

Human dignity and Economic inequality: constitutional theory and policy practice*

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CONTENTS: 1. Introduction – 2. Equality and human dignity: a breakable hedge against economic inequality? – 3. The equality/inequality, human dignity and poverty triad – 3.1. Equality and inequality – 3.2. From poverty to human dignity – 4. “We sail within a vast sphere, ever drifting in uncertainty, driven from end to end” – 5. Minimum Income in Europe: setting the scene – 6. Social state principle and minimum income – 7. Social state principle in times of austerity – 8. Minimum income in Europe: lights and shadows – 9. Conclusions

1. Introduction

One of the main social costs of the crisis has been for poverty and social exclusion to spread notably across Europe. Eurostat figures show that, in 2015 in the 28 European Member States, 118.8 million people (23.7 per cent of the population) were at risk of poverty or social exclusion. While the “new comers” to European integration (Poland, Romania and Bulgaria) have seen a reduction in the rate of poverty, others have experienced increasing levels of poverty (Italy, Spain, Greece, the Netherlands and UK).

This creates a challenge for constitutional legal systems in Europe, especially those where human dignity and social rights are included in constitutional provisions. Extreme poverty is a condition that impinges on the very heart of human dignity not only because it is an obstacle to achieving the basic goods a human needs to exist, but also because impacts on a person’s ability to maintain interpersonal relationships and a minimal degree of participation in social, cultural and political life.

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Taking this scenario as the basis, the aim of this paper is to offer food for thought on the sensitive relationship among human dignity, economic inequality and poverty from a constitutional perspective. The paper is divided in two parts: the first one addresses the issue starting from a theoretical perspective in order to provide a more concrete understanding of the equality/inequality, human dignity and poverty triad, and the consequent implications. The second part adopts a more analytical perspective, focusing on one of the tools designed by legal systems to fight poverty and restore equality and human dignity: the Minimum Income (MI).

2. Equality and human dignity: a breakable hedge against economic inequality?

The Universal Declaration of Human Rights (UDHR) opens by asserting that “all human beings are born free and equal in dignity and rights.” The Declaration is considered a turning point in the relation between the individual and society, between liberty and authority.¹ In such a perspective, the reference to human dignity in the preamble – along with the articles of the Universal Declaration – has come to be seen as a Copernican revolution for international law² and human rights discourse.

The recognition of human dignity is a foundation block for the set of universally-declared rights in the UDHR. Borrowing the well-known image conceived by René Cassin³, the UDHR can be compared to a Greek temple: “The seven clauses of the Preamble are the steps leading up to the entrance. The basic principles of dignity, liberty, equality, and brotherhood, proclaimed in the first two articles, are the

¹ J. Hoover, *Rereading the Universal Declaration of Human Rights: plurality and contestation, not consensus*, in *Journal of Human Rights*, 2013, p. 217 ss.

² Human dignity is the common thread of the whole declaration, from the Preamble to several articles (see articles 1, 22, 23).

³ M. Agi and R. Cassin, *Fantassin des droits de l'homme*, Paris, 1979, p. 317.

foundation blocks for four columns of rights: rights pertaining to individuals as such; rights of individuals in relation to each other and to various groups; spiritual, public and political rights; and, finally, economic, social and cultural rights. Crowning the portico is a pediment consisting of three concluding articles that place rights in the context of limits, duties, and the social and political order in which they are to be realized.”⁴ The Declaration was intended to be an ideal way to codify a lowest common denominator for human rights, capable of ensuring – wherever respected and implemented – decent living conditions for humanity as a whole and, as a consequence, lasting peace achieved not only because of the recognition of individual liberties but also because of the obligations and duties designed to protect social rights.⁵

The strong connection between equality and human dignity has subsequently been reflected in several Constitutions.⁶ For example, such a connection is evident in Italian Constitution, where a peculiar shade of dignity is offered. Art. 3.1 states that “All citizens have equal social dignity and are equal before the law.” This recognition – especially the phrase “equal social dignity” – leads to content that has plenty of substantive implications. It becomes explanatory, corrective

⁴ The image is repeatedly recalled by M.A. Glendon in several papers. See, among the others, M.A. Glendon, *The Rule of Law in the Universal Declaration of Human Rights*, in *Northwestern Journal of International Human Rights*, 2004, p. 3.

⁵ Eleanor Roosevelt, speaking on behalf of the US delegation, affirmed: “The United States delegation favoured the inclusion of economic and social rights in the Declaration, for no personal liberty could exist without economic security and independence. Men in need were not free men” (quoted in *Summary Record of the Sixty-Fourth Meeting*, U.N. ESCOR, Comm’n on Hum. Rts., 3rd Sess., 64th mtg., U.N. Doc. E/CN.4/SR.64 (1948). See, among the latest publications, C. Breen, *Economic and Social Rights and the Maintenance of International Peace and Security*, London, 2017; A. Cahill-Ripley, *Reclaiming the Peacebuilding Agenda: Economic and Social Rights as a Legal Framework for Building Positive Peace - A Human Security Plus Approach to Peacebuilding*, in *Human Rights Law Review*, 2016, p. 223 ss.

⁶ For examples, see the Constitution of Germany, the Constitution of India and the Constitution of South Africa.

and innovative compared to the traditional formulation of the principle of equality in its purely liberal matrix;⁷ in the subsection on the formal dimension of equality, it introduces a new dimension that places the individual in its social dimension – not some abstract individual – at the heart of public action, seeing the individual as part of the net of relationships with society, the state and the other members of the community. The reference to “equal social dignity” creates a bridge between formal equality and the substantive equality expressed in art. 3.2, which is seen as the cornerstone of the social state in the Italian legal system because the disposition charges the state with “the duty to remove those obstacles of an economic or social nature which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organization of the country.”

Despite human dignity and equality being recognized by international documents and Constitutions, there remains a constant tension on this front as such recognition has been insufficient to ensure their concrete implementation and to prevent the mushrooming of economic inequality. Globalization and the economic crisis that spread from the US and the EU to the rest of the world have been fundamental in driving the debate about economic inequalities⁸, expressed in a demand for dignity⁹, drawing in many

⁷ G. Ferrara, *La pari dignità sociale. Appunti per una ricostruzione*, in *Studi in onore di Giuseppe Chiarelli*, Milano, 1974, p. 1089 ss.; see also, ex multis, P.F. Grossi, *La dignità nella Costituzione italiana*, in E. Ceccherini (ed.), *La tutela della dignità dell'uomo*, Napoli, 2008, p. 97 ss.

⁸ On the direction of causality between economic crisis and inequality and the reverse direction between inequality and economic crisis see A.B. Atkinson and S. Morelli, *Economic crises and Inequality*, Human Development Research Paper, 2011.

