

MONOGRAFICA/1

Human Rights&Democracy

a cura di Giulia Sajeve e Matija Žgur

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*Human Rights & Democracy
Proceedings of the 1st Palermo Graduate Workshop*

The 1st Palermo Graduate Workshop on Human Rights & Democracy was organized by the PhD Program in *Human Rights: Evolution Protection and Limits* of the Department of Law of the University of Palermo (Italy) and held in Palermo between the 11th and 13th November 2015¹.

The Graduate Workshop focused on the debate about current trends and challenges for human rights and democracy. It was open to PhD students and recent PhD graduates. With more than twenty-five active participants from more than fifteen universities from Latin America and Europe, the Workshop offered a wide and diverse platform for the sharing of ideas.

The three-day event proposed three major sections of discussion: first, the Human Rights Theory section, dedicated to discussing the enduring problems of the foundations and universalization of human rights, as well as emerging issues in human rights theory, such as new subjects of rights and the relationship between human rights and other goods (freedom, security, economic growth, environmental protection etc.). Then, the Human Rights & Democratic Theory section, which reviewed the long-existing conflict between human rights and the majoritarian principle: the former being regarded as the crown jewel of contemporary democracies, while the latter is still considered the most important argument in favour of limiting human right. Finally, the last section – Challenges for Democratic States: Guaranteeing Human Rights – focused on the growing divide between the multilevel normative affirmation of human rights and their implementation in action. While we are witness to a proliferation of human rights declarations at the international, regional and national level, democratic States appear increasingly incapable of efficiently protecting fundamental rights of both their citizens and of all other individuals within their territory alike.

The Graduate Workshop saw the participation of three keynote speakers, renowned experts on human rights and democracy issues: Prof. Michelangelo Bovero from the University of Turin, Prof. Raffaele Bifulco from the University of Rome LUISS – “Guido Carli”, and Prof. Pierluigi Chiassoni from the University of Genoa.

This monographic section features papers by Professors Bovero and Chiassoni as well as from Professor Susanna Pozzolo (University of Brescia), who also held a seminar in Palermo the day before the Workshop. In addition, this section will present four articles, selected as the best papers presented at the Graduate Workshop by a panel of judges, including the three keynote speakers and selected professors from the University of Palermo’s Human Rights PhD program.

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¹ The organizing committee of the Graduate Workshop was composed of Giulia Sajeve, Matija Žgur and Irene Grifò.

Michelangelo Bovero, in his article *Diritti deboli, democrazie fragili. Sullo spirito del nostro tempo (Weak rights, fragile democracies. On the spirit of our times)*, analyses the essential aspects of the relationship between fundamental rights and the democratic regime. On the basis of a re-definition of the two notions, the author shows that there is no contradiction in conceiving fundamental rights as rights “against democracy”, subtracted from the will of political majorities and, at the same time, conceiving democracy as a regime based on certain fundamental rights.

In his article *Protecting Freedom of Conscience in a Constitutional State*, Pierluigi Chiassoni confronts two levels of problems facing constitutional states committed to protecting freedom of conscience and of religion. Conceptual problems involve understanding the two notions, their contents and their mutual relationship; strategic problems, on the other hand, regard the identification of the most appropriate means for achieving the task of their protection. The author outlines a doctrine for the protection of freedom of conscience in a religious society, which advocates the granting of a general right to conscientious objection.

Susanna Pozzolo, in *Nuove tecnologie riproduttive: fra liberazione e nuove forme di patriarcato (New Reproductive Technologies: Between Liberation and New Forms of Patriarchy)*, fosters reflection on the issue of “gestational surrogacy”, while proposing an analysis that goes beyond the classical opposition between pros and cons. Her purpose is to assess whether a feminist position can bring a different perspective on the ethical level, highlighting issues that are usually underrepresented.

In *Seguridad jurídica a través del análisis de los mecanismos de exclusión normativa. Una presentación del caso español (Legal certainty by means of the analysis of the normative exclusion mechanisms. A presentation of the Spanish case)*, Sebastián Agüero-SanJuan deals with the question of legal certainty as one of the cornerstones of consolidated democratic orders. He analyses the normative exclusion mechanisms recognized in Spanish law (mainly, repeal, nullity and inapplicability), demonstrating its insufficiencies in the area of legal certainty. Based on this analysis the article proposes to be the first stage towards a more effective protection of human rights by strengthening legal certainty as a central aspect of the Rule of Law.

Mauricio Maldonado Muñoz’s *Conflictivismo y anti-conflictivismo en los derechos fundamentales (Conflictivism and non-conflictivism in human rights)* critically analyses the debate between *conflictivists* and *non-conflictivists* (the so-called “*conflictivismo* problem”) which regards the question whether “real” conflicts exist between fundamental rights. Maldonado Muñoz argues that the “*conflictivismo* problem” is, in fact, not a single problem, but it rather refers to a multidimensional and heterogeneous set of different issues. Consequently, the contrast between conflictivists and non-conflictivists does not correspond to a series of necessarily consistent or coherent positions.

Can we speak of a new constitutional paradigm in Latin America (“New Latin American Constitutionalism”) or are we faced with new autocratic regimes? This is the question Guadalupe Salmorán tackles in her article *Bolivia, Ecuador y Venezuela: ¿un nuevo constitucionalismo latinoamericano o nuevas autocracias plebiscitarias? (Bolivia, Ecuador and Venezuela: a new Latinamerican constitutionalism or new plebiscitarian autocracies?)* in which she analyses the emerging paradox in certain Latin American states whereby, despite progress on fundamental rights and forms of citizen participation was made, constitutions still have a tendency to focus the political power in the executive branches of the government.

Finally, Marta Bordignon in her article *La roadmap verso uno strumento internazionale giuridicamente vincolante su imprese e diritti umani alla luce del ruolo degli attori non-statali (The roadmap*

towards an international legally binding instrument on Business and Human Rights in light of the role of Non-State Actors) analyzes the main steps for the adoption of an international legally binding instrument on business and human rights since the adoption of a Resolution in 2014 by the UN Human Rights Council. The main objective of her paper is to point out the main features of the law-making process of an international treaty on business and human rights, aimed at establishing the duty of States, as provided by general International Law, to protect fundamental rights.

The present monographic section provides an introduction into the diversity of the new issues being tackled by researchers concerned about human rights and democracy. Given the success of the Graduate Workshop, we sincerely hope it will become a permanent platform for furthering the debate on these important issues and allowing for a continued collaboration between Italian, European and Latin American scholars.