

**University of Copenhagen**

**Faculty of Law – The PhD Program**

**Centre for Comparative and European Constitutional Studies**

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**RESEARCH PROJECT PROPOSAL**

**Harmonizing Legal Principles: What Europe Can Teach the World:**

Issues of Constitutional Legitimacy and Constitutional Pluralism

**2016-2019**

**Full Name**

## **I. Project title**

*'Harmonizing Legal Principles: What Europe can Teach the World'*

## **II. Project abstract**

Constitutional principles serve as a basis for different political, constitutional, and legal systems in the world today. Globalization and multilevel constitutionalism pose new challenges, both for nation states, and supranational legal entities. Legal sciences have to offer adequate, practical, and current answers to these issues.

### Research objectives:

1. Imperative to be addressed are the identifying and defining of constitutional principles imposed and implemented by the European Union as a supranational entity.
2. My work analyzes and solves predicaments regarding multilevel constitutional legitimacy and constitutional principles.
3. My research demonstrates that the European Union constitutional principles can justly serve as a basis for transnational legal systems.
4. Herein, recommendations for legislation, the construct of possible international organizations, and the roles of policy makers on harmonizing constitutional principles from a European perspective will be outlined.

### Outcomes and significance:

1. My research is groundbreaking and novel both in its necessity, and in its approach in dealing with contemporary constitutional issues.
2. My project fills a void in present day legal literature, and research works that provides a thorough, and focused analysis of international and European constitutional principles.
3. The results of my work will be useful for the academic community, policy makers, international, European and national institutions that work in the field of legal harmonization.
5. My work 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 underlying principles. We must not only ask ourselves what those principles are, and what they should be, but how to implement them, how to constrain them, and how to maintain them. My work objectives address these perplexities.

Present historical events prove that not only Europe, but the whole world is facing a value-crisis today; that is, a crisis imbued in moral and ethical delinquencies, the rule of law delinquencies, and the expansions and limitations of those laws that are based on principles awry. Without harmonizing conflicting constitutional principles, stability and safety can never be reached.

Can a multicultural European Union be a model for harmonizing constitutional principles on the international stage, or should it be made into an example of how not to run a union of nations? Supposing the European Union can be better transformed into a model for righteous, constitutional governance in the modern world, what would the legal tools be needed to contribute to such an eventful exercise in aptitude? Constitutionalism must be at the forefront of those questions, which I address in detail.

The post-Cold War environment is one of increasingly open borders internationally, in which internal and external security are indissolubly linked— open boarder policies, many of which are often based on illegal agendas, especially when addressing immigration that comes from outside the European Union, that do not conform to international laws, nor do they conform to constitutional laws, but may be disputed when debating human rights initiatives, and human rights laws, by the way. What are the implications of keeping the borders open or closed? How can we maintain sovereignty, or should we? Individualism, cooperative agreements, national and international policies, relatively free trade and investments in products and services, or not— old and new, my work herein addresses. How can responsible constitutionalism be implemented, and how can it be constrained, and maintained?

Republics that are principled in limited and focused governments, where the rules of laws are applied equally, regardless of financial status, or political favor, where free markets with limited regulations are encouraged to flourish, freedom and prosperity also flourish. Many perceive globalisation is a cause of frustration and injustice for numerous reasons. The process of globalization "inevitably brings the clash of principles, both on the international and European

level." 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'*.<sup>1</sup> Has the European Union been living up to its own convictions?

With my research I contribute to reviewing and clarifying the EU constitutional principles, and offer strong models for harmonizing constitutional systems; my summation is based on thousands of years of world economical and political history and discourse, experiences within the European Union, and the world as it was yesterday, as it is today, and as what may be coming down the pike— trends of political winds.

My research focuses on three pillars:

1. The main issues of constitutional legitimacy and constitutional pluralism in regards to the multicultural legal principles of Europe
2. The perspective of harmonizing constitutional principles within the European Union
3. The providing of possible models for the formation of a principled global constitutional world.

In my research I focus on four main research areas, and they are as follows:

1. Reviewing constitutional principles in the world as they were yesterday, as they are today, and as it looks like they will be in the near future

- Main international and regional principles in the light of fundamental constitutional documents
- Basics of European constitutional principles (e.g., characteristics of national law, EU law and pan-European principles)
- Issues of cultural relativism, universalism, and the balancing of those two perspectives
- How the world is effected by this principle crisis, and what's to come of it.

2. Defining constitutional principles

- defining constitutional principles on the European and international stage
- defining the sources of constitutional principles on the international and European level

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<sup>1</sup> Towards an EU Global Strategy Ed.: Antonio Missiroli.  
[http://www.iss.europa.eu/uploads/media/Towards\\_an\\_EU\\_Global\\_Strategy.pdf](http://www.iss.europa.eu/uploads/media/Towards_an_EU_Global_Strategy.pdf)

- defining the dynamic nature of constitutional principles, of which should not need to be evolutionary, though may be revolutionary to many. A long history of humankind has innate in its history the answers to good governance, that may still be obscured to many, and yet may be purposefully obscured by others.

### 3. Analyzing constitutional values in the European context

- Constitutional pluralism equals principled pluralism; a country by country study
- Difficulties with constitutional legitimacy; a country by country study of differing constitutional principles
- The harmonization and identification of constitutional principles in Europe [a) Venice Commission, b) Primary EU law, c) European Court of Human Rights, d) European Court Of Justice]
- Enforcement of Constitutional principles— do we have effective means to implement them?

