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RELATIONAL SOCIAL THEORIES AND LEGAL PLURALISM

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Abstract

Recent sociological, anthropological, and psychological research points at a shared problem: Are humans separate and autonomous entities, or must they be seen through the lens of extended, permeable, fractured notions of personhood? This paper discusses some crucial implications for the study of law and legal pluralism. Legal orders may differ in the degrees to which personhood is taken as embedded. At the same time, notions of personhood may also be more or less bounded, with particular fields within legal orders also espousing different degrees of personal autonomy. That depends on how political preferences shape specific issues at the time legislation is enacted. All this has implications for conceptualizing and studying legal pluralism. Examples from Indonesia, Thailand, and the Netherlands bring to light some thorny issues that arise when personhood is viewed through the lens of more or less autonomy and social embeddedness. The examples suggest that a relational approach that accounts for varying degrees to which persons are perceived as extended beings deepens the analysis of plural legal orders.

Keywords: *personhood (extended, legal, permeable), individual (bounded, extended, dividual), care, social fields, social worlds, legal incoherence*

Abstrak

Penelitian sosiologis, antropologis, dan psikologis terkini mengarah kepada permasalahan bersama: Apakah manusia merupakan entitas yang terpisah dan otonom, atau mereka harus dilihat dari berbagai macam lensa *personhood*? Tulisan ini membahas beberapa implikasi penting terhadap studi hukum dan pluralisme hukum. Konsep *personhood* dapat memiliki ruang lingkup yang berbeda dalam berbagai sistem hukum yang ada (di dalam sebuah negara). Lebih lanjut, batasan sebuah konsep *personhood* dapat berbeda-beda: berbagai bidang hukum yang ada di dalam suatu sistem hukum dapat memberikan ruang lingkup yang berbeda atas konsep *personhood* tersebut. Preferensi politik atas penyelesaian isu tertentu akan mempengaruhi ruang lingkup konsep *personhood* dalam peraturan yang diundangkan. Semua hal ini tentunya akan berimplikasi pada bagaimana kajian pluralisme hukum dirumuskan dan dipelajari. Contoh-contoh dari Indonesia, Thailand, dan Belanda mengungkap beberapa masalah pelik yang muncul ketika *personhood* dianalisa melalui besar kecilnya otonomi dan keterikatan sosial (*social embeddedness*) yang melekat pada individu. Berbagai contoh yang diangkat dalam artikel ini menunjukkan bahwa pendekatan relasional (*relational approach*) yang mempertimbangkan pandangan komunitas, mengenai konsep *personhood* dan individu serta ruang lingkungannya, mampu memperkaya analisa terhadap keberadaan sistem hukum yang plural.

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Kata kunci: *personhood (extended, legal, permeable), individual (bounded, extended, individual), kepedulian, bidang sosial, dunia sosial, inkoherensi hukum.*



I. INTRODUCTION

During fieldwork on social security that Franz von Benda-Beckmann and I conducted on the Eastern Indonesian island of Ambon in the 1980s, we were confused by the blank response we often received when we asked whether persons in need had ever received care and help from their closest relatives. As we learned later, our question had seemed odd, for care or help is something offered to *others*. On the contrary, within the sphere of very close relatives and in the environs of the village, care is regarded as a “natural” course of action one takes, but *for oneself*. Any explanation to the effect that, as a matter of course, close relatives would be first to take on care responsibilities would miss the point. “Care” is “naturalized” (again an awkward approximation) to the extent that it is something you do for yourself-which-includes-these-relatives. Another incident was equally puzzling to us. When our neighbor’s aunt was injured in a motor accident, it summoned immediate action from her nephews. They had acted not merely out of a sense of care for a close relative; they cared as if they had themselves suffered the injuries in the accident. Only through relational theories of selfhood did I appreciate the layered nuances of these observations. Care opened a window on personhood and personhood on caring relations.

The fundamental insight that persons are deeply embedded in and shaped by social relationships, and cannot exist without them, is as old as social sciences. However, over the past century and a half, the fundamentally relational aspect of human existence has not always received the same degree of attention. How these questions and insights were situated in various social theories varied widely. Theories addressing these issues are of two kinds: one concerns the relationships or social interactions of persons, however defined. A second strand concerns the question of what a person is: whether personhood refers to an individuum, a bounded individual who has meaningful social relations with others, or to a permeable, extended, or fractured self that may include other persons or material objects. Studies that take a relational perspective usually focus on relationships between human and non-human actors. Such studies tend to be premised on a bounded conception of actors and do not explicitly consider the possibility of an extended notion of personhood.³ They stand in a historical context that began with the Enlightenment,

³ See e.g. Callon and Latour 1981; Giddens 1991: 74-80; Emirbeyer and Mische 1998; Behrends, Park, and Rottenburg 2014.



