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ONTOLOGY OF LEGAL PERSONHOOD

Abstract

The recent emergence of novel entities aspiring to legal personhood – including artificial intelligence, non-human animals, and environmental features – has challenged traditional theories of the ontology of legal personhood, which originally centred on corporate personality. This article provides a conceptual roadmap of the ontological views surrounding legal personhood by bridging historical theories of the corporation (Aggregate Theory, Concessionism, and Realism) with contemporary analytical metaphysics. In doing so, the paper identifies and analyses three primary theoretical fault lines. First, it examines the location problem, exploring how legal personhood exists metaphysically through dualist, reductionist, and sceptical frameworks. Second, it addresses the grounding problem, contrasting Legalist perspectives – which view personhood as an unconstrained, freely assignable institutional status – with Realist approaches that demand inherent ontological attributes, such as sentience or rationality, as prerequisites for recognition. Finally, it explores the identity problem through the lenses of essentialism and the Artifact Theory of Law, questioning the necessary features and functional plurality of legal personhood. Ultimately, this framework offers a crucial theoretical foundation for the conceptual reassessment required to navigate the forthcoming challenges of granting legal recognition to non-human entities.

KEYWORDS

legal personhood, ontology of law, corporate personality, analytical metaphysics, legal realism, rights of nature

SŁOWA KLUCZOWE

osobowość prawna, ontologia prawa, osobowość prawna podmiotu, metafizyka analityczna, realizm prawny, prawa natury

I. INTRODUCTION

In recent decades, the traditional concept of legal personhood has been seemingly challenged by the emergence of new types of entities earning (or aspiring to earn) the status of a legal person. Discussions surrounding the legal status of some environmental entities in New Zealand (Aotearoa), like Te Urewera[1] or Te Awa Tupua;[2] in Australia, e.g., in relation to the Yarra River;[3] in Colombia, regarding the Atrato River;[4] in Bangladesh in relation to rivers in general;[5] in Spain in connection with the Mar Menor lagoon;[6] and in India, as in the case of the Uttarakhand glaciers,[7] intermingle with certain trends in sociocultural studies that draw attention to certain limitations of the Western perception of nature and call for a pluralistic ontology.[8] Additionally, European Union institutions somewhat surprisingly became actively engaged in the debate regarding the very possibility of granting AI legal personhood ('electronic personhood')

[1] See Te Urewera Act 2014 (NZ).

[2] See Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (NZ).

[3] See Yarra River Protection (Wilip-gin Birrarung murron) Act 2017. The Yarra River is here recognized as a living entity, not as a legal person.

[4] Constitutional Court of Colombia, Judgment T-622/16.

[5] *Human Rights and Peace for Bangladesh v Government of Bangladesh* [2019] HCD Writ Petition No 13989 of 2016 (Bangladesh).

[6] Law 19/2022, of 30 September, for the recognition of legal personality to the Mar Menor lagoon and its basin (Spain).

[7] *Lalit Miglani v State of Uttarakhand* [2017] Uttarakhand HC Writ Petition (PIL) No 140 of 2015.

[8] To give a notable example: Arturo Escobar, 'The "ontological turn" in social theory: A Commentary on "Human geography without scale"' (2007) 32 Transactions of the Institute of British Geographers 106 and Arturo Escobar, *Designs for the Pluriverse: Radical Interdependence, Autonomy, and the Making of Worlds* (Duke University Press 2018).

to solve some liability issues.[9] Whereas many activists and rights-of-nature enthusiasts support the idea of granting person-like legal status to new kinds of entities, others remain skeptical;[10] and some go as far as to see 'the expansion of personhood' as a dangerous idea.[11] For decades, the very concept of personhood has been extensively discussed in relation to identity, as well as in various ethical and political contexts. However, the emergence of new types of entities aspiring to earn the status of a legal person has recently sparked considerable interest among legal scholars. Or, to be more precise, this interest has been re-sparked. 'Legal personhood' status and the nature of juristic persons have long been considered fundamental problems of legal theory. Inspired by Roman jurists,[12] late-nineteenth- to mid-twentieth-century authors (including Friedrich Carl von Savigny, Georg Friedrich Puchta, Joseph Unger, John Austin, and Hans Kelsen) debated the issue especially fiercely. Theories of legal personhood would be indicative of their authors' wider perspective on the metaphysics of law and the ontological status of legal institutions. After the mid-twentieth century, this discussion slowed down significantly. HLA Hart went as far as to declare this debate 'dead' in his 1953 inaugural lecture (which he called a 'post-mortem').[13] Although interest in the subject persisted among some scholars, it was not until the early twenty-first century that it regained prominence within jurisprudential discourse, with some notable contributions, like Visa Kurkis' *A Theory of Legal Personhood*.[14] The classical debate centred on the status of corporations as juristic persons and on their relation to natural persons. With the emergence of new types of entities seeking recognition as legal persons, these classical debates may require modern reconceptualisation. In this short article, I aim to provide a structured account of the principal, largely historical, theories concerning the ontology of legal personhood, and to relate these to contemporary views in analytical metaphysics.

