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<p:ct_intro_chapter>Conclusion: human dignity and the future of European democracy

<fs:lrh>Human dignity and democracy in Europe

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<p:au_intro_chapter>Gábor Halmai and Panos Kapotas

<p:a>1 EUROPE AS THE EPICENTRE OF CONVERGING CRISES

<p:text>The contributions to this book have attempted to illuminate the impact of the democratic decay in Europe on the status quo of human dignity. In the individual parts of the book the authors investigated the relationship between democracy and dignity through the lenses of identity, citizenship and solidarity. All this has been impacted by ‘converging crises’,¹ from the recent financial crisis and the ongoing migration crisis to the current, pandemic-induced health and economic crises.² One of the research objectives behind the study of these interconnected concepts was to gauge how the retreat of liberal democracy eroded the ideal state Europe wanted to achieve after World War II. This was a state in which human dignity is the most important governing principle, a ‘cultural-anthropological premise’ of constitutional law,³ the basis of fundamental rights in European Union (EU) law, which places ‘a particular understanding of humanity at the foundation of post-war constitutionalism’.⁴ The other related question that arises in this respect, of course, is whether only liberal democracy can recognise dignity by guaranteeing rights on the basis of a universal recognition of citizens as morally equal.⁵

¹ The term is used by Rogers Brubaker, ‘Why Populism?’ (2017) 46 *Theor. Soc.* 357–95, at 373.

² Mariana Mazzucato, ‘Capitalism’s Triple Crisis’, *Project Syndicate*, 30 March 2020.

³ Peter Häberle, *Europäische Verfassungslehre* (7th ed, Nomos 2011) 288.

⁴ Catherine Dupré, *The Age of Dignity: Human Rights and Constitutionalism in Europe* (Bloomsbury Publishing 2015) 66.

⁵ See this understanding of the relationship between liberal democracy and dignity in Francis Fukuyama, ‘Against Identity Politics’, *Foreign Affairs*, September/October 2018. Fukuyama argues that nationalism, as the other major form of recognition of citizens driven by the fear that immigrants are taking away national identity of the host countries, threatens democracy. Contrary to Fukuyama, Ivan Krastev and Stephen Holmes argue that multiculturalism is not the main target of illiberalism, therefore it cannot be combatted by abandoning identity politics: I. Krastev and S. Holmes, *The Light that Failed: A Reckoning* (Allen Lane, 2019) 43. But Hungarian Prime Minister Viktor Orbán’s emphasis on ethnic homogeneity of the Hungarian nation, for instance, proves that ‘illiberals’ fight against the concept of a multicultural society: ‘We do not want to be diverse and do not want to

The combined effects of these crises have indeed been felt across the continent and they have tested the resilience of all European societies, as well as their faith in (liberal) democracy and in (European) solidarity. But it is important to recognise the complexity both of the underlying research question(s) in this volume and of the social, political and legal phenomena that the preceding chapters have attempted to address. Arguably the most important concession one must make in this regard is that Europe may have been the epicentre of these converging crises, but many of their effects have been decidedly asymmetrical.

It is well known that the global financial crisis hit the European South the hardest,⁶ with catastrophic results for the economy, the labour market and social cohesion. A single macroeconomic figure is, perhaps, sufficient to illustrate the magnitude of the challenge faced by some European societies,⁷ as well as the unequal distribution of the effects of this crisis. The rate of unemployment in Greece at the start of the economic crisis in 2008 stood at 7.7 per cent,⁸ just over half a percentage point above the EU-28 average and very close to the rate in Germany and the UK at that time.⁹ In the following few years unemployment in Greece skyrocketed to 27.49 per cent in 2013, at the peak of the financial crisis, and remained at similar levels (24.96 per cent) in 2015, at the start of the refugee crisis. During this period, between 2008 and 2015, unemployment in both Germany and the UK actually went down.¹⁰

A similar asymmetry can be observed with regard to the impact of the refugee crisis. A combination of geography and politics puts disproportionate pressure on the Mediterranean countries that became points of entry into Europe. Despite the offer of some technical and

be mixed ... We want to be how we became eleven hundred years ago here in the Carpathian Basin' (Viktor Orbán's Speech at the Annual General Meeting of the Association of Cities with County Rights, 8 February 2018).

