

CALL FOR PAPERS

Human Dignity and the Constitutional Crisis in Europe: *Humanity, Democracy, Social Europe*

Thursday 15th – Friday 16th June 2017
European University Institute, Florence

OVERVIEW

Appeals to human dignity have been central to constitutional discourse in Europe during and following times of crisis. It has informed the process of constitution-building and democratization in Europe in the wake of world wars, military dictatorship, civil conflict, and the collapse of communist regimes. In these contexts, human dignity has featured as a guide which points away from the oppression and inhumanity of the past towards a more robust system of constitutional democracy and an enhanced degree of protection of human rights. Born out of crisis, human dignity has since become a foundational legal value at every level of the European constitutional order. It has been codified as either a right or principle in the constitutions of almost all nation-states in Europe. At the supranational level, it has been recognised as the 'essence' of the ECHR and is the first foundational value set out in Art 2 of the Treaty of the European Union and the first right and principle under Art 1 of the EU Charter of Fundamental Rights. This shared commitment to protect human dignity is arguably an important basis for bringing these constitutional orders together in constructive dialogue.

Europe now finds itself facing a new set of crises. The refugee and economic crises, and the concurrent rise of populism and xenophobia, have ignited a crisis in constitutionalism, with an erosion of fundamental rights standards and the deconstruction of institutional arrangements designed to uphold those rights. A number of European states seem to be regressing from constitutional democracies based on the rule of law and the separation of powers into self-proclaimed illiberal regimes with authoritarian features. Discourse has largely centered on how this backsliding relates to the foundational values of democracy, liberalism, and the rule of law. This conference aims to reflect on the ways in which the current problems also touch upon human dignity at every level of the European constitutional order, and it will evaluate the nature and impact of the current challenges in terms of the shared constitutional commitment to protect human dignity. Looking forward, with the aim to redevelop a vision for a common European future, discussion will focus on the potential of dignity to provide a guide to navigate our way out of the current crisis of constitutionalism. In doing so, we will be considering whether a renewed commitment to human dignity can, indeed, inspire a (partial) solution or whether, in light of its contested nature, may in fact serve as a rhetorical device to ostensibly legitimise regressive policies and laws.

KEYNOTE SPEAKERS

- **Dieter Grimm**, Professor of Public Law at Humboldt University; Visiting Professor of Law and Gruber Global Constitutionalism Fellow at Yale Law School
- **András Sajó**, Vice-President and Judge at the European Court of Human Rights; Professor of Law at the Central European University and Global Visiting Professor of Law at New York University Law School.

CONFERENCE THEMES

The conveners welcome papers that fit broadly within the theme of the conference, but in particular invite papers that relate to one or more of the following interrelated themes.

1. **Protecting Humanity: Inclusion, Identity, and Difference**

Post-war Europe saw the construction of a new foundation for constitutionalism and fundamental rights, which supposedly extended their (formerly narrow) reach beyond the limits of the citizen, to first and foremost protect the innate dignity of the human being. The response of European states and institutions to the refugee crisis begs the question whether this inclusive model of constitutionalism has been abandoned, whether it was ever actually achieved or achievable, or whether it remains a 'realistic utopia'. This stream invites discussion of the relationship between the constitutional protection of dignity and various policies and laws that have been adopted across Europe that seek to exclude (or contain) difference. We particularly welcome analysis of measures that treat conformity to certain cultural norms as a precondition for citizenship and fundamental rights protection, and as a prerequisite for admission and integration into society.

Papers may consider this (non-exclusive) list of questions:

- How have dignity and human rights norms been deployed to challenge measures that seek to exclude and contain difference?
- Is the constitutional commitment to respect human dignity related to measures (such as border protection policies) that have been taken to create a *cordon sanitaire* - designed to safeguard the European (and national) identity? If so, in what ways?
- In what ways has dignity been used in assimilationist policies and laws (such as the ban on the veil) that guarantee inclusion by requiring adjustment to dominant (European/national) cultural norms and values?
- What kind of constitutional order is required to effectively protect the rights of humanity and guarantee the 'right to have rights'?
- What is the interrelation between human dignity, citizenship, national identity and European civilization?

