

University of Copenhagen

Faculty of Law – The PhD Program

Centre for Comparative and European Constitutional Studies

RESEARCH PROJECT PROPOSAL

Harmonizing Legal Values: What Europe Can Teach to the World

(Issues of Constitutional Legitimacy and Constitutional Pluralism)

2016-2019

I. Project title

'Harmonizing Legal Values: What Europe can Teach to the World'

II. Project abstract

Constitutional values serve as basis for different political- constitutional- and legal systems in the world today. Globalization and multilevel constitutionalism bring about a lot of new challenges both for nation states and supranational legal entities. Legal sciences have to offer adequate, practical and up to date answers to these issues.

Research objectives:

1. Identifying and defining the constitutional values of the European Union as a supranational entity.
2. Analyzing problems of constitutional legitimacy in respect to multi level constitutional value systems.
3. Demonstrating that the constitutional value system of the European Union can serve as a base of a transnational legal system.
4. Making recommendations for legislations, international organizations and policy makers on harmonizing constitutional value systems from a European perspective.

Outcomes and significance:

1. The research is groundbreaking and novel both in its actuality and its approach dealing with contemporary constitutional issues.
2. The project tends to fill in a gap in the present scientific literature.

Offers a thorough but focused analysis of international and European constitutional value systems

3. The results of the work will be useful for the academic community, policy makers, international, european and national institutions working in the field of legal harmonization.
5. Serves as a basis for further research.

III. Subject and research objective(s)

Constitutional values and constitutional value systems have an enormous importance in the process of globalization. No legal system in the world has ever existed without an underlying value system. Present historical events prove that not only Europe but the whole world is facing a value crisis today. Without harmonizing conflicting (constitutional) values no stability and safety can ever be reached. Can legal tools contribute to the harmonization of legal values in the international level? Can a multicultural European Union be a model for harmonizing constitutional values on the international plane? **The significance and actuality of this research lies in the facts that it deals with acute legal/constitutional problems and highlights some questions have not been answered yet by the scientific community.**

The post- Cold War environment is one of increasingly open borders in which the internal and external aspects of security are indissolubly linked. Flows of trade and investment, the development

of technology and the spread of democracy have brought freedom and prosperity to many people. Others have perceived globalisation as a cause of frustration and injustice. The process of globalization *inevitably brings the clash of value systems both on international and european level*. In order to preserve a satisfactory level of justice and freedom in the world as globalization brings a great amount of phenomena never seen before - sooner than later - we have to harmonize our constitutional value systems. In accordance with this, the Global Strategy of the EU states: *'Our values are a source of strength and security, and our ability to promote our values abroad is directly tied to our willingness to abide by them at home. In recent years, questions about America's post-9/11 security policies have often been exploited by our adversaries, while testing our commitment to civil liberties and the rule of law at home. For the sake of our security and our leadership in the world, it is essential we hold ourselves to the highest possible standard, even as we do what is necessary to secure our people'*.¹

With my research I will contribute to reviewing and clarifying the EU constitutional value system, and trying to offer a possible model of harmonizing constitutional systems – based on the experiences of the EU – in the world today.

This research is basically intended to focus on three main pillars: (a) the main issues of constitutional legitimacy and constitutional pluralism in regard of the multicultural legal value systems of Europe (b) from the perspective of harmonizing constitutional values within the European Union (c) as a possible model for the forming of a value based global constitutional system in the world. In my research I will focus on four main research areas as follows:

1. Reviewing constitutional value systems in the world today – a brief overview

- Main international and regional value systems in the light of fundamental constitutional documents in the world today
- Basics of the European constitutional value systems (characteristics of national law, EU law and pan-European value systems)
- Some issues of the cultural relativist/universalist/balancing point of views
- Is the world in a value crisis now?

2. Defining 'constitutional values'

- How can we define constitutional values on the European and international level?
- The sources of constitutional values on the international and European level
- The dynamic and evolutionary nature of constitutional values

3. Analyzing constitutional values in the European context

¹ Towards an EU Global Strategy Ed.: Antonio Missiroli.
http://www.iss.europa.eu/uploads/media/Towards_an_EU_Global_Strategy.pdf

- Constitutional pluralism = value pluralism? (with country studies)
- Problems of constitutional legitimacy – from the perspective of differing constitutional values (with country studies)
- Harmonizing and identifying constitutional values in Europe [a) Venice Commission, b) Primary EU law, c) European Court of Human Rights, d) European Court Of Justice]
- Enforcement of Constitutional values – do we have effective means to that?

