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SEBASTIÁN RODRÍGUEZ CÁRDENAS

FICTIO VEL PERSONA:

THRESHOLDS, FRONTIERS, GENEALOGY

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ABSTRACT

This work traces a genealogy and a cartography of personhood and its interlacement with fiction. It follows the perpetually shifting outlines of this relationship, tracing its fractures, its extensions, and the mechanisms by which it is upheld and displaced. It does not ask what a person is, but rather where, when, and why a person emerges, stretches, and dissolves in a framework of governmentality. To do so, it follows its juridical, theological, and bio-political cartographies, unearthing the moments in which personhood acts as a threshold rather than an essence or an immutable category.

Between law and literature, philosophy and theology, theatre and grammar, this work is not a theory of personhood but a genealogy of its uses, an interrogation of its necessity, a query of its products and of the way in which it is itself produced and reproduced. It moves not towards a conclusion but towards a question: whether *persona* may ultimately signify nothing, and whether fictions may however open a pathway for a different way of understanding the actuality of the events that emerge in the governmentality we share and inhabit.

KEY WORDS: Person, Genealogy, Fiction, Governmentality

RESUME

Ce travail retrace une généalogie et une cartographie de la personnalité et de son enchevêtrement avec la fiction. Il suit les contours perpétuellement mouvants de cette relation, en traçant ses fractures, ses extensions et les mécanismes par lesquels elle est maintenue et déplacée. Il ne demande pas ce qu'est une personne, mais plutôt où, quand et pourquoi une personne émerge, s'étend et se dissout dans un cadre de gouvernementalité. Pour ce faire, il suit ses cartographies juridiques, théologiques et bio-politiques, mettant au jour les moments où la personnalité agit comme un seuil plutôt que comme une essence ou une catégorie immuable.

Entre droit et littérature, philosophie et théologie, théâtre et grammaire, ce travail n'est pas une théorie de la personnalité, mais une généalogie de ses usages, une interrogation sur sa nécessité, une mise en question de ses produits et de la manière dont elle est elle-même produite et reproduite. Il ne tend pas vers une conclusion, mais vers une question : si la persona peut finalement ne rien signifier, et si les fictions peuvent néanmoins ouvrir une voie vers une autre manière de comprendre l'actualité des événements qui émergent dans la gouvernementalité que nous partageons et habitons.

MOTS CLES : Personne, Généalogie, Fiction, Gouvernementalité

Las aguas que no saben que son el Ganges.

JORGE LUIS BORGES

Je me rends bien compte que je n'ai jamais rien écrit que des fictions.

MICHEL FOUCAULT

TABLE OF CONTENTS

INTRODUCTION

Introductions are written twice. It is not only a tradition but a testament to the distance between the idea and the actuality of what has been written. When I set out in this endeavour and wrote the first iteration of this introduction, I had only a compass composed of a couple of questions and, at the very best, an intuition of their answers. There was never a map to follow, precisely because tracing the outlines of a cartography was the purpose of the genealogy that was to come. The questions I had were related to a particular set of phenomena that have been accumulating in recent years, which I can summarise as the fictional extension of personhood to non-human entities. The questions themselves were very simple: Why? What's the purpose? Why this, and not something else? The frame of these questions was far more complex, as it involved the interstitial space between philosophy, law, and at least some approaches to the theory of fictions, all of it under the multiple forms of power and knowledge that traverse them.

With this frame and this compass, my purpose has been to unearth the conditions that allow these metamorphoses to come to be and reveal the effects of subjection and truth that they pose, to interrogate, under a philosophical light, whether the production of these forms of power and knowledge are indeed a sound attempt at protecting certain entities, pondering what lies underneath such an intention. In sum, why and how the notion of personhood has been extended through fictions across different realms —sometimes unexpectedly— and what the implications of this extension are for our understanding of subjectivity, agency, dignity, bio-politics, and governmentality, to name a few.

Naturally, my concern about these operations is not confined to the past, instead it extends into contemporary terrains where the juridical and philosophical frontiers of personhood continue to blur: artificial intelligences, entire ecosystems, biomasses, and even algorithmic entities now hover on the threshold of being inscribed into a framework that is anything but fully grasped, and where their inscription raises indeed questions of power, control, and subjection that need to be considered.

I have tried, therefore, to trace a genealogy, or perhaps more precisely, an ensemble of genealogies of the intertwinements between *persona* and fiction. The apparently clear frontiers and foundations that gave birth to a contemporary concept of person were quickly revealed to be edifices of fragmentation and discontinuity, not in the sense of a crumbling structure, but on the contrary, in the sense of a rich mosaic, composed of several pieces that per-formed their eclectic architecture. The search for the formation of personhood and its interplay with fiction began of course, with the law, but also transited to several other domains: grammar, theatre, theology, politics, and biology. This does not mean that all these realms are exhausted, but only that they appear inasmuch as this interplay has roamed widely through different geographies and different chronologies, and it is in this effort that the notion of cartography appears, not to try and localise the appearance of the concepts, but to trace

its moveable outlines in the historical, circumstantial, and unfinished process of their construction and their interaction.

Besides being "grey, meticulous, and patiently documentary"[1] genealogies are by their very essence always fractional, interwoven, provisional, and fragmentary. They are, and they aim to be, a perpetually changing palimpsest. While this methodology is evidently Foucauldian, it is not to his inquiries that this work relates. I do not attempt to summarise, rephrase, convey, or try and explain what any particular author has already said. Instead, I subscribe to the idea that books —and authors— are to be used as "toolboxes" (*boîtes à outils*)[2], and that the role of philosophy is to act as a "diagnostician" of an event in its actuality[3]. On this note, every work and every author appear here to serve the purpose of unearthing and revealing the frontiers, thresholds, and interstices of this genealogy, and this is also why several works and concepts of art, music, and literature appear recurrently, in an effort to grasp what eludes the bare academic analysis, and to poeticise a question that is itself poetic in the sense of both fiction and fabrication.

In terms of structure, the book is conceived as a diptych, with each half divided in three chapters. The first part explores what I have called a cartography of personhood, that is, the genealogical traces of its presence and its absence, its provenance and its re-appearance in particular historical constructs where it has touched upon fiction. The second half explores the personhood of non-human entities, recounting mostly contemporary instances in which this mechanism has been applied, providing a diagnosis of the effects of the interplay, as well as alternatives to the operation it performs and the forms of fictional truth and subjection that arise within.

Thus, the first chapter provides a mosaic of personhood in its juridical conception, tracing both its internal and external frontiers, particularly its opposition to *things*, and exploring how free men, women, children, and even slaves shared the character of persons, regardless of the palpable difference in terms of rights and political agency. Afterwards, it explores how pluralities, the not-yet born and even objects are taken *as if* they were persons for specific pragmatic purposes, fictions that remain inscribed even in contemporary juridical constructions.

The second chapter enters a different realm of the cartography, namely a philosophical perspective on the appearance of this intertwinement in theatre, grammar, theology, and in the centrality of reason, unearthing particularly revealing moments in which the genealogy reshapes and merges with the juridical via concepts that were in principle alien to it, such as the concern for the persons of the trinity, the complex language of the essence, the substance, and the subsistence in defining the person, as well as the eminence of reason

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1 Michel Foucault, « Nietzsche, la généalogie, l'histoire », dans *Dits et écrits I: 1954-1975* (Paris : Quarto Gallimard, 2001), p. 1004.

2 Michel Foucault, « Des supplices aux cellules », dans *Dits et écrits I: 1954-1975* (Paris : Quarto Gallimard, 2001), p. 1588.

3 Michel Foucault, « La scène de la philosophie », dans *Dits et écrits II: 1976-1988* (Paris : Quarto Gallimard, 2017), p. 573.

and government of one's own acts that amount to the dignity traditionally attached to the concept.

The third chapter explores the layered topic of the production of the subject, both as an eminent, rational, and capable agent, as well as in its subjected and tied down counterpart, particularly in terms of personhood as a link of *imputation* that allows to grasp an entity and capture its very existence and its actions. Furthermore, it looks into the displacement of both the *persona* and the subject from their juridico-political conception (their rights, their agency, their role) to their biological substratum in terms of concepts such as life, race, and species, embodying the consolidation of humanity as a biological construct, where *persona* and subject become part of discourses, powers, knowledges, and techniques that came to constitute a biopolitical frame.

The second part of the diptych —chapters four to six— opens up with the consecration of other entities as persons or subjects of rights.

The fourth chapter in particular wonders about the personhood of certain animals, not from the moral or juridical point of view, but in terms of the regimes of truth and power that allow for certain species, and most importantly, for certain criteria to be imbued with the mantle of personhood. Via concrete instances of personalisation and subjection of non-human animals (great apes, sharks, turtles), the chapter explores the implications and the effects of this operation, as well as a concurrent tendency to wonder about the imputability of artificial entities, such as AI's and robots, that also begin to be bestowed with the mantle of personhood, although in a completely different fashion.

Subsequently, this chapter goes further down the line of this contemporary extension of personhood, asking about the subjectification of trees, rivers, forests and even the totality of nature, encompassing a certain tendency to utilise the fiction of the *persona* to see these entities as "moral patients" and unspeaking subjects in need for representation, ultimately transforming them into sufficiently worthy interests in an open profitable framework.

Finally, mirroring the effort in terms of *persona*, the chapter looks into the frontiers of fictions, from the games of make-believe to the simulacra as copies without an original, tracing a cartography of ways in which the fictions that appear in this interplay with personhood can be read and problematised.

The last two chapters are diptychs in themselves. In the fifth, the work explores the effects and implications of these contemporary metamorphoses, unveiling from several perspectives how the very operation of personalisation could in fact disempower the concept of personhood, how it could render it a void simulacrum of its former self and produce a regime of mirrors posing as truths, that is, a regime of truth constituted by emptiness and falsehoods. On the other hand, it wonders how such metamorphoses produce a form of subjected but subjectless entities that hold no eminence, no agency, no capacity. Instead, these newly created subjects, disguised as persons, are perpetually silenced via a particular form of representation and more economically administered in a biopolitical governmentality.

As a contrast, the final chapter explores articulations, frames, and perspectives in which the interaction between humans and other entities can be read and problematised without the need for an operation of subjection that reduces the category of person to the category of thing. If anything, it aims to provide a multiplicity of apertures in the needs and the effects where these thresholds of *persona* and fiction become intertwined, forwarding — not as formulas or as programmes, but as mere provocations— alternative forms of addressing what underlies the issue of these fictions of persons.

Whether this florilegium of instances has fortune in its efforts is yet to be seen, but in this second writing of an introduction, there is, at least, a motive for a counterpoint, a map to follow, and a fiction to poeticise and elaborate upon.

I. THE CARTOGRAPHY OF PERSONHOOD

Ac prius de personis videamus. Nam parum est ius nosse, si personae, quarum causa statutum est, ignorentur.

IUSTINIANI INSTITUTIONES

Ut pueri infantes credunt signa omnia aena vivere et esse homines, sic isti somnia ficta vera putant, credunt signis cor inesse in aenis. Pergula pictorum: veri nihil, omnia ficta.

GAIUS LUCILIUS

1. A MOSAIC OF PERSONHOOD

1.1. Persons or things

We begin with a dissection. In his *Institutiones*, Gaius divides "the whole of the law" (*omne ius*) into the law of persons, the law of things, and the law of actions[4], namely, the law that regulates the relations between persons and things. This general division is recollected also in the *Digesta*[5] that, on account of Hermogenianus, emphasises the pre-eminence of personhood in the architecture of the law and links the concept to '*men*' from the very beginning, by saying that, since the whole of the law is constituted for —and has a cause on— *homines*, then it follows that the regulation and interest of the "status of persons should come before everything else" (*primo de personarum statu ac post de ceteris*)[6]. The development of this relationship between personhood and *homines* is performed by several degrees of inclusion and exclusion, departing from what Gaius notably called the *summa divisio*:

> The primary distinction (*summa divisio*) in the law of persons is this, that all men (*omnes homines*) are either free or slaves[7].

'*Summa*' works in its double meaning: both the first in order as well as the main or principal division, which in Gaius relies on a difference in freedom. Roman law traces a stratification of personhood that, unforeseeably, includes even those who are subjected to domination in a degree as brutal as slavery, maintaining them within the category of persons, notwithstanding the fact that they had no agency and were essentially objects in the common sense of the word, destined to labour and commerce.

Needless to say, Gaius' intention was pragmatic, meaning to solve more or less immediate issues that raised from the existence of the law and its interaction with other aspects of life. His eagerness to classify does not end with persons, and —casting a parallelism with the first book of the *Institutiones*— he also provides a *summa divisio* of things in the second book, consisting in the division between things subjected to divine law and things subjected to human law. This is then followed by categories such as private or public things, corporeal or incorporeal, moveable or immovable[8], just to mention a few.

As thorough as it may be, however, it is possible to find discrepancies in this taxonomy and even definitions that amount to apparent contradictions. Perhaps most interestingly is the fact that a man (*homo*) is described alongside a land, or a garment, as an example of

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4 Gaius, *The Institutes of Gaius*: *Part I, text with critical notes and translation*. Translated by Francis de Zulueta. (Oxford: Oxford University Press), 1958, 1.8.

5 Justinian, "Digesta" in *Corpus Iuris Civilis*, Edition by Theodor Mommsen (Berlin: Weidmannsche Buchhandlung, 1872), 1.5.1.

6 Justinian, *Digesta*, 1.5.2.

7 Gaius, *Institutes,* 1.9; also recollected in Justinian, *Digesta*, 1.5.3.

8 All these distinctions in Gaius, *Institutes,* 2.1 and ff.

corporeal things (*res corporales*)[9], regardless of the fact that *men* were previously stated as persons, and regardless of the fact that it is precisely upon the distinction between them that the whole structure of the *Institutiones* —and the law itself— seems to be settled. In fact, it could be said that the actual *summa divisio* is this primordial carving that established a realm of persons separated from a realm of things, a boundary that would define, in greater or lesser degree, the basis for an intricate theatre of inclusion and exclusion, establishing a rather simple and reciprocal formula of contraries and non-contradiction in an Aristotelian sense: either something is a person, meaning it is not a thing; or something is a thing, meaning it is not a person[10].

Before moving forward, however, it is worth considering this apparent contradiction by which a *homo* can fall into the category of *res*. The fragment, in the framework of things that are subjected to human law, says:

> Corporeal things are tangible things, such as land, a man (*homo*), a garment, gold, silver, and countless other things[11].

This poses an interesting issue regarding the definition of both *persona* and *res*, phrasing them in an entirely different fashion that can be read under two lenses: one, under which things are deemed a univocal foundation that comes even before what I just called the actual *summa divisio*; and the other, by suggesting an intrinsic ductility of the concepts, which allows for an interchange between them.

The first idea implies that, if a *homo* —which in principle included both men and women[12]— is indeed a thing-in-the-world, or simply put, an entity covered by the mantle of the law in a way that becomes part of its system, as Gaius seems to suggest with his example, then *thing* and not *person* becomes the preeminent category in the juridical conception of the Romans, and *res* would be the mechanism by which any and every entity is introduced into the grammar of the law, or to put it differently, the name by which the metaphysics of the law encompasses substances regardless of any other consideration. This is also why an "incorporeal thing" —a thing that lacks a body— is not a contradiction, nor does it fall into

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9 Gaius, *Institutes,* 2.13. See Mario Bretone, *I fondamenti del diritto romano: le cose e la natura* (Roma: Laterza, 2001).

10 See Aristotle. "Metaphysics" in *Aristotle in 23 Volumes,* Vols. 17 and 18, trans. by H. Tredennick (Cambridge: Harvard University Press, 1933); 1011b and ff.

11 Gaius, *Institutes,* 2.13. The usual translation for *homo* in this passage is *slave*, which is not uncommon given that Gaius himself comes time and again to *homines* being sold, used, or inherited (see, *v.gr.,* Gaius, *Institutes,* 2. §24, §32, §193 and §199). In this fashion, the translation of the *Digesta* by Samuel P. Scott, that recollects this very same passage (Justinian, *Digesta*, 1.8.1), translates *homo* as slave, and so does the English version of Gaius by Francis de Zulueta in 1958. Same story with the unattributed Spanish translation of 1845. The Latin, however, is always *homo* and does not figure neither as *servus* nor as any other synonym, not even as the genitive *hominis*. Translators seem to disregard the literality in favour of the ingrained interpretation by which as Esposito says, *homo* is the "word that Latin preferably reserves for the slave": Roberto Esposito, *Terza persona: politica della vita e filosofia dell'impersonale* (Torino: Einaudi, 2007), p. 100.

12 "There is no doubt that the term '*hominis*' includes both the masculine and the feminine" (*'hominis' appellatione tam feminam quam masculum contineri non dubitatur*): Justinian, *Digesta*, 50.16.152.

a different category. If this is true, then only in the notion of *things* do all entities fall into one, and only after *res* has been established as an equivalent for something that *is*, it is possible to perform the dissection between persons and things. Upon this account, the whole of entities that exist are named things, and in the metaphysics of the law the concept would play the role of the substance, quite literally, a *sub-stantia*. What follows is that the substance of the person is the thing, namely, an entity apprehended by the law, what sustains it as a concept with which the law can operate.

This conception is not orphaned by philosophy. When Heidegger confronts himself with the question, "what is a thing (*Ding*) as a thing?"[13], he says that a *thing* is something that "stands for itself" (*etwas Selbständiges*), which becomes an "object" (*Gegenstand*) when that which stands for itself is "re-presented to us" (*vor uns stellen*)[14]. He adds that the knowledge of the thing, its re-presentation, particularly the scientific representation, annuls the thing, for that basilar reality which stands by itself is replaced by that which is represented, and in that sense, objectified. His example is that of the understanding of a jar by physics. Physics does not consider the jar in its thinghood (*Dinghafte*), but it replaces the jar with a "cavity that receives a liquid" and only then it becomes susceptible of scientific knowledge. The capability of comprehension of the thing, therefore, relies in the annihilation of its essence as such. What is, then, the essence of the thing? After a poetic excursus regarding the human and the divine, which to some extent echoes Gaius' *summa divisio* of things, Heidegger arrives at a definition: the essence of the thing is "to gather" or "to assemble"[15] in a relation with time allows for permanence. In other words, *thing* is that which reunites and allows for the phenomenological experimentation of entities.

Furthermore, Heidegger ponders on the original meaning of the old High German word '*thing*', as the reunion of people to discuss a certain matter —which equates to *res* as *causa*, *i.e,* matter, action or controversy in Latin— to say that, properly speaking, *res publica* does not simply mean "the state", but rather that thing by which one and all are concerned (*angeht*), and so, indeed, a *causa*, a cause, a situation that calls for the pre-occupation of the people, which will also come to mean "thing" in romance languages (*cosa*, *chose*) and thus, *Ding, thing, causa, cosa, chose* becomes an all-encompassing term that allows to experience entities as entities (*ens qua ens*) that by their mere presence arouse concern, which would even include god and the soul[16].

Evidently, this is not merely a terminological query, but the link between language and reality that allows to grasp that which stands or is present: the *res* is the continent of every

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13 Martin Heidegger, "Das Ding" in *Gesamtausgabe 1. Abteilung: Veröffentlichte Schriften 1910-1976, Band 7: Vorträge und Aufsätze* (Frankfurt am Main: Vittorio Klostermann, 2000), p. 168. For a curated translation, see Martin Heidegger, "La cosa" in *Saggi e discorsi*, Trad. Gianni Vattimo (Milano: Mursia, 1991).

14 Martin Heidegger, *Das Ding*, p. 171.

15 This is a difficult passage since Heidegger verbalises the nouns: "*Wie aber west* [Wesen] *das Ding? Das Ding dingt. Das Dingen versammelt. Es sammelt [...]*": Martin Heidegger, *Das Ding*, p. 175. Translators often perform neologisms to circumnavigate this difficulty, or simply use a different term. Vattimo, for example, translates *west* as *is* (*è*) and *dingt* as "*to thing*" ("*cossegiare*"): p. 115.

16 Martin Heidegger, *Das Ding*, pp. 176-178.

content, a void that gathers everything else[17]. It is in this sense that men can be taken to be also a *res*, for a thing that gathers and comprehends even *homines* is not a contradiction, but a substratum in Gaius' account, regardless of whether he was or not conscious of it. Hence, on the one hand, the mechanism by which entities are experienced or captured by the metaphysics of the law, and on the other hand, that which concerns everyone, *i.e.*, a quite literal *res publica*. The final stretch of this idea would be that persons are things and non-things simultaneously: a thing as a sub-stance, as that which stands by itself and in doing so *is* a thing; and a non-thing as the constitutive part of the actual *summa divisio* that dissects the cartography of the law into the two realms of persons and things.

Moreover, a second perspective can be drawn from Gaius' passage, in that besides establishing a metaphysical mechanism that encompasses all entities, what he does in subsuming the person under the category of things could be taken as an indication of the instability or fluidity of the concepts, which would again imply a certain temporality to them. On this line of thought, even if mutually exclusive for the sake of non-contradiction, these concepts are not necessarily immutable, and so it would be possible to have a thing mutating into a person or vice versa. This is in fact what Roberto Esposito seems to envision when he says that "in [Ancient] Rome no one remains *persona* their whole life, from birth to death, but rather everyone transits, at least for a certain period, through a condition not far away from a possessed thing"[18], citing the example of the infant that is part of the estate of the father, or the slave that is liberated. In this sense, it is not so much that things are simply non-persons, or that persons are simply non-things, but rather that entities in the world can fall in either category if needed, which in turn relies in the *sub-stantia* of the *res*.

As the Borgesian fantasy in which cartographers trace a map so rigorous that it covers the totality of the territory, ultimately becoming indistinguishable from it[19], the cartography of the law, placed upon the world in an attempt to enclose it completely, traces the frontiers of both the territory and the map, in a way that renders them indistinguishable from one another, making persons and things separate both in fact and in the language of the juridical, while at the same time tracing an inescapable correspondence between the entities and the categories they are bestowed with, and so, at least provisionally, *human* entities are deemed as *personae*, while any other entities, substances, or bodies are deemed *res,* not in the sense of substances, but in the sense of objects already captured, defined and traversed by the juridico-political topology.

However, if Esposito's reading is correct, the ductility of the definitions implies that although the division is indeed a fundamental piece in the whole performance, it also allows to shift its characters so that those who occupied one realm can be moved to the other, as if

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17 Claudia Moatti, following Heidegger from a historical perspective, poses that *res* "has no *a priori* meaning", similar to the *signifiant flottant* by Lévi-Strauss, which ultimately presents itself as a *kenós*, as a void. See Claudia Moatti, *Res publica: histoire romaine de la chose publique* (Paris : Fayard, 2018), pp. 29 and ff.

18 Roberto Esposito, *Le persone e le cose* (Torino: Einaudi, 2014), p. 13.

19 Jorge Luis Borges, «Del rigor en la ciencia» en *Obras Completas*, II (Buenos Aires: Emecé, 2007), p. 265.

in the redrawing of the map the territory itself could be redrawn, preserving the frontiers as a given, but modifying their dimension time and again.

The division of persons and things in itself, as read by the centuries, came to define the foundations of most legal systems that are based upon the Roman disposition, impacting even several contemporary codes of law, but also, as Esposito points out, it came to define a "watershed" that "divides life into two zones defined by their mutual opposition [...] without any intermediate segment that can join them"[20]: either persons or things, apparently an inescapable *summa divisio* of the objects of the political and legal order, sustained upon the thing in itself as that which gathers and allows for their apprehensibility.

Nevertheless, the fact that we begin to consider rivers and forests as persons —not to mention the imminent question with artificial intelligence— shows that this is, and it even was for the Romans, far from being a binary and immutable distinction, but rather a rich mosaic of allotment that draws different gradations in the interchange between the two realms.

The disposition of the geography of the law implies that, even in the realm of persons, there are some who may inhabit the centre of the definition, while some others may inhabit its frontiers. Casting a different analogy, personhood seems to be a plateau on which, to borrow from Orwell, some are "more equal than others"[21], as proved not only by the difference between being a free man or a slave, or the discrepancies in power and agency for women and children, but also on account of things that, by means of fiction, do *act as if* they were persons.

This, however, leaves a question open: even if it is not an immutable division, what need is there to have it in the first place? If being a person does not necessarily entail a different treatment from that of a corporal ting, if it does not, for instance, shield one from slavery, from being stripped away from essentially all rights and liberties, what reason is there to separate persons and things? What's more, if it is true that under the veil of personhood lies a shared substance of *res*, and things can perform the role of persons, then why the need to distinguish beings as persons *or* things?

The answer may not rely on *being*, but on *having*. As Esposito points out, following on his idea of personhood as non-static, for the Romans, *persona* is not something that an entity *is*, but rather something that an entity *has*, or at least is capable of having, introduced by the expression *personam habere* which, he says, serves as a "faculty that, precisely because [it is a faculty] can also be lost"[22], linked to the etymological sense of *persona* as a mask.

On this note, firstly, "having a person" relates to the capacity to "appear in court", to play the role of a party in the framework of a trial or, to advance a term that will appear further ahead, having a person relates to being *imputable*. Slaves, although persons in the framework of Gaius' *summa divisio*, are forbidden to appear in a trial, as attested by

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20 Roberto Esposito, *Le persone e le cose*, pp. vii - viii.

21 George Orwell, *Animal Farm* (New York: Harcourt, Brace and Co, 1946), p. 112.

22 Roberto Esposito, *Le persone e le cose*, p. 14.

Theodosius: "since from the beginning we order slaves to not be admitted to trials, almost as if they had no person (*quasi nec personam habentes*)"[23]. In the same sense, Justinian's *Codex* will devote a chapter to "those who have a legitimate person in a trial and those who do not" (*qui legitimam personam in iudiciis habent vel non*)[24], which again does not relate to whether they are or not *homines*, but simply if they "have the person" in order to play a part in the theatre of a trial[25]. Even if Gaius' division would still attach personhood to essentially all *homines*, the fact that *persona* is something placed upon an entity remains very much at the core of this idea of *personam habere*: a role that does not necessarily coincide with its interpreter.

Secondly, "having a person" relates to an entity that has an estate (*patrimonium*) and is able to own property, which would even include being the owner of one's body, and would trace the line on the fact that certain entities do not possess the capability of becoming owners, of acquiring a *persona*, but taking into account that basically every entity is, indeed, a *thing* susceptible of ownership, including humans under several forms of domination. If this is so, things and persons are differentiated not to prevent persons from being owned, which even if applicable nowadays —at least in principle— was certainly not the case for the Romans, but to allow for some things to be able to appropriate others, to perform the fundamental relationship of property and domination which was at the centre of the legal construct. *Personam habere*, thus, allows the transit from owning to being owned, from being dominant to being dominated, which was the "basis for Roman law"[26].

Even if one were to pose the idea of protection at the centre of this differentiation, and, regardless of the anachronism, say that it was meant to guarantee certain rights without which a person would become a thing, as Yan Thomas recalls, up until very recently "persons were protected not as non-things, but rather as things out of commerce"[27], a concept that ties to "divine things" as being "owned by no one" (*res nullius*)[28], and thus could not be included in trading or other forms of commerce. That being the case, the status of thing was not an impediment to consecrate some preliminary form of what nowadays is called *human dignity*. On the contrary, from the point of view of the Roman order and those who followed it, only

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23 Theodosius II, *Theodosiani libri XVI cum Constitutionibus Sirmondianis; et Leges novellae ad Theodosianum pertinentes*. Edition by Theodor Mommsen and Paul Meyer (Berlin: Weidmannsche Buchhandlung, 1905), 17.1.2.

24 Justinian, "Codex Iustinianus" in *Corpus Iuris Civilis*, Edition by Theodor Mommsen and Critical Edition by Paul Krüger, (Berlin: Weidmannsche Buchhandlung, 1877), 3.6.0. For many other examples of its use, see Bernardo Albanese, *Le persone nel diritto privato romano* (Palermo: Università di Palermo - Tipografia S. Montaina, 1979), p. 8.

25 Siegmund Schlossmann argues against such an interpretation, saying that the material is incomplete and that the differences between *personam habere* and *personam esse* are not really significant, at least not to be able to extrapolate two different conceptions. See Siegmund Schlossmann, *Persona und prósōpon im Recht und im christlichen Dogma* (Kiel: Lipsius & Tischer, 1906) §7, pp. 62 and ff.

26 Roberto Esposito, *Le persone e le cose*, p. 11. For a recent approach to 'having', see Paolo Virno, *Avere: sulla natura dell'animale loquace* (Torino: Bollati Boringhieri, 2020).

27 Yan Thomas, « Le sujet de droit, la personne et la nature : sur la critique contemporaine du sujet de droit » *Le Débat*, Vol. 3 no. 100 (1998) : 85 – 107, p. 92. Thomas is referring to article 1128 of the French Civil Code of 1804, that stated that "only things that are in commerce can be the object of covenants". The article was modified in 2016.

28 Gaius, *Institutes*, 2.9.

as things "out of commerce" have persons been or may person be "deemed indispensable and inalienable"[29].

Recalling Borges' analogy of the map that interlaces with the confines of the empire, the landscape of the division between persons and things can be seen as the mosaic of an apparatus that acknowledges and gathers entities, tracing relationships of inclusion and exclusion that constitute themselves as moveable frontiers and interstices on which the living are gathered, categorised, captured, and sometimes perhaps even fortified and sheltered. Far from being straightforward, the division between persons and things encompasses mutations, exclusions, and instability.

[29] Yan Thomas, *Le sujet de droit*, p. 92.

1.2. The frontiers of personhood

Elaborating on the metaphor of the plateau, the image that should come to mind is that of an acropolis, a central and elevated point in which the entities are indisputably considered persons, surrounded by entities whose distancing from the centre renders them methodically less akin to persons and more akin to things, to the point where, although they do remain inside the definition, they constitute the frontiers of personhood, clearly visible and clearly defined —as I will show presently—, but mutable nonetheless.

If persons are preliminarily understood as *homines*, then it is easy to identify who occupies the centre of the acropolis of personhood in Ancient Rome: adult, free, male, Roman citizens, all encompassed in a specifically coined legal term: *sui iuris*, that is, of one's own law or right, similar to what in Greek would literally be an autonomous (αὐτό-νομος) being. The *sui iuris* is the one entity that can decide upon himself and upon others without being subjected to anyone or anything but his own will, at least as long as he was not subjected to an elder male of the same family, which also provided the title of *paterfamilias*. This being the centre, it is algo quite clear who occupies the periphery: women, foreigners, children, and slaves. All of them *homines* and all of them persons, but clearly distinct in terms of capacity and freedom before the law.

