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Identity Claims and the Legal Order: Secular or Religious?

Abstract: The problem addressed in this article is the challenge that identity claims stemming from identity politics, commonly recognized as left liberalism, pose to the secularity of the modern legal order. The paper: (1) postulates human dignity as the highest value and assesses the potential of philosophy and law to find a balance among the conflicting demands posed by this value; (2) identifies constitutional principles and/or *jus cogens* as the basis for the identification and appraisal of identity claims; (3) describes major identity claims embodied in the Istanbul Convention and appraises them on the basis of the principles; (4) ascribes identity politics and its claims to a worldview with traits of a religion, termed culturalism, as their condition. The conclusion proposes alternative decisions (*de lege ferenda*) more in accord with the principles, most notably with the freedom of thought, conscience and religion.
Keywords: culturalism, human dignity, identity claims, identity politics, Istanbul Convention, legal order

Introduction

The problem addressed in this article is the challenge that identity claims stemming from identity politics (second-wave+ feminism and the LGBTQIA+ movement), commonly recognized as left liberalism, pose to the secularity of the modern legal order. The paper performs the following tasks: (1) it postulates human dignity as the highest value and assesses the potential of philosophy and law to find a balance among the conflicting demands posed by this value; (2) it identifies constitutional principles and/or *jus cogens* as the basis for the identification and appraisal of identity claims; (3) it describes major identity claims embodied in the Istanbul Convention

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stemming from identity politics and appraises them on the basis of the principles; (4) it ascribes identity politics and its claims to a worldview with traits of a religion, termed culturalism, as their condition. The conclusion proposes alternative decisions (*de lege ferenda*) that are more in accord with the principles.

1. Human dignity

The contemporary dominant view of human dignity relies on Kant's second variation of the categorical imperative, which reads 'Always act so that you treat humanity, whether in your own person or in another, as an end and never merely as a means' (Kant, 1785, 4:428–429; tr. Liddell, 1970, p. 138). The first variation commands 'Always act on a maxim which you can will to become a universal law of nature' (Kant, 1785, 4:421; tr. Liddell, 1970, p. 140), while the third variation is 'Act always on a maxim by which the will considers itself as making universal law' (Kant, 1785, 4: 432; tr. Liddell, 1970, p. 165) for a possible 'kingdom of ends', i.e. 'the orderly community of different rational beings under a common law'. Kant's variations of the categorical imperative incorporate Cicero's universal rules for the resolution of conflicts between duty and interests (Liddell, 1970, pp. 138–139): '*Omnino hominem ex homine tollat*' (Cicero,1913, pp. 292–293) ('Honor every man as a human being *because* he is a human being') (Liddell, 1970, p. 139) (comp. Kant's 2nd variation); '*Convenienter cum natura vivere*' (Cicero, 1914, pp. 282–283) ('Live according to Nature, Nature as it would be under ideal conditions') (Liddell, 1970, p. 139) (comp. Kant's 2nd variation); '*Communis humani generis societas*' (Cicero, 1913, pp. 280–281) ('Live as a member of a universal society of rational beings') (Liddell, p. 139) (comp. Kant's 3rd variation). In Plato's writings, dignity was 'associated with unity based on internal harmony' (Piechowiak, 2019, p. 43; also see p. 255) and, predating Kant again, 'the prohibition on destroying a possessor of dignity […] was not formulated with a view to achieving goals that go beyond the good of the possessors of dignity themselves, such as the good of the state or the universe as a whole' (Piechowiak, 2019, p. 44). However, 'treating a person as an end (in oneself) does not exclude the recognition that he is a part of a certain whole, which is also an end in itself; in Plato's thought it is the universe' (Piechowiak, 2019, p. 256). Kant's 'kingdom of ends' is akin to this too. Seemingly unrelated to Plato's and Kant's views of human dignity is Pico della Mirandola's (1956, p. 7 and *passim*) claim that humans have dignity because God created them to in His image, thus endowing them with free will to fashion themselves the way they choose.