⁹ D. Moellendorf, *Inequality and the Inherent Dignity of Persons*, in *Global Inequality Matters. Global Ethics Series*, London, 2009, p. 1 ss.

scholars from a range of disciplines.¹⁰ Stiglitz argues that: “Inequality has become the issue of the day. (...) That there will be social, political, and economic consequences goes without saying.”¹¹ Indeed, many scholars see economic inequality as the leading cause of rising populisms.¹²

This debate has inevitably lured another theme, that of poverty. Economic inequalities and poverty are considered, first of all, to be an infringement of dignity.¹³ Secondly, despite a lack of consensus on this issue among economists¹⁴, several authors¹⁵ and the International

¹⁰ It is not a little odd that equality and inequality stand at the crossroads of several disciplines, as recommended by Hirschman (A.O. Hirschman, *Essay in Trespassing: Economics to Politics and Beyond*, Cambridge, 1981); see also, on the appropriate relationship between law and economics, G. Calabresi, *The Future of Law and Economics: Essays in Reform and Recollection*, New Haven, Connecticut, 2016.

¹¹ J. Stiglitz, *Wealth and Income Inequality in the Twenty-First Century*, in <https://www8.gsb.columbia.edu>, 2017.

¹² N. O’Connor, *Three Connections between Rising Economic Inequality and the Rise of Populism*, in *Irish Studies in International Affairs*, vol. 28, 2017, p. 29 ss. According to Inglehart and Norris, we can count two main theories explaining the populist phenomenon: the *economic inequality* perspective and the *cultural backlash* thesis. The Authors argue that “looking more directly at evidence for the *economic insecurity thesis, the results of the empirical analysis are mixed and inconsistent*” (R.F. Inglehart and P. Norris, *Trump, Brexit, and the Rise of Populism: Economic Have-Nots and Cultural Backlash*, Harvard Kennedy School Research Working Paper Series, 2016). Mudde takes a critical view of the theories according to which economic inequality is the only or the leading cause of populism (C. Mudde, *Populist Radical Right Parties in Europe*, Cambridge, 2009).

¹³ See Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on 25 June 1993.

¹⁴ For example, according to Okun, equality policies would prompt a loss of economic efficiency (A.M. Okun, *Equality and Efficiency: the Big Trade-Off*, Washington, 1975). See also E.P. Lazear and S. Rosen, *Rank-Order Tournaments as Optimum Labor Contracts*, in *Journal of Political Economy*, vol. 89(5), 1981, p. 841 ss.; R.J. Barro, *Inequality and Growth in a Panel of Countries*, in *Journal of Economic Growth*, vol. 5(1), 2010, p. 5 ss.

¹⁵ A. Berg and J.D. Ostry, *Inequality and Unsustainable Growth: Two Sides of the Same Coin?*, in *IMF Staff Discussion Note*, Washington, 2011.

Monetary Fund (IMF) argue poverty and inequality are strictly intertwined in a negative relation. They affect each other directly and indirectly through their impact on economic growth.¹⁶ The growing gap between the richest and poorest is directly linked to higher rates of poverty, as measured using the Gini coefficient – the widely used index of income inequality. Thus, we can draw a trilateral figure linking poverty, economic inequality and human dignity.

3. The equality/inequality, human dignity and poverty triad

The equality/inequality, human dignity and poverty triad is complex to define and fully understand as it is problematic to precisely define these three components. At first glance, the concept of poverty might seem the easiest to define – far simpler than the concepts of equality or human dignity – as it at least expresses a certain degree of measurability, but in practice it becomes quite tricky, especially to understand in-depth. This section aims to highlight the ambiguity of these concepts and how they are open to different understandings, both individually and in relation to each other.

3.1. Equality and inequality

In his paper “What is inequality?”, Dworkin prefaced his reflections with the following sentence: “Equality is a popular but mysterious political ideal”.¹⁷ This assumption underpins the same concern which Sen has highlighted asking the essential question “equality of what?” The difficulties in answering those questions

¹⁶ Ex multis, see F. Naschold, *Why inequality matters for poverty*, in *Inequality Briefing*, London, 2002.

¹⁷ R. Dworkin, What is inequality?, in *Philosophy & Public Affairs*, vol. 10, n. 3, 1981, pp. 185.

derive partly from the fact equality is itself a paradox, not so much because – remembering Peter Westen’s words – we profess to believe in equality, yet we allow inequality to abound,¹⁸ but rather because there is no doubt all people are different and, in order to treat them equally, it becomes necessary to offer different treatments, such that some members of the collective receive these and others do not. Furthermore, substantive equality requires active policies through which the state provides services or/and secures the equal provision of certain *specific goods*. *And this proactive role carries costs borne by the state and, consequently, by the community.*¹⁹

The concept of equality, considered both broadly and economically (as economic equality or economic inequality), *cannot be considered* a purely descriptive concept: “One’s attitude toward economic inequality and the measures that one believes a democratic government should take to reduce it depends on one’s belief about the type of society one is living in.”²⁰

Every society is inspired by specific ideas of justice and social justice that establish how the society must be built, the role of liberty in its relationship with authority, and the *an* and the *quomodo* by which public authorities regulate society and the market. In a nutshell, a pivotal knot is the role attributed to liberty and equality in a constitutional system and the effective balance between them.²¹ And

¹⁸ P. Westen, *The concept of equal opportunity*, in *Ethics*, vol. 95, n. 4, 1985, p. 837: “We profess to believe in equal opportunity, yet we allow unequal opportunity to abound.”

¹⁹ S. Holmes, C.R. Sunstein, *The Cost of Rights: why liberty depends on taxes*, New York-London, 1999; among Italian Constitutional scholars see M. Luciani, *Diritti sociali e livelli delle prestazioni pubbliche nei sessant’anni della Corte costituzionale*, in *Rivista italiana dei costituzionalisti*, 2016.

²⁰ F. Fukuyama, *Dealing with Inequality*, in F. Fukuyama, L. Diamond and M.F. Plattner (eds.), *Poverty, Inequality, and Democracy*, Baltimore, 2012, p. 3 ss.

²¹ R.E. Howard and J. Donnelly, *Human dignity, human rights and political regimes*, in *American Political Science Review*, vol. 80(3), 1986, p. 806: “many avowed liberals view liberty and equality as largely antagonistic principles to be traded off against one another, rather than as complementary dimensions of the single principle of equal concern and respect”.

all of these key elements affect the distinction between good and bad inequalities.