when personhood gradually came to be conceptualized in individual terms.⁴ The imprint of dominant economic theories and neo-liberal perspectives, premised on highly individualized notions of personhood, continues to shape how persons are conceptualized. Modern law is also deeply imbued with these notions, though we shall see that the welfare state shows traces of a less individualized conception of personhood. If it has been exceedingly difficult to break with the idea of personhood as a bounded entity, one reason may be that in the past, many social theories of selfhood leaned heavily on psychological studies. Here, child development has been a longstanding field of inquiry because the foundational insight was that humans begin to develop a sense of self and others only during early childhood, which allow them to enter into social relationships. Early women's lib movements have arguably also contributed to the dominance of the notion of autonomous individuals. Nevertheless, only the theoretical work on gender issues of the past decades generated valuable insights into the specific power differentials entailed in gendered social relationships in a way that began to interrogate critically a hyper-individualized understanding of personhood.⁵ In the 1960s, a political decision was taken to enact not one but two separate Human Rights Conventions – one for civil and political rights and the other for economic, social, and cultural rights. Thus began a movement towards an almost exclusive focus on individual rights with a parallel downgrading of social and cultural rights, which dominated the discussions at the end of the twentieth century. Underlying the emphasis on bounded notions of personhood was a call to pry people loose from the subordination that characterized so many traditional social relationships. By then, the possibility of a relational personhood had become almost entirely eclipsed. Finally, methodological individualism, that is, the assumption that social behavior is exclusively to be studied and understood in terms of individual behavior, is the methodological *pendant* of the same hyper-individualism of the late-20th century. Most studies of the social working of law and legal pluralism that were carried out in the second half of the 20th century were also based on this paradigm.⁶

Today, we seem to have passed the peak of hyper-individualism. Social relationships are back on stage with a greater focus on social relationships and a rising interest in its theoretical implications. New in the *current* discussions is that research in

⁴ See Zenker 2018 for references and a discussion of concepts of the individual in anthropology. See further Crossley 2011.

⁵ See Nedelsky 2011a, 19.

⁶ See Chua and Engel 2019 for the study of legal consciousness.



the neurosciences has produced a deeper understanding of some of the neurological mechanisms underlying what psychologists and social scientists have shown to be relational patterns of behavior, emotions, and sensations.⁷ This raises a number of related questions. A first set of issues concerns the question of how human relationships, whether defined as bounded or extended/permeable, affect social behavior. This has been the subject of inquiry in many recent studies. A second set of issues concerns relational notions of personhood and the self, which boils down to the questions of boundedness and separateness: Can humans be regarded as a separate, bounded, and autonomous entity, or are we relational beings at their core, with a self that is unbounded? A third set of questions, deriving thereof, and the main concern of this paper, asks what relational theories, and especially the issue of the relational self, mean for studying the social working of law in plural legal contexts, and *vice versa*, what the insights in legal pluralism might contribute to relational social theories.

II. SOCIAL RELATIONSHIPS

Earlier work on relational social theories emphasized a range of topics: roles, contexts, embeddedness, gender relations and power relations. Norms were seen as negotiated and reproduced in social interaction. A huge body of literature studying behavior, conduct, interaction, and practices from a relational perspective.⁸ The focus here is on how general social theories have affected socio-legal studies.⁹

Anthropological studies of the Manchester School in the mid-twentieth century have paid much attention to the relations between actors in disputing processes. Bourdieu's (1977) and Giddens' (1984) structuration theories in which social relations are a prominent theme has been very influential in the study of law and legal pluralism. Sally Falk Moore's concept of 'semi-autonomous social field'¹⁰ has inspired many scholars to center on relationships that generate and change law, which produces the contexts for the study of legal pluralism and forms the basis to trace links between legal orders in particular social fields. Scholars have pointed out that legal orders facilitate and constrain social interaction differently and define power relations in diverse ways. Legal

⁷ See for example Galin 2004; Milojevic 2017; Slaby and Gallagher 2014.

⁸ See for an overview Crossley 2011.

⁹ I use this term in a generic sense that includes all empirical studies of the social working of law.

¹⁰ Moore 1973. It should be noted, however, that 'semi-autonomy' here denotes the relative independence of or connection between legal orders, such as customary law or religious law, state law, or international legal regimes. This is a different concept from autonomy as in autonomous personhood, in which an individual is a bounded entity, separate from, though possibly intimately related to other individuals.



orders each have evolved their own idiom to express claims and obligations, to define situations and relationships, and to attribute power within relationships.¹¹ Feminist studies show that such legal framings are profoundly gendered.¹² The arena and the legal order in which relationships are negotiated and rights and obligations are claimed are indicative of how actors frame their issues and in what power relations these interactions occur. Conditions of legal pluralism allow people – to various degrees – to choose from sets of law and this may have profound implications for the outcomes.

