

Laws born out of trauma: in defence of the EU's conception of human rights

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*With both the EU and human rights demonised in public discourse, **Catherine Dupré** sets out to redeem the concepts from their critics. She argues that the EU's conception of human rights, as codified in its Charter of Fundamental Rights, defines a set of absolute rights borne out of wartime trauma and transcending the limitations of a conception of the human that is driven by merely economic concerns. It protects the weak from exploitation at the hands of the powerful and offers a sophisticated judicial architecture through which citizens can exercise their rights.*



As the political discussion on the EU referendum reaches [new lows](#), the issue of human rights becomes more pressing. At first glance everything seems to be stacked against both human rights and the EU. Seen in combination, they appear to represent everything that the Brexit camp dislikes and wants to reject. Both are seen as fettering the sovereignty of the UK parliament (constructed as the ultimate democratic paradigm), as protecting criminals and allowing their free movement, and as imposing undue burdens on the business world, thus reducing competitiveness and freedom to innovate.

The discussion is difficult for – it has to be admitted – the EU's [human rights record](#) is far from flawless. Indeed, historically human rights were not meant to be part of the economic construction of the EU and the European Court of Justice only started to consider them under pressure from a Member State – West Germany – whose recent history of systematic destruction of human rights, humanity and democracy is a vivid illustration of the importance of human rights.

Since the seminal '[so lange](#)' case, the EU and the European Court of Justice have moved towards acknowledging human rights as a necessary step in the Union's development and integration. Perhaps one point to note in the EU's favour is that historical timing was against it. No sooner had the [EU Charter of Fundamental Rights](#) come into force in 2009 than the EU succumbed to an unprecedented crisis of capitalism, thus leaving the EU and its institutions – the Court of Justice of the European Union in particular – no time to learn how to make use of the Charter. It certainly does not help that the first images that come to mind when thinking about the EU and human rights (regardless of which camp one might belong to) are ones of rather spectacular failings on both fronts, with the EU's [handling of the refugee crisis](#) apparently depleting both the EU and human rights of their *raison d'être*.

Yet it is against this background that the case for human rights and the EU has to be made. Cutting across the technical, theoretical and political complexities, two issues are arguably of paramount significance. Starting with the more obvious – which is nevertheless often left out of the Brexit discussion – the first is the mere existence of an EU bill of rights, namely the EU Charter of Fundamental Rights, which secures a rich and detailed system of human rights at the heart of the EU. With all its faults, imperfections and uncertainties, the EU has established and indeed is pioneering mechanisms for human rights protection that are unrivalled by other international organisations. In particular, no other international economic organisation in the world offers a similar degree of human rights protection, bringing together three otherwise seemingly irreconcilable factors: a capitalist economy, respect for human rights and supranational cooperation.

The EU Charter codifies the longest, most comprehensive and up to date catalogue of human rights in Europe. Its first title – 'Human Dignity' – crystallises and protects a set of absolute rights which are at the core of the human rights system, the postwar European construction and the definition of humanity. These are the right not to be killed or executed (article 2), the right to physical and mental integrity (article 3), the right not to be treated in an inhuman and degrading way and not to be tortured (article 4), and the right not to be held in forced labour, servitude, or slavery and not to be trafficked as a mere commodity (article 5). Each of these rights is supported by very

substantial case law mainly (but not exclusively) from the European Court of Human Rights (Article 52.3 EU Charter), and offers a potentially far-reaching protection to all people living in the EU.



Prof. Dr Nathan, a Jew, awaits deportation in Baden-Württemberg, Germany in October 1940. Photo: [Landesarchiv Baden-Württemberg](#) via a [CC-BY-4.0 licence](#)

This brings us to the second and overarching issue, namely the particular political project that the EU construction has been about – rising to the challenge of making economic and political friends out of former enemies in a terrible war. The pragmatic necessities of economic reconstruction in the immediate postwar years might at first have made more sense to founding, subsequent and potential Member States than the abstract spirit of brotherhood heralding the beginning of a new era in the UN Universal Declaration of Human Rights. However, with the EU Charter the EU is gradually catching up with the ‘universal values of human dignity, freedom, equality and solidarity’ (Preamble EU Charter), and repositioning human beings where they belong, namely ‘at the heart of [the] activities’ of the EU.

The full implication and significance of this repositioning have yet to be worked out in more detail and over time. What is certain, however, is that the human rights system of the EU is grounded in an unprecedented definition of humanity. In other words, with the Lisbon Treaty and the EU Charter in particular, human beings are considered in a very wide range of their identities and activities. The absolute character of the right to life and prohibition on (state) killing bears the memory of the Holocaust and its systematic extermination of human beings deprived of their humanity by a totalitarian ideology, acting too as a reminder that justice can miscarry and that innocents (as well as murderers) were executed.

Of course, the first aim of human rights is to ensure that people stay alive and that states take the necessary steps towards this. However, no matter how fundamental the right to life is, the EU Charter’s protection of humanity extends much further than the protection of life. In its bold and provocative article 1, the EU Charter provides that ‘human dignity is inviolable. It must be respected and protected’. While this statement deserves much closer attention than can be given here (C Dupré, 2015), three key points can be made.

The first is that the EU acknowledges and protects a comprehensive definition of human beings, moving beyond a purely economic logic, within which individuals can be reduced to their ability as economic agents, with the consequence that they become worthless when they cannot (or can no longer) actively participate in economic life. Moreover, the EU Charter grants individuals protection as human beings first and foremost: that is, regardless of their citizenship and nationality status. The principle of the inviolability of dignity is to be understood as the first and last barrier against treatments that deprive people of their humanity, such as torture, slavery, trafficking or inhuman and degrading punishment, treatments which are often inflicted when democracy fails or the capitalist logic goes too

far. As such, this principle acts as a constant reminder that people do not lose their humanity even when they reach or go through phases of intense vulnerability and are no longer able to fend for themselves.

Echoing the famous Kantian imperative, the principle of human dignity and inviolability under the EU Charter acts as both the most basic rule of survival in society and as the highest political commitment that no human being will become the tool or the object of another, and that the weakest members of society will be protected against abuses by the most powerful. The EU Charter of Human Rights specifically codifies this commitment under its article 1, thus guaranteeing that human beings may not be degraded to a mere number, a cost or a tool of production in a context of increasingly total capitalism (A Supiot, 2012).

What the EU offers to its Member States as well as to all those living in its territory is not just this formidable political commitment, it is also a whole system of judicial protection involving the Member States' courts, the Court of Justice of the European Union, as well as the European Court of Human Rights, through which these rights can be implemented and protected. This sophisticated judicial architecture is not without imperfections, but it offers a unique forum for challenging, litigating and, ultimately, for developing human rights within the EU. So as the Brexit debate rumbles inexorably on, the EU's positive and innovative contribution to human rights protection should be kept in the picture.

References

C Dupré, *The Age of Dignity, Human Rights and Constitutionalism in Europe* (Oxford, Bloomsbury/Hart, 2015)

S Peers, T Hervey, J Kenner and A Ward (eds), *The EU Charter of Fundamental Rights, A Commentary* (Oxford, CH Beck, Hart Publishing, Nomos, 2014)

A Supiot (Trans by S Brown), *The Spirit of Philadelphia, Social Justice v the Total Market* (London, Verso, 2012)

This post represents the views of the author and not those of the BrexitVote blog, nor the LSE.

Catherine Dupré is Senior Lecturer in the Department of Law at the University of Exeter, and Director of Doctoral Studies.

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