was the artistic realm. Art, is all about personal appreciations, feelings, unlike law. As mentioned earlier, *where the authority of law ends, the authority of art can save us?* Legal discourse is articulated in the realm of and through the medium of images. While it cannot be forgotten that art was also instrumentalised as a tool of propaganda, more importantly the arts helped *see*, *understand*, *identify, and improve* the lives and experiences of individuals that were unseen and discriminated within the law.

The Portuguese visual artists played a pivotal role in, not only understanding and captivating citizen's discontent in their art, but also in translating that feeling into inspiration and empowerment towards change. Towards the revolution and the democratic transition.

Aspirations for political or legal change and disruptive creative processes emerged in various artistic forms. Notwithstanding, attention is paid to Portuguese visual artists and how creative expression that emerged in the late 1960s allowed artists to engage with the political transformation of the country and promote the democratization of its institutions.[259] Visual artists in Portugal not only anticipated but actively supported the revolution as a democratic endeavour. In doing so, they introduced innovative forms of civic engagement that intertwined artistic creation with political activism. On the one hand, specific experimental artistic practices anticipated the revolution and the ensuing democratic shift; on the other, they were also invigorated by the revolution itself, prompting direct engagement with Portugal's political, cultural, and social transformation.[260]

First, it is essential to note an important 'trend' that emerged in the late 1950's until the 1970's. According to Trindade, the cultural practices that defined the 'pop people' of the 1960s introduced a distinctive relationship with the present, one that '*was experienced as if it were*

[259] Leonor de Oliveira, 'Visual arts and institutions in post-revolutionary Portugal: artistic interventions and the creation of a new museum of modern art' (2023) *Journal of Spanish Cultural Studies* 220 <https://doi.org/10.1080/14636204.2023.2211797> accessed 5 July 2025.
[260] *Ibid*.

the future'.[261] Oliveira positions the common thread that connected many artistic expressions during that period as follows:

> '*Awareness of the incredible weight of symbolic readings, whereby specific images and signs were loaded during the decades-long dictatorship with political and ideological discourses*.'[262]

An additional interesting interpretation lies in Oliveira's view on the concept of democracy. Democracy is understood not only as a long-lasting aspiration of the artistic community under the dictatorial regime but also as something which was at the centre of their artistic practice:

> '*By imagining democracy as the alternative to totalitarianism, Portuguese artists were projecting the future into the present, … , and anticipating the transformation of the country in its political, social and cultural facets.*'

This perspective on the image of democracy and how its imagining trough the arts, as an alternative to the present dictatorial regime, inspired people and empowered them to strive towards the realisation of that image, stands central in this research.

The Portuguese artistic community took part in grassroots efforts to break with the dictatorship, aiming to decentralize art and engage directly with the public. Therefore, art operated as socially engaged practices: they reacted not only to the restrictions marking the revolutionary landscape, but also confronted, criticized and made visible internalized social injustices[263]

Professor Leonor de Oliveira applies her theory of how visual arts, by reacting to the regime's restrictions, anticipated the Portuguese revolution as a democratic project, to the transformation of museums in Portugal. Due to space constraints, we will not delve deeper into the mobilization of the artistic and cultural community in Oporto for the creation of 'living' museum of modern art, causing a rupture with the institutional apparatus of the dictatorship.[264]

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[261] Luís Trindade, 'Exuberant Invisibility' in Ana Vasconcelos and Patrícia Rosas (eds), *Post-Pop: Beyond the Commonplace* (Museu Calouste Gulbenkian 2018) 220–221.
[262] de Oliveira (n 259) 220.
[263] *Ibid*., 223.
[264] *Ibid*., 224.

However, Oliveira's theory of visual arts as important elements of civic agency in the Portuguese revolutionary process will be applied the *oeuvre* of Margarida Santos below. It will be analysed how visual arts, by directly reacting to the authoritarian regime's limitations operated as catalyst for political or legal change and in this way, anticipated the Carnation revolution by acting as forms of civic agency and empowering Portuguese individuals. By breaking certain conventions, they opened the path for change and by imaging freedoms and democracy they projected the future into the present and anticipating Portugal's transformation in its political, social and cultural facets.

This theory stands at the basis of the following analysis and will be applied together with the theory on the aesthetic of human rights and images that provoke citizenship.

4.5. Margarida Santos: artist breaking with conventions

4.5.1. Introduction: '*Fundação Dionísio Pinheiro e Alice Cardoso Pinheiro'* as the starting point

When exploring the visual art scene in Portugal of today, the connections to its authoritarian past and the path towards democracy are still very present and represented in artistic expressions. The revolution remains vivid and deeply etched in Portugal's collective memory. A few personal explorations can be drawn for the contextualisation of the choice of artworks for this case study.

When visiting the *Fundação Serralves* in Porto, the exhibition '*O sal da democracia.Mário Soares e a cultura',* drew my attention to the close relationship between the political, legal and cultural history of Portugal. As a fundamental figure of contemporary Portuguese history, everything Mário Soares[265] did in politics-his opposition the dictatorship, his participation in the struggles for democracy, and the high state positions he held-was derived from the strong and profound cultural attitude that underpinned his activities:[266]

[265] Mário Soares(1924-2017) was a key figure in Portugal's transition to democracy, serving as a founder of the Socialist Party, a political prisoner under the Estado Novo, and later as both Prime Minister and President of the Republic.
[266] José Manuel dos Santos and Pedro Marques Gomes, 'O sal da democracia.Mário Soares e a cultura' (2024) *Serralves.*

> '*It was my love of culture, it was the constant and emotional relationship that has always bound me to it, that caused my political life to be forever intertwined with my constant passion for freedom*.'[267]

Other exhibitions highlighting the importance of the *25 de Abril* are myriad: contemporary art exhibitions regarding the '50 Years of Freedom' as part of the 'Braga 25 Portuguese Capital of Culture' [268] or the exhibition '*Posters Without Censorship in Lisbon' as* visual testimonies of a period of political and social transformation.[269] Researching the interaction between art and human rights in Portugal's contemporary art scene could have been done from various perspectives. The artistic expressions interacting with the *25 de Abril* is rich. Nevertheless, a (practical) choice had to be made. The choice of *oeuvre* for this case study departed from the theories on visual arts as civic resistance and empowerment towards the Carnation revolution and the imaging of freedoms, together with the theory on the power of visual arts. The red threat in selecting was finding an *oeuvre* that both was subject to the restrictions and in the meantime translated those restrictions in artistic expressions, contesting them, reinterpreting them and using them as a form of civic resistance and empowerment for Portuguese citizens in the fight for democratic change.