Similar arguments have been made by Crossley, who argues that norms are negotiated in interaction within ‘social worlds’, a concept that comes close to Sally Falk Moore’s semi-autonomous social fields.¹³ These social worlds overlap and are connected because belonging is shared between several social worlds through interactions. These ties that emerge are not random but emanate from involvement in overlapping clusters of social worlds. Clusters are bounded entities. Including some and excluding others, they generate and maintain social stratification. Crossley’s argument, in turn, resembles Bourdieu’s notion of ‘habitus’, but while Crossley argues that habitus is a characteristic of individuals, he insists that social worlds are made up of relationships. He argues further that “moving between different worlds affords us a sense of control over our identities and the information flow which partially shapes them, affording a sense of autonomy and of control over who we are and what we are”.¹⁴ Yet autonomy remains important to him despite his relational approach. However, because individual actors bridge these social worlds and try to create some coherence among them, the social worlds affect each other.¹⁵

Recent work on gender and in Science and Technology Studies have taken relational approaches a few steps further and pointed out a few important themes that derive from a relational perspective on the social: the power-saturated situatedness of relations in which knowledge is produced, the ontological multiplicity and methods of enacting non-coherence; the materiality and material-semiotic approaches; the ‘condition

¹¹ See for early examples Comaroff and Roberts 1977; 1981; K von Benda-Beckmann 1984. See also K. von Benda-Beckmann and Turner 2020.

¹² See e.g. Merry 2000, Griffiths 1997; Hellum 2000.

¹³ Crossley 2011, 129, 137; Moore 1973. The concept ‘world’ is derived from Simmel. See Levine 1971, xvii. Crossley 2011, 129: “Order and patterns of social life that invite reference to ‘structure’ are not the aggregate effect of individuals each following pre-existing rules but rather of actors negotiating with, influencing, coercing or otherwise interacting with one another. This is not to deny that actors do, indeed, internalize rules etc. but rather to suggest that the effect of those internalized rules is always necessarily mediated by actors’ interactions.”

¹⁴ Crossley 2011, 173.

¹⁵ Crossley 2011, 174.



of possibilities’ set by specific ‘*epistemes*’; and the problem of *heterotopic spaces*.¹⁶ It bears a striking resemblance to studies in the field of neurosciences and psychology, for instance, of David Galin (2004), which is discussed in greater detail below. Galin also examines the notion of non-coherence and the multiple relations of personhood and the self. However, the lack of interest in law or normativity in these studies is surprising. Some authors even seem to consciously stay away from it.¹⁷ This is unfortunate because legal pluralism covers many of the same issues, albeit in different terms. Socio-legal scholars have also pointed out that legal pluralism characteristically generates incoherence, as the relevant legal orders people are confronted with tend to be incompatible.¹⁸

Recent work on legal consciousness looks at the interconnections between worldview, perceptions of law, and legal decisions (or legal interactions) and has, as Chua and Engel (2019) demonstrate, undergone the same development. The emergent relational legal consciousness studies build on psychological and social relational theories. This work addresses both strands of relational theory. It takes social relations as a core issue but also puts the character of personhood and the self under scrutiny. The authors call for a more in-depth documentation and analysis of the various dynamics between individual and collective forms of legal consciousness. In the most extreme form, they argue, legal consciousness becomes “a fully collaborative phenomenon”.¹⁹

In a comparative study conducted at the Max Planck Institute for Social Anthropology (Halle/Saale) on care in Rumania, Hungary, and Serbia, my colleagues and I took a relational perspective on the local state, paying attention to the multiplicity of the normative embeddedness of social relations.²⁰ As social relationships of civilians and state agents are nowhere as intensive as in the realm of care, looking at caring relationships offered unexpected insights into how people perceived and interacted with the local state. Thelen, Thiemann, and Roth (2014) found that in Serbia, many people rejected a connection to the state, but that did not prevent them from accepting the help of welfare workers: they did so by ‘kinning the state’, to paraphrase a term coined by Signe Howell (2006). By perceiving and maintaining their relationships with welfare

¹⁶ See e.g. Law 2008, Puig 2012; Kazimierczak 2018. See Haraway 1994, 83 for cyborgs, couplings between organisms and machines.

¹⁷ See e.g. Puig 2012, 197-9. Normativity in STS studies does appear as part of assemblages, but usually is not further problematized. See e.g. Kazimierczak 2018, 189.

¹⁸ Santos 1987; Davies 2017; K von Benda-Beckmann and Turner 2020:139.

¹⁹ Chua and Engel 2019, 347.

²⁰ Thelen, Veters and von Benda-Beckmann 2018.



workers as kin rather than as state officials, they circumvented their distaste for the state. They navigated their relations through the normative requirements of kinship and were, thus, able to enact the state and its law. In other words, the dynamics occurred in a legal plural context, in which relationships were reconstituted by drawing upon different normative orders. Care, it turned out, is a particularly productive field or inquiry for studying social relations under conditions of legal pluralism.