Now, if every single individual is both a part and a creator of the universe, it is necessary to find multiple balances between a person, his/her community, and humankind, and between every single person and nature, in conservation as well as in

creation. Philosophy and law are two common responses to the challenge, and only seem to go hand in hand.

(A) Philosophy

Philosophy, being an enquiry into rationality, is indispensable as a check on any other enquiry that is meant to be rational. However, even in the performance of such a limited task, philosophy cannot cast away the doubt that it has come to an end (see Manser, 1973) – all the more so when philosophy *qua* philosophy, rather than as an underlabourer of common sense, science or literature, pronounces on politics, society, law, etc. It is an effort on a slippery slope, which seeks credibility in building, through free-roaming speculation, an all-inclusive view of its subject matter and, tacitly, a whole worldview, every brick of which creates an ever-deeper gulf between believers and non-believers. The idea that one can find necessary and/or satisfactory conditions for the use of the concepts of politics, society, etc. is not less pretentious.

(B) Law

Law limits creation by protecting, in addition to life, freedom of belief and expression. In this, it is informed by history, including the history of philosophy. The latter is both a repository of the ideas that are still usable (see sections 1A and 1C), and that often are used tacitly as presuppositions of current thinking, *inter alia* in formulating theoretical constructs, and a way of detecting fallacies. Since law is public reasoning, its corequisite is a study of humans. It should start with the insight that the personality of every single human being is a unique but natural 'good', unanalysable, undeterminable and irreducible to either experience or norms, which can only be understood teleologically, but which to that end does not need explicit or categorical metaphysics.

(C) The mean

Aristotle's doctrine of the mean may temper choices between nature and nurture. Aristotle formulates the doctrine in discussing virtue or excellence (*aretê*) by explaining that 'all excellence makes what has it good, and also enables it to perform its function well'. Thus 'the excellence of a human being will be that disposition which makes him a good human being, and which enables him to perform his function well' (Aristotle, 1984, 1106a16–25; tr. Losin, 1987, p. 329, 341 n. 2). The doctrine teaches that '[h]itting the mean is not so much a matter of hitting one particular point on a target as it is a matter of avoiding the variety of mistakes it is possible to make in a complex situation' (Losin, 1987, p. 340). A mistake to avoid is an enthusiastic response to Pico della Mirandola's claim, which is prone to treating 'the world as an ensemble of objects for our use' (Taylor, 1989, p. 513).

Aristotle's doctrine of the mean is prima facie closely related to, or even the source of, proportionality analysis, which is embedded in the theory of legal argumentation and presupposed by the rational application of constitutional rights. If so, the doctrine may reconcile philosophy with law, to a degree.

2. Constitutional principles

Constitutional principles and/or *jus cogens* as the basis for the identification and appraisal of the identity claims (see section 3) are of two kinds: historically, the secularization of the modern European state (see section 2A), or dogmatically, international and European human rights principles (see section 2B).

(A) The secular state

Durkheim says that 'Religion is above all a system of notions by which individuals represent to themselves the society whose members they are, and relations, obscure but intimate, that underline it' (Durkheim, 1968, p. 219). 'Religion holds within it, from the very beginning, but in a muddled sort of way, all the elements that have given rise to the various manifestations or collective life' (Durkheim, 1980, p. 54). 'With the possible exception of economic organization, everything […] was bound up with religion' (Fournier, 2013, p. 317).