⁶ With the notable additions to this list, of course, of Ireland and Iceland.

⁷ See also Chapter 10 by Antonia Baraggia, this volume.

⁸ Historical data on unemployment across the EU Member States (and beyond) are available on the OECD webpages (<https://data.oecd.org/unemp/unemployment-rate.htm>, last visited on 1st December 2020).

⁹ Ibid. In 2008 the unemployment rate in Germany stood at 7.42% and in the UK at 5.62%, while the EU-28 average was 7.05%.

¹⁰ Ibid. In 2015 the unemployment rate in Germany was 4.63% and in the UK 5.33%, while the EU-28 average stood at 9.43%.

financial support by the EU,¹¹ institutional response mechanisms in Greece, Italy, Hungary and elsewhere were overwhelmed. Living conditions in refugee camps,¹² including those at Moria, on the Greek island of Lesbos, which burned down in September 2020,¹³ continue to be appalling and images of dead bodies of refugees washing up on European shores will haunt European collective memory for decades to come. The failure to deal with the refugee crisis effectively and humanely cannot be attributed, of course, to a single agent or factor. It is, however, obvious that efforts to put together a fair and viable burden-sharing system¹⁴ were thwarted by the lack of consensus among EU Member States.¹⁵ Regardless of whether this failure has triggered an integration crisis in the EU, as some have argued,¹⁶ it has certainly

¹¹ See for instance European Commission, ‘EU Budget for the Refugee Crisis and Improving Migration Management’, 2017 (https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170302_eu_budget_for_the_refugee_crisis_en.pdf).

¹² It is precisely in light of these inhumane conditions that the refugee camp in Calais was dubbed the ‘Calais Jungle’. See *The Economist*, ‘Learning from the Jungle’, 6 August 2015 <<https://www.economist.com/europe/2015/08/06/learning-from-the-jungle>> accessed 22 June 2021.

¹³ BBC News, ‘Moria migrants: Fire destroys Greek camp leaving 13,000 without shelter’, 9 September 2020 <<https://www.bbc.co.uk/news/world-europe-54082201>> accessed 22 June 2021.

¹⁴ Based on proposals by the European Commission, the Justice and Home Affairs Council adopted in September 2015 two Decisions to relocate 160,000 asylum seekers from Italy and Greece. See European Commission, ‘European Solidarity: A Refugee Relocation System’, Factsheet, 9 September 2015 (https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/2_eu_solidarity_a_refugee_relocation_system_en.pdf).

¹⁵ Hungary, Poland and the Czech Republic led the charge against refugee relocation and refused to honour their obligations under the scheme. See European Commission, ‘Relocation and Resettlement – State of Play’, Factsheet, 3 March 2016 (https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/relocation_resettlement_20160304_en.pdf); European Commission, ‘Relocation and Resettlement – State of Play’, Factsheet, 12 April 2017 (https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170412_update_of_the_factsheet_on_relocation_and_resettlement_en.pdf). The Court of Justice of the European Union has recently confirmed that, by refusing to comply with the temporary mechanism for the relocation of applicants for international protection, Poland, Hungary and the Czech Republic have failed to fulfil their obligations under EU law. See Joined Cases C-715/17, C-718/17 and C-719/17 *Commission v Poland, Hungary and the Czech Republic*, ECLI:EU:C:2020:257.

¹⁶ Rainer Bauböck, ‘Refugee Protection and Burden-Sharing in the European Union’ (2018) 56 *Journal of Common Market Studies* 141–56.

opened up divisions among EU Member States and it has become one of the principal battlegrounds for the proponents of ‘illiberal democracy’. It is not an exaggeration to say that the fight for the dignity of refugees and migrants has really become a fight for Europe’s democratic soul.