4. Critical analysis of the possible role of the EU as a constitutional model system for the rest of the world

This reserach proposal is goundbreakig and novel since the existing scholarship on the subject have not dealt with these issues yet from this angle and with the intention represented above. It will be a major academic conntribution to the debates of harmonizing european and international constitutional systems. The project also intends to inspire further research in the field.

IV. Major research question(s)

My research is based on the following main research questions:

1. How can the constitutional values of the European Union be defined?
2. How can constitutional values be harmonized on the international level?
3. How can constitutional values be enforced?
4. How do the European Court of Human Rights and the European Court of Justice contribute to the harmonization of constitutional values?
5. Can the EU method/process of harmonizing constitutional values be a model for the rest of the world?

I intend to base my research on two main hypotheses, with the notion that in my view the layers of international value systems are in constant evolution, not unlike that of municipal constitutional orders, where the fundamental value system evolves over time. As well as based on primary researches, practical experience on the situation, literature review and analysis, the following will be research hypotheses:

Hypotesis 1: The European Union has developed a 'living', common, but still evolving constitutional value system in a multicultural continent.

Hypotesis 2: The adequate reply to the challanges and obstacles of globalization is defining the fundamental constitutional values in a multicultural world by using the tools of constitutional legal harmonization. In this process the constitutional legal harmonization practice of the European Union might serve as a model for the rest of the world.

V. Review of relevant literature

Present research project is mainly based on and takes as a starting point of the scientific results of the **Centre for Comparative and European Constitutional Studies**. From these I highlight two

authors with most significant and direct links to my research. **Professor Helle Krunke** writing about the legitimacy issues of European courts emphasizes: *'There could also be a difference based on the traditions of human rights protection and democracy in different member states. Further studies in this field would be useful.'*² She also states: *'It seems that the Court might be able to find public support among the majority of the people in some nation states but not in others because of the differences between the nation states as regards history, political culture, democratic tradition, human rights tradition etc'.* **Professor Antoni Abat Ninet** argues about the role of constitutional values: *'Constitutions are matched to values in order to justify and legitimise their violent implementation.'* Further He emphasizes: *'Thus, the European Union believes that democracy and human rights are universal values that should be vigorously promoted around the world. Having come into force on 1 January 2007, the European Instrument for Democracy and Human Rights (EIDHR) is the concrete expression of the EU's intention to integrate the promotion of democracy and human rights into all its external policies'*.³ As the issue of constitutional values has always been a top research issue for many scholars and research organizations we can look through huge pool of different literature. Unfortunately, there are a few studies and researches on European constitutional value harmonization issues from the critical point of view and with an attitude of making the experiences practically useful for the international level. Proceeding from main purpose of the research, during literature analysis the most effort will be made to capture especially the literature carrying more practical nature (showing difficulties of constitutional value harmonization besides theoretical issues) i.e. researches by Dennis Davis, Alan Richter, Cheryl Saunders, Mark Tushnet, Vicki C Jackson, etc. Of course, thorough analysis of most well known literature on theoretical explanations and approaches will be carried out. If we look on some issues we already discussed above, through some literature already analyzed during preparation of this background study, in the work of Christian Walter we can find evidence about that the *'vision of an international constitutional model is inspired by the intensification in the shift of public decision-making away from the nation State towards international actors of a regional and functional (sectoral) nature, and its eroding impact on the concept of a total or exclusive constitutional order where constitutional functions are bundled in the nation State by a single legal document'*.⁴ Thus, regional actors like the EU have pivotal role in forming international value systems in the modern world. Some authors like Erika de Wet⁵, Anne-Marie Slaughter⁶, Koen Lenaerts⁷, etc. offer

² Helle Krunke, Chapter 4: Courts as Protectors of the People: Constitutional Identity, Popular Legitimacy and Human Rights

³ Antoni Abat i Ninet, Constitutional Violence: Legitimacy, Democracy and Human Rights

⁴ Christian Walter 'Constitutionalising (Inter)national Governance: Possibilities for and Limits to the Development of an International Constitutional Law' (2001) 44 German Yearbook of International Law 192.

