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## **The Essence of Corporation and Corporate Personality through Ontological Perspective**

*In modern world corporations play a crucial economic, social and legal role. Both organizationally and in its very essence, a corporation represents a complex phenomenon in which numerous interesting and quite problematic issues intersect, with one of the most significant being the nature of the corporation itself. As a participant in legal relations, it is equalized with the physical person as a “legal entity” with its own separate personality. Despite this fact, a legal person, in and of itself, is undoubtedly a legal fiction lacking its own physical distinctiveness and veritable existence, bereft of the capability to cognize its own actions and to make decisions without its constituent physical individuals.*

*As a fictional phenomenon, both sociologically and philosophically, having its origins in the attribution of human properties by humans themselves to such certain phenomena (i.e. anthropomorphization), detailed analysis of corporation and its corporate personality as well as the study of its interrelation with its constituent natural individuals is necessary to ascertain, what does it precisely represent from ontological standpoint and not only what specific descriptive characteristics it bears in the eye of the law.*

**Keywords:** *Corporation; legal person; legal fiction; nature of corporation; ontology of the person; separate corporate personality; definition of the person; anthropomorphization*

### **1. Introduction**

The impact of contemporary corporations on the global economic, social and political scene is truly immense. They constitute such an inseparable part of our daily lives that an average man does not even think much about them and only a large establishment may attract his or her attention, even then, only due to some widely publicized case or complete bankruptcy of latter. At the same time, the influence of international corporations is rising not only in economic and financial, but also in political and social areas.<sup>1</sup> "Islands of conscious power in this ocean of unconscious co-operation, like lumps of butter coagulating in a pail of buttermilk." – so eloquently described one British economist these corporations in the last century.<sup>2</sup>

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<sup>1</sup> Bottomley S., *The Constitutional Corporation: Rethinking Corporate Governance*, Ashgate Publishing, Aldershot, 2007, 1-3.

<sup>2</sup> Robertson D.H., *Control of Industry*, Nisbet and Co., Ltd., London, 1923, 85.

Such power of corporations should not, of course, be understood as something absolute. It is constrained with ever-changing caprices of the market, official regulations and public opinion. In spite of this, it can be stated without reservations, that corporations do have actual power and have the capability to make decisions that may entail severe economic or social consequences.<sup>3</sup>

At a certain stage of its historical development, with the conferral of fiction of separate personality and limited liability, corporation was equalized with the natural person in legal realm. Today it benefits from almost all rights that the individual does, leaving out obvious exceptions and particular restrictions conditioned by the very nature of the legal person. In spite of the existence of this legal fiction, the law can not simply turn a blind eye on the fact that a corporation is not a full equivalent to a physical, natural person, that it is a wholly different thing, organized and structured, in the hands of which large power may also accumulate. From a purely naturalistic standpoint, corporation as a certain separate *being* does not even exist, it comes into being as a result of human actions and therefore it would be appropriate to aver that it demands a different, special approach.

Regulating corporations was never a simple task. If, in the eye of the law, a legal person today is equalized with the natural person, then interference in its business should be deemed impermissible without a proper justification. However, as a corporation is not a true individual from naturalistic and social viewpoints, regulations applying to it are far more extensive than in the case of a natural entity. This specifically concerns a legal form established for drawing in large capital – the joint stock (public limited) company, which is stringently regulated even under the most liberal legal regimes due to the latter's economic and social significance.

Hence, instead of analysing corporation through a purely legal prism, as a mere subject of law and a person equalized with an individual, it would be incorrect to ignore the legal person as a social phenomenon – such social element should definitely be taken into account during regulation. The latter is occasioned by a simple axiom that the law itself is a social phenomenon, born within the community. By such interpretation any large corporation, in certain terms, becomes a so-called “social enterprise”, whose freedom of decision-making is hamstrung by public or social interests.<sup>4</sup>

When moving from the general notion of a legal person to its typology, it is important to stress that several types of persons are signified under this term. Discussing non-commercial (non-entrepreneurial) legal entities goes outside the scope of the present work. It would be sufficient to state, that aspects such as separate personality, commercial activities and limited liability apply to them just as well, but the exclusions from the latter principles are generally more relevant for those complex types of legal persons, which play a key role in the economic, social and political life of the world. Such are the corporations and public companies, about which present article will concern itself.<sup>5</sup>

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<sup>3</sup> *Parkinson J.E.*, *Corporate Power and Responsibility: Issues in the Theory of Company Law*, Clarendon Press, Oxford, 1993, 10.

<sup>4</sup> *Id.* 23.

<sup>5</sup> In English language, the word „corporation“ mainly denotes a joint stock company (JSC) and does not include the limited liability company (LLC). Concurrently, by a far broader definition, it is often used to mean any registered legal person as well. In German law, two main subjects are signified under

The present work shall analyze the nature and essence of a legal person, including ontologically, in which case not only legal, but also the philosophical dimension shall be discussed. In second chapter of the work such nucleus of the legal entity will be dissected through social and ontological perspectives. Third chapter shall expound on the importance of the legal fiction and the role it plays in both corporate law and law in general. Fourth chapter the concept of corporate personality shall be analyzed in general terms, both through the lens of notion of personality as well as from the viewpoint of its “humanification” (anthropomorphization). The final chapter shall contain a conclusion, summarizing the issues discussed in the present article.

## **2. The Essence of Corporation from Legal, Social and Philosophical Perspectives**

A number of authors invoke specific properties of a corporation, that it is characterized in modern legal system, in order to explicate its essence: legal power to conclude contracts and own property; capacity to delegate powers to its representatives; file a lawsuit and hence be a claimant or defendant.<sup>6</sup> From the point of view of modern legal science, such explanation is technically correct, but it stresses what *characteristics* and *signs* a phenomena called a corporation has, without giving a detailed explanation as to what specifically it is.

Numerous theories have been voiced regarding the essence of a corporation. Within the German private law, three main theories have been established under significant influence of Roman law: the fiction theory<sup>7</sup> of Carl Friedrich von Savigny, the real entity theory<sup>8</sup> of Otto von Gierke and the ownership theory of Brinz.<sup>9</sup> Much like these three theories, others have also been put forth, of which particularly notable is the concession theory, similar (albeit not equivalent) to fiction theory, which related the entire existence and being of the legal entity to the permission (concession) granted by the

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corporations (capital associations): a joint-stock (public limited) company (*Aktiengesellschaft*) and a limited liability company (*GmbH - Gesellschaft mit beschränkter Haftung*). The third one, a registered cooperative (*eingetragene Genossenschaft*) is also considered to be a corporation (capital association), but due to its relative rarity and certain idiosyncracies, only LLC and joint-stock company shall be meant under corporations (capital associations) in this paper. *Wolf M., Neuner J., Allgemeiner Teil des Bürgerlichen Rechts*, 11. Auflage, C.H.Beck, München, 2016, §16, Rn.23-28, s.169-170.