<p:a>2 ‘ILLIBERAL DEMOCRACY’ AS AN ALTERNATIVE, ANTI-DIGNITY IDENTITY IN EUROPE

<p:text>Several authors of this book¹⁷ argue that ‘illiberalism’ practised by some governments in EU Member States guarantees human dignity neither to migrants nor to the their own citizens.¹⁸ The main theoretical objects of this illiberal critique are the values of political liberalism codified under Article 2 Treaty of the European Union (TEU): human dignity and rights, justice, equality and the rule of law, its commitment to multiculturalism and tolerance, ideas that started in law and were followed in political philosophy by Isaiah Berlin’s ‘negative liberty’, Karl Popper’s ‘open society’, John Rawls’ ‘overlapping consensus’, or Ronald Dworkin’s equality as the ‘sovereign virtue’.¹⁹ From an institutional point of view – and this has been visible in the legal reactions both to the refugee crisis of 2015 and to COVID-19 in 2020 – illiberalism challenges liberal democracy, which is not merely a limit on the public power of the political majority, but also presupposes the rule of law, checks and balances, and guaranteed fundamental rights. This means that there is no democracy without liberalism advancing human dignity and fundamental rights, and there also cannot be liberal rights

¹⁷ See particularly Chapters 9 and 8 on Hungary and Poland respectively.

¹⁸ One of the latest signs of the disrespect for human dignity in one of these ‘illiberal’ Member States is the 22 October 2020 decision of the packed Polish Constitutional Tribunal on abortion. The judges have determined that abortion due to foetal defects is unconstitutional even in the very few cases the previous restrictive regulation allowed. According to the reasoning, this further curtailment of the human dignity of women was necessary to protect the human dignity of the unborn foetus. See Anna Rakowska-Trela, ‘A Dubious Judgment by a Dubious Court: The Abortion Judgment by the Polish Constitutional Tribunal’, *Verfassungsblog*, 24 October 2020 (<https://verfassungsblog.de/a-dubious-judgment-by-a-dubious-court/>).

¹⁹ These attacks against liberal values, such as human dignity, occur first and foremost in the post-Communist countries, where the entrenchment of human dignity into the newly enacted constitutions was an important element of the democratic transition in the early 1990s. See Catherine Dupré, *Importing the Law in Post-Communist Transitions: The Hungarian Constitutional Court and the Right to Human Dignity* (Hart Publishing, 2003).

without democracy.²⁰ In this respect, there is no such a thing as an ‘illiberal or anti-liberal democracy,’ or ‘democratic illiberalism’ for that matter. Those who perceive democracy as liberal by definition also claim that illiberalism is inherently hostile to values, such as human dignity, or to elements of constitutionalism, such as separation of powers, constraints on the will of the majority, human rights, and protections for minorities.

It is, of course, no coincidence that the first priority and the ultimate goal of the politics of illiberalism are to affirm its paradoxical nature by weakening the institutional safeguards of democratic systems of governance, with the judiciary being one of the first targets.²¹ Using populist rhetoric that, in most cases, opens up a clear path to some form of authoritarianism, has proved a successful political gambit well beyond the European continent.²² But even where the advocates of illiberalism have failed to generate a majoritarian political movement, they have often still found ascent to power within their reach. Although the paradigmatic European examples of this authoritarian populism are indeed to be found in Hungary and Poland,²³ the European South has not been exempted from such developments. The political system in

²⁰ Cf. Jürgen Habermas, ‘Über den internen Zusammenhang von Rechtsstaat und Demokratie’, in Ulrich Preuss (ed) *Zum Begriff der Verfassung. Die Ordnung der Politischen* (Fischer, 1994) 83–94. For the English version see Jürgen Habermas, ‘On the Internal Relationship between the Rule of Law and Democracy’ (1995) 3 *European Journal of Philosophy* 1: 12–20. Also, Juan José Linz and Alfred Stepan assert that if governments, even when freely elected, violate the right of individuals and minorities, their regimes are not democracies. See Juan José Linz and Alfred Stepan, ‘Toward Consolidated Democracies’ (1996) 7/2 *Journal of Democracy* 14, 15. Similarly, János Kis claims that there is no such thing as non-liberal democracy, or non-democratic liberalism. See János Kis, ‘Demokráciából autokráciába. A rendszertipológia és az átmenet dinamikája [From Democracy to Autocracy. The System-Typology and the Dynamics of the Transition]’ (2019) 1 *Politikatudományi Szemle* 45–74. Those critics who argue that liberalism as a 300-year-old concept predates liberal democracy forget that not only democracy but also liberalism presupposes general and equal suffrage.

²¹ Gábor Halmai, ‘Making of “Illiberal Constitutionalism” With or Without a New Constitution: The Case of Hungary and Poland’, in David Landau and Hanna Lerner (eds), *Comparative Constitution Making* (Edward Elgar, 2019) 302–23.