The starting point to delve deeper into this quest was the '*Fundação Dionísio Pinheiro e Alice Cardoso Pinheiro'* in Águeda, Portugal. The Fundação was established in 1969 by the couple Pinheiro. The foundation has a dual function: a museum space and a socio-cultural institution. The aim is to act as a '*social and cultural model*' transmitting contemporary and transcultural values through artistic engagement. [270]

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[267] *Ibid*.
[268] *See*: <https://braga25.pt/en/programa/carnation-revolution-50-years-of-freedom/>
[269] *See*: <https://www.ccb.pt/evento/cartazes-sem-censura-25-de-abril-e-a-revolucao-do-verao-quente/2025-07-31/>.
[270] X., 'Museu: Fundação Dionísio Pinheiro e Alice Cardoso Pinheiro' <https://www.fundacaodionisiopinheiro.pt/pt/o-museu> accessed 8 July 2025.

The current founders of the *Fundação Dionísio Pinheiro e Alice Cardoso Pinheiro,* Águeda, Portugal. (Author's picture)

The *rationale* behind the selection of the *Fundação Dionísio Pinheiro e Alice Cardoso Pinheiro* as the locus for this case study is both methodologically and conceptually grounded. As an institution, the Fundação distinguishes itself through its remarkable openness and inclusivity, cultivating a space where artistic experience is made accessible to a wide and diverse public. The museum's low-threshold model of engagement, reinforced by the direct and dialogical approach of its curatorial team, fosters a unique proximity between viewer, artwork, and curatorial discourse—facilitating a democratization of aesthetic and historical interpretation. Moreover, the Fundação offers a richly textured artistic landscape, housing a diverse corpus of works by both canonical and lesser-known Portuguese artists. This diversity is particularly salient in its temporal and political scope, encompassing both *pre-* and *post*-25 de Abril artistic production. In doing so, the museum provides a living archive through which the aesthetic articulations of authoritarianism, resistance, and democratic transition can be critically examined. Its collection thus becomes not merely a repository of visual culture but a dynamic terrain where the shifting contours of Portuguese identity, memory, and citizenship are made visible—and contestable—through art.

When visiting the Fundação, the curator J.M. Veira Duque contextualised several *oeuvres* in view of the path towards the Carnation revolution. Two particularly significant pieces stand out for their political and aesthetic resonance: *'A Família'* by Manuel Filipe and '*Os Ciganos'* by Arlindo Vicente. The artworks will be described to give a glimpse of the broader context, based on the interpretation of the curator J.M. Vieira Duque, answering to some extent Panofsky's three level iconological analysis but not strictly adhering to it.[271]

Manuel Filipe's(1908-2002) *'A Família'*, painted in 1943, belongs to what is referred to as his '*Dark Phase'*. Created during the early years of the Estado Novo, just a decade after the regime's Constitution was approved, the painting became part of a groundbreaking 1943 exhibition in Lisbon—considered the first in Portugal to be described in the media as '*neo-realist'*. The exhibition was, however, quickly shut down by the political police, and the painter was personally threatened by Salazar, who revoked Filipe's teaching license. Following this, Filipe was forced into clandestine artistic production. The work portrays a father, mother, and son, rendered in a style closely aligned with Soviet socialist realism. The figures' large feet and hands—particularly the exaggerated, claw-like hands of the female figure—emphasize the connection to the land and the working class, echoing the visual language used in the drawings of Álvaro Cunhal (1913-2005). This aesthetic is emblematic of a strand of Portuguese socialist realism that exalted the strength and dignity of the people.[272]

Manuel Filipe, A Família (1943) *Fundação Dionísio Pinheiro e Alice Cardoso Pinheiro* (Author's picture)

[271] Interview with J.M. Vieira Duque, conducted by the author (Águeda, Portugal, 28 June 2025).
[272] *Ibid*.

In contrast, Arlindo Vicente's (1906-1977) '*The Gypsies'* (1974) reflects a different lineage of neo-realism, drawing inspiration from Mexican and Latin American models. While also operating within a framework of denunciation, Vicente's approach centres on social critique—specifically, the denunciation of prejudice against the Roma community. The painting aligns with a tradition of politically engaged art that highlights systemic discrimination. *The Gypsies* was completed shortly before the Carnation Revolution and formed part of Vicente's final solo exhibition during his lifetime, held in 1974 at the Fine Arts Academy in Lisbon.

Arlindo Vicente's, 'The Gypsies' (1974) *Fundação Dionísio Pinheiro e Alice Cardoso Pinheiro.* Author's picture.

Though both works fall under the broader label of neo-realism, their elements and ideological roots differ significantly: Filipe's piece embodies a Soviet-influenced exaltation of the proletariat, while Vicente's work articulates a Latin American-inflected visual critique of marginalization and prejudice.[273]

[273] *Ibid*.

Both artworks shed light on discriminated and marginalized groups, giving them visibility through visual language; in doing so, they provided these communities with a voice, called for their social recognition, and implicitly challenged the dominant regime by demanding a shift toward inclusion and justice.

The *oeuvre* which intrigued me most deeply and caught my attention in the Fundação, because of both the *aesthetic* aspect and because of the underlaying *meaning*, was the one from Margarida Santos. And above all: because of the breaking of conventions during a time where this was even more difficult: as a woman, as an artist, as a sculptor, as a female artist in a male dominated world and all of that during an authoritarian regime. In the following, first the profile of Margarida Santos as an artist breaking with established conventions will be unveiled, before delving deeper into her artworks applying Erwin Panofsky's tripartite iconological analysis and unveiling their potential force of civic engagement and empowerment towards the Carnation revolution and freedom.

4.5.2. Margarida Santos

4.5.2.1. A artista

'*I was and am a determined woman. I chose my path without expecting or requiring family, social, political, or other support. I have always felt and been free in the choices I made. I have always had a precocious sense of independence and responsibility*.'[274]

This quote by Margarida Santos herself aptly represents who she is as an individual and above all: as an artist. In her life she broke more than one convention. It is exactly this rupture with several, established social, legal, political and cultural conventions that stands at the base of the selection of her *oeuvre* in this case study.

