

Book Reviews

A Theory of Legal Personhood by Visa A.J. Kurki

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The notion of legal personhood has garnered more attention, particularly for non-humans.¹ Several lawsuits dealt with animal rights activism for legal personhood for chimps and other species of orangutans. Tommy, a Chimpanzee, was one of some cases advocated by the non-human rights project.² Other topics contributing to the expansion are the extension of legal personhood to natural objects such as rivers or space³ and non-natural objects such as robots and artificial intelligence.⁴ With the rapid development of biotechnology,⁵ the definition of legal personhood begins with the fetus.⁶ These issues of questioning the concept of legal personhood are also addressed in the legal priorities project's legal priorities research.⁷

This book entitled, 'A Theory of Legal Personhood' seeks to deconstruct the conventional view of legal personhood. The author refers to the orthodox view that legal personhood is something with legal rights and obligations, followed by introducing a new concept the author dubs the Bundle Theory. It draws readers' attention to the forthcoming title since

¹ Anna Arstein-Kerslake et al, "Relational personhood: a conception of legal personhood with insights from disability rights and environmental law" (2021) 30:3 Griffith Law Review 530–555.

² Non-Human Rights Projects, "The NhRP's first client: Tommy (Chimpanzee)", (2018), online: *Nonhum Rights Proj* <<https://www.nonhumanrights.org/client-tommy/>>; Kristin Andrews, et al., *Chimpanzee Rights: The Philosophers' Brief* (Routledge, 2018).

³ Daniel P Corrigan & Markku Oksanen, "Rights of Nature: Exploring the Territory" in *Rights Nat Re-Exam* (New York: Routledge, 2021); Kaloyan Kirilov, *A Human Right-Based Approach to Protecting the Environment: Status, Critique and Alternatives* University of Helsinki, 2019).

⁴ S K Stepanov, "Deconstruction of the legal personhood of artificial intelligence" (2021) 2:2 Digit Law J 14–30; Ben Chester Cheong, "Granting legal personhood to artificial intelligence systems and traditional veil-piercing concepts to impose liability" (2021) 1:9 SN Soc Sci 1–20.

⁵ Muhammad Bahrul Ulum, "Regulating Biosafety of Genetically Modified Crops in Indonesia: Limits and Challenges" (2021) 12:1 UUM Journal of Legal Studies 157–177 at 159.

⁶ B S Van Loggerenberg, *The legal nature of a cryopreserved human embryo: A legal comparative analysis* North-West University, 2021); Visa AJ Kurki, "Active but not independent: the legal personhood of children" (2021) 30:3 Griffith Law Review 395–412.

⁷ Christoph Winter, et al., *Legal Priorities Research: A Research Agenda* (2021).

deconstruction and construction initiatives give new perspectives on legal persons. It also examines the link between humans and non-humans and the definition of their rights and responsibilities.

This book presents a broad overview of the fundamental concept of rights and duties, focusing on rights and the difficulties associated with applying them to non-human beings. Additionally, people have been confronted with rapid technological advancements that bring new knowledge about life, humans, and non-humans, such as robots and artificial intelligence, as well as biotechnology subjects.⁸

Furthermore, this work calls into doubt the integrity of the accepted legal definition of persons,⁹ and it has concerns about the right and a legal entity. We consider that, in this book, the author's primary aim was to comprehend why legal scholars describe a legal entity as a subject with legal rights and duties. Following this, there is a link between a legal person and the capacity to have a legal position within this ambiguity. However, there is a discrepancy with the author's assessment of the current contemporary reality. Only individuals have the potential to have rights.¹⁰ As a result, a chimpanzee, as mentioned before, cannot have rights based on its status as a legal person. Its rationale emerges that historically, the worth of rights has been linked to the formulation of social responsibilities, implying that rights and obligations should be reciprocal. According to the New York State Court, by citing the non-human rights project's argument,¹¹ animals should not enjoy legal rights comparable to humans because they cannot fulfill all societal obligations. Subsequently, it is anchored in legal issues confined to people, albeit there have been recent extensions to specific physical things, such as fetuses as legal persons in certain circumstances.¹² It becomes one of the author's fundamental concepts in the bundle theory of legal personhood.