²² Among others see A. Velasco, ‘Populism and Identity Politics’ (2020) 1 *LSE Public Policy Review* 1–8.

²³ See Przemysław Tacik, Chapter 8 and Gábor Halmai and Nóra Chronowski, Chapter 9, this volume.

Greece and Italy,²⁴ two of the countries hit hardest by the global financial crisis post-2008,²⁵ may have proven more resistant so far to the allures of Orbán-style illiberalism, but the ascent to power of xenophobic right-wing populists in coalition governments²⁶ in both countries, as well as the strong electoral presence of the neo-Nazi Golden Dawn²⁷ in consecutive elections between 2012 and 2019 in Greece,²⁸ should give one pause for thought. It may be true that the winds of illiberalism blow stronger in (parts of) the Central European heartlands and in the European North, but this has by no means been a local storm. In fact, one would be hard pressed to find a corner of Europe where the political climate has remained entirely immune to challenges to the fundamental precepts of constitutional democracy and democratic constitutionalism.

The attitude of the UK government during the final stretch of the road to Brexit is a disturbing case in point. The UK Internal Market Bill,²⁹ designed to regulate the internal trade among the four nations of the UK post-Brexit,³⁰ contains clauses that amount to a ‘fundamental

²⁴ On the impact of austerity measures in these two countries see Antonia Baraggia, Chapter 10, this volume. On the impact of the economic-cum-social and political crisis on the Greek labour market and the system of employment relations see Horen Voskeritsian, Panos Kapotas and Christina Niforou (eds), *Greek Labour Market in the Crisis: Problems, Challenges and Prospects* (Routledge, 2019), in particular the ‘Introduction’.

²⁵ Greece lost more than 9% of its GDP between 2008 and 2011, while Italy lost more than 5% of its GDP during the first two years of the crisis. Data available at <https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?end=2019&locations=GR-IT&start=2008>.

²⁶ In Italy until August 2019, when right-wing party the League (Lega) was replaced by the Democratic Party (Partido Democratico, PD) in the coalition government.

²⁷ In October 2020 the Athens Criminal Court of Appeal delivered a historic judgment that found that the Neo-Nazi party was, in fact, a criminal organisation and found seven of its former MPs (including a current MEP) guilty of leading a criminal organisation. Among others see H. Smith, ‘Golden Dawn guilty verdicts celebrated across Greece’, *The Guardian*, 7 October 2020.

²⁸ For an overview of the electoral rise of Golden Dawn see Iasonas Lamprianou and Antonis Ellinas, ‘Institutional Grievances and Right-Wing Extremism: Voting for Golden Dawn in Greece’ (2017) *South European Society & Politics*, 22, 43–60.

²⁹ At the time of writing (December 2020) the Internal Market Bill is about to receive its 3rd reading in the House of Lords. On the progress of the Internal Market Bill see <https://services.parliament.uk/bills/2019-21/unitedkingdominternalmarket.html>.

³⁰ For a discussion of the UK Internal Market Bill in the context of devolution see M. Dougan, K. Hayward, J. Hunt, N. McEwen, A. McHarg and D. Wincott, ‘UK Internal Market, Devolution and the Union’, *Centre of Constitutional Change Briefing Paper*, 18 October 2020

rejection³¹ of a key part of the EU–UK Withdrawal Agreement,³² which had been negotiated and incorporated into domestic law³³ by the very same government a few months earlier. When pressed on this issue, the Northern Ireland Secretary conceded that the Bill ‘does break international law in a very specific and limited way’.³⁴ Leaving aside the technical issue of whether the UK can unilaterally limit the direct effect of the Withdrawal Agreement through domestic legislation,³⁵ the symbolism of the UK government’s casual admission of its conscious law-breaking cannot be overstated. If a core tenet of the illiberalism narrative is the casual disregard for the rule of law by the executive, then the UK government’s recent record comes awfully close to that of its Hungarian and Polish counterparts.