Margarida Santos is a Portuguese sculptor, poet, educator, and visual artist born in Vila Nova de Gaia, in 1946. She graduated in Sculpture from the Escola Superior de Belas-Artes do Porto

[274] Interview with Margarida Santos, conducted by the author (Vila Nova de Gaia, Portugal, 7July 2025).

in 1968. Her academic performance was marked by distinction, and she became a scholar of the Calouste Gulbenkian Foundation.[275] For Margarida Santos:

> *'Sculpture is the source of life, the light, the reason I exist as an artist. This is the force that drives me to bring it from nothing.'*[276]

Santos' career unfolded across both the authoritarian regime of the Estado Novo and the democratic transition, marking her as an artist who not only witnessed but actively interacted with Portugal's regime. Notable, Santos managed to maintain her own form of artistic expression without allowing her message as a (female) artist to be compromised. The central themes of her work remained firm and unchanging. She contends:

> '*I belonged to a rebellious generation, always ready to fight for their ideals, as demonstrated by the plead of visual artists of my time who established themselves in the Portuguese visual arts—including those who, for reasons of political party affiliations or fleeing the colonial war, moved to other countries*.'[277]

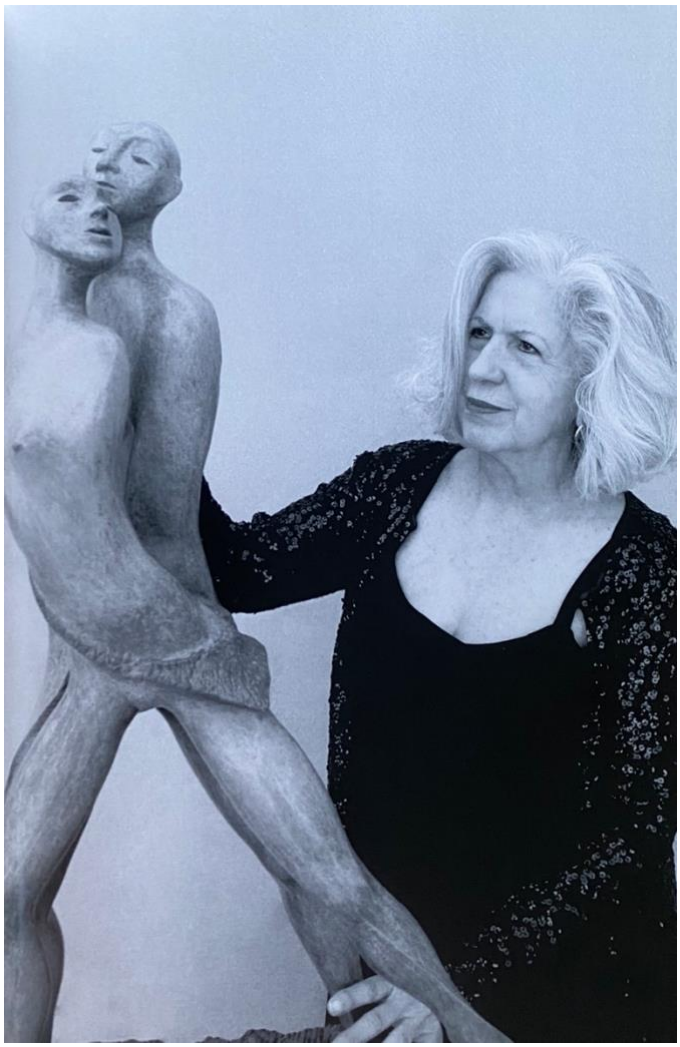
As a woman artist working in an authoritarian patriarchal state Santos broke with the conservative, religious, and maternal ideals imposed upon women. Her artistic path is marked by independence, resistance, and integrity, choosing to remain outside both aesthetic trends and political manipulation. As observed by curator J.M. Vieira Duque '*Margarida Santos was always a woman outside the box.'*[278] The only role she wanted to internalise was the one as mother.[279]

Santos emphasizes that her primary commitment was and is *freedom of expression* and the *right to difference*, regardless of its nature. '*I've always been free and democratic, so what I did corresponded to who I was and what I felt.'*[280] Sculpture, for Santos, is not merely a medium but the source of life, an act of creation rooted in construction rather than reduction—she

[275] Margarida Santos, *Fragmentos De Uma Biografia Roída* (Sinapis, 2015).
[276] *Ibid*.
[277] Interview with Margarida Santos, conducted by the author (Vila Nova de Gaia, Portugal, 7July 2025).
[278] Interview with J.M. Vieira Duque, conducted by the author (Águeda, Portugal, 28 June 2025).
[279] Interview with Margarida Santos, conducted by the author (Vila Nova de Gaia, Portugal, 7July 2025).
[280] *Ibid*.

describes herself as a '*modeling sculptor'*, working from defined ideas to build form, rather than subtracting from a block.[281] In other words: no *'l'art pour l'art'*, but rather in-depth intellectual exercises on the relationship between image and reality. The image is not the result of automatism, nor the fruit of chance, but the product of prolonged reflection. Throughout her life, Santos has maintained a strong pedagogical dimension, working as an art teacher. According to her:

> '*Education is the fundamental foundation on which societies must be sustained. Art is an absolutely essential expression of the human being and should be a mandatory discipline in any civilized society*.'[282]



Margarida Santos. Photography by Lauren Maganete.

Margarida Santos' *oeuvre* can be described as a very free, sensual, feminine and even, provocative visual language. Addressing themes such as motherhood, eroticism, and the female experience—elements that not only challenged societal conventions but also offered a counter-narrative to the repressive aesthetics and ideologies of the regime.

At the centre, stands the *human being* and its *freedom*.[283]

In the following, two sculptures of Margarida Santos will be analysed from Panofsky's three-level iconological method: one *prior* to the Carnation Revolution and one *post*. Two things will become apparent to the reader: on the one hand, a *rupture* with established conventions and on the other, a *continuity* in iconographical elements running through Santos' *oeuvre*.

[281] *Ibid*.
[282] *Ibid*.
[283] *Ibid*.

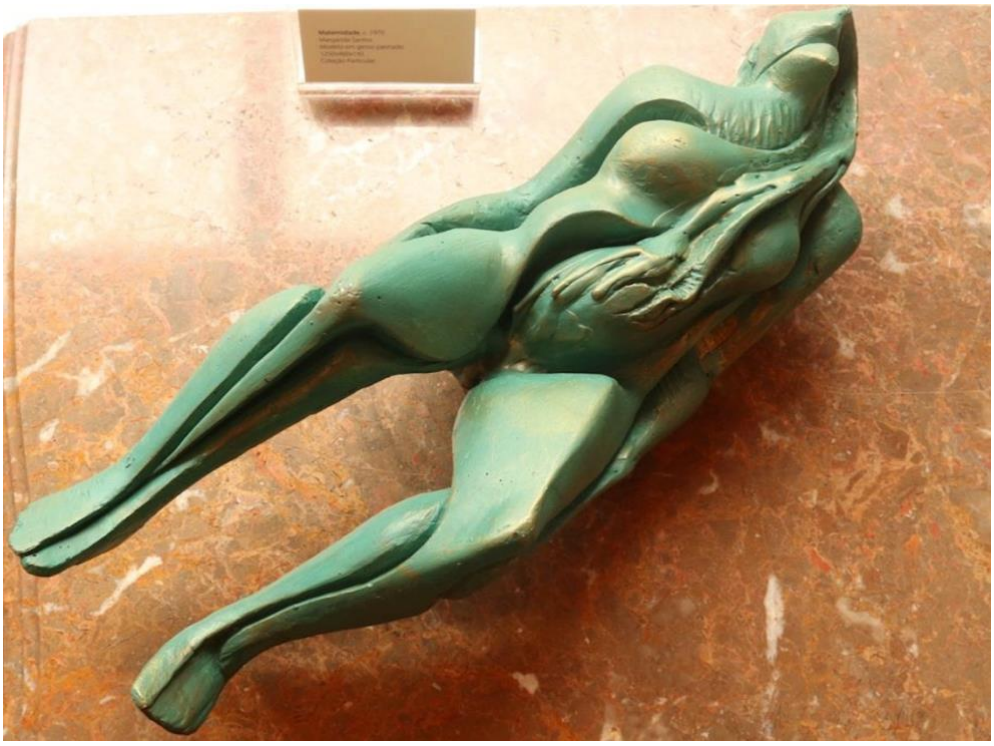
'My search for intrinsic humanity, for the most intimate truth of the Human Being, prevailed and, as such, was well understood and accepted.'[284]

