

BEYOND DUALISM(S): A NEW APPROACH TO LEGAL PERSONHOOD IN CONTEMPORARY LEGAL THEORY*

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Abstract: This article presents a critique of the Orthodox View of legal personhood, which traditionally aligns personhood with the capacity to hold rights and duties. It explores the Bundle Theory proposed by Visa Kurki, which redefines legal personhood as a cluster concept composed of passive and active elements, and which challenges the binary nature of personhood, proposing a spectrum ranging from full to partial personhood. It also considers which entities can be legal persons and offers a brief overview of new, alternative ontologies.

Keywords: legal personhood; Orthodox View; Visa Kurki; Bundle Theory; new materialism

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INTRODUCTION

For a long time, legal personhood did not receive much attention in legal doctrine – the theories that emerged in the nineteenth and twentieth centuries remain largely dominant to this day. However, recent decades have brought about significant changes that have fundamentally challenged this concept. Technological advancement has led to the emergence of new entities that require our attention, while climate change has provided a new impetus for reinterpreting the relationship between humans and nature. The anthropocentric view of the world is increasingly being questioned and offers an opportunity to find an alternative way forward.

These changes are necessarily reflected in law and legal theory. New entities become subjects of law, new fields of legal theory emerge, such as Earth Jurisprudence, activists claim rights for more and more entities (see e.g., Nonhuman Rights Project, Rights of Nature Movement), sometimes successfully.

A fundamental concept that requires further examination is that of legal personhood.¹ This concept represents a foundational element of Western legal thought. However, in

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¹ The term *legal person* is used in this article to refer generally to entities to which the law confers the status of a person. Corporations and foundations are referred to as *juristic persons*, while human beings are also referred to as *natural persons*.

its traditional form, it is unable to fulfil the systematizing, explanatory, and unifying roles that are expected of a basic concept.

This article examines the potential for redefining legal personhood in order to address the challenges posed by contemporary social contexts. In this article, I build on the Bundle Theory of Visa Kurki,² who has critiqued the classical conception of legal personhood and developed a new, comprehensive theory of legal personhood. Following an introduction to the theory, a brief discussion of Kurki's approach to new entities and potential legal persons is provided, with the Whanganui River³ serving as an illustrative example. The fourth and concluding part will address the questions, possibilities, and criticisms that arise from Kurki's theory.

1. THE ORTHODOX VIEW AND ITS CRITIQUE

Theories of legal personhood have gradually evolved throughout history, taking on a well-defined form and meaning in the 19th and 20th centuries. This understanding of legal personhood, which Visa Kurki terms the *Orthodox View*,⁴ defines legal persons, roughly put, as entities that have (the capacity to hold) rights and duties. Within the Orthodox View, Kurki identifies five sub-theories:⁵

- a) the Rights-and-Duties approach, according to which a legal person is an entity that holds at least one right and bears at least one duty;
- b) the Rights-or-Duties approach, according to which a legal person is an entity that holds at least one right or one duty;
- c) the Capacity-for-Rights approach, which does not require that an entity actually has rights and/or obligations, but which links legal personhood with the capacity to do so;
- d) the Capacity-for-Legal-Relations approach, which links legal personhood not to atomistic legal positions, but to the capacity of participation in a system of relations between legal persons; and
- e) the Kelsenian approach, according to which the legal person is nothing other than a personified set of legal norms.⁶

² KURKI, V. *A Theory of Legal Personhood*. Oxford: Oxford University Press, 2019.

³ The Whanganui River is a New Zealand river that was given legal personhood in 2017 as a result of an agreement between the Indigenous Whanganui Iwi and the Crown. The Te Awa Tupua Act governs the status of the river, the rights and obligations of the various entities in relation to it, and the question of its representation. See Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, 20 March 2017.

⁴ Kurki calls *Orthodox View* the theory of the legal person, which gradually evolved from the early modern period and was finalised during the 19th and 20th centuries. He contrasts this with his own theory, which he terms the *Bundle Theory*. It should be noted that Kurki acknowledges that the Orthodox View is not a single, unified concept, but rather comprises a number of common elements and underlying ideas that facilitate a unified analysis of the various theories. KURKI, *c. d.*, pp. viii, 55.