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[9] See European Parliament resolution of 16 February 2017 with recommendations to the Commission on Civil Law Rules on Robotics [2018] OJ C252/239 and the backlash that followed.

[10] See, e.g., Artificial Intelligence and Robotics Experts, 'Open Letter to the European Commission Artificial Intelligence and Robotics' (5 April 2018).

[11] Lisa Siraganian, *The Problem of Personhood: Giving Rights to Trees, Corporations and Robots* (Verso 2026).

[12] See Reuven S Avi-Yonah, 'The Cyclical Transformations of the Corporate Form: A Historical Perspective on Corporate Social Responsibility' (2005) 30 Delaware Journal of Corporate Law 767. Avi-Yonah discusses Roman roots of Aggregate Theory, Concessionism and Realism about different corporate bodies.

[13] Herbert LA Hart, 'Definitions and Theory in Jurisprudence' in Essays in Jurisprudence and Philosophy (Clarendon Press, OUP 1983) 47.

[14] Visa AJ Kurki, *A Theory of Legal Personhood* (Oxford University Press 2019).

II. THEORIES ABOUT THE NATURE OF CORPORATIONS

Although HLA Hart seemed to agree that 'the juristic controversy over the nature of corporate personality is dead', he still remained eager to 'learn from its anatomy'.[15] And this lesson of anatomy convinced him that theories which aimed to explain the nature of corporate personality followed 'a familiar triad' of semantic approaches to the problem, i.e., they aimed to answer the question of 'what does the word "corporation" stand for?'.

One group of such theories would take the word in question to stand for 'some unexpected variant of the familiar'; a second group of these theories would take the word to stand for some kind of fiction; the last group would take the word to stand for something we cannot touch, hear, see, or feel.[16] Hart would go on to indicate that these theories 'are in form similar to the three great theories of corporate personality (…) that the name of a corporate body like a limited company or an organization like the State is really just a collective name or abbreviation for some complex but still plain facts about ordinary persons, or alternatively that it is the name of a fictitious person, or that on the contrary it is the name of a real person existing with a real will and life, but not a body of its own'.[17] Traditionally, these three theories were classified as Aggregate Theory (Contractualism), Concessionism and Realism, respectively.[18]

1. AGGREGATE THEORY

The main idea behind various aggregate theories is that a corporate body is not an independent, stand-alone entity but rather (ultimately) a contractual association of individuals (or: shareholders) whose interests it serves. Jensen and Meckling state explicitly: '[t]he firm is not an individual'.[19] Two main aggregate theories either reduce a corporate body to the 'collection of assets'[20] or see it as a legal

[15] Hart (n 13) 36.
[16] Ibid 23–24.
[17] Ibid 24.
[18] See, e.g., Susanna K Ripken, *Corporate Personhood* (Cambridge University Press 2019); this traditional triad of theories about corporate personhood has been criticized.
[19] Michael C Jensen and William H Meckling, 'Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure' (1976) 3(4) Journal of Financial Economics 311. Jensen and Meckling introduce an agency theory as a modern version of contractualism.
[20] David Grindis calls it the 'aggregationist' position and associates this approach with Sanford Grossman and Oliver Hart, 'The Costs and Benefits of Ownership: A Theory of Vertical and Lateral Integration' (1986) 94(4) Journal of Political Economy 691. See David Gindis 'From Fictions

fiction behind the complex 'nexus of contracts' (hence, the alternative name: contractualism). David Grindis, who sees both these variants as similar, explains that '"Aggregate theory", popular in the second half of the nineteenth century, is a variant of fiction theory that holds that corporations are simply aggregates of natural persons, usually shareholders'.[21]

