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The Concept of the Inner Self in European Human Rights Law

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Abstract

This article seeks to uncover and then analyse the concept of the 'inner self' as it finds expression in European Human Rights law (EHRL) using personality rights as a case study. It submits that although the inner self is not a term traditionally used in the field, it underlies the idea of human rights law. Briefly, the inner self is defined as the entirety of a person's internal processes – thoughts, emotions and identity – unmanifested to others. The article situates the inner self within existing legal categories like the *forum internum*. By analysing rights such as freedom of thought (Art. 9) and respect for private and family life (Art. 8) under the European Convention on Human Rights (ECHR), the article evaluates both the strengths and limitations of current protections, particularly in addressing emerging technological threats to cognitive freedom and mental privacy.

Keywords

inner self – personality rights – European Convention on Human rights – human rights law theory

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1 Introduction

Discussions about the imminent impact of existing and emerging technologies upon the 'inner selves' of individuals is an increasingly frequent feature of recent legal scholarship, fuelled by rapid advancements across technological sectors.[1] Neuroscientific technologies, for instance, steadily progress in their ability to read and decode the neural activity of the human brain, with experiments going as far as attempting to influence the behaviour of animals.[2] The prospect of such technologies being applied to humans more widely is a realistic concern.[3] A related issue is the appropriation of such scientific progress in cybertechnologies by other industries.[4] This includes algorithms used widely by social media to collect, evaluate and exchange online user data that discloses information about preferences and characteristics of individuals and that are used to predict and influence human behaviour.[5] Additionally, the integrity and confidentiality of systems that handle such user data – whether derived from neuroscientific or cybertechnologies – raise concerns about the privacy and self-determination of information we share and which may reveal aspects of our inner worlds.[6] These developments have prompted expert reports to address these emerging challenges, often through the lens of human rights law (HRL).[7] Emerging strands in the literature call for the introduction of new rights tailored to the current technological

1 S. Alegre, "Rethinking the Right to Freedom of Thought for the 21st Century", *European Human Rights Law Review* (2017) 221–233; P. O'Callaghan and B. Shiner, "The Right to Freedom of Thought in the European Convention on Human Rights", *European Journal of Comparative Law and Governance* 8 (2021) 112–145; N. Hertz, "Neurorights – Do We Need New Human Rights? A Reconsideration of the Right to Freedom of Thought", *Neuroethics* 16(5) (2023).

2 O'Callaghan and Shiner (*supra* note 1) 115; see also C. Cinel and others, "Neurotechnologies for Human Cognitive Augmentation: Current State of the Art and Future Prospects", *Frontiers in Human Neuroscience* 13(13) (2019).

3 O'Callaghan and Shiner (*supra* note 1) 117.

4 Ibid. 118; see also the controversy surrounding the commercialisation of such technologies by Elon Musk, R. Hart, 2024. "Experts Criticize Elon Musk's Neuralink Over Transparency After Billionaire Says First Brain Implant Works." (*Forbes*, 26th February).

5 O'Callaghan and Shiner (*supra* note 3).

6 See, e.g. B. Van Alsenoy and others, "Privacy Notices versus Informational Self-Determination: Minding the Gap", *International Review of Law, Computers & Technology* 28(2) (2014) 185–203; C. Bublitz, "Neurotechnologies and Human Rights: Restating and Reaffirming the Multi-Layered Protection of the Person", *The International Journal of Human Rights* 28(5) (2024) 782–807.

7 E.g. United Nations, 2021. "Our Common Agenda – Report of the Secretary-General", 6–7, 24, 27, 33, 62–63; see also HRC, 2024. "Impact, Opportunities and Challenges of

developments.[8] It is precisely this call for the introduction of new, specific rights to take account of technological advancements that inspired this paper. It raises the question: is such an approach really necessary? Or are already existing rights aimed at protecting in particular the *forum internum* of individuals not being used to their full potential?

Against this background, this paper critically assesses the current equipment of human rights aiming to protect the person by focusing on the notion, significance and legal protection of an individual's inner self, which albeit not a term traditionally used in the field, underlies the idea of HRL. It argues that considering HRL through the proposed concept of the inner self can fill gaps in existing legal frameworks, address emerging technological threats and provide a more comprehensive approach to personality rights. Personality rights, at their core, stem from the fundamental principle that every individual is entitled to dignity and autonomy, which serves as the foundation for other human rights. In the civil law tradition, these rights are regarded as a set of protections safeguarding the integrity and inviolability of the person as well as the free development of one's personality.[9]

By framing the inner self as a central construct in HRL, this article contributes to the discipline by offering an innovative theoretical lens through which personality rights, privacy and cognitive freedoms can be re-examined. It provides a systematic legal analysis of how ECHR jurisprudence already accommodates the protection of the inner self, even if not explicitly named as such. Through an in-depth engagement with the European Court of Human Rights' (ECtHR) case law, this study demonstrates that while certain protections exist, they remain fragmented and under-theorised. Thus, in sum, this article argues for a reconceptualisation of existing legal categories to better safeguard the inner self in light of technological advancements that increasingly threaten the absolute protection of our inner worlds.

The article begins with a conceptual elaboration and critical analysis of the inner self (section 2). Through this conceptual approach, the article develops an innovative perspective by identifying the existing human rights that are closest developed around the notion of protecting the inner self of a person

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Neurotechnology with Regard to the Promotion and Protection of all Human Rights." (8 August) A/HRC/57/61.

8 E.g. M. Ienca and R. Andorno, "Towards New Human Rights in the Age of Neuroscience and Neurotechnology", *Life Sciences, Society and Policy* 13(5) (2017); S. Edwards, "Is Internet Access A Human Right?" Amnesty International; S. Nathaniel-Ayodele and T. McGrath, 2023. "Internet Access: Essential Utility or Human Right?" Good Things Foundation, p. 8–10.

9 See further sub-section 3.1.

and assessing their potential as well as their limits in existing HRL. This includes a discussion of (1) the distinction between the *forum internum* and *forum externum* and their relation to the proposed concept of the inner self, as well as (2) those rights that are directly relevant to the inner self (section 3). With regards to the latter, so-called personality rights are identified as directly relevant to the inner self and thus form a core aspect of this paper's analysis.

As for the scope, this article focuses on the jurisdiction of the ECHR and related ECtHR jurisprudence as a case study. This approach is particularly pertinent given the deep roots of European liberal philosophies in shaping concepts of individual autonomy, dignity and selfhood, which directly inform the legal protections surrounding the inner self. The Enlightenment-era ideals of self-determination and personal integrity continue to underpin contemporary human rights discourse, making the European framework a compelling model for analysing the evolving protection of the inner self.[10] Already existing rights, such as the right to freedom of thought (Art. 9 ECHR) appear to capture the very essence of the protection of a person's inner self, yet its potential remains unexplored in practice and under-researched in scholarship.[11] Furthermore, the ECtHR's extensive jurisprudence on the right to private and family life (Art. 8 ECHR) includes the development of special categories within this right, such as the rights to psychological integrity,[12] identity,[13] personal development[14] and the right to be forgotten,[15] which are all directly relevant to the human rights conceptualisation and perception of a person's inner self. It is this unique and sophisticated jurisprudence on rights that are of relevance to the inner self that makes the European framework especially instructive for such a case study.

2 The Inner Self: A Working Definition and Theoretical Exploration

This article invites the reader to consider HRL through the prism of the 'inner self'. Accordingly, this section seeks to theorise the concept and provide a

10 See also sub-section 3.1.

11 See further F. Benziger, 'The Right to Freedom of Thought in the ECHR and Jurisprudence of the ECtHR' in P. O'Callaghan and B. Shiner (eds.), *The Cambridge Handbook of the Right to Freedom of Thought* (Cambridge University Press 2025).

12 E.g. *Söderman v Sweden* 5786/08 (ECtHR, 12 November 2013) para 80.

13 E.g. *S. and Marper v The United Kingdom* 30562/04;30566/04 (ECtHR, 4 December 2008) para 66.

14 E.g. *Denisov v Ukraine* 76639/11 (ECtHR, 25 September 2018) para 95.

15 E.g. *Hurbain v Belgium* 57292/16 (ECtHR, 4 July 2023) para 199.

working definition. The term inner self, as used in this article, refers to the entirety of a person's internal processes, that are not yet discernibly manifested towards other members of society and that together contribute to the formation of the individual's personality. This includes, for example, a person's thoughts, desires, emotions, instincts, mental state and cognitions.[16]

Two fundamental questions inform the theoretical approach to the idea of inner self as presented in this paper: First, how does the inner self relate to the established human rights category of *forum internum*? Second, what is the difference between the inner self and the broader idea of the self in HRL?[17]

2.1 *The Inner Self as a Fundamental Concept in Human Rights Law*

The 'inner self' is not a term traditionally used in HRL, or for that matter, the discipline of law more generally. Instead, law commonly focuses on measurable manifestations of a person's inner self in what human rights and constitutional lawyers would consider to be the *forum externum*.[18] Despite this, the idea that persons have a distinct inner self strongly informed the shape of our legal systems in the liberal tradition.[19] From the perspective of HRL, the most obvious fruit of this process are personality rights. However, even beyond HRL, the idea of inner self is fundamental to law more generally. While this article focuses on the inner self in the context of HRL, it is important to recognise the concept's wider importance in law as a discipline as well as in legal philosophy. Upon closer inspection one will find that the idea of a person's inner self features in many areas of law: in private law it is reflected in the aspect of will, in intellectual property law in the categories of personality or personhood in the creation of works, in criminal law in intent and in HRL in the recognition that individuals have a *forum internum* distinct from the *forum externum*. In other words, HRL distinguishes between processes that unfold on the inside of a person, such as thoughts, convictions and beliefs, and processes that are manifested in a manner perceivable by society.[20]

16 The conceptualisation of the inner self applied in this article is based on the one used by the Law and Inner Self (LAWINSEL) Project at https://www.lawinnerself.org/.

