



Identity In Question

Legal Personality

Paul du Gay

Why is it that not all human beings have legal personality?

Professor David Saunders

Before I go on to answer that question, of course, not all legal persons are human beings. States, bureaucracies, corporations can all have responsibilities and rights, and you can't meet one of them walking down the street.

Paul du Gay

That's true.

Professor David Saunders

But the other way round is also of great interest. What about individuals as legal persons and you might want to think about that sort of formulation. What we're talking about here is individuals as persons or, in this particular case that you've asked about, individuals as legal persons. You can keep in mind the example of the US visa holder. An individual occupies a status that's recognised for a legal purpose. Status lets you into the United States if you have the correct legal attributes. Merely being human does not make you an admissible person. So this means when we begin to talk about legal personality we must stop saying things like 'I want the law to recognise me for what I am'. I mean that's as foolish as saying to the United States immigration service: let me in, recognise me for what I am. Let me put that another way. It's never men as men, or women as women, who can have their rights recognised by a court. It's only when individuals have the right legal personality, that is, when they occupy the right legal status that has the right attributes, only then can the court recognise them as legal persons. So here you can begin to see, Paul, why you asked your question. You are a legal person not because you're a human individual but because you occupy status to which certain rights and duties are ascribed. That's what we want to describe if we want to understand how we live, how we operate, how we can do things, how we can enter into relationships in a society which has a legal system, i.e. which is juridified.

Paul du Gay

So if I understand you correctly, if your analysis of legal personality is correct, then it's the case that some non-humans, say corporations, can have legal personality?

Professor David Saunders

Yes, but of course. You'll remember well what, oil spills like the Amoco Cadiz or the recent disaster off the French coast, that's closer to you where you are than it is to me where I am, but in both cases corporations, non-humans, have liabilities and responsibilities that the law will force them to face up to by treating them as legal persons, in other words for legal personality the distinction human/non-human is not fundamental. I mean that will seem strange to people, it's a technical matter, as I said; it's not true in all societies, of course, because not all societies, very few in fact, have had legal systems.

Paul du Gay

Is the distinction man/woman a valid one in the legal context?

Professor David Saunders

Well that's a good one again, isn't it? For some purposes. When we focus on persons we're focusing on purposes. For what purpose does this person exist? Now you can't expect a court to recognise you as a man, or to recognise the women students as women, in just those terms. That would be asking the court to recognise them as human individuals and, as I said, human individuals have no attributes, they're like raw material, as we hear in a moment when

we talk about Marcel Mauss. It's men and women as visa holders, as parents, as enrolled students, as tenants, property holders, or whatever, that's what a court can recognise, that's your legal personality and you'll realise, once we begin talking like this, how rich a thing your legal personality is. But again, don't be confused, we're not talking about individuals, we're not talking about selves because legal attributes don't add up into a whole. I mean the right to vote has no necessary relation say to, well to what, to the right to rent an apartment, or to be held criminally responsible. Now these are the sorts of questions that Mark Cousins, I think everybody's been reading Mark Cousins' tough piece of writing, these are the sort of issues that Mark Cousins is dealing with, along with twenty other things in his paper, *Mens Rea*. It's a joke of course and I'll try and explain it if I have time. But what Mark Cousins is arguing is that what the law can recognise is not a woman as a woman, or a man as a man, but only a woman as a legal person, i.e. as a tenant, as an employer, as a parent. That's why the feminist view that the law should recognise women as women is, according to Mark Cousins, conceptually mistaken. The law simply cannot do that and there are good arguments for saying we should be very pleased that it doesn't do that.

Paul du Gay

Why is that, David?

Professor David Saunders

Well imagine if your claim to a legal entitlement was based on a prior examination of your moral state, or your religious views, or some of those, or your sexuality, or some of those other aspects that are taken to be, as it were, your real self. Fortunately, you know, the legal person is tied to its purposes. That's what the law will recognise, and only that, so one of the interesting things here is that the law will recognise only a fragment and that word recurs in Mark Cousins' paper. There will only be fragments. He says legal personality will never add up into a whole. Now you'll have come across other statements to that effect in some of your other readings. I mean there's always that colourful piece from Marshall, you know where he talks about his various legal statuses – do you remember that piece about he is a wicketkeeper, a father, a church warden, whatever that is and he can't add these things up. Mark Cousins is making the same point about the different legal statuses that are available to us as individuals in this legal system of ours, they are fragments, they don't add up. Look at echoes with that in a Max Weber piece, Paul, that I know you've written about, where Max Weber equally says you can't really imagine a relation open to all our statuses.