⁵ *Ibid.*, p. 55.

⁶ *Ibid.*, pp. 55–56.

The Orthodox View, with its definition of the legal person as a (potential) bearer of rights and duties is still dominant in both legal theory and in practice,⁷ and the Orthodox View, with all of its sub-theories and modifications, provides a good starting point in the search for the meaning of the concept of a legal person. But at least two problems immediately arise in connection with the Orthodox View: what do the rights and duties to which these definitions refer mean, and what criteria can be used to determine which entities can have legal personhood, i.e., who or what has (or can have) rights and duties?

Kurki points out that the Orthodox View cannot answer these questions without contradicting itself, since its definitional elements cannot reflect several issues related to legal personhood, and are not compatible with certain views held by both professionals and lay society,⁸ e.g., that animals or foetuses have certain rights⁹ but are not legal persons, that children have no (or limited) duties but are still considered legal persons, etc.¹⁰

Kurki's approach allows for a very precise analysis of both issues. The following section will demonstrate how he begins by presenting the main theories of rights, thus answering the first question, and builds on this analysis to critique the Orthodox View.

When presenting and evaluating the dominant rights theories, Kurki builds on the Hohfeldian approach¹¹ by breaking down the complex and somewhat opaque notions of "rights and duties" into its elements. On this basis, he distinguishes two main groups of legal theories that play a role in the definition of a legal person: the interest theories, which link the concept of right to the interest of an entity: "*a duty borne by X constitutes a right for Y if Y's interests are typically served by the performance of the duty*".¹² Will theories, on the other hand, "*define Y's holding of a right as Y's control over X's duty*".¹³ Both approaches are central to Kurki's critique: he points out that the Orthodox View conflicts with these definitions of rights. According to the interest theories, animals or foetuses (or even other entities on some interpretations, though Kurki disputes this)¹⁴

⁷ Although this article does not aim to analyse the Czech legal environment, it is worth briefly looking at the Czech private law concept of legal personhood. The Civil Code leans towards the fourth (d) theory when it defines a legal person as follows: "*Legal personhood is the capacity to have rights and obligations within the limits of the legal system*" (Art. 15). The concept of legal personhood in Czech (private) law can also be read as a good example of the Orthodox View. The Czech private law contains three important definitions of legal personhood: on the one hand, it defines what legal personhood is (Art. 15) and specifies that only entities defined as legal persons can have rights and obligations (Art. 17), and on the other hand, it defines who counts as a legal person (natural persons and juristic persons, Art. 18). It thus leaves no room for extending rights and obligations to nonpersons, nor does it allow the extension of the category of entities that fall within the definition of legal person. Legal competence (*svěprávnost*; in Kurki's theory it corresponds roughly to active personhood, see below) is a separate legal concept, although it makes sense to speak of legal competence only in the case of legal persons. Act No. 89/2012 Sb., Civil Code, 22 March 2012. On the Czech concept of legal personhood, its anthropocentric roots and possible alternatives, see BERAN, K. Proč nepotřebujeme člověka při legislativním vymezení pojmu fyzické osoby? [Why do we not need a human being in the legislative definition of a natural person?]. *Acta Universitatis Carolinae Iuridica*. 2017, Vol. LXIII, No. 4, pp. 123–135.

⁸ KURKI, *c. d.*, p. 55.

⁹ For a brief analysis of the relevant rights theories, see below.

¹⁰ KURKI, *c. d.*, p. 55; Kurki calls these beliefs extensional beliefs.

¹¹ HOHFELD, W. N. Fundamental Legal Conceptions as Applied in Judicial Reasoning. *The Yale Law Journal*. 1913, Vol. 23, No. 1, pp. 16–59; KURKI, *c. d.*, pp. 55–90.

¹² KURKI, *c. d.*, p. 61.

¹³ *Ibid.*

¹⁴ See part 3.

can have rights, even though they are not considered legal persons under extensional beliefs. And will theory denies rights to certain entities that are considered to be legal persons, such as children.

Rights theories thus provide a useful tool for conceptualising legal personhood, but the Orthodox View cannot be reconciled with the answers that these theories provide to the question of who or what can be a legal person.

