REVIEWS AND ANNOTATIONS

Sobek, Tomáš. Právní myšlení: Kritika moralismu. Praha: Ústav státu a práva, 2011, 620 s. [Legal Thought: a Critique of Moralism. Prague: Institute of State and Law, 2011, 620 pp.]

Tomáš Sobek has written a massive and hugely ambitious book. There are eighteen chapters in all, and they range over a diverse set of topics, although they are connected by the overarching theme of moral pluralism. The book's scope is however something of a problem: in trying to cover so much territory, the author is forced to move quickly over complex ideas and thinkers, sometimes too quickly.

This book explores the relationship between moral pluralism and other schools of law. It reveals the central function and creative force of moral pluralism and shows why and how lawyers and legal philosophers should take pluralism of moral positions more seriously. Even though the law should be regarded as the primary mode of settlement of our moral conflicts, it can, and should, also be the object and the forum of further moral conflicts. There is more to the rule of law than convergence and determinacy and it is important therefore to question the importance of agreement in law and politics. By addressing in detail issues pertaining to the nature and sources of moral pluralism, its extent and significance, as well as the procedural, institutional and substantive responses to disagreement in the law and their legitimacy, this book suggests the value of a comprehensive approach to thinking about law, which is often analysed in a compartmentalized way. It aims to provide a fully-fledged picture of moral pluralism and disagreement by drawing on the analysis of topical jurisprudential questions. Developing such a global theory of moral pluralism in the law should be read in the context of the broader effort of reconstructing a complete account of democratic law-making in pluralistic societies.

This is a big and serious book both in aim and in scope. Its aim is to take reasonable moral disagreement seriously; its scope is to show that law (and politics) around the globe should pay more attention to the phenomenon of disagreement. Its central thesis states that reasonable disagreement should be more openly acknowledged both in politics and law. In light of disagreement, and of its creative force, Sobek argues that law should be conceived as a double edged sword: it should not only solve conflicts but it should also value and embed disagreement. The book achieves its aim by showing that disagreement is pervasive and involves a rethinking of most of political and legal issues. Fortunately, the author transgresses the boundaries of narrow jurisprudential traditions, and borrows generously from analytic and continental philosophy in an attempt at bridging the oft-stereotyped gap between the two. It is a notable effort and the author is well positioned to do so. The scientific apparatus in terms of footnotes and bibliography is encyclopaedic. Such an all-encompassing, and serious, methodology has however a drawback; the central argument is at times lost in the maze of political and legal literature, and the style may be slightly cumbersome. But the reward is great if one embraces the sweeping aim of the book.

At times, the impression is that the book wishes to achieve too much. However, in conclusion, the book can be recommended for its seriousness and its scope. Reasonable disagreement is indeed a pervasive phenomenon of our polities and its importance has often been downplayed. Sobek achieves its aim of shedding more light on this issue and by bringing the phenomenon of reasonable disagreement to a central stage. He offers a convincing general approach and backs it up with numerous and erudite discussions of several areas of interest. The book will be of value not only to legal philosophers and constitutional theorists, but also to political and democratic theorists, as well as to all those interested in public decision-making in conditions of conflict.

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Beran, Karel. Pojem osoby v právu: Osoba, morální osoba, právnická osoba. Praha: Leges, 2012, 224 s. [The Notion of Person in Law: Person, Moral Person, Legal Person. Prague: Leges, 2012, 224 pp.]

Recently there appeared another interesting book authored by K. Beran, describing the evolution of the term "person" in law from the oldest times to present day. The author has been dealing with the notion of person in law and moral person for several years, publishing numerous interesting studies and works including a monograph on legal persons of public law (Právnické osoby veřejného práva, Praha 2006).

As suggested by its very title, in the monograph under review the author deals with the notion of person in legal sense. The entire work is underpinned by differentiating the notion of "person", mirroring human being and deriving the legal "personality" or "subjectivity" from it by deduction, and the notion of "subject" with no human prefiguration, a product of inductive reasoning from subjectivity as the set of rights pertaining to "subject". Utility of this differentiation is well illustrated in the concluding parts of the monograph, where he claims that "a subject in law is nevertheless not necessarily a person in legal sense" (157), because legal subject as the bearer of rights and duties – of legal subjectivity – "can as well be nothing more than a non-independent body or authority" (158) of a more complex person: the author gives examples of parliament, police officer or school director as bodies or authorities of state that are nonetheless endowed with their own legal subjectivity. We shall, however, get to that point in due course.

