European Values in the Charter of Fundamental Rights: An Introduction

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The adoption of the Charter of Fundamental Rights of the European Union, first proclaimed at the Nice European Council of December 2000, marked a qualitative change in the nature of an organization that had previously been described—and is still being described by many of its critics—as mainly interested in promoting economic cooperation and development. Since then, the European Union has been able to refer to the Charter as its “positive moral code,” a source of normative commitments that was given binding legal force with the Treaty of Lisbon of 2007 (entered into force in 2009).

According to its drafters, the Charter was aimed at reaffirming a catalogue of fundamental rights that were considered to be already part of European Union law. The preamble of the Charter explicitly mentions as its reference sources the constitutional traditions and the international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Social Charters adopted by the European Union and the Council of Europe, and the case-law of the Court of Justice of the European Union and of the European Court of Human Rights.

The Charter is more than a mere “summary” of what had already been achieved by the European Union and its Member States in the field of fundamental rights. Among the innovative features of the Charter is the fact that it organizes fundamental rights around six key concepts—dignity, freedoms, equality, solidarity, citizens’ rights, and justice—that can be understood as the values providing a foundation for fundamental rights and that those rights articulate.1

The European research project NoVaMigra: Norms and Values in the European Migration and Refugee Crisis, funded by the European Commission under the Horizon 2020 program, 2 includes among its tasks a reconstruction of the normative commitments of the European Union in light of the Charter, that is, of the set of values,

1 For an analysis of the Charter’s normative content in light of the decisions of the European courts with a focus on the ideas of dignity, freedoms, equality, and solidarity, see A. Facchi, P. Parolari, and N. Riva, Values in the EU Charter of Fundamental Rights: A Legal-Philosophical Analysis with a Focus on Migrants’ Rights (Turin: Giappichelli, 2019). The book is open access and can be downloaded from the NoVaMigra project website at https://novamigra.eu/index.php?c=50_publications or from the publisher’s website at https://www.giappichelli.it/values-in-the-eu-charter-of-fundamental-rights-22575.

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principles, and rights that should guide public and private institutions in designing and implementing their migration and refugee policies. In the frame of this research project, we asked six scholars to sketch their conception of one of the Charter’s values—dignity, freedoms, equality, solidarity, citizenship, and justice—and to articulate their perspective on how that value should be better understood and developed in the context of the European project.

From different scholarly perspectives and approaches, the six resulting papers—here published in the order of the Charter’s titles—offer interesting insights into the Charter’s core values and provide conceptual tools and arguments that can contribute to an understanding of its normative potential.3

For the European Charter of Fundamental Rights, dignity is “a fundamental right in itself” and “constitutes the real basis of fundamental rights.”4 Observing that the Charter doesn’t say anything about the human dignity of migrants, Richard Brownsword shifts the focus to state responsibility and outlines three tiers of that responsibility. On the basis of these tiers it can be assessed what is cosmopolitan, non-negotiable, and what is local, left to competing interests in the communities, and it can be determined when and how states should engage with the human dignity of migrants.

In the Charter, freedom is understood as something which needs to, and must, be created: a political goal to be reached through the guarantee of fundamental rights. Catherine Audard points out the inconsistencies between the principles enshrined in the Charter and the reality of present policies. By criticizing what she calls the “commodification” of freedoms and the utilitarian conception of persons at its basis, she seizes on a Kantian anthropology and argues for the need to connect freedom with agency, not simply with mere choices or possibilities.

Title III of the Charter refers to different concepts of equality: formal equality (Art. 20), procedural equality in the form of nondiscrimination (Arts. 21 and 22), and substantive equality in the form of equality of opportunity (Arts. 23 and 26). Investigating the relationship between these different concepts, Gianfrancesco Zanetti claims that equality should be understood as a complex and plural notion and defends the merits of a bottom-up approach to it, that, understanding equality as always situated, proceeds from a consideration of existing inequalities and of the struggles to overcome it.

Philippe Van Parijs distinguishes three different senses of solidarity that can apply to the European Union: solidarity as (factual) interdependence, solidarity as a set of obligations between Member States, and solidarity as a set of obligations between European citizens. According to his analysis, normative solidarity consists in a sort of counterfactual reciprocity, different from both the kind of reciprocity that underlies insurance and from charity. Van Parijs considers what is needed to reinforce European solidarity and suggests that we should try to go beyond solidarity and move towards realizing social justice in the European Union.

3 First drafts of these papers were presented and discussed at the NoVaMigra international conference European Values in the Charter of Fundamental Rights, held in Milan on September 9 and 10, 2019.

4 “Explanations relating to the Charter of Fundamental Rights,” prepared by the Praesidium of the Convention that drafted the Charter. OJ C 303, 14.12.2007, pp. 17–35, available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32007X1214%2801%29.
Central to the project of the European Union is the aim of overcoming the tension identified by Hannah Arendt between national citizenship and human rights protection by developing a new model of federal or even cosmopolitan citizenship, both de-nationalized and based on human rights protection. Justine Lacroix critically reflects on recent developments in some East European countries, where the rule of law is undergoing a process of progressive dismantlement, and on the condition of asylum seekers in the European Union after the 2015 crisis, raising some doubts about the actual commitment of the European Union to realize that ideal.

For Gianluigi Palombella, access to justice has a prominent role in the European Union’s complex and “multilevel” order, especially when it comes to reaffirming its unitary structure. He focuses on the contours and contents of the right of access to justice, on its dynamic and pluralistic nature, and on its autonomy vis à vis substantive rights or public interest directives. Finally, he stresses its dual character as a fundamental right and as a foundation for legality, that is, a requirement of the ideal of the rule of law.

European values and the need to reaffirm these values as distinctive to a European cultural tradition are often invoked to support restrictive migration and refugee policies, but the Charter of Fundamental Rights of the European Union seems to point in a different direction. The values it includes, and the way they are articulated, provide a framework for imagining a more inclusive Europe, where fundamental rights could also serve as a guarantee for a peaceful cohabitation of differences. It is to the articulation of such an ideal that the papers that follow contribute.