### 4. A critical analysis of a possible role for the EU as a constitutional-model system for the rest of the world

My research proposal is groundbreaking, and a novel idea since most present-day scholars adroit on the subject have not presented their cases as I have outlined herein. My exhaustive work will be a major academic contribution to debates for Harmonizing European and international constitutional principles.

### **IV. 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 and constrained?
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 and process of harmonizing constitutional principles be a model for the rest of the world?

My research is based on two main hypotheses, with the notion that the layers of international constitutional principles should be founded on good economics based on thousands of years of recorded historical data, and current events. Contrary to popular belief, these constitutional principles should not be dynamic, but static. Even though there is a constant tugging at interwoven

sets of political threads that show massive rippings at the seams, constitutionalism and constitutional order should be based on fundamental principles of good economics, and good governance of those principles.

The more peaceful and prosperous among us won't be bred from the melee of peoples and their struggles, but will be born from the interweaving of communities that share similar principles— of healthy constitutional principles— that breed good economics that has been hidden, but imbred in thousands of years of economic prosperity and woes.

The following literature reviews and analyses will begin as research hypotheses:

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

**Hypotesis 2:** The adequate reply to the challenges and obstacles of globalization is defining the fundamental constitutional principles 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**

The present research project is mainly based on and taken as a starting point from 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** writes 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.'*<sup>2</sup> 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 Antotni 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*

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

*of democracy and human rights into all its external policies*'.<sup>3</sup> As the issue of constitutional values has always been a top research issue for many scholars and research organizations, we can look through huge pools of different literature.

Unfortunately, there are only a few studies that have delved into European constitutional principle harmonization issues from the critical point of view, and with an attitude of making the experiences practical, and useful for the international level. Proceeding from my main purpose for my research, during literature analysis, most of my effort will be made to especially capture the literature by carrying a more practical nature (e.g., showing difficulties of constitutional value harmonization besides theoretical issues), i.e., research made by Dennis Davis, Alan Richter, Cheryl Saunders, Mark Tushnet, Vicki C Jackson, etc.

Even still, a thorough analysis of some of the most well known literature on theoretical explanations and approaches will be carried out. If we look at certain issues we have already discussed above, through some literature already analyzed during preparation of this background study, in the work of Christian Walter, we can find evidence for 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'*.<sup>4</sup> Thus, regional actors like the EU have pivotal roles in forming international principles in the modern world. Some authors like Erika de Wet<sup>5</sup>, Anne-Marie Slaughter<sup>6</sup>, Koen Lenaerts<sup>7</sup>, etc., offer theoretical solutions for harmonizing constitutional principles with the balancing of multicultural and pluralistic interests.

At the same time, a considerable number of scholars (i.e., Stein, Rubinfeld, Pathak, Ghai, etc.) do not agree with the view of only high positive returns for harmonizing legal systems and constitutional principles; 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

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<sup>3</sup> Antoni Abat i Ninet, *Constitutional Violence: Legitimacy, Democracy and Human Rights*

<sup>4</sup> 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.

<sup>5</sup> Erika de Wet 'The international constitutional order' *ICLQ*-vol 55, January 2006 pp 51-76

<sup>6</sup> 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.

<sup>7</sup> Koen Lenaerts 'EU values and constitutional Pluralism: The EU system of fundamental rights protection, XXXIV *Polish Yearbook of international law* 2014. pp 136-160.

social rights and on the relative character of human rights'.<sup>8</sup> 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 methods

My research will employ both library and field research. In order to lay down the general theoretical and philosophical background, existing scholarly writings and jurisprudence will be used. In the work, both quantitative and qualitative research methods will be used to address the research questions and objectives.

These multiple methods of my research 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 research data will be used to build the whole picture of contemporary constitutional principles; although, of course, more focus will be made on the European Union; based on the data collected, comparative analyses will be made in order to shed a light into several research questions. The second stage will be carrying out questionnaires in selected international organizations. The third stage will a capture of qualitative interviews with officials from the European Court of Justice and the European Court of Human Rights. The Fourth stage will be concerned with analyses of primary data acquired during questionnaires and application of quantitative analysis in order to discover the possibilities for harmonizing constitutional principles 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 principles, and how to distinguish them from rights
- How to select a set of principles upon which to base the comparison
- How to establish a connection between a particular feature of the constitutional order and the principles that underlie it

## VII. Timetable

	Activities	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
FIR ST YE AR	Consultations with supervisor on the structure of the PhD	X											

<sup>8</sup> 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.



	research												
	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			X									

resubmission of article													
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

**\*\* "The most basic duty of government is to defend the lives of its own citizens. Any government that fails to do so is a government unworthy to lead." – Donald J. Trump (This phrase should be inserted somewhere.)**

**\*\*Democracies are evil – always! Whenever I hear someone use this word, I think they are either stupid or evil. This is why I changed your use of the word to republic.**

**For further reference, please see:**

**the first vid and pdf:**

<http://www.mediaaccess.hu/index.php?module=sourcepage&id=440&lang=1>

**the vid and pdf explains it:**

<http://www.mediaaccess.hu/index.php?module=sourcepage&id=112&lang=1>

**Here is what a real democracy looks like— always:**

<http://www.mediaaccess.hu/index.php?module=sourcepage&id=451&lang=1>

**How to conceptualise principles, and how to distinguish them from rights**

**To remark: rights are given from God, and the constitution should only be created to protect those 'unalienable rights to live, liberty, and the pursuit of happiness'**

**U.S. Constitutional Law explained in second to last vid:**

<http://www.mediaaccess.hu/index.php?module=sourcepage&id=598&lang=1>

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