

Building Consensus on European Consensus

1&2 June 2016

European University Institute

Florence Italy

Keynote speaker

Professor Conor Gearty, London School of Economics

Call for Papers

The University of Portsmouth School of Law, the European University Institute and the McCoubrey Centre for International Law of the University of Hull Law School are organising a two-day conference on the European consensus (EuC) method of interpretation of the European Court of Human Rights (ECtHR, the Court).

Should prisoners have voting rights? Should terminally ill patients have a right to assisted suicide? Should same-sex couples have a right to marriage or adoption? Few would argue that such legally complex, and morally and politically sensitive issues are subject to universally accepted normative responses. When these questions arise within a European normative framework, the European Convention of Human Rights (ECHR, the Convention) is expected to act as a buffer for idiosyncratic national differences so that common “European” answers and standards of protection can emerge. The ECtHR undoubtedly plays a pivotal role, given its position as the last-word interpreter of the Convention.

Yet, the idea of a court, let alone an international court, establishing “new” rights or significantly expanding the scope and meaning of existing ones is, of course, inherently controversial. Presumably, it is for this reason, and in an attempt to increase its external legitimacy, that the ECtHR has developed the interpretative method of EuC. The Court will only recognise a pan-European -thus common to all 47 signatory parties to the ECHR- standard in sensitive areas of social activity, if it can trace their existence to the (loosely defined) consensus of national jurisdictions, as this is evidenced in the practice of the national legal systems of the ECHR states. If no consensus is diagnosed, states are given wider margin of appreciation. As a result, Europe may legitimately accommodate multiple human rights standards within its normative borders in the spirit of constitutional pluralism.

EuC, and its symbiotic relationship to other interpretative techniques, inevitably raise significant legal, political and philosophical questions. By resorting to EuC the Court may appear to pre-empt or respond to criticisms of judicial activism and claim that evolution in the interpretation of the Convention is, in fact, born out of the practice and implicit will of its signatory parties, which are all sovereign states. But this is hardly sufficient to dissuade concerns regarding the appropriateness of consensus analysis in identifying norms in a “special” area of law, such as human rights.

The purpose of this two-day international conference is to study the function of EuC, to identify its impact on European human rights law and beyond, and to assess its merits and shortcomings by exploring the following three main strands of analysis.

1. *Conceptualisation of EuC*: This theme invites contributions that will purport to define and conceptualise EuC, that is to say, to explain what EuC *is*, how it functions and what its results and consequences are. Papers may discuss the *methods* (both quantitative and qualitative) that could be used for the conceptualisation of EuC, the theoretical lens (such as constitutionalism, legal pluralism etc.) through which EUC may be explained, the interrelation between EuC and other methods of interpretation (such as margin of appreciation, dynamic/evolutive, systemic integration etc.), how EuC compares to, converges with or diverges from the methods employed by courts in analogous positions (such as regional international human rights courts or national constitutional courts, including the US Supreme Court) and, more generally, any line of enquiry that may contribute to the understanding of EuC.

2. *Evaluation of EuC*: This theme invites contributions that aim to critically evaluate EuC, its use, usefulness, appropriateness and normative outputs. We expect analysis in that strand to be primarily normative in nature and attempt to situate EuC in the broader context of questions within Public law, Constitutional law, International law and the Philosophy of Law, purporting to answer *who* has the authority to make constitutive decisions about civil and political rights in a liberal democracy and *how* these decisions should be made.

3. *The “spill-over” effects of EuC*: The last theme invites contributions that will examine the impact of EuC beyond the confines of the ECHR, both within national legal systems and at the inter/supra-national levels. Is EuC (or its *altera pars*, namely the margin of appreciation doctrine) employed in some shape or form in other legal systems? Could / should other courts in Europe, and first and foremost the Court of Justice of the European Union, make use of EuC? Are European Union (EU) human rights institutions using EuC?

We are inviting contributions that will engage with these axes of enquiry from *any* disciplinary perspective. Contributions may adopt a variety of doctrinal or disciplinary approaches, ranging from Jurisprudence and Legal Theory to Constitutional law and from Political Science and Philosophy to European Public law, broadly defined.

Submissions:

Interested scholars should submit an abstract of no more than 500 words by 31 January 2016. Abstracts should contain the title of the paper, and the name title and affiliation of the author(s). Please send abstracts using the [Building Consensus on European consensus](#) conference webpage. If you wish to discuss topics or ideas informally, please contact Dr. Panos Kapotas at panos.kapotas@port.ac.uk.

Speakers will be informed of acceptance of their papers by 12 February 2016, and will be expected to submit a full paper of around 8.000 words (including footnotes) by 1st May 2016. Presentations should be no longer than 20 minutes in duration.

The Conference will take place at the European University Institute in Florence, Italy. Speakers will be required to meet the cost of travel and accommodation.

Timeline:

Abstract submission by: 31/01/2016

Selection of papers by: 12/02/2016

Submission of papers by: 01/05/2016

Organising Committee:

Dr Panos Kapotas, University of Portsmouth, School of Law

Professor Dennis Patterson, European University Institute

Dr. Vassilis P. Tzevelekos, University of Hull Law School