



HISTORY
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HISTORY

HUMAN RIGHTS RELOADED

edited by
Mario Varvaro



PALERMO
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HUMAN RIGHTS RELOADED

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HUMAN RIGHTS RELOADED IN PALERMO

MARIO VARVARO
University of Palermo*

In organising the Summer School on the 30th anniversary of the International Doctorate in Human Rights at the University of Palermo, it was natural to consider a general reflection on the study of human rights.

In particular, we wanted to reflect on its history, current horizons, and future prospects. The aim was to outline a constantly evolving framework for presenting the problematic nodes at the intersections between law and ethics that can be identified in all fields of positive law.

Today, several voices complain that while equality is recognised at the formal level, it has yet to be matched by equality at the substantive level. On the other hand, the accentuation of inequalities in access to shared resources on a planet where the climate is changing at an alarming rate and the resurgence of armed conflicts in the heart of the European continent undermine confidence in the future. These factors, along with other concerning issues, aggravate the crisis of the concept of human rights itself.

The 'Age of Rights', as discussed by Norberto Bobbio, seems to have entered a crisis that compels us to not only expand our perspective and reconsider the foundations of human rights in a new light but also to constantly redefine their limits and reassess all their implications, while resisting the temptations of empty rhetoric.

From this perspective, the title of the Summer School was intended to provoke contemplation within a framework that includes a critical rethinking not only of civil and political rights or social, economic, and cultural rights but also of the collective rights of society. Specifically, it aims to address the role of *societas iuris* in adopting a globally responsible approach towards future generations.

* Coordinator of the Didactic Commission of the PhD in Human Rights: Evolution, Protection and Limits.

Within this unified framework, we provided an overview that, while not exhaustive, will at least give PhD students an idea of the various aspects of a field that they must continuously explore.

“Human Rights Reloaded”. In other words, human rights indeed need to be rethought, not only as the rights of the men and women of today but also as the rights of future generations, extending indefinitely to their children, grandchildren, and great-grandchildren. They must be reformulated and redesigned to become the rights of humanity conceived from a global perspective, including consideration for the environment (and, more generally, the Earth) that must accommodate them.

The Summer School, held in Palermo from June 19th to June 23rd 2023, took place in the lecture hall of the Law Department dedicated to Bruno Celano. Luigi Ferrajoli inaugurated the event with a paper titled “Global Constitutionalism and Human Rights”. It is not a coincidence that Giulia Sajeve focused her reflections on “Human Rights in the Anthropocene”, Emanuela Fronza on “War and International Criminal Justice”, and Pasquale De Sena addressed the problem of the crisis or development of human rights from the perspective of international law (“Human Rights Crisis or Development? The point of view of an international lawyer”).

The reflection on the rights inherent to man as such has its origins in ancient Roman law and continues to influence modern legal thinking. Like a *motus perpetuus*, this ongoing process involves adapting legal questions to which lawyers are called upon to respond. This was emphasised by Iole Fargnoli, who spoke on “The Law Born with Us. The Legacy of the Roman Legal Tradition”. Aldo Schiavello’s paper “Rethinking Human Rights” also highlights the need to reformulate questions and answers.

There were numerous discussions on traditional topics, including Vittorio Manes’ analysis of the principle of legality in the European Court of Human Rights (“The Principle of Legality in the ECHR”) and Hilde Farthofer’s examination of the prohibition of torture in Germany, focusing on the well-known Gäfgen case (“The Human Right Not to Be Subjected to Torture in Germany”). Guido Corso spoke on “Social Rights as Human Rights”, Giovanni Bisogni on Carlos Santiago Nino’s approach to human rights and judicial review, and Paola Maggio on “The Execution of Judgments of the European Court of Human Rights”.

Paola Maggio and Nicolò Iannello provided an overview of the results of SERENY, a two-year research project aimed at strengthening the prevention of youth radicalisation in prison and probation settings.

The final section of the Summer School focused on the jurisprudence of human rights courts. “The Three Regional Human Rights Courts and the Majority Will of Democratic Societies” was Laurence Burgorgue-Larsen’s topic. The floor was then given to two European Court of Human Rights judges. Lorraine Schembri Orland, a Maltese judge, spoke on “The Rule of Law – A Cornerstone of the European Convention on Human Rights”; Raffaele Sabato, appointed by Italy, spoke on “Mental Health and Human Rights”. Elena Baroni, Senior Lawyer at the European Court of Human Rights, concluded the Summer School by presenting a paper on “Family and Child Law: The Case Law of the European Court of Human Rights”.

The lines drawn by the reports have only indicated questions to be addressed or possible directions to be taken in a much broader field. This is the same field in which even the youngest academics are called upon to plant the seeds of their research activity.

From this perspective, we wanted to provide PhD students in Human Rights at the University of Palermo the chance to comment on some of the papers from the Summer School, refer to their content, or delve deeper into their reflections.

This volume, therefore, brings together the writings of these young scholars. They follow the same order as the papers upon which they are based.

Federica D’Amore’s contribution revisits Luigi Ferrajoli’s paper. Enrica Cibella returns to the principle of legality in criminal matters within the European Convention on Human Rights system, as discussed by Vittorio Manes. Martina Sardo reflects on the analysis of the results of the SERENY project, while Manfredi Matassa, inspired by Guido Corso, raises the question of whether social rights can be considered fundamental rights. Following Emanuela Fronza’s intervention, Francesca Sironi De Gregorio examines the inclusion of the ‘new’ crime of ecocide in the Rome Statute. Laura Calandriello reflects on Paola Maggio’s analysis of the challenges of implementing European Court of Human Rights judgements. Giorgia Pane, in turn, discusses the

arguments put forward by Pasquale De Sena. Paolo Capriati reflects critically on Aldo Schiavello's speech. Katharina Stübinger addresses the issue of the prohibition of torture in Germany, as discussed by Hilde Farthofer. The volume concludes with contributions by Lorenzo Acconciamesa, who elaborates on the ideas of Laurence Burgorgue-Larsen, and Giada Cascio, who examines the theme raised by Elena Baroni.

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One or two Reviewers will evaluate each proposal by means of a double-blind peer-review process. If a revision of the work is requested, the Referees will ascertain if the Author has made the requested changes. If there are inconsistencies with the latter, the work will be submitted to the Scientific Board for a final evaluation.

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In June 2023, on the 30th anniversary of the International Doctorate “Human Rights: Evolution, Protection and Limits”, a Summer School entitled “Human Rights Reloaded” was held at the University of Palermo.

The ‘Age of Rights’, as discussed by Norberto Bobbio, seems to have entered a crisis that compels us to not only expand our perspective and reconsider the foundations of human rights in a new light but also to constantly redefine their limits and reassess their implications, while resisting the temptations of empty rhetoric.

From this perspective, the title of the Summer School wanted to inspire a critical rethinking not only of civil and political rights or social, economic, and cultural rights but also of the collective rights of society. Specifically, it addressed the role of *societas iuris* in adopting a globally responsible approach towards future generations.

While the lines drawn by the speakers concentrated on issues to be tackled or possible directions to be followed in a much wider field, some PhD students of the Doctorate in “Human Rights” further elaborated these lines to deepen their reflections and open new perspectives.

This volume collects their writings as younger academics who are called upon to plant the seeds of their research in this field.