

DOI 10.5817/MUJLT2018-1-5

LEGAL PERSONHOOD: ANIMALS, ARTIFICIAL  
INTELLIGENCE AND THE UNBORN.  
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by

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*Kurki, V. A. J.; Pietrzykowski, T. (eds.). (2017) Legal Personhood: Animals, Artificial Intelligence and the Unborn. Springer International Publishing, 158 p.*

In 2017, Springer's *The Law and Philosophy Library*<sup>1</sup> was expanded by a next work in the philosophy of law which focuses on the theoretical research of a legal personhood in the context of chosen entities. The topic of legal personhood is discussed in a highly theoretical way which adds a huge potential to the book itself. Especially since animals, artificial intelligence (AI) and the unborn shall form the core of the research. However, the result remains slightly behind its potential. This review will describe briefly the content of the book selected into three parts (see below) and evaluate these parts separately following the individual descriptions.

Discussion of the legal personhood in the selected context is crucial when considering the question of an AI in the area of law. Nowadays, AI represents a significant challenge to the law because of the multiple options of its operation. For example, considering its role in copyright, an AI might be a principal element in the chain of creating the works. Following that, some part of the doctrine tries to understand the AI as an author. The problem is that the understanding of the AI is still prevailing in its own object-oriented form. However, the role of an AI as a subject of legal

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\* The review was written within the project PrF/08/2018: "Conceptualization of the Artificial Intelligence".

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<sup>1</sup> For more information about this series see: <https://www.springer.com/series/6210>

relationships – considering development of its capabilities and exploitation – is not anymore just wishful thinking.<sup>2</sup> Therefore it is necessary to examine the most basic principles and concepts in the context of an AI, including legal personhood.

The book itself consists of ten chapters by various authors and is logically divided into three parts. *Part One* conceptualizes the legal person and personhood *per se*, so that it establishes a theoretical background of the book. *Part Two* applies this theoretical concept of legal personhood to the non-personal subjects of law, such as animals, things and “machines”. This part represents a more practical part of the book and its most valuable section trying to answer some important normative questions. Finally, *Part Three* discusses legal personhood in the view of bioethics and biolaw. In general, this part discusses the depersonalization and extraction of personhood from the human nature on the one hand and on the other hand it highlights the role of human rights. As a result, the book provides a unique and global assessment of legal personhood. Moreover, each chapter is followed by a special list of references which is very beneficial for the narrow focus and better insight to authors' researches, instead of the final list of references common to all the chapters.

As it was stated before, Part One, “*Identifying the Legal Person*”, discusses legal personhood purely in its theoretical sense and attempts to explain a historical context and background of the legal personhood idea. The development of the concept and its understanding are described in a very detailed way.<sup>3</sup> This part also refers to fundamental international documents on human rights and reflects the biological and ideological, as well as philosophical meaning of personality, personhood and other related terms. The first chapter, Brožek: “*The Troublesome ‘Person’*”, highly relies on Engelhardt's position distinguishing people and persons.<sup>4</sup> Brožek strictly points out the criterion of humanity, consciousness and psychology when dealing with the legal personhood.<sup>5</sup> The second chapter, Naffine:

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<sup>2</sup> The author of this review is dealing with the artificial intelligence as a technological challenge to copyright where an AI is analysed in a context of copyright with emphasis on its possible authorship of copyrighted works. For an AI as an author of such works, it is needed in the first instance to shift from its position as pure object of legal relationship to the position of subject. However, such shift is dependent on granting the (un)limited legal personhood to the AI.

<sup>3</sup> See especially p. 4–6 of the book.

<sup>4</sup> See p. 3 of the book.

<sup>5</sup> See p. 8 et seq. of the book.

*“Legal Persons as Abstractions: The Extrapolation of Persons from the Male Case”*, does not deny any of previous statements and broadens the knowledge with placing the person to the structure of the legal relationship as an analytical unit of the subject position.<sup>6</sup> Naffine discusses the legal fiction of personhood<sup>7</sup> and notices that individuals tend to be understood as mental and physical units.<sup>8</sup> Following that, it could be a question of whether the model of universal personhood is enough, or not, because of the role of gender.<sup>9</sup> Finally, the third chapter, *Lindroos-Hovinheimo: “Private Selves – An Analysis of Legal Individualism”*, concentrates on the position of legal personhood within the legal setting of EU law, emphasising the individuality and privacy issues. Lindroos-Hovinheimo divides the understanding of legal personhood into two groups, as a legal artifice and an ontological God-given nature.<sup>10</sup> In this context, legal personhood is connected to the area of privacy and personal data, and with the relation to *Solove’s* taxonomy of privacy it is analysed there.<sup>11</sup> This EU-centric part brings out the inherent connection of privacy and personality; establishing their relevancy and need for further analysis as the requirement for the legal subjectivity.<sup>12</sup>

The theoretical determination of personality and legal personhood in this part of the book is indeed brilliantly done. It perfectly helps to understand the discussed matter in a clear and concise manner. There could only be just one objection and it lies in better linking between theory and practice. This shortcoming may either be caused by the form of the book, or by the highly philosophical conception of the chapters.