The counterpart of the *sui iuris* in this legal conceptualisation were the *alieni iuris*, those subjected to the power of another in different degrees of submission, be it because of a particular form of Roman ownership (*mancipium*); because of marriage (*manus*); or because they happened to be either the children or the slaves of a *paterfamilias* (*potestas*)[30]. While all these forms of submission show a filigree of domination whose conditions cannot be equated, perhaps the *potestas* is the one that shows more clearly the intensity of the differentiation, since at least in theory it amounted to the possibility of killing at will those who were under it, a power over life and death: *vitae necisque potestas*.

The formula appears in various passages, most prominently in Aulus Gellius' *Attic Nights*, dwelling on the difference between *adoptatio*, the adoption of someone who is under the power of another; and *adrogatio*, the adoption of a *sui iuris* by another *sui iuris*. In this framework, he presents the *vitae necisque potestas* as an attribute circumscribed to the *paterfamilias* over his son:

> The language of this request is as follows: "Express your desire and ordain that Lucius Valerius be the son of Lucius Titius as justly and lawfully as if he had been born of that father and the mother of his family, and that Titius have that power of life and death (*vitae necisque in eum potestas*) over Valerius which a father has over a son"[31].

[30] Gaius, *Institutes*, 1.48.

[31] Aulus Gellius, *The Attic Nights*, ed. by John C. Rolfe (Cambridge: Harvard University Press; 1927), 5. 19. 9.

Gaius, in turn, presents the *potestas* as the power of life and death over slaves (*in servos vitae necisque potestatem esse*) not as exclusive to the Romans, but as part of the "law of nations" (*iuris gentium*), so that it was "licit to treat all other *men* (*hominibus*) subjected to the Roman people with excessive severeness without any cause"[32]. Secondly, Gaius extends the *potestas* over the children procreated in marriage, saying that this faculty is almost exclusive to the Roman citizens, for "no other men have such a power over their sons"[33].

The formula of *vitae necisque potestas* has been widely addressed in recent years, particularly on account of Yan Thomas, who points out that, instead of being the consequence of an act in a hypothetical relationship, as would be the case with punishment being served because of a crime; in the power of the *paterfamilias* — the *patria potestas* — death comes indeed as an "absolute", as the very "content of the relation between the agent and the one who is the object of the *potestas*"[34]. In other words, not a last resort to which the *paterfamilias* could eventually turn to, but a power that could be exercised at will, regardless of any trial or guilt, a power "without conditions nor limits"[35].

When it came to slaves, Thomas notes, the power of life and death could be taken as a matter of fact, that is, as something that does not spring from the law but from reality itself: the very condition of slave implies an almost "natural" domination, to the point where the master has a guaranteed disposition over their life and death. On the contrary, in the case of the sons, it is indeed a matter of law, a faculty that, precisely because it is conceived by and for the Roman order, constitutes the fabric of the legal relationship between fathers and sons[36], so that one can only be a father by means of an exercise of a *vitae necisque potestas*, that is, by being able to bring death to the son. Such a relationship will be eventually transposed to divinity in the Christian era, where the figure of God the Father is, indeed, a father, inasmuch as he truly disposes of life and death[37].

Yan Thomas explains that, in the formula *vitae necisque*, death (*nex*) is not a mere opposition to life, but actually a technical term that defines the act of "taking a life without bloodshed", departing from the XII Tables' definition of killing (*necare*), particularly the killing of a new-born. Considering that the *paterfamilias* could kill his wife or his daughters with impunity in cases of adultery[38], this implies that the death of the son was a special case of the

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32 Gaius, *Institutes*, 1. 52 - 53. Gaius clarifies that, starting from the rule of Antoninus, the killing *sine causa* was no longer permissible.

33 Gaius, *Institutes*, 1. 55.

34 Yan Thomas, « *Vitae necisque potestas*: Le père, la cité, la mort », dans *Du châtiment dans la cité. Supplices corporels et peine de mort dans le monde antique.* École Française de Rome (1984) : 499 – 548, p. 499.

35 Yan Thomas, *Vitae necisque potestas*, pp. 500 – 501.

36 Yan Thomas, *Vitae necisque potestas*, pp. 506 – 507 ; 520 – 521.

37 Thomas notes how Lactantius transposes to God a character that Seneca had already attributed to the emperor by saying that "only he who has true and perpetual power over life and death should be called father *(inst. Div., 4, 4, 11)":* Yan Thomas, *Vitae necisque potestas*, p. 508.

38 See Papinian, *Mosaicarum et romanarum legum collation*, ed., and trans. by Moses Hyamson (London: Oxford University Press, 1913), pp. 78 – 79, §§ 4.7.1 – 4.9.1; and Yan Thomas, *Vitae necisque potestas,* pp. 501 – 505; 520 – 521.

patria potestas. Instead of being the mere exercise of the power of killing, that sprang from his sovereignty in the household, when it came to the son, the *patria potestas* was an indissoluble act in which, by not killing, the father was allowing his life to be. In other words, not simply that the entities of the household were his to dispose of, which indeed they were, but something else entirely that came to constitute an "inimitable link" that had to do with the very notion of power and its exercise, to the point where, in Thomas' own words, "the power of killing comprises that of allowing to live"[39]. Instead of simply accepting the son's life as a fact of nature, the father was actively deciding to allow his son to live, and so death does not follow from life, but instead it is life that follows from death, as the sword of Damocles perpetually pending over the son's existence.

It is not coincidental that Foucault summons the *patria potestas* to outline the classical definition of sovereignty as the power to "make die or let live" (*faire mourir ou laisser vivre*)[40], but it is interesting to note that, in the case of the son, the sovereign power of the *paterfamilias* was distinct from the one exercised over any other entities, or to be more precise, over both persons and things. So much so, that Agamben would take this father-son relationship as one of the manifestations of the bare life (*nuda vita*) —a life that is perpetually exposed to death— as the primordial political element:

> The *vitae necisque potestas* attaches itself, at birth, to every male free citizen and seems to define the very model of political power in general[41].

What both Agamben and Thomas point to is that, beyond the practice of the killing itself —which is, at the very least, difficult to trace— what the *vitae necisque potestas* shows is a "pure concept"[42] in the Roman notion of power, something akin to its very core that, veiled under the heavy mantle of history, allows for a better understanding of the institutions that were built upon such a model, not only confined to the household, but well into the political sphere[43]. In fact, Thomas goes to a great length to show that the *imperium*, the political power, was intertwined with the condition of *pater*, as was the actual capacity to act in private and public affairs[44], both of which are outlined by the *potestas*. Departing from Thomas' conclusions, it seems that a magistrate's power to coerce the citizen mirrors the power of a

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39 Yan Thomas, *Vitae necisque potestas*, p. 510.

40 Michel Foucault, *Histoire de la sexualité I : La volonté de savoir* (Paris : Gallimard, 1976), p. 178.

41 Giorgio Agamben, *Homo sacer: il potere sovrano e la nuda vita* (Torino: Einaudi, 2005), p. 98. An echo of this idea can also be traced to Aristotle, who claims that "the rule of the father over his child is that of a king" (*hē de tōn teknōn archē basilikē*): Aristotle, "Politics", in *Aristotle in 23 Volumes*, Vol. 21, trans. by H. Rackham (Cambridge: Harvard University Press – Loeb Classical Library, 2005), 1259b.

42 Yan Thomas, *Vitae necisque potestas,* p. 512.

43 In contrast, Nicole Loraux claims that the relation father-son was not as paradigmatic of power as it was in Rome, not even in cases of parricide. Furthermore, departing from Pericles, the son's involvement in the political life was guaranteed to a certain degree, for he made "a citizen out of a son". See Nicole Loraux, *La cité divisée : l'oubli dans la mémoire d'Athènes* (Paris : Payot & Rivages, 1997), pp. 204 ; 219.

44 Yan Thomas, *Vitae necisque potestas*, pp. 517 – 518.

father to coerce the son, to the point where citizens and sons are not simply liable to be executed on account of their actions but are perpetually being *allowed to live* as subjected to this power of *make die*.

Moreover, even before the question on life and death, the question refers to capacity and the ability to perform a societal role. Of particular interest in Thomas' examples is the case of the magistrate that, despite holding political power, is still under the subjection of a *pater*, since he is not the elder of his household. This implies a paradoxical condition: a full capacity to dispose of public affairs by means of *imperium*, but a less than full capacity to govern him*self* at will. What is truly alluring, however, is that, as a son in these strict legal terms, he would still be subjected to the *vitae necisque potestas,* and thus bound to obey his father's wishes.

The case is not hypothetical. In the *De inventione*, Cicero speaks of Caius Flaminius who, during a proposition as a plebeian tribune —that was "against the will of everyone in the upper classes (*optimatum*)"—, was dragged by his father to impede the continuation of his speech. When the father was called upon for violating the majesty of the magistrate, he appealed to the use of the *potestas* over his son[45]. In other words, the extent of the *potestas* is that of impeding the exercise of political power, not because of a hierarchy or a degree, but because the father-son relationship traces indeed the way in which power is conceived and exercised as a concept.

What does this convey, however, for the question of personhood? Firstly, this reiterates that personhood was not at all a talisman that protected anyone from coercion, for even the son — the one *alieni iuris* that was expected to become *sui iuris*— was deemed as a life immediately and necessarily exposed to death. While females and slaves were evidently subjected to domination, and in practice were assuredly more vulnerable than male children, the potentiality of becoming a *sui iuris* represented for the son a reinforced form of domination rather than a safeguard in the conceptual plain. Secondly, this implies that capacity serves indeed as the cairn by which the internal frontiers of personhood are drawn in Roman society, for even if *homines* are *personae*, it is in being *alieni iuris* or *sui iuris* where that which contemporary conceptions try to grasp by personalising non-human entities lies, namely a sort of dignity that prevents from domination or oppression. Again, *personam habere* is not, by any means, a sufficient condition for dignity to be attached to an entity. Yan Thomas arrives at a similar conclusion when he says that, in Rome, "a subject of rights, a legally capable individual [...] is necessarily a *paterfamilias*", closing his remark in a way that is quite close to the discussion at hand: "The *summa divisio*, for [Roman] citizens, passes between fathers and sons"[46].

A question stands, however, regarding the paradox enunciated earlier. How did Roman law solve the issue of a magistrate with a power as vast as a plebeian tribune that, at the same time, was subjected to a *vitae necisque potestas*? The solution, not found in Cicero's

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45 "*In filium enim habeam potestatem, ea sum usus*": Cicero, *On invention*, trans. by H.M. Hubbell (Cambridge: Harvard University Press, 2006), II, 17, 52; pp. 213 – 214.

46 Yan Thomas, *Vitae necisque potestas*, pp. 530.

narration, is provided by the *Digesta*, which contemplates that a son in a public situation takes the place of the *paterfamilias* (*loco patris familias habetur*)[47]. Yan Thomas deems this as the construction of a "quasi-father", an interstice between the two poles of maximum capacity and absolute subjection. This quasi-status or condition, although not always enunciated by the prefix, was by no means alien to Roman legal literature, as exemplified by the slave that administers his own property, being "almost- free", or the foreigner that is deemed as a citizen when he suffers a robbery, that is, an "almost-citizen"[48]. Regardless of whether actually enunciated in such a way, what these constructions share is a fictitious foundation. Taking the place of someone else (*loco habetur*) is one of the ways in which the legal and political order feigns a situation that, notwithstanding its anomality, becomes susceptible of regulation. This shows that the disposition of the law, although apparently immovable, is indeed quite flexible, and it means that entities can and do move between their conceptual frontiers, not simply because of a transition of age or status —*v.gr.* liberation, coming of age, etc.—, but because of places that appear between these concepts, such as this particular case of being and not being fully capable at the same time. Fictions are, as we shall see, fertile grounds for such transgressions, especially when it comes to trace and retrace a *summa divisio*.

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Women could be either under the *potestas* of their *paterfamilias* or, literally, under the hand (*manus*) of their husbands after marriage[49]. Despite their status as persons and *homines*[50] not being questioned, the differences that the Roman order traced on the basis of sex and gender seem to were situated in terms of freedom and capacity, and the mantle of personhood allowed to cover such differences and to confine the little agency they could have inside the realms of the household, which clearly prefigurated their *locus* before the law in the orders to come that were based upon the Roman.

In terms of the place they occupied in the realm of personhood, as understood so far, women could not only be "sold" (via the special procedure of *mancipium*) as other parts or members of the household, but as discussed earlier, they were liable to be killed with impunity by either their father or their husband in cases of adultery. In addition, women were confined to the private realm and barred from participation in most public spheres:

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47 Justinian, *Digesta*, 1.5.9.

48 Yan Thomas, *Vitae necisque potestas*, pp. 527.

49 Gaius, *Institutes*, 1.136. This is, of course, an approach to the exercise of power over women from a conceptual perspective. For a recent historiographical and critical approach to the subject, see Bonnie MacLachlan, *Women in Ancient Rome: A Sourcebook* (London: Bloomsbury, 2013), and Laura K. McClure, *Women in Classical Antiquity: From Birth to Death* (Hoboken: Wiley-Blackwell, 2019).

50 Again, a "gender neutral" term: Justinian, *Digesta*, 50.16.152.

> Women are excluded from all civil or public employments; therefore, they cannot be judges, or perform the duties of magistrates, or bring suits in court, or become sureties for others, or act as attorneys[51].

Such an exclusion ratifies Thomas' and Agamben's interpretation of the *patria potestas* as the foundation of political power and its central concept in Ancient Rome. When Gaius explains why women cannot adopt a child "by any method", the answer is not simply because of their sex, but because their sex entails the lack of *potestas*, a lacking that amounts to not having it even upon their "natural children"[52], that is, upon those children who they carried in their own bodies. This implies that carrying the child was nothing more than a given fact that did not imply any sort of power, and while it is the rule for contemporary systems of law to recognise the *patria potestas* —evidently and fortunately, in completely different terms— to both parents, the Roman order would have seen this as a contradiction, for it was a power that, by definition, belonged to the father. What defined the mother of a family (*matrem familias*), at least according to the *Digesta*, was neither her marriage nor her birth, but her "good morals" (*boni mores*)[53], an almost undefinable but recurrent topic in the legal literature, not to mention in women's lives[54].

On a similar note, Aristotle claims that the relation between males and females is the relation of ruler and ruled on account of nature[55], because although clearly *anthropoi*, the deliberative capacity of women is faulty, that it is present but it "lacks authority" (*ákyron*). Evidently, Aristotle does not provide a reason on how or why it lacks authority. Children, on the contrary, do have the deliberative capacity, but it is "not fully developed" (*atelés*)[56], and in the case of slave, as I will show later, such a capacity is non-existent.

This lack of authority, which again implies the fracture that would, if present, allow for public agency, comes with an even stronger imposition, given how Aristotle —citing Sophocles— relegates women to silence: "As the poet said of woman: 'silence gives grace to woman', though that is not the case with a man"[57]. Free adult men are not only fully capable by nature to speak and deliberate, but they are also called to do so, while for women exclusion from the public sphere and silence are the traits the define their inhabitancy in personhood, which does not seem to be in contradiction with the fact that Aristotle himself acknowledges they are "half of the free"[58] population of the *polis*. This also traces the frontier with regards

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51 Justinian, *Digesta*, 50.17.2.

52 Gaius, *Institutes*, 1. 104.

53 Justinian, *Digesta*, 50.16.46.

54 See, for instance, how Foucault traces the *dispositifs* applied on sex in the Hellenistic period through Claude Vatin and others. See Michel Foucault, *Histoire de la sexualité III : Le souci de soi* (Paris : Gallimard, 1984), III, 1.

55 Aristotle, *Politics*, 1254b.

56 Aristotle, *Politics*, 1260a.

57 Aristotle, *Politics*, 1260a. The fragment appears in Sophocles' *Ajax*, section 293. This reiterative *locus* of silence assigned to women will reappear much later in Christianity through the letters of Paul, *v.gr.* 1 Timothy 2: 11 - 14 and 1 Corinthians 14: 34 – 35.

58 Aristotle, *Politics*, 1260b.

to the slaves —who, needless to say, could also be women— on account of something else besides the political capacity to speak and act in public matters, namely freedom.

Before moving forward, it is important to notice that, in contrast to Aristotle, the *Digesta* speaks of women and slaves not being able to occupy a public office, and particularly not able to serve as judges "not because they lack judgement", but "by a received custom"[59], namely a matter of order and norms (*nomos*) and not of nature (*physis*). Be it as it may, freedom and not personhood is the line that draws women apart from slaves of both sexes, although it remains to be seen what such freedom meant.

In any case, the synthesis of the position of women before Roman law is openly stated by the *Digesta* in saying that "in many parts of our law the condition of women is worse than that of men" (*in multis iuris nostri articulis deterior est condicio feminarum quam masculorum*)[60]. A person indeed, but quite far away from the centre of the plateau.

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The personhood of the slave implies a different set of boundaries[61]. As I said earlier, although indeed subjected to a *vitae necisque potestas*, slavery was deemed as springing from *iuris gentium* rather than from *ius civile*, meaning it was shared by all the peoples in a similar fashion and was not exclusive to the Romans, which in turn meant that, even if the effects were the same in practice, namely death with the caveats provided earlier, the relationship of power between the slave and the master was of a different fabric.

It is also worth noting the difference between this conception of slavery —again, conceptually, not necessarily from a historiographical point of view— and the Greek conception presented by Aristotle. In a well-known passage of the *Politics*, Aristotle says that people who are "unable to exist without one another" come together on account of "necessity", such as the case of the male and the female for procreation, and the case of the "natural ruler" and the "natural subject" for the purposes of safety or conservation (*sōtērían*)[62]. Again, according to him, the very nature of females and slaves is distinct from that of free men, on account of their "natural purpose"[63].

For the specific case of the slave, Aristotle speaks of an ability to provide with his body rather than being able to "foresee with his mind", and so, the natural disposition of capabilities calls for the submission of those who cannot foresee under those who can, overcoming necessity by means of an alliance of sorts, albeit one that was, obviously, anything but voluntary. The consequence, following this line of thought, is quite foreseeable: only free

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59 Justinian, *Digesta*, 5.1.12.2.

60 Justinian, *Digesta*, 1.5. 9.

61 "[The slave] is literally the non-person within the broader category of person, the living thing, or life walled up inside the thing": Roberto Esposito, *Terza persona*, p. 96.

62 Aristotle, *Politics*, 1252a.

63 Aristotle, *Politics*, 1252b.

men are "naturally" meant to rule. Any other arrangement would imply an act *contra naturam*, such as with "the barbarians among whom the female and the slaves hold the same rank"[64].

In commenting this passage, Hannah Arendt shows that the discussion goes beyond the usual conception of slavery as a means of "cheap labour" for, in fact, it would be the attempt to go beyond (and not be bound by) the material needs of life, that is, the necessity to produce one's own means of subsistence[65]. Under this light, being bound to basic needs was the natural condition of the living, and thus an entity that was subjected to them, persistently occupied by them was not free, and hence not on the same rank as humans but instead somewhere below. Indeed, Arendt says that "what men share with all other forms of animal life was not considered to be human"[66]. Likewise, this explains why Aristotle —recalling a line from *Iphigenia in Aulis* by Euripides— calls for the ruling of the barbarians by the Greeks, "those being slaves, while these are free"[67], meaning freedom is not simply a status recognised or ordained, but a fact that determines and differentiate the "human" nature, *i.e.,* the nature of free men.

This explains why, although incapable of public or private agency, there was indeed a theoretical difference between free women and slaves: being free meant not having to concern oneself with one's basic needs. Granted, this was the most basic level of freedom, the fundamental difference where the line is drawn between these two forms of being an *anthropoi*, which was not exhaustive of the concept. As Arendt herself would point out in her writings on revolution, true freedom was only conceivable for the Greeks as a public matter, which implying an equality in the *agora* in which all men, different indeed by nature or material conditions, were deemed equal for the express purpose of the game of politics[68]. Hence the difference between liberation and freedom[69].

Upon this framework, slavery was conceived as an effective way by which one could be liberated of the yoke of necessity by subjecting others, and in the process, ascribing a "distinct nature" to those who were indeed liberated. Furthermore, this necessity is of such a degree that —Arendt adds— only the violence used in torture could match the violence of necessity, which also answers "for the historical fact that throughout occidental antiquity torture, the 'necessity no man can withstand', could be applied only to slaves, who were subject to necessity anyhow"[70].

Does this mean that slaves were not *homines*? Or to put it differently, were slaves considered *things*?

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64 Aristotle, *Politics*, 1252b.

65 Hannah Arendt, *The Human Condition* (Chicago: Chicago University Press, 1998), p. 84.

66 Hannah Arendt, *The Human Condition*, p. 84.

67 Aristotle, *Politics*, 1252b.

68 Hannah Arendt, *On Revolution* (New York: The Viking Press, 1963), pp. 23 – 24.

69 Hannah Arendt, *On Revolution,* pp. 25 – 26 *et passim.* Also, a similar approach by Isaiah Berlin with the concepts of negative and positive freedom in Isaiah Berlin, "Two concepts of liberty" in *Four Essays on Liberty*, (Oxford: Oxford University Press, 1969).

70 Hannah Arendt, *The Human Condition*, p. 129.

Aristotle provides at least two interesting definitions when dealing with the "management of the household" (*oikonomía*). Firstly, he calls the slave an "animated possession" (*ktēma ti empsychon*)[71], after dealing with the tools that the *oikonomia* demands, and clarifying that such tools can be either animate or inanimate. This idea could very well be applied to animals of labour, and from the Roman perspective, it would fit with no problems into the category of things. Furthermore, after dealing with the difference between production and action, and after addressing that a possession can be understood as a part of a whole, Aristotle emphasises this reading by saying that the slave "wholly belongs" to the master[72], for he does not belong to himself. However, this apparent thinghood immediately falls, as Aristotle defines the "nature (*phýsis*) and capacity (*dýnamis*) of the slave" as an "*anthropos* belonging by nature to another", which in turn means that he is a possession and a tool[73].

The passage is seemingly aporetic but telling all the same. First of all, how to translate *anthropos?* A human being? A man? A person? All of them and none at the same time. The English translation prefers *human being*, as does Arendt. However, *human* as a biological conception is foreign both linguistically and conceptually from Aristotle, which is the same problem that *person* would pose. *Man*, in the same sense as *homo* would probably be the most approximate choice, although ignoring the matters of sex and gender, and it would indicate that, although a tool and a possession, the preliminary equation of *persons* and *homines* is sustained for the case of the slave in Aristotle, although it does entail a different set of problems in contemporary readings. On the other hand, it does not seem that *anthropos* entails any form of especial dignity, for it does not impede possession, usage, or disposition at will by the master. Finally, the problem of belonging to oneself or another by nature is problematic, for it casts questions regarding the essence of that which is the object of appropriation: is it the body of the slave as the means to escape necessity by labour? Is it the sum of body and soul that constitute its character of animal?[74] Is it the lack of deliberative capacity? Or is it their life, as would be the case with the *vitae necisque potestas*? I do not intend to provide a solution, but I outline these questions simply to point out that, from the Aristotelian point of view, the slave indeed occupies an unsteady frontier between persons and things.

This conception is indeed a vivid contrast with Roman law, for even if it did recognise slavery as basically omnipresent, it was clear that freedom —in its whole dimension of agency, capacity, and overall power to be, to do, or to become— was a "natural faculty" (*libertas est naturalis facultas*) while servitude was a domination "*contra naturam*"[75].

In a very telling passage regarding "diverse rules of ancient law", the *Digesta* recollect this claim saying that "natural law regards all men as equal" (*quod ad ius naturale attinet, omnes homines aequales sunt*), that is, equal in natural freedom; but adding a particularly daunting

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71 Aristotle, *Politics*, 1253b.

72 Aristotle, *Politics*, 1254a.

73 Aristotle, *Politics*, 1254a.

74 "[...] but an animal consists primarily of soul and body" (τὸ δὲ ζῷον πρῶτον συνέστηκεν ἐκ ψυχῆς καὶ σώματος): Aristotle, *Politics*, 1254a.

75 Justinian, *Digesta*, 1.5.4.

formula about the status of the slave in the Roman order: "slaves are taken as nothing" (*servi pro nullis habentur*)[76]. Being a nothingness, or more precisely, being *as if* one were nothing. The very words for expressing such an idea become convoluted, falling into the question of whether nothingness *is*. From an immediate point of view, however, what is important is that the slave is a person, and simultaneously not even a thing. What's more, not even a *res nullius* —a thing that belongs to no-one—, for the slave is obviously subjected to possession, but he is a corporeal entity that is taken by the law as a non-*res*, as a non-thing. As usual, this could very well be the overreading of a simple metaphor introduced in the law to show the precarious situation of slaves before the law, but it is nonetheless revealing in trying to assess their placement in the *summa divisio*.

A different metaphor —in fact, a simile— says that, to a certain extent, "slavery is compared to death" (*servitutem mortalitati fere comparamus*)[77]. If the life of the son was already exposed to death on account of the *patria potestas*, death and nothingness seem to trace the perimeter of those who were subjected to slavery: persons indeed, although not even bound to die and allowed to live, but already dead by the very fact of being. Aristotle himself seems to share this idea, stretching his notion of slavery as a consequence of necessity to say that "without the necessary, both life and the good life (*kai zēn kai eu zēn*) are impossible"[78]. This is not a figure of speech, but rather the description of *anthropoi* whose life is exposed to necessity in such a degree that not only a qualified life is not possible, but neither is a bare life, and thus the slave is indeed in the realm of death and nothingness[79].

On the same line, Arendt speaks of a fate worse than death:

> Because men were dominated by the necessities of life, they could win their freedom only through the domination of those whom they subjected to necessity by force. The slave's degradation was a blow of fate and a fate worse than death, because it carried with it a metamorphosis of man into something akin to a tame animal[80].

Arguably, the metamorphosis into an animal is not necessarily a fate worse than death, but Arendt's implication is strong, for what does it mean that the slave —the subject of death and nothingness— is to be taken *as if* he were an animal, and why is this such a tragic end? Most likely, because animals were indeed the immediate counterpart of persons: animated as well, but undeniably *things*. If so, then the localisation of the slave in the topology of personhood is problematic and calls for metaphors and similes not because of its harshness, at least not exclusively, but because they are so close to the frontier that the definition becomes blurred.

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76 Justinian, *Digesta*, 50.17.32.

77 Justinian, *Digesta*, 50.17.209.

78 Aristotle, *Politics*, 1253b.

79 Such a conception is close to the notion of death-bound subjects, as proposed by Abdul R. JanMohamed, *The Death-Bound-Subject: Richard Wright's Archaeology of Death* (Durham: Duke University Press, 2005).

80 Hannah Arendt, *The Human Condition*, p. 84.

When Aristotle defines the nature of the *anthropos* as a political animal (*ho ánthropos phýsei politikòn zōon*)[81], he gathers several concepts under this definition, for it implies that *anthropoi* are gregarious and live under a rule —a characteristic shared by bees, for example — but most importantly that they are the only among animals to have developed reason or speech[82], and that are deliberative [83]. This is the key difference, for according to Aristotle, the reason why men rule "naturally" is because the slave "does not have the deliberative" part of the soul, and as we saw earlier, women and children do have it, but it is lacking[84].

Thus, the domination over (other) animals comes on account of the capacity to deliberate, while the fact that they are also living beings comes secondary at best. Strictly speaking, a *living thing* was not a contradiction, and thus, animals can be safely placed outside of the frontiers of the *anthropoi*, regardless of their gregarious and ruled way of living, and the very fact that they are, indeed, alive.

Notwithstanding the fact that slaves were undisputedly *anthropoi* or *homines*, their equation to animals is a way to ascertain the distance between them and the fully deliberative *anthropoi*, it is meant to show how close slaves were to the borders of the plateau, that is, of that metamorphosis by which they could fall onto the realm of things. This is, in fact, what transpires in a passage of the *De re rustica* by Varro, in which he plainly places slaves and animals under the same category of instruments to till the land, with the distinction placed on the voice. These instruments are divided into "the vocal, the semi-vocal, and the mute" (*vocale et semivocale et mutum*); "the vocal [*i.e.*, articulate] comprising the slaves, the semi-vocal comprising the cattle, and the mute comprising the vehicles"[85]. Thus, the slave is an *anthropos-instrumentum*, an in-between of the realms of persons and things that having articulate language fins himself, nevertheless, at the very threshold of the plateau. In the terms of Esposito:

> The figure of the slave does not fully belong to the realm of the person nor to that of the thing, but to the indefinite zone that both composes and juxtaposes them. If one considers the condition of the *servus*, this split and amphibological dimension is easily recognised [...] a *Doppelnatur*, a combination of human and thing. Defined as a "speaking instrument", he is simultaneously a person and a non-person—the non-person within the person[86].

In sum, whether an animated possession, a nothingness, or a voiced instrument, the slave sits always under Circe's will, one step away from the sty.

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81 Aristotle, *Politics*, 1253a.

82 Aristotle, *Politics*, 1253a.

83 Aristotle, "Historia Animalium" in *Aristotle in 23 Volumes*, Vol. 9 (Cambridge: Harvard University Press, 1979), 488b24.

84 Aristotle, *Politics*, 1260a.

85 Marcus Terentius Varro, *On agriculture*, (London: Loeb Classical Library, 1934), 1.17.1.

86 Roberto Esposito, *Due: la macchina della teologia politica e il posto del pensiero* (Torino: Einaudi, 2013), p. 99.

As anticipated, I do not intend to exhaust the particularities of *anthropoi* or *homines* in such a short space. Rather, my intention is to outline the shape of personhood as a mechanism that provides no special dignity or protection, that is mutable and flexible, and that constitutes only one threshold by means of which an entity enters into contact with a certain order.

Up to this point, the constant has been a mantle of personhood on top of the mosaic of figures that share the characteristics of what would much latter be called the *human species*, whether exposed to death or in a position to exercise full political power. Now, we shall encounter phenomena or situations that are more problematic, for they are for the most part undoubtedly things but, at the same time, become or behave as fictionalised persons.

1.3. Not persons, but…

So far, personhood has been a synonym of *homines*, regardless of the actual capacities and freedoms they held, and despite several frontiers being continuously traced inside its plateau. Now, a step further beyond these frontiers will assume a paradoxical form, since inside the concept of *persons* we will begin to find *things*, or at least, entities that do not respond entirely to either category, such as pluralities of people acting as one, the suspended personhood of the foetus still in the uterus or even estates acting in the place of persons. This will show that, rather than insurmountable barriers, the topology of personhood embodies a mutable relationship of inclusion and exclusion, a perimeter enclosed by malleable membranes that may open or close seemingly *ad libitum*, either encompassing or expelling, granting or refusing the status of persons to entities. This is, so to speak, a *locus* of indetermination, a moat between the *summa divisio* of persons and things. Additionally, this interstice between the two categories presents a rich soil for fictions to flourish, and it will be by means of fiction that these paradoxes come to be arranged and codified.