2. CONCESSIONISM

Concessionism, sometimes referred to as 'the artificial entity view'[22] or *persona ficta* theory,[23] emphasises the role of the state granting authority to a corporate body: 'without imperial permission, they could not have legal personality, own property, or have an agent who can act in their name'.[24] According to concessionism, corporate existence and legal privileges are explicitly granted as a concession by the state.[25] The focus here is on the source of corporate legal personality. From an ontological point of view, however, corporate bodies are to be treated as separate legal persons, *personae fictae,* not at all reducible to anything physical (they are neither grounded in some collective nor in some assets). They are persons 'in imagination'.[26]

3. REALISM

The core idea of various realist theories[27] (also: real entities theories) is that corporations are more than a nexus of contracts or an aggregate of natural persons or their assets. Corporations are actually separate collective or group entities, with their own interests. According to Otto von Gierke, a corporation has its own life,

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and Aggregates to Real Entities in the Theory of the Firm' (2009) 5(1) Journal of Institutional Economics 25.

[21] Ibid 26.

[22] See, e.g., RS Avi-Yonah (2025).

[23] Susan Watson, 'The Corporate Legal Person' (2018) 18(1) Journal of Corporate Law Studies 137.

[24] Ibid 774.

[25] Susan Watson, *The Making of the Modern Company* (Hart Publishing 2022).

[26] Maximilian Koessler, 'The Person in Imagination or Persona Ficta of the Corporation' (1949) 9 Louisiana Law Review 435, at 437.

[27] Continental legal tradition associates realism about corporate personhood with Otto von Gierke whereas the common law tradition associates it with the UK scholar Frederic Maitland. Interestingly, it was Maitland who translated von Gierke's vol 3 of *Das deutsche Genossenschaftsrecht* (1881) entitled *Die publicistischen Lehren des Mittelalters* into English. See Otto von Gierke, *Political Theories of the Middle Age* (tr Frederic William Maitland, Cambridge University Press 1900); also Frederic W Maitland, 'The Corporation Sole' (1900) 16(4) Law Quarterly Review 335 and Maitland, 'Moral Personality and Legal Personality' (1905) 6(2) Journal of the Society of Comparative Legislation 192. The latter was based on his Sidgwick lecture from 1903 delivered at Newnham College.

separate from the lives of human beings, it also has its own internal ('organic') structure and will. Maitland, inspired by von Gierke, described corporations as 'right-and-duty-bearing units'. Unlike concession theory, realism sees an act of incorporation as mere recognition or a response to the pre-existence of some kind of group. As John Dewey noticed, this recognition is dependent on the assumption that 'there are properties which any unit must antecedently and inherently have in order to be a right-and-duty-bearing unit'.[28]

A close analysis of this classical triad of theories regarding corporate bodies reveals that they would, historically, at the same time address two interconnected yet distinct questions: 1) what is the onto-legal status of corporations? And 2) what is the onto-legal status of non-human legal persons? While for centuries the problem of what it is to be a non-human legal person would not be very different from the problem of what it is to be a corporation, with the emergence of new types of entities aspiring to legal personhood, these problems should now be considered separately. One must be careful not to conflate discussions concerning the concept of legal personhood with debates regarding a specific class of entities that hold this status. While the aforementioned theories continue to frame discussions regarding the status of the corporation within the fields of collective intentionality, the philosophy of economics, and corporate law, we must carefully distil what they reveal about the very nature of legal personhood.

In order to distil what is necessary from the theories of corporations, it is worth examining the points of contention among the aforementioned theories, as well as the extent to which their respective positions can be generalised to the concept of legal personhood as a whole. It seems that among the main fault lines, we may easily find those which concern: 1) the location of corporations as legal persons and their mode of existence; 2) the grounding facts of corporations as legal persons; as well as 3) their identity and essential features. In what follows, I aim to elucidate how the lessons drawn from the debate on the nature of the corporation can be applied to the broader problem of the ontology of legal personhood.

III. EXISTENCE OF LEGAL PERSONS: THE LOCATION PROBLEM

Visa Kurki rightly points out that, in legal discourse, the term 'legal person' is ambiguous between 'an entity that holds entitlements and burdens that constitute their holder's legal personhood' and 'the legal entitlements and burdens them-

[28] John Dewey, 'The Historic Background of Corporate Legal Personality' (1926) 35(6) Yale Law Journal 658.

selves'.[29] This ambiguity, disguised as a semantic puzzle, can be read as indicative of a deeper, metaphysical problem. Namely, if the term 'legal person' were to successfully refer to 'legal entitlements and burdens themselves' and not their holder, one ought to assume that there must actually exist something different from the holder, which is to be taken as a mere underlying substrate to which legal personhood is attributed.