<sup>6</sup> *Armour J., Hansmann H., Kraakman R., Pargendler M.*, What Is Corporate Law? in: *Kraakman R., Armour J., Davies P., Enriques L., Hansmann H., Hertig G., Hopt K., Kanda H., Pargendler M., Ringe W., Rock E.*, *The Anatomy of Corporate Law: A Comparative and Functional Approach*, 3<sup>rd</sup> Edition, Oxford University Press, Oxford, 2017, 8. Although these authors also claim that, while a legal subject may possess all aforementioned rights, it may still not qualify as a legal person. For instance, a partnership in common law countries fully benefits from these rights, but majority of jurists do not regard it as a legal subject having corporate personhood and separate from its constituent individual members. Id. n.27.

<sup>7</sup> *Fiktionslehre.*

<sup>8</sup> *reale Verbandstheorie.*

<sup>9</sup> *Zweckvermögen.* *Wolf M., Neuner J.*, *Allgemeiner Teil des Bürgerlichen Rechts*, 11. Auflage, C.H.Beck, München, 2016, §16, Rn.13, s.167. For quite an informative short overview of this classical theoretical triad, see: *Chanturia L.*, *General Part of Civil Law*, “Samartali Publishing”, Tbilisi, 2011, 224-228 (In Georgian). Some authors add a fourth theory to this trinity: according to *Jhering’s* symbolistic theory, a legal entity is only a convenient symbol, a mere abbreviation used by its constituents. This theory has not gained much traction and its detailed analysis is beyond the scope of this work.

state (sovereign) and which, after reception of the principle of free establishment of legal entities, has lost its relevance. Similarly, other theories were developed in common law, in particular, the aggregate theory, for which an association is the union, aggregate of its constituents and the contracts theory,<sup>10</sup> which analyzes the corporation and the legal relations within through the prism of specific contracts concluded.

Theories on legal persons may, in general, be divided into two groups, with authors distinguishing corporate realism and corporate nominalism. If, in case of former, a corporation is a real entity and its corporate personality simply reflects its position in modern society (e.g. real entity theory of Gierke), for the latter nominalists a corporation remains, at its core, as a conglomeration of individuals and the corporate personhood is nothing more than a shortening of their names, a certain abbreviation for the purposes of flexibility and simplicity.<sup>11</sup> Logical extension of these two theories may be to view the entity as a real person, with its separate existence (e.g. the already mentioned real entity theory of Gierke or the realistic theories in general) or to consider it as an association based on the contracts concluded by its constituent members (e.g. the contractual theory or the aggregate theory).<sup>12</sup>

These theories on the legal persons are not merely of legal or philosophical<sup>13</sup> significance – they have other, more important functions as well and oftentimes influence official state and legislative policies.<sup>14</sup> For example, according to the real entity theory, a certain entity either has separate corporate personality or not, in contrast to common law jurisdictions in which until the 20<sup>th</sup> century, the issue of corporate personality was frequently contingent on specific *ad hoc case* as due to the then-popular aggregate or fiction theory, the full separation of a corporations from its constituents was never considered to be firm.<sup>15</sup> A different outcome may be brought about by a wholesale reception of the concession theory – by treating corporation as just a creation of the law and the state, one arrives at a conclusion that norms regulating corporations must inevitably be derived from public interests.<sup>16</sup>

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<sup>10</sup> *Nexus of contracts.*

<sup>11</sup> *Iwai K.*, Persons, Things and Corporations: The Corporate Personality Controversy and Comparative Corporate Governance, *The American Journal of Comparative Law*, Volume 47, No. 4, Autumn, 1999, 583-584. The author does mention other alternatives, which, despite different designations, in general, stand in the same or similar positions with regard to corporations.

<sup>12</sup> *Iwai K.*, What Is Corporation?, *The Corporate Personality Controversy and the Fiduciary Principle in Corporate Governance*, in: *Legal Orderings and Economic Institutions*, Ed. *Cafaggi F., Nicita A., Pagano U.*, Routledge, London, 2007, 243.

<sup>13</sup> It is curious that not many authors in the philosophy of law and philosophy in general touch upon the problem of the essence of the legal entity and the corporation and despite the importance of corporations in modern life, its analysis through philosophical (and not sociological) lens seems to have been of lesser relevance to many famous philosophers. Several political philosophers, including Hegel, represent a notable exception. See: *Goedecke W.R.*, Corporations and the Philosophy of Law, *The Journal of Value Inquiry*, Volume 10, Issue 2, June 1976, 81-82.

<sup>14</sup> *Blumberg P.I.*, The Corporate Personality in American Law: A Summary Review, *The American Journal of Comparative Law*, Volume 38, Supplement. U. S. Law in an Era of Democratization, 1990, 51-52.

<sup>15</sup> *French D., Mayson S., Ryan C.*, *Mayson, French & Ryan on Company Law*, 33<sup>rd</sup> Ed., Oxford, Oxford University Press, 2016, 154.

<sup>16</sup> *Ripken S.K.*, Corporations Are People Too: A Multi-dimensional Approach to the Corporate Personhood Puzzle, *Fordham Journal of Corporate & Financial Law*, Vol. 15, No. 1, 2009, 101.