This is not an attempt to suggest that every incident of departure from liberal constitutional normalcy is equally pernicious and poses the same dangers. Indeed, the different experiences that European societies have gone through during these crises may go some way into explaining the lack of uniformity in their reactions to authoritarians, demagogues and populists. It is nevertheless possible to make two observations that cut across regional or local differences. First, the fact that ‘illiberal democracy’ in all its guises is an oxymoron should not mean that its rise should be swept under the proverbial carpet as a historical anomaly. The rise of Orbán,

https://www.centreonconstitutionalchange.ac.uk/sites/default/files/2020-10/UK%20INTERNAL%20MARKET%20BILL%2C%20DEVOLUTION%20AND%20THE%20UNION%20%282%29_0.pdf.

³¹ C. Barnard, ‘The Internal Market Bill: When is EU law not EU law?’, UK in A Changing Europe, 10 September 2020 (<https://ukandeu.ac.uk/the-internal-market-bill-when-is-eu-law-not-eu-law/>).

³² Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community 2019/C 384 I/01 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1580206007232&uri=CELEX%3A12019W/TXT%2802%29>).

³³ European Union (Withdrawal Agreement) Act 2020 (<https://www.legislation.gov.uk/ukpga/2020/1/contents/enacted>).

³⁴ See the UK House of Commons Hansard from 8 September 2020 (<https://hansard.parliament.uk/Commons/2020-09-08/debates/2F32EBC3-6692-402C-93E6-76B4CF1BC6E3/NorthernIrelandProtocolUKLegalObligations?highlight=limited%20specific%20way#contribution-C5C04D42-8987-4DDD-A764-67E95E23966D>). See also BBC News, ‘Northern Ireland Secretary admits new bill will “break international law”’, 8 September 2020 (<https://www.bbc.com/news/uk-politics-54073836>).

³⁵ On this see among others Kenneth Armstrong, ‘A Test for Sovereignty after Brexit: Can the UK Rewrite the Withdrawal Agreement through Domestic Legislation?’, *Verfassungsblog*, 9 August 2020 (<https://verfassungsblog.de/a-test-for-sovereignty-after-brexit>).

PiS (Poland's Law and Justice Party) and forces of a similar ilk is, to a large extent, the by-product of the political failures of European leaderships to meet the recent crises with solidarity and collective determination and to provide a robust safety net for the protection of the weak and the vulnerable, thus proving that the collective commitment to human dignity is more than sheer political rhetoric. Second, no such failure or crisis is an excuse to relinquish or extinguish the constitutional premises of liberal democracy.

<p:a>3 HUMAN DIGNITY AND EUROPEAN DEMOCRACY IN TIMES OF PANDEMIC

<p:text>No one reasonably disputes that emergency situations, caused by a huge number of migrants or the coronavirus pandemic, require special legal and constitutional measures even in fully-fledged liberal democratic systems. These measures have to take into account (among other things) various economic and health considerations, which can lead to different balancing outcomes between a certain legitimate public interest – like security, public order or public health – and fundamental rights – such as the right to human dignity, the right to life, freedom of movement, the right to education, freedom of information and expression, privacy, and so on. Even decisions of democratic legislators and governments potentially reviewed by independent judicial bodies can lead either to ‘under-’ or ‘overreaction’ to migration or the pandemic. However, certain illiberal regimes used the crisis situation as a pretext to strengthen the autocratic character of their systems. In some cases, this needed an ‘underreach’³⁶, as in Poland, where the insistence on holding the presidential election was important to entrench the power of the governing party’s incumbent, despite the health risks.³⁷ Elsewhere an ‘overreach’ has served the same purpose, as in Hungary, where an unlimited emergency power of the

³⁶ See the term used by Jonathan Gould and David Pozen, ‘How to Force the White House to Keep Us Safe in a Pandemic’ (2020) *Slate*, 6 April (<https://slate.com/news-and-politics/2020/04/nancy-pelosi-white-house-covid-19-supplies.html>).

³⁷ Jacob Jaraczewski, ‘An Emergency by Any Other Name? Measures Against the COVID-19 Pandemic in Poland’, *Verfassungsblog*, 24 April 2020 (<https://verfassungsblog.de/an-emergency-by-any-other-name-measures-against-the-covid-19-pandemic-in-poland/>).

government was introduced after the very first cases of contagion,³⁸ and again at the beginning of the second wave of the pandemic.³⁹