The monograph features introduction (ch. 1), five individual chapters (ch. 2 to 6), conclusion (ch. 7) and an extensive English summary (ch. 8). The book also features index of names and terms and of course an extensive list of Czech and foreign literature and sources.

In the first full chapter the author deals with the historical evolution of the notion of person in legal sense from antiquity to modern period. He proves that the Roman law of antiquity had no knowledge of "abstract notion of person in legal sense" (16), thus it cannot be considered the origin of contemporary notion. He sees it in much more recent notion of "persona moralis" from modern period, as elaborated by German thinkers of 17th and 18th centuries. He identifies major breakthrough no earlier than in differentiation of law and morality by Kant that allowed for separation of the notion of person in legal sense from its prefiguration in (im-)moral human. With respect to this chapter it should also be said that although the author does not avoid generally philosophical aspects of the issue, he only mentions these marginally, laying stress on considerations of legal philosophy.

The subsequent chapter is focused on the notion of legal person in legal codifications, with particular attention on Austrian ABGB from 1811 and its individual Austrian commentators. Nor does he, however, avoid the codifications preceding this code. The author highlights Franz von Zeiller (53ff), the main editor of ABGB, heavily influenced by the notion of human dignity of Kant when designing the rights of persons. It was Zeiller who, in his commentary to ABGB, used the notion of "legal (juridical) person" for the first time; however, it was not before the commentary of Franz Xaver Nippel from 1830-9 that the notion had been used in its modern sense (58).

Although Valentin Urfus claims that ABGB introduced a shift in the outlook of individual (36), the author underlines that the influence of ABGB on status of person in legal order should not be overestimated and it should be critically noted that ABGB included not only inherent rights, but in art. 18 also acquired rights (37).

In chapter 4 the author pays attention to individual theories of legal persons in 19th and 20th centuries, from Savigny to early normative theory. Here he writes that most authors of 19th century derived the essence of "subject" from subjective right pertaining to that subject – hence the notion had been built via its content. Thus the author describes the notion of person as the bearer of subjective right or "volitional power" as used by German positivists, the organic theory of real union personality connected with O. von Gierke, or the interest theory of R. von Ihering, as well as of there story combination in the works of G. Jellinek. Aside from these mainstream theories there had been theories that do not derive the essence of subject from subjective rights – based in the philosophy of Hegel

or elaborating the theory of Gierke to a general union theory. In this connection the author assigns specific status to normative construction of legal subject that meant, in his words, "a thorough change of paradigm" (93) with respect to preceding theories due to outright and complete separation of the first subject from human being: in normativism the person as legal notion is only derived from the position of this category in normative world. It is eventually in normativism that the author sees the most important inspiration of contemporary Czech legal science (93-4).

The author devotes a separate chapter to contemporary theories of person in legal sense. He deals with theories belonging more or less to the positivist tradition in legal science (R. Ostheim, F. Rittner) as well as with theories with more prominent sociolegal aspects (G. Teubner, T. Raiser) or legal-linguistic approach of J. Wróblewski. He neither avoids recent postmodern theories including their Czech proponents (J. Hurdík, M. Škop, M. Šejvl).

In the last full chapter preceding the conclusion and English summary the author presents recent view of person in legal sense in Czech environment. He thoroughly summarizes works of legal scholars on this issue, but also the case law of Czech courts with implications on the notion of person in legal sense. On the basis of this knowledge he presents a conclusion compiling the essential conceptual features of person in legal sense: it is "a subject of law that can be duly identified, has capacity to independent legal acts and is responsible for its own actions" (162, the English version at 191 uses "person" instead of "subject of law").

Overall it can be claimed that K. Beran fulfilled his task to present the genesis of the notion of person in legal sense from the most ancient times to present day, and he did so in a well written monograph displaying thorough knowledge of the issue at hand.

The reviewed monograph can be recommended to scholarly readers and everyone interested in the issue presented, lawyers as well as philosophers. Although it is truly only marginally that the author deals with generally philosophical connotations of the genesis of the notion of person in legal sense, this book is a good reference comparison to the evolution of the notion of person and subject in general philosophical thought.

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