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Remembering Stefano Rodotà

[±]NEW TECHNOLOGIES AND HUMAN RIGHTS FACTS, INTERPRETATIONS, PERSPECTIVES

A REPORT FOR A FUNDAMENTAL RIGHTS AGENCY'S DISCUSSION

Stefano Rodotà

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I. INTRODUCTION

One of the FRA's long term objectives is to: "identify and analyse major trends in the field of fundamental rights". One major trend at the present time is the relationship between scientific and technological innovations and fundamental rights. An analysis of this relationship has become even more important after the entry into force of the Treaty of Lisbon, which, by giving the Charter of Fundamental Rights the same legal force as the treaties, provides a more solid and inescapable legal basis.

In these cases, we usually speak of "new rights", but this expression can be dangerously ambiguous. It creates the impression that rights are capable of constant renovation, to satisfy at any moment a reality that is constantly changing. At the same time, however, it also gives us a glimpse of a contrast between rights that are new and those that are old, as though the most distant are consumed by time, leaving the field open to a better, more up-to-date and glossier product. Rights are spoken about in terms of "generations", and this terminology, identical to that used in the computer world, might suggest that each new generation of tools takes the place of the one that came before, which, having become obsolete may be definitively abandoned. The Charter, however, takes a different standpoint, underlining the indivisibility of rights, and therefore a process of accumulation and integration, not replacement. Consequently, when we look at rights that relate more

[±] The editorial team of the Comparative Law Review has decided to publish this contribution of Professor Stefano Rodotà to celebrate him on the Fifth anniversary of his passing. Both papers engage with new technology, identity, data and legal rules. It seems the best way to remind how important his work is within the academia.

directly to science and technology, we need to reconstruct and interpret all recognized rights as a whole.

More generally, it should be noted that today, in a global dimension in which sovereignty often disappears and uncontrollable powers are manifested, it is precisely fundamental rights that represent the only visible counterbalance and the only instrument that is in the hands of citizens. From this point of view, the European Union, which represents the largest supranational area in the world, can build its own model of balance and distribution of power. We should not forget that the process of drafting the Charter started in a decision taken in the Cologne European Council of June 1999, which opened with these particularly demanding words: "The protection of fundamental rights is a founding principle of the European Union and the essential condition of its legitimacy". This means that the construction of Europe cannot be left solely to market logic but its legitimacy comes from the fact that it is built on rights. This also implies that the European Union has a responsibility and a great opportunity to take the lead in the protection of fundamental rights.

Starting from this premise, we might conclude that, with the (supposed) coming to an end of ideologies and the demise of traditional common references, fundamental rights can be seen as the only common reference for the world to follow.

II. THE PERSPECTIVE OF FUNDAMENTAL CHARTER OF RIGHTS

In the Preamble of the Charter it is stated that "it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and *scientific and technological developments".* And, in general, it is stated that the Union "places the individual at the heart of its activities". The relationship between the individual, fundamental rights, science and technology is particularly clear in Articles 3 and 8, which may also be seen as a specific development of the statement that opens the Charter as a whole: "Human dignity is inviolable. It must be respected and protected". Thus, the process of "constitutionalization of the person", already clearly stated in many national constitutions, is expressly brought to completion.

In Article 3, regarding the "right to the integrity of the person", the Charter identifies four principles of reference, which reflect broadly held viewpoints: consent of the person concerned, prohibition on making the body an object of profit, prohibition of mass eugenics, ban on reproductive cloning. According to these indications, therefore, the

respect and dignity of the person is incompatible with seriality or market logic and, above all, it gives all concerned full independence of decision. The basic principles in the field of bioethics are thus established.

Moreover, the undeniable fact that our life is now becoming a continuous exchange of information, that we live in a continuous stream of data, means that data protection is extremely important, bringing it to the centre of the political and institutional **system.** This evolution is clearly visible by comparing the EU Charter with the provisions made in the 1950 Convention on Human Rights of the Council of Europe. Under Article 8 of the Convention, "everyone has the right to respect for his private and family life, his home and his correspondence". Conversely, the Charter draws a distinction between the conventional "right to respect for his or her private and family life" (art. 7), which is modelled after the Convention, and "the right to the protection of personal data" (art. 8), which becomes thereby a new, autonomous fundamental right. Moreover, article 8 lays down data processing criteria, expressly envisages access rights, and provides that "compliance with these rules shall be subject to control by an independent authority".