Legal personhood is a status function with which a certain bundle of deontic powers is associated (rights, duties, obligations, authorisations, permissions, empowerments, requirements and certifications).[30] While this status function is attributed to certain entities, the nature of these entities – though undoubtedly an interesting topic of inquiry – remains of secondary importance to the theory of legal personhood as such. This observation echoes HLA Hart's well-known frustration with the juristic controversy over the nature of corporate personality. Ultimately, whether the holder of the deontic powers associated with 'legal personhood' is an aggregate, a physical entity, or a creature of our imagination need not *a priori* affect the deontic powers in question.

It should be noted, however, that the question about the nature of the holder of deontic powers remains different from the question about the nature of 'legal personhood' itself, i.e., a kind of legal entity. In order to accommodate the latter, a thorough ontological framework would be useful. Questions about the nature of various entities and phenomena can be presented as a 'placement' or 'location problem':[31] how to locate certain metaphysically suspicious or putative features of our world in the account of some serious metaphysics. If one were to take naturalism as a reference point (i.e., as the aforementioned account of serious metaphysics), the question would be: where to place 'legal personhood' within our *prima facie* natural world.

Huw Price introduces three general placement strategies:[32] dualism, reductionism and scepticism. Dualism and reductionism are two forms of Realism. According to dualism, natural features of our world are not exhaustive: non-natural entities are also real. Torben Spaak sees Hans Kelsen as a dualist in this respect.[33] According

[29] Kurki (n 14) 133.

[30] John R Searle, 'What is an institution?' (2005) 1 Journal of Institutional Economics 1, 10. See also Paweł Banaś (2018) 'Truth and Truth-Makers in Legal Discourse' [unpublished PhD dissertation].

[31] See Huw Price, *Expressivism, Pragmatism and Representationalism* (Cambridge University Press 2013), 6-9; also Frank Jackson, *From Metaphysics to Ethics: A Defence of Conceptual Analysis* (OUP 1998) 5.

[32] See Price ibid 26.

[33] See Torben Spaak 'Legal Realism and Functional Kinds: Michael Moore's Metaphysically Reductionist Naturalism' (2021) 2 Archiwum Filozofii Prawa i Filozofii Społecznej.

to Kelsen, the validity of norms is their mode of existence.[34] For something to be a legal norm, it must be a valid legal norm. And since the validity of any norm is conditional solely upon the validity of the basic norm (which is also a valid legal norm), its existence is independent of the natural (or social) spatiotemporal realm. Legal norms belong to the world of 'ought' and not the world of 'is'. A reductionist position would assume that all reality – including social and legal reality – is fundamentally spatiotemporal and governed by causal laws. Axel Hägerström is a reductionist about legal facts; for him, legal discourse can be understood as being 'about the various causes of human behaviour in terms of social feelings and the appropriate behaviour as the effect of the maintenance of the rules that keep the legal machinery running'.[35]

Scepticism is a form of Anti-Realism: sceptics doubt the very existence of metaphysically suspicious phenomena. Sceptics about legal institutions (including legal persons) doubt the existence of legal entities, legal phenomena, or legal facts. Expressivism is a radical form of scepticism in which statements in a given discourse are not taken to assert facts but to express the speaker's attitudes. Kevin Toh interprets Hart's position from *Definition and Theory in Jurisprudence* in that direction.[36]

The location problem of legal personhood (and, in fact, any legal institution) can be rephrased as a semantic challenge: what makes statements about legal personhood true? Or: What are the truth-makers of statements about legal personhood? Dualists would answer that non-natural legal facts are the truth-makers. Reductionists would argue that the actual truth-makers are to be found among natural facts. Sceptics deny that such statements must aspire to being undeniably true.

It should be clear by now that the classical opposition in the historical debate about corporate personhood: Fictionalism v Realism does not concern the ontological status of legal personhood but rather the onto-legal status of corporations as hold-

[34] Hans Kelsen, *General Theory of Law and State* (Anders Wedberg tr, Harvard University Press 1949) 30; see also Kelsen, *Pure Theory of Law* (Max Knight tr, University of California Press 1967) 10.