III. PERSONHOOD

Much of the relational theoretical and empirical work on social interaction and institutions does not explicitly address the notion of personhood. Yet social interaction and relations to institutions may be premised on very different notions of personhood. This section looks at the various ways in which personhood can be perceived. It is not only an important political and social issue that constitutes the state and shapes relations with it, which was the theme of that research. It also shapes social and legal relations with other institutions as well.²¹ Moreover, as we shall see, additionally, it opens a perspective on conceptions of personhood that may be premised on divergent notions of personhood. This section looks at the various ways in which personhood can be perceived. In his insightful overview of the current debates on relational social theories, Nick Crossley constructs a continuum between two extremes, between holist and individualist perspectives.²² An *extreme individualist* idea of personhood, developed in Enlightenment philosophy, regards persons fundamentally as fully autonomous entities. And in the most *extreme form of holism* persons cannot even be distinguished from the group to which they belong. This second notion once found considerable traction among scholars who encountered cultures in which people saw themselves primarily as part of their kin group or village community. Socio-legal scholars have repeatedly pointed out that in Indonesia, individuals could not be seen as free because they are part of their community, which is an organism.²³ However, a closer inspection of the anthropological data shows that even in the most holistic thinking environments, individuals were identified despite their embeddedness in social and natural environments. On the other hand, the so-called totally autonomous individuals appeared to be less autonomous even in Western industrialized

²¹ Puig (2012, 198) considers care as fundamental to human life, when she states that “relations of thinking and knowing require care”.

²² Crossley 2011. Like others he criticizes the dichotomies in notions of personhood. See also Smith 2012, Hess 2006.

²³ See Koesnoe 1977. See also Maddock 1993,90; Rahardjo 1994; Arnscheidt 2009; Horii 2019.



societies so deeply imbued with individualistic ideas of the Enlightenment. Nevertheless, as an ideal and an ideology, such notions have been immensely influential. Individualist concepts of highly autonomous persons are deeply entrenched in Western law and social organization. In short, empirical evidence suggests that there is a great deal of variation among societies in the space between the two constructed ideal-typical extremes. And within societies, the degrees of autonomy and relatedness are constantly changing and renegotiated in social interaction.

The past theoretical and empirical work of scholars leaning towards a bounded notion of personhood shows how persons could develop into more or less autonomous persons, given the fact that they are deeply social beings, born without the capacity to distinguish themselves from their surroundings. Psychological studies, for example, demonstrated first and foremost the process of becoming an autonomous person: by mimicry, role playing, slowly emerging capacities of reflection on the behavior of others, and finally by self-inspection.²⁴ The *environment* in which this happens was regarded in terms of relationships, but the *focus* tended to lean towards autonomy, to the extent individuals are, or will become autonomous.

Crossley (2011, 93) positions himself between the poles and proposes a notion of personhood that develops and acquires its competence in social interaction. Personhood, according to him, consists of an ‘I’, a competent actor, and a ‘me’, “a historical reconstruction of the self that the I forms in moments of self-reflection.” The I and the me are mutually constitutive. He suggests that the ‘me’ is not necessarily bounded to the individual’s own body, but may include material possessions.²⁵ And he continues “[o]ur sense of who we are takes shape within an imaginative discourse, a narrative, and from this point of view it is perfectly possible that the identity constructed is a we”, but the actors are I’s. Charles Taylor makes a similar argument.²⁶ In his view, the self grows and develops over time and can only exist by means of language in communication with others within a community (1989: 509).²⁷ A self therefore is a “self among selves” (1989: 35).

²⁴ The emphasis on autonomous persons is enhanced by ‘the psychological turn to creativity’ Reckwitz 2017, 127-153

²⁵ STS studies of health care in hospitals have shown how machines in fact are extensions of persons. Haraway, Puig, Kazimierczak.

²⁶ Taylor 1989. His focus is slightly different, in that for him morality is a core element of personhood.

²⁷ See also Smith 2012, 56f.



A number of authors have pointed out that what the self is, or how it is philosophically constituted, has consequences for social interaction, which vary widely and are a result of socialization. For example, Taylor contrasts Indian identities with western ones: “The Indian pattern tends to encourage a kind of identity in which it is difficult to know what I want and where I stand on an important range of subjects if I am out of phase or not in communication with the people close to me. The Western pattern tries to encourage just the opposite”. Though relational social theories emphasize the relational aspects of social behavior and even acknowledge other perspectives, their theoretical ideas are rooted in the notion of persons as bounded and more or less stable beings once they reach adulthood. As we operate in our social environment, we might draw on a variety of normative orders and adopt diverse lines of thinking and registers of behavior in different sets of interaction, and yet, we do so as bounded persons in these different roles. The ‘I’ as a competent actor, in Crossley’s terms, is a clearly bounded person. Taylor argues that “there is something like an a priori unity of a human life through its whole extent,” (Taylor 1989: 51). However, he acknowledges anthropological evidence that some cultures, for instance, perform rites of passage to mark the moment when a person becomes someone fundamentally different.