This is not the place to exhaustively investigate the multiple theoretical approaches to equality and economic inequality. Although we are restricting our reflections on economic inequality, it is worth remembering there is a broad spectrum of economic theories. For example, some scholars argue economic equality is not something bad itself, but a free society unavoidably requires or entails a degree of economic inequality.²² In a sense, economic inequalities might be a symptom of economic health.²³ Some scholars, even within a liberal approach, view economic inequality as a ‘pathology’ that needs to be treated through weakened redistribution schemes.²⁴ For others, closer to the socialist approach, economic inequality is regarded as a source

²² See, among others, F. Von Hayek, *The Constitution of Liberty*, Chicago, 1960; M. Friedman, *Capitalism and Freedom*, Chicago, 1962 and M. Friedman, *Free to Choose: A Personal Statement*, San Diego, 1980. See also, N.G. Mankiw, *Defending the One Percent*, in *Journal of Economic Perspectives*, vol. 27, 2013, p. 21 ss.; E. Conard, *The Upside of Inequality: How Good Intentions Undermine the Middle Class*, New York, 2016.

²³ S. Kuznet, *Economic Growth and Income Inequality*, in *The American Economic Review*, vol. 45(1), 1955, p. 1 ss. and the Kuznet curve theory, criticised – among others – by Stiglitz according to whom, “Those prevailing doctrines were upset by what happened after 1980, as inequality in virtually every dimension increased in the US and many other countries” (J. Stiglitz, *Wealth and Income Inequality in the Twenty-First Century*, in <https://www8.gsb.columbia.edu>, 2013, last accessed 12 February 2019).

²⁴ A. Sen, *On Economic Inequality*, Oxford, 1973; T. Piketty, *Capital in the 21st Century*, Cambridge, 2014 (who defines himself as a liberal). See also R. Dworkin, *Taking Rights Seriously*, Massachusetts, 1977, p. 273: “Government must not only treat people with concern and respect but with equal concern and respect. It must not distribute goods or opportunities unequally on the ground that some citizens are entitled to more because they are worthy of more concern. It must not constrain liberty on the ground that one citizen’s conception of the good life (...) is nobler or superior to another’s”.

of growing poverty rates and as a cause of a slowdown in economic growth, thus a cost for society as a whole.²⁵

Consequently, this wide spectrum shifts with ways of thinking and approaching the doctrine of *laissez-faire laissez-passer*²⁶, which leads back to the heart of constitutionalism, to the eternal *nexus between freedom and authority* - the “abstentionist”/“interventionist” state dichotomy.²⁷ The concrete nuances which suit economic theory and their constitutional premises are the result of a specific constitutional context.²⁸

This non-neutrality of equality within economics has resulted in a macro-distinction between a twofold ideal: equality/inequality of opportunities and equality/inequality of outcomes. As Flew assumed, an “ideal of equality of opportunity (...) is distinguished by wanting only that people be provided with equal or equivalent opportunities, leaving it up to the individual whether or not the opportunities are in fact taken; whereas the egalitarian of outcome, as his label indicates, strives to equalize, in whatever dimensions are under discussion, eventual conditions.”²⁹

Equality of opportunity is largely considered the basic standard for equality, able to justify social and economic inequalities. According to Rawls’s second principle, “social and economic

²⁵ J. Stiglitz, *The Price of Inequality: How Today’s Divided Society Endangers Our Future*, New York, 2012.

²⁶ Only mentioning a few of them: firstly, the minimal state by Nozick. Then, we can mention the pure version of liberalism, neoliberalism, ordoliberalism and the Soziale Marktwirtschaft from the Freiburg School. And finally, egalitarianism, socialism and communism need to be considered.

²⁷ G. Bognetti, *Dividing Powers. A Theory of The Separation of Powers*, Padova, 2017

²⁸ According to Sitaraman, “Any attempt to address economic power in constitutional theory will run headfirst into a series of pervasive, persistent, and even perverse problems” (G. Sitaraman, *The Puzzling Absence of Economic Power in Constitutional Theory*, in *Cornell Law Review*, vol. 101, 2016, p. 1445 ss.).

²⁹ A. Flew, *The Politics of Procrustes. Contradictions of enforced equality*, London, 1981, p. 47. See also P. Von Parijs, *Qu’est-ce qu’une société juste?*, Paris, 1991.

inequalities are justified only if (a) they are attached to offices and positions open to all under conditions of fair equality of opportunity, and (b) they are to the greatest benefit of the least advantaged, meaning that some lesser degree of inequality would make the least advantaged even worse off.”³⁰

However, the distinction between equality of opportunities and equality of outcomes, and the set minimum threshold are not decisive. Equality of opportunity is usually described as the possibility of all individuals to take part in open competition where “the only opportunity which is equal is precisely the opportunity to compete on these terms.”³¹ Such a definition could appear pleonastic; moreover, a narrow narrative runs the risk of, on the one hand, connecting the equality of opportunities to a liberal approach and, on the other end, deriving the equality of outcomes from socialism/collectivism. However, such a distinction is unable to capture the variety of nuances that characterize the theoretical approaches to equality of opportunities. These entail a structural ambiguity that is liable to be seen as a justification for distributive policies or non-distributive policies or, at the same time, distributive policies designed to reconcile individualism and collectivism.³² What does equality of opportunity mean? What are these opportunities?

Consequently, once again, one gets the feeling this street is a dead end. And this feeling is fuelled by the preliminary realization we need to understand what economic inequality really means. Does it mean income inequality or does it require a more comprehensive definition that includes the different positions of general economic distribution (pay, wealth, income)?

3.2. From poverty to human dignity

³⁰ J. Rawls, *A Theory of Justice*, Cambridge, 1971, p. 302

³¹ A. Flew, *op.cit.*, p. 45

³² L. Einaudi, *Concetto e limiti della uguaglianza nei punti di partenza*, in L. Einaudi, *Lezioni di politica sociale*, Torino, 1964.

The same difficulties with *defining* equality/inequality arise when defining the next term in the triad, namely poverty. Although scholars vary greatly in their views on the positive or negative value of economic inequality, there is a widespread consensus on the need to fight poverty. Some scholars even argue the real problem is poverty and not economic inequality.³³

How can we define poverty? And how can we measure poverty?³⁴ It has been stated “poverty is pain. Poor people suffer physical pain that comes with too little food and long hours of work; emotional pain stemming from the daily humiliations of dependency and lack of power; and the moral pain from being forced to make choices.”³⁵ One of the traditional criteria for measuring poverty is to set an absolute or relative threshold, distinguishing between absolute and relative poverty.³⁶

The absolute poverty standard is defined “in terms of a level of purchasing power that is sufficient to buy a fixed bundle of basic necessities at a specific point in time”; the relative standard is commensurate to “the typical income or consumption level in the wider society.”³⁷ Absolute poverty seems to entail a more static threshold whereas relative poverty a more dynamic one, with wider,

³³ Quoting Early: “despite the fact that income inequality and poverty are often conflated, they are different” (J.F. Early, *Reassessing the facts about inequality, poverty and redistribution*, in *Policy analysis*, 2018, p. 1) and, according to Feldstein, “the difference is not just semantic” (M. Feldstein, *Income inequality and poverty*, NBER Working paper series, 1998). See also H.G. Frankfurt, *On Inequality*, Princeton, 2015; W. Watson, *The Inequality Trap: Fighting Capitalism Instead of Poverty*, Toronto, 2015.