The distinction between right to respect for one's private and family life and right to the protection of personal data is more than an empty box. The right to respect for one's private and family life mirrors, first and foremost, an individualistic component: this power basically consists in preventing others from interfering with one's private and family life. In other words, it is a static, negative kind of protection. Conversely, data protection sets out rules on the mechanisms to process data and empowers one to take steps — i.e., it is a dynamic kind of protection, which follows an item of data in all its movements. Additionally, oversight and other powers are not only conferred on the persons concerned (the data subjects), as they are also committed to an independent authority (Article 8.3). Protection is no longer left to data subjects, given that there is a public body that is permanently responsible for it. Thus, it is a redistribution of social and legal powers that is taking shape. It is actually the endpoint of a long evolutionary process experienced by the privacy concept — from its original definition as right to be left alone, up to the right to keep control over one's information and determine how one's private sphere is to be built up.

The approach outlined in Articles 3 and 8, in conclusion, identifies common principles, which concern the various ways in which science and technology affect people's lives. So not only is the above-mentioned process of "constitutionalization of the person" specified and concretized, but it also involves a "reconstruction" of that person, going beyond the

distinction between physical or real person and virtual or digital person, which was thought to have been an inevitable consequence of new technologies. This integral reconstruction of the person is also important because it provides clear indications on how to react to "reductionism" and the technological decomposition of the person, present in statements like "we are our data", "we are our genes", yielding to the "mystique of the DNA" with the dangerous effects of reducing our guarantees of rights. It is no coincidence that the UNESCO Universal Declaration on the Human Genome and Human Rights states in Article 2b that "dignity makes it imperative not to reduce individuals to their genetic characteristics and to respect their uniqueness and diversity.

III. QUALITY OF CHANGE? A NEW ANTHROPOLOGY

The changes produced by science and technology are driving profound changes that affect anthropology at its deepest levels and the very notion of humanity. The root of this change is in the transition from situations governed by the laws of nature (chance or fate) to situations in which a person is given the freedom to make a choice. Scientific and technological innovations affect the way we are born and die, the construction of the body in an age in which it can be technically reproduced, and a person designed. The techniques of assisted procreation not only involve the treatment of sterility but they offer forms of programming which, for example, allow our own mothers or sisters to become surrogate mothers or may even include human cloning. All this produces social anxieties, because it disrupts kinship systems, generational order, and the very uniqueness of individuals. Human kind is in the throes of another kind of anthropology, one that is hard to metabolize. It is almost as if humanity, which until recently lived protected from the laws of nature, has discovered areas where the sudden burst of freedom turns out to be unmanageable. This determines a change in the meaning of 'appealing to the law'. If the laws of nature fall, the void left by them should be filled by the laws of men who, mainly through prohibitions, artificially reconstitute (by making laws) the natural constraints removed by science. From law, society seeks reassurance first and foremost, and then protection. But such a radical rejection cannot obviously be proposed, and only careful reflection on the meaning of the undeniable "procreative rights" can help us find a point of balance.

Equally significant is the change made apparent by the judgment 27 February 2008, by which the Bundesverfassungsgericht declared in contravention with the Grundgesetz an

amendment to the law about the domestic intelligence service of the Land North-Rhine Westphalia. The amendment had introduced a right for the intelligence service to "covertly observe and otherwise reconnoitre the Internet, especially the covert participation in its communication devices and the search for these, as well as the clandestine access to information-technological systems among others by technical means". The decision of the Bundesverfassunsgericht is widely considered a landmark ruling, because it constitutes a new "basic right to the confidentiality and integrity of information- technological systems" as part of the general personality rights in the German constitution. Confidentiality, a quality of humans, is handed over to the machine. It is recognised that between man and machines not only is there an interaction, but a compenetration. This is structurally evident data, and its constitutional relevance is recognised. The law thus reiterates the priority of humans, but manifests its power telling us that the world is going through a new entity, made up of the person and the technical apparatus to which data is entrusted. A continuum is established between the person and the machine: by recognising this, the law hands us a new anthropology, affecting legal classifications and changing their quality.