[35] Axel Hägerström, *Inquiries into the Nature of Law and Morals* (Karl Olivecrona ed, CD Broad tr, Almqvist & Wiksell 1953) 299.

[36] Kevin Toh, 'Hart's Expressivism and his Benthamite Project' (2005) 11 Legal Theory 75; see also Hart (n 13) 22–23, where he points out that when philosophers of law ask, 'what is law?', they 'are not asking to be taught how to use these words in the correct way. This they know and yet are still puzzled. (…) For the puzzle arises from the fact that though the common use of these words is known, it is not understood; and it is not understood because compared with most ordinary words these legal words are in different ways anomalous'. And the main anomaly of legal language Hart has in mind is that legal words 'do not have the straightforward connection with counterparts in the world of fact which most ordinary words have and to which we appeal in our definition of ordinary words. There is nothing which simply "corresponds" to these legal words (…)'.

ers of legal-personhood-related deontic powers. Fictionalists like Friedrich Carl von Savigny, Georg Friedrich Puchta, Joseph Unger or, from the common law tradition, John Austin, would see corporations as artificial subjects, conceived merely by our imagination. Realists like Otto von Gierke or Frederic William Maitland would argue that corporate bodies are internally organised collective organisms, they express and realise collective will and cannot be reduced to a mere aggregate of individuals.

IV. GROUNDING OF LEGAL PERSONHOOD: LEGALISM V REALISM

Another ontological challenge surrounding legal personhood is the problem of grounding – specifically, what constitutes the metaphysical foundation for the existence of legal persons. To illustrate the controversy, one may invoke the tension between Legalists and Realists as described by Ngaire Naffine:[37] 'to some Legalists, anything goes, anything or anyone can be endowed with rights and so become a legal person, as long as it is compatible with the purpose of any particular law'. On the other hand, Realists '(…) believe that the legal person is an expression of some important defining attribute of human nature and therefore it is important to go beyond law to work out what that nature is'.

Legalists claim that legal statuses need not depend on any supposed essential features of the being to whom it is to be ascribed. For Legalists, the status can be ascribed to anything; such an ascription amounts to attributing rights and duties based on authoritative declaration, completely independent of the entity's inherent features. Legal kinds (including legal personhood) come into existence and are attributed to their holders *via* collective recognition of some relevant authoritative community.[38] The fact of collective recognition (a social fact) is the sole grounding condition of something being a legal person.

Naffine's Realists, on the other hand, see legal statuses as grounded in some inherent properties of the entities to which they are ascribed. According to Naffine's

[37] Ngaire Naffine, *Law's Meaning of Life: Philosophy, Religion, Darwin and the Legal Person* (Hart Publishing 2009) 21–22.

[38] See Muhammad Ali Khalidi, 'Three Kinds of Social Kinds' (2015) 90(1) Philosophy and Phenomenological Research 96, who introduces three categories of social kinds. Legalists would place legal kinds (like legal personhood) in Khalidi's third category: not only does the existence of the kind depend on our having propositional attitudes toward it; the existence of its instances also depends on our having propositional attitudes toward them (namely, that they are instances of that kind). See also Banaś, 'Why cannot anything be a legal person? A critique of Kurki's Theory of Legal Personhood' (2021) 44 Revus.

Realists, legal systems cannot simply attribute legal personhood to any entities but only to those which satisfy some pre-defined constitutive criteria, i.e., those who have certain competence or some inherent feature. Naffine's Realists may disagree regarding the criteria in question: some ground legal personhood in rationality, whereas others view sentience as the grounding condition. Interestingly, if one were to accept this form of Realism, one could not evade the question concerning the very nature of the entities to which legal personhood is attributed (to find out whether they possess the necessary features).

Joshua Jowitt is an example of a radical Realist as he claims: 'It is impossible for legal personhood to be seen as a thing separate from a metaphysical criterion of personhood, and claims that argue otherwise are demonstrably false'.[39] Visa Kurki is also a Realist (although his position is not as radical as Jowitt's in this respect).[40]

There are two normative interpretations of Realism in this sense: a strong and a weak one. According to the former, satisfaction of some grounding criterion of personhood is both sufficient and necessary for something to be a legal person. According to the latter, satisfaction of some metaphysical criterion of personhood provides a primary moral reason to recognise something as a legal person, i.e., a legal system ought to recognise that something as a legal person to be considered a just legal system. Again, Jowitt is a prime example of a strong Realist in this context.[41] This stance is also prevalent in discourse surrounding the legal status of non-human animals, where strong Realism often underpins the argument that a specific threshold of a trait – such as sentience – ought to constitute legal personhood.[42]