Margarida Santos. Photography by Lauren Maganete.

[284] *Ibid.*

4.5.2.2. A arte

I. *Maternidade* (1970)



Margarida Santos, Maternidade (1970), *Fundação Dionísio Pinheiro e Alice Cardoso Pinheiro,* Águeda, Portugal. (Author's picture)

1. What is depicted? The Pre-Iconological Description

The sculpture '*Maternidade'* depicts, just as its title implies, motherhood. Margarida Santos sculpted a woman, rendered in a fluid and energetic state. The body is elongated, with stretched legs, rounded hips, and full breasts, evoking a classically feminine anatomy but strongly reimagined through abstraction. At first glance, Margarida Santos seems to give a representation of birth or rather, the process towards birth and motherhood. However, the manner of sculpting certain body parts deviates from the conventional, classical representation of the female body or the mother in art history and invites towards a deeper reflection.

The woman is clearly in an ecstatic state as opposed to a loose, natural relaxed state. This energy is being transposed to the viewer, both from the general posture of the woman and from the specific body parts. An intense euphoric thread of tension seems to run throughout the whole body, from the feet all the way up to the face of the woman. Even more, it gives impression that the woman as such cannot be disregarded from her state of pregnancy. The woman's state controls her whole physical presence or even mental state.

When analysing the specific body parts, this condition becomes even more apparent. The most dominant feature is the prominent abdomen, sculpted with textural ridges resembling nerves or veins, immediately drawing attention to the interior, biological space of the body. Strangely, the abdomen is directly connected to the top of the head of the woman. Does this physical connection refer to the inherent emotional connection between mother and child or the unique nature of motherhood? The arms furthermore are positioned along the torso, with oversized hands that seem both protective and powerful. Upon closer observation, the arms and legs appear to merge in a continuous, flowing movement. Nonetheless, the legs seem split, introducing a subtle tension between unity and fragmentation within the body's form. At the height of the chest, etched lines or abrasions emerge—suggesting elements of discomfort, vulnerability, or perhaps even resistance inscribed onto the body.

The facial features are subdued—almost anonymous—redirecting focus to the bodily expression rather than individual identity. Among the facial features, only the mouth is clearly defined, directing the viewer's gaze to its open contour, which nearly extends the full length of the neck.

The entire body seems to flow organically, as if caught in a state of suspended motion or intimate introspection—yet simultaneously, it externalizes an intense internal tension, revealing the psychological and physical weight carried within. The green patina of the material enhances the organic, almost vegetal quality of the form, situating it between human and elemental.

Overall, the sculpture releases and transposes an intense and ecstatic power to the spectator.

2. Iconographical Analysis

'*My works were considered shocking by some, daring by others. Yet they were respected, even though they were admittedly full of sensuality and eroticism*.'[285]

With this intense and agitated image of the woman, Santos sought to provoke and catch the attention the viewer. We could even say that '*Maternidade'* causes a shock in the sphere of the viewer. The sculpture shocks in a manner that it confronts the spectator with the situation of the woman and her body. In this sense, '*Maternidade'* is a carrier of an intrinsic force that directly causes an action (*shock*) in the viewers' sphere and brings them to a higher consciousness. (*See supra*) In line with an interpretation I contended earlier, we could say that Margarida Santos wields this *shock to a higher consciousness* towards the image of women as mothers.

Indeed, the sculpted, physical connection between the abdomen and the top of the head of the woman could refer to the inherent, emotional connection between mother and child. The sculpture conveys that motherhood leaves undeniable traces—both physical and psychological—taking hold of the entire being and asserting itself as a total, embodied experience.

Perhaps, Santos wanted to shine a light on the unique (biological) nature of women in a more provocative way to show the real truth behind birth and motherhood. Margarida Santos strips it of its decorative or idealized connotations. This is not a Madonna figure, nor a religious allegory—it is embodied maternity, raw and unapologetic. The iconographical significance of the veins or nerve-like ridges may allude to both the pain and power of motherhood—its bodily cost, its emotional depth, its symbolic resonance. Santos departs here from classical representations of maternity as serene, pure, or sacred. Instead, she offers a modern, visceral reinterpretation: motherhood as experience, flesh, and force.

The sculpture stands as an ode to the female body and its inherent power—celebrating not only the physical form, but also the uniqueness of female experience, from sensuality and

[285] *Ibid*.

strength to creation and care. It affirms a distinctively feminine nature, rooted in bodily presence, emotional depth, and generative force.

3. Iconological Analysis

Created in 1970, during the final years of Portugal's authoritarian Estado Novo, *Maternidade* must be seen as a counter-image to the regime's inferior vision of womanhood. The Estado Novo promoted a deeply conservative, religious and patriarchal ideology that celebrated motherhood, but only within narrow, state-sanctioned parameters: maternal obedience, domestic silence, and religious virtue.

'Maternidade' is sculpted in a manner that directly clashes with Estado Novo legal norms. Santos sculpts her work in a way that directly confronts two authoritarian legal norms: those imposed on her as a *woman* and as an *artist*. As a *woman*, she challenges her inferior and complementary position as constitutionally declared by art. 5 of the 1933 Constitution. (*See supra)* As an *artist*, '*Maternidade'* goes directly against Salazar's censorship law, subjecting artistic content to a test of compliance with the '*fundamental principles of the regime'*. Generally, following the triad of 'God, Fatherland, and Family', themes considered to be offensive to morals and good customs included erotic, nudity and/or pornographic content. (See supra)

However, Margarida Santos' oeuvre was not directly impacted by the regime's *a posteriori* censoring. This may be understood, as Margarida Santos herself proposes, in the striking reality that regime's authorities simply did not comprehend the deep and complex meaning of her *oeuvre*:

> '*The Estado Novo regime didn't affect my resilience in my work, which went through different phases and experiments and always remained true to my deepest motivations.*

> *I think it was the fact that my work was part of a certain avant-garde movement that was incomprehensible to the pseudo-cultured men of the time that freed me from any suggestion, flexibility or obligation to follow this or any other path*.'[286]

Consciously or not, Santos' oeuvre maintained a strong and enduring presence during the Estado Novo precisely because she appropriated the symbol of maternity, while simultaneously reclaiming it through a distinct and subversive artistic vision. In other words, while her work formally echoed certain aesthetic prescriptions of the regime, it critically questioned and redefined them from within.