This appropriation of technology to build a new human dimension is even more evident in the case of Oskar Pistorius, the South African runner running with two carbon fibre artificial limbs replacing his lower legs, authorised to participate in the games with the other "normal" athletes. After this case, another paralympic athlete, Aimée Mullins, said that "to change one's body through technology is not an advantage, but a right, both for those doing sports professionally and common people". Thus, the barrier between "normal people" and those with artificial prosthesis falls, and in fact a wider notion of "normal" is developed, which becomes a condition to freely construct one's body using all socially available opportunities.

This raises a number of new questions, primarily the right to use technology not only to restore lost functions or ones that were never there but also to enhance physical or intellectual performance. The new dimension of humanity requires legal measures that expand the scope of fundamental human rights. The construction of the person thus becomes central to how we see rights, making the necessary distinctions between the design of the self and the design of others, the continuous exploration of frontiers, such as the use of synthetic biology for the programming of people.

Experiments with brain-machine interfaces (BMIs) or brain-computer interfaces (BCIs) highlight the new relationship between man and machine even more clearly and, together with other mechanical creatures, like robots, different thinking machines and cyborgs,

herald the advent of the trans-and post-human and pose a fundamental question: since a series of rights have been historically identified as the rights "of man" or "human" rights, will the transition to a post-human or trans-human state gradually lessen the significance of these rights? To avoid such stark and misleading alternatives, we should reflect on the fact that the social acceptability of the post-human, in a democratic environment, depends on ensuring that technologies are safe, equally accessible to everyone, and that everyone's right to freely govern their own bodies is respected. This prospect is totally opposed by those who see the transformations of the body, when involving cloning or transmittable genetic modifications, as a crime against humanity. Such an emphatic standpoint runs the risk of producing distortions, since it shifts the question to the extremely problematic area of crimes against humanity, thus making it more difficult conduct a legitimate debate around the necessary limitations to interventions on the body. Moreover, by equating reproductive cloning with transmittable modifications of the genome, an extremely delicate question involving the fundamental right to health is transformed into an ideological issue.

Through the body people can take possession of technology and bring it back to a human dimension. But what happens when these phenomena do not manifest themselves as appropriation but as expropriation, when people find themselves living in an environment where machines can take over their identity, change their body to enable its external control, when we live in an *augmented reality, ambient intelligence, ubiquitous* or *pervasive computing, smart environments,* when, all said and done, we live in an environment where machines can take on a position of supremacy, for whatever use is made of them or for their own autonomic nature?

IV. SELF-DETERMINATION AND IDENTITY

In recent years, the principle of self-determination has been consolidated and specified. The most significant stages of this process include the importance of informed consent and the recognition of self-determination as a separate fundamental right of the person, within the overall constitutional framework of the free construction of the personality (par.2 the Grundgesetz, Art. 2 of the Italian Constitution).

In 1946, the Nuremberg Code stated that "the voluntary consent of the human subject is absolutely essential." This statement, which was a reaction to the horrors of human experimentation which emerged during the trials of Nazi doctors, not only reversed the

relationship between doctor and patient, subtracting the latter from the power of the therapist but created a new "moral subject" in possession of a specific legal power. It identified a principle which was to be widely applied in many different fields. Informed consent is fundamental to Directive 95/46 on personal data and Article 8 of the European Charter of Fundamental Rights. This confirms, on the basis of a common reference principle, the unification of the abovementioned physical and electronic body.

Case law in some European constitutional courts confirms this position. In 1983, the Bundesverfassungsgericht held that there was a new fundamental right, "informational self- determination", which led to further regulatory elaborations and inspired requests for additional recognitions, even the right to "biological self-determination." Similarly, in 2008 the Italian Constitutional Court concluded that "informed consent represents a synthesis of two fundamental rights: the right to health and the right to self-determination". We may say that self-determination is the foundation of free governance of the self, sovereignty over our own bodies.