³⁴ See T.M. Smeeding, *Poverty measurement*, in D. Brady and L.M. Burton (eds.), *The Oxford Handbook of the Social Science of Poverty*, Oxford, 2016, p. 21.

³⁵ D. Naryan and R. Patel and K. Schafft and A. Raemacher and S. Kochschlote, *Voices of the Poor; Can Anyone hear Us?*, New York, 2000, p. 6.

³⁶ See, among others, J.E. Foster, *Absolute versus Relative Poverty*, in *The American Economic Review*, vol. 88(2), 1998 p. 335 ss.

³⁷ T.M. Smeeding, *Sociology of Poverty*, LIS Working Paper Series, no. 315, Luxembourg Income Study, 2002, p. 5.

more fluky parameters. Ultimately, as assumed by Blank, “poverty is an inherently vague concept and developing a poverty measure involves a number of relatively arbitrary assumptions.”³⁸

Criteria designed to set poverty lines are ultimately arbitrary because, firstly, the multidimensionality of poverty³⁹ and, secondly, the lack of a common understanding of what a minimum consists of.⁴⁰ In other words, there is a lack of consensus on what basic goods are necessary to guarantee human existence and an adequate standard of living. The statement that basic goods are those goods that are essential to fulfil daily basic needs appears to be little more than a tautology. The UDHR itself makes the effort to pinpoint some of the basic goods necessary to achieve a suitable standard of living, including “food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old-age or other lack of livelihood in circumstances beyond his control” (art. 22).

However, creating a common definition for basic goods or defining a common catalogue is a complex issue. The expression “essential goods”/“basic goods” tends to be filled with a variety of senses, embracing many factors, from a notion of human dignity to

³⁸ R. Blank, *How to improve poverty measurement in the United States*, in *Journal of Public Analysis and Management*, vol. 27(2), 2008, p. 243.

³⁹ It is worth remembering that the First Goal of the 2030 Agenda for sustainable development seeks to reduce multidimensional poverty (Goal 1: End poverty in all its forms everywhere and Goal 1.2: By 2030, reduce at least by half the proportion of men, women and children of all ages living in poverty in all its dimensions according to national definitions). On multidimensional poverty see F. Bourguignon and S. Chakravarty, *The measurement of multidimensional poverty*, in *Journal of Economic Inequality*, vol. 1(1), 2003, p. 25 ss.; F.H.G. Ferreira, *Poverty is multidimensional. But what are we going to do about it?*, in *Journal of Economic Inequality*, vol. 9(3), 2011, p. 493 ss.

⁴⁰ See A.B. Atkinson, *On the Measurement of Poverty*, in *Econometrica*, vol. 55(4), 1987, p. 749 ss.; A. Coudouel and J.S. Hentschel and Q.T. Wodon, *Poverty Measurement and Analysis* in J. Klugman (ed.), *A Sourcebook for poverty reduction strategies*, Washington, 2002, p. 27 ss.

cultural, historical, religious and traditional ones.⁴¹ Many legal scholars and economists have sought to list basic goods, with most linking the identification of basic goods to the need to protect and implement human dignity. Such an assumption is probably insufficient to resolve this situation.

Human dignity, as asserted by McCrudden, cannot be defined as an abstract principle.⁴² The consequences resulting from the application of this principle are very concrete, so that human dignity – along with liberty – has become the couple on which modern constitutionalisms are based. Nonetheless, the concept has become increasingly fluid and ambiguous. As much as there is a robust agreement on the importance of human dignity, there is no agreement on what it entails⁴³ and this is the reason why human dignity dodges any attempt to redraw its boundaries.⁴⁴

⁴¹ The cultural factor poses similar problems to those of universalism or cultural relativism in human rights. Some scholars argue that the cultural argument is a trick to hinder the protection of human rights (A. Phillips, *Multiculturalism, Universalism and the Claims of Democracy*, United Nations Research Institute for Social Development, Geneva, 2001) and other authors remember that this risk occurs when the cultural argument is radicalized, and a radical universalism may be considered dangerous (see J. Donnelly, *Cultural Relativism and Universal Human Rights*, in *Human Rights Quarterly*, 1984, pp. 400-419; M. Freeman, *Human Rights*, Polity Press, Cambridge, 2011). In support of the potential for intertwining these two approaches in some form of compromise and mutual respect see D. O’Sullivan, *The history of human rights across the regions: Universalism vs cultural relativism*, in *The International Journal of Human Rights*, 2007, pp. 22-48.

⁴² See P. Carozza, *Human Dignity and Judicial Interpretation of Human Rights: A Reply*, in *The European Journal of International Law*, vol. 19(5), 2008, p. 931 ss.

⁴³ C. McCrudden, *Human Dignity and Judicial Interpretation of Human Rights*, in *The European Journal of International Law*, 2008, p. 655 ss.

⁴⁴ We need only to think of the main twofold senses that human dignity historically acquired - at least until a few decades ago - and which have spread out across the US legal system and the European states (G. Bognetti, *The Concept of Human Dignity in European and U.S. Constitutionalism*, in G. Nolte (ed.), *European and US Constitutionalism, Science and Technique of Democracy*, Cambridge, 2005, p. 85 ss.): on the one hand, a subjective conception of human dignity, closely associated with the idea of dignity as autonomy and liberty; on the other hand, an objective conception under which human dignity has been long considered by European lawyers as an “objective value”, able to limit other fundamental rights.

Even if, despite its multiple meanings, we take a positive, substantive concept of human dignity that associates human dignity with social welfare rights or with the need for basic conditions of well-being, the issues surrounding its concrete content cannot be disentangled. The evanescence of a univocal conception of dignity, together with the fluidity of its anthropological presupposition, can provide at least two divergent interpretations of basic goods: a minimalist approach and a maximalist approach. In accordance with the first approach, basic goods include only those goods aimed to preserve livelihood. In second approach, basic goods become those things by which individual can realize their potential in their specific social context. In addition to health, food, water, and a healthy environment, we could include – for example – culture or free internet access as basic goods, and so on and so forth. And if anchoring the definition of basic goods to human dignity seems to suggest the maximalist approach, this approach must deal with discretionary choices made by the legislator who ought to balance social rights/basic goods with financial resources.

This phenomenon can be better and more fully understood when a good becomes the content of a human/fundamental right (or of a new fundamental right, which often stems from human dignity⁴⁵), resulting in the public authorities having to ensure its implementation in order to avoid it being jeopardized. To do this, public authorities face the everlasting dilemma of economic sustainability, especially in times of crisis. Indeed, economic criteria are often used to tip the balance in favour of one good/right rather than another or to gauge the degree to which it is protected.

⁴⁵ Especially when a new right, conceived as a liberty right, takes the form of a welfare right in its practical implementation. To take just one example, in Italy medically assisted IVF treatments have been included among minimum healthcare provisions, as free healthcare services.