The first one of these paradoxes is that of pluralities acting as one. As attested by the philosophical topic of the one and the many, the identification of a plurality as a single entity is, at the very least, problematic: how can a universality of beings be taken as one? How can the body, composed of several parts, constitute one entity? How can the state, composed of several entities, or 'the people', composed of several individuals, be taken *as if they were* a single person? This is indeed a problem addressed by the *Digesta*:

> The term "public" has in many instances reference to the Roman people, for political bodies take the place (*loco habentur*) of private [persons][87].

Loco habentur —taking or having the place of something—, as said earlier, is one of the ways in which legal fictions were usually conceived in the Roman corpus, and it is indeed the way by which, asking about the significance of certain terms, the *Digesta* solves the issue of how the Roman people could perform acts that are exclusive of persons: by taking their place. This should also echo the notion of *personam habere*, for personhood begins to stray away from its attachment to and its identity with *homines*, and instead performs as a role, as a place that another entity could take upon. Finally, it is also a fiction, for it seems evident —from the Roman perspective— that no political plurality can express an actual univocal will, and thus it is necessary to fabricate such an individuality for it to act. A fiction, nonetheless, in its

[87] Justinian, *Digesta*, 50.16.16. Yan Thomas explores this passage and its meaning in terms of the place the city occupies in Roman law. See Yan Thomas, « L'institution civile de la cite » dans Yan Thomas, *Les opérations du droit*, eds. Marie-Angèle Hermitte et Paolo Napoli (Paris : Seuil-Gallimard, 2011), pp. 103 – 130.

precise juridical conception as the "certainty of the false" (*certitude du faux*) —using Yan Thomas' definition[88] — that allowed Roman law, in this particular case, to circumnavigate the philosophical minutiae of plurality and unity, making it possible to take a multiplicity of entities *as if* they were just one person. This is, naturally, only one of the manifestations of juridical fictions, and the first encounter of this kind in this mosaic. However, saying that pluralities take the place of individual persons leaves the question of its definition quite open.

In his treatise *De fictionibus iuris* of 1659, Antonio Dadino Alteserra speaks of several places in which "the law feigns things, without perception or soul, as being persons or men" (*lex finxit personas vel homines esse res quae sensu et anima carent*) and provides several examples, such as "political bodies" (*civitates*), "municipalities, colleges, societies and other bodies (*et alia corpora*),", and even the church[89] as feigned or fictive persons, in what would be classical examples of so called juridical persons, distinct from all the other *personae* because of their lack of perception and soul. Granted, the chasm between the *Digesta* and the *De fictionibus iuris* is substantial[90], but the attribution is telling nonetheless, for perception and soul become definitory of personhood in his account, and it is only by fiction that these necessary conditions of personhood can be overlooked. In other words, only ascertaining the fact that pluralities are not persons —for they lack both *sensu* and *anima*— can we *pretend* that they *take the place* of persons, that they do *have* a person attached to their plural composition. It is also interesting to note that they are indeed called *bodies*, and while the analogy of anatomy and physiology is anything but uncommon, the body does not seem to enter the definition of personhood, or rather, the plurality is already understood as a body without any further complication, despite the fact that, evidently, the body is not singular but plural, and despite the fact that perception and soul would rely on such a body in order to come to be[91].

A similar approach to plural entities is found in the classical *Traité des personnes et des choses* by Robert-Joseph Pothier, who claims that "bodies or communities [...] are considered as having the place of persons" (*comme tenant lieu de personnes*) that, "same as persons, can sell, buy, possess things", among others. Not only do they seem to lack a soul, however, but they are defined as "intellectual beings" —that is, not having a material existence—, completely "different and distinct from the persons that compose them"[92]. These bodies or communities are much closer to the contemporary notion juridical persons, entities whose existence relies entirely on the law, that is, a legal invention that accounts for the plurality acting as one, that

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88 Yan Thomas, « *Fictio legis*: L'empire de la fiction romaine et ses limites médiévales », *Droits,* 21 (1995) : 17 – 63. In this work, Thomas recollects some of the formulas usually used in the writing of legal fictions: «*ita... uti, ita ut... ita, perinde, proinde, ac si, siremps atque si, quasi si*», p. 21.

89 Antonio Dadino Alteserra, *De fictionibus iuris tractatus quinque* (Paris: Petrum Lamy, 1659), pp. 44 – 45. For a recent recollection of several other legal fictions, as well as their meaning and their construction, see Massimo Brutti, «Le finzioni nella giurisprudenza romana», *Specula Iuris* 2, no. 1 (2022) 109 – 173.

90 Of particular relevance is the scholastic interpretation of collectivities as recounted in Yan Thomas, *Fictio legis*, pp. 45 – 47.

91 See *infra*, 2.1.

92 Robert-Joseph Pothier, « Traité des personnes et des choses » dans *Ouvres de Pothier,* ed. par M. Dupin (Paris : Bechet Ainé, 1825), p. 84.

still rely on the fictitious texture of 'taking the place of': a fabrication that holds their existence together.

Pothier will later trace the "nature" of these plural bodies that act as persons. On the one hand, they are meticulously regulated as to whether they can engage in certain contracts. On the other hand, as intellectual beings, they cannot perform certain acts by themselves, and thus not only do they need a representative —an aspect that mirrors the functioning of civil society and the state—, but they also "hold the advantage of being treated as minors" in certain aspects by the law, such as special judicial protection. Indeed, their fictitious substance seems to render them less than fully capable. Much more interesting, however, is how Pothier says that these bodies ensure the "discipline" of their members by means of a somewhat autonomous regulation[93]. Given the temporality and the context, I believe this calls to mind Foucault's own analysis of discipline, and it could represent a bridge between the abstract characterisation of the law and the specific places where Foucault centres his analysis.

Early on, in *Surveiller et punir*, Foucault traces discipline as a mechanism that springs from an "art on the human body" that renders those bodies "more obedient and more useful", a "political anatomy" that produces "docile bodies"[94]. Further ahead in his career, Foucault revisits this idea and extends it in his course *Sécurité, territoire, population*. Here, he says that not only is discipline exercised upon singular bodies, but that it exists only where "there is a multiplicity and an end, or an objective, or a result to obtain from that multiplicity". Schools, barracks, prisons, and factories are the places where discipline takes place[95], plural bodies that conform and perform their members to a single aim. If this is indeed the case, then it is worth noting that these places —these stages where discipline is performed— are much more than the geographical site they occupy or the architecture they inhabit, for when it comes to the metaphysics of the law, they are not to be taken as mere things. Schools, barracks, prisons, and factories can —and do indeed— buy, sell, engage in contracts, and may even inherit; what's more, they organise, exercise discipline, reward, punish and, generally speaking, they act, not as the plurality that underlies them, but as a something that *takes the place of* a single person.

Not a soul, but a will; not organic, but a body; not material, but a being: these are the certainties of the false, the way to fake a plurality into a person, a substance of fiction fabricated upon a conscious contradiction of reality, precisely because, by definition, only something that *is-not* can take the place of something that *is*. In this case, only a *non-person* could take the place of a *person*.

Admittedly, instead of reconciling discipline and law, Foucault is purposefully straying away from the legal functioning of power, describing how these places exercise it outside and beyond the legal apparatus. Consequently, he is not interested in the level of abstraction implied in the construction of a juridical person out of a non-person, namely the 'person' of

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93 All of this in Pothier, *Traité des personnes et des choses*, pp. 85 – 86; 94.

94 Michel Foucault, *Surveiller et punir : naissance de la prison* (Paris : Gallimard, 1975), pp. 162.

95 Michel Foucault, *Sécurité, territoire, population : Cours au Collège de France (1977-1978)* (Paris : Gallimard, 2004), pp. 13 – 14.

the hospital or the 'person' of the factory, but this is, perhaps, a gap tan can be bridged, for it is in the framework of self-regulation that these entities are able to develop and apply such disciplinary techniques. In turn, this autonomous regulation has its genesis, and its habitat, in the personhood of these entities, that is, in their conception as persons by the law regardless of their plural nature. Hence, indeed, not separated instances of power, but rather an extensive net in which the abstract form of the law aids in the production of a precise knowledge that becomes a disciplinary technique. Furthermore, this does not mean that power is to be taken as a possession, for its "vertical and horizontal trajectories", as Foucault calls them, still take place inside the pluralities, even if driven by the one result that is being pursued. Rather, it means that the fiction of personhood can be taken as part of a *dispositif de sécurité*[96], an interplay of mechanisms that neither prohibit nor prescribe, like the legal and disciplinary mechanisms would, but that allows the law to *digest* and regulate, as a person, a reality that is outside the realm of the *homines*.

This interplay can also be seen later, where Foucault, commenting on Guillaume de La Perrière's conception of government as the "right disposition of things" (*la droite disposition des choses*), points out that "things" (*choses*) are not to be taken as opposed "to men" (*aux hommes*), but rather as an all-encompassing term, in the same way that *res* was conceived earlier as the fundamental cornerstone of the whole edifice:

> Some sort of a complex constituted by [both] men and things (*les hommes et les choses*) [...] men, but in their relations, in their ties, in the intricacies with these things that are wealth, resources, livelihoods, territory[97].

Needless to say, Foucault takes "things" in this context to convey an ensemble of political, moral, and economical entities, rather than the reduced legal meaning of *res*. However, if *res* is not indeed as reduced as it seems, but rather the mechanism by which the law captures the entirety of existing entities, then it is possible to see how a right disposition of this complex that includes both "men and things" is indeed the basis for government, for governmentality[98].

In any case, the 'nature' of these plural entities, although obviously not immutable, relies still upon the mechanism of a *loco habentur,* which rather than being a simple analogy for the functioning of certain legal provisions, becomes the embodiment of *things* with personhood. Despite their entirely different substance, these things *have* a person placed upon their collective reality, and thus, they come to be part of an indetermination that renders available the disposition of a multiplicity as a unity and transmutes the relations of such unity

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96 Michel Foucault, *Sécurité, territoire, population*, p. 7.

97 Michel Foucault, *Sécurité, territoire, population*, pp. 99 – 100. Foucault speaks of men, but in the linguistical and historical context it is licit to also think of *persons*.

98 "Governmentality" (*gouvernementalité*) is a much deeper topic in Foucault that stems from biopolitics, to which I shall come back further ahead. For the definition, see Michel Foucault, *Sécurité, territoire, population,* pp. 111 and ff.

towards the rest of the cartography: where there was once a plural thing there can now be a unified person.

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The creature in the womb, the one-yet-to-be-born —usually designated as the *nasciturus*—, is equally problematic for said juridico-political fabric, and represents a noteworthy bridge in the frontier between persons and things. First of all, because when we say that something will come to be or that it is expected to be, we are also saying that it *is-not*, at least not yet. Nevertheless, saying that the creature still in the womb is not yet a person seems both disquieting and obvious. It seems disquieting because, in the usual manner of speaking, *person* is indeed a synonym of the human species, and thus it should follow that everything human is immediately also a person; but it also seems obvious since being born is, also plainly speaking, a requisite to *be*, and even if one were to link the idea to the biology of the human species, the question of its actual coming to be —a person, a human, a being— has always been up to debate. Even from the pragmatic approach of Roman law, the question is indeed puzzling:

> Whomever is in the uterus is cared for just as if it were in human existence (*perinde ac si in rebus humanis esset*), whenever its own advantage is concerned; although it cannot be of any benefit to anyone else before it is born[99].

By this account, an entity in the uterus not only is not a person but is also not even "in human existence" (*in rebus humanis*), meaning that the foetus still does not belong to the realm of the *homines*[100]. In other words, only as a *non-homo* can it be taken "just as if it were" (*perinde ac si*) one, and only for pragmatic legal purposes. The formula varies and does not always come along with the qualification of *human* existence, but as the more common *in rerum natura esse*, that is, being in the nature of things —this all-encompassing term—, or simply put, existing[101]. Sometimes, the formula even takes the *nasciturus* "as if it survived" (*pro superstite esse*)[102] the act of birth. What is common to all, however, is that they place fiction at the threshold: only by means of an *as-if* can the yet-non-existent *be*, under the condition that such fictions hold up only until the moment of birth, and thus, those who are born alive remove the fiction with their actuality, while those who are born dead, or die before being born, ratify the fiction as such, as a conscious denial of reality.

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99 Justinian, *Digesta*, 1.5.7.

100 It could also be translated as "human affairs" or "human things", that is, closer to the notion of "human genre" than to the biological sense of "human species", which again, was completely alien in the historical context. In other words, it is not a physiological terminology. See *infra* 3.2 and 3.3.

101 Justinian, *Digesta*, 1.5.26 and 38.16.7.

102 Justinian, *Digesta*, 50.16.231.

It is of no surprise that the Roman corpus rejects any other condition to the *nasciturus* beyond the expectative of existence, saying, *e.g.*, that "whoever is still in the uterus is not a minor (*pupillus*)"; that "it would not be right to say that a child-to-be is already a man" (*quia partus nondum editus homo non recte fuisse dicitur*); or even that, "before birth", the child-to-be "is part of the woman, or her entrails" (*partus enim antequam edatur, mulieris portio est vel viscerum*)[103]. Even from the casuistic spirit of Roman jurisprudence, it seems legitimate to take birth as a necessary condition for existence, and whenever the legal formulations refer to the personhood of the *nasciturus*, that is, when they take the unborn as a person, it is only as a feigned mechanism that allows for specific legal effects to take place, such as complying with a strict hereditary order, or to be able to assess the right over a property, including property over other persons[104]. The fiction need not go deeper in tracing the meaning of a *nasciturus* as a person for the purpose is achieved by equating them to the regime of already existing persons, that is, of fully existing *homines*. Whether they are free, hold an estate, or have certain rights or duties will depend on the actual fact of birth and its circumstances, but the solution to the problem of a personhood that is yet to be is solved simply by an anticipation of a fact, the uncertainty of the future taken as a certainty of the present: only time will unveil whether the fiction remains untouched.

This, however, does not cover the full extent of the question, for the act of birth is not sufficient in itself for personhood to be acquired. First of all, one must be born, at least provisionally, with a "human form":

> [They] are not children those who are procreated contrary to the form of the human genre (*qui contra formam humani generis*), as if the woman were carrying something monstrous or prodigious. However, one who has more than the ordinary number of human limbs seems to be, to some extent, completely formed, and therefore may be counted among children[105].

Secondly, and perhaps most interesting from this perspective, one must be born *alive:*

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[103] Justinian, *Digesta*, 50.16.161; 35.2.9; and 25.4.1, respectively.

[104] The case of a pregnant slave that has been kidnapped is exemplary: if she gives birth during her captivity, her child is considered "stolen property", and thus cannot be acquired by usucapion: Justinian, *Digesta*, 1.5.26 and 47.2.48.5.

[105] Justinian, *Digesta*, 1.5.14. The strictly legal discussion on this topic is quite vast and will face Paulus and Ulpianus (Justinian, *Digesta*, 50.16.38 and 50.16.135) up to Justinian himself (Justinian, *Codex*, 6.29.3). As a couple of references from contemporary perspectives, see Antonio Palma, "Il nascituro come problema 'continuo' nella storia del diritto" in *Teoria e storia del diritto privato* 7 (2014); Christof Rolker, "The two laws and the three sexes: ambiguous bodies in canon law and Roman law (12th to 16th centuries)", *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Kanonistische Abteilung* 100 (2014) 178-222; and Ana Alemán Monterreal, "Precisiones terminológicas sobre *ostentum* D.50,16,38 (Ulpianus libro 25 ad Edictum)" *Fundamentos romanísticos del derecho contemporáneo* 2 (2021) 3 – 18.

> Those who are born dead are not taken as neither born nor procreated, because they have never been able to be called children[106].

Being born dead is, at the very least, an apparent contradiction. If birth is the act by which an entity comes into existence, how can it be both born and not alive? While medically possible, the question here is about belonging to the *rebus humanis*, and so the fact that an entity is indeed outside the uterus and shares the form of a *homo* does not seem to be sufficient to be a person, since it also demands a *living* being: just as a not-yet-formed person is not a person, a not-yet-formed life is not a life, an actuality that allows for the recognition of those rights that were, pre-emptively, assigned to the *nasciturus* pending its actual birth. As Yan Thomas would put it, the fiction enters the realm of the "biological order", of the "living and mortal bodies"[107]. In being capable of transforming the very "nature of things", it approaches the threshold where bio-politics is formed. Furthermore, it will provide with some interesting legal provisions in the centuries to come, that are more often than not overlooked, and whose unearthing should be telling of this relationship between personhood, life, and the law.

The French Civil Code of 1804 —arguably the foundation of contemporary practice of codification, alongside its German counterpart— will approach both the conception and the living status of persons when addressing the problem of succession and inheritance, saying that in order to be able to inherit, one must "necessarily exist" at the instant when the succession is opened. Hence, it is not capable of inheritance the "one who is not yet conceived", but also "the child that is not born [with a] viable [life]" (*l'enfant qui n'est pas né viable*)[108]. While the requisite to be conceived could seem an overstatement, the fact that existence is linked to a viable life is not to be taken for granted. Given that the issues at stake are still practical questions of inheritance, why the *ostinato* of counting only formed bodies that are viable —*i.e.*, capable of living— as existing? Why is the mere body, already formed and present, not enough to assess and determine the succession?

A different phrasing on the topic, of a rather sinister tone, can be unearthed in the legal soil of the 'New World'. The *Digest* of the *Civil Laws in Force in the Territory of Orleans* of 1808, also called the *Louisiana Digest* —written both in English and French—took on the topic by restating that those in the womb were "not to be counted among the number of children", although it did hold the provision of taking them "as if they were already born"[109]. However, what's interesting is that this code sunk deeper into the matter of fictionality by stating that "children born dead are considered as if they had never been born or conceived [!]"[110].

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[106] Justinian, *Digesta*, 50.16.129.

[107] Yan Thomas, *Fictio legis*, p. 48.

[108] *Code Civil des Français* (Paris : Imprimerie de la République, 1804), art. 725. Retrieved from https://gallica.bnf.fr/ark:/12148/bpt6k1061517/f180. Although modified in 1977, and again in 2001, the article still requires viability: "To succeed, one must exist at the moment of the opening of the succession or, having already been conceived, be born viable (*naître viable*)".

[109] *Digest* of the *Civil Laws in Force in the Territory of Orleans* (Louisiana, 1808), book 1, title 1, art. 7. Sometimes called the first *Louisiana Civil Code*. Retrieved from https://digestof1808.law.lsu.edu/.

[110] *Digest* of the *Civil Laws in Force in the Territory of Orleans,* book 1, title 1, art. 5.

So far, what could be drawn from the personhood of the *nasciturus* was that something still not formed was feigned as if it already were, but this provision brings matters to a different plane. In adding such a hermetic link between life and existence, the '*Louisiana Digest*' produced an entirely different fiction, one by which death rescinds the anticipation of rights to the not-yet-born —namely the inheritance order and so forth—, but also brings forward the annihilation of the entire existence of the entity in the womb, as if the *substantia* that comes out of the uterus, its material corporality, had never existed. The *nasciturus* gets nullified by the fact of being born dead: both time and existence erased by fiction, as if they had never taken place and any conception —in both a literal and a rhetorical sense— of the *nasciturus* will come to be a nothingness. Even if one shares the idea that the foetus is just part of the mother's entrails —and hence nothing separate from her body—, this will imply that those very entrails have never existed. At the very instant of birth and death coming together, what once was a person by anticipation becomes retroactively a void: a radical erasure of reality by which the lack of life means the lack of substance.

Such a construction is not isolated. When Andrés Bello was entrusted with redacting a civil code for Chile in the 1840's, he gathered a corpus composed of several sources that included, evidently, the *Digesta*, but also the *Siete Partidas de Alonso X* as well as several other Civil Codes, including the *Louisiana Digest* [111]. By 1853, Bello presents an almost finished draft of the code in which he heightens the idea of non-existence:

> The legal existence of every person begins at birth, that is, once fully separated from the mother.
>
> The creature that dies in the mother's womb, or that perishes before being completely separated from the mother, or that it cannot be proved that it has survived the separation for a moment at least, will be reputed as having never existed (*se reputará no haber existido jamás*) [!][112].

The fatality of the sentence "will be reputed as having never existed" is interesting in itself. Although he does not cite the much closer rendition of the '*Louisiana Digest*', in a marginal note in handwriting, and then in a printed endnote, Bello himself refers to the *Digesta,* 50.16.129[113] as the apparent source of his rule, namely the provision by which "those born dead cannot be called children". However, an echo of his choice of words, with all their inevitability, appears elsewhere in the *Digesta*. Speaking about the inheritance of a grandfather

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[111] For a more exhaustive study on Bello's sources on this topic, see Ian Henríquez Herrera, "La regla de la ventaja para el concebido y el aforismo 'infans conceptus pro iam nato habetur' en el derecho civil chileno" *Revista de Derecho (Valparaiso)*, v. 1, núm. 27, Pontificia Universidad Católica de Valparaíso (2006) 87 – 113.

[112] Andrés Bello, *Proyecto de Código Civil* (Santiago: Imprenta Chilena, 1853), p. 23; §1, art. 76. This provision became indeed part of the *Civil Code* in Chile and was also adopted in several other countries such as Ecuador and Colombia, still in vigour: *Código Civil de Chile* (1855), art. 74; *Código Civil de Ecuador* (1858), art. 60; *Código Civil de Colombia* (1873), art. 90.

[113] Misquoted as '123' instead of '129', although crossed out in p. 176. In any case, the context allows to deduce with certainty that 50.16.129 was indeed the rule he had in mind.

that circumvents the son and goes directly to the grandson (still in the uterus), because the son becomes a prisoner of war, Ulpian says that captivity impedes the son to inherit since, in his condition, "he is considered as having never being in human existence" (*nec enim creditur in rebus humanis fuisse*)[114].

The rule is extraordinary for it combines two fictions at once. On the one hand, the grandson is still in the uterus, and although not in human existence yet, his personhood is feigned by anticipation so that he can receive the inheritance. On the other hand, the son is in captivity, and as a prisoner of war he is not merely being considered dead, but foreshadowing Bello's rule, as having never existed —even if actually still alive and obviously fully formed as a *homo*— and hence unable to receive the inheritance. By fiction one personhood is attributed and one is removed, notwithstanding the reality of life nor death.

It is unclear, of course, whether this was indeed the source of Bello's rule, but it is very likely that he knew of it, and in any case, it does resonate in this entanglement between existence and life. Whatever the origin, the rule adapted in these civil codes still has a practical concern: those who are born dead are not to be civilly registered. For the law, this implies simply that the acrobatics of inheritance and filiation can indeed take place, but a philosophical light should unearth two different veins of discussion, both of which emphasise the fact that personhood is not consubstantial to humanity, as it is acquired under certain circumstances that are bound to certain effects. One relevant philosophical query has to do with corporality, and the other with the registry —the trace of that (in)existence of those that are born dead.

The first philosophical query touches a differentiation between a 'mere body' (*Körper*) —the flesh and blood, the physical materiality devoid of life—; and the 'living body' (*Leib*) — the incarnation of life and its self-consciousness. The distinction, particularly relevant for phenomenology, involves a deep discussion that goes beyond my scope here, but the difference is patent when Husserl speaks of "an external body (*Körper*) apperceived as 'a [living] body' (*ein Leib*) and not merely as a [material] body (*bloß als ein Körper*)"[115]. The same happens with a hand that touches us: it is not apperceived as a "marble hand or a painted hand, but as flesh and blood", on account of feeling and consciousness[116]. Hence why it is possible to say that one *has* a *Körper*, whilst one *is* a *Leib*, and why the marble hand can be considered one and not the other: life traces a difference in the materiality of a body, which in turn translates as a distinction in the regard for such a body.

Pygmalion's sculpture, despite being carved with blissful skill to the point where it almost seems as it "wanted to move" (*velle moveri*), is still a "simulated body" (*simulati corporis*)[117],

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[114] Justinian, *Digesta*, 28.3.6.1.

[115] Edmund Husserl, „Zur Phänomenologie der Intersubjektivität", Zweiter Teil, in *Husserliana: Gesammelte Werke*, Bd. XIV, (Den Haag; Martinus Nijhoff, 1973), p. 4.

[116] Edmund Husserl, „Zur Phänomenologie der Intersubjektivität", Erster Teil, in *Husserliana: Gesammelte Werke*, Bd. XIII, (Den Haag; Martinus Nijhoff, 1973), p. 40.

[117] Ovid, *Metamorphoses*, trans. by Frank J. Miller (Cambridge: Harvard University Press – Loeb Classical Library, 1958), X, 250 – 253, pp. 82 – 83.

and the fact that it seems to kiss Pygmalion back when he approaches is nothing but the sculptor's own impression on account of the closeness of the figure to a living body. This closeness, however, denounces the distance, and it is only after Venus' intervention that the statue gets imbued with life, that its "veins pulsate under his touch" and it becomes "a [real] body" (*corpus erat! saliunt temptatae pollice venae*)[118]. In Ovid's narration, life traces the frontier between a real body and the figure of a body —a transition flawlessly depicted by Jean-Léon Gérôme's *Pygmalion et Galatée* of 1890— in the same way that Husserl represents the difference between the *Körper* and the *Leib*. Needless to say, it is only after the sculpture gains life that it becomes a person, for being in the realm of the living is indeed a necessary condition for personhood to exist, unless, of course, fiction mediates.

What happens with the contrary transition, *i.e.,* when the living matter comes to die? Just as the sculpture *has* a (material) body, but it *is not* a (living) body, the corpse ceases to be someone and becomes a *thing*. The word is not casual. In fact, and paradoxically, it becomes a *human thing*: undoubtedly human in form, as one would say about Galatea before Venus' grace, but nevertheless not a person. Regardless, fiction would allow for those human things to hold onto their personhood after their death, or even more counterintuitively, it will allow to attach said personhood to someone's estate *in the place of* their actual human person.

As is well-known, the term *soma* —commonly translated as "body"— does not represent in Ancient Greek the ensemble of life and body as a *Leib*, but only the lifeless body, the carcass, "the cadaver"[119]. Furthermore, as Paolo Godani shows, in Archaic Greece, *man* is not conceived as an "organic unity", but rather as a "diversified multiplicity of functions". The only "paradoxical case", he says, where 'man' and 'body' represent such an organic unity is in death:

> When the *psyché* is flown away through the teeth or through the wounds, when the body lies inert, that is, when it is no longer traversed by the potencies that moved it, when it is nothing more than a *soma*, only then does it acquire the substantial homogeneity and the unity of an object[120].

A *person* becomes an object, in other words, it is reunited with the all-encompassing notion of *thing* when life no longer differentiates it from other bodies. What does this mean for the case of those born dead taken as having never existed? It means that even a fully formed human body is not sufficient, on account of its lack of life, to be embodied with personhood. Birth —taken as the mere act of separating one body from another— can bring forth either a *Körper* or a *Leib*, either an inert *soma* or the multiplicity of functions of a living-body, and hence to be *born dead* is not a contradiction: birth can produce something that either takes or rejects the mask of personhood, or better stated, a substance to which the mask of personhood can be granted or denied, seemingly at will. In this particular case of the juridical, such a will takes

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118 Ovid, *Metamorphoses*, X, 289, pp. 84 – 85.

119 Giorgio Agamben, *Homo sacer*, p. 76.

120 Paolo Godani, *Il corpo e il cosmo: per una archeologia della persona* (Vicenza: Neri Pozza, 2021), p. 33.

the form of an impossibility, that of personhood being attached to an unliving body, which in turn will imply the erasure from the whole of existence: fictitious, indeed, and yet real.

However, as the case of the *hereditas iacens* will show, there are indeed other instances where death and personhood do not repudiate each other, and rather coexist.

For now, the other philosophical query that raises on account of entities that are taken as having never existed comes on the traces of their existence. Civil registry, ostensibly, is the way in which a juridico-political entity apprehends life from the act of birth to the act of death —*vitae necisque*—, an inscription of existence however long it may be, the trace of a passage with its rites, its vital and fatal moments written down, and archived. While the history of the registry itself is quite rich, I am interested in Foucault's approach to the "entrance of individuality into a documentary field (*champ documentaire*)"[121], as part of the mechanisms of a discipline that seems to first make their appearance by the early 19th century.

In the framework of examination (*examen*) as a mechanism of "surveillance that allows to qualify, classify and punish" individuals[122], Foucault speaks of a "net of writing", a "mantle of documents" that "capture and fixate" those individuals[123], a minutiose recounting of events, episodes, symptoms, behaviours, faults, and achievements that range from the hospital to the asylum, from the school to the factory. While Foucault's emphasis is indeed in the minutiae, in the narration of singularities that imply a disciplinary exercise of power over bodies to render them docile, on codes of conduct that are not confined to the power of the state; it is not neglectable that all of these records begin and end with these civil registrations, with this inscription in the juridico-political that render persons a living-writing, a life whose existence is not placed entirely on its materiality but on the registry enforced upon it. Medical, educational, occupational, and penal records are all wedged into the narrow space of coming in and out of existence, of *be-coming* a person. The intertwining of life and existence becomes complete once the inscription is performed, and after death, not a deletion, but again an inscription: the boundaries of existence are traced by the text.

Stated differently, the fabric of existence is woven with a formed body, a life, and an inscription, and since both life and body decay, the true remains of an existence are the traces left in the archives, in the documentary field that at one time narrates and constitutes their existence. Undoubtedly memory and testimony of existence, but also a mechanism of capture and a ratification of the topology: inside the registry, the realm of existence; outside, the realm of nothingness. Fiction, as a threshold, allows to be or not to be, to have or not to have a person, and in so it becomes a passageway between one realm and the other.

An image close to such fatality is presented in *Le Colonel Chabert*, where Balzac fabricates the story of a colonel of the Napoleonic army that was declared dead in the Battle of Eylau, in 1807. A decade later, a man of a "cadaverous physiognomy" comes into a lawyer's office saying that he is indeed the defunct Colonel Chabert. He has been registered

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121 Michel Foucault, *Surveiller et punir,* p. 221.

122 Michel Foucault, *Surveiller et punir,* p. 217.

123 Michel Foucault, *Surveiller et punir,* p. 222.

as dead, his wife has remarried, his estate has been liquidated and his inheritance distributed. He is, in fact, doubtlessly alive and certainly dead. Unable to legally regain possession of his fortune, of his status and his life, and unwilling to accept a negotiation with his widow —who refuses to fully believe he is who he says he is—, he ends up his life in a hospice for the elderly, refusing the name Chabert and resigning himself to be "number 164, seventh ward"[124]. Just as the prisoner of war in the *Digesta*, his condition of defunct does not comply with reality, and nevertheless becomes more real than reality, since the whole world around him has been performed to comply with the fiction of his death. A fully formed body and an actual life cannot refute the inscription. Such is the effect of the registry of death.

