

INTRODUCTION

The meaning of the concept of human rights does not depend on whether rights in national or international codifications are denoted as such. Therefore, there can be rights that are explicitly mentioned in human-rights codifications that actually cannot be considered real *human* rights. It is equally conceivable that there are rights which have not been included in human-rights codifications that should nevertheless be recognized as such. These unwritten human rights only have a chance at future codification through human awareness.

Awareness of new hitherto unwritten human rights does not arise in the context of abstract philosophical considerations. Rather, awareness arises when dealing with real conflicts and man-made human suffering. Since it is just the Courts of Justice that have to deal with such conflicts and have to find legal solutions, it stands to reason that it is the Courts that become aware of gaps in the system of codified human rights and “discover” new unwritten human rights. One prominent example is the discovering of the *Right to Informational Self-Determination*, which was first formulated by the German Federal Constitutional Court in 1983 and is now well established and recognized under the denomination *Right to Personal Data Protection*.

The Inter-American Court of Human Rights recently claimed to have identified another gap in the human-rights-codifications, in particular in the American Convention of Human Rights, which is supposed to be filled with a new and unwritten human right which they have called *Right to Identity*. (For more details concerning this jurisprudence see the articles of *Tiedemann* and *Zhang Tu*). The proposal is – already because of its prominent source – worth examination and discussion among legal and philosophical scholars. However, the proposal is not only of relevance in the context of the American Convention of Human Rights. Since a *Right to Identity* does not exist either in any other human-rights codification worldwide it is a proposal that should affect the interest of human rights scholars everywhere in the world. It was therefore a great honor to have the opportunity to discuss the issue on an international and multicultural level in the frame of a Special Workshop during the XXVII World Congress of the *International Association for the Philosophy of Law and Social Philosophy* that took place at the end of July 2015 in Washington DC. This ARSP-Beiheft contains the elaborated versions of the papers that were presented at this Workshop. The article of *Janne Mende*, who did not have the opportunity to participate in the workshop, is added.

The first article (*Paul Tiedemann*: “Identity and Human Rights”) examines the different meanings of the term “identity” and relates each of them to specific human interests. It examines the possible conflicts in which these interests can be involved and to what extent the existing catalogues of written human rights keep in stock sufficient rights for the protection of the respective interest or to what extent new unwritten rights should be demanded. The article concentrates on the most relevant meanings of identity understood as individual identity.

The following four articles focus also on an individualistic approach to identity in the context of human rights. *Zeynep İspir* (“Human Dignity as a Common Identity”) examines the concept of human dignity and its relation to the concept of human rights. *Christoph*

tity”) considers the fact that all of our individual particularities which distinguish one from another can be made a crucial characteristic of our personality and identity. However, she argues that this is not a sufficient basis for the understanding of human rights. According to *Íspir*, identity as a matter of human rights only comes in focus when we refer to the “sameness as human beings”. She discusses the question of whether the concept of human dignity expresses the common identity of human beings adequately and whether therefore the concept of human dignity should be considered as a yardstick for the justification of human rights.

Reiner Keil (“A Negative Right related to Identity as a Right to Change: A Kantian Approach to Philosophical Aspects of Criminal Justice, especially of Life Imprisonment”) deals with the aspect of diachronic identity and asks whether and to what extent the present imputation of past acts to a person for the purpose of proportional future legal consequences is in terms of morality, justified or even compelling. Starting from the critical analysis of Kant’s fragmentary theory of punishment and his rigorous statements regarding punishment the author pleads for a permanent *Right to Change One’s Identity*. This right constitutes the crucial argument for limiting the term of punishment and to abolishing life imprisonment.

Zhang Tu (“Is the Right to Identity a Fundamental Human Right?”) discusses the question of whether the Right to Identity can be considered a fundamental human right. She starts with Charles Taylor’s account of identity and considers the research question in light of two standards of human rights as two tests. One is a humanity standard which fundamentally takes human rights as moral rights; the other is a political conception of human rights, which understands human rights in view of our international human rights practice. According to the author neither of these standards can show that the *Right to Identity* as it is demanded by the Inter-American Court of Human Rights can be understood as a fundamental human right.

Fabio Queiroz Pereira / Mariana Alves Lara / Felipe Quintella Machado de Carvalho (“Body Integrity Identity Disorder: An Interface between Body and Personal Identity”) deal with the aspect of body-identity. They discuss the case of a severe disorder of body-identity (Body Integrity Identity Disorder – BIID) and ask whether the desire of the concerned individuals to cut off one or some of their own limbs should be considered as protected by human rights and whether they are supposed to have access to an amputation surgery. The authors argue in favor of the opinion that the desire falls in the scope of private autonomy and is therefore to be recognized.

The following articles are focused on a rather collective understanding of identity. *Janne Mende* (“Collective Identity”) analyzes the different meanings of the term “Collective Identity” by discussing strong and weak points of basic identity concepts from philosophy and social sciences. She stresses the fact that identity is constitutively and necessarily intrinsically entangled with its other, the non-identical. She analyzes the different forms that the other can take on in its relation to identity. She analyzes further the emancipatory and the repressive effects of these forms and scrutinizes on this basis the concept of collective identity in normative perspective. She examines the constitutive role of collective identity for individual identity and the relevance of its openness to its other and to other others.

Marcos Augusto Maliska (“Right to Identity in the Context of Constitutional Pluralism”) discusses the right to collective identity under the aspect of constitutional pluralism. First he describes several collective identities which are protected

under the Brazilian Constitution. In the second part of his essay he shows that protection of collective identity by the Constitution does not mean that the State has the right to define the content of the respective identity. The constitution of a pluralistic society has to be an open constitution. This means openness for different pre-understandings of the collective identity with which individuals identify. So the interpretation of the Constitution may not be based on a certain particular unambiguous understanding of the respective collective identity. Pluralism demands rather the recognition of the pre-understanding of those who identify with a particular social group as e. g. their family.

Akibiko Morita (“Collective Human Right to Collective Identity”) defends the position that collective identity is an indispensable part of the individual identity. He argues that individual human rights are not sufficient to protect collective identity and demands therefore a collective right to collective identity. The *Collective Human Right to Collective Identity* must, however, stand under moral limitations in order to avoid the legitimation of suppression of minority groups or individual members in the given society. Morita locates his approach in the framework of Charles Taylor’s conception of interculturalism.

Identity as a matter of law is a very wide field. The contributions of this book can only deal with some of the many aspects. So, this book does not give a final answer concerning the question of a Right to Identity but it is a small contribution to a dialogue that has just recently begun.

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