17 Even though I am emphasising the distinguishing features between the self and the inner self, the two concepts naturally share a link.

18 A. Libson, *Law and Self-Knowledge in the Talmud* (Cambridge University Press, 2018) p. 1.

19 See also LAWINSEL Project (*supra* note 19).

20 *Kosteski v The Former Yugoslav Republic of Macedonia* 55170/00 (ECtHR, 13 April 2006) para 39; *C v. The United Kingdom* 10358/83 (ECtHR, 15 December 1983) 147; see also C. Roberts, "Reconceptualising the Place of the *Forum Internum* and *Forum Externum* in Article 9 of

The fact that HRL distinguishes between rights concerning the *forum internum* and those concerning the *forum externum* leads to two fundamental conclusions: First, HRL recognises that individuals have an *inner* self. While this may *prima facie* appear to be a rather obvious observation – especially since the idea that we have an inner self seems so natural that we rarely, if at all, interrogate it[21] – it is a significant one to state because it proves that there is a legal presumption that an inner self actually and measurably exists.[22] This presumption, whether or not it is based on scientific evidence, has shaped our contemporary HRL system on at least an international and European regional level.[23] This interrelates with the second conclusion, namely that HRL presumes that a person's inner self requires legal protection.

A closer examination of HRL in this context reveals that it is deeply shaped by the concept of the inner self, both at the international and regional European[24] levels. The Universal Declaration of Human Rights (UDHR) adopted by the General Assembly of the United Nations in 1948 can be considered the birth instrument of our current HRL system. Its content inspired the establishment and shape of subsequent human rights instruments, most notably that of the ECHR, which was signed only two years later in 1950.[25] A look at the rights set out in the UDHR underlines the prominent status given to the inner self, even without directly using this term: starting with the presumption that all human beings are endowed with reason and conscience (Art. 1), the Declaration includes the rights to privacy (Art. 12), freedom of thought, conscience and religion (Art. 18), freedom of opinion and expression (Art. 19), free development of one's personality (Art. 22) and education (directed to the full development of the human personality, Art. 26). The drafters of the ECHR continued this tradition and included many of the rights previously proclaimed in the UDHR, such as the rights to private and family life (Art. 8), freedom of thought, conscience and religion (Art. 9),

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the European Convention on Human Rights" (PhD Thesis, University of Bristol, September 2019) p. 17–18.

21 See P. O'Callaghan, "Law and Everyday Forgetting: Preserving the Opacity of the Inner Self", *Pólemos* 20(1) (2026) 69–89.

22 While one could argue that the existence of an inner self is rooted in phenomenological and psychological fact, biologically proving its existence is considerably more challenging, see also ibid. and A. Tauber, "The Biological Notion of Self and Non-Self" in E. N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy* (Winter 2016 Edition).

23 Other legal systems are beyond the scope of this article.

24 'European' in this article means spanning the ambit of the Council of Europe (CoE) and its Member States, in other words the jurisdictional reach of the ECHR.

25 See also CoE, 2025. "European Convention on Human Rights".

freedom of opinion and expression (Art. 10) and education (Protocol No. 1 Art. 2). All these rights either have a *forum internum*, and thus speak directly to the idea of a person's inner self, or aim at the protection of the (free) development of a person's inner self (right to education). It thus becomes clear, that the idea of a person's inner self is fundamental to the structure and shape of modern HRL.

2.2 *Inner Self and Forum Internum*

If one talks about the 'inner self' in HRL, one cannot avoid the traditional normative dichotomy of *forum internum* and *forum externum*, which crystallised in canon law in the Middle Ages.[26] The *forum internum,* as a canon law category, is regarded as the "court of conscience (*forum conscientiae*) where even secret crimes and sins are considered, along with manifest sins against God, neighbor, and self".[27] In essence, the *forum internum* is commonly understood to encapsulate a person's inner (i.e. unmanifested in society) mental processes, including beliefs, convictions, opinions and thoughts.[28] Conversely, the *forum externum* concerns the manifestation of such internal processes within society.[29] While there is an overlap between the concepts of inner self and that of *forum internum*, the concept of inner self proposed in this article is not just a different term for the *forum internum*. Rather, it is broader than the established human rights definition of *forum internum* and may help to bridge the gap that arises from the traditional distinction between the inner and the outer in HRL.[30]

The concept of the two *fora* primarily serves to reflect the viewpoint of the state: after all, the objective of HRL is to safeguard against the State's undue intrusion into these fora. The differentiation between *forum internum* and *forum externum* is a legal tool that helps the subject of regulation, the state, to distinguish between the sphere of permissible and non-permissible intervention. In simple terms, what is visible to the state, i.e. manifested in society, falls within the *forum externum* and can thus be regulated and interfered with (to varying degrees, depending on the nature of the right). Whereas what is

26 On the origin of these terms in canon law see J. Goering, "The Internal Forum and the Literature of Penance and Confession", *Traditio* 59 (2004) 175.

27 Ibid. 176.

28 P. Petkoff, "Forum Internum and Forum Externum in Canon Law and Public International Law with a Particular Reference to the Jurisprudence of the European Court of Human Rights", *Religion and Human Rights* 7 (2012) 184–187.

29 Ibid.

30 Yet, even though this article's focus is on the field of human rights law, this is equally applicable to law as a discipline.

invisible to the state, namely the *forum internum*, i.e. internal, unmanifested processes inside the individual, generally evades regulation and interference.[31] The underlying thought behind this approach is that the state may only exercise its authority within the public, not, however, within the private domain of the inner self.[32] This is most clearly underlined by the absolute protection of the right to freedom of thought, which is a rare example of a pure *forum internum* right.[33] In a 2023 Advisory Opinion, the ECtHR clearly stated that Art. 9(1) "cannot be subject to any restriction or limitation".[34] Other relevant case law, where the absolute protection of Art. 9(1) was confirmed includes *Mockutė v. Lithuania* (2018) and *Ivanova v. Bulgaria* (2007).[35] Similarly, in international human rights law (IHRL) too, the right to freedom of thought, conscience and religion is recognised to posses a *forum internum* component that creates an absolute sphere of protection. Although absolute protection and derogation are nuances of the same theme instead of interchangeable legal categories, CCPR General Comment No. 22: *Article 18* (*Freedom of Thought, Conscience or Religion*) confirms that Art. 18(1) ICCPR cannot be derogated from due to the fundamental nature of the rights enshrined therein.[36]

However, when applied in practice, this *prima facie* neat distinction shows limitations. First, it remains unclear, where the *forum internum* ends and the *forum externum* starts. For example, it is established ECtHR jurisprudence that not every manifestation of internal beliefs meets the threshold relevant to be considered relevant for the *forum externum*. The Court's approach, as established in *Kokkinakis v Greece* (1993), rests on two main points: first, the

31 There are exceptions to this, for example concerning *mens rea*, though this is assessed based on observable facts manifested in the *forum externum*.

32 Petkoff (*supra* note 28) 187–192; obviously, private law applies to the private domain, hence the emphasis on the inner self while recalling that this takes account of the public law perspective.

33 Benziger (*supra* note 11).

34 *Advisory Opinion as to Whether an Individual may be denied Authorisation to Work as a Security Guard or Officer on Account of being Close to or Belonging to a Religious Movement* (2023) ECtHR at para 69.

35 *Mockutė v. Lithuania* 66490/09 (ECtHR, 27 February 2018) para 119; *Ivanova v. Bulgaria* 52435/99 (ECtHR, 12 April 2006) para 79.

36 CCPR General Comment No. 22: *Article 18* (*Freedom of Thought, Conscience or Religion*) CCPR/C/21/Rev.1/Add.4 para 1; see also PM Taylor, *A Commentary on the International Covenant on Civil and Political Rights: The UN Human Rights Committee's Monitoring of ICCPR Rights* (Cambridge University Press 2020) 499 – 537.

recognition that freedom of thought, conscience and religion is a cornerstone of a democratic society.[37] This freedom is considered crucial for believers' identities and life views as well as for non-believers, ensuring the pluralism essential to democracy, which relies on this freedom.[38] Second, in democratic societies with multiple religions, it may be necessary to limit this freedom to balance different groups' interests and ensure respect for everyone's beliefs.[39] Concretely, as determined in *Eweida and Others v. the United Kingdom* (2013), for a manifestation of internal beliefs to fall within the ambit of Art. 9(2), it must have attained a certain "level of cogency and importance" and "be intimately linked to the religion or belief".[40] Interesting in view of present-day technological enmeshments with our daily lives, the ECtHR acknowledged in its 2023 Advisory Opinion that online activities, including those on social media, can qualify as manifestations of a religion or belief protected by Art. 9(1).[41]

Whereas a significant range of case law was developed on rights with both a *forum internum* and *externum*, the distinction between these two spheres remains dependent on a case-by-case analysis. This difficulty in drawing a clear line between the inner and the outer spheres of the self becomes particularly evident in the face of increasingly pervasive cybertechnologies. Through our daily engagement with digital services – e.g. via user-interfaces, programmes we use on our smartphones or via media engagement which operates on the basis of algorithms to assess user behaviour – data protection questions have received a new dimension: through our interaction with these technologies, information about our inner selves may become externalised, that is observable within society, at the very least to those with access to the servers where such information is stored. It is thus becoming the norm that in order to reveal or access a person's inner self, the traditional *forum externum* as described above is no longer the dividing line. Particularly considering the digital space, the question of whether it is truly accurate to consider it as *forum externum* per se becomes increasingly significant to ensure efficient protection of *forum internum* rights. Second, it is questionable whether the two *fora* can or even should be viewed in isolation from each other, or whether in some cases a nuanced approach may be required. In fact, human

37 *Kokkinakis v Greece* 14307/88 (ECtHR, 25 May 1993) para 31.