4. *“We sail within a vast sphere, ever drifting in uncertainty,
driven from end to end”⁴⁶*

As asserted by Martha Nussbaum, “anything worth measuring, in human quality of life, is difficult to measure”.⁴⁷ This difficulty not only depends, from a practical perspective, on the existence of a perfect measurement tool but also on a theoretical un-unravelable knot. Searching for a universally endorsed definition of equality, human dignity and poverty (the theoretical basis of economic inequality) is like sailing without seeing the harbour, echoing Pascal. Our aim here is not to solve the economic inequality dilemma. Moving on from the suggestion by Prof. Hirschl and Rosevear (“To truly rescue socioeconomic rights a more realist approach is required”⁴⁸), our paper seeks to approach a defined perspective of economic inequality, focusing on income and analysing how European legal systems are trying to deal with the income poverty challenge.

One of the instruments that has been implemented in European states is the ‘minimum income’ (MI). The implementation of MI has been encouraged by the European institutions. In 2017, the European Parliament adopted a resolution on minimum-income policies. Indeed, the European Parliament called on all Member States to introduce adequate minimum-income schemes in order to achieve the goal adopted in 2010 by the EU and its Member State to reduce the number of persons at risk of poverty and social exclusion by 20 million by 2020. This call was partly based on the assumption that “high unemployment, poverty and inequality remain key concerns in some Member States; (...) broad income inequalities are not only

⁴⁶ B. Pascal, *Pensées*, 1670.

⁴⁷ M. Nussbaum, *Capabilities and Social Justice*, in *International Studies Review*, vol. 4(2), 2002, p. 135.

⁴⁸ R. Hirschl and E. Rosevear, *Constitutional Law Meets Comparative Politics: Socio-Economic Rights and Political Realities*, in T. Campbell and K.D. Ewing and A. Tomkins, (eds.), *The Legal Protection of Human Rights: Sceptical Essays*, Oxford, 2011, p. 208.

detrimental to social cohesion, but they also hamper sustainable economic growth; (...) the impact of the crisis has been generally more acute among lower-income individuals, pushing income inequalities upwards within European societies.”

MI, which operates as a safety net of last resort designed to alleviate the negative externalities of the market, is seen as a remedy to poverty and economic inequality because its purpose is to bring individuals out of poverty, providing them with an acceptable standard of living.

This tool is controversial both in its theoretical premises and in its effectiveness. First of all, it is worth noting that it subverts the traditional understanding of “liberalism” and “socialism”. Although one of its “defenders” is Von Hayek in his “The Road to Serfdom”, a sharp criticism is offered by Polanyi in “The Great Transformation”, who sees minimum income as a tool fostered by paternalism and assistentialism. Secondly, focusing on its effectiveness, this might depend on the specific features defined by each state. In this context, how is this tool designed in the different Member states and, especially, the Italian legal system? Can minimum income be an effective response to poverty and income inequality?

5. Minimum Income in Europe: setting the scene

Minimum-income schemes are becoming a very common tool for fighting poverty across Europe. The popularity of the instrument lies at the crossroads between the different national welfare systems and the influence of the European Union, which has fostered the adoption of certain measures to combat poverty in Member States. From a comparative perspective, minimum income is an interesting case study dealing with the tension between the specificity of each Member State in framing its system of welfare protection for those living under certain dignified standards, and the EU’s harmonization towards a common standard of (minimum) social rights protection.

As one can see this debate touches one of the most sensitive issues of the EU integration process: social rights protection, which is mainly a matter of national sovereignty, resisting the various attempts by the EU to influence and regulate this policy area. The debate about introducing MI schemes has gained force in the aftermath of the economic crisis, which challenged the traditional social security tools in many countries affected by the crisis and, in particular, by the austerity measures imposed by the EU and other international financial institutions.

Prior to analysing MI schemes and their concrete implementation as part of an assessment of whether and under what conditions such a tool is effective in advancing human dignity in Europe, it is useful to ground MI within the principle of the “social state”.

6. Social state principle and minimum income

As Bognetti argues, “in contemporary Western societies, the dignity of the less fortunate citizens must be taken care of through robust, adequate, and free social services. If such services are not expressly provided for in the constitution, they must be read into its general clauses. The state ought to assure a minimum standard of living to all citizens. Decent housing ought to be provided to them through public funds as a distinct, officially recognized ‘social’ right, or otherwise human dignity would be offended.”⁴⁹

What is the origin of this obligation on the State to provide at least a minimum level of social rights? As Katrougalos argues, one of the distinctive features of the European model of social rights protection is that it is informed by the “social state” principle, which

⁴⁹ G. BOGNETTI, *The Concept of Human Dignity in European and U.S. Constitutionalism*, in G. NOLTE (ed.), *European and US Constitutionalism, Science and Technique of Democracy*, Cambridge University Press, Cambridge, 2005, pp. 85-107.

is not the same as the “welfare state” concept. While the latter is a descriptive notion which effectively describes the form of state that emerged after World War II in response to the new forces of the capitalist economy, the former “is a normative, prescriptive principle, which defines a specific polity, a sub-category of the welfare state in the former sense, where the State has the constitutional obligation to assume interventionist functions in the economic and social spheres.”⁵⁰

In such a sense, the social state principle permeates the constitutional order of many European States, not only in Germany, where the social state principle is enshrined in article 20 GG, but in many other countries too, such as Greece, which introduced the concept in 2001 despite it already being considered a fundamental principle, Italy and Portugal, even without an explicit constitutional reference to the concept. As argued, “the term is now widely used throughout Europe, as a fundamental normative and organizational general principle of the Constitution, on par with the Rule of Law. Indicative of its continental acceptance is the fact that the majority of the new democracies of Central and Eastern Europe have incorporated a similar clause in their Constitutions. It is, anyway, broadly accepted in European constitutional theory that the concept can be deduced from the overall corpus of constitutional legislation, even without explicit, solemn reference to it.”⁵¹ The principle of social state favoured more than simply the protection of social rights per se. It is a principle which “contributes to the formulation of an objective system of values, which constitutes a different constitutional ‘ethos’ to that of a liberal state.”⁵² In this framework, concepts such as human dignity and equality “acquire not only a programmatic but a fully normative, binding content.”⁵³

⁵⁰ G. S. Katrougalos, *The (Dim) Perspectives of the European Social Citizenship*, in *Jean Monnet Working Papers 05/07*, 2007, p. 10.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid.