At a time when women's identities were confined by both legal codes and social norms, *Maternidade* affirms the female body as an autonomous, deliberate space—capable of creation, protection, and transformation. The sculpture thus becomes a quiet but forceful act of defiance**,** cloaked in a theme acceptable to the regime, yet infused with a subversive visual language. It reveals how the most intimate experience—maternity—can be politically reimagined as a site of dignity, not control; power, not submission.

[286] *Ibid*.

II. Related sculptures post Carnation Revolution

'*They are 50 years apart, but the iconographic elements are the same*.'[287]

An analysis of the iconographic choices Margarida Santos made in subsequent sculptures post Carnation Revolution until the present day, reveal a continuity in the nature of her *oeuvre*: freedom.[288]Her unwavering commitment to the sensual, expressive, and liberated female form reflects a profound artistic integrity: she never adapted her visual language to fit the ideological constraints of the Estado Novo or any other norm. Instead, she remained consistently true to her aesthetic convictions, resisting authoritarian expectations by continuing to celebrate the power, vulnerability, and autonomy of the human—especially female—body. Her work stands as a testament to artistic resilience and the enduring capacity of form to signify freedom.

Margarida Santos, Excesso (2012) *Fundação Dionísio Pinheiro e Alice Cardoso Pinheiro,* Águeda, Portugal. (Author's picture)

Margarida Santos, Espera II (2001) *Fundação Dionísio Pinheiro e Alice Cardoso Pinheiro,* Águeda, Portugal. (Author's picture)

[287] Interview with J.M. Vieira Duque, conducted by the author (Águeda, Portugal, 28 June 2025).
[288] Due to space constraints, only the general iconographical thread is explained without applying step by step Panofsky's methodology.

4.6. Conclusion: Margarida Santos' oeuvre as civic resistance and empowerment towards freedom

'I saw works from the 1960s with erotic content that today would shock many good academics. Provocatively shock!'[289]

Margarida Santos, Cânone da Harmonia (2016)*Fundação Dionísio Pinheiro e Alice Cardoso Pinheiro,* Águeda, Portugal. (Author's picture)

In a period where *women* were not only socially subordinated to inferior roles but inequality between men and women was constitutionally embedded, Margarida Santos offered civic resistance.

In a period where *artists* were censored and artistic expression subjected to compliance with '*God, Fatherland, and Family'*, Margarida Santos offered an alternative reality.

Margarida Santos' refusal to conform—her unwavering commitment to her own artistic vision—meant that she never adapted her expression to fit the constraints imposed by the authoritarian regime. In a time when she, as both a woman and an artist, faced profound legal, cultural, and societal limitations, her choice to continue creating sensual, nude, and unapologetically free representations amounted to a powerful act of resistance and empowerment.

By breaking with legal, political, social and cultural conventions, Santos transformed her *oeuvre* into a quiet yet powerful form of civic resistance. By breaking these conventions and contesting them, Santos opened the path for change by imagining freedoms and therefore inspiring and empowering people to fight towards those freedoms. In this sense, by using a visual language filled with freedoms, she empowered people by projecting the future into the present and anticipated Portugal's transformation in its political, social and cultural realm. The provocative nature of her sculptures operate as carriers of an intrinsic force that directly cause an emotion or action in the spectator's sphere and bring them to a higher consciousness of the repulsive nature of the authoritarian regime and

[289] *Ibid*.

possible alternative of freedom. In view of the abovementioned theories on the power of visual arts, Santos' *oeuvre* invited spectators to reflect, question, and ultimately imagine alternative futures grounded in freedom, difference, and dignity. When applying, Oliveira's theory, it can be concluded that by directly reacting to the authoritarian regime's limitations Santos' *oeuvre* operated as a catalyst for political or legal change and in this way, anticipated the Carnation revolution by acting as forms of civic agency and empowering Portuguese individuals.

In doing so, Santos demonstrated that aesthetics can act as a catalyst for change towards freedom, and by this can contribute to a *universal culture of human rights*.

5. Conclusion: embracing the aesthetic of law and the authority of art

'Art is not innocent. So if it's not innocent today, and I believe it never was, it's obvious that during the dictatorship, it wasn't innocent either. Especially visual arts—we had great poets and brave men and women who, through their art, managed to influence and make a difference. Let's not forget that artists—painters, sculptors, poets, writers—were persecuted and imprisoned.

That's because their art made a difference and played a role.

Otherwise, they wouldn't have been censored.
And they were—heavily.'[290]

These strong words by the curator of the Fundação Dionísio Pinheiro e Alice Cardoso Pinheiro aptly catches the essence of this research.

The case study of Portugal's authoritarian past and democratic transition answered our central research question in an affirmative manner. Not only did visual artist actively resisted against the authoritarian regime's restrictions, they translated them into a form of civic action, empowering people to fight for a change in the legal, political, social and cultural realm.

In this sense, the visual arts contributed to the realisation of a (universal) culture of human rights; understood as a social reality of human activities, knowledge and practice, where human rights are *seen*, *felt*, *understood*, *guaranteed* and *acted upon* as the ultimate touchstone of human action in all aspects of life and inherent to all human beings. *In other words*: A 'culture of human rights' aspires to foster deep awareness and compassion for the fundamental rights of all human beings. Curator Vieira Duque confirms this fostering of lived awareness during the events leading to the *25 de Abril*:

'I believe the Revolution brought our country the possibility for artists to take part in building what eventually became democracy. I don't believe that was when the awareness was born. It

[290] Interview with J.M. Vieira Duque, conducted by the author (Águeda, Portugal, 28 June 2025).

was the freedom to express that awareness. It was already there—because human beings are born free. When we're born, we cry.

