

Sous la direction de
Géraldine AÏDAN et Émilie DEBAETS

L'identité juridique de la personne humaine

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L'identité juridique De La Personne Humaine

Rachel Sandford



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LA PERSONNE HUMAINE EN DROIT Catherine Levy, 2000 LA PERSONNE HUMAINE CONSTITUE EN DROIT UN CONCEPT CENTRAL ET INDEFINI CERTES LE DROIT CONNAIT DIFFERENTES NOTIONS COMME CELLES DE SUJET DE DROIT DE PERSONNALITE JURIDIQUE OU D'ETAT DES PERSONNES POUR AUTANT LA NOTION DE PERSONNE MEME SI A L'EXCEPTION DES PERSONNES MORALES RECOUPE A PEU PRES CELLE D'ETRE HUMAIN REVELE UN CERTAIN FLOU DES QUE L'ON S'APPROCHE DES LIMITES DE LA VIE LA CONCEPTION ET LA MORT AINSI L'ETRE SIMPLEMENT CONCU NE BENEFICIE PAS DES MEMES PREROGATIVES QUE LA PERSONNE NEE VIVANTE ET VIABLE ET CERTAINS DROITS SEMBLANT DEPASSER LA VIE HUMAINE NOTAMMENT LE RESPECT DE LA DIGNITE CETTE RECHERCHE PROPOSE UNE ANALYSE DES INSTRUMENTS AU SERVICE DE LA PERSONNE AFIN DE DETERMINER A TRAVERS LEUR FONCTIONNEMENT QUELLE NOTION DE PERSONNE EST A L'OEUVRE DANS L'ESPACE JURIDIQUE ELLE TEND ENCORE A S'INTERROGER SUR L'EXISTENCE D'UN CONTENU SUBSTANTIEL A LA NOTION DE PERSONNE ET SUR L'ARTICULATION ENTRE LA PERSONNE SUJET DE DROIT ET LA PERSONNE SUJET DE DIGNITE IL EN RESULTE EN PREMIER LIEU QUE LA NOTION DE PERSONNE EST UNE NOTION FONCTIONNELLE LA PERSONNE ETANT CONSTITUEE EN DROIT PAR LA SOMME DE SES DIFFERENTS ATTRIBUTS ET NE REpond A UN CONTENU SUBSTANTIEL AUSSI LA PERSONNE RELEVET ELLE EN DERNIERE INSTANCE D'UNE QUESTION DE POLITIQUE JURIDIQUE EN SECOND LIEU SI LE SUJET DE DROIT EST LE LIEU D'IMPUTATION DES DROITS ET DES DEVOIRS LE SUJET DE DIGNITE SURGIT DANS L'HYPOTHESE D'UNE INEGALITE FONDAMENTALE ET A POUR FONCTION DE LIMITER L'EFFICACITE DU CONSENTEMENT DE CE SUJET DE DROIT SOUMIS AU POUVOIR DE L'AUTRE LE SUJET DE DIGNITE VIENT DONC DOUBLER LE SUJET DE DROIT ET LIMITER SA LIBERTE D'ENGAGEMENT Le principe

juridique de dignité de la personne humaine David Lambert, 1999

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Géraldine Aïdan, Emilie Debaets, 2013-07-01 L'identité juridique de la personne humaine n'cessite aujourd'hui d'être revisitée aux critères objectifs traditionnels nom pr nom nationalité renforcés par des nouveaux critères biologiques et technologiques données biométriques empreintes génétiques s'adjoignent de plus en plus des critères subjectifs volonté sexe psychique sentiment d'appartenance pour déterminer l'identité de la personne humaine Sur chacun des aspects de l'identité de la personne humaine une double analyse juridique et extrajuridique a ainsi t men e

Le Principe juridique de dignité de la personne humaine Michaël Varescon, 1998

Le concept de personne humaine en droit public Xavier Bioy, 2003 Le droit public international depuis 1945 et interne depuis 1986 multiplie au sommet de la hiérarchie des normes les références la personne humaine dignité primauté principes d'ontologiques libre développement de la personnalité Cette thèse tente de définir les contours et la fonction de ce concept juridique aussi puissant que souple Après avoir distingué et lié entre eux le concept de personne humaine et ceux de personnalité juridique et d'être humain l'auteur dresse le mécanisme de cette nouvelle