The modern state is identical with the national legal order, as the state can be identified only by understanding the reasons, including the legal norms (rules, values, principles, institutions, etc.), that constitute it (see Kelsen, 1945). The state is structurally and genetically intertwined with the Catholic Church; structurally, the papacy in the 13th century was the prototype of the state (Picq, 2009, pp. 109–110), demanding religious obedience (see Hobbes, 1968, ch. 43, s. 3, p. 610). Genetically, the state has developed by separation from the Church (Berman, 1983; Maclear, 1995). This separation has been brought about by two institutions, the first being nationality. Nationals are the persons residing on a state's territory, irrespective of whether they are linked to a religious community, including the Catholic Church, or not. The second institution is freedom and equality: a religious community, and later on even a religious individual, is, on the one hand, free to profess his/her faith (in words, worship, etc.) and govern his/her affairs by his/her own laws within the limits of the state law set to protect the basic functions of the state; on the other hand, s/he is equal under the state law to other religious communities and individuals.

Freedom of belief and expression is a distinctly legal idea, which was informed by religious conflicts at the dawn of modern Europe (Picq, 2009). Meanwhile, the freedom has come to protect not only religious but also philosophical convictions (Foblets, Graziadei & Vanderlinden, 2010). The extension of the freedom protected by state law to philosophical convictions, and even to worldviews with little or no

philosophical underpinning, can be justified by the fact that they are all, more often than not, religions in Durkheim's sense. While the freedom is intentionally all-inclusive, in reality, often both what and from what the freedom protects is what legally counts as a religion (Padjen, 2010, pp. 477–514). Political community without religious tolerance, i.e. without minimal freedom of religious or other convictions, is not a (modern) state, although it may be – and often is – a state according to international law (e.g. Nazi Germany, Communist China).

(B) Human rights

Constitutional principles and/or norms of *jus cogens* as the basis for the identification and appraisal of the claims and decisions in sections 3B-C are selected from the following international instruments: the Universal Declaration on Human Rights (UDHR) (United Nations, 1948), the International Covenant on Civil and Political Rights (ICCPR) (United Nations, 1966a), the International Covenant on Economic, Social, and Cultural Rights (ICESCR) (United Nations, 1966b), the European Convention on Human Rights (ECHR) (Council of Europe, 1950) and the Charter of Fundamental Rights of the European Union (CFREU) (European Union, 2016). Several norms are written in identical or substantively similar formulations in more than one of these instruments (for reasons of economy, a selected norm is given in subsequent paragraphs in full or is abbreviated or given as a keyword, and is accompanied by references to its sources, listing the primary source first and indicating articles and sections by numbers only, e.g. UDHR 2; ICCPR 2(1), 26):

- Equality, non-discrimination (UDHR 2; see: ICCPR 2(1), 26; see ICESCR 2(2); ECHR Protocol 12; CFREU 20, 21).
- Everyone has the right to life, liberty and security of person (UDHR 3; ICCPR 6(1); ECHR 2(1); CFREU 2(1)).
- Freedom of thought, conscience and religion (UDHR 18(1); ICCPR 18(1); ECHR 9; CFREU 10).
- The right to hold opinions without interference (UDHR 19(1); ICCPR 19(1); CFREU 11(1)).
- The right to freedom of expression (UDHR 19(2); ICCPR 19(2); ECHR 10; CFREU 11(1)).

3. Identity claims

An identity is by definition integrative. It spans one's whole life. A woman or a man of integrity can change greatly, perhaps even substantially, by transition from one gender, worldview, or way of life to another. But the person changing has integrity only if they change for a reasoned conviction and by bearing the consequences.

Their integrity is provided by both actions and interpretations. The latter consists of self-interpretations, i.e. making sense of ourselves by grasping our lives in a narrative or story, and interpretations given by the community we live in (Taylor, 1989, pp. 36–38, 47). The integrity includes a respect for 'the demand that our natural surrounding and wilderness make on us' (Taylor, 1989, p. 513). Prelinguistic communication, such as eye-to-eye contact between parent and child (Taylor, 1989, pp. 524–525), demonstrates the unbroken continuum between our natural surroundings and linguistic interaction. The continuum is constitutive of the identity of a human being.

