

*Corporate Personhood*. By Susanna Kim Ripken. Cambridge: Cambridge University Press, 2019.

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Like this review, *Corporate Personhood* was published by a corporate person but was written for human persons. This is because corporate persons in principle cannot read. (This question may need to be revisited in the near future, given proposals to assign corporate personhood to certain artificial intelligence systems, which arguably can read.) Yet according to the U.S. Supreme Court, corporate persons can speak, at least in the commercial and political spheres, and their speech merits First Amendment protections. The Court also recently ruled that closely-held businesses are entitled to bring free exercise claims under the Religious Freedom and Restoration Act, given that the U.S. Code's Dictionary Act defines the term "person" to include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, alongside individuals. Meanwhile, several lower federal courts have held that minority-owned businesses may be said to have racial identities and are therefore entitled to bring race discrimination claims.

That courts not only recognize in corporate persons attributes we normally think of as belonging uniquely to human persons, but also grant the former some of the same constitutional rights afforded to their human counterparts, raises a series of complex questions concerning the nature and functions of corporate personhood, the meaning and

scope of corporate rights and duties, and the place and power of various kinds of corporations in society. An enormous law journal literature addressing these issues has appeared in the decade or so since the controversial and sharply divided 5-4 decision in *Citizens United v. FEC*. Contrary to the corporate personality controversy of the turn of the twentieth century, this time around the dispute is not merely esoteric. A popular movement demanding the abolition of corporate personhood and the restriction of constitutional rights to human persons has emerged, with numerous state and federal lawmakers endorsing these proposals.

Susanna Ripken is an astute and fair-minded observer of these developments. Her interest in the topic predates the current debate, as does the analytical framework deployed in her impressive book. The book's premise is that the "corporate personhood puzzle" (13) is as complicated as it is vexing because corporate personhood is inherently "multidimensional" (6), in a way that mirrors the fact that the corporation is at the same time an economic institution, a legal actor, a cultural artifact, and a political operator, whose actions can be morally praised or condemned. To produce a comprehensive picture of the corporation we need to weave together the different facets highlighted by economics, law, sociology, political science, philosophy, ethics, and other disciplines. So too must we proceed, Ripken persuasively argues, when dealing with corporate personhood. No single discipline is in a position to answer all the important questions corporate personhood raises. An interdisciplinary conversation is required.

A distinctive merit of Ripken's book is that it covers large volumes of very different literatures, usefully unpacking the key ideas in an engaging and accessible manner. Ripken's intended audience is broad. Chapter 1 guides readers through the three traditional legal theories of the corporate person—the artificial/fictional person theory, the aggregate theory, and the real/natural entity theory—which remain a reference point throughout the book. Readers next embark on an excursion through the deeper philosophical and moral questions

underpinning these positions in Chapter 2. Chapter 3 then introduces them to how different social sciences—including organizational behavior, social psychology, sociology, linguistics, and political science—conceptualize the corporation in relation to individuals and society, and account for our commonsense perceptions of the corporate person’s identity, structure, and power. Specialists of these disciplines will no doubt find the discussion somewhat superficial, but Ripken’s aim of producing an “interdisciplinary anthology” (13) is arguably achieved.

All the ideas covered in the opening three chapters, Ripken believes, play a role in the ongoing scholarly and public debate about corporate personhood and corporate constitutional rights. How we characterize corporations is intimately related to our perceptions of their organizational reality, their economic and political power, or their place and role in society. It is affected by our commonsense understanding of morality, which both shapes and is shaped by our engagement with them. Our understanding of corporate personhood is “woven into the fabric of our language” (114), and this includes the language used in legal texts and judicial decisions. Legal personhood may technically be an empty slot that anything can fill, but the legal language of personhood has an expressive function. When a court announces that a corporation is a person with many of the rights of human persons, it sends a “message about how society values corporations and how they ought to be treated” (50). The backlash against corporate personhood stems from the clash people perceive between the language of the law and their deeply-held social or moral values.

The remaining three chapters drive these points home. Historically, Ripken explains, the Supreme Court’s gradual extension of constitutional protections to corporations has not followed a consistent pattern or relied on a single legal theory of the corporate person. For example, all three legal theories seem to be evoked in the language used in recent decisions concerning corporate free speech, examined in Chapter 4, and religious freedoms, discussed

in Chapter 5, which also addresses the connections between corporate persons and race. The more important socio-legal point, however, is that judicial decisions are not made in a societal vacuum. Judges often consider the actual functions and normative purposes of specific kinds of corporations in our pluralistic democracies, and frequently take matters of public policy into account as well. In the process, courts have not erected a one-size-fits-all model of personhood but have instead constructed a “spectrum of constitutional corporate personhood” (174), reflecting its multidimensional nature.

This suggests, as Ripken opines in Chapter 6, that simplistic dismissals of corporate personhood and calls for the blanket abolition of corporate personhood or the complete elimination of corporate constitutional rights should give way to a more nuanced dialogue about the place and role of various types of corporation in our societies. This is not to suggest that such a dialogue can be exempt of deep-seated ambiguities. The fact is that “personhood does not fit into a neat and tidy box” because it is “complicated, textured, and dynamic” (272). Moreover, what we take corporate personhood to be is an unfinished project. Our current understandings are subject to adjustments as we experience changes in our economic circumstances and perceive changes in our political structures, as corporations themselves change, and as new competing interests and values emerge. Future cases will provide multiple occasions for the reevaluation of currently prevailing rationales for granting or withdrawing corporate rights. Having a multidimensional understanding of corporate personhood, Ripken concludes, will help us make these important judgment calls. This is an appropriate and coherent conclusion to a fascinating intellectual journey.