

*Call for papers of conference*

DI.P.LA.P. - LABORATORIO PERMANENTE DI DIRITTO E PROCEDURA PENALE

First International Conference on

**EQUALITY, PROPORTIONALITY AND SOLIDARITY IN THE MODERN CRIMINAL CONSTITUTIONALISM**

28 (afternoon)-29 September 2017

University of Modena and Reggio Emilia, Department of Law

### **CALL FOR PAPERS**

1. The criminal system of several countries that in the last century have adopted liberal-democratic Constitutions has been reshaped by principles that, placed at the highest level of hierarchy of sources of law, have guided the activity of Parliaments and the Judiciary, and have been instrumental in assessing and criticizing the Constitutions legitimacy of the rules of law, both substantive and procedural.

In the tradition of Constitutional justice of different legal systems, general principles (above all equality and proportionality) have long been invoked as parameters to invalidate the aforementioned rules of Criminal law. Significantly, these principles have been used more frequently than those concerning freedoms and much more frequently than those traditionally considered as grounds of Criminal law (such as the rule of law, legal interest, offensiveness and subsidiarity) with the exception of the principles of culpability and of rehabilitation. The breach of the Constitutional principles of equality and proportionality has been observed in relation to the Criminal and Procedure law system, as a whole, often with reference to areas identified by scholars as problematic in terms of their compatibility with traditional principles. Equality and proportionality have so proved capable of influencing the entire legal system, fulfilling their role as Constitutional limit of the ordinary legislative power.

2. From a strictly procedural approach, the increased protection of fundamental rights of the defendant, in the context of the minimum rules set up at the European level, requires a regular review of the procedure, alongside with the creation of “new rights of freedom”.

The overwhelming technological progress, from one side, the intensification of repressive needs, from the other, in a global context characterized by the growth of the transnational organized-crime, convince to redraw the mobile boundaries of the protection of fundamental freedoms.

The criminal trial structure suffers the consequences of such evolution, as sectorial legislative reforms follow one another without a unitary plan and since domestic and

supranational Courts struggle for the research of minimum standards of protection of human rights.

Under this perspective, an increasing role is played by the principle of proportionality, as parameter for the legitimacy of the exercise of coercive powers and as social behavioral standard.

The expansion of judicial discretion at the stage of sentencing finds, moreover, a first solution in the adoption of diversion models and tools, with the goal of minimizing the impact of traditional penalties, in compliance with the principles of “tenuity” and “offensivity”.

3. The actual shape of the so called “*Criminal Constitutionalism*” should not be considered exhaustive given the potentialities of the domestic models. The predominant attention to the protection of fundamental freedoms from the coercive power of the State in the scholars’ debate has overshadowed the existence of duties upon the Government and the community to act in favor of citizens, and has overlooked their impact on the criminal and procedural system.

For some time now, Constitutional Law experts have been discussing about the existence of “Constitutional duties”, more often in relation to obligations which found their legitimacy in the principle of solidarity.

It is most probably the current political, economic and social crisis at national and supranational level which re-proposes the importance of solidarity in creating and reforming social bonds.

Among the different positions about the juridical value of solidarity, more recently scholars have agreed that such principle can neither be confined to the level of general theory or philosophy of politics or law, nor be considered as a mere political feeling.

The principle of solidarity belongs to the “hard-core” of contemporary Western Constitutionalism and contributes to defining the basis and distinctive features of the model of social coexistence, envisaged by the Constitution and enshrined in several supranational sources.

Solidarity affects many areas of Criminal law, from the definition of criminal responsibility to the choices standing behind criminalization and the modalities of criminal enforcement.

From the procedural standpoint, the principle of solidarity guides the arrangement of those measures which guarantee the right to access to justice, the right of the suspect and of the defendant to a real participation in the proceedings (with particular regard to the right to be assisted by an interpreter and to be provided with translation of documents), or the right of the detainees to assert their claims before the prison administration. The principle may also serve as an interpretative tool valid for many other scopes (such as forms of compensation, which the accused is entitled to, for unreasonable length of proceedings, unfair detention or trial).

The normative dimension of the solidarity principle seems to reveal also a “dark side”.

In the context of the so called “Victim-Centric” view of contemporary Criminal law, the principle of solidarity is indeed more frequently adopted as a basis to legitimate a wider and earlier criminal intervention (and even authentic duties of criminalization of the State

4. In the described framework, the "Criminal issue" shows new fields of investigation suitable for contributing to the research of the problematic balance between authority and freedoms.