The balance that is instituted by the location of self not in 'the fastness of immediate private consciousness but in a cultural-historical situation as well' (Bruner, 1990, p. 107) by cognitive psychology or, even more radically, by the philosophy of ordinary language (Wittgenstein, 1958) is precarious. It can easily be tipped to reduce the self to a mere knot in the texture of human history, devoid of nature. Identity politics is a case in point.

(A) Identity politics

Identity politics is commonly seen in the West as *the* source of identity claims, which is why they are the major concern of this article. Identity politics 'has come to signify a wide range of political activity and theorizing founded in the shared experiences of injustice of members of certain social groups' (Heyes, 2020, s. 1; also see Edgar & Sedgwick, 1999, pp. 183–187). The groups are, most notably, second-wave feminists, racial minorities (primarily in the USA) and persons belonging to the LGBTQIA+ community, who came to prominence in the second half of the 20th century in Western liberal democracies (Heyes, 2020, s. 1). While the institutions of liberal democracy made identity politics possible, they have been unresponsive to identity claims, because liberalism cherishes individual rather than group liberty (although it protects corporate rights). Nonetheless, 'some commentators have suggested a possible rapprochement' between identity politics and liberalism (Heyes, 2020, s. 3).

One should expect an even more tense relationship between identity politics and the left, especially of Marxist provenance (Heyes, 2020, s. 4). However, identity politics has attempted to appropriate the standpoint theory of science from Marxism, defined as the theory that those who are oppressed have a privileged position to understand the social relations that constrain them (Simondo, 2001). By appropriating the standpoint theory, identity politics presents itself, and is widely accepted, as left liberalism, and even as the next in line to Marxism, especially in this century in Europe.

Of interest in this article are identity claims raised by feminists and the LGBTQIA+ community as two wings of identity politics. The claims are concerned largely with human reproduction and relate directly to issues of sex and gender. They are also indirectly related to the same issues by dealing with speech about the issues (*sp*. free-

dom of expression v. hate speech) and legal regulation of them (freedoms v. rights, public v. private, duties v. conscientious objection, etc.). The third wing of identity politics, the claims of racial minorities, is not of interest here; they deal with issues of a different kind, especially colonialism and racism (though some of them overlap).

(B) The Istanbul Convention

The boldest claims that have been made and implemented by the first two wings in Europe demand a complex protection of women against gender-based violence. The claims have been implemented by the Convention on Preventing and Combating Violence against Women and Domestic Violence, conventionally known as Istanbul Convention (IC), agreed in Istanbul on 11 May 2011 (Council of Europe, 2011). The IC, which entered into force on 1 August 2014 (Council of Europe, 2024), 'recognizes gender-based violence against women as a violation of human rights and a form of discrimination' (Council of Europe, 2011).

A comprehensive criticism objects that the IC does not provide objective criteria for recognizing gender-based violence and for that reason merely assumes that violence against women is based primarily on gender rather than sex (i.e. the fact that men are stronger and perhaps more aggressive than women), race, colour or ethnicity (Hrabar, 2018, pp. 25–27; cf. p. 29). The IC, article 14, reads as follows:

1. Parties shall take, where appropriate, the necessary steps to include teaching material on issues such as equality between women and men, non-stereotyped gender roles, mutual respect, non-violent conflict resolution in interpersonal relationships, gender-based violence against women and the right to personal integrity, adapted to the evolving capacity of learners, in formal curricula and at all levels of education.
2. Parties shall take the necessary steps to promote the principles referred to in paragraph 1 in informal educational facilities, as well as in sports, cultural and leisure facilities, and the media.