⁵ Erika de Wet 'The international constitutional order' ICLQ-vol 55, January 2006 pp 51-76

theoretical solutions of harmonizing constitutional values with balancing of multicultural and pluralistic interests. At the same time considerable part of scholars (Stein, Rubinfeld, Pathak, Ghai, etc.) do not agree with the view of only high positive returns of harmonizing legal systems and constitutional values, thus e.g. Johnson argues: ‘Classical Western liberal notion of human rights emphasizes absolute individual political and civil rights while most non-Western, Third World traditions place greater emphasis on the community basis of rights and duties, on economic and social rights and on the relative character of human rights’.⁸ For my research the relevant works (see ‘References’) of Ulrich Sieber, Julianne Kokott, Thomas Kleinlein, Ronald St. J. Macdonald, Ralf Michaels, and Larry Catá Backer, etc. will also be important.

VI. Methodology and method(s)

The research will employ both library and field research. In order to lay down the general theoretical and philosophical background, the existing scholarly writings and jurisprudences will be used. In the work both quantitative and qualitative research methods will be used to address the research questions and objectives. Multiple methods will allow the different research objectives and questions to be fully explored. In the first stage of the work data from different international organizations and secondary data from researches will be used to build the whole picture of contemporary constitutional value systems, of course more focus will be made on the European Union. Based on the data collected, comparative analysis will be made, in order to shed a light for several research questions. The second stage will be carrying out questionnaires in selected international organizations. The third stage will capture qualitative interviews with officials of the European Court of Justice and the European Court of Human Rights. Fourth stage will be concerned with analysis of primary data acquired during questionnaires and application of quantitative analysis in order to find out the possibilities of harmonizing constitutional values on the international level from an EU perspective.

This project will also give rise to a range of epistemological and methodological challenges, such as:

- Which european constitutional orders to compare?
- How to conceptualise ‘values’, how to distinguish them from rights?
- How to select a set of values upon which to base the comparison?
- How to establish a connection between a particular feature of the constitutional order and the values that underlie it?

⁶ Anne-Marie Slaughter ‘Security, Solidarity and sovereignty: The grand themes of UN reform’ *The American Journal of International Law*, vol. 99:615. pp 619-631.

⁷ Koen Lenaerts ‘EU values and constitutional Pluralism: The EU system of fundamental rights protection, XXXIV Polish Yearbook of international law 2014. pp 136-160.

⁸ Johnson, M. Glen (1988) “Human Rights in Divergent Conceptual Settings - How Do Ideas Influence Policy Choices?,” in *Human Rights Theory and Measurement*, David Louis Cingranelli, editor, MacMillan Press, London.

VII. Timetable

	Activities	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
FIRST YEAR	Consultations with supervisor on the structure of the PhD research	X											
	Literature review	X	X	X									
	Work on introduction and first chapter			X	X	X	X						
	Preparation of questionnaires for the countries to be compared						X	X					
	Field trip to EU institutions (research stay for interviews with scholars, officials of EU institutions)								X	X			
	Transferring the data from questionnaires to excel sheets										X		
	Analysis of data set formed and consultations with the supervisor on quantitative analysis part of the work											X	X
	Preparation of first article and submission to several international journals (EU and USA)											X	X
	Edition and resubmission of the article												X
	Attending PhD courses		X	X	X	X	X	X	X	X	X		
SECOND YEAR	Work on second chapter and quantitative analysis	X	X	X	X								
	Preparation of second article and submission to international journals (EU and USA)		X	X	X								
	Edition and resubmission of the article					X	X						
	Preparation of preliminary questions for interviews with some officials of the ECHR					X	X						
	Field trip to Starsbourg (research stay carrying out interviews with some judges and scholars)							X					
	Preparation of article for publication in a Danish law journal and submission							X	X				
	Work on third chapter and consultations with supervisor									X	X	X	X
	Attending PhD courses	X	X	X	X	X	X	X	X	X	X	X	
	Visiting conferences			X	X				X		X		
	Teaching		X	X	X	X	X			X	X	X	

THIRD YEAR	Preparation of third article and submission to several international journals (EU and USA)	X	X	X									
	Edition and resubmission of article			X									
	Work on fourth chapter, conclusion and submission to supervisor for comments	X	X	X	X	X	X						
	Preparation of paper on the results of PhD research for participation in conference				X	X							
	Participation at conference					X				X	X		
	Revision and updating the thesis based on the comments					X	X	X					
	Submission of final version of the PhD thesis							X					
	Visiting conferences			X	X				X	X			
	Teaching	X	X	X	X	X	X			X	X	X	X

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