

Columbus' Egg and Legal Personhood: The Paradigm Legal Fiction and Problems of AI.

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The apocryphal story from which this piece takes its name tells us that Christopher Columbus, upon returning from the New World, was disappointed that Spanish nobles seemed to think he was unworthy of recognition. His voyage, they claimed, could have been undertaken by anyone with specific means. To persuade them of his worth, Columbus invited them to make an egg stand on its end upon a table - a task none of them could achieve. Columbus, taking his turn last, tapped the egg on the table and flattened its base so that it could stand upright. His point was that, despite this being seemingly obvious with hindsight, when faced with the problem nobody could see the obvious solution.

This article will argue that a similar problem exists within the concept of legal personhood and its extension to non-human recipients, including AI. It will suggest that, in seeing the status as something that a legal system is able to bestow in order to fulfil a given end, theories of legal personhood (the status required for an individual to be recognised by a legal system as a bearer of rights and/or duties) presuppose a foundation in legal positivism that ignores the normative content of the concept. By instead adopting a Natural Law framework that firmly grounds legal normativity in rationally identifiable metaphysical conception of the person, it will become clear that noumenal agency, in the Kantian sense, should be seen as a sufficient (though not necessary) criterion for the recognition of legal personhood.

This claim will be supported with reference to the moral writing of Alan Gewirth and his argument for the Principle of Generic Consistency, which holds that all agents must, by the fact of their own agency, recognise generic rights claims are capable of being made by all other agents. The dialectically method adopted by Gewirth requires the agent to accept that to deny this is to contradict their own agency, thus creating a principle that binds us in the same way as a categorical imperative. All agents that meet this threshold criterion are therefore worthy of moral respect – regardless of their species, or whether they are biologically or artificially intelligent.

Once this framework is acknowledged a two tier normative framework emerges whereby core and peripheral classes of legal persons must be recognized. Recognition peripheral legal personhood for non-agents can remain within the discretion of a legal system according to whatever purposes it wishes to pursue. By contrast, a positive obligation emerges whereby a legal system must at least recognise the passive component of legal personhood of all agents deemed to be moral patients according to Gewirthian theory. Failure to acknowledge this metaphysical core of legal personhood will, according to whether one sees the connection between legal norms and morality as direct or indirect, have a serious impact on the validity of the legal system that refuses to recognise the legal personhood of Gewirthian agents.

Short Biography

Josh is a lecturer in law at Newcastle Law School, where he has worked since 2016. Prior to this he studied at the Universities of Cambridge, Warwick and Durham, and he is currently a visiting scholar at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg, Germany.

His interests lie in legal theory and jurisprudence, and the extent to which moral norms are necessarily connected to the positive law. He has recently become interested in the extent to which moral claims are relevant to the judicial artefact of Legal Personhood, with particular reference to the attribution of the status to nonhuman animals and AI.