(C) Appraisal of the Convention

Even a summary view of the IC, *supra* at B, suffices to offer the following tentative legal appraisal: the IC, by obligating the vast majority of the population who identify as sexual to identify as gender, violates the right to equality and non-discrimination (UDHR 2; see ICCPR 2(1), 26; see: ICESCR 2(2); ECHR Protocol 12; CFREU 20, 21), the right to liberty and security of the person (UDHR 3; ICCPR 6(1); ECHR 2(1); CFREU 2(1)), the right to hold opinions without interference (UDHR 19(1); ICCPR 19(1); CFREU 11(1)), the right to freedom of expression (UDHR 19(2); ICCPR 19(2); ECHR 10; CFREU 11(1)) and, for some people, freedom of thought, conscience and religion (UDHR 18(1); ICCPR 18(1); ECHR 9; CFREU 10). By the same

token, a law obligating a single person, let alone a numerous group, who identifies/y as a particular gender to identify as a sex (female or male), also violates the right to equality and non-discrimination, and may violate the other rights stated in the preceding paragraph.

4. Culturalism as a condition

4.1. Worldview

Identity politics, and its claims described and appraised in section 3, can be seen, like any other social occurrence, as self-contained and unique. However, it can also be ascribed to a more inclusive worldview with traits of a religion (see section 4.2), termed culturalism. As a set of reasons for recognition of a reality and for action, culturalism can be seen as a condition that both motivates, as a *causa efficiens*, and justifies, as a *causa finalis*, identity politics and identity claims.

A worldview is a set of beliefs and demands. Left liberalism as a worldview, whose variant is identity politics, is labelled culturalism here (Padjen, 2017). The term parasitizes on cultural theory, verbally as well as conceptually (Edgar & Sedgwick, 1999). The tenets of culturalism are as follows: ‘humans are a product of culture in that nature, which had generated humans as well as other species, had been changed by humans to the extent that culture is the distinctly human nature and disponible for further change by humans’; ‘humans can know human nature’ in three ways – through science (understood to be a social construct), art and introspection; and ‘a human being not only can but ought to change human nature totally’ (Padjen, 2017, pp. 139–141). Hence, the artificial is preferred to the natural.

Culturalism as a worldview treats everything as a narrative. It is epitomized by a conversation between a TV presenter and a geophysicist: ‘What was that story at 06:24?’; ‘It was measuring 5.5 on the Richter Scale.’ While it would be preposterous to assert that culturalism is either the embodiment of certain philosophical ideas or, the opposite, a mere reflection of social or even natural forces, culturalism, especially its reduction of everything to narratives, can be traced to, as well as supported by, philosophy. For the purpose at hand, the philosophical dimension of culturalism is a construct with a purpose, rather than the interpretation of what a thinker or a group of thinkers have actually said or meant. The purpose is to pinpoint the assumption that underlies, or at least provides coherence to, the change in the widespread understanding of institutional facts, and the consequences of that assumption.

(A) The assumption

John Searle (1969, pp. 50–53) distinguished between institutional facts and brute facts in the 1960s. The latter are exemplified by force, chemical bonds and tectonic plates, and are all observer-independent, i.e. they exist independently of us. Institu-

tional facts are exemplified by baseball, citizenship or federations; they are all observer-relative, i.e. their existence depends on humans. Institutional facts are constituted by language. Yet the great sociologists – Weber, Simmel, Durkheim, Schutz – as well as great thinkers of the past took language for granted. Hence the difficulty of considering that 'observer-relativity implies ontological subjectivity, but ontological subjectivity does not preclude epistemic objectivity' (Searle, 2008, pp. 26–30). The change that Searle already noted in 1995 was that when he 'baptized some of the facts dependent on human agreement as "institutional facts" […] many people […] have argued that all of reality is somehow a human creation' (1995, p. 2). Hence, the construct that underlies, or at least provides coherence to, the change. It is the assumption that *language cannot say anything about the world but can nonetheless talk incessantly about itself as if it were not a part of the world*. This assumption may be seen as a prominent or even fundamental feature of modern philosophy. Of interest in this study is not the history of the idea but the possible reasons for and consequences of the assumption.