38 Ibid.

39 Ibid. at para 33.

40 *Eweida and Others v. the United Kingdom* 48420/10, 59842/10, 51671/10 and 36516/10 (ECtHR, 15 January 2013) at para 82.

41 *Advisory Opinion* (*supra* note 34) at para 74.

rights scholarship and jurisprudence suggest that while there is a conceptual difference, both *fora* are often intertwined.[42] Psychological studies confirm that external factors can influence our sense of self, including the way we think and form decisions.[43] Similarly, the view frequently supported in sociology, that "all identities are constructed" based on an array of external as well as internal factors, shows that outside of HRL such a systematic separation of the inner and the outer appears rather peculiar.[44] However, from a legal point of view there may be some merit in keeping these concepts distinct not least because it helps (roughly) filter behaviour relevant to the public domain from processes appertaining to the private realm of the individual. But even from a legal perspective, a sharp distinction between the two *fora* comes under strain: consider, for example, cases concerning the notion of public privacy under Art. 8 ECHR, which highlight the difficulty of applying this dichotomous approach in practice.[45]

The inner self must also be recognised as a philosophical concept that underpins the human rights framework, in particular, but not exclusively, in the context of personality rights.[46] It takes account of the fact, that the inner self may still be affected even by rights without a *forum internum*, such as the rights to health and education (which are economic, social and cultural rights from an ECHR perspective). Therefore, the human rights understanding of the inner self proposed in this article is broader than just the *forum internum* and takes account of the flowing boundaries between the two *fora*. It thereby addresses the concerns depicted in this paragraph and offers a solution. The proposed concept of inner self is furthermore justified from a transhistorical perspective: it serves to describe a social process that reflects an inwardness curve over time, that is increased awareness of and attention towards the idea that individuals have distinct inner selves.[47] Thus, the conceptualisation of

42 E.g. *Sinan Işik v. Turkey* 21924/05 (ECtHR, 2 February 2010) paras 42–46.

43 A. Tajadura-Jimenez and M. Tsakiris, "Balancing the "Inner" and the "Outer" Self: Interoceptive Sensitivity Modulates Self–Other Boundaries", *American Psychological Association* 143(2) (2014) 736–744; A. Scalabrini and others, "The Self and our Perception of its Synchrony – Beyond Internal and External Cognition", *Consciousness and Cognition* 116 (2023) 9: "(…) the self can be considered relational as it crosses the gap of the internal mind and the external world."

44 M. Castells, *The Information Age: Economy, Society, and Culture – Volume II: The Power of Identity* (2nd edn., Wiley-Blackwell, 2010) p. 7.

45 E.g. *Von Hannover v. Germany* 59320/00 (ECtHR, 24 June 2004) para 57; *Peck v. the United Kingdom* 44647/98 (ECtHR, 28 January 2003) paras 57–59; *X and Y v. the Netherlands* 8978/80 (ECtHR, 26 March 1985) paras 22–23.

46 See further section 3.

47 This follows one of the methodologies of the LAWINSEL project (*supra* note 16).

inner self rather than *forum internum* described in this article proposes a novel approach to the traditional human rights dichotomy of public and private domain. It also offers an innovative perspective on disputes resulting from this dichotomy, as it takes account of boundary issues between legal concepts. The next sub-sections will explore the mechanisms underlying this view in more depth.

2.3 *Self and Inner Self: Finding Determining Characteristics*

Compared to the inner self, the term 'self' is not foreign to HRL.[48] For instance, the theory of personality rights emerged against the backdrop of natural law theories concerned with the notion of rights that human beings possess by virtue of their personhood.[49] On a literal level, HRL recognises both an individual and collective right to *self*-determination. For example, Art.1(2) ICCPR/ICESCR provides for the collective right to self-determination, which as a *ius cogens* norm of international law also applies to EHRL. Meanwhile individual claims under the umbrella of self-determination in international law may be based on Art.1(2) ICCPR in conjunction with Art. 27 ICCPR.[50] In EHRL, specifically within the ambit of the ECHR, there is no explicit recognition of a right to self-determination. Nevertheless, ECtHR jurisprudence consistently upholds that this lack of direct reference does not contradict the fundamental interpretative value of it for the purposes of ECHR rights, in particular Art. 8(1):

> Although no previous case has established as such any right to self-determination as being contained in Article 8 of the Convention, the Court considers that the notion of personal autonomy is an important principle underlying the interpretation of its guarantees.[51]

48 This also applies to law more generally. For example, intellectual property law is concerned with the idea of a person's self in the creation, following IP law theory based on Locke, Hegel, and Kant, see C. Bodimeade and F. Deane, "Evolving Theory of IP Rights: Promoting Human Rights in the Agreement on Trade-Related Aspects of Intellectual Property Rights", *Journal of Intellectual Property Law & Practice* 18(8) (2023) 605.

49 E.g. F. von Zeiller, *Das natürliche Privatrecht* (3rd edn., 1819).

50 See e.g. CCPR General Comment No. 23: Article 27 (Rights of Minorities) para 3.1.

51 *Pretty v the United Kingdom* 2346/02 (ECtHR, 29 April 2002) para 61; *Gillan and Quinton v the United Kingdom* 4158/05 (ECtHR, 12 January 2010) para 61; *Evans v United Kingdom* 6339/05 (ECtHR, 10 April 2007) paras 26, 71.

Furthermore, EHRL protects a person's identity as expression of one's self under the right to private and family life (Art. 8(1) ECHR).[52] The crucial question then is, how does the 'inner self' differ from 'the self' more broadly? This sub-section seeks to answer this question based on an abstract theorisation by reference to HRL methodology, philosophy and natural sciences, all disciplines, in which distinctions and interrelations between a person's self and what the article considers to be the inner self are crucial.

Using the example of data often referenced in recent scholarship, whether one thinks of neuro or general user data derived through the use of software, one could argue that it affects our inner selves, because it may contain information, we would not have otherwise expressed within society in a manner that fits under the human rights category of *forum externum*. In other words, we may speak of an *inner* self when we decide to withhold information about ourselves as persons towards others. 'Inner' in this case resembles secrecy or privacy. On the flipside, loosely inspired by the Kantian category of the *noumenon*, we may consider aspects of ourselves to appertain to the inner realm because we are not consciously aware of them ourselves.[53] In short, our sub- or unconsciousness can be considered to form part of our inner self.

Another way of distinguishing the self from the inner self consists in considering physical barriers, in particular our bodies. The human body organically forms a natural barrier between our inner bio-chemical processes and the outside biosphere. The self that is visible to other members of society is the self that corresponds to the body. What is not visible to others, however, are those parts of ourselves that the body conceals behind the organic barrier that it forms. In this context, one could also consider the self to consist of inner and outer self, with the inner being hidden behind a physical barrier, whereas the outer is what is visible from the outside.

In literature too, the idea of a person's inner self is a frequent theme, for example, considering Emily Dickinson's idea of "ourself behind ourself, concealed".[54] Similarly, Denis Diderot's *Le Neveu de Rameau* inspired subsequent authors and philosophers to use his novel as a basis for works further

52 Y. Al Tamimi, "Human Rights and the Excess of Identity: A Legal and Theoretical Inquiry into the Notion of Identity in Strasbourg Case Law", *Social & Legal Studies* 27(3) (2017) 283–298; *Mikulić v. Croatia* 53176/99 (ECtHR, 7 February 2002).

53 Kantian philosophy's exploration of the *noumenon* ("the thing-in-itself") parallels the idea of the inner self as something not fully accessible or understood, even by the individual concerned.

54 E. Dickinson, 'One Need Not be a Chamber to Be Haunted' in R. W. Franklin (ed.), *The Poems of Emily Dickinson* (*Variorum Edition*) (Belknap Press of Harvard University Press, 1999).

exploring the idea of inner self distinct from the external self we display in community with others.[55] The Enlightenment period is characterised by a surge of philosophical explorations of the individual's self, which are frequently credited to have had an impact on the conceptualisation of the human person as reflected by our modern HRL system.[56] In psychology too, the idea of an inner self (without necessarily using that exact term, or with a slightly differing interpretation than the one this article endorses) is a recurring theme addressed by many scholars.[57]

In other words, the importance of the proposed conceptualisation of a person's inner self furthermore consists in its grounding in at least philosophical traditions (such as Kant's ideas on autonomy and subjectivity) and sociological research, if not also neuroscience and psychology. These disciplines show how identities are constructed through a blend of internal and external influences. Solely observing the traditional human rights legal framework separating the inner and outer self may result in overlooking how these forces interact in shaping an individual's sense of identity. By recognising the inner self as a dynamic and integrated part of the individual, HRL can better respond to the complexities of modern identity formation, which is increasingly influenced by both internal psychological processes and external societal pressures (e.g., through social media, surveillance, etc.). Hence, this article's approach is not merely a legal innovation in a narrow sense, but also draws on insights from philosophy, psychology and sociology, thereby enriching the legal discourse. By drawing from these disciplines, this approach recognises that legal frameworks must evolve to account for the complex interplay between the inner and outer selves, reflecting a more accurate understanding of human experience.[58]

In summary, based on this article's analysis as reflected on the foregoing pages, there are at least three possible meanings of 'inner self': (a) information we know about ourselves that we intend to remain hidden, (b) information we do not know about ourselves, i.e. that is unintentionally hidden, even to

55 Stanford Encyclopedia of Philosophy, 2020. "Sincerity and Authenticity".

56 See, e.g. A. Biletzki, *Philosophy of Human Rights: A Systematic Introduction* (Routledge, 2020).

57 C. Jung, *The Undiscovered Self* (Routledge, 2002).

58 See also A. Giddens, *Modernity and Self-Identity* (Stanford University Press, 1991), in which the author explores and emphasises the constructed nature of identity, suggesting that legal categories must reflect the dynamic, fluid process by which the self is shaped both internally and externally; M. Foucault, *The Order of Things: An Archaeology of the Human Sciences* (Vintage, 1994); C. Taylor, *Sources of the Self: The Making of Modern Identity* (Harvard University Press, 1989).

ourselves, and (c) the physical barrier between the material and immaterial self, whereas our inner self would appertain to the immaterial realm behind the physical or organic barrier constituted by our body. So understood, the inner self describes a specific set of characteristics appertaining to the individual's broader self, including the spiritual dimension of the human being, which may fall under any of the three categories depending on the specific case at hand. This article endorses a broad approach to the notion of inner self that includes all three of these interpretations, which will be examined more closely over the following pages by using EHRL as a case study.