As Francis Fukuyama argues, why some countries have done better than others in dealing with the crisis so far is not a matter of regime type.⁴⁰ Some democracies have performed well, but others have not, and the same is true for autocracies. Therefore, for Fukuyama the factors responsible for successful pandemic responses have been state capacity, social trust, and leadership. Indeed, one can think of the old democracies, such as the USA and the UK, which did not perform well due to lack of state capacity and/or effective leadership. On the other hand, all the states Fukuyama mentioned, which have used the crisis to give themselves emergency powers and moved still further away from democracy, happen to be non-democracies. Like Hungary, where, on the orders of the Hungarian health minister, 36,000 hospital beds were cleared across the country – mostly by ejecting terminally and chronically ill patients from these hospitals and sending them home.⁴¹ Nurses were frantically explaining to family members how to change drips and bandages, how to administer shots, how to look for dangerous turns in these patients' conditions. As a consequence, tens of thousands of Hungarian families were isolated at home with sick and dying loved ones who should have had hospital care. Two hospital directors were fired for resisting the government's orders, which overrode doctors' assessments of what was the best course of action for their patients' health.⁴² Never mind that the real need for beds was about a tenth of the government estimates, this measure alone violated human dignity and in some cases the right to life of the patients. This is the same denial of solidarity and treatment of human beings as non-equal in their humanity and, by the same token, the same undermining of democracy by the Hungarian government as

³⁸ Gábor Halmai and Kim Lane Scheppele, 'Don't Be Fooled by Autocrats! Why Hungary's Emergency Violates Rule of Law', *Verfassungsblog*, 22 April 2020 (<https://verfassungsblog.de/dont-be-fooled-by-autocrats/?fbclid=IwAR1y2QoJktMihGxcp5G5QGkR8NZ9WerG6z3fHj808QDiHMPPym1XEB-x3cM>).

³⁹ See a more detailed description of the amendment in Gábor Halmai, Gábor Mészáros and Kim Lane Scheppele, 'So It Goes, Part I', *Verfassungsblog*, 19 November 2020 (<https://verfassungsblog.de/so-it-goes-part-i>).

⁴⁰ Francis Fukuyama, 'Pandemic and Political Order', *Foreign Affairs*, July/August 2020 (<https://www.foreignaffairs.com/articles/world/2020-06-09/pandemic-and-political-order>).

⁴¹ <https://www.intellinews.com/hungary-prepares-for-the-worst-and-empties-tens-of-thousands-of-hospital-beds-181318/>.

⁴² <https://hungarianspectrum.org/2020/04/15/miklos-kaslars-housecleaning-hits-a-nerve-in-certain-fidesz-circles/>.

during the 2015 migration crisis, discussed in Chapter 9. The ninth amendment to the Hungarian Fundamental Law, introduced in November 2020 amidst the second wave of the pandemic, used the pandemic as a pretext to fix children's gender identity at birth so that later gender changes can never be reflected on the birth register. By blatantly rejecting the self-determination rights of the children as part of their human dignity, this new provision reads: 'Every child shall have the right to the protection and care necessary for his or her proper physical, mental and moral development. Hungary protects children's right to the gender identity they were born with and ensures their upbringing based on our national self-identification and Christian culture.'⁴³

Another observation of Fukuyama is that, given the importance of strong state action to slow the pandemic, it will be hard to argue against a stronger state involvement during a national emergency. Also, according to Ivan Krastev and Mark Leonard, the virus strengthened rather than weakened national sovereignty.⁴⁴ Similarly, a report of Carnegie Europe asserts that most governments have assumed executive powers considered to be broadly necessary to contain the health crisis, and it remains uncertain whether these will entail long-term restrictions on democratic rights and human dignity.⁴⁵ Measures implemented to prevent or slow the spread of the virus have a disproportionately negative impact on vulnerable categories of people, not only migrants and refugees, but also ethnic minorities, the elderly, prisoners, those with physical or mental disabilities.⁴⁶ Ivan Krastev calls it one of the Corona-paradoxes that when people realise the threat to dignity and fundamental rights they are rather inclined to reject authoritarian rule.⁴⁷ Because one common understanding has been that the 'rights *versus* public health' paradigm is fundamentally flawed: rights-respecting measures which secure public

⁴³ See Gábor Halmai, Gábor Mészáros, Kim Lane Scheppelle, 'So It Goes, Part II', *Verfassungsblog*, 20 November 2020 (<https://verfassungsblog.de/so-it-goes-part-ii/>).