Indeed, anthropologists have pointed out that perceptions of personhood vary enormously. For example, Marilyn Strathern found that in Melanesia, personhood differs according to the context in which a person acts, and changes fundamentally over time. A Melanesian person, according to her, is an inherently fractured, ‘dividual’.²⁸ As another example, the vignette at the beginning of this article shows that caring relations open a window on relational notions of selfhood. The Ambonese entertained a relational or extended notion of the self that included their closest relatives. This is not to say that Ambonese were unable to distinguish themselves from these intimate relatives; they were perfectly capable of doing so and had different terms of address and reference for them. Relational personhood was a matter of degree: the more distant the relation was perceived, the less natural care labor and cooperation and the more it was subject to rights and obligations, conditions, and negotiations.²⁹ As will be discussed in more detail below,

²⁸ Strathern 1988. See also Dumont 1965, Hess 2006, Smith 2012 for conceptions of the self and subjectivity. See also Zenker 2018.

²⁹ In the memory of Moluccan members of the former Dutch colonial army that were re-settled in the Netherlands in 1950-1, normalized care relations extended to the village community as a whole. Our research in the mid-1980s bore no evidence of such a mythical village community. See K. von Benda-Beckmann 2015.



focusing on relational selfhood shows that things such as an injury that happens to one person, may automatically impinge on other persons with whom one has intimate relationships.

David and Jaruan Engel have recently shown that for the Lanna in Northern Thailand, a person is traditionally perceived as a ‘relational’, ‘permeable’ self, “*inseparable* from the spirits and souls of fellow villagers and the supernatural beings that oversaw the household, village, and principality”, rather than as a bounded, autonomous self that *has relations* with others. They are “... only loosely or temporarily situated in a physical body”.³⁰ The authors have also shown that this relational notion of selfhood has changed over the past decades and affected how people deal with injuries. The idea that persons are intimately related to human, animal and plant ancestors has been shown in many anthropological studies, e.g. on Australian aboriginals. Nursoo (2018:61) points to the relational philosophy at the base of the aboriginal law. In the Western world, attempts have been made to re-conceptualize philosophical notions of personhood. This has been done to counter the idea of a disembodied mind ontologically independent of the body, which the Cartesian mind-body split envisages, and the fundamental difference between men and women that derives therefrom, and the feminized conception of nature.³¹ In the Cartesian conception of legal personhood, relations have no place. Grear criticizes this lack and argues for reconciling mind and body. With reference to Merleau-Ponty, Grear (2011:39) argues that “knowledge and rationality are each revealed as being *inescapably embodied*” [italics original]. In this perspective there is “an intimate bodily continuity between ourselves and the world” (Grear 2011:40).

Comparing Western psychology and Buddhism on concepts of “self”, “person”, and “I”, the behavioral scientist David Galin (2004) has made perhaps the most profound theoretical analysis of the relatedness of personhood. He argues that evolutionary adaptations to enable acting have shaped our nonconscious mental life in a particular way. Human beings have to abbreviate the immense complexity of their environment into manageable entities and approximations to enable them to interact in everyday life. As a result, humans focus on entities and regard persons as entities in their daily interactions rather than as fluctuating webs of inconsistent relationships that shape persons more comprehensively, according to Galin. He emphasizes that the entities that human beings construct are “always conditional, dependent on our purposes, constrained by context”

³⁰ Engel 2018, 2. See also Engel and Engel 2010.

³¹ See Grear 2011; 2015, 90-91; Nedelsky 2011a and b.



(Galini 2004,136). Despite the varying terminologies in use, these authors share a critical stance towards the proposition that persons are clearly defined and remain stable over time. People change over time, depending on the place and contexts in which they operate, and boundaries are as not sharply defined as assumed: in fact, they are fundamentally inconsistent.

IV. PERSONHOOD IN PLURAL LEGAL CONTEXTS

The possibility of a relational personhood is not merely of theoretical relevance; it affects social and legal relations, and the rights, entitlements, responsibilities and obligations within these relationships. Normative orders are based on specific notions of personhood, and they differ widely in what kind of personhood is taken for granted and in the extent to which the relational aspects of personhood are considered. As Peter Fitzpatrick (1992) reminded us long ago, Western legal systems are predicated on individualistic notions of a clearly bounded person. Such notions inform the law in the first place as cultural and legal ideals, sometimes also called ideology. However, the way these ideals play out is contingent on specific institutional contexts. And at this institutional level, individualistic and autonomous notions are often combined with relational concepts. That is, legal institutions differ in the way autonomous and more relational approaches to personhood are combined, which may, but often does not directly translate comfortably into actual legal relationships and social interactions, where people may maintain more relational or individualistic perceptions of personhood.³²

David and Jarawan Engel (2010) found that differences in legal concepts of personhood explained why it is that both in the US and in Thailand so few victims of injuries seek redress and compensation in court. For the US, they explain the reluctance of going to court in terms of locally enforced norms of proper behavior that prescribe seeking solutions within the community and strongly disapprove of going to court. Here, the notion of a bounded person is not necessarily questioned. For the Lanna in Northern Thailand, they explain this in terms of changing conceptions of personhood. High levels of mobility and migration have dis-embedded persons from their intimate connections with local communities, kinship networks, and local spirits. In the new urban environment, they have become familiar with a new type of Buddhism that contrasts with their local Buddhist understandings and that is associated with urban life, which entails a