3 The Inner Self in European Human Rights Law: Conceptualisation and Mechanisms for its Protection

As pointed out in the previous section, HRL is saturated with the idea of a person's inner self. In EHRL history, this is linked to personalist philosophies underpinning legal theory that led to the establishment of human rights aiming to protect the person as opposed to solely the living human organism as such.[59] There is thus a significant tendency to lean towards natural law as propagated by European Enlightenment philosophers and legal theorists that was revived and developed in twentieth century HRL, which formed the basis of our modern, contemporary understanding of HRL. As a result, HRL displays a range of mechanisms to protect the inner self as one aspect of the human person.[60] Against this background, this section analyses ECtHR jurisprudence through the lens of the inner self.

3.1 *Personality Rights*

The most relevant mechanisms through which HRL protects a person's inner self are personality rights as understood in civil law legal systems. The concept and idea of personality rights was significantly developed within German legal doctrine, where it culminated in the recognition of a general personality right in constitutional law.[61] Nevertheless, different jurisdictions have different

59 For an overview and discussion of personalism in human rights law see S. Moyn, "Personalism, Community, and the Origins of Human Rights" in S. L. Hoffmann (ed.), *Human Rights in the Twentieth Century* (Cambridge University Press, 2010) p. 85–106.

60 Ibid. 99: "Indeed, the human person became a key figure of thought at the United Nations, thanks to Christians impressed by papal language who injected it into founding documents."

61 Ibid. 98–106.

understandings of what is meant by 'personality rights'. In the German jurisdiction, the Federal Constitutional Court developed a general personality right through jurisprudence, based on Art. 2(1) in connection with Art. 1 German Basic Law, i.e. the rights to free development of one's personality and dignity.[62] From this legal institution of a general personality right, all concrete rights of personality are derived, such as protection of honour and reputation, but also privacy. French law, on the other hand, provides legal protection to personality interests based on delictual provisions, without recognising a general personality right in the German fashion.[63] Then again, the English common law does not traditionally recognise the doctrine of personality rights in the fashion of continental Europe civil law systems. Instead, it protects personality interests through specific torts.[64] Most frequently personality interests are considered at stake in so-called image right cases.[65] Through the adoption of the Human Rights Act 1998 and the influence of the ECHR, however, English courts had to engage with continental European interpretations of personality protection on many occasions.[66] It remains to be seen, how and if the interaction between ECHR and the English Common Law approach will affect their interpretation of personality rights.

In simple terms, personality rights are a reflection of the basic idea that every person is entitled to their dignity and autonomy, which inform other human rights. In the civilian tradition, personality rights are understood to be 'that bundle of rights which protects the integrity and inviolability of the individual'.[67] They are considered "innate, inalienable human rights which

62 It should be noted for completeness sake that the constitutional development on the personality right was preceded by intense discussions on personality rights in the context of the Buergerliches Gesetzbuch in previous decades, one of the most distinguished scholars in this context is Otto von Gierke, see further C. M. Pfennig, *Die Kritik Otto von Gierkes am ersten Entwurf eines bürgerlichen Gesetzbuches* (Cuvillier, 1997) (the original text of Gierke's was not available to me).

63 J. Neethling, "Personality Rights: A Comparative Overview", *The Comparative and International Law Journal of Southern Africa* 38(2) (2005) 218, 222.

64 H. Stallard, "The Right of Publicity in the United Kingdom", *Loyola of Los Angeles Entertainment Law Review* 18(3) (1998) 567; see also H. Carty, "Personality Rights and English Law" in N. Whitty and R. Zimmermann (eds.), *Rights of Personality in Scots Law: A Comparative Perspective* (Oxford University Press, 2009) p. 383–402.

65 Ibid.; see also *Irvine v Talksport Ltd* [2003] EWCA Civ 423, [2003] 1 WLR 1576.

66 C. Coors, "Is the UK heading towards Protection of Image Rights?" (2014) Athens: ATINER'S Conference Paper Series, No: LAW2014-1101; *Fenty v Arcadia Group Brands Ltd* [2013] EWHC 2310 (Ch).

67 E. C. Reid, "Personality Rights: A Study in Difference" in V. Palmer and E.C. Reid (eds.), *Mixed Jurisdictions Compared* (Edinburgh University Press, 2010) p. 387.

include various rights relating to personality".[68] The ECtHR has thus far not explicitly endorsed the term 'personality rights'. However, it has incorporated the essence of the personality rights doctrine within the jurisdiction of the ECHR through ample jurisprudence, especially through its interpretation of specific rights under Art. 8(1) ECHR.[69] Consequently, the concept of personality rights is relevant to the ECHR and has been applied to the continental level.[70]

This article's focus on EHRL is essential because the region's legal traditions have historically been intertwined with liberal philosophical values that emphasise the protection of the individual's inner self, dignity and autonomy. These values are strongly influenced by thinkers such as Immanuel Kant, who argued for the inherent dignity of the individual and the imperative of respecting human autonomy, for example in his work *Groundwork for the Metaphysics of Morals*. Kant's conception of personhood, which centres on the intrinsic value of each individual as an autonomous agent, is reflected in the modern human rights discourse, including the recognition of personality rights in law. Additionally, legal philosophers such as Georg Wilhelm Friedrich Hegel, whose philosophy of law emphasised the protection of individual freedom and personality within the state, also influenced the development of legal frameworks that safeguard personal dignity.[71] The German tradition of personality rights, especially, draws heavily from Hegelian ideas about the individual's development within the context of law and society. Legal theorists, like Otto von Gierke and Hans Kelsen further developed the connection between individual autonomy and legal protections, which over time culminated in the recognition of a general personality right within German constitutional law.[72]

Despite these influences, this contribution submits that the ECtHR's approach to personality rights must be viewed as distinct from European civil

68 Neethling (*supra* note 63).

69 See e.g. J. Oster, "Rethinking Shevill: Conceptualising the EU Private International Law of Internet Torts Against Personality Rights", *International Review of Law, Computers & Technology* 26 (2012) 114.

70 However, since the ECHR was modelled after the UDHR and both instruments contain largely the same rights, the same applies to the international level too, except to the extent that one refers to subsequent jurisprudence.

71 G. W. F. Hegel, "Grundlinien der Philosophie des Rechts", in G. Lasson (ed.), *Philosophische Bibliothek – Band 124* (Felix Meiner, 1911).

72 Pfennig (*supra* note 62); H. Kelsen, *Reine Rechtslehre: Einleitung in die Rechtswissenschaftliche Problematik* in M. Jestaedt (ed.) (Mohr Siebeck, 2008); BGH, 25.05.1954 – I ZR 211/53.

law traditions in the way it is legally anchored and applied in practice. Thus, a distinction must be drawn – from a European perspective – between personality rights as understood in civil law, common law and EHRL. While a comprehensive comparison between the European regional and domestic jurisdictions is beyond the scope of this article, the following pages illustrate what specific personality rights are recognised by the ECtHR and what content they have been accorded in case law.

3.1.1 Right to Private and Family Life

The ECHR does not provide for a general personality right explicitly, nor has the ECtHR followed the German approach of developing such a right through jurisprudence. Instead, and perhaps surprisingly, Art. 8(1) ECHR, the right to private and family life, became the anchor point for the ECtHR's jurisprudence on personality rights. This choice may be considered surprising, among other things because Art. 8(1) ECHR was originally adopted as a negative right shielding the individual from undue state interference in their private and family life.[73] Thus, in its traditional interpretation, the right to private and family life would speak first and foremost – and perhaps exclusively – to the first element of the inner self as defined here (namely (a), information we know about ourselves that we intend to remain hidden). Despite this, the ECtHR has interpreted Art. 8(1) as not only a negative, but also a positive right, that provides grounds for the development of further rights on which claims may be based.[74]

Art. 8(1) ECHR is frequently just referred to as the right to privacy, instead of its actual title, namely the right to respect for private and family life.[75] While this may appear a minor divergence from the actual title, language is arguably law's most potent means and terminologies are usually carefully elaborated in lengthy drafting processes. Thus, a change in terminology is likely to entail consequences concerning its interpretation. For instance, 'privacy' as a standalone term can be interpreted to have a different meaning than 'private life'. English language dictionaries, frequently define 'privacy' as either "the state of being alone" or "the right to keep one's personal

73 The ECtHR acknowledged this in *Kroon and Others v. the Netherlands* 18535/91 (ECtHR, 27 October 1994) para 31.

74 The same can be said for essentially all ECHR provisions, which are today generally accepted as usually involving positive and negative obligations, even though the original intent may have differed.