A *prima facie* reason is a reaction to the quest for the unity of science prominent in the late 19th and the early 20th centuries, i.e. to the self-fulfilling prophecy of construing enquiries into humans and society as part of a single science grounded in physics (Neurath, 1959). The reaction criticized such a quest and offered the idea of the social sciences, rooted in understanding social actions, which is beyond the reach of natural science (Giddens, 1974). A related reason for the assumption is the Procrustean need for a grand theory of society, and the realization that it is not possible.

The last such widely accepted theory in the West (that has spread all over the world) is Marxism. A reason why this has faded away even as a scholarly theory is that the Marxist (or any other) quest for social laws cannot be met, since strict social laws may never be discovered. 'Many of the important and influential factors relevant to social behaviour are environmental and belong to such field of investigation as biochemistry, physiology, physics, and geography' (Brown, 1984, p. 269).

Structuralist psychoanalytic theory, which has had a profound impact on contemporary thought, including feminism, insulates its subject matter from nature. The theory maintains that the ego, the autonomy of which is an illusion, is not biologically but symbolically determined; it is a psychological and social construct (Turkle, 1992, pp. 16–17; also see p. 235). It is both expressed and understandable by mathematics and poetry; contrary to Western philosophy and science, they are intertwined. Like poetry, mathematical creativity draws on the unconscious, and mathematics gives us a window back into the unconscious (Turkle, 1992, pp. 230–240). But psychoanalysis or linguistics are not science; the latter is expressed by equations (Turkle, 1992, pp. 236–237).

A step further, but not forward, is the idea that social sciences have been on the wrong path by trying to follow natural sciences rather than philosophy (Winch, 1990, p. 1 ff.). The latter is concerned with 'the question of how language is connected with reality. To assume that one can make a sharp distinction between 'the world' and 'the

language in which we try to describe the world' […] is to beg the whole question of philosophy […] [S]ocial relations are expressions of ideas about reality' (Winch, 1990, pp. 11–13, 23). Hence, 'the central problem of sociology, that of giving an account of the nature of social phenomena, in general, itself belongs to epistemology […] [it] is really misbegotten epistemology' (Winch, 1990, p. 43). This is how philosophy, which had been reduced to an underlabourer of science (Winch, 1990, pp. 3–7), has been resurrected by philosophy whose central concern is language as a social science. It is more appropriate to state that such a discipline, which understands its subject matter and denies that it can be explained causally by social laws (Winch, 1990, pp. 75–86, 111–116, 123–125; see criticism in MacIntyre, 1971), is, in its own terms, closer to history than to sociology (Wright, 1971, pp. 139–141). Thus, the need for a grand theory of society after Marxism has been met from two very different sides – 'in a pincer movement' (Winch, 1990, p. 1), by a step back into philosophy whose whole world is language.

(B) Consequences

The consequences of the assumption are a rejection of the correspondence theory of truth as metaphysical, and a recent acceptance of consensual theories of truth (Apel, 1973; Habermas, 1973; see also Skirbekk, 1977). The problem is that the consensus achieved by a correspondence of the syntactic and/or semantic dimensions of utterances only does not make them different from correspondence theories. A consensus can be valid if it includes pragmatic dimensions, which consist of the whole, consisting of language and the actions into which it is woven (Wittgenstein, 1958, s. 7). Practical philosophy devoid of theoretical considerations does not and cannot answer the prejudicial question of moral, political and legal enquiries, 'who is a person?' This is to say that a valid consensus presupposes the correspondence of actions as well as of words. It can only be established by a correspondence that, however naively, assumes the external world – including language, actions, artifacts, natural facts and, above all, human persons (rather than merely legal subjects) – does exist independently of language 'in the head' and can be known.

However, a reason for the assumption that language cannot say anything about the world but can nonetheless talk incessantly about itself, as if it were not a part of the world, may be the postmodern subject who is in pain (Conklin, 1998). She may accept that language about pain is public (Wittgenstein, 1958, s. 243–315), but her pain is nonetheless private, because it is utter loneliness, like a descent into hell (Ratzinger, 1968, pp. 247–255). It follows that language can talk about but not express or correspond to pain. Language is self-referential. Pain is the postmodern thing in itself. Perhaps our incessant e-communication is not an addiction but an attempt to ascent from loneliness.