Naturally, self-determination has its limits, since it can interfere in the freedom of others and can be contradictory. The subject of imposing limitations is a particularly sensitive point because it immediately produces hostility towards "paternalistic" legislator, who have no right to invade the sphere of personal freedom. This criticism also extends to references to the principle of dignity, seen by some scholars, especially Americans, as an authoritarian tool to impose one's own point of view. These objections can be countered by observing, on the one hand, that the principle of dignity, as is stated in the opening of the Grundgesetz and the Charter of Fundamental Rights, is closely linked to that of freedom, and therefore cannot be used to limit the latter. On the other hand, self-determination must by definition be free from external influence, especially market logic. It is no coincidence that Art. 3 of the Charter of Fundamental Rights, reiterating UNESCO's Universal Declaration on the Human Genome and the Council of Europe's Convention on Human Rights and Biomedicine, provides for "the prohibition on making the human body and its parts as such a source of financial gain". And the precedence of the principle of dignity over the freedom of economic initiative was explicitly recognized by the Court of Justice in the "Omega ruling (October 14, 2004).

In general, however, self-determination depends on the material conditions of the person, thus education, income, and so on. However, new technologies have introduced additional constraints, well reflected, for example, in some recent definitions of privacy, especially those referring to the "vindication of the boundaries protecting each person's right not to

be simplified, objectified, and evaluated out of context" and more directly to "freedom from unreasonable constraints on the construction of one's own identity".

Thus, two elements are highlighted: the importance of context and the link between self and identity. The growing availability of information on people and the growing number of technical procedures for its use have had a profound effect on the characteristics of our time, which has been defined as the age of records, classification, monitoring, control, and evaluation. Security needs and market pressure have led to a technological reduction of fundamental rights, with the spread of video surveillance, the use of biometrics, the creation of DNA databases, profiling techniques, and increasingly invasive body controls (as in the case of body scanners). Technological changes in the way personal information are processed have gradually changed the relationship between a person's freely constructed identity and the intervention of third parties, which is increasing all the time. Inaccuracies and partial truths, or even falsifications, are a constant feature of many biographies, freely written by people other than the person concerned, which then become part of socially accredited information (like Wikipedia). Identity is also "dispersed", since information concerning the same person is contained in different databases, each of which returns only a part or a fragment of the overall identity. We risk entering a time of "unknowable" identities, even to the persons concerned, since they are kept in places that are not only different but also difficult if not impossible to discover or access.

We have before us changes that affect the very anthropology of persons. We are faced with a series of progressions: from being "scrutinized" through video surveillance and biometric technology to being "modified" by the introduction of chips in the body, continually being "traced" from recordings made possible by the use of mobile phones, sending e-mails, being obliged to put on *wearable computers* or carrying other tools that can be remotely controlled. There is already a context that increasingly identifies us as "networked persons", people constantly on the network, gradually configured to transmit and receive impulses that allow us to trace and reconstruct movements, habits, contacts, thus changing the meaning and content of the autonomy of persons.

Along with more traditional approaches to the protection of fundamental rights, which should be strengthened by the constitutionalization of the person, strategies are emerging to help free ourselves from constant technological dependence. There is talk of a "right to make silent the chip", therefore an individual's power to terminate the connections that make us dependent on the outside. Rights are being identified, such as the right not to know and the right to oblivion, which aim to liberate people from the invasion of

unwanted information (such as spam) and even from the implacable weight of the past, thus converting the right to oblivion into the right to request the removal or short-term preservation of certain categories of personal data held by others. It has become important to assess the importance of collections of personal data in accordance with the principles of necessity, proportionality and purpose, to avoid being overwhelmed by the "digital tsunami" heralded by Web.2.0 and the even more so by Web 3.0. There is the gradual cancellation of the boundary between public and private life, documented particularly clearly in social networks, where people tend to project themselves fully in the public arena, making more difficult the reference to the consent principle as a tool for defending privacy.