V. IDENTITY OF LEGAL PERSONHOOD

Another question about the ontological status of legal personhood concerns its necessary properties[43] and is best explained in terms of modal essentialism about legal kinds. Accordingly, modal essentialism can be bifurcated into two catego-

[39] Joshua Jowitt, 'Assessing Contemporary Legislative Proposals for Their Compatibility with a Natural Law Case for AI Legal Personhood' (2021) 36 AI & Society 499–500.
[40] For the discussion see Banaś (n 38).
[41] Jowitt, 'Legal Rights for Animals: Aspiration or Logical Necessity?' (2020) 11(2) Journal of Human Rights and the Environment 173.
[42] See, e.g., Rachel N Wichert and Martha C Nussbaum, 'The Legal Status of Whales: Capabilities, Entitlements and Culture' (2016) 37(72) Seqüência (Florianópolis) 19.
[43] I have elsewhere discussed this topic as a problem of potential constraints on the concept of legal personhood, see Banaś (n 38).

ries: kind essentialism and individual essentialism.[44] The former presupposes that all entities belonging to a specific legal kind (i.e., legal personhood) share certain necessary and distinctive properties. The latter can be described as essentialism about kind membership: it posits that for every entity, it either necessarily belongs or does not belong to a legal kind under scrutiny. One can ask two corresponding questions: 1) are there any necessary properties of legal personhood as a legal status?; and 2) are there any necessary requirements that need to be satisfied in order for something to be a legal person?

Question 1) is reminiscent of various debates about the nature of law and legal institutions: whether there are any constraints (ontological or normative) on how legal systems and legal institutions (including legal personhood) are shaped. It is often argued that legal personhood is equivalent to holding rights and bearing duties.[45] But is it a necessary and constitutive feature of legal personhood? And is there a fixed set of rights and duties to be associated with this legal institution?

In his sophisticated theory, Visa Kurki associates legal personhood with a bundle of Hohfeldian legal positions (which he calls a 'legal platform').[46] This can be considered an essential, necessary feature of legal personhood. But he argues that there are actually different legal platforms (different bundles of positions, i.e., sets of rights and duties: purely passive personhood, dependent legal personhood, independent legal personhood and purely onerous personhood) and new ones could be 'defined into existence'.

Question 2) requires some additional clarification. Legal personhood must be differentiated from the holder of this status. Holders of the status cannot be mistaken for instances of legal personhood. Hence, question 2) is not about holders of a 'legal person' status but rather about the token status itself.

Indirectly, however, it might be a necessary feature of a 'legal person' status token that it can only be ascribed to entities satisfying certain criteria. One can consider various theories of rights, which are generally divided into 'will theories' and

[44] With regard to social kinds, these two forms of essentialism can be elucidated through an analogy with Muhammad Ali Khalidi's second category in his classification of social kinds. Among three categories of social kinds, Khalidi describes one for which the sole grounding criterion for its existence is collective recognition of this existence. However, by collectively recognizing the social kind in question, the relevant community stipulates conditions that need to be objectively fulfilled for something to count as a member of that kind. See Khalidi, *Natural Categories and Human Kinds: Classification in the Natural and Social Sciences* (Cambridge University Press 2013) followed by Khalidi, 'Three Kinds of Social Kinds' (2015) 90(1) Philosophy and Phenomenological Research 96.

[45] This is what Visa Kurki calls the 'Orthodox View of legal personhood'; see Kurki (n 14) 15.

[46] See chapter 4 of Kurki (n 14).

'interest theories'.[47] Will theories assert that having a right requires the cognitive competence to demand or waive a duty. This inherently excludes animals, infants, and nature from being independent legal persons *sui juris*. Interest theories argue that rights exist to protect the interests of the right-holder. While more liberal – potentially accommodating the 'interests' of trees or ecosystems – both will and interest theories insist that the capability to hold rights is grounded in pre-existing, non-legal facts (competence or identifiable interests). Thus, they restrict legal personhood to entities that meet these preliminary conditions. Naffine's Realists seem to imply some version of individual essentialism. Visa Kurki, by being such a Realist, must also embrace individual essentialism.[48]

Alternatively, proponents of the Artifact Theory of Law might argue that legal institutions – including legal personhood – are constituted entirely by the collective propositional attitudes of a relevant political community. As an institutional artifact, legal personhood is inherently functional; entities are recognised as legal persons only insofar as granting them this status fulfils a specific purpose. Crucially, there are no inherent constraints on what this purpose might be, nor are there any natural limitations on which entities can receive this status. The projected functions of legal personhood might vary widely: it may facilitate economic processes, afford legal protection, or simply manifest a community's normative stance toward a given entity. Given this functional diversity, one might ask whether 'legal personhood' remains a single, overarching institution, or if the term actually masks a plurality of distinct institutions. To date, this question remains largely unaddressed in the literature, presenting a compelling avenue for future research.