To sum up, the Orthodox View is essentially a binary concept, which draws the demarcation line between person/non-person by means of the attributability of rights and duties, and does not recognise (or only to a very limited extent) the concept of a partial legal person: based on either of the five definitions described above, one can determine whether an entity is a person or not, *tertium non datur*. However, with the emergence of new entities (e.g., AI) and the reinterpretation of certain existing ones (e.g., non-human animals, nature), this view is no longer suitable to be a pillar, a structural element of Western legal thought.

The following part will build upon Kurki's work by examining the ways in which legal personhood can be reconceptualised. Kurki is perhaps the first to create a new general analytical theory of legal personhood that is relevant to the challenges of the 21st century,¹⁵ and it is an excellent starting point for examining future issues. The following section provides an overview of the fundamental elements and structure of the so-called Bundle Theory, of the question of who or what can be a legal person under this theory and shows how the concept relates to and what possibilities it offers for those entities whose legal personhood has been increasingly discussed in recent years, both in legal theory debates and in legal practice. Kurki's work also focuses on the potential legal personhood of AI, animals, human collectivities etc.; in my article, I focus on those entities that Kurki's theory does not grant personhood to and conceptualises differently – namely, I address the question of nature's rights and present Kurki's view on it: why cannot a river (namely the Whanganui River) be a legal person and what alternative does Kurki offer to resolve its status.

2. THE BUNDLE THEORY

In response to the shortcomings of the Orthodox View, Kurki developed his own theory, known as the Bundle Theory, the basic tenets of which can be summarised as follows:

- a) Legal personhood is a cluster concept, i.e., a complex concept consisting of several interrelated elements. Kurki calls them incidents.¹⁶
- b) Legal personhood consists of two, separable, but interconnected parts: passive personhood and active personhood, which are built up from the individual incidents. While the dominant legal position of passive personhood is claim-rights, active personhood is linked to agency, competence, and responsibility.

¹⁵ KURKI, *c. d.*, p. 91.

¹⁶ *Ibid.*, p. 6.

- c) Legal personhood is not a binary concept (according to which someone/something is either a legal person or not), but rather a matter of degree. It ranges from full legal personhood to purely passive personhood (see below).¹⁷
- d) The individual incidents of legal personhood can be analysed separately, but they are interconnected and interact with each other. Legal personhood derives its ultimate meaning from its role in society.
- e) On the question of who or what can be a legal person on the basis of the Bundle Theory, Kurki builds both on the Legalist tradition, i.e., he holds that the concept of legal personhood is primarily constituted by law, and that personhood as a status is guaranteed or denied by law.¹⁸ However, his Legalist stance is limited: he does not believe that any entity can be endowed with legal personhood, and concludes that only sentient beings of ultimate value can be legal persons. The interests of other entities must be represented and enforced by other means.

The following sections will provide a more detailed analysis of these theses, as well as Kurki's proposed solution to the problem of asserting the interests of entities that are not legal persons (specifically the Whanganui River in New Zealand).

2.1 WHAT IS LEGAL PERSONHOOD?

As mentioned earlier, the Bundle Theory views legal personhood as a cluster concept, which is not binary but graded, allowing for partial, even purely passive personhood.

Passive legal personhood is primarily related to the legal position of claim-rights:¹⁹ passive personhood is held by an entity that has claim-rights against another entity, i.e., another entity has a duty towards them. Passive personhood consists of six incidents. Three are substantive incidents, i.e., non-procedural claim-rights:²⁰

- a) The so-called fundamental protections: protection of life, liberty, and bodily integrity. These are absolute rights that cannot be weighed against other interests or limited on the basis of utilitarian considerations;²¹
- b) The capacity to be a party to special rights: Kurki refers to special rights in a Hartian sense. Although Hart's theory of special rights is based on will theory and its earlier version holds that e.g., children do not have this capacity, Kurki argues that even en-

¹⁷ Kurki's definition of the incidents and degrees of legal personhood is strongly influenced by the theory of MacCormick, who breaks down legal personhood into four basic capacities: pure passive capacity, passive transactional capacity, capacity responsibility, transactional capacity. KURKI, *c. d.*, 94. See also MACCORMICK, N. *Institutions of Law: An Essay in Legal Theory*. Oxford: Oxford University Press, 2007, pp. 77–99.