The construction of identity is increasingly affected by all these factors. Is said that identity is no longer "what you say you are" but "what Google says you are." An identity increasingly built from the outside, therefore, increasingly dependent on processes governed by others, sometimes even unknown to the person concerned. At the same time, however, it has become easier to take on multiple identities or even communicate without revealing any.

These observations give an indication of the problems faced, which include the need to reduce the effects of expropriating identity determined by the incessant production of profiles of individuals, family members, groups, the spread of cloud computing and autonomic computing. Identity in the cloud has suggested a new approach to identity itself in the social context, going toward a "user- centric open identity network". The idea is an identity system that is scalable (so it works everywhere), user-centric (serving your interest, instead of something done to you by outside interests) and, importantly, customizable. This new system would recognize that each of us has multiple identities. We will be able to spoon out bits and pieces of our identity, depending on the social or business context we find ourselves. We could separate our identity into discrete units and assign different access permissions depending on our role in a given situation. We could create a business profile, a health care profile, a friend profile, a mom or singles profile, a virtual profile and so on. It is, essentially, a case of recognizing the right to build identities centred on the needs of the person which, depending on the contexts in which one is operating, will communicate only those aspects of identity that are strictly necessary for a specific operation, or allow access to only some of the information available (for example, in the case of health cards that contain the entire medical history of the person concerned). Thus, we enter the realm of what is called *identity,* personal information relevant to the

construction of identities collected and transmitted electronically. As regards the right to anonymity, which is seen as a typical network right, this depends on how it is related to the exercise of fundamental rights (guarantee of freedom of expression for political refugees), how it may affect the rights of others ("protected" anonymity, which can be removed in the case for example of defamation) or if it conflicts with general interests (those of security, in particular).

All this requires a review of the reference to privacy, which appears in all the above-mentioned contexts and which cannot be considered just from the perspective of the protection of privacy. Privacy today is a dimension of freedom, and must be considered as such. It is made apparent by the changes in the same definition of privacy. Privacy has been conceived as an "exclusion" device — as a tool to fend off the "unwanted gaze". However, by analyzing the definitions of privacy one can appreciate how privacy has changed over time by giving shape ultimately to a right that is increasingly geared towards enabling the free construction of one's personality — the autonomous building up of one's identity, and the projection of fundamental democratic principles into the private sphere. The initial definition of privacy as the "right to be let alone" has not been done away with; rather, it is now part of a context that has grown out of different contributions. The first real innovation was brought about by Alan Westin, who defined privacy as the right to control how others use the information concerning myself. Later on, privacy was also regarded as "the protection of life choices against any form of public control and social stigma" as "vindication of the boundaries protecting each person's right not to be simplified, objectified, and evaluated out of context" and more directly as "the freedom from unreasonable constraints on the construction of one's own identity". Since the information flows do not simply contain "outbound" data - to be kept off others' hands - but also "inbound" information - on which one might wish to exercise a "right not to know" - privacy is also to be considered as "the right to keep control over one's own information and determine the manner of building up one's own private sphere" and as "the right to freely choose one's life". This trend must be taken into account when we are dealing with the new perspectives opened, for instance, by behavioral advertising (Phorm) and by the new research devices, related to personal profiles, books, and so on.

V. THE RIGHT TO ACCESS

The word access has been increasingly used in recent years in a variety of situations. The right to access personal data has been introduced, no matter by whom it is kept, to avoid losing control of one's electronic body and to enable widespread control of the "lords of information." It has been argued that we now live in the age of access, which has changed the way we use property, governed in the past by property rights. If we are to live in what is described as the knowledge society, free access becomes a fundamental right, which calls into question rules on copyright. In the European Charter of Fundamental Rights there is a clause on the right of access to personal data (art. 8), "to vocational and continuing training" (art. 14), "to a free placement service" (art. 29), "to social security benefits and social services" (art. 34), "to preventive health care and the right to benefit from medical treatment"(art. 35), "to services of general economic interest" (art. 36), "to his or her file" in the framework of the right to good administration (art. 41), "to European Parliament, Council and Commission documents" (art. 42).