75 Including by the CoE itself, see https://www.coe.int/en/web/impact-convention-human-rights/right-to-privacy [last accessed 14 July 2025].

information secret".[76] Whereas 'private life' is more often understood as concerning a person's social life, incl. personal relationships with others.[77] This is substantiated by the fact that in draft versions, that were eventually rejected, Art. 8(1) ECHR included a reference to "privacy" instead of "private and family life".[78] Not only did the latter wording prevail, but the discussions during the drafting make it clear that the rationale behind the provision was to protect "the natural rights deriving from marriage and paternity and those pertaining to the family, the sanctity of the home" given the experience of the "raiding of citizens' homes without warrant … by governments".[79] In spite of this, Art. 8(1) ECHR has been increasingly interpreted as a comprehensive personality right by the ECtHR, rather than the classic negative right aimed at the protection of private and family life as envisaged at the time of drafting.[80] While this suggests a tendency to embrace the German constitutional law approach of departing from a general personality right from which further such rights are derived, neither the ECHR nor the ECtHR have upheld this approach. The substantial meaning of "private life" elaborated by the ECtHR supports this interpretation:

> (…) the concept of "private life" is a broad term not susceptible to exhaustive definition. It covers the physical and psychological integrity of a person. It can sometimes embrace aspects of an individual's physical and social identity. Elements such as, for example, gender identification, name and sexual orientation and sexual life fall within the personal sphere protected by Article 8. Article 8 also protects a right to personal development and the right to establish and develop relationships with other human beings and the outside world. Although no previous case has established as such any right to self-determination as being contained in Article 8 of the Convention, the Court considers that the notion of personal autonomy is an important principle underlying the interpretation of its guarantees.[81]

76 Cambridge Dictionary.

77 Collins Dictionary.

78 CoE, "Preparatory Work on Article 8 European Convention on Human Rights", CDH (67) 5, p. 11, 14.

79 Ibid., p. 3.

80 The discussions during the drafting focus in particular on the aspect of the protection of the family and sanctity of the home, see CoE, "Preparatory Work on Article 8 European Convention on Human Rights", DH (56) 12.

81 *Pretty* (*supra* note 51) para 61.

Following this outline of private life by the ECtHR, the subsequent sections will concisely examine the interpretation of these Art. 8(1) rights to provide a better understanding of personality rights in the ECHR jurisdiction.

3.1.2 Right to Physical, Moral and Psychological Integrity

The above-quoted definition of private life includes a reference to physical and psychological integrity as protected aspects of Art. 8(1) ECHR. While the Court itself does not use the term 'right' in connection with personal integrity (used here to cover all forms of integrity acknowledged under Art. 8(1)), it appears that the perception of it as a right is now commonly accepted.[82] The encroachment of Art. 8(1) with Arts. 2 and 3 ECHR, which are the provisions explicitly concerned with bodily integrity, may be considered yet another surprising development of this provision. In addition to physical and psychological integrity, the ECtHR has also recognised a right to moral integrity, while in the literature frequent reference can be found to a right to mental integrity.[83]

Mental integrity in particular is among the rights suggested in the literature to be of central importance in the discourse of human rights protection in the face of progressing neurotechnologies.[84] When it comes to mental integrity, the legal provision that is often referenced as significant is Art. 3(1) Charter of Fundamental Rights of the European Union (EUCFR), due to its explicit protection of mental integrity. The ECHR, on the other hand, does not explicitly provide for a right to mental integrity. Rather, the essence of it was included within the ambit of the right to private and family life ('privacy') under Art. 8(1) ECHR through the ECtHR's jurisprudence. Despite this, it was the ECtHR which developed the most sophisticated notion of a right to mental integrity – or its components – in its jurisprudence. Notably, however, neither the Court of Justice of the European Union (CJEU), nor the EUCFR's preparatory works or explanatory reports have so far given substance to the right to mental integrity independently from the right to physical integrity (which together form the right to integrity of the person).[85] In order to

82 J. Herring and J. Wall, "The Nature and Significance of the Right to Bodily Integrity", *The Cambridge Law Journal* 76(3) (2017) 574.

83 Again, the Court itself does not explicitly state it as a right, but this appears to be common interpretation in scholarship.

84 A. Lavazza and R. Giorgi, "Philosophical Foundation of the Right to Mental Integrity in the Age of Neurotechnologies", *Neuroethics* 16(10) (2023).

85 See further J. Jones, "Human Dignity in the EU Charter of Fundamental Rights and its Interpretation before the European Court of Justice", *Liverpool Law Review* 22 (2012) 281.

address the debate on mental integrity in EHRL, the following is an overview of the cornerstones.

Even though the right to mental integrity is often the term referred to in the literature (including the CoE's own guide to the ECtHR's case law on Art. 8(1) ECHR),[86] the ECtHR itself uses the terms 'psychological' and 'moral' rather than 'mental' integrity. The first case, in which the ECtHR addressed the right to moral integrity was *X and Y v the Netherlands* (1985).[87] In other cases, however, the ECtHR refers to a right to psychological integrity (e.g. *Milićević v Montenegro* (2016)).[88] Based on the Court's case law, it appears that no clear conceptual distinction is made between moral and psychological integrity. In *Špadijer v. Montenegro* (2018), it rather appears that both terms are used to determine the same matter:

> 80. (…) the concept of private life is a broad term not susceptible to exhaustive definition. *It includes a person's physical and psychological integrity*, and extends to other values such as well-being and dignity, personality development and relations with other human beings.
>
> 81. In order for Article 8 to come into play, however, an attack on a person must attain a certain level of seriousness and be made in a manner causing prejudice to the personal enjoyment of the right to respect for one's private life. *Not every act or measure which may be said to affect adversely the moral integrity of a person necessarily gives rise to such an interference.*
>
> 82. (…) The expert's opinion (…) confirmed that *the incidents in question had had an adverse impact on the applicant's moral integrity and had left long-lasting effects on her well-being.* In particular, *the expert established that the applicant had psychological problems* related to conflict at work and that her capacity to function was permanently reduced by 20% owing to post-traumatic stress disorder and an adjustment disorder with episodes of reactive psychosis. The Court considers that, in such circumstances, the *causal link between the incidents in question* and the alleged deficient reaction of the relevant authorities, on the one hand, *and the applicant's psychological problems*, on the other hand, can be regarded as clearly established. [Emphasis Added]

86 Para 83.
87 Para 21.
88 Para 54.

As a result, mental integrity appears to be best understood as the umbrella term, which includes the rights to psychological and moral integrity. However, ECtHR jurisprudence suggests that in order to find a violation a threshold must be met. Not every interference with a person's physical or psychological integrity is sufficient to trigger the application of Art. 8(1) ECHR. A certain level of 'severity' is required.[89]

As such, the Court emphasised that the focus must remain on the protection of private life. Private life must be concerned, rather than "activities which are of an essentially public nature". For example, in the case of *Nicolae Virgiliu Tănase v. Romania* (2013) the applicant's claim under Art. 8(1) was dismissed *ratione materiae*, because a traffic accident is considered an activity in the public domain and no reason to divert from this finding was pertinent.[90] However, in a case where harassment, including physical attacks on the person and property of the person, extended from the workplace to situations outside of work, namely damage of the applicant's car parked outside her apartment building and an attack of the applicant in a parking lot while picking up her daughter from school, this was considered to meet the threshold of a severe interference with personal integrity under the aspect of private life within Art. 8(1) ECHR.[91] In the case, both physical and psychological integrity were found to be relevant, the latter apparently heavily based on the expert's finding that the applicant was significantly psychologically impaired and this could causally be linked to the harassment, resulting in PTSD, permanently reduced "capacity to function" by 20% and episodes of reactive psychosis.[92]

It is noteworthy that this approach reinforces the perception of a clearly distinguishable inner v outer narrative (here, psychological v physical).[93] This is something that could be reassessed in developing human rights principles in international law for the context of neurotechnologies and their impact on persons, since mental integrity is at the forefront of the arising challenges.[94]

Concerning the interaction between personal data and mental integrity, interestingly, the ECtHR does not appear to interpret data protection issues (incl. about personal identity and health related information) to concern

89 *Nepomnyashchiy and Others v. Russia* 39954/09, 3465/17 (ECtHR, 30 May 2023) para 62.
90 *Nicolae Virgiliu Tănase v. Romania* 41720/13 (ECtHR, 25 June 2019) paras 130, 131.
91 *Špadijer v. Montenegro* 31549/18 (ECtHR, 9 November 2021) paras 82, 91–101.
92 Ibid.
93 Ibid. at para 89.
94 See also HRC (*supra* note 7) paras. 27, 64, 66, 76.

mental integrity in its case law, but rather to constitute a separate category within the broad concept of 'private life'.[95]

Returning to the idea of inner self as presented in this paper, the ECtHR's jurisprudence on personal integrity is arguably the best illustration of its recognition and application, operating based on the acknowledgement that personal integrity consists of physical and meta-physical components, an amalgamation of outer and inner aspects of the person. It does not exclude the protection of 'potential', i.e. aspects of our inner self we are not consciously aware of, but that could come to light once impaired could well fall under the scope of personal integrity as interpreted by the ECtHR. However, and this is unsurprising, ECHR case law does not explicitly address dimensions beyond what a person can consciously grasp about themselves. Hence, the ECtHR's jurisprudence on personal integrity suggests a tendency towards the third element of the inner self ((c) inner self as mainly immaterial essence of the individual person, but also protected by the physical barrier of our body).