This strict relationship clearly appears in the well-known legal reasoning of the German Bundesverfassungsgericht (BVerfG) in its jurisprudence on the *Existenzminimum*. This path was taken in the famous Hartz IV⁵⁴ decision, where the BVerfG created a constitutional right to guarantee a subsistence minimum by law based on article 1(1) GG in conjunction with the social state principle in article 20(1) GG. In Hartz IV, the right to a subsistence minimum is seen as an absolute right that may not be left to the discretionary disposal of the legislator. Indeed, the latter must give the right concrete form, orienting the benefits to be paid towards the respective stage of development of the polity and towards the existing conditions of life.⁵⁵ More specifically, article 1.1 of the Basic Law establishes this right as a human right encompassing both the physical existence of a human being, and the possibility to have interpersonal relationships and some minimum degree of participation in social, cultural and political life.

In other countries, such as Italy, Portugal, Hungary, Poland, Romania, Latvia and Greece, although human dignity may not have the same normative force to be the foundation of the duty of the state to provide an “existence minimum”, and social rights protection is often more uncertain and changing, “the *Sozialstaat* principle has put down firm roots in all of these constitutional systems, just as it has in Germany, France and a number of other countries, and it consequently limits to some degree the extent to which social provision can be diluted or eliminated in these States.”⁵⁶ Consider the case of Italy. As Ciolli argues, the very structure of the Italian Constitution protects social rights from being reduced due to a scarcity of economic resources. In our contemporary democracies the

⁵⁴ Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court], 9 February 2010, 1 BVL 1/09, 1 BVL 3/09, 1 BVL 4/09, *Hartz IV*.

⁵⁵ Ibid.

⁵⁶ C. O’Cinneide, *Austerity and the faded dream of a ‘social Europe’* in A. Nolan (ed.), *Economic and Social Rights after the Global Financial Crisis*, Cambridge, 2014, p. 176.

relations between social rights, substantial equality and the principle of social dignity are so strong that the guarantee of social rights is a fundamental, inherent characteristic of the form of State.⁵⁷

7. Social state principle in times of austerity

The economic crisis that, starting from 2008, affected Europe and its Member States, had a significant impact not only on the EU's economic and financial policies, but also on the status of social rights protection and on the future developments of the so-called "social model". For the first time in EU history, the threat of austerity entered the EU socioeconomic space, a space that until the eruption of the financial crisis had been relatively stable - developed under the rules of the Maastricht Treaty⁵⁸ - and which seemed "immune" to the crises that occurred in other parts of the world, such as Latin America or South-East Asia.

EU institutions embraced Washington-style consensus measures⁵⁹, challenging the basic assumptions of the social democratic state. The adoption of austerity measures – negotiated by national governments and international financial institutions – resulted in severe and unprecedented violations of fundamental constitutional rights⁶⁰, especially social rights, which were the most affected by the

⁵⁷ I. Ciolli, *I diritti sociali al tempo della crisi economica*, in *Costituzionalismo.it*, n3, 2010, p. 10.

⁵⁸ E. W. Böckenförde *Kennt die europäische Not kein Gebot?* in *Neue Züricher Zeitung*, 2010. As Böckenförde argues: "Die Krise der Europäischen Union hat ihren Grund in Widersprüchlichkeiten und Strukturfehlern des EU-Vertrags seit der Einführung der Währungsunion im Vertrag von Maastricht. Sie war vorhersehbar und ist nicht einfach vom Himmel gefallen."

⁵⁹ S. Lütz, M. Kranke, *The European rescue of the Washington Consensus? EU and IMF lending to Central and Eastern European countries*, in *Review of International Political Economy*, 21:2, 2014, p. 310-338.

⁶⁰ G. Katrougalos, *The Greek Austerity Measures: Violations of Socio-Economic Rights* in *International Journal of Constitutional Law Blog*, 2013, available

scarcity of financial resources.⁶¹ The core of the social state principle has been challenged by loan conditions, most of which imposed reductions in public spending on health⁶², social assistance, education, pensions, and social security.⁶³ Moreover, such loan conditions

at: <http://www.iconnectblog.com/2013/01/the-greek-austerity-measures-violations-of-socio-economic-rights>.

⁶¹ A. Nolan (ed), *Economic and Social Rights after the Global Financial Crisis*, CUP, 2014.

⁶² “The fiscal consolidation policies have limited the affordability and accessibility of public health-care services in programme countries. In Greece, a large number of individuals dropped out of the public health insurance schemes. Reform measures included reduction of health-care staff, reduction in the number of public hospital beds and an increase in co-payments for outpatient treatment or medication, effectively shifting the cost burden from public budgets to citizens. Waiting times for medical examinations and surgery increased in Cyprus, Greece, Ireland and Spain. In Greece, social clinics and social pharmacies staffed by volunteer doctors and nurses have been set up to service patients who are not able to get adequate treatment in public health-care facilities. Access to health care has been a particular concern in relation to undocumented migrants and refugees. In 2012, Spain limited access of undocumented migrants to the public health-care system. In Greece, 17.3 per cent of all persons belonging to the lowest income quintile reported in 2014 not to have been able to undergo a necessary medical treatment, either because of waiting lists, cost, or because services were too far away. A similar, less drastic trend can be seen in Cyprus. Survey data in Ireland and Spain also show a significant increase in the number of individuals reporting unmet health care needs”, *Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights on his mission to institutions of the European Union*, 28 December 2016, www.documents-dds-ny.un.org/doc/UNDOC/GEN/G16/442/18/PDF/G1644218.pdf?OpenElement (last accessed 15 January 2019). On the impact of austerity on health care see also, D. Stuckler, A. Reeves, R. Loopstra, M. Karanikolos, M. McKee, *Austerity and health: the impact in the UK and Europe*, in *European Journal of Public Health*, vol. 27, 2017, p. 18–21.

⁶³ “Measures implemented in countries affected by adjustment included reform of pension and social welfare systems, including unemployment benefits or benefits for families, children and persons with disabilities. The reform measures have so far not been able to reduce poverty and material deprivation, in particular among children, migrants, the unemployed, single-parent households and female

severely undermined labour rights⁶⁴, reforming the system of collective bargaining and transforming labour relations. Greece, Portugal, Ireland, Cyprus, and - outside the Eurozone - Latvia, Hungary and Romania were the most affected by such severe terms.

Legal scholars such as Salomon⁶⁵ and Fischer-Lescano⁶⁶ have already highlighted the broad violations of human rights by the austerity measures enacted by the Troika. Such impacts were also assessed by the “UN Independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights” during his mission to Greece. In his report he highlighted the serious and devastating effects of adjustment measures on human rights. In his conclusions, he specifically highlighted that “Social and economic rights have been denied in a widespread manner. More than one million persons in Greece have fallen below income levels indicating extreme poverty.... These individuals are ultimately denied, in one or another form, the enjoyment of core

pensioners. (...) In Cyprus, Greece, Ireland, Portugal and Spain there were 3.8 million more persons at risk of poverty and social exclusion in 2014 than in 2008”, *Report of the Independent Expert*, par. 58.