Nowadays a legal person truly is more than just an artificially created fiction, it is a social reality equalized with the physical person, in the eye of the law at least. Rights and duties are assigned to it notwithstanding the presence of any property.<sup>17</sup>

Aside from the legal dimension, the legal entities have economical significance as well. In this economical sphere, a legal person (and more so, the corporation (capital association) is a mechanism, an instrument with which human or humans conduct their affairs (including business). In a joint stock company, for example, a third person intercedes between the shareholder and the business, a real person, even if it is an undoubtedly artificial entity.<sup>18</sup> That the increase of economical efficiency lies behind the idea of separate corporate personality has been noted quite a few times in literature. To perform larger and larger economic activities, more capital and investments are to be attracted and involvement of more people is needed which is easier if they, instead of unlimited liability, are held liable only within the limits of the amount they have contributed. In the end, this increasing capital is transferred in the hands of several people for efficient management. Corporate personality from this point of view is a logical instrument for the liability to be limited with such contributions deposited by the partners.<sup>19</sup> A contributed deposit then constitutes not the property of a particular shareholder, but that of a separate legal person. Thereby investors usher into bolder and riskier projects, which in long term positively affects the economy.<sup>20</sup>

Discussion on the nature of a legal person may be conducted from multitudinous angles, both philosophically and socially. If we delve deeper into its essential, physical elements, its ontological substance, then it can be said that a legal entity is, in fact, a fiction.<sup>21</sup> Unlike a natural person, a legal entity does not have the capacity to understand its own actions and act without its constituent natural persons. This element of self-consciousness is crucial in the notion of a human as a philosophical category. In this particular instance, when describing a legal entity as fiction, a *social* fiction, *bestowed by the human mind* is meant and not the *legal* fiction as mentioned by Savigny in his theory. A joint stock company “making” a decision does not mean that a legal person has itself cognized, through its own consciousness, existing circumstances and alternatives and hence arrived at a decision. In reality such decision is made by governing bodies of this entity, comprised of natural persons. Not a single

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<sup>17</sup> *Wolf/Neuner.*, Allgemeiner Teil des Bürgerlichen Rechts, 11. Auflage, C.H.Beck, München, 2016, §16, Rn.14, s.167.

<sup>18</sup> *Gas Lighting Improvement Co Ltd v Inland Revenue Commissioners*, (1923) AC 723 at 740-741.

<sup>19</sup> *Radin M.*, The Endless Problem of Corporate Personality, *Columbia Law Review*, Volume 32, No. 4, April 1932, 654.

<sup>20</sup> *Bainbridge S.M.*, Abolishing Veil Piercing, *Journal of Corporation Law*, Volume 26, No. 3, Spring 2001, 488-489.

<sup>21</sup> *Demos R.*, Legal Fictions, *International Journal of Ethics*, Volume 34, No. 1, October, 1923, 44. Contrary to this idea, according to the “functionalist” understanding, any agent which is capable of acting as a person in the existing social environment is regarded as such, including corporations. With this approach, corporations definitely are not “fictions”. See: *List C., Pettit P.*, *Group Agency: The Possibility, Design, and Status of Corporate Agents*, Oxford University Press, Oxford, 2011, 176. Other commentators suggest, and rightly so, that for the entity to be held liable for its actions, it must have a certain veritable physical dimension and not to be a mere fiction. See: *Tuomela R.*, *Social Ontology: Collective Intentionality and Group Agents*, Oxford University Press, Oxford, 2013, 236.

corporation can, with the literal meaning of the word, reach such a decision “by itself”.<sup>22</sup> If a partner of a legal person is another legal entity, than we can catch sight of natural persons behind these legal entities as well. No matter how long this chain of ownership of legal entities, in the end one still comes to natural persons, who make decisions on the behalf of the corporation.<sup>23</sup> Actual volition, capacity to reflect upon the situation and act according to one’s own mental processes – none of legal persons have this due to their own nature.<sup>24</sup> It also has no interest of its own, strictly speaking and in literature the situation when a legal entity is created as means, as an instrument to further the goals of its constituent natural persons is considered completely normal.<sup>25</sup>

From a non-legal standpoint, often corporate identity is synonymous with the body or person which influences it or with which it is related to in various circumstances. This may be a founder, manager, board of directors, dominant shareholder, etc. Such equating should not be taken as a mere coincidence – in the eyes of common laypeople, it is the physical persons that stand behind the corporations.

To put it otherwise, without natural persons, no legal entities would exist, while the reverse does not hold – a natural person is already present in modern world and it is due to him that a legal person even comes to existence.<sup>26</sup> A natural person is ontologically primary<sup>27</sup> and at its center, corporations are only groups and aggregates of individuals.<sup>28</sup>

If the theory of legal person as a legal fiction is less relevant today and realist theory of *Gierke* is widely accepted, the topic of legal person as a *social* or *philosophical* fiction is more contentious. The opponents of fiction theory make the case that artificial does not necessarily mean fictional. An artificial lake or a waterfall actually exists and is neither a fiction nor an illusion.<sup>29</sup> Others refer to the fact in case of decision-making by corporations, actually determining the part of individuals is not

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<sup>22</sup> See, for example: *Ripken S.K.*, Corporations Are People Too: A Multi-dimensional Approach to the Corporate Personhood Puzzle, *Fordham Journal of Corporate & Financial Law*, Vol. 15, No. 1, 2009, 100.

<sup>23</sup> The aforementioned should not be taken as the support of fiction theory of Carl Friedrich von Savigny. The fiction theory, at its heart, defines the *approach* of the legislator and law in general concerning such legal entities as fictions. Concurrently, even though the separateness of a legal entity is widely recognized in almost every single legal system, a fact remains, that it does not exist as a physical, natural thing. It remains fiction in view of the latter simply not possessing its own essence, life and consciousness. The present paper is chiefly elaborated from this very proposition.

<sup>24</sup> *Gierke O.*, *Political Theories of the Middle Age*, Tran. *Maitland F.W.*, Cambridge, Cambridge University Press, 1900, xx-xxi.

<sup>25</sup> *Grigoleit H.*, *Gesellschafterhaftung für interne Einflussnahme im Recht der GmbH: Dezentrale Gewinnverfolgung als Leitprinzip des dynamischen Gläubigerschutzes*, C.H.Beck, München, 2006, 6-7.

<sup>26</sup> („it would be absurd to say that corporations could act even though all human beings have perished“). This quote is associated with *Irving Grant Thalberg Jr.* (1930-1987) and is cited in: *Held V.*, *Shame, Responsibility and the Corporation*, Ed. *Cutler H.*, Haven, New York, 1986, 170.

<sup>27</sup> *Scruton R.*, *Finnis J.*, *Corporate Persons*, *Proceedings of the Aristotelian Society*, Supplementary Volumes, Volume 63, 1989, 254.

<sup>28</sup> *Dan-Cohen M.*, *Rights, Persons and Organizations: A Legal Theory for Bureaucratic Society*, University of California Press, Berkeley, 1986, 15-16. The author indicates that, unlike the “atomistic” theory, which represents a corporation as a mere assembly of individuals, a holistic approach deems corporation as a truly existing entity.