3.1.3 Matters Relating to Personal Identity and the Right to Personal Development

The ECtHR has confirmed on numerous occasions that private life in Art. 8(1) ECHR extends to matters relating to personal identity.[96] It has, however, not thus far recognised a self-standing right to personal identity. Furthermore, personal identity is not conclusively defined, rather the Court lists examples of matters relating to this concept. Usually referenced are a person's name, photo, but also physical and moral integrity. The two latter examples in particular highlight how interwoven the different Art. 8(1) aspects developed through case law are.

The question of interest to this article is whether and if so what the Court's interpretation of personal identity tells us something about the notion of inner self in the ECHR. To the extent that the ECtHR acknowledges an overlap between psychological integrity and personal identity, one can safely assume that the above drawn conclusions apply to personal identity as well, as far as the recognition of metaphysical aspects of the person being protected are concerned.

In *Y v France* (2023) the ECtHR confirmed that gender identity is one aspect of the broader category of personal identity, making a related claim under Art.

95 There is a range of case law on data protection issues confirming this, a prominent example is *S. and Marper* (*supra* note 13) paras 66, 67.

96 E.g. *Cherrier v. France* App Np18843/20 (ECtHR, 30 January 2024) para 50.

8(1) ECHR *prima facie* admissible.[97] This case can be seen as substantiating the significance of the inner-outer dichotomy in HRL, as well as substantiating the recognition that on the one hand, there is an inner self, and, on the other hand, that that inner self may not automatically be reflected in the public domain (the 'outside').[98] In the case, the applicant sought French authorities to change the official gender on the applicant's birth certificate from "male" to "intersex" or "neutral".[99] What is notable in this case, from the viewpoint of inner self, is the applicant's argument: the claim was based on the internal, psychological suffering of the applicant due to "the role the applicant had to play in public" which does not align with their personal identity.[100] This line of argument also suggests another, fourth, possible meaning of inner self: namely, information we know about ourselves and that we wish to be reflected in the public domain so as to concord with our introspective view of ourselves. Assessing the merits of the case, the Court found that personal identity must not be reduced to the outer appearance of the person.[101] Yet, the Court found that the conflict consisted in the discordance between biological and legal identity, rather than between inner and outer identity or self. Nevertheless, this case is a notable example of how the ECtHR interprets Art. 8(1) ECHR as a comprehensive personality right, but also, how notions of inner self as defined in this article underpin the interpretation and application of ECHR rights even without explicit mention. In other cases, the ECtHR also recognised ethnic identity and the right to discover one's origins as important aspects to the concept of personal identity.[102]

Another personality right developed by the ECtHR under Art. 8(1) ECHR, and in the context of personal identity, is the right to personal development, including the development of one's identity. It is not always clear, how the concrete rights developed though ECtHR jurisprudence that are not directly referenced in Art. 8(1) interrelate from a legal systematic viewpoint. For example, in some cases, the Court expanded that "private life" may cover matters related to "an individual's physical and social identity" in addition to the already referenced matters related to gender and ethnic identity.[103] Yet, it

97 *Y v France* 76888/17 (ECtHR, 31 January 2023) paras 47, 49, 75.

98 While it was medically undisputed that the person is to be intersex, this sentence refers to the legal perception of the person as opposed to how the applicant views their own identity.

99 *Y v France* (*supra* note 97) at para 1.

100 Ibid. at para 53.

101 Ibid. at para 88.

102 *Tasev v. North Macedonia* 9825/13 (ECtHR, 16 May 2019) paras 32, 33.

103 *Pretty* (*supra* note 51) at para 61.

has not elaborated on how these different categories relate to each other. The ECtHR tends to recognise specific rights under Art. 8(1) ECHR, without specifying their relation to previously acknowledged rights. For example, the Court upholds the existence of a right to apply for adoption within Art. 8(1) ECHR in the context of the right to personal development, but how these two rights stand in relation to each other from a systematic perspective remains obscure.[104] There is no question that the ECtHR interprets the right to personal development as a personality right as understood in European civil law jurisdictions. Indeed, the Court confirmed Art. 8(1) ECHR's function in relation to the protection of one's personality beyond the meaning of legal personality:

> Article 8 secure[s] to the individual a sphere within which he can freely pursue the development and fulfilment of his personality. Article 8 concerns rights of central importance to the individual's identity, self-determination, physical and moral integrity, maintenance of relationships with others and a settled and secure place in the community.[105]

A specific right to identity as such has so far not been upheld by the ECtHR. Instead, as exemplified in the above quote, the Court routinely confirms the importance of individual identity in cases concerning questions of personal development.

3.1.4 Right to Informational Self-Determination

'Informational self-determination' is not a term used in the ECHR, however the ECtHR found that Art. 8(1) ECHR provides for such a right in *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* (2017):

> The protection of personal data is of fundamental importance to a person's enjoyment of his or her right to respect for private and family life, as guaranteed by Article 8 of the Convention. The domestic law must afford appropriate safeguards to prevent any such use of personal data as may be inconsistent with the guarantees of this Article. Article 8 of the Convention thus provides for the right to a form of informational self-determination, allowing individuals to rely on their right to privacy

104 *A.H. and Others v. Russia* 6033/13, 8927/13, 10549/13, 12275/13, 23890/13, 26309/13, 27161/13, 29197/13, 32224/13, 32331/13, 32351/13, 32368/13, 37173/13, 38490/13, 42340/13 and 42403/13 (ECtHR, 17 January 2017) para 383.

105 *A.-M.V. v. Finland* 53251/13 (ECtHR, 23 March 2017) para 76.

> as regards data which, albeit neutral, are collected, processed and disseminated collectively and in such a form or manner that their Article 8 rights may be engaged.[106]

In essence, informational self-determination denotes a person's right to decide if, which and for what purpose information about themselves may be disclosed to others. The scope of the right to informational self-determination is thus to give the individual person agency over their personal information. Notably, the right to informational self-determination was developed in ECtHR jurisprudence in the context of data protection cases. Furthermore, it is another example of a right that seeped into ECHR jurisdiction from German constitutional law.[107] Its origins lie in a German Federal Constitutional Court decision from 1983, a cases concerning a population census, in which the Court found that every individual has a fundamental right to decide on the disclosure and use of their personal information.[108] Since then, the right to informational self-determination has become a cornerstone for personality rights jurisprudence within the ambit of the ECHR. In fact, it has become such a central legal institution within Art. 8(1) ECHR, that some scholars consider it a fundamental right in and of itself.[109]

While states enjoy a margin of appreciation when it comes to the storage of citizens' personal information (such as records of life events, a person's finances or medical history), the storing of personal information as such principally interferes with Art. 8(1) ECHR's scope of protection, unless the interference is justified pursuant to Art. 8(2) ECHR.[110]

Notably, ECtHR jurisprudence confirms that access to personal information (incl. medical records) and the disclosure of it are protected by Art. 8(1) ECHR. However, the ECtHR did not develop this jurisprudence by reference to the right to informational self-determination, although that would have been reasonable given the matter of personal information. Rather, the Court refers to the significance of data protection for a person's enjoyment of their private and family life as guaranteed by Art. 8(1) ECHR. Sometimes, reference is made in cases concerning the disclosure of medical information to "moral integrity"

106 *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* 931/13 (ECtHR, 27 June 2016) para 137.

107 F. Thouvenin, "Informational Self-Determination: A Convincing Rationale for Data Protection Law?" *JIPITEC* 12 (2021) paras 4–8.

108 BVerfG, Urteil des Ersten Senats vom 15. Dezember 1983 – 1 BvR 209/83 – at paras 146–164, 189, 192, 194, 199, 202, 205.

109 Thouvenin (*supra* note 107) at para 5.

110 *Rotaru v. Romania* 28341/95 (ECtHR, 4 May 2000) para 43.

of the person affected.[111] Thus, while a topical connection between such issues exists, technically, questions of access to and the disclosure of personal information are not systematically linked to the right to informational self-determination in ECtHR jurisprudence.

From the viewpoint of the inner self, informational self-determination speaks mainly to its meaning of information we know about ourselves and either choose it to remain hidden or control to whom and what extent it is disclosed.

3.1.5 Right to Protection of Honour and Reputation

One of the perhaps most surprising rights developed within the ambit of Art. 8(1) ECHR through Court jurisprudence is the right to protection of honour and reputation.[112] As scholars have pointed out elsewhere, the ECtHR's approach is surprising in light of the provision's drafting history.[113] The ECHR mentions the protection of a person's honour and reputation not in Art. 8(1), but Art. 10(2) ECHR. Moreover, the protection of one's reputation in Art. 10(2) ECHR is not a right of the individual and thus not a personality right in the traditional sense, but one of the parameters based on which states may legitimately limit the rights to freedom of expression and freedom of the press protected in the provision. Still, the ECtHR interpreted the right to protection of one's reputation and honour as a personality right protected by the right to privacy. It is notable that this aspect of the ECtHR's jurisprudence contravenes the explicit intentions of the drafters.[114]

On the other hand, the ECHR was based on the UDHR, with many provisions inspired by the latter. Art 12 UDHR references both, privacy and the protection of honour and reputation. This can be considered to lend some support for the ECtHR's approach. However, the ECHR and UDHR are two different instruments with distinct drafting histories. The authors of both instruments were different as were their intentions and reasons for drafting each text. Thus, although Art. 12 UDHR could lend support to the ECtHR's

111 *Mockutė v. Lithuania* (*supra* note 35) para 94.

112 *Axel Springer AG v. Germany* 39954/08 (ECtHR, 7 February 2021) para 83.