So if we're born free, it's inside us. If we're imprisoned, it's against nature. So, of course, we'll act against oppression however we can. If art is something inherent to humans—creativity—it's ours. We can teach techniques and tools, but creativity, imagination, that's ours. It's intrinsic to human beings, anywhere in the world. So it wasn't the 25th of April that made artists want to build democracy—but it gave them the freedom to be part of that construction.'[291]

Before generally reflecting on the result of this research, it is essential to draw a side note. When adopting interdisciplinary perspectives, while art can and should be connected to legal and political meaning, it must not be reduced to it. Interpreting artistic expression solely through the lens of legal theory or governance risks reimposing the very restrictions that art, by its nature, seeks to challenge. To assign a singular, functional meaning to an artwork — to treat it merely as an instrument of human rights messaging or political critique — is to constrain its freedom and domesticate its ambiguity. One of the most important lessons drawn from this research is that every interpretation is inherently personal, and that artists and curators do not necessarily intend their work to be defined in terms of law, justice, or democratic governance. While it is valuable to remain critically aware and to build meaningful connections between disciplines, we must resist the urge to instrumentalise art. To do so would be to betray the liberating potential of the arts — the very potential that makes them so essential to the democratic and human rights imaginary.

This research has explored, from an interdisciplinary perspective, the question to which extent the visual arts can contribute to the realization of a universal culture of human rights. What has emerged through the dialogue between law and the visual arts is not simply a reflection on their interaction, but a radical reconfiguration of their relationship. Rather than positioning art as an auxiliary to legal structures, or as a mere illustrative tool, this thesis has argued for a deeper epistemological shift: to understand the visual arts as co-constitutive of the human rights imaginary — as producers of meaning, sites of resistance, and vehicles of legal and political agency.

[291] *Ibid.*

At the heart of this research lies the growing disjunction between the normative promises of human rights and their institutional implementation. The legal language of human rights, however foundational, often remains abstract and inaccessible, incapable of activating the kind of democratic engagement it needs. By interrogating the philosophical, sociological, and aesthetic limitations of legal formalism, this thesis has proposed a necessary shift toward the Law & Humanities paradigm: one that embraces subjectivity, visuality, narrative, and symbolic meaning as central to the pursuit of justice.

Drawing on iconology and iconography, this research has examined how images of law and justice — both traditional and subversive — shape public understanding of rights, authority, and the possibility of democratic renewal.

The case study of authoritarian Portugal and the democratic transition after the Carnation Revolution provided the concrete ground upon which this theoretical framework was tested. The visual resistance produced during and after the Estado Novo, exemplified most powerfully in Margarida Santos' *oeuvre*, revealed art's power to anticipate legal change, to empower civic imagination, and to catalyse legal transformation. Her *oeuvre* disrupted the dominant narratives of law, gender, and identity, confronting the symbolic violence of the regime while constructing new visual images of freedom and humanity.

Santos's artistic expression, rooted in a defiant female agency, is not merely a historical artifact; it is a social and legal intervention. Her artistic expression offers a counter-narrative to the legal norms of authoritarianism, and in doing so, prefigured the emergence of a democratic culture grounded in visual critique and affective engagement. By engaging with her work through the lens of Panofsky, this research has demonstrated how the aesthetic and image shape legal consciousness and open new spaces for human rights to be *lived*, *felt*, and *enacted*.

Finally, this research advances a critical rethinking of the relationship between artistic practice—particularly visual arts—and the human rights discourse. It argues that the traditional legal-doctrinal model is insufficient on its own and must be supplemented—some might even say *corrected*—by alternative methodologies that engage with the imaginal, the aesthetic, and the affective dimensions of rights.

A true universal culture of human rights must therefore embrace the visual arts not as decoration, but as foundation. The future of rights lies not only in treaties and courts, but in creative expressions. In the poetic rupture of Margarida Santos and her contemporaries, we witness the emergence of a legal consciousness that is aesthetic, embodied, and radically democratic. This is the promise of law and the humanities: not merely to interpret the world, but to imagine and transform it.

'*It is a fact too often forgotten – that law touches at some point every conceivable human interest, and that its study is, perhaps above all others, precisely the one which leads straight to the humanities*.'[292]

For that reason, approaching the law, including human rights should happen in view of other disciplines such as the (visual) arts, since it is inherently and intrinsically connected to the human nature.

[292] Ernest W. Huffcut, 'The Literature of Law' (1892) *Indiana University School of Law* 52.

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Interview with Margarida Santos, conducted by the author (Vila Nova de Gaia, Portugal, 7 July 2025).

7. Appendices

3.1. Law and the Humanities

A.

Law and humanities is understood as a dynamic interdisciplinary interaction that defies canonisation and categorisation. Law and humanities draws upon the rich and varied approaches from a number of humanities disciplines to transform our understandings of law while at the same time returning the favour by using legal methods (predominantly doctrinal and socio-legal approaches) to enrich the objects of study at the centre of humanities disciplines.'[293]

B.

Neither institutional efforts to define it (typically as a collection of disciplines outside the social and natural sciences), nor attempts to ground it in a shared methodological foundation, have proven successful, as both approaches tend to be either overly narrow or excessively broad. However, on the other side of the coin, this flaw[294] carries the advantage in that it provides an open understanding of what the humanities are: an openness that is fitting, given the inherently fluid and diverse nature of the field itself.[295] Sara Ramshaw has argued that law and humanities exists '*not as a 'canon' per se, but as a 'field without a canon' or a canon that resists canonization'*.[296] At this stage, it is furthermore primordial to pay attention to other risks of law and humanities as field, besides the question of domain and definition. Firstly, some fear that there is something not only elitist but, even more, counterfactual in the idea that the humanities are a propaedeutic to humane action. Implying that the humanities offer a kind of moral supplement to law is to fundamentally misunderstand the broader scope and critical ambition

[293] Sara Ramshaw, 'Law and Humanities: A Field without a Canon' (2023) 19(1) *Law, Culture and the Humanities* 77, 79.
[294] Newman and Sandberg, (n39) 8.
[295] *Ibid*.
[296] Sara Ramshaw, 'Law and Humanities: A Field without a Canon' (2023) 19(1) *Law, Culture and the Humanities* 77, 79.

of humanistic learning.[297] An additional risk lies in the field's openness to interpretive freedom, which, while again operating as a strength, opens to the door to a degree of amateurism.

C.

