

INTRODUCTION

Kristen Rundle: Legal Subjects and Juridical Persons: Developing Public Legal Theory through Fuller and Arendt

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This special issue of *NJLP* is devoted to the notion of personhood or subjectivity in the context of public law. The main claim of our distinguished guest author Kristen Rundle, Senior Lecturer at the University of New South Wales, Australia, is that Hannah Arendt's analysis of legal subjectivity provides new insights to Lon Fuller's inquiry into law's forms and their bearing on human agency. Moreover, the pairing of Arendt and Fuller, Rundle claims, provides the building blocks of an alternative theory of public law. Four philosophers have been invited to respond to Rundle's exposition: Thomas Mertens (Radboud University Nijmegen), Wouter Veraart (Free University Amsterdam), Pauline Westerman (University of Groningen), and Michael Wilkinson (London School of Economics). Rundle and her critics wrote their contributions at the request of the Board of the Netherlands Association of Philosophy of Law (VWR) and presented them at the association's Spring meeting, which was organized on June 20, 2014 in the conference center 'De Veranda' in Amsterdam.

In her article, Rundle discusses Arendt's and Fuller's views concerning the relation between the legal person, as a subject responsible for his or her actions, and the institutional framework of law. Notwithstanding the fact that Arendt and Fuller represent different traditions, Rundle argues that, at base, both share a similar account of legal subjectivity. According to Rundle, Arendt's insights on the political dimension of legal subjectivity can be used to extend Fuller's analysis of legal personhood. Rundle's thesis builds on her previous work as developed in her book *Forms Liberate: Reclaiming the Jurisprudence of Lon L. Fuller* (Oxford: Hart Publishing, 2012). In this much acclaimed work, Rundle makes a case for the thesis that law, consisting of certain forms, is a precondition for the development of human agency. In the opening essay of this special issue, Rundle aims to develop this thesis further, building what she calls a 'normative public legal theory,' that is, a theory that interprets law's subjectivity-creating form as a political enterprise that sets limitations on the arbitrary use of political power. The shared concerns of Fuller and Arendt form the building blocks for a theory that provides how the personhood, status and agency of persons is shaped by the legal environment that surrounds them.

Wilkinson takes up the discussion with Rundle on legal personhood from the perspective of Hannah Arendt. He questions the smooth pairing of Fuller – with his

focus on the rule of law – with Arendt, whose focal point is the political. Siding with Arendt and underlining the creative power of political action, Wilkinson claims that Rundle sketches an institutional rather than a political type of jurisprudence. For him, Rundle pictures a concrete institutional order as a necessary support for the rule of law and this, according to Wilkinson, does not seem a viable alternative to a source-based type of jurisprudence. In order to do justice to Arendt, he argues forcefully that Rundle needs to focus more on the notion of political freedom. Doing this, however, would make the enterprise antithetical to Fuller's project.

Westerman questions the method employed in Rundle's paper. She claims that if the question addressed in the paper is about the way in which a minimal legality hangs together with the rule of law, it is not appropriate to treat Fuller and Arendt as indisputable authorities to defend what ultimately can be identified as a normative position. This approach, which, according to Westerman, is characteristic to analysis in legal doctrine, is inadequate to address philosophical problems. The upshot is that, as Westerman argues, Rundle's paper lacks an explicit philosophically argued normative position.

Veraart's main claim is that the common interest of Fuller and Arendt is in the experience of legal injustice rather than in the experience of law as such. In order to substantiate his argument, he elaborates some generally accepted elements that Rundle seems to work with but does not make explicit. The upshot of Veraart's argument is that both Fuller and Arendt as a couple do not have a lot to say about the more common challenges of law's institutional complex; their coupling is instead interesting in the more extreme cases in which law's institutional complex fails or lacks. As a result, Veraart argues, Rundle can be considered both to make too much and too little of the Arendt-Fuller pairing.

Mertens' commentary places Rundle's paper firmly within the context of her previous work *Forms Liberate* and explicitly interprets the paper as a continuation of the project on Fuller. In this way, Mertens is able to identify the possible contribution of Arendt to Fuller's analysis of legal personhood. However, he critiques the viability of the project of reading Fuller and Arendt together, particularly from the standpoint of Arendt's discussion of legal subjectivity. According to Mertens, rather than bringing Fuller and Arendt in a dialogue, it may be more fruitful to relate Arendt to Gustav Radbruch and his analysis of legal certainty.

Central to Rundle's reply is a defense of the pairing of Arendt and Fuller as contested by the commentators, each in their own way. In response to Wilkinson, Rundle disputes strongly his interpretation of Fuller and brings Fuller back into conversation with Arendt, particularly with respect to the problem of authority. According to Rundle, Westerman's emphasis on methodology seems to divert attention from the ideas that are expressed in the paper. While Rundle acknowledges the importance of method, she does not share Westerman's critique that she mistakes legal with philosophical method. As concerns Veraart's comment, Rundle takes the immanent critique of her argument on board. However, Rundle

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also nuances Veraart's critique and defends a reading of Fuller that allows for a number of the objections he raises. Lastly, in response to Mertens, Rundle sees it necessary to readdress her interpretations of both Fuller and Arendt. Mertens' commentary enables Rundle to specify where she puts the emphasis in her interpretation of Fuller and Arendt and for what reasons.

The editors of this special issue wish to express their gratitude to all the participants in the Spring meeting of the Netherlands Association of Philosophy of Law on June 20, 2014, especially the key note speaker and the commentators.