

Right to Identity

Edmund Ryden

Adjunct Associate Professor, Human Rights Programme, Soochow University, Taipei

***Right to Identity: Proceedings of the Special Workshop
'Right to Identity' held at the 27th World Congress of the
International Association for Philosophy of Law and Social
Philosophy in Washington DC, 2015***

edited by Paul Tiedemann

Stuttgart: Franz Steiner, 2016

ISBN 9783515-112444, 185 pp.

No reviewer can be wholly free of a subjective viewpoint determined by their own background and interests. One of my professional tasks is the correction of manuscripts purportedly written in English. As I begin this review I cannot but note that the book in question cries out for such skill and that this frustrates my reading and tends to colour my views.

The book contains eight papers on various aspects of a possible right to identity. It does not pretend to present a complete picture but just to offer a variety of possibilities. Paul Tiedemann provides an interesting, brief introduction in which he situates the book as a partial response to the February 2011 Gelman judgment of the Inter-American Court of human Rights which referred to a “right to identity”. The first paragraph of the introduction sets the discussion in the context of the emergence of new, unwritten human rights and how they might be codified. Tiedemann believes that they emerge in court decisions made in the face of abuses and that the right to identity may be one such right. The question raised here is indeed a fascinating one that deserves further study.

Now, the first article in the book is also by the editor, a detailed study of possible senses of the right to identity and the way in which these senses may

already be covered by existing rights. The most surprising thing, though, from the point of the book as whole, lies in the conclusion to this first article where Tiedemann states: “The demand for a new ‘Right to Identity’ is meaningless and pointless because what is to be understood here as identity remains unclarified.” (p. 41) With a conclusion like that one cannot help but wonder if the book is worth reading at all. It rather denies the whole purpose of the title.

Having said that we may still give an overview of the other essays. Zhang Tu (p. 89 ff.) follows Tiedemann in rejecting any notion of a right to identity. He claims that such a right fails two standards by which something may be identified as a human right. The first standard is that rights belong to persons, where the term person is a concept of generality, something all human beings have, whilst identity is something particular, hence not universal and hence not capable of generating a right. His second standard is that something is a right if it justifies political intervention in the case of its violation. Here he argues that intervention can only be carried out when an abuse of a particular right leads to threats against rights in general and that the right to identity is not so fundamental that attacks on it alone constitute a threat to all rights.

Janne Mende’s article “Collective Identity” (p. 129 ff.) argues that collective identity can serve as one possible form of mediation between the individual and society. However, while there may be aspects of collective identity that deserve protection there may be other negative aspects that do not. What matters are the relationships between what the identity states and what it excludes and how these are to be treated.

Akihiko Morita—“Collective Human Right to Collective Identity” (p. 167 ff.)—returns to the theme of collective identity but arrives at a much more positive conclusion. Morita argues that we do need a collective right to collective identity and that it would be particularly valuable in states and regional bodies such as ASEAN “so that each community can be treated equally when it comes to representation and participation in the creation of a new identity in the given political community”. (p.177)

Marcos Augusto Maliska—“Right to Identity in the Context of Constitutional Pluralism”(p. 151 ff.)—looks at the types of identity recognised by the Brazilian Constitution, namely: national, political, religious, indigenous, cultural and family identities. The author focuses on the last of these six forms of identity, noting how the idea of family is open and susceptible to

various possible readings.

Zeynep İspir—“Human Dignity as a Common Identity” (p. 43 ff.)—prefers to look behind the various identities we have to our common human dignity and to base human rights claims on the latter.

Likewise, Reiner Keil—“A Negative Right Related to Identity” (p. 53 ff.)—works from Kant’s core idea of human dignity. His paper argues that, according to Kant, a person should never be wholly bereft of self-determination. For instance while the law is right to assume the continuing identity of the person in the dock with the person who committed a crime and thus require a punishment commensurate with the crime, this doctrine of identity and punishment should never be such as to preclude a person ‘re-inventing’ themselves. Keil thus rules out lifelong imprisonment with no possibility of release and, of course, the death penalty as incompatible with the Kantian definition of a person. I find this essay to be one of the most positive in the whole collection.

Finally, there is one paper by three authors on the Body Integrity Identity Disorder (p. 117 ff.) which deals with one specific medical condition whereby a patient seeks to get rid of a healthy limb that they see as unwanted. The authors argue that doctors should help in the amputation for three reasons: those who have undergone such amputations are generally satisfied; a person must be allowed to decide what is best for them and if surgery is not carried out then patients will try to do the operation themselves and often make a mess of it. These arguments are not new: they all appear in the arguments in favour of abortion. They all clearly call for doctors to renounce their Hippocratic Oath and thus are morally questionable.

Finally, to return to the question of language. This book should have been thoroughly proofread and its publication delayed until that was done. In places the English is unintelligible. Fortunately, there are summaries in German of each article so at least one can grasp the sense of the articles, if you read German, that is.