The mentioned study explored the extent to which the environment of judicial proceedings shapes their perceived legitimacy. First-year law students—who, alongside their core doctrinal courses, were enrolled in a compulsory lawyering course—were divided into two groups for a mock trial exercise. One group argued their case in an informal setting, a rearranged classroom with a casually dressed judge, while the other presented their arguments in a formal courtroom adorned with classical architectural elements, Latin inscriptions, judicial robes, and the full symbolism of legal tradition. When surveyed, the jurists *in spe* responded that justice was more likely to be done in the second setting. In this sense, the students who had appeared in the formal courtroom were significantly more likely to assess the proceedings as legitimate, the judgment as authoritative, and the presiding judge as more learned in the law, compared to their peers in the improvised setting.[298] While legal reasoning may claim to be self-sufficient, leaving no need for anything beyond doctrine and rule, the students responded intuitively and emotionally to the classical symbols, rituals, and architectural majesty associated with the law. Despite having little formal training in visual rhetoric or critical visual literacy, these aspiring jurists sensed that the performance of justice—the spectacle of truth—cannot be fully contained by logic alone, nor confined to written texts.[299]

This reveals that the students appeared to absorb the visual environment—the formal decor, the comfort of ceremony—without all too much critical reflection. *'Structures, it seems, go untutored and unseen.'*[300] Therefore, the importance of the *décor and decorum* for the law students in this study cannot be overlooked. These *juventus cupida legum*, eager for law, intuitively recognized in the grandeur of robes and architecture a symbolic register of legality absent from the improvised classroom. Even more, within the image archive Freud terms the

[297] Sarat (n 46) 12.
[298] Oscar G Chase and Jonathan Thong, 'Judging Judges: The Effect of Courtroom Ceremony on Participant Evaluation of Process Fairness-Related Factors' (2012) 33 *Yale Journal of Law and the Humanities* 101.
[299] Goodrich (n 7) 2-3.
[300] *Ibid*., 4.

unconscious, there existed a prior mental picture of the judge and courtroom—one that aligned far more with the formal courtroom than with the improvised classroom setting. The law was already visually inscribed in the imagination—shaped, in part, by representations from film and television, the architecture and monuments of the city, and the busts, bronzes, paintings, and other visual forms encountered in law school. These prior images—imaginary representations of legality—function as contemporary and enduring emblems that guide perception and create recognisable visual cues. They align closely with the legal tradition of justice iconography and the broader gallery of juristic imagery, which forms the central focus of this study.[301]

D.

In the field of legal iconography, the iconographical level is most immediately evident. Common figures and symbols populate judicial imagery: the blindfolded Lady Justice, the gavel, the scales, the robes of the magistrate, or institutional spaces such as the courtroom or parliament. These elements are systematically catalogued in classificatory systems like ICONCLASS, which provides art historians with a taxonomy of visual motifs. For instance, legal concepts appear prominently in category 44 ("State, Law and Politics"), with subcategories such as 44G ("Law and Justice Administration").[302] Yet ICONCLASS, developed by art historians, tends to foreground the aesthetic dimension while often neglecting the legal and political depth of these images.[303] A productive dialogue between legal historians and art historians is needed to expand the taxonomy to include underrepresented yet highly significant categories—such as *democracy*, *authoritarianism*, *civic resistance*, or *constitutional rupture*. These themes are crucial to any contemporary legal iconology concerned with the socio-political force of imagery.

[301] *Ibid.*
[302]
[303]

3.2. A Universal Culture of Human Rights

A.A.

The concept of a culture of human rights has often been linked to the concept of a culture of peace. A culture of peace is defined by the United Nations (hereinafter: UN) as a set of values, attitudes, and behaviours that reject violence and endeavour to prevent conflicts by addressing their root causes through dialogue and negotiation among individuals, groups, and nations.[304] Although similarities exist, the two must be distinguished. The concept of a culture of peace integrates a positive peace approach, which implies that peace cannot exist in a system that systematically violates fundamental rights. Thus, a human rights culture can be seen as a precondition for a culture of peace. Notwithstanding the close relationship, a definition of the former cannot directly be derived from the latter. The notion of a culture of peace is broader and more inclusive, whereas the concept of a culture of human rights is more specific and largely confined to the domain of human rights itself.[305]

A.

In this progressive and ongoing process of internationalisation, the promotion and protection of all human rights has evolved from being a matter solely within the domestic jurisdiction of states to becoming, as affirmed in the Vienna Declaration of the World Conference on Human Rights, '*a legitimate concern of the international community*.'[306] All of these were measures by which states limited their sovereign authority and committed their influence to protect certain

[304] United Nations General Assembly, *Declaration and Programme of Action on a Culture of Peace*, A/RES/53/243 (13 September 1999), Article 1.
[305] Christina Wurzinger, 'Human Rights Education and the Creation of a Culture of Peace (2007) *EMA Theses* 49 < https://polovea.sebina.it/SebinaOpac/resource/human-rights-education-and-the-creation-of-a-culture-of-human-rights/VEA02272159?locale=eng> accessed 23 June 2025.
[306] Vienna Declaration and Programme of Action, World Conference on Human Rights, Vienna, from 14 to 25 June 1993, A/CONF.157/23, 12 July 1993, Part I, para. 4.

interests of individuals, effectively placing what had been treated as aspects of the domestic jurisdiction of states under one or another form of international supervision.[307]

B.

And even so, it is essential to pause and acknowledge a necessary caveat before exploring this assertion further. The political project of creating international standards regulating how states should treat their citizens does not stand or fall with the concept of rights. That intended project can, according to Nickel, be pursued using other normative concepts.[308] Indeed, human rights documents do not exclusively use the legal language of rights. These alternative vocabularies offer both normative and philosophical flexibility.[309] The importance of the concept of rights to human rights must be acknowledged but it must not turn into an over fetishism of rights. The qualification as a right is strongly linked to the elements of rights: let us portray them generally. First, rights are held by rightsholders—individuals or entities entitled to possess and exercise them. Second, every right pertains to a particular freedom, power, immunity, or benefit, which defines its content. Third, most human rights involve claim-rights, which entail corresponding duties on specific parties to provide or respect the freedom or benefit in question (rights are commonly classified as positive or negative). Finally, the weight of a right specifies its rank or importance in relation to other norms.[310]

C.

Marie-Bénédicte Dembour furthermore, has famously argued that a close reading of academic literature reveals that we do not all conceive of human rights in the same and that the apparent consensus around human rights masks deep conceptual divergences.[311] Dembour identifies four ideal-typical schools of thought that approach human rights in fundamentally different ways. The *natural school* views human rights as pre-existing entitlements grounded in nature or reason, inherent to all human beings by virtue of their humanity.[312] The *deliberative school* sees

[307] Beitz (n134) 15.
[308] Nickel (n 147) 22.
[309] I.a.; prohibitions such as '*No one shall be subjected to torture or to inhuman or degrading treatment or punishment.*' (art. 3 ECHR) or general normative principles such as '*All human beings are born free and equal in dignity and rights.*' (art. 1 UDHR).
[310] *Ibid*. 23.
[311] Marie-Bénédicte Dembour, 'What Are Human Rights? Four Schools of Thought' (2010) Human Rights' Quarterly <https://www.jstor.org/stable/40390000> accessed 30 June 2025.
[312] Costas Douzinas, *The End of Human Rights. Critical Legal Though At The Turn of The Century* (Hart Publishing, Oxford 2000) 2,5, 12.

them as political values, constructed through rational agreement within liberal democratic societies.[313] The *protest school*, in contrast, regards human rights as dynamic and contested claims, tools of resistance forged in the struggle against oppression.[314] Finally, the *discourse school* adopts a critical stance, holding that human rights exist only insofar as they are invoked in discourse, often serving hegemonic or imperial interests rather than delivering substantive justice.[315]

D.