³² See for a layered analytical framework of law, F. and K. von Benda-Beckmann 2000, 14-15; F. and K. von Benda-Beckman and Wiber 2006, 14-29.



more individualized, bounded notion of personhood. This new individualized life is not compatible with their traditional, local, extended conception of personhood, which they have not completely abandoned. It causes a great deal of uncertainty as to how to deal with injuries when the community can no longer be involved, and the local spirits cannot, or do not have to be appeased. Under these circumstances, the appropriate kind of compensation or remedy might not be immediately evident. Although the cultural ideals have changed, the institutional regulations have not kept pace, which have produced unclear social relationships and, ultimately, a practice of withdrawal from the state court system.

The authors also point out that Western legal systems have allowed little room for the health consequences suffered by caregivers who are intimately related to the injured person. Yet intimate relatives or friends of an injured person show empathy and tend to mirror and experience the pain they witness. Caring tasks in a more intimate or family setting tend to severely affect the carers: they fall ill more often and die significantly earlier than they would otherwise. In addition, income-generating activities may be impaired, which often leads to long-term financial hardship. This is owing to the failure of the state legal system, with its autonomous conception of personhood, to not cater to that degree of relatedness.

Welfare states have designed yet other ways of dealing with these consequences. In Europe, too, relatively few victims of injuries go to court to sue for compensation, but the reason for it contrasts both with the situation in the US and in Thailand. Unemployment, disability, and health insurance are far more widespread than in the US and absorb some of the consequences, even some of the indirect ones. In fact, the burden is distributed among the injured person, the family, social welfare and insurance companies, and the person that caused the injury. But over time, the share of this burden that each has to bear changes. Notwithstanding a state-provided care system and affordable private and public insurance institutions, care labor is vastly performed outside of these institutions. These systems tend to cover the professionalized rather than the non-professionalized care labor.³³ Even in the highly developed European welfare systems, most of the care is, therefore, extended in unpaid labor, mostly by women who are intimately related to persons in need of care, and who may have to give up part of their job, with long-term income reduction as a result. These care givers, therefore, are also

³³ See Schwitters 2011.



victims of the injuries that their relatives suffer. But the long-term financial implications for care givers, or for the children of victims, are neither fully absorbed by state-provided social security, nor by insurance companies. In the Netherlands, there are signs that courts are beginning to realize that an overly individualistic approach defining victimhood in the event of consequences beyond the injured victim might not be appropriate. While it was standard practice to award compensation for material damage to close relatives, in a recent decision, the Supreme Court, for the first time, granted affect-compensation to close relatives of the injured persons. There is also some discussion about compensating care givers in general.³⁴

These legal and institutional changes are symptoms of changing care relationships, of responsibilities and entitlements, and of notions of personhood. Rob Schwitters (2011) has shown that until the late 19th century, paternalist employers of small enterprises in the Netherlands took their care obligation for their employees for granted. Their personhood as employer extended to their employees. But around the turn to the 20th century, industrialized countries went through a shift from individual civil liability towards a risk system, which reduced the tendency to blame individuals for incurred injuries. At the same time, the needs of injured persons came to be seen as a public issue rather than a mere private problem of the injured person and his employer. This occurred also at a time when labor unions argued that the old system of care rendered the employee overly dependent on the employer. Heavily supported by the emerging insurance industry, they argued that an insurance system would grant the laborers a higher degree of autonomy from their employer. Monetized compensation that allowed for maximum spending freedom reflected an emerging notion of autonomous individuals in relationships between laborers, employers, insurance companies, and the state (Schwitters 1991). It was a legal institutional translation of changing cultural ideals of personhood.

Such welfare arrangements also have implications for the character of the social relationships *within* the social networks of injured persons in which care is extended, and for the implied notions of personhood. Modern risk systems collectivize the burden of compensation – on the basis of single-stranded networks of autonomous persons – in contrast with the multi-stranded networks that absorbed the costs of care in case of

³⁴ It is interesting to note that discussions about redress for indirect victims in the Netherlands assigns an important role to the state, while under the US legal system this would be a matter for courts and the persons that caused the indirect injury. In Foucault's terms: the conditions of possibilities are different in these countries.



