Preface

IS GLOBALIZATION THE CRITICAL TURNING POINT FOR THE CURRENT HUMAN RIGHTS TALK?

It is commonly known and accepted that nowadays human rights are appraised, acknowledged, and protected by numerous international Declarations, Conventions, and Organizations by national Constitutions and Charters. Ever since the Enlightenment, human rights have taken a gradually elevating yet winding path and have transformed by leaving behind their natural, theological origin, to the rights of the subject of secularization, a free, autonomous, and valued individual. During this process the protection and acknowledgement of rights has occupied philosophy, ethics, law and legal theory, history, politics, and human rights movements. Under these multiple lenses, the human rights doctrine has been enriched normatively, teleologically, and empirically.

Nevertheless, despite their current dominance on the public, social, and political dialogue one could wonder whether this Glorious Evolution of rights that has marked especially the post-Holocaust Era is indeed flawless. Thus, we must pay in mind that rights bear also a dark side, as they have been understood in the past as class privileges (e.g. the right to property), as means of occupying the freedom of minorities, as means of empowering an egoistical individual, and as rivals of democracy and social and political equality.

The question that lays in the epicenter of any modern debate on rights is the dynamic effect of Globalization, the rise of Technology and Cyberspace on human rights. This is the central question that the present book is trying to provide an answer for. Globalization, as an era of a new metaphorical dimension of space and time is in fact a turning point for rights? Does it alter the classic divisions, categories, notions and traditional approaches that we have as far as rights are concerned? As a whole, the chapters presented in this volume adopt the opinion that Globalization along with its counterparts Technology and Cyberspace, in fact signify a whole new era for the human rights talk, one that we must not underestimate or overvalue.

This era is characterized on the one hand by new tensions, challenges, and risks for human rights as well as on the other by the empowerment of the individual via the acknowledgment of novel rights and liberties (e.g. the data protection). It is also characterized by an overcoming use of the human rights doctrine in our everyday lives, in national and especially international politics. Someone could say that the era of Globalization has risen the most hidden and yet important dynamic of the human rights notion: their ability to justify political claims and arguments and to legitimize arguments and ideologies.
GLOBALIZATION, TECHNOLOGY, AND THE CHALLENGES OF THE DIGITAL ERA AS A “WOMB” OF HUMAN RIGHTS

The birth of new rights is a multifaceted dynamic procedure. For some, it is closely connected with the idea of positive law, since a right can by lawfully claimed only as far as it is normatively enshrined in a national Constitution or an International Charter or Convention. Thus, its birth is in fact captured in the momentum of its legal recognition. This could be considered as a “positive” understanding of the origin of rights. Under this notion, the very value of rights lays not in the liberties that guarantee but in their “contractual,” stable, and invariable character. For others, the birth of rights is connected with the idea of them being a product of social and political processes, revolutions, political and social movements, and clashes between dominant and revisionary parts of society, between majorities and minorities. This is the approach of rights as “claims,” as means of achieving social solidarity and political inclusion and has strong communicative, discourse and political elements.

Under a third “ethical” approach, rights are born on the ground offered by their legitimizing basis, namely ethical principles, such as the human dignity, equality, freedom, and autonomy. From a fourth point of view, closely connected with all the previous ones, rights are born due to their specific, dynamic judicial acknowledgement on the basis that they can be derived from legal sources, mainly Constitutional norms, that reflect a new, revising social understanding and that they can be conceptually deducted by previously acknowledged rights or principles (such as the right to personality or to privacy). This is a “procedural,” neutral understanding of the matter of the “birth” of rights that emphasizes on their open, evolving under given social and political circumstances, nature.