⁴⁴ Ivan Krastev and Mark Leonard, 'Europe's pandemic politics: How the virus has changed the public's worldview', Policy Brief, European Council of Foreign Relations, 20 June 2020.

⁴⁵ <https://carnegieeurope.eu/2020/06/23/how-coronavirus-tests-european-democracy-pub-82109>.

⁴⁶ Joelle Grogen, 'States of Emergency', *Verfassungsblog*, 26 May 2020 (<https://verfassungsblog.de/states-of-emergency/>).

⁴⁷ Ivan Krastev, 'Sieben Corona-Paradoxien', *Neue Zürcher Zeitung*, 16 June 2020 (<https://www.nzz.ch/meinung/sieben-corona-paradoxien-was-das-virus-mit-uns-gemacht-hat-ld.1557102?reduced=true>).

confidence are ‘more likely to be more effective and sustainable over time than arbitrary or repressive ones’.⁴⁸

<p:a>4 FROM TEARING DOWN WALLS TO BUILDING BRIDGES: EQUAL DIGNITY AND THE FUTURE OF EUROPEAN DEMOCRACY

The COVID-19 pandemic, which occurred during the editing process of this book, further complicated the answer to the question of what is the state of the ‘human dignity-based “civilisation”’ which, according to Catherine Dupré, is so close to the European Court of Human Rights idea of ‘democratic society’.⁴⁹ As Harvard philosopher Michael Sandel argues, the pandemic, and in particular the new appreciation of the value of supposedly unskilled, low-paid work, offers a starting point for a new politics centred on the ‘dignity of work’.⁵⁰ Geraldine Van Bueren calls for a new social contract, which requires both justiciable socio-economic rights and a prohibition of class discrimination, because the pandemic has brought to the forefront the need to include class in this emerging social contract, in order to provide everyone with a meaningful right to dignity.⁵¹ It remains to be seen, whether this crisis can indeed serve as a catalyst for such change.⁵² One reason for cautious optimism is the recent ‘revolution of

⁴⁸ Alice Donald and Philip Leach, ‘Human Rights – The Essential Frame of Reference in the Global Response’, *Verfassungsblog*, 12 May 2020 (<https://verfassungsblog.de/human-rights-the-essential-frame-of-reference-in-the-global-response-to-covid-19/>).

⁴⁹ See Chapter 2, this volume. Catherine Dupré started to express her hopes in this after the European debt crisis (see ‘Dignity, Democracy, Civilisation’ (2013) 33 *Liverpool Law Review* 264–80), as well as in the midst of the migration crisis (see: Catherine Dupré, *The Age of Dignity: Human Rights and Constitutionalism in Europe* (Bloomsbury Publishing 2015)).

⁵⁰ ‘This is a moment to begin a debate about the dignity of work; about the rewards of work both in terms of pay but also in terms of esteem. We now realise how deeply dependent we are, not just on doctors and nurses, but delivery workers, grocery store clerks, warehouse workers, lorry drivers, home healthcare providers and childcare workers, many of them in the gig economy. We call them key workers and yet these are oftentimes not the best paid or the most honoured workers.’ See Julian Coman, ‘Interview with Michael Sandel: The Populist Backlash has been a Revolt against the Tyranny of Merit’, *The Guardian*, 6 September 2020 (https://www.theguardian.com/books/2020/sep/06/michael-sandel-the-populist-backlash-has-been-a-revolt-against-the-tyranny-of-merit?CMP=Share_iOSApp_Other).

⁵¹ See Geraldine Van Bueren, ‘The New Social Contract – A Dignified Life for both the Poor and the Wealthy’, in L. Gunnarson et al (eds) *The Human Right to a Dignified Existence in an International Context* (Nomos, 2019) 33–54.

⁵² For a more pessimistic view see Albena Azmanova’s new book, which claims that in the current phase of ‘precarity capitalism’ we are faced not with a crisis of capitalism but a ‘crisis of the crisis of capitalism’. See

dignity'⁵³ in Belarus, spearheaded by women against the last traditional dictatorship in Europe. Can human dignity, then, be a cure for the current malaise of European liberal democracy, brought about by the multifaceted crises that have afflicted Europe since the dawn of this century? Can a renewed affirmation of the centrality of dignity provide new inspiration for a democratic European polity, a 'civis Europeus'⁵⁴ that will remain unwavering in its collective commitment to the rule of law and the protection of fundamental rights in the post-pandemic world?⁵⁵ The answer is simple. If our common commitment to human dignity helped us build a wall that shields us from our shared European past,⁵⁶ it can also help us build a bridge to a shared European future. But this cannot happen unless we appreciate the most recent crisis for what it really is: a collective wake-up call.