¹⁸ KURKI, *c. d.*, p. 93.

¹⁹ Keep in mind that Kurki builds on Hohfeld's analysis of rights in his work, claim-rights in this context are Hohfeldian rights.

²⁰ KURKI, *c. d.*, p. 95.

²¹ *Ibid.*

tities with purely passive personhood can exercise this right through a representative or a guardian;²² and

- c) The capacity to own property (and insusceptibility to being owned):²³ since property is also a cluster concept, in which active and passive components can be distinguished, it is possible, according to Kurki, for passive persons to own property and have property rights.

Three remedy incidents are related to enforcement and include:

- a) standing, i.e., the capacity of a legal person to enforce its rights: there are two aspects of standing in Kurki's reading, one is invested standing, which means that "*an entitlement of X is recognized by the legal system as enforceable in court*".²⁴ The other is the competence-related aspect, which gives the entity X the choice of whether or not to enforce its right in court.²⁵
- b) The capacity to be legally harmed, which addresses the question of whether an entity is entitled to remedies under tort law;²⁶ and
- c) The capacity to count as a victim of crime.²⁷

Active incidents relate to agency, competence, and responsibility, and include:

- a) legal competence, i.e., the competence to perform acts-in-the law which "*are acts which effect changes in legal relations in virtue of the fact that they have been performed with the intention to effect the change in question*";²⁸
- b) onerous legal personhood, which is linked to legal responsibility and means that an entity can be held responsible for its conduct and sanctions can be imposed on them.²⁹

In sum, Kurki's theory of legal personhood is a structured system of several elements that can be divided into two larger units: passive personhood, which is essentially based on interest theories and has claim-rights as its central legal position, and active personhood, which can be associated with will theories and which allows an entity to perform actions with legal consequences and to be held accountable for its behaviour.

However, the above analysis raises the question: which incidents are essential to declare someone a legal person, and how many incidents must an entity have in order to be considered a legal person?

²² Ibid., p. 103; see also HART, L. A. Are There Any Natural Rights? *The Philosophical Review*. 1955, Vol. 64, No. 2, pp. 175–191.

²³ Ibid., pp. 103–106; A legal person may, under certain circumstances, be the object of ownership, but, as Kurki acknowledges, this question is rather complicated, and its analysis would go beyond the scope of this paper. For the purposes of this analysis, it is sufficient to note that even entities that may be owned may be legal persons.

²⁴ Ibid., p. 108.

²⁵ Ibid.

²⁶ Ibid., pp. 110–111.

²⁷ Ibid., pp. 111–112.

²⁸ Ibid., p. 116. This competence is linked to, but not synonymous with, Hohfeldian powers which is a much broader category. KURKI, *c. d.*, p. 115.

²⁹ Ibid., p. 116.

Kurki's answer is that, although the Bundle Theory is a cluster concept, it is a functional whole, and its elements are able to fulfil their function together in Western societies: the grouping of these elements into a single concept is justified by the fact that they can only fulfil the needs of society when they are interconnected. Kurki therefore does not give a clear answer as to what the minimum requirements for *legal personhood* are, but he states that it is impossible to ignore the interconnectedness of the different elements of the concept and its role and function in the legal order and in society.³⁰

2.2 WHO CAN BE A LEGAL PERSON AND WHY

A related (though distinct) question to the above theory is: who/what, according to the analysis, is entitled to (at least partial) legal personhood?

For some entities, it is not difficult to determine whether they are legal persons under the Bundle Theory. The *paradigmatic legal person* is the adult of sound mind who has all the incidents of both passive and active personhood.³¹ But the status of many other entities is not so clear: how does the Bundle Theory assess the status of foetuses, animals, rivers, idols, AI? Which incidents are relevant in their case, and why?

To answer these questions, Kurki introduces a further distinction between the legal person and the legal platform.³² A legal platform "*is a specific kind of bundle of legal entitlements and burdens*" that "*exist only in the law, and can attach to certain kind of entities*".³³ It is also "*named, integrated, and separate from other similar bundles*".³⁴ A legal person, on the other hand, "*is an attribute of a non-legal entity, conferred by an efficacious legal system*".³⁵ Every legal person has at least one legal platform.