A comparative analysis on the role played, in books and in action, by Constitutional principles appears to be crucial, so as to develop a thorough theorization of constitutionally oriented Criminal and Procedural law systems.

As a matter of suggestion, papers shall cover the following topics:

## 1. Equality and Proportionality

### A) Criminal Law

- Relationships between principles of equality and/or proportionality and/or fundamental principles of Criminal law.
- Principles of equality or proportionality as criteria for:
  - arranging Criminal law
  - interpreting Criminal law
  - assessing the Constitutions legitimacy of Criminal law.
- Equality and proportionality according to Constitutional or European case law regarding Criminal law.

### B) Criminal Procedure

- Relationships between principle of equality and national and supranational foundations of Criminal Procedure.
- The emergence of the principle of proportionality as a legislative criterion.
- Equality and/or proportionality according to Constitutional or European case law regarding Criminal Procedure.

## 2. Solidarity

### A) Criminal Law

- Possible influence of the principle of solidarity on:
  1. general requirements (objective and subjective) for criminal liability
  2. contents and limits of types of criminal offences.

- Theoretical relationships between principles of solidarity, humanity and rehabilitation.
- Principle of humanity and/or solidarity with regards to the enforcement of penalties and other criminal measures.
- Constitutional legitimacy of penalties of imprisonment for an undetermined period, or life sentence.

#### B) Criminal Procedure

- Right of the suspect/accused and the victim to access justice.
- Right to effective participation in the criminal proceedings.

### CONFERENCE ORGANIZATION

Speakers of the conference will be chosen by an anonymous *peer review* among those who will answer to the “call for papers”.

Nine (9) presentations of twenty (20) minutes each will be accepted. A debate will follow the presentations and all the speakers will be granted the possibility to discuss and intervene.

Languages of the conference will be English, Italian, Spanish and German.

### SELECTION PROCEDURE

Candidates must send by e-mail to Di.P.La.P. (labdirpen@gmail.com), **re: call for papers, to the President's attention**, a *paper* written in compliance with the attached form.

*Papers* must include name, surname, academic title or PhD, University name or Research centre name, e-mail address and, for the purpose of anonym review, pseudonym of the author.

In order to guarantee the anonymity of the assessment, the President will send the papers to peer reviewer only, indicating the title of the presentation and the pseudonym of the author.

Reviewer are Professors:

- Lorena Bachmaier Winter – Università of Complutense di Madrid (website docente);
- Luigi Foffani – University of Modena and Reggio Emilia (website docente);
- Adam Nieto Martin – University of Castilla-La Mancha (website docente);
- Helmut Satzger – University of Monaco di Baviera (website docente).

At the end of the anonymous assessment, the Scientific Committee will prepare the rankings where only pseudonyms will appear.

The directive Council, in the person of the President, will associate the pseudonyms to the author's name and communicate a list of 9 speakers.

The President grants the anonymity of the procedure; the names of the non-selected candidates will not be communicated neither to the directive Council, nor to the Scientific Committee.

### DEADLINES

Sending paper: 18 June 2017

Communication of the selection results: 16 July 2017

### EDITORIAL CRITERIA FOR PAPER

Language: English, Italian, Spanish, German

Range: max 8000 characters (including spaces and notes)

Edges: 2,5 (every one)

Text font: *times new roman*, 12

Notes font: *times new roman*, 10

Line spacing: single

First line indent: 0,5

Title: bold type

extension format: Word (.doc; .docx) and Pdf (.pdf)

Notes: in the text, indicating the author's name and the year of publication.

### CONFERENCE PROCEEDINGS

Conference proceedings will be collected in an *e-book*, with ISBN number, and published in the DiPLaP series (website "DIPLAP Editor").

### OSPITALITY OF THE SPEAKERS


The overnight expenses of the speakers will be reimbursed.

Travel expenses in principle will not be reimbursed.

Laboratorio Permanente di Diritto e Procedura Penale - Di.P.La.P. is an association founded by a group of Italian criminal and procedural law researcher in order to aggregate and respond to the instances of renewal and participation of research and debate concerning criminal law. Constitutive values are autonomy and organizational and scientific independence, multidisciplinary, openness to extra-academic and professional community, inter-generational solidarity.

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**Abstract:**

Max. 1500 characters (including spaces)

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**Key words: (3-5 words)****Text**

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**Conclusions**

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