113 B. Van der Sloot, "Privacy as Personality Right: Why the ECtHR's Focus on Ulterior Interests Might Prove Indispensable in the Age of "Big Data"", *Utrecht Journal of International and European Law* 31(80) (2015) 27, 33.

114 Judge Loucaides notably argued that "the right to reputation should always have been considered as safeguarded by Article 8 of the Convention, as part and parcel of the right to respect for one's private life", *Lindon, Otchakovsky-Laurens and July v. France* 21279/02, 36448/02 (ECtHR, 22 October 2017) Concurring Opinion of Judge Loucaides.

approach, it cannot be dismissed that the drafters' intent behind Arts. 8(1) and 10(2) ECHR was not the same as that of the authors of Art. 12 UDHR.

Initially, the ECtHR only referenced the protection of one' reputation as a matter relating to personal identity and integrity.[115] This was subsequently expanded to explicitly include the protection of honour.[116] The interpretation of the right to protection of one's reputation and honour as a matter of personal identity and integrity confirms the ECtHR's interpretation of Art. 8(1) ECHR as a personality right. This is different in the context of Art. 10(2) ECHR, where the protection of reputation and honour is not applied as a personality right as such, but rather as an explicit ground for limiting the right to freedom of expression provided by Art. 10(1) ECHR. Thus, the essential difference between the two provisions is that only Art. 8(1) ECHR offers a basis for a claim for violation of one's honour and reputation.

Fundamentally, the ECtHR's interpretation of the right to protection of one's honour and reputation within Art. 8(1) ECHR as a matter closely related to personal identity and integrity substantiates the recognition and the significance of a person's inner self in the ECHR. In the context of the right to protection of one's honour and reputation, the inner self has the meaning of information we know about ourselves and deem integral to our personal identity and how it is displayed in society. The rationale of this right is to preserve the integrity of the individual's inner self so understood and to maintain the balance between inner and public self.

3.1.6 Right to Be Forgotten

The so-called right to be forgotten is a comparably recent development in ECtHR jurisprudence. While it experienced surging prominence with the adoption of European data protection laws (e.g. the General Data Protection Regulation, known as GDPR), it has not yet featured in the exemplifying account of rights falling under the concept of private life as shown above. *Hurbain v Belgium* (2023) is the typically referenced landmark case concerning the right to be forgotten in the context of the ECHR:

> Thus, from the standpoint of the Convention, the "right to be forgotten online" has been linked to Article 8, and more specifically to the right to respect for one's reputation, irrespective of what measures are sought for that purpose (the removal or alteration of a newspaper article in the

115 *Pfeifer v. Austria* 12556/03 (ECtHR, 15 November 2007) para 35.
116 *Vučina v Croatia* 58955/13 (ECtHR, 24 September 2019) para 31.

> online archives or the limitation of access to the article through de-indexing by a news outlet). In the Court's view, a claim of entitlement to be forgotten does not amount to a self-standing right protected by the Convention and, to the extent that it is covered by Article 8, can concern only certain situations and items of information. In any event, the Court has not hitherto upheld any measure removing or altering information published lawfully for journalistic purposes and archived on the website of a news outlet.[117]

Although the Court acknowledged the relevance of the notion to be forgotten within the broader right to respect for one's reputation, it explicitly rejects that it constitutes a self-standing right within the ECHR. It is furthermore notable, that the relevance of being forgotten, based on relevant ECtHR case law so far, appears to be limited to the digital world. This is underscored in *Hurbain*, but also in the previous case of *M.L. and W.W. v. Germany* (2018). In both explicit reference is made to the right to be forgotten *online*.[118] Essentially, the ECtHR understands the right to be forgotten as a right to erasure or deindexing of personal information from online portals.[119] The rationale that a right to be forgotten enjoys heightened significance in the context of digital media is highlighted in *M.L. and W.W. v. Germany*:

> The Court notes first of all that *it is primarily because of search engines that the information on the applicants held by the media outlets concerned can easily be found by Internet users.* (…) the existence of search engines merely amplified the scope of the interference. However, *because of this amplifying effect* on the dissemination of information and the nature of the activity underlying the publication of information on the person concerned, *the obligations of search engines towards the individual who is the subject of the information may differ from those of the entity which originally published the information*. Consequently, the balancing of the interests at stake may result in different outcomes depending on whether a request for deletion concerns the original publisher of the information, whose activity is generally at the heart of what freedom of expression is intended to protect, or a search engine whose main interest is not in publishing the initial information about the person concerned, but in particular in facilitating identification of any available

117 *Hurbain* (*supra* note 15).

118 Ibid.; *M.L and W.W. v. Germany* 60798/10, 65599/10 (ECtHR, 28 June 2018) para 109.

119 See further Benziger (*supra* note 11).

> information on that person and establishing a profile of him or her.[120] (emphasis added)

The aim of the right to be forgotten is similar to that concerning the protection of honour and reputation examined previously. This is natural, since the former is a derivative of the latter. Consequently, the right to be forgotten – even if not confirmed as a self-standing right by the ECtHR – equally relates to personal identity and integrity, aiming to reconcile the integrity of one's inner self with the perception of one's self in the public. Thereby, the right to be forgotten too substantiates the recognition and the significance of a person's inner self in the ECHR.

3.1.7 Right to Freedom of Thought, Conscience and Religion

The right to freedom of thought, enshrined in Art. 9(1) ECHR, is a peculiar right in so far as virtually no substantial jurisprudence exists on its content and practical significance. Due to the limited juridical engagement with the right to freedom of thought, there are few reference points to determine what 'thought' is and hence, what precisely Art. 9(1) ECHR protects.[121] On the other hand, an impressive body of case law emerged concerning its sister rights, the rights to freedom of conscience and religion. The rights of Art. 9(1) ECHR are particularly closely related to the human rights conception of inner self. It is established jurisprudence that all of them protect the individual not only when interacting in society, but also and notably the integrity and impenetrability of the individual's inner mental world.[122] As such, the right to freedom of religion not only covers the manifestation of religious beliefs, but notably the state of having a religious belief. In fact, the perception that thoughts only appertain to the inner realm of a person's identity (*forum internum*) and are thus beyond the reach of legal regulation, is among the reasons for the hesitant engagement with the right to freedom of thought in scholarship and literature.[123] Notably, the right to freedom of thought is the only Art. 9 right without an established *forum externum* – that is, if one does not count rights, such as freedom of conscience, religion and expression as external manifestations of Art. 9(1) thoughts.[124] It is thereby the only ECHR right solely protecting a person's *forum internum*, which in this case overlaps

120 *M.L and W.W.* (*supra* note 118) at para 97.
121 Benziger (*supra* note 11) 152.
122 Ibid.
123 Ibid 161.
124 Ibid.

with the definition of inner self coinciding with all its meanings established in section 2. The right to freedom of thought must therefore be considered the one closest developed around the idea of a person's inner self in the ECHR, making it the core personality right of the ECHR.

3.1.8 Right to Freedom of Association, Assembly and Participation v Art. 8(1)

The right to freedom of association, assembly and participation is not usually considered a personality right in the literature or ECtHR jurisprudence. On one hand, this plausible given the provision's evident focus on the *forum externum*, namely to associate, assemble and participate in community with others. On the other hand, there are grounds for intersection between Art. 8(1) and Art. 11 ECHR from the standpoint of personal identity and development. Indeed, the ECtHR has recognised that the forming of associations can be vital to the protection of pluralism in a democratic society, including the protection of cultural and ethnic identities.[125] Against this background, the crucial difference could be found in Art. 8(1)'s focus on protecting the individual's personal identity, whereas Art. 11 ECHR could be said to protect the identity of a collective. The wording and rationale of Art. 11 ECHR, however, opposes such a conclusion: the right to freedom of association, assembly and participation is held by every individual, not every group. In fact, the ECHR does not protect any collective rights as such.[126]

The question then is, how Art. 11 relates to the above-presented notion of a person's inner self. The intent to form an association may be considered relevant within the provision, drawing a parallel to the *forum internum* established in the context of Arts. 9 and 10 ECHR. What speaks against this, is the fact that the ECtHR appears to have chosen Art. 8(1) ECHR as the right from which it derives personality rights in the ECHR. A comparable example is that of the protection of honour and reputation, which in Art. 10(2) ECHR has the function of a mere limitation, but in Art. 8(1) it constitutes a right aimed at the protection of the person.[127] Systematic consistency suggests that where there is an encroachment with Art. 8(1)'s notion of personal identity, aspects of Art. 11 may be interpreted as a personality right too, but no within the ambit of Art. 11 itself.

125 *Gorzelik and Others v. Poland* 44158/98 (ECtHR, 17 February 2004) paras 92, 93.

126 Further Benziger (*supra* note 11) 160.

127 See previous sub-sections.

3.2 *Economic, Social and Cultural Rights*

Another HRL mechanism aimed at the protection of a person's inner self can be found in certain economic, social and cultural rights. While these rights are recognised as relevant to the idea of inner self this paper engages with, they go beyond its scope. Hence, this section will only briefly touch upon them.