However, the legal effects of being taken as having never existed go even further. By feigning a radical non-existence, all the corporalities, all the substances of those who are born dead or deemed inexistent have left no textual trace. The circle becomes inaccessible: only the living exist, only the existent are persons, only persons are registered. In being denied existence and thus personhood, or vice versa, there is nothing left behind; as if no pregnancy had occurred, as if no life had been lived before being captured by the enemy, as in any case no body remained, as if no matter was ever produced[125]. From this conception, an unregistered existence does not come to constitute the public corpus and alas, even if there is indeed a materiality, in there lies only a precarious existence, perhaps as an inscription in private memory, perhaps as the scars in the fully formed body of the mother: *damnatio memoriae*, a nameless tomb, a mass grave of those who never were. If Foucault speaks of an "anthology of existences"[126], this may very well represent an anthology of inexistences.

The personhood of the *nasciturus,* and the whole juridical apparatus erected upon its filigree, show an estrangement between personhood and the human genre, a relationship far more complicated than that of a simple synonymy or even an intimate correspondence:

> The person subject of rights and obligations is not the concrete human being with its own physical and psychological characteristics; it is an abstraction of the juridical order, a point of personalised imputation of legal rules that govern said human being. The person, of course, usually has an individual as a substrate, but it may very well have many [...] it could also have none[127].

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124 Honoré de Balzac, *Le Colonel Chabert* (Paris : Folio-Gallimard, 1999).

125 This is why the *Digesta* says that "it is false that a woman gives birth when a child is extracted from her after death" (*falsum est eam peperisse, cui mortuae filius exsectus est*): Justinian, *Digesta*, 50.16.132. Moreover, the Roman fiction of the captured soldier as having never existed (*Digesta*, 28.3.6.1) implies, if taken literally, that the grandson never had a father, and yet exists and is able to inherit. The grandson, therefore, becomes a causeless effect yet to exist, and the captured father becomes the dichotomy of being and not being simultaneously: a Parmenidean nightmare.

126 Michel Foucault, « La vie des hommes infâmes », dans *Dits et écrits II: 1976-1988* (Paris : Quarto Gallimard, 2017), p. 237.

127 Yan Thomas, *Le sujet de droit*, p. 102.

The individual substrate is thus neither a sufficient nor a necessary condition of personhood. An alive and fully formed individual, member of the human genre, could very well lack personhood, while something else that does not share any of those characteristics could hold the position of person without any impediment. So much so, that in contrast to the other civil codes in Latin America, the Argentinian *Civil and Commercial Code* will stray away from the Roman fiction of personhood and, in fact, declare that "the existence of the human person (*la persona humana*) begins at [its] conception"[128]. Notwithstanding the emphasis of "human person", which implies the possibility of non-human persons, this provision immediately imposes the mechanism of personhood to an entity that is still very far away from having a human form or an autonomous life, and perhaps as close as it can ever be to be part of the mother's entrails.

The problem, beyond the scope of legal and bioethical issues —*v.gr.* abortion—, is not that a person is being feigned as such, but rather that, via the mechanism of personhood, an inexistence is rendered an actual existence, that via the interplay of fiction and personhood things can come to be what they are not and cease to be what they are. This is why Thomas refers to it as an "abstraction": nothing natural in its attribution, but instead a creation from the law, a very literal fabrication placed upon entities[129].

Fiction comes to represent the threshold by which entities come in and out of a juridical character —truly a *juridical person*—, a gateway that marks the belonging to either the inside or the outside, to the status of person or thing. What's even more fascinating and useful about fiction is that it does not call for a *sub-stantia*: nothing can be something, nothing can be someone, or at least, behave *as if* it were.

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Finally, in this passageway of indistinction, not members of the human genre, but actual things acting *as if* they were persons. One branch of this idea would assimilate *things* to *homines* by means of analogy, such as the *peculium* —the goods entrusted to a slave or a child—, that "is born, grows, decreases, and dies" and therefore "resembles a man (*simile esse homini*)"[130].

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[128] *Código Civil y Comercial de la Nación Argentina* (2014) art. 19. The previous code, from the 19th century, held the same provision: "The existence of persons begins from their conceptions in the mother's womb, and before birth [the conceived] can obtain certain rights as if they were already born (*como si ya hubiesen nacido*)": *Código Civil de Argentina* (1869), art. 70.

[129] Needless to say, not everyone was so fond of such an indeterminacy. For instance, Bentham had already denounced how the "jargon" of such "forced falsehoods" —namely, legal fictions— render the law "more and more incognoscible", so that it becomes a "gross and palpable nonsense: a man dead and alive at the same time; a dead man and a live man the same person; thirty or forty days making altogether but one day; a man constantly present in a place where he never set his foot; the same man judge and party, and justice all the better for it". He was, of course, speaking of the fictions of the late 18th century and early 19th century, which pose a remarkable resemblance with the situation of the Civil Codes I just presented. For all of this, see Jeremy Bentham, *The Theory of Fictions*, ed. by C.K. Ogden (London: Kegan Paul, 1932), p. 148. See *infra*, 3.2.

[130] Justinian, *Digesta*, 15.1.40.

However interesting in terms of the analogy as a literary device, this is not the same case of a thing taking the place of or behaving as a person[131].

A different branch is far closer to the topic at hand: the *hereditas iacens*, the recumbent inheritance. The concept —broadly defined, regardless of particular legal dispositions— is not difficult to grasp: an inheritance that has neither been accepted nor rejected by the inheritors, and thus "lies" (*iacet*) expecting to merge with another estate. The central legal issue is the time between death and the acceptance of the inheritance, as well as the internal disputes of the inheritors. Since the estate can be pursued by creditors while it is still unassigned, since it is called to 'protect its own interests' during a legal procedure, and since its original owner is unable to respond to these calls, the Roman solution was double. In some instances, the inheritance is called to "sustain" the defunct, while in others it can even act *as if* it were a person on its own. Both cases show a re-placement of the person. In the former, the re-presentation of the deceased, that survives death through its estate and makes his appearance as a bodiless will, devoid of human life or form; in the latter, the personhood of the deceased is taken away and placed upon the ensemble of things that constitute the estate. In any case, a thing takes the place of a person, a thing re-places a person:

> A slave who forms part of an inheritance can be instituted an inheritor before the acceptance of said inheritance; this is because the inheritance is considered to be the owner of the slave, and to occupy the place of the defunct (*defuncti locum optinere*)[132].

This is an extraordinary provision. Not only does it open the possibility for inheritance acting as a person, to the point where it is understood as a *domina* of the slave, but it goes even further and creates a curious and rather circular situation in which the inheritance, as the owner of the slave, can institute him or her as an inheritor, thus making the slave its (own) owner. In other words, the slave is simultaneously the property of a personified estate —a thing— and its potential owner —a person—; while the inheritance is simultaneously the owner of the slave that takes the places of the defunct —a person—, and the possession of the slave who owns the inheritance —a thing—. Rather than an anchored homophony of persons and things, the relation between them is a contrapuntal interplay, a fugue in which both characterisations can play the role of the subject and the countersubject, appear or disappear, augment or diminish, become an inversion or even mirror one another in a contredanse of indetermination whose cadence is always deceptive, never authentic, never truly final.

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131 Manuel Jesús García Garrido objected that this is not, properly speaking, a fiction. I concur. He also, however, denied the fiction in the case of the *nasciturus* and the anticipation of its personhood, from which I have clearly taken a differing stance. For his take on these matters, see Manuel J. García Garrido, "Sobre los verdaderos límites de la ficción en derecho romano" en *Anuario de historia del derecho español*, N.º 27 – 28 (Madrid: Ministerio de Justicia, 1957), pp. 339 – 341.

132 Justinian, *Digesta*, 28.5.31.

As usual, the formulas are varied, and so the recumbent inheritance can "sustain the deceased" (*defuncti sustinet*)[133], it can "take its place" (*loco habentur*)[134], and also —in a rather theatrical approach to the matter—, it can even "perform like a person" (*fungitur vice personae*):

> With the debtor dead, and before the inheritance has been accepted, a guarantee can be received, because the inheritance performs like a person (*hereditas personae vice fungitur*) in the same way as a municipality, a decurion, and a society[135].

Besides the fact that it is indeed theatrical, it is interesting to note that the equation between inheritance and person —in fact, its *constitution* as a person for the matter of its recumbency— is not performed through a correlation or through an analogy with *homines*, but via the personhood assigned to pluralities, such as societies and municipalities. In this instance, instead of going directly to the human genre as the basis for its composition, the fictionalised character of the person —the person of the person, if I may— is depicted through a link to the plural bodies that act as one. As seen, although not (entirely) human, such pluralities *take the place of* persons, and thus, rather than recurring directly to the apparent equivalence between human nature and personhood, the mechanism of fiction draws upon the looking-glass of pluralities to depict an ensemble of things performing as a person.

Yan Thomas points out, however, that in the Middle Ages the apparent confusion, implied in the Roman formula, between re-placement and fiction was severed. In order to close the circle of personhood and unify it with the "concrete human subject", Medieval commentators interpreted representation —the sustainment of the deceased, or the fact the inheritance "took their place"— as a mechanism to "ensure [his] quasi-presence", so that the inheritance, through its presence, denounced the absence of the defunct. Therefore, representation did not imply personification, and thus, the object of the fiction would not be the personhood of the inheritance, but the presence of the deceased through his or her estate. A modification that, according to Thomas, was performed "to avoid the personification of the world of objects"[136]. There is a tension, then, between the source and its interpretation, that would end up in an effort to keep separate the realms of persons and things that had been previously mixed together.

Now, commenting the very same passage of the *Digesta*, Thomas takes the verb *fungitur* as '*fonction*', or '*faire office de*', and states that the fiction appears in this matter only after being separated from the representation by Medieval commentators. If this is so, then the inheritance does not 'have' a person nor does it 'function' (*fungor*) as such, but rather 'feigns'

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133 Particularly in Justinian, *Digesta*, 41.1.34: *non heredis personam, sed defuncti sustinet*, and in *Digesta*, 46.2.24: *ad heredem cuius personam interim hereditas sustinet.*

134 Justinian, *Digesta*, 11.1.15: "[...] because the inheritance takes the place of the owner" (*quia domini loco habetur hereditas*).

135 Justinian, *Digesta*, 46.1.22.

136 All of this in Yan Thomas, *Le sujet de droit*, p. 100.

or 'simulates' (*fingor*) one in the game of presence and absence[137]. Nevertheless, I do not think it is illicit to read *fungitur* alongside the other provisions as "*perform*", for it conveys the enigmatic implications of an inheritance that takes the role of a person in a more comprehensive manner, allowing the ambiguity of the concept to flourish: from *sustaining* to *representing*, from *taking the place of* to even *be* the person of the deceased. The difference in interpretations vividly displays the contredanse to the point that, well into the 17th century, Dadino Alteserra would count the *hereditas iacens* clearly as a fiction, reiterating and paraphrasing the Roman passages that rely on sustainment and representation[138], while also clearly having a foundation in Medieval approaches to fiction to which I will come back further ahead.

When dealing with things that are feigned as persons, Dadino Alteserra elaborates on such fictionality, saying that "death does not come naturally to inanimate things" (*naturaliter mors non cadit in res inanimatas*), since —just as pluralities— they "lack perception or soul" (*quae anima et sensu carent*)[139]. Under these circumstances, be it by the fiction of a presence or by the fiction of personhood, the *hereditas iacens* comes close to the human genre, not only because it can also grow or die as the *peculium* does, but on account of sharing the fictionality of pluralities, that is, of other bodiless, soulless, *humanless* entities that act and *perform* as persons. Such is the fertility of fictions: they create and procreate; both fictions and persons are multiplied.

Instead of an *ad libitum* disposition, there seems to be a process in place when feigning personhood, its outskirts extend methodically by a relation that does not spring exclusively from the human genre in what would be a mere analogy, but reaching out for other non-human entities that compose and modify this mosaic of personhood, with evident implications in action, capacity, and freedom; an allotment that, despite first appearances, includes both persons and things: a *summa divisio* concurring with a *summa confusio*.

137 Yan Thomas, *Le sujet de droit*, p. 101.

138 Antonio Dadino Alteserra, *De fictionibus iuris*, pp. 45 – 46.

139 Antonio Dadino Alteserra, *De fictionibus iuris*, p. 80.

1.4. An animate mosaic

The mosaic of personhood I have been tracing so far, much like any other mosaic, is essentially incomplete. Be it because it lacks pieces, because they are in themselves fragmentary, or because their historical rearrangement via interpretation has modified their original figure and position, what this brief genealogy shows up to this point is that personhood is not the solid structure it seems at first, but rather an animate, living, mutable mosaic, closer to the unsettled anatomy of Gérôme's *Galatée* than to the "cadaverous physiognomy" of a lacklustre marble. This already convoluted depiction of personhood would be challenged by Medieval thought, in an attempt to, on the one hand, effectively confine personhood to human individuals, while on the other, extending it to the metaphysical context of the personhood of the Christian god. The tapestry of personhood —to move the metaphor forward— will become a lot more complex.

So far, however, it is interesting to note that there does not seem to be —at least not yet— a clear criterion that defines personhood: not the body, for it can be a *Körper,* or a *Leib,* or an incorporeal being; neither perception nor a soul, for pluralities can be persons despite lacking them; not even "human", for a non-fully formed entity or an actual set of things can be persons.

Besides this missing touchstone, moreover, at least two questions remain. Firstly, if even things can be included in the realm of persons, what function does personhood actually serve? What does it ultimately imply to be or to have a person in these contexts? Secondly, and given that it seems to equally appear and disappear, what is the precise role of fiction in relation to the personhood, and why the interest or need for it? It is perhaps still early to cast a conclusive answer to these questions, but at least some conjectures are conceivable.

First off, if the way personhood works is difficult to grasp, it is because it seems to encircle a double or even an opposite function. According to Yan Thomas, the Roman conception of personhood, on the one hand, appears as something that reunites and gathers —which calls to mind Heidegger's depiction of the thing as a thing—, and on the other hand, as something that splits and divides. Thomas calls personhood a "unity of managerial order", "an abstract and consequently extensible unity" [140], one that, nevertheless, does not equate to the "physical or the psychological subject", but to whatever entity becomes capable of holding an estate[141]. However, to arrive at this managerial unity that allows to allocate —broadly speaking— rights and duties to several entities, a dissection must be performed, one that Yan Thomas defines as "the law (*le droit*) operating a veritable dissociation of subjects and bodies to compose 'the persons'"[142], adding that not only is *persona* double, but also "the

[140] Yan Thomas, *Le sujet de droit*, p. 101.
[141] Yan Thomas, *Le sujet de droit*, p. 100.
[142] Yan Thomas, *Le sujet de droit*, p. 99.

subjectum iuris as a the 'support of a given right'"[143], meaning that, as we have seen thus far, some bodies —*Körper* or *Leiber*— can be subjects, some bodies can be objects, some subjects can be either or none, and all of them can come to be, or cease to be, persons. On a similar line of thought, Roberto Esposito speaks of personhood as "a technical artifact that not only does not coincide with a given living being but splits it apart (*lo sdoppia*) into two different planes, to the point where it can refer to many individuals, or make a single individual take on several persons"[144], rephrasing Thomas' account.

While certainly Roman in origin as a juridical concept, *persona* is not the *nomen iuris* of a living being that belongs to the human genre[145]. Instead, and here lies the first conjecture, it is a mechanism by means of which a juridico-political order captures entities and renders them available for its disposition in the theatre of its rules. This mechanism does not recount the singularity of an entity, but rather denounces a fracture between an entity and the role it plays in said order, an *arte-factum* indeed, a device made by the law —unmistakably an *ars*[146], a *techné*— to introduce a role to be played in its theatre, so that the drama unfolds as intended, rendering some natural beings susceptible of juridico-political management and rearrangement. This is, of course, considering that the term *res* is always behind, acting as the catalyst between the 'thing as a thing' of the (natural) world and the thing as the all-encompassing (conventional) term for entities captured by the law. *Persona* is therefore, at least so far, a mechanism that renders some beings a thing-of-the-law —under the law, before the law—, cloaking them with certain characteristics specific to such a role, which in turn may differentiate them from —or equate them to— other entities as needed.

These characteristics, however, are mutable, and while sometimes it is true that *persona* comes to mean a fully-capable and alive member of the human genre, with a coded set of rights and freedoms, it is also true that *persona* can mean a woman, a slave, or a child under quite different conditions in terms of life, capacity, and freedom; it can mean a plurality, taken as if it were an individual; a not-yet-formed-human, counted as if it were already existing; or a collection of objects that can take the place of its late owner, or even become a person on its own. Capable or uncapable, inert or alive, human or not, *persona* is not double, but multiple, a mechanism that gathers things together for the purpose of management, and in doing so denounces a fissure: always one and many, an animate mosaic that breaths in and out the fragments of its own composition.

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143 Yan Thomas, *Le sujet de droit*, p. 101.

144 Roberto Esposito, *Due,* p. 109. Yan Thomas also speaks of "artifact" when introducing the topic of personhood: Yan Thomas, *Le sujet de droit*, p. 97.

145 Schlossmann's study on personhood actually begins with this division, saying that "the concepts 'person' and 'man' (*Mensch*) [...] do not coincide". He draws this conclusion from the personhood of pluralities, but also by saying that "slaves were not persons", which to me is not as immediate as it seemed for him: Siegmund Schlossmann, *Persona und prosopon,* pp. 1 and ff.

146 "As Celsus elegantly defines, the law is the art (*ars*) of what is good and just": Justinian, *Digesta*, 1.1.1.

In this genealogy, fiction serves as the counterpart of personhood. So far, I have mostly dealt with the pragmatics of juridical fictions, in the vein of Yan Thomas' definition of fiction as a "certainty of the false" (*certitude du faux*)[147]. Now, standing upon all of these Roman provisions that call or recall a fictitious texture, it would be prudent to enter the challenge of a deeper definition. It is worth clarifying that these fictions ought not be taken as imprisoned behind the walls of the juridical, or rather, that they *cannot* be restrained in this fashion given that they are a channel of communication between the inside and the outside of the legal realm, a threshold, a passageway of indetermination and transition. This approach to legal fictions must be seen not only as provisional, but also as a synecdoche, so that the part can in fact unveil the whole, so that the scale of the juridical fictions can foreshadow the much larger charter of fiction as a vast realm.

That being said, let us return to Yan Thomas's definition. For him, a juridical fiction "consists in disguising the facts, declaring them other than what they really are, and in drawing from this very adulteration and from this false assumption the legal consequences that would attach to their feigned truth, if this truth existed under the guise it is presented with [...] fiction —he concludes— requires above all the certainty of the false"[148].

This certainty of the false, upon which the fiction is built, contrasts with the *presumption*, a device that defines as already true something that is dubious, instead of creating something contrary to reality. The "ontological difference" between fictions and presumptions lies then in the fact that "the presumption gives effect to a conjecture that is by no means impossible" —*e.g.* the presumption of innocence, that calls for a verification of culpability—, while the fiction takes place as a distortion or a diversion (*détournement*) of truth, one that creates an alternative order of things[149]. Thus, in fiction, not an erasure of reality but a redrawing of its outlines and its rules; not a lie, but a fabrication of a different plane of truth upon which other "facts" can be given and other fictions can be born. This is why, according to Yan Thomas, the fictions of personhood are "particularly striking", for they allow life, birth, or death to be captured by the law "in a complete deviation (*écart*) from nature"[150].

Additionally, Yan Thomas remarks two characteristics of this departure "from the nature of things". On the one hand, the fact that fictions are "arbitrary", not in the sense of

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147 Yan Thomas, *Fictio legis*, p. 17. In an effort to bring together "Idealism and Positivism", Hans Vaihinger devoted an extensive analytic account of fictions and their role in science and philosophy, as "hypotheses that are known to be false, but which are employed because of their utility": Hans Vaihinger, *The Philosophy of 'As if': A System of the Theoretical, Practical and Religious Fictions of Mankind,* trans. by Charles Kay Ogden (London: Kegan Paul, 1935), p. xlii.

148 Given that the Romans did not usually provide an abstract definition of their concepts, much less a philosophical commentary on their own legal provisions, Thomas' extrapolates from Medieval legal thought rather than from Roman sources, particularly from Azo, Baldus and Cinus da Pistoia, who he cites by saying: "A very elaborate definition of Cinus da Pistoia, relentlessly copied afterwards by the jurists of the 14th and the 15th centuries, condenses in this regard more or less a century of canonical and civil doctrine: 'Fiction takes as true that which is certainly contrary to the truth' *in re certa contrariae veritatis pro veritate assumptio* (in C.J. 4,19,16)». All of this in Yan Thomas, *Fictio legis*, p. 17.

149 Yan Thomas, *Fictio legis*, p. 18

150 Yan Thomas, *Fictio legis*, p. 29.

capricious or unreasonable, but in the very literal sense of a decision, of a discretional act, of an *arbitrium*. In other words, there is "nothing evident nor necessary" about fiction, it is a choice that produces certain effects and that is usually made despite the existence of other alternatives[151]. This arbitrary decision of imposing a fiction in the place of some other legal procedure is interesting in itself, but it is more so when it involves a deviation from nature, so that the fiction over life or death takes the place of the actual fact.

This should immediately resonate in terms of the opposition between nature and order, between *physis* and *nomos*, a topic that presents quite early in Greek thought. In this framework, for instance, Sophocles' *Antigone* speaks of the "unwritten and immovable laws of the gods" (*ágrapta kásphalē theōn nómima*) as a justification for breaking Creon's decree[152]. In Plato's *Protagoras,* Hippias, the sophist, says that he regards other men as "kinsmen and intimates and fellow citizens by nature, not by law (*phýsei, ou nómōi*)", adding that the "law, despot of mankind (*týrannos ōn tôn anthrṓpōn*), often constrains us against nature"[153].

The subject is quite vast, and I do not intend to cover it all here, but I bring it up if only to note how Hippias —as conveyed by Plato— sees a clear opposition between nature and order, whilst this idea of certainty of the false in legal fiction implies a very different conception on behalf of the Roman *nomos*. Firstly, because if legal fictions can deviate from both truth and nature, and if they are contingent and by no means necessary, it is because the *nomos* is not in opposition to nature, actually quite the contrary, the former tends to re-present the latter, and only in exceptional cases a deviation is needed to solve a particular case that is not meant to constitute the rule. This is patent in the way the *Digesta* depicts natural law, not as "exclusive to humans but common to all animals of the land, and the sea, and even to birds" (*non humani generis proprium, sed omnium animalium, quae in terra, quae in mari nascuntur, avium quoque commune est*)[154]. Secondly, because this deviation conveys in itself an overturning of this relationship, perhaps not a clear an opposition as Hippias intended, but instead an indistinction that calls upon the question on reality. If, for instance, a captured soldier is "dead in life", *i.e.*, physically alive but dead nonetheless on account of an inescapable *nomos*, what is the actual reality of his existence? If the estate is indeed as definitory of personhood as Thomas seems to suggest, what is there for someone whose alive body holds no *patrimonium* whatsoever, having it been overstated and liquidated over the fiction of his death? Ultimately, is Colonel Chabert dead or alive?

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151 Yan Thomas, *Fictio legis*, p. 34.

152 Sophocles, "Antigone" in *Sophocles. Vol 1: Oedipus the king. Oedipus at Colonus. Antigone,* trans. by F. Storr. (Cambridge: Harvard University Press - Loeb Classical Library, 1962), 450 – 455.

153 Plato, "Protagoras" in *Laches, Protagoras, Meno, Euthydemus*, trans. by W.R.M. Lamb (Cambridge: Harvard University Press – Loeb Classic Library, 2006), 337c-d. Agamben has traced its implications in terms of sovereignty from Solon, Hesiod, and Pindar, see Giorgio Agamben, *Homo sacer*, pp. 36 and ff. For a recollection in the 20th century, see W.K.C. Guthrie, *A history of Greek Philosophy Vol. 3: The Sophists* (Cambridge: Cambridge University Press, 1977), pp. 55 and ff. And for a more recent approach, see Nihal Petek Boyaci Gülenç, "An Enquiry on *Physis–Nomos* Debate: Sophists", *Synthesis Philosophica* 61, 1 (2016) 39 – 53.

154 Justinian, *Digesta*, 1.1.1.3. Similarly, natural precepts are one of the sources of private law in *Digesta* 1.1.1.2.

At the depth of this threshold, the metaphor of the Borgesian map I introduced earlier develops in its full extent. In the short story *Del rigor en la ciencia*, as we have seen, the cartographers of a nameless empire extended a map in order for it to coincide precisely with its territory, to the point where they covered it completely. But the generations that followed did not mind the map and "left it to the inclemency of the sun and the winters", so that its "ruins [were] inhabited by animals and beggars"[155]. The map becomes indistinct with the territory it represents. In a similar way, in order to better dispose of entities, the juridico-political order traces categories and creates mechanisms that may cover them with seeming precision, but in fact these mechanisms split them apart, re-presenting rather than presenting those entities, and in doing so, some of them do not longer inhabit the territory but the map, and some even owe their very existence to the cartography: edifices that may not have a mirror "in reality" exist and are real in the map itself, an augmented reality of sorts that constitutes a new, distinct "nature of things", sometimes a clear mirror of *physis*, sometimes its utter distortion.

The second characteristic of fiction deepens this indistinction and comes in the form of a warning by Yan Thomas. Fictions, he claims, are not a matter "of causality but of imputation", and so there is "no mixture between being and not-being", nothing else to be found beyond a simple "legal technique". There ought not to be, he suggests, any consequences derived from juridical fictions beyond the limited scope of the legal effects they produce, and overall, no "substantialisation of the phenomenon of the artifice in law"[156]. In other words, Yan Thomas seems to think of these devices as narrow solutions for narrow problems: a cold scalpel —the metaphor is mine— applied to the cold body in an autopsy. I do not believe this is necessarily the case. It is true that the Romans, in principle, did not envision the creation of an order that allowed for a conscious contrast with —and even a deviation from— nature, at least they did not undertake the enterprise with this very purpose in mind. It is also true that they did not provide an extensive development of the implications of fictions beyond practical cases, but it does not follow that these mechanisms come to be as aseptic or as confined as Yan Thomas suggests. In fact, the very development of the Medieval commentary on fictions, from which he extracts his own definition, is proof that there is a rather fertile ground for fictions to be read as something else, precisely because they raise questions that cannot be answered by the restricted means of the law, summoning perspectives on reality and truth that call upon philosophy and even literature.

The warning might be telling, nevertheless. If fiction is indeed the certainty of the false upon which real effects take place, even against nature, it is a perilous procedure to say the least, given how it blurs the line between causality and imputation, given how it denounces the intricacy of the frontiers of a *nomos* and its consequences: does the *nomos* really oppose the *physis*, or rather it re-forms it, trans-forms it, or per-forms it? What does it mean if this process were indeed not based on truth, but on a consciousness of its denial? The "substantialisation

[155] Jorge Luis Borges, *Del rigor en la ciencia*, p. 265.

[156] Yan Thomas, *Fictio legis*, p. 36.

of fiction" is, up to a certain point, unavoidable. For instance, further ahead, Yan Thomas points out how the Roman provisions did not take nature to be a "pre-institutional reality" but an institution in itself, a state of affairs to which refer when the "second" institution of the law needed a common ground[157].

Thus, not one *physis* and one *nomos* in a relentless dialectic, but a nature that becomes itself an institution, multiplying the strata of reality and creating some natures more natural than others. This will be, among others, the angst of Medieval legal thought, which tried to reconcile such an apparent malleability of the real, by means of the law, with the nature of an omnipresent and omnipotent god that reigns and governs the universe. The fracture between the Roman and the Medieval conceptions of fiction, that Yan Thomas brings forward, will flourish in this instance amidst several paradoxes.

On the one side, Roman legal fictions are indeed technical devices for practical effects, appearing always in formulas — "*marqué formulairement*", says Thomas[158]— that nonetheless intertwine law and fact, *physis* and *nomos*, or plainly speaking, fiction and reality with no issues whatsoever. Hence why the recumbent inheritance acts not only *as if* it were a person but can also *be* a non-human person; hence why the captured soldier *is* already dead, and not only is *as if* he were, even if he is in fact physically alive during his captivity. All of this because the Romans, "as good pragmatists" utilize the *as-if* to "liberate (*affranchir*) the law from the [logical] principle of non-contradiction"[159], fabricating instead what seems to be a 'pragmatic' principle of contradiction, via which things can be simultaneously alive and dead, one and many, persons and things, regardless of their 'natural' status and because nature is indeed an institution, a fabrication, and not something that remains at the outskirts. In other words, Roman law inhabits, simultaneously, indistinguishably, both the map and the territory.

On the other shore, as will be seen in depth further ahead, Medieval efforts will trace a severe distinction between the realms of law and fact, to the point where the Medieval notion of fiction would be completely opposed to the Roman, and instead of founding fictions upon the certainty of the false, Medieval legal fictions will be transplanted to have their soil in truth and in "actual" nature. Thus, an entirely different development of fiction will appear, one in which "fiction can only be extended to things that are not impossible for the nature of things (*quod per rerum natura non est impossibile*)"[160], or, as Azo and Accursius will point out, where "[nothing] can be feigned about facts as it can be feigned about the law" (*circa facta non potest fingi sicut circa iura*)[161]. Finally, several texts will repeat a maxim by Baldus' and Bartolus' that

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157 Yan Thomas, *Fictio legis*, pp. 37 - 38. Yan Thomas provides, as an example, the contrast between "natural" filiation and "adoptive" filiation, both of which are certainly legal, *i.e.,* social, constructs. See also Yan Thomas, « L'institution juridique de la nature : remarques sur la casuistique du droit naturel à Rome » dans Yan Thomas, *Les opérations du droit*, eds. Marie-Angèle Hermitte et Paolo Napoli (Paris : Seuil-Gallimard, 2011).

158 Yan Thomas, *Fictio legis*, p. 31.

159 Yan Thomas, *Fictio legis*, p. 36.

160 Accursius, *Digestum vetus: mit der Glossa ordinaria von Accursius Florentinus und Summaria von Hieronymus Clarius* (Venice: Baptista de Tortis, 1494), 17.2, p. 267.

