



Strategic Personhood



Definitions of “personhood” shape the practice of law, ethics, and politics. Already expanding well beyond *Homo sapiens*, the boundaries of personhood are likely to grow further over the next decade in unexpected and disruptive ways.

While we think of personhood as a natural right—and an essential quality of being human—its political use has always been complicated. A claim to personhood has been used as a strategic tool for all sorts of human, non-human, and even non-living entities to gain legal protection and extend their power. Past conflicts over political rights and protections for slaves, women, and various ethnic groups were fought on the grounds of personhood, and today, debates about the rights of fetuses, animals, and even nature still rage over that same issue. The masters of personhood have been corporations, who have used legal and political systems to expand the notion of personhood and provide a variety of protections and rights. Personhood is power, and over the coming decade, a “personhood strategy” will be increasingly necessary for a range of political, economic, and social actors.

—Jake Dunagan

critical balances



DISINTEGRATION
integration

Broad definitions of legal personhood distribute the benefits across ad hoc groups and unravel its basic meaning.



EXPOSURE
accountability

Legal definitions of personhood designed to protect privacy rights also protect the rights of new kinds of “persons” to expose information.



SLOW
fast

Changes to a concept as fundamental as personhood could trigger a backlash against rapid social/cultural change.



PERSUASION
regulation

While regulation may grant new entities—from robots to dolphins—a change of legal status in the near term, changing norms will confer them with a new cultural status over the longer term.

law: strategic personhood

FROM PROPERTY TO PERSONHOOD:

A STRATEGIC TOOL OF EMPOWERMENT

In almost all modern political and legal systems, rights, responsibilities, and privileges are all predicated on the concept of the individual. In U.S. law, there are two categories of persons: natural persons (a category reserved exclusively for human beings) and legal persons (primarily organizations, such as corporations or unions). The history of personhood, both natural and legal, has been marked by dramatic expansion. This expansion has always met resistance. For natural beings, from wives to slaves to children, the attainment of personhood has been the way to escape being defined as property. For artificial entities like corporations, personhood has been a way to extend the benefits of collective property and power, while still protecting personal property.

The United States does not have a principle-based definition of a legal person, but rather a history of case law and situational applications of rights and the language of rights, and the category of legal personhood has evolved as a contentious classification—with disruptive consequences. Recent Supreme Court decisions have greatly expanded the rights available to legal persons (although a small shift in judicial mindsets could reverse this trend). Meanwhile, activists and corporations around the world are using the concept of legal personhood as a “trump card” in debates over regulation and economic liberty.

This power—and the fuzzy logic of its definition—will likely render legal personhood a key battleground for social, economic, and political change in the coming decade. But with each expansion of the concept of personhood has come debate and stress on the system. It's possible that the strain on the legal and political system arising from the extension of legal personhood may lead to its unraveling. How many entities can be called “persons” before personhood loses its meaning and political power?



Pablo Handl
Founder, São Paulo Hub

“When we create community, one thing we have to do is listen to every single voice in a way that we can fit into our key decisions. We have forgotten to ask nature, ask animals, we've even forgotten to ask the future what they actually think about the decisions that we're making today for them. What I'm proposing as a key strategy is that we elect representatives that actually talk on behalf of animals, all sorts of species, nature, in a legal way. Through that process we will be able to make more informed, smart decisions for the planet, for the human species, and also for the animals and future generations.”

PERSONHOOD EXTENDED:

THE MORE THE MESSIER?

Corporations have been the most aggressive in accruing and defending their personhood rights. Dozens of court cases in the United States have confirmed and extended the rights of artificial legal persons, including “free speech” rights to contribute to political campaigns and rights to privacy. However, while corporations have seen the most ROI on their personhood strategy, other entities (or representatives of those entities) have begun to use personhood as a legal technology for amplifying their power and protecting their interests.

In 2008, Ecuador famously gave constitutional rights to nature, claiming it “has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution.” A few years ago, Spain considered a subset of human rights to embrace higher primates, and numerous scientists have called for dolphins to be recognized as “non-human persons,” as well. And while the issue has yet to reach the level of legislation, the question of rights for potential human-animal chimeras—however microscopic and limited—is subject to growing religious and environmental debate.

Over the next decade, we should expect to see more efforts to accord non-human entities some legal rights of personhood. Higher primates, dolphins, and other intelligent mammals will lead the way, especially if scientific trends continue to demonstrate that animals have more conscious reflexivity and self-awareness than previously thought. Environmental activists will continue to push for rights for nature to mitigate ecological destruction. Anti-abortion activists will continue to use personhood as an argument against abortion and the use of embryos in scientific research. All these debates focus on expanding the definition of the *natural person* and have highly charged religious, ethical, and cultural aspects. While we may see tentative conclusions about expanding natural personhood this decade, the arguments are likely to continue. Meanwhile, the real fight over the transformation in the definition of person will take place in the realm of *legal persons*.

“I’m involved in juvenile re-entry work, so I thought about what this would mean when you talk about future generations being counted as a legal person. What first came to mind was the alienation that people returning from incarceration face in regards to voting rights. What does it mean when a person is removed from civic engagement and a family, in turn, is removed from that process of civic engagement, and in turn, a future generation has not been connected to the democratic process? Alienating a person due to mistakes of their past has effects on their children and their children’s children.”