Part Two, *“Persons, Animals and Machines”*, forms the core of the book as a practice-oriented discussion of legal personhood in the case of persons, animals and machines in three selected chapters. This part starts with analyzing the importance of the legal systems. The first chapter, *Pietrzykowski: “The Idea of Non-personal Subjects of Law”*, is based on reflection over purpose of the legal systems. These systems have been constructed as exclusively human creations and though they might still serve solely for

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<sup>6</sup> See p. 16 of the book.

<sup>7</sup> See p. 16 et seq. of the book.

<sup>8</sup> See p. 20 of the book.

<sup>9</sup> See p. 25 of the book.

<sup>10</sup> See p. 30 of the book.

<sup>11</sup> See p. 32 et seq. of the book.

<sup>12</sup> See p. 44 of the book.

the humans.<sup>13</sup> Following that, the idea of non-personal subjecthood is described within the discussion of the traditional dualism of persons (personhood) and things (thinghood) as well as their place in more or less complex legal relationship.<sup>14</sup> When talking about that, the personhood is sometimes being divided into personhood of human beings and juristic entities.<sup>15</sup> Furthermore, an effort is made to explain animal personhood in the context of human rights as well,<sup>16</sup> or the idea of deriving the legal personhood from the ability to feel and suffer which could help to recognize the personal and non-personal subjects of law.<sup>17</sup> This chapter ends with recommendations, controversies and warnings of granting the legal personhood to some entity, which is not a living human being, without proper analysis.<sup>18</sup> Next chapter, *Kurki: "Why Things Can Hold Rights: Reconceptualizing the Legal Person"*, focuses on an analysis of right-holding persons, and the development of such a concept.<sup>19</sup> There is an emphasis on Western jurisdictions regarding the fundamentals of paradigmatic natural persons,<sup>20</sup> the duties of legal persons, and their capacity to hold rights.<sup>21</sup> The main idea of this chapter is that the problem lies not in the unacceptability of granting the legal personhood to other entities but rather in the unimaginability of such a shift for many jurists. It is done by underlining the role of consciousness while there is a plethora of research indicating non-human animals can be conscious.<sup>22</sup> The situation is compared to slaves and their social role in history when the law established a special category for them.<sup>23</sup> This part of the book is concluded with the chapter, *Michalczak: "Animals' Race Against the Machines"*, where the idea of personhood for an AI is evaluated. Ethical questions are thoroughly described<sup>24</sup> as well as the apparent resemblance between AI's and an undeveloped child's intelligence, whereby brain activity is mooted

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<sup>13</sup> See p. 49 of the book.

<sup>14</sup> See p. 51 et seq. of the book.

<sup>15</sup> See p. 54 of the book.

<sup>16</sup> See p. 57 et seq. of the book.

<sup>17</sup> See p. 58 of the book.

<sup>18</sup> See p. 60 et seq. of the book.

<sup>19</sup> See p. 71 of the book.

<sup>20</sup> See p. 74 of the book.

<sup>21</sup> See p. 82 of the book.

<sup>22</sup> See p. 80 of the book.

<sup>23</sup> Ibid.

<sup>24</sup> See p. 92 et seq. of the book.

as a relevant criterion for granting of personhood to AI.<sup>25</sup> There is also established a parallel between animals and AI through the conceptual and pragmatic argument which highlights the impossibility of animals to be granted with the legal personhood.<sup>26</sup> Following that, the legal subjectivity of software agents is analysed in the same way.<sup>27</sup> The chapter is concluded by describing the wartime and peacetime (trading) scenarios of AI subjectivization.<sup>28</sup>

This part should have been the most valuable part of the book. Nevertheless, I find it quite vague and half-empty when considering the possible extent of discussed topic; especially in the part dealing with the AI. While the question of personhood is adequately analysed as it relates to persons and animals, the AI problematics not so much. The arguments discussing the subjectivization of AI are well structured. However, there is missing further differentiation of AI's legal personhood, its limitations and discussion on the needs for the shift of comprehension that is required given the growing influence and importance of AI. When analysing the legal personhood of AI, it is not enough to focus only on ethical problems. It requires analysis of the fundamentals of personhood and their application to AI. The next problem lies with the conclusions of the chapters which are very broad and lack further elaboration of related ideas.