161 Accursius, *Digestum vetus*, 4,8.19, p. 94, and 4.8.21, p. 100; Yan Thomas, *Fictio legis*, p. 40.

overturns the function of fiction: *fictio imitator naturam*, fiction imitates nature[162]. Where Roman fictions feigned a different state of things in order to solve specific cases, Medieval fictions will only appear in the framework of the realism of the possible: indeed, a clear reversal of the purpose of legal fictions in the Roman corpus. While understandable in the context of Medieval thought, this necessity of fiction as natural or possible will face a challenge: if the only thing that can be modified is the law, and not the nature of things, *i.e.*, the facts, then what is the purpose of fiction? A mere repetition of nature that ultimately seems the closest fiction can get to be a cold and inert device of the law, and yet it remains to be seen if nature is indeed a static and immovable opposition to the *nomos*, or an institution that confounds with it. In any case, such a conception, as Thomas himself points out, will be revaluated as soon as the 16th century, where fictions shall appear again in the realm of facts[163].

The fruitfulness of its characters shows that fiction is not a mere legal technique, not only because, as I have said, fiction is not a monopoly of the law, but also because it represents, just as personhood, another threshold between its inside and its outside. What the Roman fictions so far have showed is that they provide with strata and substrata of reality, that they encompass a diverse nature of things, upon which it is possible to construct and rearrange that very reality, an aperture that may prove indeed fruitful and perilous. If, so far, *persona* seems to be a mechanism that allows to capture entities for their disposition in the theatre of the *nomos*, then —second conjecture— fiction is one of the mechanisms by which this theatre constitutes itself, not upon the clear distinctions between *physis* and *nomos*, persons and things, and so forth, but taking those distinctions as part of its very production, a threshold by which one can become the other, at the same time an entrance and an exit, an equally animate interplay of mortar and surface that allows the mosaic to come to life and depict neither the map nor the territory, but the ruins of both.

If Medieval thought would challenge the Roman foundation, it would also settle the path for a different array of fictions to incorporate God, the State and Humanity into personhood. All these majuscule-concepts will rely, among others, on the counterpoint of *persona* and fiction to sustain themselves, a polyphony that, in its variations, creates a chromatic fantasy that has only begun to develop its motifs.

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Before moving forward, an excursus is necessary to address a couple of terms that have already appeared and will appear recurrently. I have used the term *mechanism* thus far to address both person and fiction, and although it has also appeared in several instances, the

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162 This refers to the commentary of passage 17.2 ("*pro socio*") in the *Digesta*. The references are indeed quite extensive. As an example, see Paulus de Castro, *Segunda Super Digesto Veteri* (Lyon: Trechsel, 1535), *De locuto et conducto, Qui impleto*, 2. p. 128. In the 18th century, it will appear as a "*brocardicum*", see Gottlieb Gerhard Titius, *De fictionum Romanarum natura et inconcinnitate* (Leipzig: Schedius, 1724), §48, p. 30.

163 Yan Thomas, *Fictio legis*, pp. 41 – 42.

concept remains undefined. The term, as I take it, is entangled with another recurrent concept: *dispositif*. Mechanism and *dispositif* are by no means neutral or common vocables, but rather technical terms that imply a certain methodological approach as well as a certain theoretical conception from which this work stems, and thus they call for at least a brief attempt at definition.

First off, a note on translations. English does not have a specific term for the French *dispositif,* or the Spanish and Italian *dispositivo*. A common translation uses *apparatus*, but the felicity of the term is at the very least dubious. On the one hand, it could apply to two different concepts: *appareil* and *dispositif*, both of which have different implications in, for example, Foucault's work. On the other hand, while *apparatus* conveys a set of tools, materials, or equipment, which to some extent approaches the idea that *dispositif* and *dispositivo* convey, it does also connotate a structure, an edifice or any other notion of stability which would be in principle opposed to the definition and would pervert the sense of the concepts. Moreover, even though *dispositivo* and *dispositif* translate seamlessly in most romance languages, they do not mean the same thing, and thus introducing a neologism such as 'dispositive', that departs from this apparent transparency, could be counterproductive. Thus, I shall be using *dispositif* and *dispositivo*, considering the remarks that follow[164].

The point of departure is, of course, Michel Foucault. While *dispositif* is virtually omnipresent in Foucault's work, he did not provide a univocal definition of the concept, precisely because it conveys something that fundamentally escapes a definitive characterisation. However, in an interview conducted on July 10, 1977[165], Foucault did provide several accounts of what he took *dispositif* to mean. Firstly, he said that *dispositif* is a "decidedly heterogenous ensemble of discourses, institutions, arrangements, architectures, reglementary decisions, laws, administrative measures, scientific statements, philosophical, moral, and philanthropic propositions". The "network" (*le reseau*) that is established upon this heterogenous ensemble of "the said as well as the unsaid" is the *dispositif* [166].

Secondly, not only the link or the network between those elements but the very nature of the link, so that, for instance, a discourse can appear "as the programme of an institution" as well as an element that "justifies or hides" a certain practice, a "kind of game" that implies "changings of positions [and] modifications of functions", all of which constitute the nature of the link that was established upon the ensemble[167].

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164 For a discussion on the translation, see Tom Frost, "The *Dispositif* between Foucault and Agamben", *Law, Culture and the Humanities*, 15, 1 (2019): 151– 171, p. 159. For a compilation of the appearances of the term and its broader spectrum, including the issues of translation, see Greg Bird and Giovanbattista Tusa (ed.), *Dispositif: A Cartography* (Cambridge: MIT Press, 2023). In their respective contributions to the anthology, Tusa argues that "perhaps only a 'monstrous' translation can give an account of what we call "*dispositif*" (p. 488), while Bird poses that the Gallicism should be assimilated without italics: dispositif (p. 4).

165 Michel Foucault, « Le jeu de Michel Foucault », dans *Dits et écrits II : 1976-1988* (Paris : Quarto Gallimard, 2017), 298 – 329.

166 Michel Foucault, *Le jeu de Michel Foucault*, p. 299.

167 Michel Foucault, *Le jeu de Michel Foucault*, p. 299.

Thirdly, Foucault understands by *dispositif* a certain "formation" that has as its function "the response to an urgency", a function that he calls "strategic" providing the example of "the *dispositif* of control-subjection of madness", which served a purpose of organising a floating population that a mercantilist society found cumbersome[168]. Thus, to encompass everything in a definition, one could say that a *dispositif* is the heterogenous network established upon an ensemble of discursive and non-discursive elements, whose nature implies a game of change and mutation —of appearance and disappearance—, which serves a strategic function.

Foucault is quick to specify that this strategic function does not imply a "meta or transhistorical will" that governs the *dispositif*. It is neither a decision nor an act that can be attributed to a singularity, but rather a certain emergence of a state of things in which the *dispositif* comes to be. The word 'emergence' is mine in this context but is not casual. In *Nietzsche, la généalogie, l'histoire*, Foucault speaks of emergence in relationship to the way in which Nietzsche understood the origins of morality, not springing from a supernatural source (an *Ursprung*) but coming forth indeed as an emergence (*Entstehung, émergence*), as the product of a "certain state of forces", as the "entrance of those forces into the scene", "an irruption" for which "no one is responsible"[169].

With this in mind, it is possible to understand Foucault's example of the *dispositif* of imprisonment and the meaning of "strategic" in this context. Incarceration emerges as an "effective and reasonable instrument" to dispose of deviations in an economical way —*i.e.,* in a cost-effective disposition of resources—, that had, nevertheless, an unforeseeable result: the creation of a "delinquent environment" (*milieu délinquant*). The *dispositif* shows its strategic nature by rechannelling the unforeseen effects in order to profit from them, so that the delinquent environment can be utilised for political or economic purposes[170], for instance, cheap labour as a method of resocialisation in the penitentiary system.

Finally, Foucault will outline the notion of *dispositif* by saying:

> The *dispositif* is thus always inscribed in a game of power, but also always tied to one or many boundaries of knowledge (*savoir*) that are born in the game of power, but just as much, are also conditioning it. That's

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168 Michel Foucault, *Le jeu de Michel Foucault*, p. 299.

169 Michel Foucault, « Nietzsche, la généalogie, l'histoire », dans *Dits et écrits I: 1954-1975* (Paris : Quarto Gallimard, 2001), 1004 – 1024, especially in pp. 1011 and ff. This marks, incidentally, the shift in Foucault's thought from an archaeological account, that traces the *arkhé* of a certain phenomenon, to a *genealogical* approach in which any phenomenon comes forth as this emergence, as this provenance (*Herkunft*; another important term in this account) that stems from unearthing and reframing a multiplicity of relations. On the topic of Nietzsche's genealogies, Deleuze would say: "The philosopher is a genealogist, not a judge from a tribunal in Kant's fashion, nor a mechanic in a utilitarian fashion. The philosopher is Hesiod [...] Genealogy means at the same time the value of the origin and the origin of values": Gilles Deleuze, *Nietzsche et la philosophie* (Paris : Presses Universitaires de France, 2010), p. 2. I would, if I may, pluralise even further: the values of the origins and the origins of values. This, I believe, is what Foucault points towards in his notion of emergence and *dispositif*.

170 Michel Foucault, *Le jeu de Michel Foucault*, pp. 299 - 300. Foucault gives a different example: a profit upon pleasure based on the organisation and disposition of prostitution.

> what the *dispositif* is: strategies of force relations supporting types of knowledge, and also supported by them[171].

Again, an interplay of knowledge and power that echoes throughout Foucault's work, by which *dispositif* comes to be said heterogenous network established upon an ensemble of discursive and non-discursive elements, that emerge and converge to form strategies of power and knowledge that mutually condition the way they operate.

On a different note, Deleuze will approach the problematic concept of the *dispositif* with a telling image: it is a tangle, a skein (*écheveau*). A skein of yarn is indeed an ensemble, but as Deleuze says himself, it is "multilinear", "composed of threads of different nature" that "follow directions, trace processes always in disequilibrium" and as much as they get close to one another, they also split apart, so that each thread or line is "fractured", "bifurcated and bifurcating, subjected to derivations"[172].

What are the threads that compose the *dispositif*? "Lines of visibility, of enunciation, lines of forces," but also "lines of rupture, of fissure, of fracture"[173]. That which Foucault called the discursive and non-discursive, the said and the unsaid that appear and disappear, Deleuze takes it to mean an entanglement of contradictions, which renders it even more difficult to point out and define, for a *dispositif* that verbalises can also silence, one that casts a shape can also break it: two different images that more or less correspond to what I called a contrapuntal interplay, in which subject and countersubject appear and disappear; or an animate mosaic that rearranges its fragments.

Moreover, Deleuze draws out two methodological consequences that derive from "a philosophy of *dispositifs"*. First, the "repudiation of universals" (*e.g.,* "the One, the Truth, the Subject"), on account of them being processes in themselves (*e.g.,* "unification, verification, subjectivation") that depend and spring from a "certain *dispositif*"[174]. In other words, following this example, not one-true-subject, but *dispositifs* that unify, verify, and subjectify, creating such categories. Second consequence: the change of orientation in terms of temporality. Philosophy does no longer try to reach out for "the Eternal", but instead aims at understanding "the new", the "variable creativity" produced by *dispositifs*.

Upon these two methodological aspects, Deleuze traces two groups in which the threads of the *dispositif* can fall. On the one hand, threads of stratification or sedimentation. On the other hand, threads of actualisation or creativity. Following Foucault's work, Deleuze exemplifies these two groups as the strata of subjectivity produced by the clinic, the prison, etc., and the actualisation of said subjectivity in face of contemporary *dispositifs*[175].

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171 Michel Foucault, *Le jeu de Michel Foucault*, p. 300.

172 Gilles Deleuze, « Qu'est-ce que c'est qu'un dispositif ? » dans *Deux régimes de fous : textes et entretiens 1975 – 1995* (Paris : Minuit, 2003) : 316 – 325, p. 316.

173 Gilles Deleuze, *Qu'est-ce que c'est qu'un dispositif ?,* p. 320.

174 Gilles Deleuze, *Qu'est-ce que c'est qu'un dispositif ?,* p. 320. On the rejection of universals, see Michel Foucault, *Du gouvernement des vivants : Cours au Collège de France 1979-1980* (Paris : Gallimard, 2012), p. 78.

175 Gilles Deleuze, *Qu'est-ce que c'est qu'un dispositif ?,* pp. 324 – 325.

While evidently not the same, the *dispositif* in Deleuze builds upon Foucault's conception, fraying the fabric and exposing the entanglement of its possibilities in terms of methodology. This continuity will be broken when the *dispositif* is read as a *dispositivo*.

When Agamben reads the notion of *dispositif* in Foucault, he begins by addressing what Deleuze had already deducted, that the universals can no longer subsist, but instead of taking the threads of this dissolution as a skein, Agamben understands that the *dispositifs* are "that which in the Foucauldian strategy takes the place of [those] universals", since, he says, Foucault is not interested in "this or that measure of police, in this or that technology of power" but instead in the network that is established between these elements"[176]. The network, according to Agamben, encompasses a level of abstraction that amounts to new universals.

Further down this line of interpretation, Agamben traces *dispositivo* as stemming from *dispositio*, the Latin translation for *oikonomia*: a disposition, an arrangement, a government; an idea that will appear prominently later in the discussion of the trinitarian doctrine. For the time being, what is noteworthy is that *dispositivi,* according to Agamben, always imply a "process of subjectivation", that they must "produce their subject". This in turn ties to what Heidegger called a *Ge-stell*, a technique, "whose etymology is similar to that of *dis-positio* and *dis-ponere*"[177], so that his reading of Foucault implicates "an *oikomonia*, *i.e.,* a set of practices, knowledge, measures, and institutions whose purpose is to manage, govern, control, and direct the behaviour, gestures, and thoughts of men (*uomini*) in a purportedly useful sense"[178].

What was a heterogenous ensemble in network for Foucault, or a tangle of sedimentation and actualisation in Deleuze, in Agamben becomes anything that subjectifies, an all-encompassing term that fundamentally breaks with the non-linear or multilinear conception of *dispositif*, framing *dispositivo* in a totalising fashion, so that everything that exists (*l'esistente*) is divided into two groups: the "living beings or substances", and the "*dispositivi* in which they are ceaselessly caught"[179]. Under this conception, he says:

> I will call *dispositivo* literally anything that in some way has the capacity to capture, direct, determine, intercept, shape, control and secure the gestures, conducts, opinions, and speech of living beings. Not only, therefore, prisons, asylums, the Panopticon, schools, confession, factories, disciplines, juridical measures, etc., whose connection with power is, in a way, evident, but also the pen, writing, literature, philosophy, agriculture, the cigarette, navigation, computers, mobile

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176 Giorgio Agamben, *Che cos'è un dispositivo* (Roma: Nottetempo, 2006), p. 13.

177 Giorgio Agamben, *Che cos'è un dispositivo*, pp. 15 – 19. Heidegger, calls the technique, first, an *instrumentum*, an *Einrichtung* —a possible translation of *dispositif*—, which will later develop as *Ge-stell*, an im-position, and will provide Agamben with the closeness to dis-position: see Martin Heidegger, *Die Frage nach der Technik*, §10 and §§23 – 24, pp. 7 – 21.

178 Giorgio Agamben, *Che cos'è un dispositivo*, p. 20.

179 Giorgio Agamben, *Che cos'è un dispositivo*, p. 21.

> phones and —why not— language itself, which is perhaps the most ancient of *dispositivi* [180].

This poses *dispositif* and *dispositivo* not simply as different terms, but almost as antipodes. While in Foucault and Deleuze all these elements are interrelated strategically to respond to an urgency or entangled in a particular game of knowledge and power, in Agamben —admittedly, in the latter Agamben— they become, practically speaking, a new *summa divisio*: living beings on one side and *dispositivi* on the other. This is nothing close to a game or an entanglement, but a metaphysical approach that is totalising precisely because it aims to create a new series of universals.

I do not believe Agamben's reading is sound when he takes *dispositifs* to be a new set of universals in Foucault. Foucault's efforts aimed to show the exact contrary: a dis-continuity, a contingency, and an emergence of *dispositifs*; which would in turn explain his reluctance to cast a mantle of definition upon them. Regardless, Agamben has forged his own definition based upon the logic of a *dispositio* and would go ahead by saying that the subject is born out of the contact between *dispositivi* and living beings, so that the total sum of existence is enclosed in this economical trinity of the living, *dispositivi,* and subjects. Anything else, so it seems, is excluded from the realm of existence.

Esposito follows a similar path in his own coming to terms with the notion of *dispositivo*[181]. According to him, the common ground between Foucauldian *dispositifs* and the Heideggerian conception of technique (*Gestell*) is "the production of something intended to subject (*assoggettare*) existence" by means of separating said existence from itself. Hence why, always according to Esposito, subjects are situated in an order of things, a disposition from which they "cannot escape", precisely because it is said disposition that which subjects —*subjectifies*— them, that which renders them *subjects*[182]. Now it is possible to see what he means when he says that *persona* is not only an "artifact", but also "for the Romans [...] a *dispositivo* that separates the physical and psychical identity of an individual from his juridical identity"[183]. According to Esposito, *persona* constitutes in the Roman context a device that subjectifies the individual human being by creating its double, one that "stays" in reality and one that plays a role in the juridical. While certainly close to my own conjecture, I am far from defining *persona* so categorically, considering the presupposition that Esposito —or Agamben for that matter— takes in terms of *dispositivo.* Furthermore, if I speak of *mechanism,* it is because I believe there is a different relation to be addressed.

What is, therefore, a mechanism? The term is, naturally, not mine. In his course, *Sécurité, Territoire, Population*, Foucault envisioned at least three ways in which power could be exercised, in what he called the legal and disciplinary *mechanisms,* as well as the *dispositif de*

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180 Giorgio Agamben, *Che cos'è un dispositivo*, p. 22.

181 Roberto Esposito, *Due*, pp. 18 – 24.

182 Roberto Esposito, *Due*, p. 30.

183 Roberto Esposito, *Due*, p. 109.

sécurité[184]. These were sets of devices and techniques constructed by distinct ways of exercise and application of power, and with distinct times of historical relevance (albeit not restricted to a specific epoch), that allowed for different degrees of inclusion, exclusion, and coercion, but also different ways of understanding, exercising, and most importantly producing subjects, liberties, lives. Briefly, the legal mechanism was characterised by a prohibitive technique (enunciating what *cannot* be), the disciplinary mechanism was characterised by a prescriptive technique (enunciating what *must* to be), while the *dispositif* of security "neither prohibits nor prescribes [...] but annuls [reality], or limits it, or dampens it, or regulates it"[185]. Departing from this idea, Foucault coined the term *gouvernementalité* [186] —to which I have previously alluded— to designate a certain way to exercise power that does not only command but governs, that is, manages, administers, and dispenses both "men and things" (*des hommes et des choses*)[187] —a phrasing even more relevant in analysing the play of (in)distinction between both concepts.

I believe this correlation between governmentality and the *dispositif* of security to be definitive in Agamben's own conception of *dispositivo*, but it is also definitive in the difference between mechanism and *dispositif*.

Firstly, if Agamben is able to link his notion of *oikonomia* or *dispositio* to the *dispositivo*, it is not only because he finds an etymological link, which undoubtedly exists, but because it is in the framework of the *dispositif de sécurité* where Foucault plays along the idea of a heterogeneity of devices, procedures, and means inserted in the reciprocation of knowledge and power, that instead of performing only one action —namely prohibiting or prescribing— , aims to manage persons and things, but also the techniques themselves in what Foucault had previously —less than a year prior to the lecture— called a "strategy". A strategic link placed upon the heterogenous ensemble of techniques is exactly what defines *dispositif*, and it is thus the reason why "that which neither prohibits nor prescribes but annuls or regulates" is called a *dispositif*. Furthermore, if governmentality is placed upon *dispositifs*, it is because the administration, management, government and, indeed, *oikonomia* and disposition are at play, not in the massive partition of existence that Agamben had in mind, but simply as the emergence of mechanisms, discourses, architectures, gestures, tactics, and relations of knowledge and power that flourish in their contingency.

A recent example should prove revealing. During the COVID-19 pandemic, applying Foucault's approach, one could see the legal mechanism in the prohibition: restriction of movement and contact, curfews, and so forth. The disciplinary mechanism manifested itself in the prescription: wearing a mask, entering and leaving spaces at certain hours and in a determined fashion, and of course, vaccination[188]. The *dispositif de sécurité* showed itself in the

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184 Michel Foucault, *Sécurité, territoire, population,* p. 7.

185 Michel Foucault, *Sécurité, territoire, population*, p. 48.

186 Michel Foucault, *Sécurité, territoire, population*, p. 111.

187 Michel Foucault, *Sécurité, territoire, population,* p. 100.

188 This is neither a moral nor a political evaluation. That the measures were needed and useful, some more, some less, is undeniable. Moreover, that the vaccine was necessary and proved to be the measure that allowed the pandemic

regulation of these elements: when and how to apply them, when and how to ease them off, heightening or alleviating their intensity in response to, *e.g.*, the number of deceases, the hospital resources available, and the impact of the measures on the economy. The exercise of power, the management, and administration based on the *dispositif* — the heterogenous link that is placed upon the contingency of a pandemic— is precisely the *gouvernementalité*:

> By "governmentality" I mean the set of institutions, procedures, analyses and reflections, calculations and tactics that make it possible to exercise this very specific, albeit very complex, form of power, which has the population as its main target, the political economy as its main form of knowledge, and the *dispositifs* of security as its essential technical instrument[189].

Indeed, a disposition, but not one half of a theological or metaphysical carving which would almost imply the meta or transhistorical will Foucault himself casted aside. Rather, something much more situated in a historical framework, or even more so, in a circumstantial framework, whose emergence allows for a certain exercise of power to develop and mutate. Elsewhere, Foucault would define this as straying away from what philosophers are traditionally occupied with, namely "the eternal, that which doesn't move, that which remains stable under the iridescence of appearances", but instead by the event (*événement*)[190]. This difference of frameworks and interests is what separates Foucault from Agamben.

Secondly, this shows that there is a part-whole relationship between mechanism and *dispositif*, at least in Foucault's conception. A mechanism is one of the ways in which a *dispositif* could act —*v.gr.,* legal and disciplinary mechanisms in the political response to the pandemic—, and correspondingly, a *dispositif* is itself one of the instruments that governmentality ensues, albeit not necessarily the only one. Under this fractal of an edifice that preserves, and is constituted by, heterogeneity, *mechanism* would come to mean the way in which the *dispositif* itself gets a grip of entities, a device or a technique that guarantees their apprehension, that responds to and forms part of a *dispositive*, ensuring its functioning. In the case of person and fiction, the *dispositif* is that of the juridico-political order, which in turn deploys several other mechanisms and interacts with other emergencies, with other contingencies, not moved by an *oikonomia* of existence but instead by the strategic entanglement of knowledge and power, blooming as a network in which some things may occupy a nodal point, but not as a necessary, universal, or eternal condition.

Likewise, if person and fiction are taken here as "thresholds", it is because they are places of transition and indetermination, places where one entity transmutes into something

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to come to an end is also out of the question. This does not mean that these measures do not respond to these constructs: they were prohibitions and prescriptions, legal and disciplinary mechanisms in the framework of a *dispositif* of security, which is not to say that they were necessarily or immediately right or wrong.

189 Michel Foucault, *Sécurité, territoire, population*, p. 111.

190 Michel Foucault, « La scène de la philosophie », dans *Dits et écrits II: 1976-1988* (Paris : Quarto Gallimard, 2017), p. 572.

else, performing the function as well as the mutation of the *dispositif*. If I may use an analogy with biology —cautiously, exclusively as an image given the dangers of biologistic approaches— the mechanism operates as a membrane protein in a cell: permeable but present, it introduces or expels, embraces or excludes and ultimately serves as a passageway between the inside and the outside. Furthermore, it is conspicuous that these mechanisms can be managed and disposed of —hence why personhood and fiction can be extended or abridged if needed—, but such a management emerges always in the framework of discontinuity, of this game of appearance and disappearance that I have traced so far.

If I call upon the figure of the fractal it is because the mechanism itself can be seen at a closer range, so that it shows the wide arrange of discourses, measures, discourses, tactics, and calculations that render the capture of an entity possible: a law —properly speaking, the product of a legislative body—, an executive decision, a judicial ruling, but also social demands, art, literature, and the very act of thinking can have a say in this disposition and redistribution. Likewise, the mechanism can be seen from afar as constitutive of a *dispositif*, and in doing so even the *dispositif* itself could become, at a certain distance and in the strategic development of the emergence, another tactic, another technique, another mechanism.

A glossary of Foucauldian terminology is yet to be anthologised, but if it were, the project would need moveable types that allow for an endless recomposition. If *persona* and fiction are deemed so far mechanisms, it is because their function is never anchored, but rather always transmigratory.

2. THEATRE, GRAMMAR, THEOLOGY, REASON

2.1. One body, many souls

The mosaic in which both mechanisms interact has become, just as the notion of *dispositif*, larger and richer, but also more fragmentary. In terms of personhood, in a development of centuries that Pierre Hadot appropriately framed as going "from Tertullian to Boethius"[191] —that is, from the 2nd to the 6th centuries of the common era—, the movement would imply the personification of the Christian god, on the one hand, and the enclosure of *persona* within the confines of human individuals, on the other. In terms of fictions, the movement would go, as anticipated, from the "certainty of the false" to an imitation of (the possibilities of) nature, and it would see the introduction of a moral conception akin to Christian thought.

However, before entering the realms of Medieval thought, I would like to remain for a little longer on the threshold. So far, personhood has been linked to the pragmatics of the juridical, but when it comes to the personhood of God[192], the Greek terms *prosopon* and *hypostasis* will come to join the Latin *persona* in the constitution of the concept, springing not only from the equivalence of translations, but also on account of the legal, the grammatical, the theatrical, and the philosophical conceptualisations that had been built around these terms. Beyond the reconstruction of the terminology and its arrival at Christian thought, what matters is that the juridical was indeed not the only realm where the concept of person would appear and where it would intertwine with fiction, admittedly under different lenses.

Again, Aulus Gellius provides an interesting insight, framing the etymology of *persona* on the theatrical mask that allows the voice of the actor to resonate on the stage:

> Wittily, by Hercules, and skilfully, Gavius Bassus interprets in the books he composed *On the Origin of Words* where the term "*persona*" comes from; he conjectures that this term was formed from resounding (*personando*). "Because", he says, "the head and mouth covered by the mask of the person, with only one way to emit the voice, since it is neither vague nor diffused but gathered and concentrated into a single exit, produces clearer and more resonant sounds. Therefore, since that facial covering makes the voice resonate and amplify, it was called '*persona*' for that reason, with the letter 'o' lengthened due to the form of the word[193].

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191 Pierre Hadot, « De Tertullien à Boèce. Développement de la notion de personne dans les controverses théologiques », dans *Problèmes de la personne : Colloque du Centre de Recherche de Psychologie Comparative* (Berlin: De Gruyter Mouton, 1973), 123 – 134. The article has been reproduced more recently in an anthology of Hadot's work: Pierre Hadot, *Études de patristique et d'histoire des concepts* (Paris : Les Belles Lettres, 2010).

192 In a pre-Christian framework, if one takes personhood to be equivalent to human, Cicero's *On the nature of gods* presents an interesting discussion that faces Epicurean and Stoic conceptions. See Cicero, *De natura deorum*, trans. by H. Rackham (Cambridge: Harvard University Press – Loeb Classical Library, 1951), I.18.46 – 49; I. 24. 74 and ff.

193 Aulus Gellius, *The Attic Nights*, 5. 7

Persona, then, as a mask, a device that allows the voice to *per-sonare*, that is, to sound-through or to re-sound. As René Brouwer notes, this etymology does not sustain itself, and it is generally rejected as spurious, probably even by Aulus Gellius himself when says "wittily and skilfully"[194]. However, while the construction of the term from *personare* is rejected, the link to the mask is certainly not. Brouwer poses that, as of today, it is generally thought that the word *persona* springs from a character of Etruscan origins, Phersu, described as "a figure participating in games of more or less violent sorts that honour the deceased, with a bearded mask as his most conspicuous attribute", where *phersuna* denotes a possessive adjective meaning "belonging to Phersu" and ultimately will relate to his mask rather than to Phersu himself. The Romans, it seems, adopted both the term and the funeral rites involving masks from the Etruscan, and thus *persona* will come to embody the representation of the ancestors[195], a representation that not coincidentally Marcel Mauss define as "man fabricating in there an overlapping personhood" (*l'homme s'y fabrique une personnalité superposée*)[196].

Additionally, the filiation of mask and *persona* will appear in the Greek *prosopon*, which referred to the mask as well, particularly in the framework of theatre, but also more immediately to the *face*. As Frontisi-Ducroux extrapolates from the etymology, *prosopon* is "that which is before the eyes of an observing subject [...] a collection of elements that 'offer themselves to the gaze'", not in a passivity, but in a "reversibility" that renders them both observed and observers[197].

The appearance of the term in both senses is vast, so I will limit myself here to a couple of examples. In the *Iliad, prosopon* appears as 'face' when the news of Patroclus' death reach Achilles and he "defiles his graceful face" (*charíen d'ēïschyne prósōpon*) with dust in sorrow[198]. On an entirely different note, of an anatomical sort, Aristotle writes in the *Historia Animalium* that

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194 René Brouwer, "Funerals, Faces, and Hellenistic Philosophers: On the origins of the concept of person in Rome", in *Persons: A History*, ed. by Antonia LoLordo (Oxford: Oxford University Press, 2019), p. 27.

195 All of this in René Brouwer, *Funerals, Faces, and Hellenistic Philosophers*, pp. 20 – 21. He refers to three sources in order to gather his own account: Ingrid Krauskopf, "Phersu," in *Dizionario della civiltà etrusca*, ed. Mauro Cristofani (Florence: Giunti, 1985), 281–289; Gertraud Breyer, *Etruskisches Sprachgut im Lateinischen unter Ausschluss des spezifisch onomoastischen Bereiches* (Leuven: Peeters, 1993), 373–376; and Jean-René Jannot, "Phersu, phersuna, persona," *Publications de l'école française de Rome* 172 (1993): 281–320. Marcel Mauss refers to the same etymology with the aid of Benveniste, adding that "materially speaking, the institution of masks, particularly ancestral masks, seems to have had its main focus in Etruria. The Etruscans had a civilisation of masks": Marcel Mauss, « L'Esprit Humain: La Notion de Personne. Celle de "Moi"», *The Journal of the Royal Anthropological Institute of Great Britain and Ireland*, 68 (Jul. – Dec. 1938), 263-281, pp. 274 – 275.

196 Marcel Mauss, *La Notion de Personne*, p. 273.

197 Françoise Frontisi-Ducroux, *Du masque au visage : Aspects de l'identité en Grèce ancienne* (Paris : Flammarion – Champs arts, 2012), p. 41. Hannah Arendt, in turn, would say that "the mask as such obviously had two functions: it had to hide, or rather to replace, the actor's own face and countenance, but in a way that would make it possible for the voice to sound through", adding that in the metaphor of *persona* the role would also allow for the voice of the private homo that holds it to "sound through" in the public sphere: Hannah Arendt, *On Revoution*, p. 102.