Rahiel Tesfamariam
East of the River
Clergy-Police-Community
Partnership



“It’s vital right now that we start to think about strategies to increase the conversation around responsibility, that we don’t continue to extend rights or even look at the rights that are currently being extended to corporations and to people without having a richer conversation around the responsibility that coincides with those rights. Right now, there’s a demand for more and more rights without much conversation about what we have to contribute back to society, what we have to contribute back to nature, what we have to contribute back to each other to make those rights actually something that exist with responsibility.”

Shilpa Jain
Education and Outreach
Coordinator, Other Worlds



THE BOUNDARIES OF PERSONHOOD: WHERE DOES A PERSON END?

Those who are troubled that corporations can be persons will be facing a whole range of new, ad hoc, abstract, and hybrid entities, all vying for personhood. For example, the ability of individuals to network their time, skills, and “mind-share” with each other and with machines will create entirely new classes of lightweight organizations, distributed cognitive systems, and mind-bot collectives. Granting these collective entities individual personhood will give groups of individuals the power to “scale up” their resources and their reach at much greater speeds. It will allow individuals to mitigate the risks to their personal wealth and freedom and lower the barrier to entry for becoming a corporation.

Scientific knowledge about the intelligence of animals—and the advocacy of rights for non-human, non-animate, and even non-existent entities such as future generations—will push the boundaries of legal personhood even further. Legal scholars are already debating the question of personhood for artificially intelligent beings, and the notion that sapient artificial intelligences (AIs) will gain rights through incorporation is already a science fiction trope. But while the emergence of self-aware computers remains a distant concern, a more tangible possibility for truly radical legal disruption will emerge when digitally networked human minds become more intimately connected and interdependent.

Our legal system is built around bounded, complete individual persons, with rights and responsibilities tied to that individual. As consciousness and agency become more fragmented and distributed through our networks and technologies, the notion of a distinct individual with sole agency for decisions and actions becomes problematic. Our legal systems will be forced to evolve or will be rendered obsolete.

Two possible strategic directions are clear. The first will be the move to limit personhood to only natural human beings. We already see many anti-corporate activist groups adopting this strategy today. The other will be the continued expansion of the concept of personhood to include new and surprising entities, such as nature, virtual corporations, and future generations. While the most radical forms of personhood will win only slow and grudging acceptance, the debate over personhood will become increasingly central to shaping the politics—and possibly the economics—of the 2020s.

en.wikipedia.org/wiki/Citizens_United_v._Federal_Election_Commission



Recent Supreme Court decisions continue to extend personhood-derived rights to corporations and unions. The right to political speech was upheld in the *Citizens*

United vs. Federal Election decision against the argument that “electioneering communication” by outside interest groups would unfairly skew campaigns toward moneyed interests. Upcoming cases involving corporate right to privacy and intrusions of disclosure requirements will again test the limits of constitutional rights for corporations as legal persons. Meanwhile the networked coalition, “Move to Amend,” provides a platform for discussion and pooled resources to amend the constitutional definition of person.

intergenerationaljustice.org/index.php?option=com_content&Itemid=1



Legal scholars and social activists have begun to frame many issues, from climate change to income disparity, in terms of intergenerational justice, and personhood for future generations is a strategy employed by many seeking to protect our posterity from the actions of those in the present. The Foundation for the Rights of Future Generations (FRFG), a policy think-tank based

in Germany, is an example of an organized network of scientists, philosophers, demographers, political scientists, and others addressing intergenerational justice.

timesonline.co.uk/tol/news/science/article6973994.ece



Zoologists are beginning to find more and more evidence of the intelligence and self-awareness of animals, especially mammals. Proposals for chimpanzees and other great apes to be given legal personhood rights have been floated in Spain and Germany. Recently a group of scientists have called for dolphins to be added to a list of species in consideration for “non-human personhood.” These scientists argue that dolphins have distinct personalities, are highly self-aware, can think about the future, and have an intelligence on par with a three-year-old human child.

foundrs.com



Foundrs.com is an organization that supports informal online networks in becoming legally incorporated entities—and thus allowing them to take advantage of

legal definitions of personhood. A law passed in Vermont in 2008 makes it easier for these kinds of networks to incorporate, and the state is hoping to capitalize on this trend of spontaneous group organization. Analogous to Delaware’s corporate-friendly laws and regulations, Vermont aims to become the “Delaware of the Net.” The ability for individuals to network their time, skills, and “mind-share,” with each other AND with machines, may create entirely new classes of lightweight organizations, distributed cognitive systems, and even mind-bot collectives.

the quick list

- *Love and Sex with Robots: The Evolution of Human-Robot Relationships*, David Levy. New York: HarperCollins Publishers, 2007
- *Unequal Protection: How Corporations Became “People,” and How You Can Fight Back*, Thom Hartman. New York: Rodale/St. Martin’s Press, 2002
- Vermont wants to be the “Delaware of the Net,” *CFO*, June 30, 2008. www.cfo.com/article.cfm/11654091
- “Why Did Progressive Media Miss This Important Progressive Story?” Community Environmental Legal Defense Fund (CELDF). www.celdf.org/why-did-progressive-media-miss-this-important-progressive-story
- “Ways to Legally Implement Intergenerational Justice,” Foundation for the Rights of Future Generations (FRFG). www.intergenerationaljustice.org/index.php?option=com_content&task=view&id=170&Itemid=236