⁶⁴ “Fiscal consolidation policies often included reducing the number of public employees. Restrictions on hiring in the public sector were introduced in Cyprus, Greece, Ireland, Portugal and Spain. In Greece, measures also included a labour reserve scheme aimed at transferring or dismissing workers employed in the public sector. Conditions for collective dismissals were relaxed in Greece and Spain. Public sector wages were cut in Cyprus, Greece, Ireland and Portugal and minimum wages frozen in Portugal and cut in Greece, including to levels below the statutory minimum wage for young workers entering the labour market”, *Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights on his mission to institutions of the European Union*, 28 December 2016, par. 51.

⁶⁵ M. Salomon, *Of Austerity, Human Rights and International Institutions*, in *European Law Journal*, vol. 21, 2015, p. 521-545.

⁶⁶ A. Fisher-Lescano, *Human Rights in Times of Austerity Policy*, Nomos, 2014.

essential minimum levels of social, economic and cultural rights, which States have to protect in all circumstances. Extreme poverty in Greece is pervasive, taking into consideration the fact that currently, 1 of 10 persons (or 10.4 per cent of the population) is living under such conditions.”⁶⁷

In such a scenario, characterized by a massive drop in the standard of social rights enjoyed by European citizens and by the inadequacy of the existing social security schemes, one may rightly ask: what tools that can be deployed to guarantee a dignified existence when the “Sozialstaat” is experiencing a crisis?

8. Minimum income in Europe: lights and shadows

Minimum income can be defined as a regular (i.e. monthly) money from general taxation assigned to those who live below a given poverty line. It is a tool specifically targeted to reduce poverty and to help subjects who cannot work or find a job.

The European Pillar of Social Rights has defined MI as follows: “Adequate MI benefits shall be ensured for those who lack sufficient resources for a decent standard of living. For those of working age, these benefits shall include requirements for participation in active support to encourage labor market (re)integration.”⁶⁸ Today, most EU Member States have adopted some form of minimum income. However, minimum income is not a standard, fixed tool and an examination of the different MI schemes adopted by EU Member States shows a wide spectrum of different solutions. The opposites of this spectrum are: 1) systems where minimum income is the only (or

⁶⁷ Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights on his mission to Greece, A/HRC/31/60/Add.2 par. 76

⁶⁸ C. Crepaldi *et al*, *Minimum Income Policies in EU Member States*, Study for the EMPL Committee, 2017.

the most important) income support scheme and it addresses all those who are without sufficient resources, thus it is not limited to specific targets of the population; 2) systems where minimum income is considered as a last resort tool for those who have already exhausted all other possible applications for targeted measures. In this case, minimum income can be guaranteed to certain target groups – disabled, elderly, unemployed – and usually under certain conditions. On such a spectrum, the actual adoption of MI by countries varies substantially, with even the amounts being made available significantly different. There are many reasons for such differences between countries.

The first element to take into account is how the “social state” principle is adopted across Europe (Social Democratic/Nordic Model, liberal model, conservative model and Southern Europe model.)⁶⁹ Following along a similar track, any comparative analysis of the different schemes should also take into account “the normative foundations behind them and the notion of solidarity they pursue, as addressing in a non-neutral way key concerns about who are the poor, who deserve to be assisted, in what forms and by whom.”⁷⁰

Focusing specifically on MI, much of this variation is because the poverty threshold is determined nationally, by law or other administrative sources of law. Sometimes there is a mechanism used to establish the level of payments based on specific indicators (i.e. a percentage of the social pension or of the minimum wage); however, in most of cases there is no such mechanism and the determination of the minimum level is set discretionally by the public administration. Moreover, in several countries (Germany, Finland and Sweden), MI can be increased to cover specific needs, such as rent, heating, electricity, health care, school expenses for children, and

⁶⁹ M. Ferrera, *Modelli di solidarietà*, Bologna, 1993; G. Esping-Andersen, *The Three Worlds of Welfare Capitalism*, New York, 1990.

⁷⁰ N. Riva, I. Madama, Giulia Bistagnino, *The politics of redistribution an interdisciplinary dialogue on the foundations of the welfare state*, Centro Einaudi, Working Paper n. 4/2015, p. 29.

transportation costs from and to the workplace.⁷¹ The degree of public expenditure allocated to MI schemes is another key factor when exploring how MI differs between countries.

The interplay between the regulation and the organization of the schemes plays a fundamental role in explaining the differences in MI schemes.⁷² In many countries, regulatory functions are centralized, whereas managing functions are devolved to local governments, such that “the mainstream trend to reduce discretionary allocation of benefits is to centralize eligibility rules and to decentralize the managing of conditionality, which often needs to be addressed considering case-by-case situations.”⁷³ However, the decentralization of the implementation of the benefits, especially when the local government enjoys a key role in the social security system, poses some challenges in terms of the possible emergence of territorial inequalities.⁷⁴

Last but not least, a key feature of minimum income, which makes it clearly different from basic income⁷⁵, is the use of a regime of conditionality to access to the benefit. Such conditions are usually related to trying to find a job in a given time, or to attending vocational training courses. The UK Universal Credit System, where conditionality plays a central and critical role, requires that claimants sign a claimant commitment with strict guidelines. Conditionality related to labour market policies is clearly also found in Italy, the Netherlands and Portugal. Conditionality, as it has been observed, “is

⁷¹ N. Petzold, *National report: Germany, Combating Poverty in Europe: Re-organising Active Inclusion through Participatory and Integrated Participatory and Integrated Modes of Multilevel Governance*, 2013.

⁷² C. Crepaldi *et al*, *Minimum Income Policies in EU Member States*, Study for the EMPL Committee, 2017.

⁷³ *Idem*.

⁷⁴ See L. Natili, *The unexpected institutionalization of minimum income in Spain*, Centro Einaudi, Working Paper n. 2/2016.

⁷⁵ Basic income is a universal money subsidy which is granted to all, regardless of their income or working conditions.

probably the main theme and affects many countries belonging to all the different welfare systems.”⁷⁶

Looking at the pervasive role of conditionality in designing MI schemes, it is clear the aim of MI is not (anymore) to only be a tool to guarantee a minimum level of dignified existence, but also to foster the realization of social inclusion and the integration of unemployed people into the labour market. To this regard, it has been argued that MI schemes have witnessed a transformation over time: “From mainly residual instruments that aimed to guarantee minimum income support and to prevent extreme marginality, in most countries they now have an ‘ambiguous’ function – promoted by the active inclusion paradigm introduced by the European Union.”⁷⁷ As it has been noticed, “within this active inclusion approach, “policies aim not only to provide resources but also to reduce individuals’ need for help, in particular by supporting their access to the labor market.”⁷⁸

This is the context in which to interpret the increasing presence of conditions that link the benefits to a set of often quite strict conditions: registering with public employment services; seeking a job; accepting job offers; participation in activation measures such as training, personal development or community service; having used all possible entitlements to other social security benefits; selling or making use of one’s own assets (e.g. selling or renting a property); and keeping the benefits administration informed of any changes in personal circumstances. Failure to comply with such conditions can lead to severe sanctions, with access to the benefit denied or temporarily suspended.