198 Homer, *The Iliad*, trans. by A.T. Murray (Cambridge: Harvard University Press, 1924), 18. 22 – 24.

"the part below the skull is named the face (*prósōpon*), but only in man, and in no other animal, as we do not speak of the face of a fish or of an ox"[199].

On the other hand, in the sense of a mask, the term appears most prominently in Aristotle's *Poetics*, where he says that the mask (*prósōpon*) is an example of the distortion of reality performed by comedy[200], although he claims it is unknown who introduced its use in plays[201]. Brouwer, in turn, reports a passage of the *Byzantine Suda* where the same term is used in both senses, saying that Thespis performed his tragedies initially by "rubbing his face (*prosopon*) with white lead", and later "he also introduced the use of masks (*ten ton prosopeion chresin*) made purely out of linen"[202].

I would like, however, to focus on a remarkable passage from an author that was, incidentally, Gaius' contemporary: Lucian of Samosata[203]. In the *De Saltatione,* a treatise on dancing and performing, written in the form of a dialogue, Lucian narrates the surprise of a foreigner —a barbarian, in his own terms— when he saw "five masks (*prósōpa*) arranged for only one interpreter", which prompted an intriguing comment by the foreigner:

> This body (*sōma*), indeed, is one, but it contains many souls (*pollàs tàs psychàs*)[204] [205].

It is curious how this passage mirrors the discussion on the personhood of pluralities. Where Roman law was occupied with a univocal personhood taking the place of a multiplicity, Lucian was calling upon its inversion, namely the existence of a plurality of persons in a singular body. Thus, where Dadino Alteserra yearns for a soul in pluralities, attributing

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[199] Aristotle, *Historia Animalium*, 491b9. Frontisi-Ducroux points out that this anthropocentrism is not generalised, as Hesiod, for instance, speaks of the *prosopon* of several animals, and in fact so does Aristotle further ahead in the very same text referring to the *prosopa* of apes having many resemblances to that of the *anthropos* (520a25), or the *prosopon* of the chameleon resembling that of a baboon (503a18), both of which are referenced by the English commentator. Regardless of these contradictions, what is remarkable according to Frontisi-Ducroux is how Aristotle presents the *prosopon* in a close relationship with the voice and the gaze, even from this very physiognomic perspective: Françoise Frontisi-Ducroux, *Du masque au visage*, p. 40.

[200] Aristotle, "Poetics", in *Aristotle in 23 Volumes*, Vol. 23. Trans. by H. Rackham (Cambridge: Harvard University Press, 1932), 1449a35.

[201] Aristotle, *Poetics*, 1449b1.

[202] René Brouwer, *Funerals, Faces, and Hellenistic Philosophers*, p. 25. The entrance in the *Byzantine Suda* corresponds to Θ.282. Available at: https://topostext.org/work/240.

[203] The passage of the *Digesta* that speaks of "political bodies take the place of private [persons]" (50.16.16) is in fact part of Gaius' commentary *On the Provincial Edict* (*ad edictum provinciale*), whose datation and localisation are up to debate. Although there is no evidence whatsoever of an encounter, Lucian and Gaius were both actively writing, at the very least, by the time of Emperor Marcus Aurelius (161 – 180 CE). See W.W. Buckland, « L'Edictum provinciale », *Revue historique de droit français et étranger* 13, No. 1 (1934) 81 – 96, and more recently Gaia di Trolio, «Gaio commentatore dell'editto provinciale», *Revista General de Derecho Romano* 33 (2019).

[204] Lucian, "The dance". In *Lucian in Eight Volumes,* V, trans. by. A. M. Harmon (Cambridge: Harvard University Press, 1972), §65, pp. 268 – 269: I have slightly modified the translation provided. Frontisi-Ducroux recalls this passage, but she does not occupy herself with it. See Françoise Frontisi-Ducroux, *Du masque au visage*, p. 77.

[205] On a similar phrasing, with an entirely different connotation, Mark 5:9: "And he asked him, what is thy name? And he answered, saying, my name is Legion, for we are many (*legōn legeōn onoma moi hoti polloi esmen*)".

personhood to entities that do not have it and that he calls *bodies* —regardless of their plural constitution—, Lucian exposes an overflow of souls in a singular body, which he frames as a multiplicity of persons (*prósōpa*) that concur into a single vessel. Furthermore, the overturning of the question rephrases the very relationship between soul and personhood, for in the former case it seems to represent a requisite, so that —unless fiction intervenes— only something with a soul can have a person; while in the latter case the soul itself *is* the person, a character that a given body can acquire, replace, or even lose just as it would do with a mask. Needless to say, the *psyché* in Lucian is a long way from the Christian soul that Dadino Alteserra had in mind, but it is noteworthy that their absence and their surplus is accounted for in terms of personhood, since it ratifies the complexity of the concept even in apparently distinct realms such as the theatre and the law, emphasising the *sfumato* of its outlines.

Now, even if it may be said that the passage is nothing more than a figure of speech, it is undoubtedly a telling one, since it also exemplifies a transition from the conception of *prosopon* as a mask to the character someone represents, from the very object to its role and its performance on the stage. In fact, Lucian introduces the story of the foreigner by saying that "the aim of dancing is playing a part" (*hypókrisis*), which is also performed by rhetoricians, adding that in both cases "there is nothing we commend more highly that their accommodating themselves to the roles (*prosōpois*) they assume"[206], taking *prosopon* to effectively mean character or role, only to immediately afterwards use the same concept for the masks. On this note, Frontisi-Ducroux notes that, whether in the theatre or in a ceremony, the "function of the mask was not to hide the face it covered"[207] but instead it "abolished and replaced" the face, nullifying the bearer and "yielding its place to the character he incarnates"[208]. She adds:

> The tragic actor, like the celebrant of a ritual, fulfils a liturgical function; he is above all the animator, silent or speaking, of the costume he wears and the hero he brings to life[209].

This "liturgical function" —etymologically, a public function or service[210]— implies not a transmutation of the mask-bearer into the character, but simply the annulation of his or her identity for the sake of representation, so that the observer sees the body of the actor as that of the *prosopon*, the *persona* instead of the actor. Thus, Oedipus or Antigone occupy someone else's body, their mask being the sign of an interplay between presence and absence in which their re-presentation and their re-placement exposes the division between the bodies on the stage and their *dramatis personae*.

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206 Lucian, *The dance*, §65, pp. 268 – 269.

207 If a wordplay is allowed with translations, this would mean that the *prosopon* was not meant to hide the *prosopon.*

208 Françoise Frontisi-Ducroux, *Du masque au visage*, p. 79.

209 Françoise Frontisi-Ducroux, *Du masque au visage*, p. 79.

210 On this political conception of liturgy and its implications, see Giorgio Agamben, *Opus Dei: archeologia dell'ufficio* (Torino: Bollati Boringhieri, 2012).

Exposure is, therefore, constitutive of said presence, for only in the midst of an interaction with others can the *persona*, in principle, come to be, and if a singular body can accept several *personae*, it is because the *prosopa* come to be accepted as different characters. This idea of exposure will extend beyond the boundaries of the actual stage onto the theatre of ethical and political reality —*i.e.,* the public life among others— and it will have, for instance, Diogenes Laertius speaking of the dialogical genre, which conveys both philosophy and politics by means of the conversation of "assumed characters" (*tôn paralambanomenōn prosōpōn*)[211]. The metaphor moves away from its material origins, and so, *prosopon* is neither the face nor the mask, and not even the theatrical re-presentation of a character, but the characterisations that someone —a person— may display in social, ethical, and political scenery.

On the same line of thought, Brouwer attributes to Panaetius of Rhodes the development of such a notion of person[212], whose thought we know off on account of Cicero. Indeed, in the *De Officiis*, while speaking about the "natural superiority of man (*hominis*)" over beasts, Cicero says that everyone is "invested with two characters (*personis*)": the first one is "universal", stemming from the shared use of reason, while the second one is assigned to each individual, which explains differences in strength, wit, jollity, and so forth[213]. Later, he will add a third and a fourth *personae*, one corresponding to chance, such as nobility of birth, wealth, and influence; and the other corresponding to a deliberate choice, such as deciding to follow a life in philosophy or in law[214]. In sum, a multiplicity of roles that coincide in a singularity. Likewise, and emphasising a sense of mutability, Seneca would write to Lucilius that "we often change our mask (*mutamus subinde personam*) —that is, our characterisation— and take on the opposite one to the one we shed"[215].

This idea of personhood as public roles that mutate and vary has been revisited time and again, perhaps most prominently in the 20th century by the theory of social roles forwarded by Talcott Parsons, in which an individual plays a plurality of social roles[216], as well as the symbolic-interaction sociology of Erving Goffman, in which the self is dramaturgically constructed and presented[217]. Although centuries away, the conceptual link

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211 Diogenes Laertius, *Lives of eminent philosophers* (Cambridge: Harvard University Press – Loeb Classical Library, 1965), 3. §1. Further ahead, he recounts how Ariston of Chios "compared the wise man to a good actor who, if called upon to take the part (*prósōpon*) of a Thersites or of an Agamemnon, will impersonate them both becomingly": Diogenes Laertius, *Lives of eminent philosophers*, 7. §2.

212 René Brouwer, *Funerals, Faces, and Hellenistic Philosophers*, p. 30. See Panezio di Rodi, *Testimonianze*, edizione, traduzione e commento a cura di Francesca Alesse (Napoli: Bibliopolis, 1997). Also recounted by Philippe Cormier, *Généalogie de personne* (Paris: Ad Solem, 2015), pp. 95; 125.

213 Cicero, *De Officiis*, trans. by Walter Miller. (Cambridge: Harvard University Press, 1990), I. 30. §107, pp. 109 – 111.

214 Cicero, *De Officiis*, I. 32. §115, pp. 117 – 119.

215 Seneca, *Ad Lucilium Epistulae Morales* III, trans. by Richard M. Gummere (Cambridge: Harvard University Press, 1989), CXX, pp. 394. 395.

216 Talcott Parsons and Edward Shils, *Toward a General Theory of Action: Theoretical Foundations for the Social Sciences* (Cambridge: Harvard University Press, 1951).

217 Erving Goffman, *The Presentation of Self in Everyday Life* (Edinburgh: University of Edinburgh, 1956).

between personhood and social or public role remains quite apparent on account of this constitutive idea of exposure, and thus, a liturgical, public performance of a character enclosed in the very same notion of *persona*. Regardless of the sociological implications of said theories, reading Lucian's passage under this conception implies that, in the public exposure of the entity so far equated to a *man* or a *human*, there are several characters, roles, or even performances that are all encompassed under a singularity: many masks and many characters on a single recipient. Moreover, as Yan Thomas points out, this conception was not incongruous with the constructions of Roman law, which also developed a language akin to this dramatic conception of *persona*, producing some of the concepts we have already visited such as "holding, sustaining or assuming a person" (*personam sustinere, personam gerere*) or even "to hold one's place in a role" (*personae vicem gerere*)[218]. In fact, this intertwining of the legal and the dramatical would allow to split the *person*: on the one hand, the *subjectum iuris*, a doctrinal conception that implies an entity subjected to the law, and on the other hand, the function that the law assigns to that entity, so that any given *human* can play "the person of the [*paterfamilias*], the person of the slave, the person of the citizen, etc."[219].

And yet, Lucian's passage is telling on another front, for it does not only speak of a plurality of souls, roles, or characters, but also shows the necessity of an often-overlooked topic: the body. In a recent book, Elettra Stimilli has centred her philosophical worry on means (*mezzi*) and their subordination to ends (*fini*), devoting particular attention to bodies (*corpi*). By means of a genealogical approach, she has shown how bodies have often been deemed subservient in the supposedly linear trajectory of reason, at least as conceived in the Western history of philosophy[220], and thus, although omnipresent, they are often neglected and excluded from philosophical thought, notwithstanding the fact that they constitute the very immediate means of survival and the "instrument *par excellence* of techniques of life"[221]. In this endeavour, Stimilli reaches out for a particularly relevant passage in Spinoza —often called the *abrégé de physique*[222]—, in which he goes through a series of definitions in order to arrive at the human body.

From the "simplest bodies (*corporibus simplicissimis*) that differentiate each other only by motion or speed"[223], Spinoza then speaks of an ensemble of bodies "that are constrained to stay together", or "that move at the same speed" and "compose a single body or a single

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218 Yan Thomas, *Le sujet de droit*, p. 98.

219 Yan Thomas, *Le sujet de droit*, p. 98. Yan Thomas adds that, in dramaturgy, things are "relatively simple", since "an actor wearing a mask holds a role and portrays a character (*personam gerit*)", while in the law things are "infinitely more complex" given that an individual could assume "several persons", and several individuals could have only one person as their bedding". Lucian's passage —and dramatic practice in general—clearly shows the contrary position, and the complexity of the representation in the realms of theatre.

220 Elettra Stimilli, *Filosofia dei mezzi: per una nuova politica dei corpi* (Vicenza: Neri Pozza, 2023), pp. 51 and ff.; 86 and ff., and *passim*.

221 Elettra Stimilli, *Filosofia dei mezzi*, p. 18.

222 Baruch Spinoza, *Éthique*, édition annotée et traduite sous la direction de Maxime Rovere (Paris : Flammarion, 2021), pp. 221 – 237. I shall use this judicious edition for the commentary. For the Latin text, see *Spinozae Ethica ordine geometrico demonstrata et in quinque partes distincta*, available at https://thelatinlibrary.com/spinoza.html.

223 Spinoza, *Ethica*, II, *prop*. 13, *axioma* 2.

individual" (*et omnia simul unum corpus sive individuum componere*)[224], in order to finally arrive at the composition of the human body:

> The human body (*corpus humanum*) is composed of many individuals (of diverse nature), each of which is highly complex (*compositum*) [225].

As Stimilli points out, the body turns out to be, in Spinoza, "multiple and differentiated, in itself social and communal"[226]. Pluralities, so it seems, multiply: souls, masks, characters, roles, and even bodies start to appear in a plural form. Furthermore, if indeed a necessary condition for such a public appearance of *personae* as characters, then the body itself constitutes a seemingly paradox between the one and the many, one that, be it physically, physiologically, or metaphysically, is difficult to grasp in its indispensability, and only under certain light is this body, as Lucian's passage says, in fact *one*.

Now, this raises an interesting conjunction, for a body that is multiple and differentiated was also present in the legal construction of entities that, although plural, constituted one person and were called *bodies.* Granted, the fact that the *Digesta*[227] and legal authors[228] speak of bodies regarding pluralities is always in the interstice between the concept and the figure of speech, but the core of the matter remains, since these bodies encompass the unicity of a person and the plurality of its composition, with a striking resemblance of what Spinoza had in mind when saying that the body is composed of several individuals: again, a paradoxical fractal, one that will re-appear most prominently in the notion of the body politic of the state. For the time being, however, the question is how to reconcile this dispersion of the body with the exposure of the public performance of the persons taken to be characters.

In the poetic *Le corps utopique* from 1966, Foucault recalls how only in the cadaver — *soma*— did Homeric Greece find a word that designated the body as a unity, instead of its members[229]. However, rather than dwelling on the constitution of the self as a unity, Foucault pushes forward on this idea of dispersion, and so, instead of the place where a multiplicity of persons come to join, the body becomes a literal *u-topia*, a non-place. His path is significant:

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224 Spinoza, *Ethica* II, *prop*. 13, *definitio*.

225 Spinoza, *Ethica* II, *prop*. 13, *post*. 1. Spinoza comes back again to this idea in *Ethica*, IV, *prop*. 73, *c*. 27. Maxime Rovere's commentary indicates that this conception of the body as composed "by several organisms" is due to the development of the microscope. See Baruch Spinoza, *Éthique,* pp. 212 and 234.

226 Elettra Stimilli, *Filosofia dei mezzi,* p. 86. Upon this account, the consequence drawn by Stimilli in terms of the submission of the body is quite telling: "It is not, therefore, about a univocal movement of an autonomous, predominant subject aimed at achieving ultimate ends (*fini ultimi*) through equally unequivocally identified means. Instead, a complex movement is at stake, which requires a constant confrontation with the very plasticity from which bodies originate in the concomitant and parallel relationship with minds": Elettra Stimilli, *Filosofia dei mezzi,* p. 88.

227 See, for instance, Justinian, *Digesta,* 50.6.6.12, and 50.16.195.2. In this last passage, interestingly, "*familiae*" is defined as "a certain body, which is either contained within their own right or within the common entirety of the kinship".

228 Antonio Dadino Alteserra, *De fictionibus iuris*, p. 45; Robert-Joseph Pothier, *Traité des personnes et des choses*, p. 84.

229 Michel Foucault, *Le corps utopique, Les hétérotopies* (Paris : Lignes, 2009) p. 18.

after wondering about the confinement in the body and the utopias that societies constitute in order to erase such a confinement —from the mummies in Egypt to the masks (!) placed upon Mycenaean defunct kings, both of which perpetuate the body beyond the body—, he goes to the fragmentary perception of one's own anatomy: places, crevices, surfaces that can be touched but not seen, that can be surveyed by others but not by the self; a body, he says, "indissociably visible and invisible", simultaneously "life and thing" (*vie et chose*)[230]. Stimilli comments on this dissociation of perception and self-perception as "a social experience of fragmentation without univocal synthesis", saying that "the body itself is not only here and now but always in another place, in other eyes"[231]. One's body is always a utopian body, and its exposure and its interaction —the liturgical function of, quite literally, *embodying persons*— implies and relies on a fragmented sustenance.

Afterwards, Foucault transits directly into the path of representation, as he summons the idea of the body as a "grand utopian actor", adorned with "masks, makeup, and tattoos", all of which serves purposes beyond the mere embellishment, such as imprinting a "cyphered, secret, sacred language" upon the body, as well as a reconfiguration of the space it occupies, turning the body, again, into "a fragment", this time in the form of an "imaginary space that will communicate with the universe of the deities or with the universe of others"[232]. In other words, Foucault says, the function of the mask, the makeup and the tattoo is to place the body elsewhere, beyond the place it materially occupies, so that "the sacred or profane, religious or civil garment brings the individual into the enclosed space of the religious or into the invisible network of society"[233]. Thus, on the one hand, a fragmented non-place upon which a myriad of characters performs, and on the other hand, the public or social exposure that unifies them in the perception of a singularity. Indeed, as Deleuze says, not the universal of the *One*, but the process of unification of the many[234].

Naturally, this does not dwell on the actual performance of social roles, but on the fact that these rely upon a regime of truth and upon such a process of unification, so much so that not only the institutionalised forms of the religious or the civil garments (*v.gr.* the priest or the magistrate) are encountered in terms of this public exposure, but also, as Stimilli points out, in the roles that are assigned to the female body[235]. On this line of thought, Simone de Beauvoir speaks of the necessity to play a certain game of artifice in which the woman, rather than being a natural female-body, must "dress" herself —or rather *disguise*— into the *persona* of one, so that no matter her status, and no matter that the "girdle, brassiere, hair-dye, and makeup disguise body and face", every woman remains always "like the painting or the

230 Michel Foucault, *Le corps utopique,* p. 18.

231 Elettra Stimilli, *Filosofia dei mezzi,* p. 136.

232 Michel Foucault, *Le corps utopique*, p. 15.

233 All of the above: Michel Foucault, *Le corps utopique*, pp. 11 – 17

234 Gilles Deleuze, *Qu'est-ce que c'est qu'un dispositif ?,* p. 320. See *supra*, 1.4.

235 She speaks of an intertwine of nature and artifice that produces and reproduces life, particularly on the fact that "only the female body possess the capacity to double itself (*sdoppiarsi*)", and how such a capacity is seen in terms of social and economic labour: Elettra Stimilli, *Filosofia dei mezzi,* p. 151 and ff.

statue, or the actor on the stage", some kind of avatar of "an absent subject that is her character (*personnage*) but not her"[236]. This is of course not the place to enter the question of the body for feminism, but it serves to show the separation of the person from the vessel of the body, as well as the fragmentation of such a vessel, both of which acquire a singular sense in the political sphere, always in a polychromatic fashion.

Back in Lucian's passage, what the foreigner points out is only one of the lines in a polyphony of possibilities: many souls in a single body, indeed, but also one person covering an arrangement of fragments, and ultimately, many *persons* —faces, masks, characters— performing upon a mosaic of bodies, a relentless paradox of amalgamation and fragmentation that will come to join the juridical mosaic and its intricacies in the constitution of a contemporary *mechanism* of subjection, equally amalgamated and equally fragmentary.

In such processes, the paradox of the necessity of the body, and its perpetual subservient place, shows that there are still missing pieces that contribute to the construction of a governmentality that, relying upon these constructions, subjectifies and captures entities under a mantle of inclusion. If *persona* is not indeed a synonym of human, and if it is not indeed a single entity, it is in part because of how the notion of the body is constructed as a multiplicity. Although apparently part of an endless cycle of subjection, the presence of bodies in the construction of these notions implies that, indeed, as Elettra Stimilli suggests, the expressive strength of bodies can play a political role that goes beyond means of survival or means of subjection. In order to do that, an overabundance of both bodies and souls seems to be, indeed, indispensable.

Needless to say, this is not to be seen as the "evolution" of a concept, but rather, in the spirit of its fragmentation, the emergence of instances where *persona* appears as a useful and strategic notion —as Foucault puts it— that serves purposes outside of the legal realm, in an outside that is both topological and chronological. Furthermore, it shows that in the interplay of convergence and divergence of meaning and appearance, a public-political appearance seems to be constitutive, as it is the relationship with a body, even if "multiple and differentiated".

Now we shall move onto other realms of personhood, via a path that walks through grammar and theology.

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[236] Simone de Beauvoir, *Le deuxième sexe II*, (Paris : Gallimard, 1976), p. 398. Unsurprisingly, Goffman cites the very same passage: Erving Goffman, *The Presentation of Self in Everyday Life*, p. 37.

2.2. *Una substantia, tres personae*

In his *Art of Grammar*, Dionysius Thrax speaks of verbs as indeclinable words that admit "three persons" (*prósōpa tría*): the first is the one "from which" (*aph' hoú*) the speech comes, the second is the one "to which" (*prós on*) the speech is addressed, and the third is the one "about which" (*perí hoú*) the speech is produced[237]. Likewise, in *On the Latin language*, Varro speaks of the "triple nature of persons in verbs" (*personarum natura triplex esset*): "the one who spoke (*qui loqueretur*), the one spoken to (*ad quem*) and the one spoken of (*de quo*)"[238]. In grammar, the transition from *prosopa* to *personae* is apparently seamless, and the concept covers itself in yet another layer of meaning, one fertile enough to open the way to the trinitarian doctrine in early Christianity.

Probably the most prominent application comes in *Adversus Praxean,* where Tertullian provides an almost (if not) literal iteration of this grammatical approach in order to sustain the distinction between the Father, the Son and the Holy Spirit, saying that "it could not possibly be seen as one and the same he who speaks, the one spoken to and the one spoken of"[239], adding later on instances of the scriptures where, for example, "the Spirit speaks (*qui pronuntiat*) addressing the Father (*pater ad quem pronuntiat*) about the Son (*filius de quo pronuntiat*)"; which clearly shows how "each person (*unamquamque personam*) is constituted in its own property"[240]. Evidently, as Pierre Hadot points out, "Tertullian is defining the *persons* [of the Trinity] in the same fashion as the Latin grammarians"[241]. That it not to say, however, that the articulation of personhood in relation to the Christian god performed by Tertullian relied exclusively on grammar, for he would also approach the concept of *person* in an ontological tone, resolving the coexistence of the Father, the Son and the Holy Spirit into what has been decanted as a formula: *una substantia, tres personae*; one substance, three persons.

The question of whether the term *persona* had a juridical sense in the Patristic tradition has been widely debated[242]. Hadot himself would argue that, even if the term *persona* were

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237 Dionisio Tracio, *Gramática – Comentarios Antiguos*, trad. Vicente Bécares Botas (Madrid: Gredos, 2002) §13, p. 67.

238 Marcus Terentius Varro, *On the Latin langauge II*, (Cambridge: Harvard University Press - Loeb Classical Library, 1938), Lib. VIII, §8,20, pp. 386 – 387. Both Dionysius and Varro are cited by René Brouwer, *Funerals, Faces, and Hellenistic Philosophers*, pp. 37 - 38. Godani cites also Priscianus: Paolo Godani, *Il corpo e il cosmo*, p. 25.

239 Tertullian, *Adversus Praxean*, introd., trans. and comment. by Ernest Evans (London: SPCK, 1948), §11.4. In the introduction for this edition, Evans retraces Tertullian's use of *persona*, which he divides into several meanings: face, mask, "a quasi-dramatic sense", "person, with no psychological or metaphysical meaning or juristic reference" as well as "passages bearing the theological import": pp. 46 – 50.

240 Tertullian, *Adversus Praxean*, §11.10.

241 Pierre Hadot, *De Tertullien à Boèce*, p. 126. He cites the *Ars Grammatica* by Diomedes, which coincides with both Dyonisius and Varro in terms of grammatical persons.

242 Both Pierre Hadot and Roberto Esposito retrace the contemporary discussion on the matter to the debate between Adolf von Harnack and Siegmund Schlossmann. Von Harnack initially argued that "Father, Son and Spirit were considered as the '*personae*' who possessed a common property", where the word property (*Vermögen*) is taken to mean *substantia*, although clearly defined via a link with the notion of possession or ownership (*besitzen*). In the same sense, Christ was taken as "the '*persona*' that had at his disposal a double 'property' (*Vermögen verfügt*): one inherited from the Father (divinity), and the other one from the mother (humanity)": Adolf von Harnack, *Lehrbuch den Dogmengeschichte*,

conceived in the legal sense of the concept, it does not account for the majority of the uses Tertullian gives to the word in his own writings[243]. Beyond a compartmentalisation of the juridical and non-juridical, that seems to respond more to a modern dispute of discourses than to an actual worry *for* and *in* Tertullian, it seems evident that *persona* had already acquired a multitude of connotations by the time of early Christianity, and it is in such abundance of meaning that the term will come to be problematic, or better yet, philosophically relevant. In fact, Hadot classifies the uses of *persona* in *Adversus Praxean* into three categories: those with a grammatical prevalence, those in which it refers to the face, and those in which "it is difficult to distinguish between the vague sense of individual, and the grammatical and dramatic senses"[244]. Notwithstanding this interesting taxonomy, I would like to focus here on a couple of passages of Tertullian that are particularly striking for the problem at hand, and that unveil several layers of meaning in *persona*.

Firstly, a difficult section in which Tertullian speaks of "discourse, wisdom and reason" (*sit sermo et in sophiae et in rationis*) as being the same as that who "became the son of God, from whom being begotten, he proceeded" (*qui filius factus est dei, de quo prodeundo generatus est*)[245]. Upon this idea, he "plainly" concedes that "discourse is some substance (*das aliquam substantiam esse sermonem*) formed by spirit, wisdom and reason"[246], in order to argue in favour of the difference between the father and the son. What's interesting, however, is that Tertullian acknowledges the son's substantiality (*eum substantivum habere*) so that he can be seen as both a thing and a person (*ut res et persona*)[247]. In other words, only in the recognition that the son is a different *thing* — *i.e.,* that he has a substance of its own, different from that of the father— can it become a different *person*, for otherwise his existence would fall into the "inane and incorporeal void" (*vacuum … inane et incorporale*) that Praxeas, his adversary, advocates. There are indeed two: "father and son (*patrem et filium*), god and discourse (*deum et sermonem*)", but they can only acquire a different personhood inasmuch as they have separate substances. This fragment echoes the fact that personhood can only be positioned upon a certain body —upon a certain corporeity—, indispensable, as seen earlier, in the sense of character and public exposure, but also in a metaphysical manner: only in being a *res* can god be a *persona*, only in a dissection of its substance can the *logos* be a separate entity from the one that produces it[248]. Granted, this substantiality is not equivalent to a material body, and he will

Zweiter Band (Freiburg: J. C. R. Mohr, 1888), p. 177. Diversely, Schlossmann criticised Harnack's approach to *substantia* as a legal term, saying that nothing in Tertullian's language allows a reference to the law, adding that at no point "in the history of development of meaning of the words *persona* and *prosopon*" have they "been influenced by legal circumstances": Siegmund Schlossmann, *Persona und prosopon,* pp. 118 – 128.

243 Pierre Hadot, *De Tertullien à Boèce*, p. 125.

244 Pierre Hadot, *De Tertullien à Boèce*, pp. 126 - 127.

245 Tertullian, *Adversus Praxean* §7.4.

246 Tertullian, *Adversus Praxean* §7.5.

247 Tertullian, *Adversus Praxean* §7.5.

248 This if, of course, John 1:1: "In the beginning was the Word, and the Word was with God, and the Word was God". For a discussion on this passage, see Roberto Esposito, *Due*, p. 93.

add that "the spirit is a body of its own kind and its own image"[249], but nevertheless a notion of a vessel —a mean— upon which *persona* can rely is undoubtedly necessary in Tertullian's argument, which he closes by saying:

> So, whatever substance the discourse was, I declare that to be a person (*illam dico personam*), and I claim the name "son" for him, and by recognising the son, I make of him a second distinct from the father[250].

On principle alien to the concept of divinity, Tertullian has attributed to the son of god the paradoxical character of being simultaneously a person and a thing: a non-human person, and yet a person; a non-material body, and yet a body, an entity, a different *thing* regarding the father. Naturally, this opens up several theological and philosophical issues, departing from the reconciliation of this double entity into the monotheistic dogma, which will be resolved by Tertullian by introducing an already familiar concept: *oikonomia*.

However, before entering this question, I'd like to highlight another passage, one that Hadot classifies as eminently grammatic although it moves, I believe, in the realm of ambiguity. In a later moment of his reasoning, Tertullian says that psalms "sustain the person of Christ (*personam sustinent*) as the son to the father", and that they "represent Christ as speaking the words (*verba facientem repraesentant*) to God"[251]. This comes indeed after the passage that mirrors the grammatic persons (*qui, de quo, ad quem*), but it goes well beyond the grammar, since what Tertullian suggests is that the psalms attribute to Christ a role, an *impersonation*, and that because of said role he is *represented* as speaking to the father as two separate persons[252]. The idea of sustaining or holding the person, we have seen, is exactly one of the ways in which the *hereditas iacens* re-placed the person of the defunct in Roman law. This is not to say, evidently, that there is a direct link to the concept of *hereditas iacens* in Tertullian's argument, but it is nevertheless singular that the same notion of sustaining and representing appears independently, so to speak, but always in the framework of personhood.