On the European regional level, economic, social and cultural rights, are set out in at least three key instruments, namely the EUCFR, the European Social Charter and the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11 (1952) to the ECHR. This finding may be surprising to some, as *prima facie* economic, social and cultural rights have, if at all, a marginal connection to the protection of the person as such and thus by extension with the inner self. In particular, this article considers two rights falling within this category to be pertinent to the concept of inner self: these are the rights to education and health. The latter appears particularly pertinent to the idea of inner self, if one thinks of mental in addition to physical health. This observation also serves to underline an important aspect of this article's proposed definition of the inner self. While as pointed out earlier, rights with a *forum internum* are highly relevant, it would be inaccurate to equate inner self with *forum internum*. Instead, this article's understanding of the inner self is broader and includes rights directed towards the *forum externum*, such as the right to education, which are however still linked to the idea of an inward perspective in HRL.[128]

3.3 *Obligations Towards a Person's Inner Self*

Within these HRL mechanisms to protect a person's inner self, established ECtHR jurisprudence recognises two kinds of obligations that flow from the different rights presented above. On one end, these rights produce a negative obligation of non-interference. This applies particularly to personality (and privacy) rights. The strongest manifestation of such negative obligation concerns the *forum internum*, which is considered to enjoy absolute protection. On the other end, such negative obligations are supplemented by positive obligations to create an environment favourable to the free development of a person's inner self. This is illustrated by rights such as informational self-determination and education. This also proves that the concept of inner self is broader than that of *forum internum*. It reaches across different types of rights and is not dependent on rights having a *forum internum*. It also emphasises the scope of existing human rights to recognise the need of access to certain

128 This can also be observed in other fields of law, such as private and criminal law, but this will not be further examined here, as the article's focus is human rights law.

technologies to the extent that this enables individuals to enjoy their human rights.

3.4 *Evaluation and Summary*

ECtHR jurisprudence on Art. 8(1) ECHR shaped specific rights, that are not explicitly mentioned in the ECHR. They include the rights to physical, moral and psychological (which can be loosely summed up under mental) integrity,[129] personal identity,[130] personal development and autonomy,[131] to one's image,[132] to protection of reputation,[133] data protection,[134] and access to personal information (incl. about one's health).[135] Alongside the other rights aiming to protect a person's inner self as proposed above, this suggests that EHRL appears to acknowledge and distinguish between different kinds of inner self. These include the notion of a moral (right to moral integrity), cognitive (right to freedom of thought) and medically intact inner self (right to psychological integrity) as well as general privacy (Art. 8(1) ECHR) in relation to the self. This all also links back to the research premise presented initially, namely that the inner self exists from the viewpoint of HRL and that it is at its very foundation. Furthermore, this finding highlights certain issues with drawing boundaries in law with a view to the inner self but also the individual and the human being. It is notable how HRL makes a legal presumption concerning the existence of a person's inner self, while this is disputed in various fields of the natural sciences. In this respect, the approach in EHRL to the idea of a person's inner self marks an example of how law does not always follow scientific evidence, but can operate based on its own systematic/philosophical premises/assumptions. While this finding may be especially striking in the context of neurotechnologies, thus a context with close connection to a natural science, it is neither a novelty nor an anomaly that law may operate based on its own assumptions. An important example of this consists in the legal fiction of juridical personality, which is not based on any biological evidence of an existing human being.

129 *Špadijer* (*supra* note 92).

130 *A.-M.V.* (*supra* note 105).

131 *Christine Goodwin v. the United Kingdom* (2002) at para 90; *Mortier v. Belgium* (2022) at paras 124, 204.

132 *Von Hannover v. Germany* (*no. 2*) (2012) at para 95.

133 *Axel Springer AG v. Germany* (2012) at para 83.

134 *Satakunnan* (*supra* note 106) at paras 133–134.

135 *Cherrier* (*supra* note 96); *Mockutė* (*supra* note 111) at paras 93–94; *Y.G. v. Russia* 8647/12 (ECtHR, 30 August 2022) para 44.

In summary, this section's exploration of personality rights suggests an expansion of their scope by emphasising the concept of the inner self as a more robust foundation for these rights. This perspective broadens the protection of an individual's mental and emotional autonomy, a necessity that has become increasingly pressing in the context of the digital age. It is argued that while the traditional notion of *forum internum* safeguards privacy in thought and belief, the inner self encompasses a wider array of internal processes that are essential for upholding personal dignity and integrity in a modern, interconnected society. ECtHR jurisprudence on personality rights supports this interpretation.

By recognising the inner self, this approach advocates for a more nuanced legal framework that can address the intangible aspects of personhood, including unconscious processes and private data that often remain hidden from view. Current HRL tends to focus on protecting a person's outer self through rights such as freedom of expression and the right to privacy, which primarily concern observable behaviours and manifestations in society. However, this legal framework falls short when it comes to safeguarding the inner self—the mental and emotional processes that may not always be outwardly expressed yet are integral to an individual's identity and dignity.

If the ECtHR were to integrate the inner self into its reasoning, it could reshape the way certain rights are interpreted, particularly in cases concerning personal identity, psychological integrity and privacy, particularly – but not limited to – the complex reality of living in the digital era. For example, in *Y v France* (2023), the Court focused primarily on legal and biological identity rather than the applicant's internal sense of self, illustrating the limitations of its current approach. Adopting the inner self as a legal principle could lead to greater recognition of an individual's introspective self-perception, particularly in cases involving gender identity or psychological harm.

Similarly, a more conscious focus on the significance and legal protection of the inner self is more likely to prevent that less tangible forms of harm – such as excessive surveillance or algorithmic profiling – often go unaddressed. An inner self framework would recognise that intrusions into cognitive or emotional autonomy can significantly impact an individual's dignity. In *Špadijer v Montenegro* (2018), where workplace harassment was linked to lasting psychological trauma, this broader perspective might have led to stronger protections against such infringements.

Furthermore, the inner self perspective could drive the ECtHR towards a more structured recognition of personality rights. While the Court has acknowledged rights such as personal development, psychological integrity and

informational self-determination, these remain somewhat fragmented. Conceptualising them as aspects of a unified inner self would provide a clearer legal basis for their protection. This would be particularly crucial in responding to emerging challenges posed by neurotechnologies and artificial intelligence, where the risks to mental privacy and cognitive liberty remain inadequately addressed under existing legal frameworks.

By proposing a legal framework that acknowledges and protects the inner self, this exploration aims to ensure that individuals have legal recourse when these private, internal dimensions of their personality are threatened or manipulated, whether by invasive technologies or psychological coercion. This shift in focus not only enhances the protection of personality rights but also ensures that legal standards reflect the complexities of human experience in the digital era.

4 Conclusion

This article departed from a broad concept of inner self, meaning the entirety of a person's internal processes, that are not yet discernibly manifested towards other members of society and that together form the individual's personality. This includes, for example, a person's thoughts, desires, emotions, instincts, mental state and cognitions. Through an interdisciplinary theorisation of this concept, oriented along the basic methodology of HRL, this conceptual definition was refined. Following an analysis of the proposed concept of inner self and its significance in HRL, of its relation to the established category of the *forum internum* and its relation to the idea of the self as explicitly recognised, closely related concept existing in HRL, section 2 concluded that there are at least three defining elements of the inner self: (a) information we know about ourselves that we intend to remain hidden, (b) information we do not know about ourselves, i.e. that is unintentionally hidden, even to ourselves, and (c) the physical barrier between the material and immaterial self, whereas our inner self would appertain to the immaterial realm behind the physical or organic barrier constituted by our body. This comprises the idea of inner self as a specific set of characteristics appertaining to the individual's self overall, including the spiritual dimension of the human being, which may fall under any of the three previous categories depending on the specific case at hand. The case study on ECtHR jurisprudence on personality rights furthermore suggests another, fourth, possible meaning of inner self: namely, information we know about ourselves and that we wish to be reflected in the public domain so as to concord with our introspective view

of ourselves. Furthermore, the case study revealed an expansion of the first element of the definition, particularly based on ECtHR jurisprudence on Art. 8(1) ECHR regarding informational self-determination and the so-called right to be forgotten, following which element (a) requires revision as follows: information we know about ourselves that we intend to remain hidden, or control to whom and to what extent it is disclosed.

In conclusion, one can trace a growing awareness of and valuation for the inner self in the development of EHRL jurisprudence since the adoption of the ECHR. From the Middle Ages – when the traditional distinction between *forum internum* and *forum externum* first took root and canon law recognised the existence of a *forum internum* – to the present day, there has been an intensifying focus on self-reflection, identity and personal autonomy. These concerns have only deepened in the age of digital technology, as this article has illustrated. Today, the recognition that the protection of the inner self is not only a philosophical issue, but a legal one has acquired new urgency, particularly as emerging technologies increasingly encroach upon our mental privacy and cognitive freedoms.

This article has approached the inner self not simply as a collection of individual mental states – thoughts, emotions, desires – although these are certainly an important starting point, but as a holistic entity deserving of protection in its own right. By reframing the concept of the inner self within the context of HRL, this article advocates for a broader, more adaptive understanding of privacy and autonomy that can better address the challenges of the digital age. Heightened consciousness of the role of the inner self in HRL could not only fill the gaps in existing privacy protections – gaps that are often the core concern in academic discourse on emerging neurotechnologies, for example – but would also help expand the scope of personality rights, offering stronger safeguards against new threats. The increasing convergence of personal data and technological tools, capable of accessing private, previously unobservable aspects of the self, underscores the urgency of this approach. This normative value of the inner self, as proposed in this paper, offers a compelling avenue for further exploration in future research.

Moreover, this perspective holds significant interdisciplinary value, integrating philosophical, sociological and legal insights to offer a more holistic understanding of identity and autonomy in the modern world. Recognising the inner self as a legal entity would influence the interpretation and application of HRL, particularly in areas like data protection, mental health and freedom of thought. Ensuring that individuals' internal worlds are protected from external interference, can help preserve the integrity of personal identity in an era of rapidly evolving technologies.

In sum, by adopting the concept of the inner self, HRL can evolve to better safeguard individuals against the complex challenges posed by technological advancements. This approach not only addresses gaps in existing legal frameworks but also offers a more comprehensive, adaptable model for protecting the legal goods falling under the scope of personality rights in the 21st century and beyond, including personal identity, privacy and autonomy.

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