Kurki thus ultimately finds the answer to the question of what/who is a legal person in *reality*, in entities that exist outside of law, not accepting the theory that law and legal concepts do not need real entities because legal personhood can be explained as a set of legal positions – as we shall see, in his reading this definition corresponds to the legal platform, which is attached to *a real* entity, the legal person.

Keeping this distinction in mind, Kurki's short answer to the question of who/what (can be) a legal person is that a legal person can only be an entity who can hold claim-rights or can perform acts.³⁶ The main question, therefore, is to which of the entities do others owe a duty³⁷ (passive legal personhood).

³⁰ I will return to this question in part 4, where I will examine alternative ways of conceiving legal personhood.

³¹ KURKI, *c. d.*, pp. 7–10.

³² Kurki argues that traditional theories use legal personhood in both senses interchangeably, which gives rise to misunderstandings.

³³ KURKI, *c. d.*, p. 133; This definition actually reflects Kelsen's conception of the legal person. See KELSEN, H. *General Theory of Law ad State*. Cambridge-Massachusetts: Harvard University Press, 1999, p. 93.

³⁴ According to Kurki, a typical example of a legal platform is the one-person company, which can be separated from the natural person's *natural platform* (KURKI, *c. d.*, p. 133).

³⁵ *Ibid.*

³⁶ *Ibid.*, p. 138.

³⁷ Duty is the jural correlative of claim-rights in the Hohfeldian analysis (HOHFELD, *c. d.*, p. 30).

At this point, Kurki departs from his strictly analytical approach and supports his theory with a moral argument. He draws on the interest theories of Joseph Raz³⁸ and, in particular, Matthew H. Kramer,³⁹ and points out that both Raz and Kramer ascribe interests to different entities (also e.g., plants, nature, rocks etc.), but argue that interests are not the same as Hohfeldian rights (they are a minimal but not sufficient condition for right-holding). Only entities that can hold at least claim-rights in the Hohfeldian sense can be granted legal personhood. Kurki combines these two theories (Raz's theory that only beings of ultimate value can have rights, and Kramer's theory that sentient beings have claim rights) and concludes that only beings of ultimate value can have passive legal personhood: if an entity is protected for the benefit of another entity, e.g., the public, then it is the public, not the protected entity, that has ultimate value and can therefore be a legal person. In determining who has ultimate value, he turns to Kramer: "*only sentient beings are of ultimate value and that they can consequently hold claim-rights. [...] Sentient beings include at least born, non-anencephalic humans, human fetuses during the final trimester; and most vertebrates.*"⁴⁰

His work can therefore be divided into two parts: while the Bundle Theory itself, the analysis of the components of legal personhood, is strictly analytical, and his conclusion that at least passive personhood can be held by those who have ultimate value is logical, the question of who or what has ultimate value is based on a fundamental moral evaluation.

His moral argument, as well as his analysis, does not go beyond the limits of Western legal ontology: it is based on an individualistic and anthropocentric view (which is logical, given that Kurki starts from an analysis of the Western concept of legal personhood and does not even aim to create a universal concept applicable in all legal systems).

However, as will be discussed in the following parts, this view is incompatible with some of the changes taking place in legal practice, which recognise the legal personhood of other entities, even in systems belonging to the Western legal cultures. The question arises as to whether the global changes in society, the intermingling of different legal (and philosophical) systems, and the new, as yet unresolved challenges facing (Western) society, do not also require a general change in conception and the search for a new legal ontology. The following sections elaborate these theoretical considerations using the case of the Whanganui River as an emblematic example of emerging new entities that require our attention.

Based on the criteria he set out in his analysis, Kurki concludes that the river is not an entity that can be granted legal personhood. However, in legal practice, it is recognized as such. The question therefore remains whether the Western legal concept of legal personhood and its moral justification, as characterised by Kurki, can respond to the challenges of contemporary practice, and whether, by lowering the criteria and expanding the range of legal persons, the whole concept is being hollowed out, and whether it is not appropriate to consider a new, alternative legal ontology in this area.

³⁸ KURKI, *c. d.*, pp. 62–65.

³⁹ *Ibid.*

⁴⁰ *Ibid.*, p. 64.

