

Identifying Implications and Creating Solutions

Breaking Down the Barriers to Legal Personhood

1. Introduction

In this book, I have applied the right to equal recognition before the law to various different marginalised groups. In order to do this, I first outlined the history of the right to equal recognition before the law throughout the international human rights system. I also provided an interpretation and a definition of the right—drawing on key human rights bodies, such as the UN Committee on the Rights of Persons with Disabilities. I establish that the right to equal recognition before the law is enshrined throughout international human rights law (eg Universal Declaration of Human Rights (Article 6), International Covenant on Civil and Political Rights (Article 16), Convention on the Elimination of Discrimination Against Women (Article 15), and the Convention on the Rights of Persons with Disabilities (Article 12)). I also establish that the right includes the right to legal capacity, which I have termed ‘legal personhood’ in this book in order to ensure clarity across multiple fields and to avoid confusion with the concept of ‘mental capacity’—a wholly different concept that pertains to an individual’s decision-making and cognitive skills. Legal capacity and legal personhood, on the other hand, refer not to an individual’s decision-making skills or cognitive abilities but instead to an individual’s right to legal standing and legal agency—their entitlement to be a holder of rights and to exercise those rights.

I have been involved in the development of this interpretation and definition via both engagement with the committee and with my own scholarship. As explained in the early chapters of this book, the critical importance of the right to equal recognition before the law as a foundational right, without which most other rights are largely ineffectual, makes the precise interpretation and definition of the right both an essential component of its application and a key to developing the right as a social justice tool with teeth. For this reason, it is critical that the right to legal personhood is clearly understood as distinct from the concept of mental capacity and that the right to legal personhood is firmly accepted to include both standing and agency. It is this understanding of the right that I have used and applied throughout this book.

To further explore how those figurative teeth can be sharpened to facilitate the development of the right to equal recognition before the law as a potentially transformative tool of equality and equity, I went on to explain the role of state sovereignty and to argue that the right to equal recognition before the law should take precedence over state sovereignty—or that there should, at least, be a clear understanding of when it does take precedence over state sovereignty. This argument is critical because, as explained in the early chapters, there are many areas where state sovereignty currently takes precedence over the right to equal recognition before the law, which results in the impossibility of the realisation of the right for many groups, for example, migrant groups who are at the mercy of state sovereignty claims regarding immigration law and are often denied legal personhood as a result.

I also explored the evolving role of the individual in international law—looking at the move from human rights law's inception, when it was merely conceived as a tool to control state action, to the current increasing use of international law as a regulatory structure that directly attaches to individuals, for example, the growth of international criminal law and treaties regarding cross-national taxation of individuals. I explored this new role of the individual in the context of human rights law—a type of international law—in order to identify the potential for the right to equal recognition before the law to be established as a right that attaches directly to the individual and, as such, supersedes claims of state sovereignty.

Once I had established the interpretation and definition of the right to legal personhood and outlined my arguments regarding the right attaching to the individual and taking precedence over state sovereignty claims, I used the remainder of the book to apply the right to various marginalised groups. I did this in order to highlight the vast number of areas in which marginalised groups are experiencing denials or limitations of the right to legal personhood and to begin to explore the further marginalisation that those denials and limitations are causing. This is the first piece of scholarly work to explore the right to legal personhood in this way and across this range of social groups. My aim was to begin to demonstrate the potential power of the right—if the right to legal personhood is realised for these marginalised groups, it has the potential to achieve significant social justice goals for each group.

2. Implications for Human Rights Law and Global Legal Order

The implications of the realisation of the right to equal recognition before the law—and the right to legal personhood—are quite extensive. As discussed throughout this book, it would require a new understanding of state sovereignty—one which prioritises the right to legal personhood. This would have implications for national borders and for our global legal order more broadly. It has implications for

our global legal order because it removes power from domestic states and places it more centrally in international law. In other words, it would require states to be bound by the right to equal recognition before the law in international human rights law and require them to reform their laws accordingly to ensure that all people enjoy legal personhood on an equal basis. From the perspective of social justice, this change would likely be highly beneficial in achieving greater equality for marginalised groups for the reasons outlined in the chapters of this book. However, it does raise the question of whether we are ready for more power to be placed in the hands of international law and for the scales to tip towards the centre in the hierarchy of the global legal order. It is worth remembering the Euro-centric and colonial origins of international law and human rights law. There is also the problem of enforcement at the international level—it remains very difficult. Even so, a shift in rhetoric that prioritises the right to legal personhood over claims of state sovereignty has the potential to be a very powerful message and to lead to real change at the domestic level.

3. Conclusion

Creating solutions for the vast number of legal personhood denials and restrictions that marginalised groups face is a difficult and daunting task. However, I believe that it is the key—or *a* key—to the achievement of social justice goals. I have discussed some of the barriers to legal personhood for the various groups addressed in this book in order to begin to show the impact of the right to legal personhood and also to identify some of the areas where, if change occurs, the realisation of the right to legal personhood could significantly lift the marginalisation that some of these groups are experiencing. I am not suggesting that the right to legal personhood is an easy fix for social justice challenges—nor that the right could be realised overnight, or even over a decade. Instead, my aim here was to turn our attention to a long-overlooked right—and a long overlooked potential advocacy tool. If we—and domestic governments—start taking the right to legal personhood seriously, it has the potential to shift power and privilege towards groups that have been marginalised for centuries. For example, if we acknowledge and rectify law, policy, and practice that denies legal personhood based on gender, it will place greater power in the hands of women and gender minorities. Similarly, if we stop allowing domestic governments to deny legal personhood based on individuals' ties to national borders, it will allow migrants to have legal standing and agency on an equal basis with others, returning power to them, and giving them more equal footing in many areas of law and society. Ultimately, what I hope I have done with this book is present the right to legal personhood as a new lens for analysing social inequality and a new tool for reaching social justice goals.