<sup>29</sup> *Machen A. W.*, *Corporate Personality*, *Harvard Law Review*, Volume 24, No. 4, February 1911, 257.

quite so simple. Disagreements and dissenting opinions are frequent and the decision arrived at by the corporation may be radically different from the mere mathematical sum of the decisions made by the constituent members.<sup>30</sup> It is quite possible to remove all individual elements and natural persons from a legal entity and for it to maintain, both conceptually and legally, its core essence, as an *intelligent machine*.<sup>31</sup> Philosophically, it is quite interesting to consider the legal entity as the modified condition of the persons' substance. Called the founder of modern philosophy, Rene Descartes<sup>32</sup> distinguished between primary unalterable properties of the substance from its modifications and changed conditions, which still belonged to substances.<sup>33</sup> A legal entity which would not have existed if not for its constituent individuals likewise would have been able to perform any actions. In this sense, a legal person, according to the Cartesian philosophy, may be regarded a modified variation of the substance of these individual persons, its extension.<sup>34</sup>

Before analysing the legal entity as essentially a fiction, it must be concisely stated what fiction means, what roles it plays in modern law and how important it is. A fiction of a legal entity is only one of a sundry of legal fictions, however it can be said, that unlike many of them, its impact is immeasurably bigger on the modern economic or social world.

### 3. Legal Fiction, Its Importance and Role

Legal fiction, in and of itself, represents a presumption in law, that a certain event is true or corresponds to reality, while in truth such is or may not be case. In theoretically inchoate state, it was widely practised in Roman law<sup>35</sup> and to this day, it occupies a central place in legal science. Blackstone<sup>36</sup> has remarked on the importance and benefit of legal fiction as instrument to prevent mischief and injury or to overcome legal complications.<sup>37</sup> Not an insignificant number of legal

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<sup>30</sup> A decision may be reached that none of the members of the managing bodies of the corporation desired., but was made as a "collective" decision following joint discussion and deliberation. In other words, corporation receives actions and decisions of the individuals as an *input*, but the final *output* may be completely different. See: *Kim S.M.*, Characteristics of Soulless Persons: The Applicability of the Character Evidence Rule to Corporations, *University of Illinois Law Review*, Volume 2000, Issue 3, 2000, 790-791.

<sup>31</sup> *Dan-Cohen M.*, Rights, Persons and Organizations: A Legal Theory for Bureaucratic Society, University of California Press, Berkeley, 1986, 49.

<sup>32</sup> *René Descartes* (1596-1650).

<sup>33</sup> *Descartes R.*, Principles of Philosophy, Tran., *Miller V.R.*, *Miller R.P.*, Kluwer Academic Publishers, Dordrecht, 1982, 23-25. *Williams B.*, Descartes: The Project of Pure Inquiry, Routledge, London, 2005, 108.

<sup>34</sup> Based on Descartes's philosophy, Baruch Spinoza (1632-1677) elaborated this difference between the properties and modified conditions and considered the latter "something" in which substance finds its own manifestation. For instance, if persons set up a club and this club performs legal actions (purchases property, stands in court), in actuality, from this point of view, the club is the *collective extension* of these persons, as without them it would not have been able to conduct any of the actions itself. See: *Scruton R.*, A Short History of Modern Philosophy, 2<sup>nd</sup> Ed., Routledge, London, 2002, 51.

<sup>35</sup> See examples in: *Ando C.*, Law, Language, and Empire in the Roman Tradition, Philadelphia, University of Pennsylvania Press, 2011, 115-131.

<sup>36</sup> *Sir William Blackstone* (1723-1780)

<sup>37</sup> *Blackstone W.*, Commentaries on the Laws of England, Book III: Of Private Wrongs., Ed. *Prest W.*, Oxford University Press, Oxford, 2016, 28.



institutions are legal fictions. These include not only the legal entity and corporate personality, but also the notion of personality itself.<sup>38</sup> The fictions or other metaphors should be utilized for decision-making, they are merely means to achieve an objective and therefore it would be erroneous to blindly submit to them without question.<sup>39</sup>

A fiction may generally be a) positive, meaning presumption of that which does not exist; 2) negative, meaning that, which actually exists, is ignored legally and 3) when an action of one person is deemed as an action of another.<sup>40</sup> Of these three, it would be logical to categorize the fiction of a legal entity in the first category. In reality, a legal entity does not exist, but the law presumes the opposite.

There are other classifications of fictions, for example, into historical and dogmatic fictions.<sup>41</sup> If historical fictions are instruments for changing the law, dogmatic fictions go one step further and attempt to place existing fictions under the single unified dogmatic framework.<sup>42</sup> In fact, a legal entity represents the most complex fiction in modern jurisprudence – it is, in its very foundation, underpinned by an intricate dogmatic basis that bolsters its position, equalizes it with a physical individual and allows it to take part in legal, economic or day-to-day social interactions.

#### **4. Separate Corporate Personality<sup>43</sup>**

In common parlance, “person” and “personality” denote a certain private individual and under these terms his or her personal and individual characteristics and habits are signified, manifested in his or her “personality”. For the purposes of this article, only legal dimension shall be meant under corporate “personality” and not its sociological or cultural connotations.<sup>44</sup>

In literature separate corporate personality, as well as the institution of limited liability logically derived therefrom, is considered to be a fundamental, core principle of corporate law, i.e. the standard which enables the basis of its further regulation.<sup>45</sup>

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<sup>38</sup> Note – What We Talk about When We Talk about Persons: The Language of a Legal Fiction, Harvard Law Review, Volume 114, No. 6, April 2001, 1745-1747.

<sup>39</sup> Berger R., "Disregarding the Corporate Entity" for Stockholders' Benefit, Columbia Law Review, Volume 55, No. 6, June, 1955, 814.

<sup>40</sup> Miller S.T., The Reasons for Some Legal Fictions, Michigan Law Review, Volume 8, No. 8, June, 1910, 624-625.

<sup>41</sup> Demos R., Legal Fictions, International Journal of Ethics, Volume 34, No. 1, October, 1923, 44.

<sup>42</sup> Id.

<sup>43</sup> There is quite an extensive literature on separate corporate personality. As an example, see the list in: Iwai K., Persons, Things and Corporations: The Corporate Personality Controversy and Comparative Corporate Governance, The American Journal of Comparative Law, Volume 47, No. 4, Autumn, 1999, 583-584, n. 2

<sup>44</sup> Sociologically, there is no unified corporate personality (that does not merge with the image and face of the corporation) as the primary actors – the shareholders, employees, etc. see the corporation from their own distinctive, particular vantage points. See: Martineau P., Sharper Focus for Corporate Image, in: Revealing the Corporation: Perspectives on Identity, Image, Reputation, Corporate Branding, and Corporate-level Marketing, Ed. Balmer J.M.T., Greyser S.A., Routledge, London, 2003, 203.