⁷⁶ C. Crepaldi *et al*, Minimum Income Policies in EU Member States, Study for the EMPL Committee, 2017, p. 54.

⁷⁷ M. Natili, *Worlds of last-resort safety nets? A proposed typology of minimum income schemes in Europe*, in *Journal of International and Comparative Social Policy*, Journal of International and Comparative Social Policy, 2019.

⁷⁸ M. Heidenreich, N. Petzold, M. Natili & A. Panican *Active inclusion as an organisational challenge: integrated anti-poverty policies in three European countries*, in *Journal of International and Comparative Social Policy*, vol. 30:2, 2014, p. 180-198.

This turn towards significant conditionality, an approach that has become particularly evident with the economic crisis, poses several challenges to the nature and ultimate aim of MI schemes: “the active inclusion approach too often has meant the introduction of measures narrowly focused on employment and on increasing conditionality and sanctions. Several countries have introduced the obligation to take up public work as a counterpart for receiving MI, even when there are clear indications that these workfare measures do not increase people’s chances to return to the labor market.”⁷⁹

While entering the labour market is definitely an important step to get out of poverty, the strict imposition of conditionality fosters the phenomenon of the so-called “working poor” as “strict conditionality and a high degree of re-commodification, increase the risk of in-work poverty.”⁸⁰

In most of the systems where the MI scheme is minimal and subject to strict conditionality, this effect is even more evident and it is one of the main reasons why MI is so ineffective in fighting poverty. Such a statement should not be construed as saying all MI schemes are ineffective or that activation policies have no positive effects on reducing poverty and social exclusion. According to recent literature, “only the combination of well financed active labor market policies and generous social benefits is the most promising strategy to fight in-work poverty.”⁸¹

This brief analysis of MI schemes in Europe shows the complexity and the multiple criticisms of this social policy measure designed to fight poverty and social exclusion. MI is certainly one of the most promising instruments to reduce poverty across Europe. However, several critical aspects can reduce and compromise its

⁷⁹ C. Crepaldi *et al*, *Minimum Income Policies in EU Member States*, Study for the EMPL Committee, 2017, p. 45.

⁸⁰ S. Seikel, *Activation Into In-Work Poverty?*, in *Social Europe*, September 2017.

⁸¹ *Ibid.*

concrete effectiveness. The great differences between countries, the different poverty lines adopted, the variations in terms of public expenditure in MI schemes, the different types of programmes associated with MI schemes (only labour market related or extended to health, education, housing), must be taken into account when comparing and assessing effectiveness. Moreover, MI schemes cannot be properly studied without a thorough understanding of the general model of welfare state adopted and the normative premises of each model.

9. Conclusions

The relation among human dignity, equality and the fight against poverty remains one of the most challenging issues faced by our contemporary constitutional systems. It is a conundrum for legal scholars and policymakers. This is especially true in times of crisis: both the financial and the constitutional crisis are questioning and revealing the limits of traditional models of the welfare state. Social democratic systems seem unable to enact effective policies to fight poverty, foster social inclusion and counteract economic inequalities in ever more polarized societies.

To tackle these issues the EU has encouraged Member States to adopt economic/legal measures. MI schemes are clearly one of the favoured tools for this, but there is no “one size fits for all” for these instruments since their concrete design and implementation strongly depends on the relevant historical, social and legal context. Additionally, assessing their actual effectiveness must be done taking into account the specific features of the specific constitutional order.

Given the complexity of this backdrop, our goal is not to offer a way out of poverty but to propose two lens through which to look at

these issues from the specific constitutional comparative law perspective.

The first ‘lens’ is a methodological one. Equality, poverty, minimum subsistence and basic good are traditionally the focus of economic inquiry and theories of social justice. Economics uses a twofold approach to study these concepts: a concrete lexicon based on a set of collected data to help in determining out how to build economic policies; and an ‘abstract’ approach, made of several different economic theories and interpretations of what equality, poverty and basic good are.

This variety of interpretations is the same that we can find in the different realizations of the social state principle in the constitutional realm. This is the why comparative constitutional law and economic perspective must be strictly intertwined in facing these challenges. Indeed, the comparative law perspective helps to contextualize the economic data within the specific constitutional context according to the historical evolution of the form of State.⁸² Similarly, comparative constitutional law enables us to look at the issue of equality and poverty in the light of the relation between liberty and authority, which grounds the idea of social justice of the different constitutional systems.

The second ‘lens’ is a substantive one: minimum income can be considered a social parachute, a safety net aimed to alleviate the negative externalities of the market. But, in a perspective of equality, it is not enough. States cannot limit their intervention downstream as they ought to provide solutions upstream, in the light of a concept of social justice based on freedom and responsibility and on the capacity of every single person to act in social groups, helping each other to achieve human dignity. As Carozza argues “subsidiarity takes the freedom necessary for human dignity and extends it to a regard for freedom at all levels of social organization. This freedom, however, is

⁸² G. Bognetti, *La Divisione dei poteri*, Giappichelli, Milano, 2001.

not simply a negative notion of restraint from interference.”⁸³ If “freedom is understood as the ability to reach one’s complete flourishing, to realize the capacities of a being of inherent dignity, it can also be served by an intervention that creates the necessary conditions for the individual to lead a life of purpose and fulfilment.”⁸⁴ The duty of the state is to monitor and potentially intervene, in a lens of subsidiarity, such that someone who needs help today, can be an active citizen of social solidarity. This is the challenge and the task the EU is called to face in the future of the EU social space.

Abstract : The relation among human dignity, equality and the fight against poverty remains one of the most challenging issues faced by our contemporary constitutional systems. It is a conundrum for legal scholars and policymakers. This is especially true in times of crisis: both the financial and the constitutional crisis are questioning and revealing the limits of traditional models of the welfare state. Social democratic systems seem unable to enact effective policies to fight poverty, foster social inclusion and counteract economic inequalities in ever more polarized societies. The aim of this paper is to offer food for thought on the sensitive relationship among human dignity, economic inequality and poverty from a constitutional perspective. The paper is divided in two parts: the first one addresses the issue starting from a theoretical perspective in order to provide a more concrete understanding of the equality/inequality, human dignity and poverty triad, and the consequent implications. The second part adopts a more analytical perspective, focusing on one of the tools designed by legal systems to fight poverty and restore equality and human dignity: the Minimum Income (MI).

⁸³ P.G. Carozza, *Subsidiarity as a Structural Principle of International Human Rights Law*, in *The American Journal of International Law*, 2003 p. 44.

⁸⁴ Idem.

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Human dignity and Economic inequality: constitutional theory and policy practice

Keywords: dignity, economic inequality, poverty, minimum income, social rights

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