Nevertheless, the question is whether the Globalization and its two counterparts the Digital and Technological era provide us with a novel fertile basis to construct a new approach on the matter of the birth of rights. This is a subject introduced in the first part of this book entitled. In fact, what is underlined in the relevant chapters is the role of the risks and dangers that Globalization poses to the freedom and identity of the individual as far as the introduction of a total new category of rights, the “digital” rights is concerned. In the same line of thinking, one could argue that new rights are emerging even from traditional notions such as privacy, because of the pressure and endangerments that the Digital and Technological era sets against the personal autonomy of the individual. Thus, Bobbe Cummins Colburn and Julie Nolin in their chapter, “Balancing Digital Freedoms and Digital Liberties,” present the alterations of the notion of citizen in the Technological era, by providing an account of the risks and dangers that he/she confronts in the private and public sector.

Two new rights are presented in the chapters of Maria Giannakaki and Christina Akrivopoulou, “The ‘Right to be Forgotten’ in the Era of Social Media and Cloud Computing” and, “The Right to Public Privacy under Surveillance: CCTV Technology and the Myth of Public Security.” Thus, the “Right to be Forgotten” is a notion adapted to protect the individuals informational autonomy and the loss over the control of personal data in the complex framework set out by the cloud computing technologies (Web 2.0, Web 3.0). In the final chapter of this part, the “Right to Public Privacy” is accounted as a specific and dynamic guarantee of the individual’s political autonomy and political participation in the era of CCTV surveillance.
PRIVACY AS THE DOMINANT RIGHT OF THE DIGITAL AND TECHNOLOGICAL ERA

As far as the protection of human rights in the Era of Globalization, Technology, and Digital Communication is concerned, the right to privacy definitely stands out as the epicenter of the relevant dialogue. Though acknowledged in the international bibliography from the end of the 19th century, due to the famous article of Samuel D. Warren and Louis D. Brandeis, “The Right to Privacy,” which was published in the Harvard Law Review in 1890, the right to privacy has never enjoyed the protection, the normative acknowledgment and esteem that enjoys nowadays.

The characteristic property that places the right to privacy in the center of the evolving debate regarding the endangerment of personal autonomy in the modern globalized era is its unique capacity to protect our inner self. The right to privacy protects the interiority, the intimacy of the person, in fact the very ability of the individual to form his/her decisions, to shape his/her choices and freely enjoy his/her autonomy. Consequently, the right to privacy is called upon in order to shield the individual from the penetrating for autonomy, effects of the modern ICT and surveillance technology. The importance of this right for the protection of the individual against the information technology and the cyberspace is illustrated in the creation of a new right, the right to protect the informational autonomy and the control over the personal data of the individual which derives from the ethical notion of privacy and enjoys protection in a national and a supranational level (especially in the European Union).

Thus, the right to privacy and especially the right to protect the individual’s control over his/her personal data is the subject of the second part of this book. Thus, William Bülow and Misse Wester in their chapter, “The Right to Privacy and the Protection of Personal Data” illustrate the possible harmful for the privacy of the individual effects from the use of ICT, specifically exploring the problems of control and consent over the use of our personal information. As the two authors conclude the moral burden of ensuring and protecting privacy is mainly a matter for policy makers and not the individuals him/her selves.

The emergence of a right to digital privacy in the European Community legislation is the main subject of the Clara Marsan Raventós chapter, “Data Retention and Security in Europe: Towards a New Right to Digital Privacy.” The author by describing today’s environment of telecommunications data is trying to provide the proper answers regarding the permanent tension that exists between privacy and security. Nora Ni Lonedaín makes an effort to evaluate the harmonization of the personal data retention legislation among the state members of the European Union in her chapter “Assessing the Evaluation of the EC Data Retention Directive.” The consequences for the right to privacy as well as the relevant uneasiness of the national legislators are pointed out by the author.

BETWEEN AUTONOMY, FREEDOM, AND LIBERTY: THE ENDANGERMENTS OF THE ICT PRACTICES

In his book, The Risk Society, printed in 1992, Ulrich Beck accounts of the notion of risk in a modernity occupied by Globalization as well as the ways in which the society is organized to confront them. The particularities of these risks in the era of Globalization are two: their origin since they originated both in the public and the private sector (e.g. the media, cyberspace, corporations sector) and their penetrating for the autonomy of the individual character. Though critical, nevertheless, the protection of the subject’s
autonomy is difficult to be shielded against the various endangerments caused by Globalization and the use of ICT Technology mainly because of the difficulty to enforce the proper legislative frameworks in a supranational environment.