<sup>45</sup> e.g., see: Blumberg P.I., The Multinational Challenge to Corporation Law: The Search for a New Corporate Personality, Oxford University Press, Oxford, 1993, 153. Bourne N., Bourne on Company Law, 6th Ed., Routledge, London, 2013, 19. Talbot L., Critical Company Law, Routledge-Cavendish, New York, 2007, 29.

As of today, the principle of separate legal personality and limited liability is ingrained in the constitution of the law itself. It is acknowledged as self-evident and beyond doubt<sup>46</sup> and takes up a central position among various characteristics of the corporation.<sup>47</sup>

Legally, in order to be recognized as a “person”, means to become a member of the society, to be endowed with the rights and duties, enjoyed by a natural person in contemporary community.<sup>48</sup> From such a standpoint, a person should not be equated with the ethical connotations of this word, but only with its formal aspects.<sup>49</sup> The doctrine of separate corporate personality gives rise to the possibility for the legal person, which from philosophical and naturalistic perspectives, is a fiction, to be viewed as a true person, with its own will and actions, to a degree that it is taken as wholly separate from even its single constituent member.<sup>50</sup>

Historically, it was not always the case. For quite a while, the identification of a legal person with its constituent individuals remained a principal doctrine. In England, United States of America and Germany too, even as late as the end of 19<sup>th</sup> century, even such complex organizational formations, as joint stock companies were not considered to be entities wholly separate from its partners.<sup>51</sup> Giving the same rights to corporations as were enjoyed traditionally by physical persons was seen as dubious and even dangerous by many jurists.

A legal definition of a person does not coincide with its philosophical or social definitions. In jurisprudence, a person is a subject with legal rights and duties.<sup>52</sup> Such definition of personality does not lack its own critics according to whom there is certain degree of “parasitism” on the philosophical and linguistic term of a human as a separate individual.<sup>53</sup>

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<sup>46</sup> As noted in one of the Canadian manuals of corporate law: „[w]ithin the realm of legal analysis, corporate legal personality is unquestionable; outside the realm of legal analysis it is doubtful whether corporate legal personality is of any interest at all.” Cited in: *Hamilton S.N.*, *Impersonations: Troubling the Person in Law and Culture*, University of Toronto Press, Toronto, 2009, 33. Today the second part of this sentence definitely does not hold up as clearly shown by the sheer increase of public interest in corporations and also corporate responsibility.

<sup>47</sup> *Armour J., Hansmann H., Kraakman R., Pargendler M.*, What Is Corporate Law? in: *Kraakman R., Armour J., Davies P., Enriques L., Hansmann H., Hertig G., Hopt K., Kanda H., Pargendler M., Ringe W., Rock E.*, *The Anatomy of Corporate Law: A Comparative and Functional Approach*, 3<sup>rd</sup> Edition, Oxford University Press, Oxford, 2017, 1.

<sup>48</sup> *Hoffmann D. N.*, *Personhood and Rights, Polity*, Volume 19, No. 1, Autumn, 1986, 74-76.

<sup>49</sup> *Wolf M., Neuner J.*, *Allgemeiner Teil des Bürgerlichen Rechts*, 11. Auflage, C.H.Beck, München, 2016, §16, Rn.14, s.167.

<sup>50</sup> To illustrate this point, a New Zealand case *Lee v Lee's Air Farming Ltd.*, [1960] UKPC 33 would be fitting, in which the court determined that, as the limited liability company was a separate entity, the sole partner of such company, who was also the manager, had the right to conclude a labor agreement with such an enterprise with the help of the „magic“ of corporate personality and become „both servant and the master“. See: *Davies P.L.*, *Gower and Davies' Principles of Modern Company Law*, 8<sup>th</sup> Edition, Sweet and Maxwell Ltd., London, 2008, 202.

<sup>51</sup> *Ireland P.*, *Capitalism without the Capitalist: The Joint Stock Company Share and the Emergence of the Modern Doctrine of Separate Corporate Personality*, *The Journal of Legal History*, Volume 17, Issue 1, 1996, 45-46. *Angell J. K., Ames S.*, *Treatise on the Law of Private Corporations Aggregate*, 8<sup>th</sup> Ed., Little, Brown, and Company, Boston, 1866, 764.

<sup>52</sup> *Gray G. C.*, *The Nature and the Sources of Law*, 2 Ed., The Macmillan Company, New York, 1921, 27.

<sup>53</sup> *Teichmann J.*, *The Definition of Person, Philosophy*, Volume 60, No. 232, April, 1985, 179.

Paradox lies at the heart of separate corporate personality: the ownership of property, a critical element, is bifurcated in corporation. Officially, property is under the ownership of the corporation, but the shares and stocks are in the possession of stakeholders. It is impossible to observe the issue from a single perspective, as in such case one arrives at contradictory, polar-opposite results. If the entity is thought to be the owner of property and capital, it will be easier to strengthen and substantiate separate legal personality. On the other hand, if one takes into account, that in the very same corporation stocks or shares are owned by other persons, the strength of this theory will be under question.<sup>54</sup>

The blind obedience to the fiction of personality, though the latter does constitute a legal principle, as already noted, is impermissible. When discussing the separation of the said corporation and its constituents (partners, directors, etc.), what must be taken into consideration is that their complete separation, even in the event of misuse of limited liability and hence unfair or illegal consequences, is an incorrect and rationally untenable position. In any case, the interest of equity (fairness), if the issue is brought forward with particular acuteness, overrules (or must overrule) the fiction of corporate personality.<sup>55</sup>

#### **4.1. Concept of Person and Personality**

The issue of what, in essence, is the “person” or “personality” chiefly belongs to the domain of philosophy and psychology rather than to any particular legal category. Naturally, the word “person” and even more so “personality” (“personhood”), has multiple dimensions: cultural, philosophical, social and legal.

