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Who are we?: The Quest For Identity in Law

Colin Jackson
Dalhousie University

Kim Brooks
Dalhousie University

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WHO ARE WE?: THE QUEST FOR IDENTITY IN LAW

Scholars from Haraway to Foucault to Freud, from Bourdieu to Erikson to Scarry have theorized identity across continents and among disciplines. Despite the rich material available, however, interrogations of identity in law have remained isolated within substantive areas of law (those working on identity in evidence law have not necessarily met issue with those exploring identity in constitutional law, for example), and have been more limited in scope and imagination than the interrogations undertaken in other disciplines.

Nevertheless, invocations of identity in law are frequent. In evidence law, identity and authenticity are tied together in inquiries about the underlying facts. In patent law, the sameness of two items is compared, and their identities explored, as a means of delineating the scope of law's application. Aspects of constitutional law demand we understand the identity of an individual or collective so that we might compare one group to another.

Law also relies on concepts of identity in less direct ways. Our sense of identity development informs our understanding of when and how people can consent to treatment or when behaviour is negligent. Our willingness to redistribute resources (financial resources, health outcomes, and others) is bounded by our geographic sense of who is Canadian or what kind of behaviours accord with our sense of national identity. At times, law calls to account based on the identities that it ascribes: citizen, taxpayer, member of a group, fiduciary, party to an agreement, custodial parent, moral agent. At other times, the identity that law ascribes is used to oppress, deny, or render invisible.

In this special volume, scholars from across Canada engage in asking original questions that explore the contours of how identity is framed and understood in law. Comprehending identity requires exploring contrasts: some identities are formed in opposition, by clarifying what they are *not* through processes of exclusion. Some articles explore how the boundaries of identity shift over time and across space and change in the light of the cultural specificity of the construction of identity. Others pose questions like: how does the need for a concept of identity arise, what role does identity play, how is identity used as a differentiator, and how does and has our sense of identity shifted. The articles consider individual identities, collective identities, and national identities. They consider how courts and legislatures deal with identity claims and how the law constructs, reconstructs, denies, destroys, obfuscates, validates, and mediates identities. The authors cross areas of inquiry and build from different theoretical traditions and literatures.

We hope that the volume as a whole enriches the discussion of the concept of identity in law, collapses silos between the substantive areas of law in which identity is constructed and employed, complicates our sense of what identity is and means in its legal context, and enhances the policy and doctrinal results of identity-based questions in law. Enjoy.

Colin Jackson & Kim Brooks
Schulich School of Law
Dalhousie University



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