The important question however is the following. What is the exact nature of the endangerments that our personal autonomy is confronting under the unique circumstances of Globalization? Autonomy and freedom represent a different aspect of an individual’s ability to form decisions and make choices than the one represented by the notion of liberty. One can enjoy liberty without being autonomous meaning that his/her rights may be acknowledged and he/she is not suppressed in their enjoyment. Nevertheless one can be enjoying this liberty yet lacking in autonomy, in case he/she has been brainwashed, manipulated, indoctrinated, or dominated by conventionalism and conformity before choosing to enact the capacities that his/her liberty entails. One must observe that the main target of the risks that this modern Globalized era and the use of ICT Technology generate is the autonomy of the individual even in those cases that his/her liberty remains intact. In this point lies the difficulty in shielding the freedom of the individual against the risks and endangerments that the Digital and Technological era brings upon him/her, since in many cases those threats are in fact difficult to indentify and thus dealt with effectively.

The problems, risks, and endangerments that the various ICT practices generate for human rights are examined in the third part of this book. In her chapter, “Private Power and New Media: The Case of Corporate Suppression of Wikileaks and its Implications for the Exercise of Fundamental Rights on the Internet,” Angela Daly examines the implications for the freedom of expression from the emerging state-private sector collaborations in the internet, as represented in the WikiLeaks case. A complex argument concerning the expansion of pubic broadcasting organizations to new media markets within the European Union state members is presented by Konstantina Bania in her chapter, “State Aid Control in the Broadcasting Sector: Has the Right Balance been struck between Competition and Public Sector Broadcasting?” Namely, the author presents the effects that the relevant Commission state aid practice has brought about on competition and public service broadcasting.

The multifaceted, ethical, and normative subject of biometrics is presented in the chapter of Raymond Anthony, Bogdan Hoanca, and Kenrick Mock, “Biometric Authentication in the Digital Age: Rights, Risks, and Responsibilities.” The authors point out the problems that can be generated from the use of such a technology and the possible risks posed against the individuals, e.g. discriminations, social exclusion. In the last chapter of this part of the book, Shalin Hai-Jew presents the problems created by the evolving pervasiveness of Information and Communication Technologies (ICT) in our daily life. In her chapter, “The Better Part of Valor: Meeting Current Human Needs Online without Compromising Future Selves,” she specifically examines the consequences of ICT for the well being, reputation, privacy, and autonomy of the individuals.

E-GOVERNANCE AND E-DEMOCRACY FOR SOCIAL INCLUSION AND DEMOCRATIC PARTICIPATION

The use of technology as a mean for facilitating political participation and enhancing the political dialogue is the basis for the upcoming notions of e-Democracy and e-Government. For many, the use of technology in the service of governance and democracy is eo ipso positive, since it enables new forms of political engagement, improves transparency and the accountability of the public sphere. Yet, the counter effects of the use of technology in the public sphere should not be underestimated. Technology
in the use of democracy and governance can introduce new forms of social exclusions for those unable to have free or full access to ICT technologies, namely the cyberspace. Moreover, one could observe that the extensive use of technology may transform political dialogue, and alter the political sphere not always in a constructive or fruitful manner. Thus, technology can enhance activism and political criticism, freedom of expression and information (e.g. blogosphere), but on the other hand, it can nurture defamation, anonymous speech, and undermine the role of parliament and the traditional parliamentary accountability practices. The “direct” character of the engagement in political discourse can also be seriously doubted, since ICT technologies can only offer a virtual and not real and actual experience of public participation.