VI. CONCLUSIONS

In this short article, I have sought to provide a structured account – a conceptual roadmap – of the possible ontological views regarding legal personhood. By drawing upon traditional debates concerning corporate personhood and integrating contemporary insights from analytical metaphysics, this roadmap has highlighted three primary fault lines: the location problem of legal institutions, the disagreement over the grounding of legal personhood, and the tension concerning

[47] See, e.g., Matthew H Kramer, *Rights and Right-Holding: A Philosophical Tract* (Oxford University Press 2024).

[48] Kurki does not give us an exact condition that holders of legal personhood need to satisfy (and leaves it to others to discover). He only says that it must be ability to hold claim rights and perform acts; see Kurki (n 14) 138.

its necessary features. As new types of entities – such as non-human animals and environmental features – earn or aspire to earn the status of legal persons, this framework might offer a roadmap for the conceptual reassessment required to effectively navigate these forthcoming legal challenges.

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REFERENCES

Banaś P, 'Truth and Truth-Makers in Legal Discourse' (unpublished PhD thesis 2018)

Banaś P, 'Why cannot anything be a legal person? A critique of Kurki's Theory of Legal Personhood' (2021) 44 Revus

Gindis D, 'From Fictions and Aggregates to Real Entities in the Theory of the Firm' (2009) 5(1) Journal of Institutional Economics 25

Grossman S and Hart O, 'The Costs and Benefits of Ownership: A Theory of Vertical and Lateral Integration' (1986) 94(4) Journal of Political Economy 691

Hägerström A, *Inquiries into the Nature of Law and Morals* (K Olivecrona ed, CD Broad tr, Almqvist & Wiksell 1953)

Hart HLA, 'Definitions and Theory in Jurisprudence' in *Essays in Jurisprudence and Philosophy* (Clarendon Press 1983)

Jackson F, *From Metaphysics to Ethics: A Defence of Conceptual Analysis* (Oxford University Press 1998)

Jensen MC and Meckling WH, 'Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure' (1976) 3(4) Journal of Financial Economics 311

Jowitt J, 'Assessing Contemporary Legislative Proposals for Their Compatibility with a Natural Law Case for AI Legal Personhood' (2021) 36 AI & Society 499

– –, 'Legal Rights for Animals: Aspiration or Logical Necessity?' (2020) 11(2) Journal of Human Rights and the Environment 173

Kelsen H, *General Theory of Law and State* (Anders Wedberg tr, Harvard University Press 1949)

– –, *Pure Theory of La*w (Max Knight tr, University of California Press 1967)

Khalidi MA, *Natural Categories and Human Kinds: Classification in the Natural and Social Sciences* (Cambridge University Press 2013)

– –, 'Three Kinds of Social Kinds' (2015) 90(1) Philosophy and Phenomenological Research 96

Kramer MH, *Rights and Right-Holding: A Philosophical Tract* (Oxford University Press 2024)

Kurki VAJ, *A Theory of Legal Personhood* (Oxford University Press 2019)

Naffine N, *Law's Meaning of Life: Philosophy, Religion, Darwin and the Legal Person* (Hart Publishing 2009)

Price H, *Expressivism, Pragmatism and Representationalism* (Cambridge University Press 2013)

Searle JR, 'What is an institution?' (2005) 1 Journal of Institutional Economics 1

Spaak T, 'Legal Realism and Functional Kinds: Michael Moore's Metaphysically Reductionist Naturalism' (2021) 2 Archiwum Filozofii Prawa i Filozofii Społecznej

Toh K, 'Hart's Expressivism and his Benthamite Project' (2005) 11 Legal Theory 75

Wichert RN and Nussbaum MC, 'The Legal Status of Whales: Capabilities, Entitlements and Culture' (2016) 37(72) Seqüência (Florianópolis) 19