personnalité pour en montrer les effets Agissant comme support le concept de personne humaine valorise l'unité des dimensions individuelle, intime et liberté corporelles et sociale identité et liberté personnelles Les notions controversées de dignité et de corps font ainsi l'objet d'un éclairage intéressant qui prolonge le débat contemporain relatif à l'évolution du sujet de droit la façon dont notre système juridique protège une certaine image sociale de l'individu *L'identité juridique de la personne humaine* Aidan|Emilie Debaets Geraldine Aidan (Debaets),2013 L'identité juridique de la personne humaine nécessite aujourd'hui d'être revisitée aux critères objectifs traditionnels nom par nom nationalité renforcés par des nouveaux critères biologiques et technologiques données biométriques empreintes génétiques s'ajoutent de plus en plus des critères subjectifs volonté sexe psychique sentiment d'appartenance pour déterminer l'identité de la personne humaine Sur chacun des aspects de l'identité de la personne humaine une double analyse juridique et extrajuridique a ainsi été menée **Essai sur la notion de personne en droit privé** Anaïg Le Noan,2004 Le droit a une vision exclusivement abstraite de la notion de personne tout individu humain n'étant vivant et viable va reconnaître la personnalité juridique dont la manifestation principale est de lui reconnaître une aptitude générale à être sujet de droits subjectifs et d'obligations Le droit ne se soucie dès lors de l'individu qu'en tant que support abstrait de droits qualitatifs qui l'autorise à intégrer le rapport juridique Dans cette hypothèse la présence du corps importe peu si son apparition est nécessaire en tant qu'il permet de partir duquel le droit va se saisir de l'individu nouvellement paru dans une perspective d'intégration juridique c'est en fonction du rôle qu'elle occupe sur la scène juridique qu'il se préoccupe de la personne Pour autant cette vision apparaît par trop restrictive au vu du contexte contemporain la société s'est emparée du corps l'unité de la personne juridique et de son support corporel est rompue Le corps humain est devenu de fait progressivement susceptible d'appropriation tant objet d'investigation scientifique tant livré aux rigueurs du plaisir Plus encore c'est du processus de construction de la vie humaine dont on dispose et que l'on manipule sous le couvert d'intérêts divers Il importe dès lors de reconsidérer une notion classique de la personne qui s'avère impuissante à fendre le corps contre les assauts contemporains qu'il subit l'apparition des concepts de personne humaine et d'être humain en témoignent Il s'agit peut-être de renouer avec l'origine de ce concept d'en forcer la compréhension au vu des éléments nouveaux de fait et de droit dont on dispose On doit en effet prendre conscience d'une réalité toute atteinte qu'elle qu'en soit la nature qui est portée au corps humain se reporte sur la personne qu'il supporte Ainsi c'est de la conception du corps dont va dépendre la conception de la personne Plus encore il nous appartient de redécouvrir l'Humain dans le cadre d'un système juridique qui s'est asphyxié faute de s'en être souci Ce n'est plus le devenir de la personne individuelle dont il est question mais de celui de l'humanité toute entière Sa survie dépendra d'un constat si la personne est au service du droit celui-ci doit néanmoins s'incliner devant la nature humaine dont elle est porteuse qui se matérialise au moyen de l'apparition du corps et qui en tout état de cause devrait demeurer insaisissable *La dignité de la personne humaine et le droit* Luc Perrouin,2000 La dignité de la personne humaine s'impose au droit plus que le droit ne l'impose parce qu'elle constitue l'un de ses fondements et l'une de ses finalités La

notion offre donc une résistance naturelle au raisonnement juridique déductif Le respect essentiel de l'humanité de l'homme ne procède pas d'une norme positive fut-elle une norme suprême de droit constitutionnel La norme de dignité ne s'inscrirait pas dans l'édifice d'une hiérarchie normative elle serait plutôt transversale l'application de toute norme positive En conséquence il fallait retenir l'hypothèse d'une norme non critiquée de dignité dont l'existence serait insaisissable au moment de l'application du droit manifestée dans une rationalité prudentielle de la fonction de juger attentive à écarter les solutions contraires au fondement personnaliste de l'ordre juridique

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Table of Contents Lidentiteacute Juridique De La Personne Humaine

1. Understanding the eBook Lidentiteacute Juridique De La Personne Humaine
 - The Rise of Digital Reading Lidentiteacute Juridique De La Personne Humaine
 - Advantages of eBooks Over Traditional Books
2. Identifying Lidentiteacute Juridique De La Personne Humaine
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Lidentiteacute Juridique De La Personne Humaine
 - User-Friendly Interface
4. Exploring eBook Recommendations from Lidentiteacute Juridique De La Personne Humaine

- Personalized Recommendations
 - Lidentiteacute Juridique De La Personne Humaine User Reviews and Ratings
 - Lidentiteacute Juridique De La Personne Humaine and Bestseller Lists
5. Accessing Lidentiteacute Juridique De La Personne Humaine Free and Paid eBooks
 - Lidentiteacute Juridique De La Personne Humaine Public Domain eBooks
 - Lidentiteacute Juridique De La Personne Humaine eBook Subscription Services
 - Lidentiteacute Juridique De La Personne Humaine Budget-Friendly Options
 6. Navigating Lidentiteacute Juridique De La Personne Humaine eBook Formats
 - ePub, PDF, MOBI, and More
 - Lidentiteacute Juridique De La Personne Humaine Compatibility with Devices
 - Lidentiteacute Juridique De La Personne Humaine Enhanced eBook Features
 7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Lidentiteacute Juridique De La Personne Humaine
 - Highlighting and Note-Taking Lidentiteacute Juridique De La Personne Humaine
 - Interactive Elements Lidentiteacute Juridique De La Personne Humaine
 8. Staying Engaged with Lidentiteacute Juridique De La Personne Humaine
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Lidentiteacute Juridique De La Personne Humaine
 9. Balancing eBooks and Physical Books Lidentiteacute Juridique De La Personne Humaine
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Lidentiteacute Juridique De La Personne Humaine
 10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
 11. Cultivating a Reading Routine Lidentiteacute Juridique De La Personne Humaine
 - Setting Reading Goals Lidentiteacute Juridique De La Personne Humaine
 - Carving Out Dedicated Reading Time
 12. Sourcing Reliable Information of Lidentiteacute Juridique De La Personne Humaine

- Fact-Checking eBook Content of Lidentiteacute Juridique De La Personne Humaine
- Distinguishing Credible Sources

13. Promoting Lifelong Learning

- Utilizing eBooks for Skill Development
- Exploring Educational eBooks

14. Embracing eBook Trends

- Integration of Multimedia Elements
- Interactive and Gamified eBooks

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