The situations are clearly very different, and the functions carried out by access are not all homogeneous. A common point, however, is the protection of the principle of equality and the guarantee of the preconditions of the democratic process itself (education, work, health). Access, then, may be seen as a tool to achieve additional goals, such as controlling the exercise of certain powers or the guarantee of identity through the correction of personal data.

As regards scientific and technological innovations, access is particularly important because it provides more opportunities for the protection of health, governance of the body, and even the design of human beings. The key point is represented by equality. It has frequently been noted that, unless there is equality in accessing new drugs or new ways of strengthening the body, we run the risk of a "caste" society in which only the rich will be able to enjoy the benefits of innovation. Not rights but the money would become the determining factor and thus alter the very concept of citizenship, with a regression towards citizenship based solely on income. Of course, this also involves a reflection on the notion itself of equality, which cannot refer only to equality of opportunity but also to equality of results.

It is argued that this approach does not take into account economic costs. Indeed, in many countries, to reduce the cost of public health, the elderly are excluded from access to transplants and receiving some categories of drugs free of charge. This not only denies

"the right of the elderly to lead a life of dignity and independence" (Article 25 of the Charter of Fundamental Rights), but creates a situation of evident inequality, since the well-off can still buy drugs that are not refundable or go to foreign countries to get transplants. At this point, we must reflect on the relationship between recognition of fundamental rights, scientific and technological innovations and distribution of resources.

VI. PUBLIC SPACE

The opportunities provided by technology are rightly considered of key importance to facilitating political participation, thereby strengthening democracy. It is no coincidence that in the Treaty of Lisbon a statement on representative democracy is followed by one on participatory democracy. In this document, however, we cannot analyze the various aspects of the functioning of the democratic system from the perspective of the overall use of new technologies, which, however, already produce significant effects through social networks and *peer-to-peer* communication. We focus on two specific issues directly related to fundamental rights: *digital* citizenship and the construction of the *scientific citizen.* Digital citizenship should not be seen as a category that replaces the traditional forms of citizenship but as an expansion of the concept of citizenship, understood as a set of rights and powers belonging to every person, wherever they may be in the world. In this sense, the Web can be seen as the privileged place, giving citizenship in general a strong connotation of universalism.

The rights of digital citizenship may be summarized as: the right to connection (indications in the regard have emerged in the European Parliament and the Council of Europe); the right to net neutrality (which excludes the content control powers and duties of network operators); the right to freedom of expression with the subsequent exclusion of forms of censorship (a problem that emerged clearly in the dispute between Google and the Republic of China, which led to a condemnation of censorship by Secretary of State Hillary Clinton, and which highlights the above mentioned theme of anonymity); the right of access to Web content (and the above-mentioned issues of copyright). The relationship between connection and access deserves special consideration. Connection universalization, in fact, must be accompanied by policies that prevent the progressive reduction of freely accessible content and the colonization of the Web by market logic. The unavoidable issue of knowledge as a common good must be addressed in a structured way, such as the one which led to the proposal and implementation of *creative commons.*

Otherwise, access to content would be increasingly conditioned by financial resources, and the right to connection would end up resembling a key that opens an empty room.

The theme of the *scientific citizen* regards the specific knowledge that must be made available to people to enable them to make conscious choices in areas directly affected by technoscience. This is true for both strictly personal choices and those of a public nature, such as those relating the increasingly frequent consultations of citizens on matters regarding the impact of science and technology on the entire social organization. Often, in fact, it is felt that the technical complexity of some issues is such that citizens should not have the right to intervene directly, since they are incapable of making proper assessments — a provocative but democratically dangerous argument. It would take away the sovereign right of people to look into matters affecting their own lives. We need to go a step further, towards a democracy of knowledge that is called, despite the fact it may create misunderstandings, "cognitive democracy." In a democracy, in fact, it is not acceptable for citizens to remain silent, whatever the subject matter.

