

A Theory of Legal Personhood

Visa A.J. Kurki

OXFORD
UNIVERSITY PRESS

Contents

Introduction	I
The Persons of Law	I
Main Tenets of the Proposed Theory	5
Central Features of the Western Doctrine of Legal Personhood	6
Who is a Natural Person?	7
Legal Nonpersons and ‘Things’	10
The Problems of the Orthodox View	12
Reflective Equilibrium	13
Applying the Reflective Equilibrium to Legal Personhood	14
Personhood and Legal Personhood	19
Value-Neutrality and the Debate over Rights	25
Book Structure	27

Part I. The Orthodox View

1. A Short History of the Right-Holding Person	31
Preliminaries	31
The Ancient World: <i>Persona</i> as a Role	31
The Early Modern Era: the Birth of the Orthodox View	35
Leibniz and Natural Law: Persons as Subjects of Rights and Duties	37
Kant, Hegel, and the Historical School	39
The Historical School	43
The Influence of German Legal Scholarship in the Anglophone World	47
Conclusion	52
2. Rights and Persons—Hohfeldian Analysis	55
Preliminaries	55
Hohfeld’s Analysis	56
Hohfeld and Persons	59
Rights in the Hohfeldian Scheme	60
Legal Persons as Holders of Rights	62
Interest Theory and the Legal Person	62
Will Theory and the Legal Person	66
Can Chattels Hold Rights?	68
Summing Up: Legal Persons as Holders of Rights?	71
Capacity for Rights, Duties, or Legal Relations	72
The Domains of Hohfeldian Categories	73

Legal Nonpersons and Legal Relations	83
Conclusion	86

Part II. The Bundle Theory

3. The Incidents of Legal Personhood	91
Preliminaries	91
Legal Personhood as a Cluster Property	93
Passive and Active Incidents	95
Passive Incidents of Legal Personhood	97
Protection of Life, Liberty, and Bodily Integrity: Fundamental Protections	97
Capacity to be a Party to Special Rights	100
Capacity to Own Property, and Not Being Property	103
Standing	107
Capacity to be Legally Harmed	110
Capacity to Count as a Victim	111
Summing Up	113
Active Incidents of Legal Personhood	113
Legal Competences	113
Onerous Legal Personhood	116
Assessing the Bundle Theory	118
Separate or Connected?	120
Legal Person and Subject of Law	121
Persons and Legal Persons	124
4. Who or What Can be a Legal Person?	127
Rivers, Idols, and Corporations as Legal Persons	127
Two Senses of 'Legal Person'	133
The Naming of Legal Platforms	136
Attachment through Claim-Rights and Acts	138
Passive Legal Personhood	139
Active Legal Personhood	145
Conclusion	150

Part III. Applying the Theory

5. Collectivities as Legal Persons	155
Groups and Corporations	155
The Ontology of Group Agents	158
Hohfeld and Groups	162
Powers of Group Agents	163
Claim-Rights of Group Agents	163

Duties of Group Agents	165
Preliminary Conclusions	166
The Legal Personhood of Collectivities	167
The Alleged Fictionality of Corporations	168
Collectivities as Beneficiaries	170
Conclusion	173
6. The Legal Personhood of Artificial Intelligences	175
Preliminaries: Three Contexts	175
AIs as Ultimately Valuable	178
AIs as Active Legal Persons	179
Holding AIs Responsible	179
AIs as Commercial Actors	182
AIs and Claim-Rights Redux	187
Conclusion	189
7. Legal Personhood in Normative Reasoning	191
Normative Questions	191
Who or What Should be a Legal Person?	192
Legal Personhood in Legal Reasoning	195
Bundle Theory and Animal Personhood Cases	197
‘Person’ in Legal Nomenclature and Interpretation	199
Finally	200
<i>Bibliography</i>	203
<i>Copyright Acknowledgements</i>	217
<i>Index</i>	219