injuries. In other words, the expansion of networks for compensation and care came at the expense of the multi-strandedness of social relationships. This is, of course, a symptom of modernity's increasing differentiation and specialization. But it is also a symptom of the ambivalent attitude towards personhood, because they combine notions of embeddedness with ideals of autonomy. Developments in the late-welfare state intensify this ambivalence. Control mechanisms have been strengthened, and professional caregivers, insurance companies, and state social welfare agencies increasingly intrude on the autonomy of the recipients and, by extension, on their relatives. Due to budget cuts, relationships between professional caregivers and recipients have also changed. Professional caregivers today often decide unilaterally on what care they are willing to extend, and what care is expected from the relatives of the needy persons in question. One might argue that this is a forced re-embedding into family relationships, imposed by the state, care agencies, and insurance companies. It is a re-embedding that deeply affects relationships within the network of the persons in need and their close relatives, with whom the relationships become unwillingly, and often unwantedly more intimate, if not always affectionate. These strands once again become thicker and more complex, but the circumstances have changed considerably. The very state legal system that puts so much emphasis on the autonomous bounded individual, and has done much to detach individuals from their family relationships, for example, when it comes to labor and other contractual relations, finds it convenient here to rely on these very family relationships and redefines them as natural, thus imposing relational personhood to a degree that many may not find as comfortable.

Thus, changes in legal relations affect legal personhood and vice versa. But legal relations and legal personhood do not necessarily reflect the perceptions and practices of those at the receiving end of the law. This constitutes an important source of uncertainty and discomfort. When persons interact under conditions of legal pluralism, confusion may rise exponentially.

That people interact based on how they assess their contexts where different norms are applicable is often captured as role switching or positionality within the contexts in which people interact. Taking on different roles is in principle possible both on the basis of autonomous and extended perceptions of personhood. But if normative orders are premised on distinct, incommensurate notions of personhood, and people interact under plural legal conditions, then the interactions become more complicated and the choices that have to be made may have farther-reaching consequences. Serbian welfare recipients



took to ‘kinning’ the state. In the Thai case, persons opted out of one of the possible legal orders altogether. In the Dutch welfare system, care relations between kin are riddled with contradictory demands based on multiple notions of personhood. In Indonesia, as Koesnoe has argued, injury as a result of an infraction on local norms implied an injury to the community, which disturbed the cosmic order. A court claim for individual compensation would not restore the cosmic balance. This would require different forms of redress.³⁵ In my own research in the 1970s in West Sumatra, I observed how the very same person that was an eloquent, dignified, and authoritative lineage head, lost his firm sense of personhood when called to court as an expert witness, where he transformed into a stuttering, utterly timid person. The unfamiliar legal idiom in which issues were discussed, the lack of knowledge of how judges understood their local laws, the intimidating environment and the bureaucratic relationships with the court personnel not only forced him to take on an unfamiliar role. It went much deeper and challenged his sense of personhood. Many lineage heads were caught unawares and found it almost impossible to handle how issues and argumentation had been framed, and the mode of interaction required in a state court. For in *their* perception, the courts were supposed to apply *their* local law, of which *they* – not the judges – were the experts. However, if lineage heads lacked knowledge of court procedures, judges had an equally incomplete knowledge of local customary rules, with the difference that judges could impose their views on the process by virtue of their position. As a result, lineage heads were often utterly confused and unable to perform in an appropriate manner.

During our research on the effects of decentralization policies in West Sumatra between 2000 and 2009, we observed that most lineage heads today have considerable experience with state institutions. Often civil servants themselves, they are used to interacting within such contexts, and have a fair understanding of how state institutions work. Working within these settings does not upset their sense of personality the way it did for lineage heads that had spent their entire life in a village. In fact, having lived in urban settings far away from their home village, some never even acquired a good sense of the modes of interaction expected of lineage heads operating within the village context. These new lineage heads sometimes act more out of an obligation *for* their kin group, than out of an obligation *emanating from* their extended personhood. This often leads to uncomfortable interaction with local members of their lineage in which the meaning of

³⁵ See Koesnoe 1977, 22; See for extended notions of personhood in Indonesia Maddock 1989, 91; Rahardjo 1994: 594; Arnscheidt 2009: 51ff ; Horii 2019:309



interactions remains unclear, and relationships and norms are only partly clarified in uneasy negotiations.

V. METHODOLOGICAL IMPLICATIONS

Relational approaches that take relations among actors as the core units of analysis have methodological implications for how we study social interaction within plural legal contexts, and as this article explores, in combination with the notion of relational personhood.

The first implication of relational personhood is that if personhood extends to others, as in the cases of the Lanna or the Moluccans, or even the Dutch, and if persons, as Galin (2004) suggests, are not so clearly bounded, then interactions always include these other persons in certain ways, even though legal personhood may be defined as clearly bounded. This inclusion may be more visible in care than in other interactions conducted in the absence of other persons that may not even know about the interactions. Studying legal interactions, therefore, requires close observation of the different ways in which personhood is expressed in different contexts, and how it is defined by the relevant legal orders. The sets of norms that constitute a plural legal order should be studied not merely in their official form but also, and foremost, in their vernacularized forms that are used in the specific contexts under study. This vernacularized form is often based on partial knowledge, and its understanding may be affected by notions of extended personhood. This includes persons implicated by the relational personhood of the participants in interaction. The methodological individualism that is still prevalent in socio-legal studies needs some calibration to account for the possibility of a more porous or extended personhood. Besides, in some contexts, the extended character may be more pronounced than in others, especially when autonomy is more dominant.