⁸ *Ibid.*

⁹ Tomasz Pietrzykowski, *Personhood beyond humanism: animals, chimeras, autonomous agents and the law* (Springer, 2018); Tomasz Gizbert-Studnicki, "The most important problems of legal philosophy and the nature of law."

¹⁰ Pietrzykowski, *supra* note 9.

¹¹ Non-Human Rights Projects, *supra* note 2.

¹² Kurki, *supra* note 6.

The capability for legal personhood does not have to be a whole human being. The new concept refers to the distinction that legal personhood is divided into active and passive. Then, newborns only have passive incidents. However, adults have both active and passive occurrences. This comparison is to classify infants as passive legal persons and non-human entities that are not in the same position. However, they do not have the same rights.

Meanwhile, the next category, adults or individuals, are active incidents with rights and abilities like criminal culpability and the capacity to contract. It is because contemporary rights theories deny the legal personhood of things that are not entirely human, such as fetuses, non-humans, or even human children. Thus, for the author to reconcile the idea of legal personhood with the integrity of this definition, he must engage the Rawlsian approach, namely reflective equilibrium¹³, to rearrange this 'belief.'

Overall, the three main sections of this book deliver some critical notes dealing with the new concept to new understanding. Part 1 critically examines the author's 'orthodox view' of human rights. In Part 2, the author introduces a new concept, dubbed 'the Bundle Theory.' It is a result of reconstructing the integrity of the notion of legal personality in connection to the capacity to have rights. Part 3, which contains three sub-chapters, is an attempt by the author to 'Applying the Theory' by discussing Collectivities as legal persons, i.e., corporations, legal personhood in artificial intelligence, and the normative debate surrounding legal personhood.

The first part of this book contains a historical-critical examination of the shift or evolution of the 'orthodox views' whole concept of legal persons. The author brings us back to ancient Rome in the sub-chapter 'A Short History of the Right-Holding Individuals,' where Roman Jurist Gaius divides rules relating to persons (*personae*), objects (*res*), and acts (*actiones*). The term *persona* becomes challenging if it only refers to human functions

¹³ John Rawls, *A Theory of Justice* (Cambridge, Mass: Harvard University Press, 1971).

or characteristics. As Cicero coined,¹⁴ humans have four distinct personas: reason, personal qualities, position, and occupation. Following Boethius,¹⁵ the *personae* are 'the unique substance of rational nature.' This concept plays a significant role in establishing that legal personhood is unique to humans. The author then continued that the technical definition was carried over to the Renaissance and Aufklärung era, or the age of enlightenment when legal scientists agreed. Then, it significantly impacted western legal culture. However, the orthodox conception of the relationship between the elements of person and rights was disrupted after the 19th century.

Thus, in the sub-chapter 'Rights and Persons' of the Hohfeldian Analysis, the author demonstrates how the definition of legal personhood has stagnated, resulting in the concept's insufficiency. This section begins with a discussion of the Hohfeldian doctrine, which holds that only human beings are legal people and holders of legal positions. The author examines the formulations of the orthodox view. First, rights or duties are attached to a legal person as an entity that possesses at least one right or bears at least one duty. Second, rights and duties that an entity must possess at least one right or bear at least one duty in order to qualify as a legal person. Third, capacity for rights, as Steven Wise asserts that legal personhood is defined as capacity. Fifth, according to Hans Kelsen, a bundle of rights or obligations is a collection of rights or obligations. In doing this, the author examines the application of each conception of rights' orthodox positions in this sub-chapter, except for Hans Kelsen's concept based on three contemporary conceptions of rights, namely the interest theory, the will theory, and the vague anything beneficial conception.