From a quite different point of view, one could note that the compound conditions of Globalization are raising issues as far as the symbolic force of human rights and the use of ICT technologies as a means to bound personal autonomy and freedom are concerned. The “international war against terror” is the characteristic example of governance without borders in the Globalized era, where the symbolic force of human rights represents the legitimating basis for the introduction of extremely strict for personal freedom and liberties normative frameworks. However, terrorism represents one of the most serious threats against modern liberties (namely freedom of movement); the use of ICT technologies, in surveillance is consequently leading to the restriction and suppression of personal and political freedom.

The complex relation between technology, democracy and social inclusion as well as the tensions that the “war against terror” impose on the human rights are presented in the fourth part of the book. In their chapter, “e-Government for Social Inclusion,” Marios Papandreou and Naoum Mylonas are exploring the relationship between the concepts of social inclusion and e-government as an aspect of ICT technologies. Based on the notion of access to ICT technologies the authors reach the conclusion that e-government can in fact achieve and maximize social inclusion.

In her chapter, “Addressing Social Inclusion via e-Democracy Applications: Which Role for Human Rights?” Evika Karamagioli analyses the role of ICT technologies in the democratization of political process, the enhancement of political process and the energetic involvement of the citizens in the political dialogue. The symbolic use of the human rights doctrine in the “war against terror” examines Shalin Hai-Jew in her chapter, “Human Rights, the Global War on Transnational Terror, and the Mixed Roles of ICT: A Meta-Analysis.” The author illustrates the mixed roles of ICT in supporting a global human rights regime with the ability to underpin the global war on transnational terror.

GLOBALIZATION AND THE POLITICS OF DIFFERENCE: MIGRATION, CULTURAL IDENTITIES, AND MINORITIES

A book concerning the risks and endangerments that globalization poses to the individual’s personal autonomy and freedom could not be completed without an analyses of the politics of “difference,” the subject of migration, cultural identity, and minorities, which are extremely threatened in the framework of globalization. Although globalization appears to enhance multiculturalism, it, nevertheless, has not yet found a way to resolve the many, complex issues that derive from migration and the co-existence of majorities and minorities, such as discriminations, xenophobia, racism, and the need to protect the group and individual cultural heritage and identity. The subject of the “Other” is central in a globalized era based in cultural correlation, exchange, and communication. Yet in many cases, it appears as a matter of clash and conflict and not as a subject of solidarity and peaceful co-existence. Thus, emblematic from this point of view is the scarf debate in Turkey, Germany, and France, the recent Roma deportations in France.
In its addendum, in the last, fifth, part of the book, the problems of migration, cultural heritage, identity building, and the rights of minorities are analysed. In his chapter “The Concept of the ‘Other’: Migration, Human Rights, and Formalized Identity Building Processes in Europe,” Daniele Ruggiu examines the concept of freedom of movement under the lenses of the jurisprudence of the Courts of Strasbourg and Luxemburg in order to approach the structural malfunctions in the regulation and control of migratory phenomena in Europe. Cristina Contartese, in her chapter, “The (Rebuttable) Presumption of the European Union Member States as ‘Safe Countries’ under the Dublin Regulation,” analyses the Dublin Regulation of the European Union in an effort to define the notion of “safe country” as far as asylum seekers in the state members of the European Union are concerned.

In an International Law perspective, Athanasios Yupsanis in his chapter, “Cultural Property and Identity Issues in International Law: The Inadequate Protection of the Cultural Heritage of Indigenous People,” explores the International Law regime concerning the cultural property and thus the cultural identity of the indigenous people. His main conclusion is that the present International Law regime regarding the protection and repatriation of stolen and illegally exported cultural property presents serious deficiencies, resulting in an inability to guarantee the indigenous people rights to identity and cultural heritage in the era of Globalization. In the last chapter of the book, Knut Fournier’s “Inequality in the Freedom of Movement in the Union: An Analysis of Roma’s Deportation in France,” the author examines the subject of inequality of freedom of movement in the European Union by focusing in the massive deportations of Roma minorities to Bulgaria and Romania and its consequences for the protection of fundamental rights and freedoms in the European Union.

A SHORT BIBLIOGRAPHICAL GUIDE ON THE RIGHTS VS. GLOBALIZATION CONTROVERSY


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