From a legal viewpoint, the concept of “person” in general is connected with the notion of carrying legal rights.<sup>56</sup> As already noted, the legal definition of a legal person often has descriptive nature rather than explanatory: it highlights principal rights and duties that legal persons have, while defining the essence of the legal person with the wording of “legal subject” Other definitions of a “person” (e.g. sociological or psychological) may be delineating the essence of this notion more precisely, but taking a physically existing individual as their baseline, their extension to legal persons maybe fraught with difficulties. For example, the modern psychological conception of “person” as “*a stable system that mediates how the individual selects, construes, and processes social information and generates social behaviors*”<sup>57</sup> perfectly fits a physical person, but to precisely conform it to legal persons even as an analogy may be problematic.

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<sup>54</sup> *Iwai K.*, What Is Corporation?, The Corporate Personality Controversy and the Fiduciary Principle in Corporate Governance, in: *Legal Orderings and Economic Institutions*, *Cafaggi F., Nicita A., Pagano U.*, (ed.), Routledge, London, 2007, 244-249.

<sup>55</sup> *Berger R.*, "Disregarding the Corporate Entity" for Stockholders' Benefit, *Columbia Law Review*, Volume 55, No. 6, June, 1955, 814.

<sup>56</sup> *Teichmann J.*, The Definition of Person, *Philosophy*, Volume 60, No. 232, April, 1985, 177-180.

<sup>57</sup> *Mischel W., Schoda Y.*, A Cognitive-Affective System Theory of Personality: Reconceptualizing Situations, Dispositions, Dynamics, and Invariance in Personality Structure, *Psychological Review*, Volume 102, No. 2, April 1995, 246.

Here it would be appropriate to delve deeper into the notions of “person” and “personality” and to discuss similarities and differences through those historical and philosophical lens that will be present in case of their application to physical or legal persons.

Historically the “person” was associated with physical (natural) persons for the simple reason, that there was not even an approximate notion of a “legal” person and only with the gradual development of “*persona ficta*” in Middle Ages and theoretical work done at the cusp of 18<sup>th</sup> and 19<sup>th</sup> centuries did it emerge. Otherwise, application of this term to other animate or inanimate objects (animals, nature) mostly carried abstract, philosophical or literary meaning. Some historical exceptions are noteworthy though. For instance, for the early medieval philosopher Boethius<sup>58</sup>, a person is an “individual substance of rational nature”.<sup>59</sup> Such definition is quite flexible and may cover not only natural, but contemporary legal persons as well. It should be emphasized, that it was due to this definition by Boethius that metaphysical properties were started to be attributed to persons.<sup>60</sup> The already mentioned Cartesian system was distinct in that it separated mind and body from each other and framed them in a dualistic system, in which the personality was assigned strictly to mental and not physical sphere.<sup>61</sup> Today such dualistic system is less popular and has been supplanted by other theoretical constructs. As an example, one of the first philosophers who stressed personality and identity, was the English philosopher John Locke.<sup>62</sup> He not only distinguished man and personality, but also quite originally considered a person to be a being with a mind and consciousness, which could comprehend its own existence ( the “me”-ness) at different places and times and with this, was characterised by permanence and continuity.<sup>63</sup> In this way, consciousness and personal memory would be at the forefront of the notion of personality.

Modern philosophical notions of person and personhood are more limited and are based on the possibility of attributing consciousness and physical characteristics to a particular object.<sup>64</sup> Today a person may be defined as an agent, an active person, which has the capability to partake in so-called agency-regarding relations.<sup>65</sup>

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<sup>58</sup> *Anicius Manlius Torquatus Severinus Boethius* (c. 480-524).

<sup>59</sup> *Boethius.*, *The Theological Tractates, The Consolation of Philosophy*, The Loeb Classical Library, Tran. *Stewart H. F., Rand E.K.*, Harvard University Press, Cambridge, 1968, 85.

<sup>60</sup> *French P. A.*, *The Corporation as a Moral Person*, *American Philosophical Quarterly*, Volume 16, No. 3, July, 1979, 208.

<sup>61</sup> *Burr V.*, *The Person in Social Psychology*, Psychology Press, Hove, 2002, 7.

<sup>62</sup> *John Locke* (1632-1704).

<sup>63</sup> *Locke J.*, *An Essay Concerning Human Understanding*, Volume I, Clarendon Press, Oxford, 1894, 448-449.

<sup>64</sup> When discussing personhood, the presence of these two elements – consciousness and body – is emphasized. See: *Strawson P.F.*, *Individuals: An Essay in Descriptive Metaphysics*, Routledge, London, 1990, 101-102. *Ayer A.J.*, *The Concept of Person and Other Essays*, Macmillan Education, London, 1963, 82.

<sup>65</sup> *Rovane C.*, *The Bounds of Agency: An Essay in Revisionary Metaphysics*, Princeton University Press, Princeton, New Jersey, 1998, 5, 72. Here a philosophical definition of the word “agency” is crucial, as it signifies the ability, capacity for the person or other subject to carry out actions, possess its own consciousness. In other words, in the mind of the subject, to have “agency” means a certain feeling that it (he or she) is the author or the cause of this or that action or movement. See: *Gallagher S.*, *The Natural Philosophy of Agency*, *Philosophy Compass*, Volume 2, Issue 2, 2007, 348.

The “personhood” itself may be understood as an immanent property, a set of characteristics that essentially distinguishes one order of subjects from another and simultaneously can be comprehended in functional terms as well: *something* that makes an active person, an agent (in philosophical sense). In this case, it is not the case that something, in essence, *is*, in and of itself, the carrier of personality, but rather something that *acts, does*.<sup>66</sup> If first road puzzled philosophers, psychologists and other specialists for a long time, the second explanation is more practical and analyzes the issue through more of a social lens. A majority of commentators agree on the functional role of the corporation with its separate personhood and limited liability: it has economical, legal or perhaps other benefits. Therefore, with this latter approach, one may consider it a “person” without any deep philosophical or metaphysical analysis.

The aforementioned method is quite useful, as it accentuates specific factors that engender the establishment of a legal person in practice, more specifically— its functional economic aspects. Historically, it was from this very angle that definitions of corporation tried to solve the riddle of the corporation: by describing its rights to own property or to litigate in court, they left its ontological nature open, without detailed dissection. However, such an approach today, when the importance and role of legal persons and especially corporations, have grown immeasurably, may seem to be insufficient and unsatisfactory. Even if an unanimous answer may not be feasible, it is important to delineate approximate contours of the notion of the legal entity and corporation to determine with what type of legal, social or philosophical phenomena one is dealing.