In short, this idea is insufficient to describe what legal people are and who are legal persons based on interest theory. It is because it is widely thought that things such as fetuses, non-human animals, and enslaved people possess interest-theory rights. These entities are frequently categorized as

¹⁴ Christopher Gill, "Personhood and personality: the four-personae theory in Cicero, *De Officiis I*" (1988) 6 *Oxford Studies in Ancient Philosophy*.

¹⁵ Udo Thiel, *The early modern subject: Self-consciousness and personal identity from Descartes to Hume* (Oxford University Press, 2011).

legal nonpersons.¹⁶ The same is true of the 'anything-beneficial' notion because if animals and fetuses have interest-theory rights, they certainly have beneficial rights. However, under the will theory, newborns, animals, and those with mental disorders are not considered to have rights.

The second part introduces a new notion connected to the concept of rights, describing 'The Bundle Theory,' according to which the definition of legal personhood's integrity is determined by its relationship to the event category. In the sub-chapter, 'The Incidents of Legal Personhood,' the author distinguishes between two types of episodes, namely passive and active incidents of legal personhood. Fundamental safeguards are the essence of passive occurrences; habeas corpus is fundamental protection, as is the physical integrity of its bearers; and fundamental protections also have a high hierarchical standing, particularly protection against consequentialist policy concerns.¹⁷ There is the capacity to be a party to special rights. It is the special transaction between individuals or arising from some special relationship in which they stand to one another. The persons with rights and corresponding obligations are limited to the parties to the particular transactions or relationships. Another component of the capacity to possess rights is the ability to own property, which includes a discussion of invulnerability to ownership. Meanwhile, two episodes are ongoing, namely the power to commit legal acts (legal competencies) and legal responsibility (onerous legal personhood). Contemporary Western legal systems do not let toddlers or persons with severe mental disabilities engage in contracts or punish such creatures or humans for their wrongdoings under criminal law provisions.

There is an emphasis that there is no clear-cut distinction between an active and passive legal person. The author uses this uncertainty to spark new ideas by contrasting conventional viewpoints with Bundle Theory, which addresses the problem in a gray area circumstances. For instance, the Bundle Theory acknowledges that enslaved people were endowed with

¹⁶ Pietrzykowski, *supra* note 9.

¹⁷ Ronald Dworkin, *Taking Rights Seriously* Harvard University Press (Harvard University Press, 1977).

certain aspects of legal personality but not others and that women's route to 'complete' legal personhood evolved gradually through time.

In the sub-chapter 'Who or What can be a Legal Person?' the author will define legal personhood and distinguish between a legal person and a legal platform. We find it interesting that the author believes the word "legal person" is confusing in two senses: a collection of legal positions and an entity that possesses them. The author stated that legal people in legal platforms are preferable as a collection of legal positions. Each legal person corresponds to at least one default legal platform and bears the associated rights and obligations. While natural legal platforms accompany natural individuals from conception to death, alternative legal platforms are infinitely definable. The idea is that while newborns are legal people, they do not require authority over a legal platform since administrators may represent them. Businesses can be founded and associated with natural legal persons. What becomes critical is the connection of a platform, which entails the legal attribution of status to persons. While it is evident that the legal platform may be applied to things such as human beings, it can also be attached to non-human entities such as animals or even inanimate objects. It demonstrates that passive personhood possesses the same rights as active persons.

In a theory of bundles, the author attempts to extend this concept to hypothetical legal persons such as artificial intelligence and even to animals, particularly in Part 3. Additionally, this book concludes with open dialogues that focus on normative issues. It is a breath of fresh air for all beings in the cosmos, both passive and active. Finally, this critical work is essential to examine, particularly in light of technical breakthroughs focusing on partially human beings in robot technology with artificial intelligence and embryos in biotechnology. Additionally, this book has a low typographical mistake rate. Also, the index aids readers in conducting productive searches.

In sum, a highly interdisciplinary examination of the legal person, legal personhood, and rights theory provide a platform for reconsidering what legal subjects are. We recommend the readers acquire this book as a basic

understanding for today's jurists and, more broadly, for anybody interested in reconsidering the status of things in our world.

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