Part Three, "*Humanity, Personhood and Bioethics*", summarizes the theory of legal personhood and argues the question of legal personhood in the case of non-personal entities in a view of bioethics, biolaw and other ethically problematic disciplines. The chapter, *Palazzani: "Person and Human Being in Bioethics and Biolaw"*, highlights the role of bioethics and "personism"<sup>29</sup>. It shows the utilitarian and libertarian theory of personality and their importance.<sup>30</sup> Palazzani states the personhood as the real condition for existence based on the ontological argument of sensitivity, rationality and will of the individuals.<sup>31</sup> Following chapter, *Silva: "From Human to Person: Detaching Personhood from Human Nature"*, appeals to human nature and its

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<sup>25</sup> See p. 94 of the book.

<sup>26</sup> See p. 94 et seq. of the book.

<sup>27</sup> See p. 96 et seq. of the book.

<sup>28</sup> See p. 99 et seq. of the book.

<sup>29</sup> See p. 105 of the book.

<sup>30</sup> See p. 106 et seq. of the book.

<sup>31</sup> See p. 110 of the book.

crucial role. Silva here states that such nature can never be abundant although there are apparent expanding efforts.<sup>32</sup> The chapter warns of the dangers of depersonalisation and highlights the purpose of the biological constitution and equity in that sense as possible clues for assessment.<sup>33</sup> Next, there is the chapter *Barbosa-Fohrmann et al.: "Are Human Beings with Extreme Mental Disabilities and Animals Comparable? An Account of Personality"*. This chapter is focused on the description of how the personal identity is created.<sup>34</sup> At this point, the role of Kant's idea of substantial self is criticized.<sup>35</sup> Barbosa-Fohrmann et al. are also dealing with vulnerability as a fundamental feature of humanity when talking about differences between humanity and animality.<sup>36</sup> Finally, the chapter, *Bielska-Brodziak et al.: "Is Sex Essential for Personhood? Being 'Halfway Between Female and Male' From the Perspective of Polish Law"*, discusses the question of gender and its role in the question of legal personhood. Bielska-Brodziak et al. analyse the question of sex from the biological and legal point of view.<sup>37</sup> The determination of the biological sex is described with a plethora of links to literature.<sup>38</sup> It is stated that determination of gender in a birth certificate could be sometimes problematic, especially for those who suffer from gender dysphoria or similar conditions.<sup>39</sup> By way of contrast Bielska-Brodziak et al. also present the possible pitfalls the absence of a birth certificate would present.<sup>40</sup>

This last part of the book highlights ethical problems and appeals to humanity. Concerning that, there is nothing to reproach because expanding the impact of legal personhood necessarily has ethical connotations. Still, this area could be considered more broadly. There are a lot of examples used in this part but only from the human or animal kingdom, while excluding the area of an AI (and machines). Yet, it is an AI that is so controversial and could serve as a clear example of whether it is right or wrong to grant legal personhood to something or somebody else than mankind. Furthermore, the final chapter feels out of place with the rest

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<sup>32</sup> See p. 114 et seq. of the book.

<sup>33</sup> See p. 119 of the book.

<sup>34</sup> See p. 128 of the book.

<sup>35</sup> See p. 136 of the book.

<sup>36</sup> See p. 132 of the book.

<sup>37</sup> See p. 143 et seq. of the book.

<sup>38</sup> See p. 145 of the book.

<sup>39</sup> See p. 149 of the book.

<sup>40</sup> See p. 151 of the book.

of the book, as there are no obvious connections to the analysis of legal personhood in case of animals, AI or the unborn. The chapter focuses on disorders of sex development and incongruence between biological sex and sex assigned at birth. Instead of that, it might be more helpful to provide some summary, resumé or final remarks on before-mentioned knowledge, some recapitulation and drawing conclusions.

In conclusion, the book brings together general knowledge of legal personhood and comprehensively examines various levels of humanity and other entities. The way the book is structured into coherent – though quite independent – chapters helps to orientate in individual aspects of the problematics as well as to essentially illustrate such theoretical material. On the other hand, the division into distinct chapters impacts the consistency of the text possibly caused by limited choice of legislations of individual authors. It could benefit from short conclusions tying ideas together between each part or as a final conclusion section. The book is very valuable when dealing with the legal personhood in the theoretical essence with emphasis on humanity, animals and unborn. However, the issue of AI is not dealt with in an exhaustive manner, even though it should have been one of the crucial parts of the book according to its luring title. Individual chapters may only serve as edification of all the crucial aspects of legal personhood which needed to bear in mind when talking about AI. The book shall be thus read by – and recommended to – those who are eager for deepening of their legal personhood knowledge base in the general way as well as from different angles. It may be helpful for those who are looking for a strong argumentation background. Unfortunately, for those longing for further AI analysis, the book could leave them simply unsatisfied, because the problematics of legal personhood in the case of AI could be analysed much more deeply.