Far from being the mere game of the one who speaks, and the one spoken to, Tertullian's idea of sustainment even begs a hypothetical reply from his adversary: is it really a person or is it only *represented as if it were*? Tertullian, of course, is adamant about the trinitarian personhood, but even if it is indeed grammatic *ab initio*, the attribution of a *sui*

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249 Tertullian, *Adversus Praxean* §7.8.

250 Tertullian, *Adversus Praxean* §7.9.

251 Tertullian, *Adversus Praxean* §11.7.

252 In theological literature, there is a technique of interpretation called "prosopological exegesis" —stemming from *prosopopeia*, *i.e.,* characterisation— which could close the gap between grammar and drama. In sum, not only Tertullian but many others, including Paul, take the passages of the Old Testament as "traces of divine conversation", meaning that God would take upon different prophets to speak through them, turning their writings into a dialogue in which the father, the son or the spirit communicate with each other. In order to better illuminate what is being said and convey the actual meaning, the interpreter produces the *prosopa* of the dialogue, hence prosopological exegesis. For the citation and a discussion on the topic, see Mathew Bates, *The Birth of the Trinity: Jesus, God and Spirit in the New Testament and Early Christian Interpretations of the Old Testament* (Oxford: Oxford University Press, 2015), pp. 28 – 40.

generis spiritual body and the "sustainment" of the personhood of the son imply a further incursion into the realms of the *dramatis persona*. In spite of this extension, Hadot reduces the dramatic and the grammatic to the same level, saying that they are both "closely linked" to the point where "*persona* is a word without true conceptual content [...] a kind of pronoun"[253]. Although drama and grammar are of course linguistically entangled, they do not convey the same dimensions or implications. Be that as it may, what's relevant in Hadot's identification of both realms is how in a footnote[254], he traces the use of *prosopon* and *persona* as closely linked to a disposition of the dramatic action that would appear as *administratio* in Diomedes[255] and also in Tertullian[256], who in turn will also use repeatedly the Greek term: once again, *oikonomia*.

Oikonomia made an appearance earlier, while addressing Agamben's notion of *dispositivo*, although it was not accompanied by the theological queries from which Agamben extrapolated its importance. Indeed, when exposing his idea of a "massive partition of existence into the living and the *dispositivi*"[257], Agamben resorts to the Patristic tradition and its use of *oikonomia*, firstly as the way in which "God [...] as a good father, can entrust the son with carrying out certain functions and certain tasks", that is, "the economy, the administration and the government of the history of men (*uomini*)"[258], followed by the incarnation of Christ and the "salvific government of the world"[259], all of which is expressed by the Latin '*dispositio*', and therefore, *dispositivo*. Nevertheless, Agamben's account of *oikonomia* is mediated by his reading of the Foucauldian literature as well as his own constructs, so that the technical definition of the term he provides is this:

> An ensemble of practices, knowledges, measures, institutions whose purpose is to manage, govern, control, and orientate, in a direction that is pretended to be useful, the behaviours, gestures, and thoughts of men (*uomini*)[260].

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253 Pierre Hadot, *De Tertullien à Boèce*, pp. 127 – 128.

254 Pierre Hadot, *De Tertullien à Boèce*, pp. 127 – 128.

255 "There are three persons in verbs, through which all discourse will be administered" (*Personae in verbis sunt tres: per quas universus administrabitur sermo*): Diomedes, *Ars Grammatica* (Venezia: Guglielmo da Fontaneto di Monferrato, 1518), I. iiii. It is interesting to highlight that Diomedes also uses *sermo* to refer to discourse, in the same way Tertullian does when referring to Christ in the passage examined earlier.

256 "But I say that no dominion is in such a way one with itself, so singular, so monarchical, that it is not also administered through other proximate persons (*per alias proximas personas administretur*), whom it has designated as its officials": Tertullian, *Adversus Praxean* §3.2.

257 Giorgio Agamben, *Che Cos'è un Dispositivo*, p. 21.

258 Giorgio Agamben, *Che Cos'è un Dispositivo*, p. 16.

259 Giorgio Agamben, *Che Cos'è un Dispositivo*, p. 18.

260 Giorgio Agamben, *Che Cos'è un Dispositivo*, p. 20. The Italian '*uomini*' is often used to mean the totality of human beings, as is the case with the French '*homme*' in, for instance, the formula '*droits de l'homme*'. However, given the considerations that I have carried out up to this point, and those that follow, such an apparent transparency seems to me both deceptive and unaccounted for, hence why I insist in translating *uomini* and *hommes* as 'men' and not as 'human beings'.

This definition will meet a lengthy development further ahead in Agamben's project, particularly in *Il regno e la gloria*, where he performs a judicious genealogy and a "textual analysis" of the term as it appeared in prominent authors from Aristotle and Paul into the 2nd and 3rd centuries of the common era, following a myriad of authors in which the term acquires an overabundance of meaning[261]. A summary of such an effort will naturally fall short, so I will limit myself here to certain key aspects that Agamben himself highlights in order to come back to Tertullian.

First of all, it is well known that the notion of *oikonomia* denotes the "administration of the household", which appears in an Aristotelian categorisation as opposed to politics, the administration of the *polis*. In this sense, pseudo-Aristotle[262] speaks of the difference between the authority of the head of the household (*despoteia*) and the authority of the magistrate in charge of the *polis* (*politeia*): the former governs slaves in a monarchical fashion (*monarchia*) — as monarchical, he says, is the government of the house[263]—, while the latter governs free and equal men[264]. However, he adds that this administration is not a matter of science or expertise (*episteme*), but of a certain mode of being, which moves Agamben to say that the *oikonomia* is a "functional organisation, an activity of management that is not linked to any rules other than those of the ordered functioning of the household", which implies "a managerial (*gestionale*) paradigm that defines the semantic sphere of the term"[265]. This is important since, instead of responding to questions of justice or the common good, as is the case with political administration, the *oikonomia* conveys "a praxis and a non-epistemic knowledge" that are to be "judged only in the context of the objective they pursue"[266]. In other words, the praxis of an *oikonomia* implies a literally non-political self-definition of the good, which is not common but particular, in as much as it is defined by the head of the household (*despotes*) and imposed to the subjects of his domination, namely slaves, women and children.

Secondly, and contrary to a generalised view, Agamben poses that although *oikonomia* appears several times in the *Letters* of Paul, its meaning was still not theologically charged, but rather still anchored to this managerial paradigm. Thus, when *oikonomia* appears in Paul, it does so in the context of an assignment or task that he has been entrusted with, as an administrator (*oikonomos*) or a servant (*diakonos*) would[267]. Additionally, Agamben remarks on

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261 Giorgio Agamben, *Il regno e la gloria: per una genealogia teologica dell'economia e del governo* (Torino: Bollati Boringhieri, 2014), pp. 31 – 64.

262 Aristotle's authorship of the *Oeconomica* has been widely refuted and it most likely was written by one of his successors.

263 "There is, however, this further difference: that whereas the ruling of a polis (*politike*) has many rulers, the ruling of a household (*oikonomike*) is a monarchy": Aristotle, "Oeconomica" in *Aristotle in 23 Volumes*, Vol. 18, trans. by H. Tredennick and G. C. Armstrong (Cambridge: Harvard University Press– Loeb Classical Library, 1990), 1343a.

264 Aristotle, *Politics*, 1255b. With a different take on the matter through Xenophon, see Michel Foucault, *Histoire de la sexualité II : L'usage des plaisirs* (Paris : Gallimard, 1984), pp. 159 and ff.

265 Giorgio Agamben, *Il regno e la gloria,* pp. 32 – 33.

266 Giorgio Agamben, *Il regno e la gloria,* p. 33.

267 Giorgio Agamben, *Il regno e la gloria,* pp. 35 – 38.

the fact that this managerial use of *oikonomia* is also accompanied by a whole "vocabulary of domestic administration" which Paul and his contemporaries use time and again —needless to say, as part of a complex process that has its origins in the Hellenistic period—, characterising the *ekklesia* as a decidedly economical rather than a political community, with its own "economical lexicon", metaphors, and constructs that illustrate this domestic, non-political and non-epistemic administration, at least in principle. As Agamben says, the implications of a self-conception of Christianity that springs from economical rather than from political terms are yet to be fully grasped[268], not to mention the implications of a supposedly praxis that self-regulates, as it were, in terms of its own realisation. Whatever the case, *oikonomia* will appear in several instances and with several meanings, from the medical as an ordered disposition of the body and the flesh, all the way to the disposition of matter, the disposition of justice and the disposition of angels[269].

Finally, the actual shift from meaning that will open the doors to a theological *oikonomia* and to the dogma of three persons in the Trinity. Agamben has traced back to Hippolytus an overturning of a Pauline formula which originally referred to "the *oikonomia* of the mystery". The formula appears in the *Epistles* to the Colossians and to the Ephesians[270], and expresses, according to Agamben, the very managerial paradigm as before, meaning the assignment Paul has received to announce the mystery of redemption[271]. However, Hippolytus reverses the Pauline formula, calling the disposition of God a "mystery of the economy" (*mystērion oikonomías*): the *logos* —called *sermo* by Tertullian—incarnated as Christ and the reciprocal presence of the son and the father in one another[272]. Likewise, Hippolytus applies the term to the triple display of God, its arrangement or disposition (*tēn oikonomía trikhē ē epídeixis*), as opposed to his one and only power (*dynamis*)[273].What in Paul was the assignment of redemption has become the mystery of how the Christian god can be, at the same time, one and many, while also avoiding a relapse into polytheism.

Upon this overturning, a familiar term will arise when Hippolytus asks whether John in his gospel takes God and the *logos* to be two different gods: "I will not say two gods, but one; and yet two persons (*prósōpa dè dýo*), and a third, the *oikonomia*, the grace of the holy spirit"[274]. Not two gods, but two persons, accompanied by a third party —still not a person— that convenes into the "harmonious economy of a single god"[275]. The question is, of course, what type of *prosopa* are these? As hinted out earlier, what Hadot suggests, given that a juridical notion would not be appropriate, is that both *prosopa* and *oikonomia* have a dramatic

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268 Giorgio Agamben, *Il regno e la gloria,* pp. 38 – 39.

269 Giorgio Agamben, *Il regno e la gloria,* pp. 40 – 48.

270 Colossians 1, 24 – 25; Ephesians 3, 9.

271 Giorgio Agamben, *Il regno e la gloria,* p. 38.

272 Hippolytus of Rome, *Contra Noetum*, introd. and trans. by Robert Butterworth (London: Heytrhop Monographs, 1977), §4.7 and §4.8, p. 52.

273 Hippolytus, *Contra Noetum*, §8.2, p. 64. Agamben traces this distinction back to Chrysippus, calling it "the stoic doctrine of the modes of being": Giorgio Agamben, *Il regno e la gloria,* p. 52.

274 Hippolytus, *Contra Noetum*, §14.2, p. 74.

275 Hippolytus, *Contra Noetum*, §14.4, p. 74.

accentuation[276], and so the father and the son seem to be indeed characters arranged in the symphonic theatre of this unity.

Whether this is sufficiently convincing to stifle the accusations of polytheism, or sufficiently revealing to clear out the mystery of a duality —or a trinity— in a singularity is a completely different topic. What's intriguing and fascinating is that, whether from grammar, drama or the law, *persona* serves as a mechanism that allows to effectively address these types of conflictive synchronicities, emerging whenever fragments need to be disposed of as a whole. Not forgetting, however, that as a threshold *persona* can also appear where a contrary motion is to be performed: exclusion, fragmentation, proscription.

Tertullian, whom Agamben accuses of being neither rigorous in his arguments nor precise in his terminology[277], was however not frugal in his poetic devices. In order to come to terms with the chimera of a monotheistic plurality, he deploys several metaphors in an effort to elucidate the mystery of the *oikonomia*. The "tree and its roots, the river and its spring, the sun and its beams" (*radices fruticem et fontis fluvium et solis radium*) illustrate for him the confluence of both distinctiveness and consubstantiality, for "the root and the tree are two things, but conjoined; and the spring and the river are two manifestations, but undivided; and the sun and its beam are two forms, but coherent"[278], as coherent, conjoined and undivided are the persons of the father and the son. Likewise with the spirit, for "the fruit is the third of the root the emerges from the tree, the stream is the third of the spring that emerges from the river, and the light is the third of the sun that emerges from the beam"[279]. In this poetic game of divided unity, Tertullian finds a way to convey the irresolute harmony of the paradox, ratifying the uniqueness of god and its arrangement into three persons.

These metaphors, however, are not deprived of their due context. As we have seen, he uses *oikonomia* recurrently, alongside Latin equivalents such as dispensation (*dispensatio*) and administration (*administrare, administrator*), not to mention Hippolytus' inversion of the Pauline formula. Instead of the Greek *mystery*, however, Tertullian uses the Latin *sacramentum*, turning what one was the 'assignment of redemption' attributed to Paul into the "sacrament of the *oikonomia*, which disposes the unity into the trinity, arranging as three the father, the son and the spirit"[280]. He adds, moreover, that they are different not in terms of status, but of degree (*non statu sed gradu*); not in substance, but in form (*nec substantia sed forma*); not in power but in their outward appearance (*nec potestate sed specie*)"[281].

This opens up the road for the formulaic summary of Tertullian's doctrine on the trinity: one substance, three persons; which will appear perhaps most clearly further ahead in his argument when he says that the distinction between father and son is not produced "by

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276 Pierre Hadot, *De Tertullien à Boèce*…, p. 127.

277 Giorgio Agamben, *Il regno e la gloria,* p. 54.

278 Tertullian, *Adversus Praxean* §8.5.

279 Tertullian, *Adversus Praxean* §8.9.

280 Tertullian, *Adversus Praxean* §2.4.

281 Tertullian, *Adversus Praxean* §2.4.

a separation of substance, but [rather] by disposition" (*non ex separation substantiae sed ex dispositione*), that is, by their very *oikonomia*[282].

Nevertheless, one question remains. How can the father and the son be of the same substance if, as we have seen elsewhere in his argument, Tertullian refers explicitly to their *substances* in order to pose that the son is a different *thing* from the father? The apparent contradiction comes, not so much in a lack of precision of Tertullian, but in the ambiguous meaning that the word *substantia* had in Latin on account of a turbulent translation, so that it could mean both the *ousia* —usually translated as substance or essence— and the *hypokeimenon* —usually translated as substance or substratum[283]. It seems likely that, for this passage, Tertullian had in mind the Stoic doctrine of substance in the sense of an "articulated nature that distinguishes itself in several degrees", which "was part of the philosophical language of his time"[284].

In this sense, there is a strikingly similar passage in Marcus Aurelius, in which he forwards a metaphor on the sunlight: "The sun emits a single light regardless of its separation by mountains or walls". The analogy develops directly into the question of the substance as a single entity that is, nonetheless, separated or disseminated: "One common substance (*mía ousía koinḗ*), even if separated into many individual bodies (*idíōs poiōis sōmasi*)", as well as "one common soul, even if separated into many natures and individual outlines"[285].

It seems that in the poetic passage of the sacrament of the *oikonomia*, Tertullian applies the prevailing conception of an articulated nature or essence, as inherited from Stoicism. Conversely, in the passage where he concedes that the substance of the *logos* is different from that of the father[286], his notion of substance comes closer to what substratum would be, given that the body of the *logos* is, as he calls him, *sui generis*. Granted, the equivocal meaning of the term would be problematic for both theology and philosophy, as problematic would be for Tertullian in terms of resolving the mystery of the monotheistic trinity that he himself had forwarded.

What's more, another branch of personhood arises Tertullian, in the person of Christ, or more precisely, in the natures that inhabit within.

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282 Tertullian, *Adversus Praxean* §19.8.

283 Evidently beyond my scope here, see Plato, *Parmenides*, 142b and Aristotle, *Metaphysics*, 1017b; 1028a and ff. As Alain de Libera points out, the translation suffered not only on account of the languages themselves, but on account of the discourses that used the terms, namely the theological and the philosophical. See Alain de Libera, *Archéologie du sujet 1 : Naissance du sujet* (Paris : Vrin, 2007), p. 212. Also on the topic, see Pierre Hadot, *De Tertullien à Boèce*, pp. 128 – 129.

284 Giorgio Agamben, *Il regno e la gloria,* p. 55. Agamben refers to Pohlenz, who in turn traces the discussion back to Posidonius —cited by Tertullian in the *De anima* (14.2) alongside Plato, Zeno, Panaetius and Chrysippus—. See Max Pohlenz, *La Stoa: storia di un movimento spirituale*, Vol. 1 (Firenze: La Nuova Italia, 1967), pp. 457 – 458.

285 Marcus Aurelius, *M. Antonius Imperator Ad Se Ipsum*, ed. by Jan Hendrik Leopold (Leipzig: B.G. Teubneri, 1908), 12.30.1. Of course, Tertullian did not have access to the *Meditations* and Marcus Aurelius did not have access to, and probably not even interest in, the *Adversus Praxean*. The common link, evidently, is the Stoic literature that preceded both.

286 Tertullian, *Adversus Praxean* §7.5.

As a somewhat distorted mirror to the formula, *una substantia, tres personae*, at the end of the response to Praxeas, Tertullian advances in Christ what would come to represent another canon: *una persona, duae substantiae*; one person, two substances:

> We see a double status, not confused but cojoined, Jesus, in one person, god and man (*hominem*) [287].

In this passage, Esposito reads a "transition of the *dispositivo* of *persona"* that goes from activity to passivity, that is, from something that *separates* in the case of the trinity, to something that becomes separated in the case of Christ[288]. In other words, *persona* operates in the trinitarian problem as the mechanism that allows the *oikonomia* to be performed, whilst in Christ it is itself arranged, disposed of, economised.

Tertullian is insistent, moreover, in saying that this double substantiality does not create a third thing, as the "electrum [is created] out of [an alloy] of gold and silver"[289], but rather two different substances that coinhabit the same vessel. Now, it is crucial to emphasize that, even if counterintuitive at first, this vessel is not the body, but the person. The double substance of Christ implies two '*bodies*': one divine and immortal —the *sui generis* body of the *logos*, different from the father—, and one human and mortal[290], made of flesh, both of which are said to be the same *persona*. Naturally impossible in terms of basic human experience, Tertullian need not occupy himself with such restrictions, given that he is arguing for the most exceptional case of a divinity.

Although not juridical in origin, this idea of a single person sharing two bodies is undoubtedly close to the spirit of the fictions of Roman law we have already seen, those that produced a body where there was none, or eliminated it where there actually was one, as it is certainly not unheard of by now that many could play the character of one, wear the same mask, and ultimately, *be* the same person. Furthermore, this cohabitation of multiple bodies in one person will appear again —prominently and much closer to the double substance of Christ— in the question of the natural body and the body politic that coexist in the person of the king, whose fabrication responded to a whole mosaic of fictions of its own[291].

As with his contemporaries[292], *persona* served Tertullian as a mechanism to pluralise the unity and unify pluralities in a plentiful tapestry that reunited the bequests from grammar and drama into the idea of a single substance that is disposed, arranged, or economised into

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287 Tertullian, *Adversus Praxean* §27.11.

288 Roberto Esposito, *Due*, p. 96

289 Tertullian, *Adversus Praxean* §27.8 and §27.12.

290 Tertullian, *Adversus Praxean* §29.2.

291 See Ernst Kantorowicz, *The King's Two Bodies: A Study in Mediaeval Political Theology* (Princeton: Princeton University Press, 1957).

292 Tertullian was active during Marcus Aurelius' rule (161 – 180 ce), and so, around the same time, Lucian (c. 125 – 180 ce), Gaius (c. 110 – 180 ce), and Tertullian himself (c. 155 – 240 ce) were using and redefining —from their respective shores— the notion of *persona*.

three persons, and a single person that can hold two different natures, two different substances, two different bodies.

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In the centuries to come, *persona* would acquire a more concrete sense, up to the point where Boethius would be able to define it as an individual rational nature[293]. The bridge that allows to close the gap between the mystery of the *oikonomia* and such an individual notion would come in the form of another Greek term: *hypostasis*. The term appears by the 3rd century on account of the theological writings of Origen and designates "the effective reality of an object [...] a definitive form", notwithstanding a persistent issue of translation[294].

Agamben's own analysis of *hypostasis* notes the absence of the term in Plato and its appearance in Aristotle only in the original sense of "sediment or residue". According to Agamben, it was only through Stoicism, and later through Plotinus, that the term acquired the sense of a concrete existence that can be possessed (*hypostasin echein*), taken (*hypostasis lambanein*) or even produced (*ginontai*), in a way that represents a "passage from being to existence"[295]. By the 4th century, the term was further developed in theology in order to settle the difference between primary (concrete) substances and secondary substances[296] in reference to the Trinitarian dogma, specifically in the Council of Alexandria in 362 where the accepted formula would be "one substance, three *hypostaseis*", decisively settling the relationship between the two concepts, and allowing to complete the fusion with *persona*. In this framework, Hadot says, "*persona* and *prosopon* were identified with *hypostasis*. Their grammatical, rhetorical, and dramatic origins were forgotten in favour of an ontological, or rather one would say an ontic sense"[297]. Whether those origins were forgotten is, certainly, a matter of discussion, but beyond its origins, what matters is the fact that the mechanism of *persona* —now identified with a concrete existence, capable of being individualised and distinguishable from the *ousia*— holds in its core a multiplicity of meanings and functions that will hide and emerge, or so I will argue, in relationship to certain *dispositifs*, aiding in the constitution of regimes of subjection and truth.

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293 See *infra* 2.3.

294 Pierre Hadot, *De Tertullien à Boèce*, p. 128. In a comprehensive study of the corpus, Ilaria Ramelli shows how Origen introduced, as a "linguistic and conceptual novelty", a prominent equation between *hypostasis* and the persons of the Trinity. For instance, in his response to Celsus, Origen reproaches him the fact that he does not fully grasp the meaning of the scriptures, and thus he is unable to understand that "father and son are two hypostases" of the same and only god (see Origène, *Contre Celse* 1, introd. et trad. par Marcel Borret (Paris : Éditions du Cerf, 1969), §12.8, pp. 199 – 201), a motif upon which he will return time and again in other texts, particularly in the Commentary to the gospel of John: Ilaria Ramelli, "Origen, Greek Philosophy, and the Birth of the Trinitarian Meaning of *Hypostasis*", *Harvard Theological Review* 105, no. 3 (July 2012): 302 – 350.

295 Giorgio Agamben, *L'uso dei corpi* (Vicenza: Neri Pozza, 2014), pp. 179 – 184.

296 Pierre Hadot, *De Tertullien à Boèce*, p. 129. See Aristotle, *Categories*, 2a11. For the historical transition, see also Giorgio Agamben, *L'uso dei corpi*, p. 186 and Scott Williams, "Persons in Patristic and Medieval Christian Theology", in *Persons: A History*, ed. by Antonia LoLordo (Oxford: Oxford University Press, 2019), pp. 54 and ff.

297 Pierre Hadot, *De Tertullien à Boèce*, p. 129.

Back in the discussion, however, it is clear that a certain consensus was being reached, to the point where Gregory Nazianzen would say that any divergence between *hypostasis* and *persona* is "purely terminological"[298], as purely terminological seems to be the issue for Augustine, when he takes upon the persons of the trinity. In the *De Trinitate*, Augustine says: "I call essence (*essentiam*) that which the Greeks call *ousía*, which we more commonly call substance (*substantiam*)"[299]. He adds, however, that the Greeks also call it *hypóstasis*, and that he "ignores" what difference do they make between the one and the other. From this confession of perplexity, he says, "three persons" (*tres personae*) is used on account of the "truly great scarcity (*magna prorsus inopia*) of the human language", so that those who occupy themselves with the subject could say something —anything— instead of remaining silent[300]. Augustine, therefore, seems to resolve the terminological issue by default, arguing from a certain interchangeability of the terms, regardless of the fact that he himself finds difficulties with the strata of (mis)translations[301]. On the other hand, he leaves the ontological issue of the trinity behind an epistemological impossibility, so that the poverty of human language explains both the equivalence of the terms as well as the impossibility to fully arrive at a comprehension of the mystery.

Two things, nonetheless, are to be noted still in Augustine.

Firstly, Hadot argues that, in a contrary motion to the abstraction of the term *persona*, which becomes almost a "pure formal concept", Augustine develops as none other the notion of the self, so that with the *Confessions*, "the modern self (*le moi moderne*) emerges in history"[302]. On a tradition that had already begun with Marcus Aurelius and the Stoic tradition, Augustine takes him-self as the object of his own observations, wondering about his own spirit, about his memory, and his shortcomings with literary candour. Hadot says:

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298 Giorgio Agamben, *L'uso dei corpi*, p. 186. In the edition I am using, Agamben suffers a *lapsus calami* and cites the *Oratio* 31, when in reality it should be the *Oratio* 21.

299 Augustin d'Hippone, « *De trinitate* », dans *Oeuvres de saint Augustin*, 15 et 16, trad. par M. Mellet et Th. Camelot (Paris : Desclée de Brouwer, 1955), §5.8.9.

300 Augustin, *De trinitate*, §5.9.10. Further ahead in his discussion, specifically in Book VII, Augustine will come back to the same topic, explaining that given the ineffability (*ineffabilibus*) of the mystery, the Greeks use "one essence, three substances" (*una essentia, tres substantiae*) to refer to the same issue that in Latin is called "one essence or substance, three persons" (*una essentia, vel substantia, tres personae*) since in Latin, Augustine says, "essence tends to be understood as substance" (*essentia quam substantia solet intellegi*): Augustin, *De trinitate*, §7.4.7. He goes further by asking "why do we not call these three, one person, as one essence and one God, but instead say three persons?" Not because there is a relationship of genus and species, for we do not say that the persons are derived from the essence (*ex eadem essentia*) of god, nor does the summed essence of the three persons amount to something greater than the essence of god. Rather, once again, Augustine appeals to the perplexity and the human inability to grasp the ineffable: "for he cannot think except of masses and spaces, whether small or large, flying in his mind's phantasms, like images of bodies (*in animo eius phantasmatis, tamquam imaginibus corporum*)"[300]: Augustin, *De trinitate*, §7.6.11.

301 For the whole approach to the "quasi Babylonic confusion of the language" and its implication for Medieval and Scholastic approaches to the subject, see Alain de Libera, *Archéologie du sujet 1,* pp. 212 and ff.

302 Pierre Hadot, *De Tertullien à Boèce*…, p. 132. On a decidedly different note, but still on the topic of the "self" emerging before Descartes, see Enrique Dussel, «Meditaciones anticartesianas: sobre el origen del antidiscurso filosófico de la modernidad» en Ramón Grosfuguel y Roberto Almanza Hernández (eds), *Lugares descoloniales: espacios de intervención en las Américas* (Bogotá: Pontificia Universidad Javeriana, 2012) 11 – 58, p. 18.

> As B. Groethuysen aptly noted, it is with Augustine that man separates himself from the cosmos, identifies himself with his soul, begins to have within himself, no longer a "He", but an "I". The "I" with Augustine enters philosophical reasoning in a way that implies a radical change of inner perspective. Instead of saying: the soul thinks, therefore it exists, that is to say, relating in a certain way to a transcendent principle of human life and thought, Augustine asserts: I am, I know myself, I will myself; these three acts are mutually implicated[303].

This motion, accompanied by the literary passages of the scriptures —*Job*, the *Psalms*— and the spiritual exercises[304] that Christianity inherited from late antiquity, will ensemble a set of practices and discourses upon which a long pathway of self-knowledge and self-government will define the boundaries of subjection, upon which the mechanism of *persona* can be re-instated; techniques of living that allow the identification of the self with both the body and the soul[305] in a process that reminds, not coincidentally, an *oikonomia*: two entities in one, a plurality becoming and acting as a unity. Selfhood will present, of course, another branch of discussion that strays away from the path I am following here, but it will clearly reappear, or better yet, reemerge, as part of the same practices and discourses that refine said subjection and said *oikonomia*.

Finally, a curious and almost imperceptible occurrence. At the end of the *De Trinitate*, in reference to human partaking of godly attributes, Augustine casually defines *persona* by saying: "a person, that is, any individual man" (*una persona, id est singulus quisque homo*)[306]. His use of the term is indeed ambiguous, and even though he is unable to grasp how can God be three persons on account of the impossibilities of human language, at the same time Augustine forwards as common knowledge that *homo* and *persona* are one and the same thing, in consonance with the apparent conformity of the terms. In a single stroke, he brings the issue back to earth and confines *persona* to the single individual. Apparently, the circle closes itself: *persona* certainly includes —and excludes in the same motion— the *homines*, regardless of their condition, but it also gathers non-human entities that can be as banal as mere objects, as ethereal as characters in a play that share a single body, or even reach the heights of the Trinity without ever leaving for good the nexus to the human entity at its base.

Taking the remarkable Aristotelian passage where he speaks of the radically self-sufficient man that can live outside of the *polis* as being either "a beast or a god" (*hōste ē thērion*

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303 Pierre Hadot, *De Tertullien à Boèce*…, p. 133. Hadot cites the passages of Augustine, particularly a beautiful passage from the *Confessions* 13.11.12*:* "For I am and know and will: I am knowing and willing, and I know that I am and will, and I will to be and to know (*sum enim et scio et uolo: sum sciens et uolens et scio esse me et uelle et uolo esse et scire*).

304 See Pierre Hadot, *Exercices spirituels et philosophie Antique* (Paris : A. Michel, 2002).

305 Paolo Godani, *Il corpo e il cosmo*, p. 64.

306 Augustin, *De trinitate*, §15.7.11.

ē theós)[307], one could say that all of these entities —the beast, the man, the community, the *polis* and even the gods— can be, not improperly, called *personae*.

[307] Aristotle, *Politics*, 1253a.

2.3. *Naturae rationabilis individua substantia*

Boethius begins his treatment of *persona* as anyone should: by confessing his perplexity. After arranging a series of definitions of nature, he says that the question of how to define *persona* can be a matter of the "utmost doubt", stating that only one thing is certain: that nature is the subject of the *persona*, and that *persona* cannot be predicated beyond nature (*personae subiectam esse naturam nec praeter naturam personam posse praedicari*)[308]. In the context of his approach, this means that the notion of person can only refer to substances, which quickly prompts him into a question of taxonomy between corporeal and incorporeal, living and inert, sensitive and insensitive, rational and irrational substances, from which he stems a formidable and alluring deduction:

> From which it is clear that person cannot be said of bodies which have no life (*non uiuentibus corporibus*) [!] (for no one ever said that a stone is a person), nor yet of living things which lack perception [!] (for neither is there any person of a tree) [!], nor finally of that which is bereft of mind and reason (for there is no person of a horse or ox or other animals which live a life without reason, mute and dependent solely on the senses) [!], but we say there is a person of a man, of God, of an angel [309].

In sum, lifeless, insensitive, and irrational entities cannot be persons. With this sentence Boethius has traced an outline for the comprehension of personhood that excludes several cases from the definition: things, trees, forests, rivers, and non-human animals have been all expelled from the realms of personhood.