3. THE STATUS OF NON-HUMAN BEINGS – KURKI'S READING OF THE WHANGANUI RIVER CASE

From the above definition, it is clear that Kurki considers sentient beings to be possible legal persons,⁴¹ but the same cannot be said of, for example, rivers, plants, or idols. In this part, I will examine how Kurki views the Whanganui River and the question of what kind of entity the river can be considered to be. These “liminal cases” are best suited to shed light on the controversies of the concept of legal personhood and the different approaches to address these issues.

Kurki's reading of the Whanganui River's legal status is that it is not a legal person, but rather a legal platform, or a *bundle of legal positions*.⁴² Although he acknowledges that there is a connection between the Whanganui River as a legal platform and the Whanganui River as a physical entity, he calls this a “weak attachment” and argues that this connection is not sufficient to attach the legal platform *Whanganui River* to the physical entity called *Whanganui River*, as this entity is not a being of ultimate value and is not capable of having legal personhood.⁴³

In contrast, Kurki proposes that the legal platform designated as the *Whanganui River* is attached to a “*collective beneficiary constituted by the sentient beings who depend on the river in one way or another*”.⁴⁴ Accordingly, on this interpretation, the legal person *Whanganui River* is constituted solely by the collective of sentient beings, thereby excluding from the definition plants, non-living material, and other components of the ecosystem. These elements are not essential to the legal person; they are merely things necessary to secure the interests of the collective beneficiary, the group of sentient beings.⁴⁵

4. THE STATUS OF NONHUMAN ENTITIES – IN SEARCH OF A NEW ONTOLOGY?

Kurki's analysis of the Whanganui River's status is logical and consistent with his general theory of legal personhood. However, another interpretation is possible, based on an alternative ontology and moral reasoning that draws on other philosophical traditions; and this interpretation may be better suited to reconciling theory and practice. While Kurki defines the river primarily as a *body of water*, the Te Awa Tupua Act considers it “*an indivisible and living whole comprising the Whanganui River from the mountains to the sea, incorporating all its physical and metaphysical elements*”.⁴⁶ It is clear that Kurki's analysis and the indigenous thinking about the Whanganui River

⁴¹ Under certain circumstances, AI can also have partial legal personhood, but the analysis of this question exceeds the scope of this article. Kurki further examines the legal personhood of group agents and human collectivities; I will explore this issue more in detail in relation to the Whanganui River.

⁴² KURKI, *c. d.*, p. 133.

⁴³ *Ibid.*, p. 135.

⁴⁴ *Ibid.*, p. 173.

⁴⁵ KURKI, *c. d.*, pp. 172–173.

⁴⁶ Te Awa Tupua Act, section 12.

rest on different ontological and moral foundations – in the indigenous worldview, it is not possible to separate the sentient *parts* of the river from the non-sentient ones, the dichotomy characteristic of Western thinking does not appear here.

However, the act itself is characterised by a specific duality. On the one hand, it recognises the physical-metaphysical unity of the river and sees it as an indivisible ecosystem; on the other hand, when it translates this essentially indigenous idea into *Western legal language* and attributes legal personhood to the river, it associates it with concepts that necessarily lead back to anthropocentric Western thinking.⁴⁷ In Jade-Ann Reeves' and Timothy D. Peters' reading,⁴⁸ the act divides the river into a *bodily, animal* part and a *part with a human face*. While section 12 defines the essence of the river and identifies this essence with its natural, passive character, section 14, which recognizes the legal personhood of the river, gives it a *human face* and endows it with an active, competent personhood and a capacity to hold claim-rights. The river is thus separated from its environment on two fronts: on the one hand, it is separated from nature by being delimited and named as an entity endowed with rights and duties, and on the other, it can never achieve full legal personhood because of the definitional elements and limitations of the Western concept of legal personhood.⁴⁹

Both the Te Awa Tupua Act and this interpretation demonstrate the complexities and unresolved issues surrounding the concepts of personhood, individualism, anthropocentrism, and the divergence of worldviews. Do we need to go beyond the Western subject-object duality and look for new ontologies if we are to respond to changes in our relationship with nature? Or can the Western worldview be brought into line with these changes without radical reinterpretation?

Kurki endeavours to respond to these questions within the context of Western philosophical discourse. Reeves and Peters adopt an alternative approach, proposing that a new ontology is required in both philosophy and law.