The ongoing pandemic is not just 'another crisis'. It is an existential juncture for the post-World War II European project. The full scale of the health, economic and social impact is difficult to predict and it will remain difficult to quantify and measure for years to come. What is already evident, however, is that the pandemic itself, as well as many of the policies designed to contain it, have revealed or exacerbated systemic inequalities in Europe and beyond. Despite an ostensibly naïve narrative portraying COVID-19 as 'the great equaliser',⁵⁷ the truth is that the

Albena Azmanova, *How Fighting Precarity Can Achieve Radical Change Without Crisis or Utopia* (Columbia University Press, 2020).

⁵³ See Belarus's Revolution of Dignity, 'Slawomir Sierakowski interviews Adam Michnik', *Project Syndicate*, 21 August 2020 (<https://www.project-syndicate.org/onpoint/belarus-revolution-of-dignity-by-adam-michnik-and-slawomir-sierakowski-2020-08>).

⁵⁴ The phrase 'civis Europeus sum' was coined by Advocate General Jacobs in the early 1990s as an adage that encapsulated the expectations of European citizens that their fundamental rights would be protected across the European Union. See Opinion of Advocate General, Case C-169/91 *Konstantinidis*, para 46.

⁵⁵ It goes without saying that this collective commitment should not be cancelled or undermined by an exclusionary vision of citizenship. On the relationship between citizenship and human dignity in the context of European democracy see Chapter 7 of this volume.

⁵⁶ Catherine Dupré, 'Dignity, Democracy, Civilisation' (2013) 33 *Liverpool Law Review* 274.

⁵⁷ It is, of course, true that pandemics in human history may have produced some socially equalising effects. See B. Milanovic, 'A Great Equalizer', *Social Europe*, 9 March 2020 (<https://www.socialeurope.eu/a-great-equaliser>). But the *impact* of pandemics has always been disproportionately suffered by the poorer and more vulnerable social groups. See C. Bambra, R. Riordan, J. Ford et al., 'The COVID-19 pandemic and health inequalities' (2020) 74 *Journal of Epidemiology & Community Health* 964–68.

impact of the pandemic – its health impact, its economic impact, its social impact, its impact on the enjoyment of basic rights⁵⁸ – has been decidedly unequal.

Equal dignity can act as a unifying principle, not only in the sense of holding national legal systems together under the umbrella of a shared value system, but also in the sense of ensuring that the dignity of every human being living on European soil matters equally regardless of each one's gender, race, religion, nationality, health or socioeconomic status. This is not to say, of course, that political discontent, social fragmentation and growing inequalities can magically disappear through rhetorical affirmations of abstract legal principles. Nonetheless, our commitment to equal dignity can help illuminate the true meaning of *identity*, *citizenship* and *solidarity* in (liberal) democracy. It can bind us together, becoming a component of a common *civic identity* that we share and cherish, even (more so) when faced with differences, contradictions or clashes on socially sensitive or culturally divisive questions. It can remind us that Europe as a constitutional space is built on a notion of *inclusive citizenship* that sees everyone inside its geopolitical borders as an equal member of its political community, with equal rights and (civic) obligations. Most importantly, it can guide us in designing and implementing policies that guarantee *universal solidarity*, which is often the *conditio sine qua non* for the realisation of equal dignity in practice, especially in times of crisis.

If equal dignity is, therefore, accepted as the minimum normative core of European democracy, we have every reason to be optimistic about our post-pandemic European future.

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⁵⁸ On the unequal impact in terms of gender see B. Bööck, F. van Hoof, L. Senden and A. Timmer, 'Gendering the COVID-19 crisis: a mapping of its impact and call for action in light of EU gender equality law and policy', (2020) 2 *European Equality Law Review* 22–44. On the impact of the pandemic on the enjoyment of fundamental rights in Europe see the Bulletins of the Fundamental Rights Agency (<https://fra.europa.eu/en/themes/covid-19>).