Despite the ready definition of “personhood” for a natural person, the question on the prospect of fitting such term to legal persons remains unanswered. However, if one considers the capacity to make diligent and reasonable decisions (as often highlighted by numerous definitions of personhood), as the definitive factor for personality, then it would be incomprehensible, why such a legal person should not be considered a legal entity, as the latter may fully plan out its own actions and take care of its “well-being”.<sup>67</sup>

The corporate identity too is quite multifaceted and is not confined to mere reflexive self-representations: if its identity can be defined through its characteristic signs and elements (such as structure, type of activities, financial state, etc.), sociologically, the identity may be associated with corporate image, reputation, its place within the wider community and market.<sup>68</sup>

Generally, the attribution of the ability to grasp one’s own actions to legal persons may be still controversial. As already noted above, behind a legal entity, in the end, it is always the natural persons who emerge. Question whether or not the will expressed by these constituent members, their collective

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<sup>66</sup> List C., Pettit P., *Group Agency: The Possibility, Design, and Status of Corporate Agents*, Oxford University Press, Oxford, 2011, 171.

<sup>67</sup> Rovane C., *The Bounds of Agency: An Essay in Revisionary Metaphysics*, Princeton University Press, Princeton, New Jersey, 1998, 71-72.

<sup>68</sup> Balmer J. M. T., Greyser S. A., *Managing the Multiple Identities of Corporation*, in: *Revealing the Corporation: Perspectives on Identity, Image, Reputation, Corporate Branding, and Corporate-level Marketing*, Ed. Balmer J. M. T., Greyser S. A., Routledge, London, 2003, 16-17.

consciousness so to speak, can be considered as the mind and will of the corporation is relevant from more of a philosophical view.<sup>69</sup>

In this case one may aver, that *personification* of a group takes place, its transformation into a single entity, which, in the end, is the corporation. In order to take part in activities and achieve a set goal, persons are obligated to look at the situation not only from their own perspective but also from that of other persons and thereby take this point of view into consideration.<sup>70</sup> Thus the outlook of persons is expanded and state of thought alters from “I” to “We”, which is called *collective intentionality*.<sup>71</sup> Here one can think of an interesting case when a separate common will (*Gesamtwille*) emerges from the wills expressed by individual constituents and based on which certain actions are performed.<sup>72</sup> For these “group agents” personhood may be granted, but this, of course, will not be biological personality, but rather institutional, organizational personhood given that corporations do not possess feelings, emotions, the capacity for cognition and hence they still require a different approach – they cannot be equalized with natural persons completely.<sup>73</sup>

Simultaneously, it should be noted that consciousness and presence of corporeal characteristics is not limited to only humans. Even today, certain personality aspects may be imputed to animals, which also possess consciousness (even if limited) and for that reason, they have been and are, primary subjects of “humanification” (anthropomorphization).<sup>74</sup> In actuality, the main distinctive characteristic of human personality and what differentiates it from other animals, is the capacity to undergo in-depth self-evaluation, realize and cognize one’s own existence, have desires other than basic instinctual ones and the capacity to rein in, control or constrain latter through one’s freedom of action.<sup>75</sup>

Naturally, on the other hand, if the definition of a person shall be confined to physically existent individuals, such explanation shall leave no place for legal entities and corporations as, no matter how the concept of “personality” is extended, a corporation can never be perceived as an *individual* with its own separate consciousness. This is true in spite of the fact, that a corporation does possess certain individual qualities: in the eye of the law it is separated from its constituents, it may own property, be represented in court. The function of the law here is precisely to equalize it with the natural person, but not turn it into an individual, as the legal entity simply lacks separate consciousness characteristic of the former.

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<sup>69</sup> Meaning in non-legal, philosophical sense. From legal standpoint, a decision made at the shareholders’ meeting is naturally viewed as an expression of the will of the enterprise.

<sup>70</sup> *Rovane C.*, *The Bounds of Agency: An Essay in Revisionary Metaphysics*, Princeton University Press, Princeton, New Jersey, 1998, 138.

<sup>71</sup> *Tuomela R.*, *Social Ontology: Collective Intentionality and Group Agents*, Oxford University Press, Oxford, 2013, 5-6.

<sup>72</sup> *Wolf M., Neuner J.*, *Allgemeiner Teil des Bürgerlichen Rechts*, 11. Auflage, C.H.Beck, München, 2016, §16, Rn.14, s.167. On the personhood of this “group personality”, see: *Rovane C.*, *The Bounds of Agency: An Essay in Revisionary Metaphysics*, Princeton University Press, Princeton, New Jersey, 1998, 137-141.

<sup>73</sup> *List C., Pettit P.*, *Group Agency: The Possibility, Design, and Status of Corporate Agents*, Oxford University Press, Oxford, 2011, 176-185.

<sup>74</sup> This phenomenon will be expanded upon later in the article.

<sup>75</sup> *Frankfurt H. G.*, *Freedom of the Will and the Concept of a Person*, *The Journal of Philosophy*, Volume. 68, No. 1, January 14, 1971, 7.

In general, concerning the personality, legal theory puts forth a logical question: is any type of legal personhood, be it of a natural or a legal entity, wholly a creation of the law?<sup>76</sup> Behind the recognition of corporate personality, one may discern not only a crucial economical instrument or an abbreviation and a handy symbol streamlining communication (for example one speaks not of thousands of shareholders and intricate, complex organizational relations, but simply of a “company”), but also a financially and accounting-wise a much-needed phenomenon completely divorced from its legal dimension.<sup>77</sup>

Despite what has been written above, one should still be reminded, that these theoretical ruminations about the personhood of legal entity and corporation should not divert our attention from practical aspects of the institution. Notwithstanding the quite intriguing philosophical or social properties, the significance of the economical factor in the theory of separate corporate personality is beyond any doubt. Indeed a corporation (capital association) is economical in character, established for economical objectives and this forms the very background, the bedrock of this concept.

#### **4.2. Separate Corporate Personality as the Case of Its Anthropomorphization**

Conferring human properties to a modern legal entity, its “humanification” constitutes one of the more interesting manifestations of legal anthropomorphism.<sup>78</sup> The anthropomorphism is a phenomenon when properties characteristic of humans are attributed, by humans themselves, to non-humans, such as animals, other animate or inanimate objects, etc. As the usual case, when discussing anthropomorphism, animals are invoked as the primary examples – live beings which can act and, in limited terms, may actually possess consciousness, which simplifies the process of ascribing more human characteristics to them. Law too, in this way, bestows human faculties to such fictional constructs as the corporations. In essence, a corporation is “*humanified*” and given the same rights, duties and capacities that individual natural persons enjoy.

