

The Role of Human Rights for the Construction of Personal Identity

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Abstract

«The finding of similarity or difference is the key step in the legal process» (Edward H. Levi). This central importance of identity for law applies not only to things and actions, but also to persons. Identity seems to be central to law, probably because legal regulation presupposes coherent actors and their permanence, that is their stability in time and space as well as the constancy of the objects and categories they deal with. Personal identity essentially means the hope or the claim that a human being stays “the same”, in spite of spatial motion and change due to time. Now, from the point of view of the natural sciences, no phenomena stay identical. Therefore, identity is always socially constructed. Human rights contribute in different ways to this construction of the modern self, individual and subject, if not citizen. First, they participate in the general constitution of the single human being by defining, presupposing and isolating her from other members of the species, by giving her legal recognition and a legal status. Rights can indeed be seen as the formalization of mutual recognition (Hegel, Mead & Axel Honneth). This first contribution is hardly distinguished from other legal mechanisms, mainly civil rights and especially the possibility to contract, but also from social and political aspects associated with the existence of the individual self. Second, human rights construct the individual in a specific, if not technical way. They attribute prerogatives to single members of the species, hardly ever to groups. Significantly, the French Déclaration des droits de l’homme et du citoyen of August 26, 1789, mentions the human being in the singular, unlike the English term human rights. Usually only individuals can claim and use them; human rights for the benefit of groups are problematic,

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because they easily collide with individual rights. For instance, the right of free movement within a determined – usually national – territory or the freedom to work and to choose one's employment are by essence individual; groups cannot, as such, pretend to these rights, as this would imply imposing their choices on their members. Third, human rights contribute to the autonomy of the individual, by not mentioning the debtors of human rights' beneficiaries nor any duties. By creating – or allowing to create – a prerogative, other legal provisions explicitly or implicitly also institute a duty and a debtor. Human rights, however, do not contain any indication as to who is obliged by them and what s/he is supposed to do. Thus nourishing the mirage of being beneficial for everyone, they sustain the illusion of human beings independent from each other. That is the idea of individual autonomy in its etymological sense: auto = self, nomos = rule or law, meaning that the single human being creates her own law and governs herself. Human rights can therefore be analyzed as the most prominent expression and guaranty of « possessive individualism » (Crawford B. Macpherson). They are simultaneously cause and effect of ongoing secular individualization and globalization. As these two related processes are indeed continuing, one may look into the future wondering to which extent the combination of human rights and personal identity may expand toward a “world legal subject”.

Keywords: Identity; Civil Rights; Individualization; Globalization.

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B)WebSite

59. « Maternal deprivation syndrome », cf. MEDLINE HEALTH INFORMATION, MedicalEncyclopedia:
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