To allow citizens to gain a critical understanding of issues, subtracting citizens from the dangers of unilateral information imposed by particularly influential Web sites, "electronic sidewalks" have been proposed: sites which provide links to sites offering different points of view. In general, this type of proposal is seen as an expression of the need for a *fairness doctrine* for the Internet, a necessary tool for the free development of personality.

VII. The World and the Rules

The projection of fundamental rights on a global scale raises the question of how legal rules should be understood in a world without frontiers. The approach most used in recent years is reminiscent of the medieval *lex mercatoria,* a body of regulations deriving from the established customs of merchants and traders. There is talk therefore of *lex digitalis* and *lex constructionis, lex labori internationalis* and *lex sportiva internationalis.* However, there is the risk of creating serious ambiguity and misunderstandings of reality, concealing the powers that effectively lay the rules and so rule the world.

To respond to this situation, emphasis has been placed on the role of major international law firms, the "merchants of the law," who write global rules on behalf of large multinational companies. Attention has been drawn to the "sovereign" power of entities such as Google, which deal directly with nation states in ways that may undermine the fundamental rights of millions of people. To achieve some sort of transparency, if not

control, of such powers, the U.S. Congress has proposed a Global Online Freedom Act, which envisages, inter alia, the requirement for Internet companies to inform a special committee at the State Department of all cases in which they have filtered or deleted content at the request of a foreign country.

These attempts to accompany the global dimension of fundamental rights with appropriate institutions have led to the possibility of setting up multiple "civil constitutions", linked to social and economic dynamics rather than the exercise of political and constitutional powers. But these efforts have been criticized by those who think it would lead to a world without a centre, characterized by "institutional neo-medievalism", precluding the establishment of common safeguards, and have been met with scepticism by a legal culture that does not think rights can be effectively enforced in a global dimension. But this hypothesis is partly refuted by the gradual establishment of a "global community of courts" linked to the protection of rights, and the realization that the effective protection of rights is no longer necessarily the sole domain of traditional judicial proceedings, but can put into effect by initiatives stemming from the civil society, which, using international documents as their point of reference, can put guarantees into practice. When news emerged that some transnational companies were getting children to sew shoes and soccer balls in India and Pakistan, civil rights groups threatened a boycott if the companies did not stop using child labour. They were successful for a variety of reasons but here it is worth underlining that the effectiveness of children's rights was ensured by means other than those assigned to traditional legal mechanisms, such as taking legal action.

It is possible, however, to suggest other models of "global constitutionalization." As regards the Internet, the business world has been particularly active, with initiatives from Microsoft, Google and Yahoo! But can we leave the protection of fundamental rights on the Internet only to the initiative of private entities, which tend to offer only guarantees compatible with their interests and which, in the absence of other initiatives, will appear as the only "institutions" capable of intervening? Can we accept a privatization of Internet governance or should we ensure that a plurality of actors, at many different levels, work together to develop common rules according to a precisely defined multistakeholder and multilevel model?

In answer to this question, work has started on establishing an Internet Bill of Rights, which is also being carried out in the annual UN Internet Governance Forums (the importance of this process was highlighted in a resolution of European Parliament).

However, in accordance with the nature of the Internet, the recognition of principles and rights cannot be imposed from above. It must be the result of a process involving the broad participation of a wide variety of players, which has already materialized in the form of "dynamic coalitions", groups of a different nature, formed spontaneously in the Net. This process may be able to achieve results such as the integration of codes of conduct and other forms of discipline, and common regulations for specific areas of the world. This is not a bottom-up universalistic approach but rather one involving different subjects at different territorial levels and different time-space assemblages.

The other model is represented by the European Union and its Charter of Fundamental Rights. Today, Europe is the region of the world that recognizes most fundamental rights, where there is a form of supranational constitutionalization. This fact has prompted talk of a "European dream". A document of the American Civil Liberties Union, dated February 2004, which bitterly criticized the U.S. administration's demand to obtain, with hardly any guarantees, a large amount of data on airline passengers travelling to the United States, made a demanding statement: "when it comes to privacy protection, we want to join Europe, not have them join us". We must insist on the need for Europeans to reflect on the political importance of actions that can ensure fundamental rights.