In philosophy, the anthropomorphized events or things or, in any case, their framing within a system in which one is able comprehend them, is analyzed in different ways. To explain such complex phenomena, some authors turn to specialized *systems*,<sup>79</sup> according to which, some occurrences are cognized through the attribution of thoughts, worldviews and desires already ingrained in human brain.<sup>80</sup> A corporation may be viewed exactly as such an anthropomorphized system. To better grasp its functions, one applies more familiar notions and concepts, such as personality, liability, designation and then, through this, ascribes actions to it as well (“corporation purchased”, “corporation laid off its

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<sup>76</sup> *Radin M.*, The Endless Problem of Corporate Personality, *Columbia Law Review*, Volume 32, No. 4, April 1932, 647.

<sup>77</sup> *Id.* 652-653.

<sup>78</sup> *Wormser I. M.*, Piercing the Veil of Corporate Entity, *Columbia Law Review*, Volume 12, No. 6, June 1912, 496.

<sup>79</sup> *Intentional Systems.*

<sup>80</sup> *Dennett D. C.*, *Brainstorms: Philosophical Essays on Mind and Psychology*, The MIT Press, Cambridge, Massachusetts, 1981, 3.

workers”, etc.).<sup>81</sup> However, such anthropomorphic understanding will be viable only if we deem corporation a metaphor.

A anthropomorphic description of a corporation is well shown in one of English legal cases:<sup>82</sup>

*A company may in many ways be likened to a human body. It has a brain and a nerve centre which controls what it does. It also has hands which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than the hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company and control what it does. The state of mind of these managers is the state of mind of the company and is treated by law as such.*<sup>83</sup>

When talking about “humanification” of corporation, this, naturally, signifies the latter within reasonable capacities conferred to such entity. All rights and duties that apply to physical persons are not automatically transferred to corporations. For example, it is obvious and self-evident, that a corporation (capital association) ca not marry and create a family.<sup>84</sup> It is not possible for the legal entity to have emotions, drive a car or to be arrested and sentenced to prison as, at the end of the day, fiction can not step outside the boundaries of reality and can not endow a corporation with capacities absolutely identical to those of a natural person.<sup>85</sup> Philosophically, a legal entity does not have mental faculties one may call “feelings”, they are not, strictly speaking, subjects of consciousness.<sup>86</sup> Famous German jurist Kelsen<sup>87</sup> also viewed the incorrect understanding of this anthropomorphic metaphor and pushing it to the extreme as unacceptable and presented it only as an ancillary concept (*Hilfsbegriff*) made up by jurisprudence.<sup>88</sup>

One more important distinction between natural and physical entities is their creation and end. Physical (also called “natural” person) person is born, he/she grows up and dies. A natural person exists as a biological organism. Of course, one can also speak, by an analogy, of the legal entity being “born” and dying, but this would be an approximate metaphor at best. Even though the concession theory is almost universally rejected, even today all countries, all legal regimes require the legal entity

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<sup>81</sup> Werhane P. H., Freeman R. E., Corporate Responsibility, in: The Oxford Handbook of Practical Ethics, Ed. Lafolette H., Oxford University Press, Oxford, 2005, 521.

<sup>82</sup> *HL Bolton (Engineering) Ltd v TJ Graham & Sons Ltd*, [1957] 1 QB 159.

<sup>83</sup> See *HL Bolton (Engineering) Ltd v TJ Graham & Sons Ltd*, [1957] 1 QB 159, p 172. cited in: *Talbot L.*, *Critical Company Law*, Routledge-Cavendish, New York, 2007, 38.

<sup>84</sup> *Maitland F. W.*, Moral Personality and Legal Personality, *Journal of the Society of Comparative Legislation*, Volume 6, No. 2, 1905, 193.

<sup>85</sup> *French D., Mayson S., Ryan C.*, *Mayson, French & Ryan on Company Law*, 33<sup>rd</sup> Ed., Oxford, Oxford University Press, 2016, 5.

<sup>86</sup> *Scruton R., Finnis J.*, Corporate Persons, *Proceedings of the Aristotelian Society, Supplementary Volumes*, Volume 63, 1989, 253.

<sup>87</sup> *Hans Kelsen* (1881-1973).

<sup>88</sup> *Kelsen H.*, *Reine Rechtslehre*, 2.Auflage, Österreichische Staatsdruckerei, Wien, 1992, 182.



to be registered and only after this will it acquire separate personality and become a true subject in the eye of the law.<sup>89</sup> A legal entity, a corporation can not simply be “born” and die as a human or any other biological organism.

## 5. Conclusion

Detailed theoretical discussion on the essence and being of legal entity and corporation, both from legal and philosophical viewpoints, is a very broad topic and is outside the scope of the present work. Even though a legal person has been recognized as a fully fledged person by law, which, with certain reservations, benefits from all the main rights and duties, as a natural person, both sociologically and philosophically, it constitutes a creation of private individuals, a laborious abstraction of their mental processes. Here the social character of the legal entity must be underlined: if not for the individuals—the physically existing humans— it would not have been capable to come to being, perform actions or end its own existence.

To conclude, it would be appropriate to summarise the definition of the legal entity: a legal entity and corporation is an independent social unit (*Einheit*),<sup>90</sup> affirmed by the law via the analogy to physical entities as a separate person and a legal subject. Present work discussed the ontology of the legal entity and corporation, its essence, not only from the standpoint of law, but also through multidisciplinary and multifaceted lens. Even though it may be impossible to give a uniform answer to the phenomena of legal person and that of corporation and hence to fully and exhaustively elucidate them, from what has been analyzed in the article, it may be concluded, that corporations are the creations of physical individuals, which are then, through the process of humanification, i.e. anthropomorphization, are imputed with the traits of personality and consciousness by humans themselves.

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<sup>89</sup> Naturally, a notion of a „pre-enterprise“ (*Vorgessellschaft*) does exist, to which corporate law applies some regulations and norms, but corporate personality is granted to such entities only after registration. See: *Andenas M., Wooldridge F.*, European Comparative Company Law, Cambridge University Press, Cambridge, 2009, 77.

<sup>90</sup> *Wolf M., Neuner J.*, Allgemeiner Teil des Bürgerlichen Rechts, 11. Auflage, C.H.Beck, München, 2016, §16, Rn.14, s.167.

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