Once a language of dissent, human rights have been transformed into instruments of state legitimacy 'turned from a discourse of rebellion and dissent into that of state legitimacy'.[316] This shift is part of a broader transformation in which legal humanism, by collapsing the distinction between fact and right, has helped pave the way for positivism and historicism, stripping rights of their transcendental critique and reducing them to what is recognized by the state.[317]In this reality, law no longer challenges power: it masks and legitimizes it. Human rights, he argues, rather than being a defence against the state and legal positivism, they end up the bedfellows of positivism, unable to provide a standard of critique and totally inadequate in their proclaimed task of defending the lonely individual against the demands of the all-powerful Sovereign, itself presented in the guise of a super-individual entity with its desires, rights and powers.[318] At the essence, Douzinas rejects the metaphysical grounding of rights in reason, nature, or humanity, insisting instead that 'rights are grounded on human discourse and nothing more solid, like nature or humanity".[319]

E.

Notable, it is fundamental to mention that HRE should be directed towards various target groups in order to be all encompassing and capable of reaching every stratum of society. These target groups are vital contributors to the shaping and characterisation of society, and each play a distinct role in advancing the realisation of a universal culture of human rights. The actors that

[313] *Ibid*., 3,5, 7, 14.
[314] *Ibid*., 3, 6, 8, 15-16.
[315] *Ibid*., 4, 6, 8, 17-18.
[316] Ibid., 7.
[317] *Ibid*., 11.
[318] *Ibid*., 243.
[319] *Ibid*., 371.

should be included in the implementation of HRE are not only the 'traditional' target groups one would imagine in the educational field, such as schools and universities, also characterised as the formal education. Additionally, HRE should target the broader society or the broader public and not less important, equally be implemented in state structures. This includes the legislative, judiciary or other governing bodies. These actors stand at the root of the governing of a society and should therefore be subject to HRE so it can shape and inform their decision-making processes with far far-reaching impact on individuals.[320]

F.

Firstly, the capacity for critical examination of oneself and one's traditions, for living what, following Socrates, we may call '*the examined life'*. This entails a way of life that refuses to accept any belief as authoritative merely by virtue of tradition or familiarity. Instead, it demands that all beliefs, claims, and arguments be subjected to critical scrutiny, accepting only those that withstand reason's call for coherence and justification.[321] Socrates argued that democracy requires citizens who think independently and engage in reasoned dialogue, rather than blindly deferring to authority or exchanging unexamined opinions.This is especially crucial good citizenship in diverse societies characterised byethnic, caste, and religious differences. [322]

Secondly, citizens who cultivate their capacity for effective democratic citizenship need an ability to see themselves as not simply citizens of some local region or group, but also, and above all, as human beings bound to all other human beings by ties of recognition and concern.[323] They must understand both the differences that hinder understanding and the shared human concerns that make understanding essential- requiring knowledge of other nations and the diverse groups within their own nation.[324] Nussbaum emphasizes that '*awareness of the*

[320] Christina Wurzinger, 'Human Rights Education and the Creation of a Culture of Peace (2007) *EMA Theses* 51-65 <https://polovea.sebina.it/SebinaOpac/resource/human-rights-education-and-the-creation-of-a-culture-of-human-rights/VEA02272159?locale=eng> accessed 23 June 2025.

[321] Martha C. Naussbum, 'Education and Democratic Citizenship: Capabilities and Quality Education' (2006) *Journal of Human Development* 388.
[322] *Ibid*., 389.
[323] *Ibid*.
[324] *Ibid*., 390.

history of cultural, economic, religious, and gender-based differences is essential in order to promote the respect for another that is the essential underpinning for dialogue. There is no easier source of disdain and neglect than ignorance and the sense of the inevitable naturalness of one's own way.'[325]

Thirdly, narrative imagination: citizens cannot think well based on factual knowledge alone. This means imagining oneself in another's place and understanding their perspective, emotions, and desires. As Tagore wrote, '*We may become powerful by knowledge, but we attain fullness by sympathy.'* [326] Notable, Nussbaum argues that the narrative imagination is cultivated, above all, through literature and the arts. (*See infra*) Reliance on the arts is essential for both freedom and community, in an open and non-hierarchical manner.

4. Case study

A.

Indeed, the Estado Novo (1933–1974) was not born fully formed but emerged incrementally out of the authoritarian turn initiated by the military coup of 28 May 1926.[327] That coup ended Portugal's unstable First Republic and ushered in a period of military dictatorship—*Ditadura Militar (1926-1933)*, that suspended constitutional rule, repressed dissent, and governed by decree. It was during this transitional phase that António de Oliveira Salazar, initially appointed Minister of Finance, began to consolidate institutional power through fiscal discipline and moral authority.[328] In 1928, Salazar was 'invited' a second time to become finance minister and imposed such stringent conditions upon his acceptance that he in effect became *de facto* head of government.[329] With economic stability achieved, the regime's political trajectory towards a dictatorship came under increased scrutiny. Within this realisation three groups can be

[325] *Ibid*., 391.
[326] Rabindranath Tagore, *A Tagore Reader* (Beacon Press 1961) 219.
[327] Manuel Baiôa, Paulo Jorge Fernandes, and Filipe Ribeiro de Meneses, 'The Political History of Twentieth-Century Portugal' (2003) JPH *3.*
[328] *Ibid*., 4.
[329] Philippe S. Schmitter, 'The "Régime d'Exception" That Became the Rule: Forty-Eight Years of Authoritarian Domination in Portugal' in Lawrence S. Graham and Harry M. Makler (eds), *Contemporary Portugal The Revolution and Its Antecedents* (University of Texas Press, 1979) 8.

identified: conservative republicans, right-wing radicals, and Salazar's own faction, the Catholic Centre.[330]

B

According to the historian António Costa Pinto, '*the non-hierarchical nature of the coup, with the almost immediate intervention of the democratic elite and popular mobilization, accentuated both the real and the symbolic break with the past*'.[331] In this sense, the Carnation Revolution was not a rupture through force, but through imagination: a revolution as much visual and performative as it was political. It invites us to reconsider the transformative power of non-violence and aesthetic symbolism in reconstituting fundamental freedoms and rights and reimagining democracy.

[330] *Ibid*.
[331] António Costa Pinto, 'Authoritarian Legacies: Transitional Justice and State Crisis in Portugal's Democratization' (2006) 13(2) *Democratization* 179 <https://doi.org/10.1080/13510340500523895> accessed 5 July 2025.