Secondly, research on issues of care and on other topics in socio-legal research should be premised on the possibility that the relevant law contains remnants of legislation from different periods when other understandings of personhood were prevalent. This is because notions of personhood are subject to change. This may happen to migrants whose sense of personhood gradually changes, as the example of the Lanna has shown. More in general, migration stimulates changes in cultural orientation and that may include changing ideas of personhood. But social, economic and cultural change may also affect general notions of personhood, and this may incur changes in legal personhood, as the examples of the Dutch welfare system suggest. Each new piece of



legislation that is added to the increasingly complex welfare regime is premised on the dominant views of legal personhood at the time of its enactment. The result is that the welfare system is incoherent and full of contradictions, due to the various ideologies that have shaped the relevant legislation and institutions over time.

A further implication is the need for a broader conceptualization of what constitutes a group, a semi-autonomous social field, or social world is needed. No longer can it be premised on the idea of a shared understanding of norms, even of those that are shared within each social world. The examples of the Lanna and my example of the Minangkabau lineage heads shows that this is not necessarily the case. The Lanna did not know how to deal with their injuries because they had lost full knowledge of the local Lanna norms without acquiring full knowledge of the urban Buddhist norms. In the 1970s, the Minangkabau lineage heads had to play in court according to rules they did not know or understand and attempted to act according to their norms, which the judges on their side did not fully understand. Different worlds and semi-autonomous fields and their norms do overlap and affect each other. And their rules may not merely irreconcilable because of their substantive content, but also because they are only partly known and differently understood in interaction. The world that the lineage heads entered into in court cases seems to be multiple in the sense of Mol (2002) and, to that extent, differently understood and enacted by the judges and court personnel and the lineage heads, and possibly by further participants in the procedures. Each of these worlds were internally stratified by internal power relations inherent in the other, connected social worlds. Studying the possible choices from among legal orders should therefore be premised on the assumption that actors may have partial knowledge, and misunderstandings remain implicit most of the time. Studying the range of possible interactions between legal orders requires an understanding of the possible sources of incoherence.³⁶

Although it extends the subject matter of this paper, it should be noted that the discussion has further implications for a broad array of legislation processes. These processes include the formulation not only of categories, indicators, and the use of numbers as the basis of national and transnational lawmaking, but also of development programs and the assessment of their implementation. Discourses and the often-implicit logic of legal personhood that actors entertain, such as legislators, bureaucrats, development agents, recipients of development cooperation, human rights experts, and

³⁶ See for non-coherence in law, Law 2008, 641.



intermediaries, deserve appropriate attention as a part of the social and legal context in which they operate.

VI. CONCLUSION

Putting social relationships center stage in social analyses has opened up new insights, but it has also generated some thorny questions. Some relational theories may be entirely compatible with the notion of bounded individuals. However, the combined results from recent research in psychology, anthropology, other social sciences, and neurosciences suggest that is not the case.³⁷ A relational notion of personhood that can accommodate the *possibility* of perceiving persons as extended, permeable, fractured, contextual, and situated at varying degrees can facilitate a more differentiated analysis of social interaction and relationships. The benefits of a differentiated analysis are particularly clear when studying care relations. However, such an analysis may also offer unexpected strategies for dealing with injuries. Notions of legal personhood are inherent to law, and law offers significant contexts that shapes personhood. At the same time, legal orders differ based on the kind of personhood upon which they are premised, some more bounded and others more relational. We also find different and contradictory notions of personhood within legal orders depending on how political preferences steer specific issues in particular directions at particular times of enactment.

A relational approach has methodological implications for the study of actions and interactions. It also requires conceptualizing semi-autonomous social fields or social worlds. The relevant social fields or worlds are less clearly defined than we once thought or hoped they would be. Furthermore, it means that there is less than *semi*-autonomy, and connections between social fields and their norms and meaning are stronger than we tend to assume. But as the norms pertaining to each of these fields may be internally fragmented and contradictory, the notion of legal personhood may potentially vary. A third implication is that serious attention must also be paid to multiple worlds. In multiple worlds, people operate with different degrees of knowledge and understanding of the respective epistemes. But the most difficult issue that remains is how we might understand relationships among actors with an extended or discontinuous notion of personhood. This paper suggests at least a need for careful calibration of methodological

³⁷ See Galin 2004; Slaby and Gallagher 2014; Milojevic 2017.



individualism, still a standard method in socio-legal research, even or especially when using a relational approach to study social and legal interaction.

Finally, a relational approach suggests that we may have found a fundamental reason why the meaning of and norms about social interaction so often seems utterly ambivalent. This is especially the case when people interact under plural legal conditions. Relations within one context and social field are affected by relations in other social fields where different norms may apply and where notions of personhood may play out differently. A truly relational take on legal pluralism reveals the extent of ambivalence, incoherence, misunderstanding, and uneasiness in relationships, interactions, and negotiations under complex normative conditions.



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