Such an ontological shift has gradually emerged in social as well as natural sciences over the past decades,⁵⁰ when the attention of certain researchers has shifted from human, language and subjectivity to objects and matter, to the interconnectedness of different entities and the embeddedness of human beings in the material world. Among the numerous theoretical approaches, one of the most pertinent *new ontologies* is that of new materialism. As posited by Jessie Hohmann,⁵¹ this perspective exhibits three distinctive features when compared to other object-oriented approaches. Firstly, it considers matter “in its very physicality”. Secondly, it emphasises the entanglement of all matter. Thirdly, it does not consider matter as passive and inert, but rather as vital,

⁴⁷ See Te Awa Tupua Act, section 14: “*Te Awa Tupua is a legal person and has all the rights, powers, duties, and liabilities of a legal person.*”

⁴⁸ REEVES, J.-D. – PETERS, T. D. Responding to anthropocentrism with anthropocentrism: the biopolitics of environmental personhood. *Griffith Law Review*. 2021, Vol. 30, No. 3, pp. 474–504.

⁴⁹ *Ibid.*, pp. 486–489.

⁵⁰ HOHMANN, J. Diffuse subject and dispersed power: New materialist insights and cautionary lessons for international law. *Leiden Journal of International Law*. 2021, No. 34, pp. 585–606.

⁵¹ *Ibid.*, p. 592.

*vibrant*⁵² and agentive. It challenges the traditional binary oppositions characteristic of Western philosophy, such as subject/object, mind/matter, and so forth. Instead, it emphasises relationality and the procedural aspects of subject formation: it considers agency “*as the result of intra-actions and entanglements and [agency] is an unstable and potentially shifting process*”.⁵³ This emphasis on relationality and a novel approach to agency renders new materialism a compelling lens through which to examine the question of legal personhood.

New materialism offers a means of reconciling the specific duality that characterises The Te Awa Tupua Act, as well as our general way of thinking about nature. It can provide a new philosophical-ontological basis for legal theory to rethink the subject-object duality and to conceptualise new, more interconnected ways of thinking about human and nature, the material and the immaterial, human and posthuman agency.

However, it remains to be seen what wider implications the new materialism would have for legal theory if adopted as a general theoretical framework in the field. These questions remain to be explored.

The question of who or what counts as an entity endowed with rights or duties in law always ultimately leads to a moral-philosophical (and also political) debate. As paradigms change in our time, so must our views on legal personhood and the entities that are relevant to the law. This involves not only the question of who is a legal person, but also the role of *real* entities in law in general: how we delimit and define them, and what modes of communication we use to relate to them. Whether we start from the analytic tradition or depart from it, these questions cannot be avoided. Kurki’s theory is one example of it, which ultimately gave moral legitimacy to its answer to the question of who and why is a legal person, and it is also evident in the work of scholars who depart from the analytic tradition and turn to new philosophical approaches.

CONCLUSION

The aim of my article has been to try to identify the place of the concept of legal personhood, its current dominant understanding and its new possibilities in law. Using Kurki’s rigorous and precise analysis, I have shown how the concept of legal personhood can be understood and given meaning in contemporary Western legal theory, then shown who can count as a legal person on the basis of this concept, and tried to outline an alternative way forward that not only breaks down the structure of legal personhood into its elements, but also experiments with an entirely new ontology. The question remains as to which path will best respond to the changes of our times, to the emergence of new entities and claims, and to conceptualise legal personhood in such

⁵² See BENNETT, J. *Vibrant Matter: A Political Ecology of Things*. Duke University Press, 2010. Bennett is one of the pioneers of new materialism. For a posthumanistic view, see BRAIDOTTI, R. *The Posthuman*. Cambridge: Polity Press, 2013. For implications of new materialism in law, see DAVIES, M. *Law Unlimited: Materialism, Pluralism and Legal Theory*. New York: Routledge, 2017.

⁵³ HOHMANN, c. d., p. 594.

a way that it can truly fulfil its explanatory and abstractive function. A great advantage of Kurki's theory is its analytical rigour and the fact that it can provide convincing answers to the questions that arise even within the current framework of Western thought. And the new materialist approaches encourage us to look at human beings, nature, technology, and their legal status from a new perspective.

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