2. Defining Democracy: *Authoritarianism, Constitutional Reform, and Self-Determination*

Strong connections have been built-up between dignity and constitutional democracy across the different levels of the European constitutional order, and the process of codifying dignity has largely coincided with the transition of nation-states to democracy. In light of these connections, attempts to reconstruct the meaning and institutions of democracy in several European states raises issues about the implications this carries for the protection of dignity. This stream deals with several dimensions of this relationship. It will focus not only on the use of dignity as a mechanism for imposing limitations on parliamentary majorities in terms of ordinary legislation, but also as a basic presupposition of constitutionalism that is incapable of being suspended by popular will as expressed either directly (in referenda) or indirectly (through constitutional reform by parliament). At the same time, it will address some of the dignity rhetoric that has accompanied the assertion of the popular will of the people to shape their future in repudiation of onerous conditions (such as bailout terms) imposed by other European states and institutions.

Papers may consider this (non-exclusive) list of questions:

- Is liberal democracy the only governance model compatible with dignity? Could states transition to an “illiberal” (or, perhaps, “less liberal”) regime, whilst remaining genuinely committed to respecting dignity?
- Does dignity impose a positive state obligation to maintain certain institutional and structural arrangements in which it can be effectively protected?
- Can / should dignity act as a legal constraint on the will of majorities when establishing a new constitutional regime? If so, what is the theoretical and normative justification for the role of dignity in limiting democratic decision-making powers?
- Must a certain core of dignity form part of the constitutional identity of a European state? Can states shape their constitutional identity in a way that impinges on that core?
- Is the imposition of measures that disregard or directly oppose the popular will of a nation state an affront to the dignity of its people? Is dignity inherently linked to participatory democracy?
- What is the relationship between human dignity and constitutional reforms that aim to restrict democratic freedoms in order to protect the dignity of the nation, groups, or communities (e.g. Article IX of the Fundamental Law of Hungary)?

3. Realising Social Europe: *Austerity, Welfare, and Solidarity*

The final stream deals with the ever widening gap between the formal constitutional commitment to a European social model - at the national and transnational level - and the reality of austerity. In some states, the socioeconomic impact of austerity has said to generate a humanitarian crisis and protection of a dignified life has figured in public discourse as an argument against the imposition of austerity measures and economic governance criteria. European states and institutions both stand accused by the Council of Europe Commissioner for Human Rights of failing to incorporate dignity and human rights considerations in their agreement of conditions that accompany economic assistance programmes. The responsibility that these bodies have hitherto assumed to maintain an adequate welfare state, and secure social rights, is being gradually questioned, and the structures of the welfare state are being eroded. This process of de-socialization raises a number of important issues relating to human dignity, which has traditionally been a standard justification for social rights and a possible foundation of the European social model.

Papers may consider this (non-exclusive) list of questions:

- How have dignity, and fundamental rights, been (or not been) used to challenge austerity measures that have deteriorated living and working conditions?
- Should the constitutional commitment to dignity at the national and supranational level demand a greater degree of solidarity with the most vulnerable within and across borders?
- Does the meaningful protection of dignity require a stronger constitutional foundation for social rights?
- Can dignity inspire a new (and better) vision for a social Europe than has so far been advanced?
- Should the constitutional protection of dignity be kept out of the socioeconomic sphere, and limited to the role of constraining the power of the state?
- Are there obligations to future generations deriving from the constitutional protection of dignity that must be taken into consideration in the agreement of austerity packages?

ATTENDEES AND SPEAKERS

Interested participants should submit an abstract of no more than **500 words** to DigDem2017@port.ac.uk or through the conference webpage at <http://www.port.ac.uk/digdem2017>

The **deadline** for submission of abstracts is **28th February 2017**.

All abstracts will be reviewed by the convenors and selections announced by **31st March 2017**. Full papers of no more than 10000 words (including footnotes) should be submitted by **15th May 2017**.

Formal registration for the conference will be possible from mid-May via the conference webpage. Participants will be responsible for their own travel and accommodation expenses.

CONVENORS

Daniel Bedford, Panos Kapotas (University of Portsmouth), Gábor Halmai (EUI), Catherine Dupré (University of Exeter)