4.2. Religion

Identity claims and corresponding legal decisions on human reproduction may also be ascribed to left liberalism as a philosophical conviction (Padjen, 2017, pp. 126–130). It cannot count as scientific; even a natural science, which is a model for social sciences, is inevitably underdetermined by facts and is value-laden (Hesse, 1978). For that reason, sciences are prone to sliding into speculation. What makes sciences different from speculations is that the former are to a significant degree determined by facts, and not overdetermined by values.

'Underdetermined', 'determined', and 'overdetermined' are inevitably vague terms, which cannot be made less so by a theory. All that can be done is to examine every single set of knowledge claims that belong to a science, or aspire to, in the light of the doctrine of the mean (see section 1C). No more reliable standard can be found if one admits the following tenet: it is possible to know piecemeal by everyday experience and sciences, both natural and social, but not comprehensively and systematically, the part of nature and the part of nurture in human development; hence, the allegedly comprehensive and systematic knowledge about the relationship between nature and nurture is speculation. Extreme instances of such speculations are, on one side of the spectrum, Ulpinianus' dictum '*ius naturale est quod natura omnia animalia docuit*', i.e. '*ius naturale* is that which nature has taught all animals' (*The Digest of Justinian*, 2011, 1.1.10.1), and, on the other, the claim that even laws of physics are a social construct (see criticism in Hacking, 2001). The doctrine of the mean, while not capable of finding a perfect balance between the two extremes or between other arguments for nature and for nurture, can indicate excess.

Indicators of a grave excess may be acceptable to persons espousing different and even opposing worldviews. If they are not, it is a strong indication that at least one of the worldviews, in addition to being speculative, has the structure of philosophical convictions akin to a religion (see section 1A). It immunizes its core creed against outside arguments by a circular chain of assumptions whose every single link supports all the others.

The claims described and appraised in sections 3B-C are speculations well beyond the moderate. Such is, first and foremost, the claim that sex is either irrelevant or reducible to gender, which is a social construct, and that, for that reason, men are made mean to women by nurture rather than by nature and can be tamed by a social upheaval of earthquake proportions. A comparable speculative and/or immoderate claim, made by conservatives, is that gender either is irrelevant or is reducible to sex, because the latter is a natural given. None of these claims can be backed by sufficient scientific evidence, and for that reason, their descriptive parts (the conditions and objects of application) cannot be used as descriptions of the facts that are suitable for legal regulation. What is appropriate is to respond by legally regulating them as

religious, philosophical or other religious-like convictions. They are all entitled the same legal protection as religious convictions.

Conclusions

If every single individual has human dignity because s/he is not merely a part but also a creator of the universe, it is necessary to find multiple balances between a human, their community and humankind, and between every single instance of them and nature, in conservation as well as in creation. Philosophy and law are two common responses to the challenge. The doctrine of the mean may reconcile them to a degree. Constitutional principles and/or *jus cogens* as the basis for the identification and appraisal of identity claims are of two kinds: historically, the secularization of the modern European state and, dogmatically, international and European human rights principles.

By obligating the vast majority of the population who identify as one sex to identify as a gender, the Istanbul Convention violates the rights to equality and non-discrimination, liberty and security of the person, freedom to hold opinions without interference, freedom of expression and, for some people, freedom of thought, conscience and religion. The claim made by the IC that sex is either irrelevant or reducible to gender, as well as the opposite claim that gender is reducible to sex, is not and cannot be backed by nearly sufficient scientific evidence; it is a speculation of a religious nature. For that reason, descriptive parts of the claims cannot be used descriptions of either condition or consequences of legal regulation.

The IC should be revised accordingly.

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