Paradoxical as it may be, entities without a body can and do have a *persona* attached to them under this definition, undoubtedly because Boethius needed to shield the personhood of God and Christ, but interesting nonetheless, since corporality is not a necessity in his account. In analytical terms, one could say that, for Boethius, life, perception, and reason are necessary conditions for personhood, while the body is neither necessary nor sufficient.

Boethius finishes his taxonomy by saying that personhood is only predicable of "singular and individual" entities, but not of universals. Thus, it is not the genus *man* or *human* that are said to be persons, but rather a certain, determined, singular man (Plato or Cicero are Boethius' examples) can be a person. With all of this in mind, he can finally proceed to define, as perhaps none other before him, what a person is:

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[308] Anicius Manlius Severinus Boethius, "Contra Eutychen" in *Theological Tractates. The Consolation of Philosophy* (Cambridge: Harvard University Press, 1968), 2. 1 – 13

[309] Boethius, *Contra Eutychen*, 2. 28 – 52. Scott Williams claims that this passage is "false" since other authors recognise the hypostasis of horses. He adds that his equation of person and hypostasis is "equivocal, contradictory and misleading". See Scott Williams, *Persons in Patristic and Medieval Christian Theology*, p. 68.

> The definition of person has been discovered: an individual substance of rational nature (*naturae rationabilis indiuidua substantia*)[310].

This "discovery" would become a cairn for personhood: both the cornerstone that would serve as a foundation and the beacon that would illuminate centuries of discussion around the central figure of the person in the philosophical, theological, and juridical realms[311]. Once almost limitless in its reach, *persona* is now confined into the reduced space of an individual substance of the rational sort. A caution is necessary, however, for even if both notions are clearly entangled, this confinement does not mean an immediate equivalence between *persona* and *homo*. Boethius orbits always around the persons of God and Christ, and it is in this framework that his requisites for personhood come to be, with extreme care not to exclude incorporeal substances. If anything, this confinement allows to outline a shared characteristic between *homines* and divinity, ratifying the pre-eminence that stems from the narrative of creation that, along with the use of reason, tells them apart from any other substances.

That being said, Boethius was not unfamiliar with the terminological issues of the concept. Immediately after he enunciates his "discovery", he says that his definition of *persona* is exactly what the Greeks had called *hypostasis*, adding that the Latin term comes from "masks (*personis*) which were used in comedies and tragedies to represent the interests of men (*homines*)", which were also called *prosopa*[312]. However, Boethius promptly leaves the dramatic link behind and adds another notion to the turmoil of translations: the notion of subsistence (*subsistentia*).

Following his discussion on universals and particulars, Boethius claims that essences can certainly be in universals, but they can only have substantiality in particulars (*in solis vero individuis et particularibus substant*). "Clearly", says Boethius, *hypostasis* is "the name of subsistences that have acquired substance by means of the particulars"[313]. He will then translate *ousia* as *subsistentia*, and *hypostasis* as *substantia,* from which it follows that the essence (*i.e.,* subsistence) can only manifest itself—come to existence, acquire actuality— by means of a substance[314]. This excursus, while not as clear as Boethius believes, is certainly necessary in his argument, since by settling the difference between all the terms he can fully dissect the meaning of man being a person, since to a singular man (*hominis*) three things pertain: (i) an essence or subsistence (*i.e., ousia*), (ii) a substance (*i.e., hypostasis*), and (iii) a person (*prosopon*), all of which is encompassed in the definition of a rational substance of individual nature. God,

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310 Boethius, *Contra Eutychen*, 3. 3 – 4.

311 For a discussion of the "entrance of the term into philosophical anthropology" from Leibniz to Heidegger, see Alain de Libera, *Archéologie du sujet 1,* pp. 88 and ff.

312 Boethius, *Contra Eutychen*, 3. 9 – 23.

313 Boethius, *Contra Eutychen*, 3. 35 – 39.

314314 Boethius adds: "Subsists (*subsistit*) that which does not require accidents in order to be. 'Substands' (*substat*) that which provides other accidents with a substratum that allows them to exist (*subiectum ut esse valeat*): it stands under [sub-stands (*sub illis enim stat*)] them as subject of the accidents": Boethius, *Contra Eutychen* 3. 45 – 49.

in turn, is indeed one essence and three *hypostaseis*, and only as a "manner of speaking" (*modum dixere*) are those three also called persons[315].

Moreover —in a phrasing that would become all the more telling when the subject acquires its central role in modernity—, Boethius speaks of nature as being subjected to the *persona* (*manifestum est personae subiectam esse naturam*), just as much as it is obvious on his account how no person can be predicated beyond nature (*nec praeter naturam personam posse predicari*)[316].

Many years later, as he faced his fateful execution, Boethius would remember his *discovery* in a much more intimate and literary form, as his personification of Philosophy would take him to wonder upon him-self: "Could you explain to me —asks Philosophy— what man (*homo*) is?", to which he responds: "Do you ask me if I know myself to be a rational and mortal animal (*rationale animale atque mortale*)? I know and confess myself to be". Philosophy then insists: "Do you not recognise yourself as anything else, then?", "Nothing (*nihil*)" concludes Boethius[317] in a rather nonchalant manner, waiting for the cures that Philosophy would impart upon him.

Homo and *persona* are, once again, deeply entangled[318]. This time, however, not by means of the imposition of a juridical mantle, nor by an analogy to the character or the speaker, and not even by means of a shared characteristic with god; but instead by what seems to be a rather autonomous proposition: the only rational (hence sensitive) and mortal (hence living) animal is *man*[319], in particular, the man and person of Boethius that faces death and sees nothing beyond his ontological constitution, nothing beyond his mere existence. Testament of his despair, Boethius' consolation seems to be that he too shares an individual rational nature, soon to surrender the non-essential materiality of his body.

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315 Boethius, *Contra Eutychen*, 3. 79 – 87. Boethius will go on into great depths in order to conjure the heresies of Eutyches (the disappearance of the human nature of Christ) and Nestorius (a double personhood in Christ), posing that the virtuous middle ground between these two is to understand that Christ had indeed a double nature (man and God) in a single person, thus confirming Tertullian: Boethius, *Contra Eutychen*, 7. 72.

316 Boethius, *Contra Eutychen*, 2. 9 – 10. Agamben comments on this passage in reference to the doctrinal difference between natural and personal guilt, and its link to the genres of comedy and tragedy regarding Dante's own *Comedy*: "The modern notion of the person as the inalienable subject of knowledge and morality does not exist in medieval culture, which still perceives the original theatrical resonance of the term and sees in it the collection of individual properties that are added to the *simplicitas* of human nature. Only in Adam (and in Christ) did nature and person coincide perfectly, and a personal sin was able to contaminate the entirety of human nature. After the fall, person and nature remain, tragically or comically, divided and will return to coincide on the 'last day' of the Resurrection of the flesh": Giorgio Agamben, *Categorie italiane: studi di poetica e di letteratura* (Roma: Laterza, 2010), p. 23.

317 Boethius, "Consolation of Philosophy" in *Theological Tractates. The Consolation of Philosophy* (Cambridge: Harvard University Press, 1968), 1.6.35.

318 For a deeper look on the formation of the anthropological view in the interplay between body and soul, see Jérôme Baschet, *Corps et âmes: une histoire de la personne au Moyen Âge* (Paris : Flammarion, 2022).

319 An echo, likely, of Augustine: "So, since cattle are irrational and mortal animals, whereas Angels are rational and immortal, man is in the middle, inferior to Angels, superior to cattle, having mortality as cattle, reason as Angels, [man is] a rational and mortal animal (*animal rationale mortale*)": Augustine, "De Civitate Dei" in *S. Aurelii Augustini opera omnia: patrologiae latinae elenchus*,Vol 5 (Roma: Città Nuova Editrice – Nuova Biblioteca Agostiniana, 1990), 9.13.3.

In any case, Boethius' definition endured the passage of time, appearing often contrasted and contested[320], but always as a necessary and unmissable point of departure for the question of personhood. Perhaps the greatest reprise of the definition was performed by Thomas Aquinas in the *Summa Theologiae.* In his distinctive scholastic style, Aquinas begins his work on persons by providing Boethius' definition of *persona* as "*rationalis naturae individua substantia*" and, after addressing possible objections and replies[321], he begins his own account by saying that individual (or first substances) receive the name *hypostasis*, that among these individual substances there are some that are also rational —which means that they "have dominion over their acts" (*quae habent dominium sui actus*), that they do not merely act but that "act for themselves" (*per se agunt*)— and that those are consequently of a more perfect kind, to the point where they hold a "special name": *persona*[322].

Rather than simply explaining Boethius' formula, Aquinas adds a non-negligible character to the rationality of the definition. Being a person means indeed being an individual substance, but it also conveys a principle of autonomy and self-rule, defined in terms that are very close to the law: a rational individual substance must be *dominus* — owner and ruler— of its actions. *Mutatis mutandis*, borrowing from the legal terminology, *persona* is by this account a *sui iuris*: master of itself, capable of self-government, owner of his actions in the world[323].

The discussion takes a turn when he claims that "*persona* means what is the most perfect (*perfectissimum*) in all nature, which is why it can be applied to God, even if it is in a "more excellent way" than it is applied to humans[324]. This link to perfection is accentuated to the point where Aquinas says that *persona* is also defined as a "hypostasis of distinct property by reason of dignity" (*hypostasis proprietate distincta ad dignitatem pertinente*)[325]. This is a rather new approach, since the concept of dignity has not appeared so far linked with the concept of *persona*, and it demands a brief detour given that Aquinas does not provide his course in the text. The definition is certainly not in Boethius, even if one could argue that dignity was

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320 See Scott Williams, *Persons in Patristic and Medieval Christian Theology*, pp. 69 and ff.

321 Thomas Aquinas, *Summa Theologiae*, bilingual ed., trans. by Laurence Shapcote (Green Bay: Aquinas Institute, 2020) I, q. 29, a. 1.

322 Thomas Aquinas, *Summa Theologiae*, I, q. 29, a. 1. resp. For a further analysis of the difference of rational creatures in Aquinas, see Giorgio Agamben, *Il regno e la gloria*, p. 153.

323 In this passage, Esposito sees a rupture of "the asserted unity of the living being, a gap, we could say political, [that] manifests itself between what commands and what obeys", adding that rationality, upon this account, acquires a pre-eminence over the body, so that personhood implies an "absolute possession" of one's corporality: Roberto Esposito, *Due*, p. 113. Whether the scholastic discussion points towards this notion is debatable, but it is certain that such a rupture has emerged repeatedly, and that rationality, intended as the dominion of one's acts, is to be a decisive account for the constructions to come. Needless to say, this also touches quite clearly upon topics that were already present, for instance, in Plato, in reference to his tripartite notion of the soul as a mirror of the ideal *polis.* See Plato, "Republic" in *Plato in Twelve Volumes*, Vols. 5 & 6, trans. by Paul Shorey (Cambridge: Harvard University Press, 1969), 4.441a and ff.

324 Thomas Aquinas, *Summa Theologiae*, I, q. 29, a. 3. resp.

325 Thomas Aquinas, *Summa Theologiae*, I, q. 29, a. 3. ad. 2. Aquinas' whole argument is this: since the "dignity of the divine nature exceeds any other dignity", it follows that the notion of person belongs with all the more reason to God. Furthermore, the same definition appears in *Scriptum Super Sententiis* I, d. 26, q. 1.

implied in the eminence that both God and men held as individual substances of rational nature.

By the same time as in Aquinas, the notion of dignity also appears in Alexander of Hales, and while it is unclear whether the introduction of dignity is his own or someone else's[326], his approach to the matter is also quite telling. After dealing with the issue of essence, substance, subsistence, and hypostasis, Hales recalls and challenges Boethius' formula in order to produce his own, which is in fact the quote by Aquinas: "*persona* is a hypostasis of distinct property by reason of dignity"[327]. Hales claims, nonetheless, that such a definition can actually be derived from Boethius' own, since he has "removed" from the concept of person "any accidental beings, any incorporeal part of substances, such as the soul; any inanimate, insensitive, irrational beings" and even the very "human nature in Christ"[328] —which is, effectively, a nature but not a person in itself— , so that it remains as a very specific *hypostasis* of a distinctive 'dignity'.

Dignity, he says in his *Glossa*, refers to an individual substance —always following Boethius— that *is* not or does not *come* "from another" (*ab alio*), as would be the eminent case of God who cannot be born (*innascibilitas*) and comes from nothing (*a nulla*), which in turn is communicated to those who are begotten (namely, Christ) from divinity. The very special character of this distinction is what implies dignity (*dignitatem importat*) and therefore "*persona* is indeed the name of dignity" (*persona enim nomen dignitatis est*)[329].

Although certainly present also in Aquinas, such an ontological conception of dignity contrasts with another definition of his that comes closer to the usual treatment of dignity in a contemporary setting. While asking whether angels have free-will, Aquinas defines this *liberum arbitrium* as the act of choosing (*eligere*), taking as a given that "free-will belongs to *man*'s

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326 F. von Gunten suggests that it comes from Alain de Lille, *Regulae Theologicae*, r. 32: see F von Gunten, "La notion de personne dans la Trinité d'après Alexandre de Halès" in *Divus Thomas: Jarhbuch für Philosophie und Spekulative Theologie*, 28 (1950) 32 – 62. It must be said, however, that notion of dignity is not present *ad litteram* in Alain de Lille, although we do find a rather interesting although spurious etymology of *persona: per se una*, one by itself.

In his own *Summa*, Alexander of Hales claims that it comes from "masters" without mentioning anyone in particular. Furthermore, he cites Thomas' *Super sententiam*, which means the source is likely to be common to both. See Alexander of Hales, *Summa theologica* (Venetiis: Apud Franciscum Franciscium Senensem, 1576), I, q. 56, m. 3, p. 142: "*Magistri vero ponut tertiam talem: persona est hypostasis, distincta proprietate, ad dignitatem pertinente*".

327 Alexander of Hales, *Glossa in quatuor libros sensentiatum Petri Lombardi* (Firenze: Quaracchi, 1951), 1, d. 23, 9b, p. 226. Also in Alexander of Hales, *Summa theologica*, *loc. cit.*

328 Alexander of Hales, *Glossa*, 1, d. 23, 9c.

329 Alexander of Hales, *Glossa*, 1, d. 28, 5e. How to explain this dignity, however, in the case of *human persons*? Alfons Hufnagel, in a study devoted precisely to the notion of person and the particularities of its dignity in Alexander of Hales, suggests that "in the human person" (*menschlichen Person*) one can find a "staged structure of being" (*Stufenbau des Seins*) in which the moral being —that corresponds to this ontological conception of person— incorporates, and "sublates" (*aufgehoben*) the natural (substance) and rational (individual) parts of its constitution[329]. In other words, if the human person implies dignity, it is because it has a similar ontological constitution to God, even if in humans the moral aspect replaces the divine: Alfons Hufnagel, "Die Wesensbestimmung der Person bei Alexander von Hales" in *Freiburger Zeitschrift für Philosophie und Theologie*, 4 (1957) 148 – 174, p. 166.

dignity" (*libertas arbitrii ad dignitatem hominis pertinet*)[330]. He will later ratify the existence of free-will in *men* (*homines*) and will link it to a "cognoscitive force" (*vim cognoscitivam*), by means of which a man can judge and decide beyond the realms of mere instinct. This prompts him to close his argument by saying that "it is necessary that man is of free will, because he is rational (*quod rationalis est*)"[331]. If being a person implies being rational, and if being rational implies being the owner and ruler of one's own acts, then it follows that an entity without free-will cannot be rational, and consequently, it cannot be a person. Aquinas seems to fall into a tautology, for free-will necessitates rationality as much as rationality necessitates free-will[332]. In fact, it seems that free-will is indeed *necessary*, not *be-cause* (*quod*) *homines* are rational, but instead considering that, without free-will, they would not be able to govern over their own acts, falling short of the requisite to be an individual substance of rational nature. Hence, everything rational must be free and everything free must be rational[333].

Whether sound or not in theological terms, what Aquinas and Hales are pointing towards is a definition that strays very far away from the mere equivalence between *homo* and *persona*, not only because their concern is always the personhood of a divinity, but also because personhood begins to demand rationality, self-government, and dignity as ontological and practical distinctions. This means that, in such an updated version of Boethius definition, *persona* would be an individual substance of a self-ruling nature that holds dignity on account of his ontological constitution, but also on account of his ability and necessity to choose in freedom.

Only here could *persona* be seen intertwined with a certain idea of eminence and dignity that excludes insensitive, irrational, and unfree entities from the frontiers of personhood. And if it includes the *homo* it is only as the furthest territory of the realm, the one that looks upon other beings not as a god, but as its image.

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From the grammatical excursions of Tertullian to the cloisters of scholasticism, an inversion of the mechanism of *persona* has been produced. No longer a character in the mysterious *oikonomia* of a tripartite monarchy, but instead the dignity of an individual substance of rational nature. No longer an analogy, a *modum dixere* that allowed to grasp such a mystery in human terms, but instead a partaking of the divine eminence recognised in *homines*, the

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330 Thomas Aquinas, *Summa Theologiae*, I, q. 59, a. 3. sc. From here it follows that angels, as more perfect than men, should also have free-will.

331 Thomas Aquinas, *Summa Theologiae*, I, q. 83, a. 3. r.

332 Nevertheless, in the very same passage, Aquinas defines free-will as an "appetitive power" rather than as an intellectual.

333 As Sergio de Souza Salles *et al* note, this "dynamic sense of dignity" is different from the transcendental and categorical meanings, and hence even if Aquinas says that a man can "see its dignity reduced by sin", it does not mean that he or she does not still hold the ontological pre-eminence that was conveyed by Alexander of Hales' formula. See Sergio de Souza Salles et al, "Dignity is said in many ways: a re-reading based on Thomas Aquinas", *Conhecimento & Diversidade*, v. 14, n. 34 (Sep-Dec 2022), 271 – 286.

creatures that resemble the most to that incorporeal person of the divine. Not the personification of gods *as if* they were human, but the personification of humans *as if* they were gods: unification, dignity, communion.

While the scholastic *lectiones* continued, *persona* would nonetheless perform a divisive function beyond the cloisters, in fact, beyond the seas.

Despite common belief, it does not seem that Spanish and Portuguese conquistadors saw soulless creatures when they first made contact with the "New World"[334]. Instead, they most likely saw other *homines* just as them, even if they were deemed "savage and barbarian", as they insisted *ad nauseam*.

In a context that was rather void of philosophy, and instead marked by a practice of extermination or genocide[335], European newcomers were not in the business of asking themselves whether they were murdering and raping persons, humans, or entities with souls. In any case, the presence of the soul would have been irrelevant up to a certain point, since souls were not exclusive to *homines* —as attested by "the nutritive and sensitive souls" that all animated creatures share[336]—, and because of the simple fact that being or having a soul has never been an impediment to be raped or murdered. The extermination[337] was carried instead under the mantle of the 'rightful' rule of 'civilisation' over 'barbarism'. In this sense, the literature of the time relentlessly cites the passage of the "natural ruler" and the "natural subject" in Aristotle[338] as well as his medieval commentators, and characterised the indigenous population as "lacking judgement and understanding", to the point where "everyone says [these *indios*] are like animals that speak (*son como animales que hablan*)", namely, peoples that were bound to a "benevolent and qualified" form of servitude ordained by God, given that "total freedom was harmful to them (*la total libertad les dañaba*)"[339].

That being said, both the soul and the recognition of indigenous people as *homines* did play a role in the question of brutality by the Spanish. In 1511, the Dominican friar Antonio de Montesinos would publicly condemn the treatment of the indigenous people in a famous sermon that, besides questioning the ruthless servitude, also centred the discussion on the *humanity* of the population:

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334 See, for instance, the French film *La controverse de Valladolid* (1992) written by Jean-Claude Carrière and directed by Jean-Daniel Verhaeghe, where the Valladolid Dispute is framed as a matter of deciding "upon the nature of the Indians, whether they have a soul like ours (*s'ils ont une âme semblable à la notre*)", min. 33:15.

335 For this issue, including the debate on terminology, see, among many others, Mohamed Adhikari (ed), *Civilian-Driven Violence and the Genocide of Indigenous Peoples in Settler Societies* (London: Routledge, 2021).

336 See Aristotle, "On the soul", in *Aristotle in 23 Volumes*, Vol. 8, trans. by W.S. Hett (Cambridge: Harvard University Press, 1986), 413b13, 414a29, 434a22 and *passim*.

337 Enrique Dussel recollected some terrifying numbers of which I give only a couple of examples: Out of 150.000 Quimbayas by 1539, only 69 remained by 1628. Out of more 16 million indigenous people in Mexico by 1532, only over 1 million remained by 1608. See Enrique Dussel, *Les Evêques hispano-américains : défenseurs et évangélisateurs de l'indien, 1504-1620* (Wiesbaden : Franz Steiner, 1970), pp. 96 – 97.

338 Aristotle, *Politics*, 1252a.

339 This was a report to the Spanish crown made by a lawyer, Gil Gregorio, as recounted in Bartolomé de las Casas, «Historia de las Indias» en *Obras Completas 5: Historia de las Indias III* (Madrid: Alianza, 1994), lib. 3, cap. 12; pp. 1799 – 1800.

> Are these not men (*hombres*)? Do they not have rational souls? [!] Are you not obliged to love them as you love yourselves?[340].

Evidently rhetorical and evidently Boethian, these questions show that there was no doubt, at least in the friar's mind, that the indigenous people were indeed rational souls, namely *homines*, and consequently, persons. Yet, the equality was not so clear for everyone involved. The king himself took notice of Montesinos' sermon, calling it "scandalous" and saying it had no "theological nor legal foundation"[341], which began a long debate on the legitimacy and legality of the Spanish treatment of the indigenous people, involving Montesinos facing "experts" in the matter back in Spain, where finally in 1512 the *Leyes de Burgos* were promulgated, providing a juridical framework of what was supposedly in the benefit of those very "Indians". These laws, however, were problematic and paradoxical to say the least.

On the one hand, they began a process that was maintained well throughout the Spanish dominion of the continent, establishing paternalistic rules in order to "save" or "deliver" the indigenous people from their sinful nature. Hence the preamble of the *Laws* justifies the imposition of faith as "necessary for their salvation", since the "*indios*" are "naturally inclined to laziness and wicked vices (*porque de su natural son inclinados a oçiosidad y malos viçíos*)"[342].

On the other hand, the *Laws* brought a convoluted use of *persona*, sometimes applied as a general word for *homines*, while other times it seemed to denounce the distance between the Spanish and their infantilised protégés. For example, the laws presented themselves as "beneficial, both for the salvation of their souls" —whose existence, again, was not in doubt— and "for the good and usefulness of their persons (*para el pro e vtylidad de sus personas*)"[343], but at the same time ordained that "all persons (*todas las personas*) that possess *indios* are obligated to provide them with quarters"[344], implying that *personas* and *indios* were two separate categories: the protective master and the protected servant, the former owning, arranging and disposing of the life of the latter. Even if taken merely as an ambiguous use of the term, it goes without saying that such an ambiguity in a legal framework is bound to become an aperture that jurists could exploit in either direction. Moreover, beyond their soul, what is at stake in such an ambiguity is their status as individual substances of rational nature, and thus it seems that *persona* operates as an ambivalent threshold, one that includes and excludes in a singular motion, placing the *indios* both inside and outside its realms, turning them into the moveable frontier between animals and men, between civilisation and barbarism.

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340 Bartolomé de las Casas, *Historia de las Indias*, lib. 3, cap. 4; pp. 1761 – 1762.

341 Enrique Dussel, *Les Evêques hispano-américains*, p. 108.

342 Carlos Herrero Abán, «Facsímil y transcripción de las Leyes de Burgos» en Rafael Sánchez Domingo y Fernando Suárez Bilbao (coord.), *Leyes de Burgos de 1512. V Centenario* (Madrid: Dykinson, 2012), preám., f. 1r; p. 315.

343 *Leyes de Burgos*, preám., f. 2r; p. 319.

344 *Leyes de Burgos*, §15, f. 8v; p. 345. A similar use in §11, f. 7r; p. 339.

While the debate on their rights and condition followed, with the prominent figure of Bartolomé de las Casas and other Dominican friars insisting in the recognition of rights to the indigenous people[345] — although staying in almost absolute silence regarding the practice of slave trafficking departing from Africa[346]— an authoritative source would make an appearance in the form of a papal bull: *Sublimis Deus*, promulgated by Paul III (Alessandro Farnese) in 1537. After stating the great love of God to the "human genus" and the capacity of man (*hominem*) to know the "Supreme Good", the pope would apparently settle the discussion for good by saying that "the *indios* are truly men" (*Indios ipsos ut pote veros homines*), and in consequence "shall not by any means be deprived of their liberty or their dominion over their property"[347].

Instead of settling the matter, however, the effect of the bull was the reduplication of the paradox: on the one hand, the necessity to bring them back to the flock of the Christian dogma via a paternalism that essentially denies the indigenous people's capacity to rule themselves, imposing so-called protective measures that extended well beyond the early establishments of the Conquest. On the other hand, the papal recognition of the indigenous persons as "truly men" implied that not only were they not to be reduced to servitude, but that they were also capable of ownership, apparently both over their lands and over themselves, or as the pope himself says, echoing Aquinas' definition, that they had *dominium.* This pendular movement was not, however, entirely on the pope. The *Laws of Burgos* had already begun a trend of protecting the indigenous people from full slavery, at least in theory, and had recognised in them a particular "ability" that echoes Aristotle on an entirely different level:

> That some of them understand this as it should be understood, and it will be noted that they have discernment and the ability to marry and govern their house (*que tienen discreción e habilidad para ser casados e governar su casa*)[348].

The ability to govern their house: *oikonomia*. As Agamben noted and as we have seen, Aristotle was emphatic in saying that the government and the administration of the house was not a science but a technique, and so it could very well be present even in "some" of the "*indios",*

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345 See Enrique Dussel, *Les Evêques hispano-américains*, pp. 110 and ff; and Berta Aires Queja, «La Apologética Historia Sumaria y el debate sobre la naturaleza del indio», en Bartolomé de las Casas, *Obras Completas, 6: Apologética Historia Sumaria I* (Madrid: Alianza, 1992), 201 – 233.

346 It has been noted how Afro-American slavery was completely omitted in the theological and philosophical doctrine of humanity of the Church, to the point where, while the discussion was centred on the "*indios"*, the Church owned slaves as a general practice and its missionaries saw no discrepancy between their doctrine and their practice. See Laënnec Hurbon, "The Church and Afro-American Slavery" in *The Church in Latin America 1492 – 1992*, ed. by Enrique Dussel (Kent: Burns&Oates, 1992) 363 – 374.

347 Paulo III, «Sublimis Deus» en Carlos Gutiérrez, *Fray Bartolomé de las Casas: sus tiempos y su apostolado* (Madrid: Imprenta de Fortanet, 1878), pp. 425 – 429.

348 *Leyes de Burgos*, §16, f. 9r; p. 347.

taking them as capable to exercise the monarchic rule of their own possessions in the same way that other *homines*, to the point where the *Laws of Burgos* actually allowed the chiefs (*caçiques*) of the indigenous population to have servants of their own[349]. In other words, although certainly deemed inferior to the Spanish conqueror, the indigenous *homines* had some ruling capacity and, at least in some cases, they were seen as *domini*. The bridge is thus clearly traceable: if they are rational, they can indeed be owners both of properties and actions, and inversely, if they are owners of themselves, they are necessarily rational in the sense of the rational nature that Aquinas summoned while addressing Boethius' definition. In calling for the respect of their dominion, and in recognising their status of *homines*, the pope was performing an equalisation up to a certain level. Undeniably individual substances of rational nature, the "*indios*" were *personae*.

It was in the transition from the private realm of the house to the public realm of the *polis* that the stratification of their autonomy was questioned, and where the paternalistic environment ratified the ambivalence of their persons. After the bull, the question moved in a different direction, not whether they were *homines*, but whether it was legitimate or just for them to rule themselves, or if it was necessary to bring them under the yoke of the Spanish crown; differently stated, whether it was according to natural law to do war to subject them to the Christian faith.

In his lecture of 1539, *De Indis*, or *Circa Indos Novis Orbis*, Francisco de Victoria begins his reasoning by asking whether these "barbarians from the New World that people call *indios*" [350] were "truly owners (*veri domini*) of the public and the private", that is, whether among them there were "truly princes and lords of the rest" (*veri principes et domini illorum*)[351] before the arrival of the Spanish.

Victoria goes to a great length to prove that, regarding at least divine law, the *indios* were indeed *veri domini.* Among the many reasons he provides, he explores two questions that have to do with rationality. On the one hand, he poses that "irrational creatures" —namely, animals, but also, he adds, the sun— cannot have dominion. Since dominion is a right (*ius*), and irrational creatures do not suffer injustice (*iniuria*), it follows that they do not have rights or that they have no law (*non habent ius*), and hence they do not rule over themselves and are thus under the property of men (*sunt hominis proprietatem*)[352]. To sustain this position, he cites Aquinas saying that only rational creatures "have dominion over their acts" (*habet dominium sui actus*), and hence were the *indios* actually irrational they would have not been able to exercise dominion over themselves, and even less so over their properties before the arrival of the Spanish[353].

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[349] *Leyes de Burgos*, §22, f. 11r; p. 355.

[350] Francisco de Victoria, *De indis et de iure belli relectiones*, ed. by Ernest Nys (Washington : Carnegie Institution, 1917), I., p. 218.

[351] Francisco de Victoria, *De indis et de iure belli relectiones*, I. 4, p. 222.

[352] Francisco de Victoria, *De indis et de iure belli relectiones*, I. 20, p. 230. In other versions "*sunt sub hominis potestate*".

[353] Francisco de Victoria, *De indis et de iure belli relectiones*, I. 20, p. 230.

On the other hand, after stating that even those deprived of reason (*amentes*)[354] can suffer injustice (*iniuria*), and therefore are also entitled to rights, Victoria asks himself whether the indigenous people are deprived of reason themselves. He says that not only are they not deprived of reason, but they have judgement (*iudicium*) in the same way that everyone else (*omnes illi*), as proved by the fact that they have "order in their things" and "marriages, magistrates, rulers, laws, labour, commerce, etc.", all of which requires the "use of reason" (*usum rationis*)[355]. He adds, however, that if "they seem so insensible and stupid is primarily due to a bad and barbaric education, just as among us many peasants are not very different from brute animals"[356]. Thus, neither *irrationales* nor *amentes*, and therefore capable of *dominium*.

Victoria concludes by introducing an argument of the utmost legal nature, saying that indigenous people are not to be taken as "*alieni iuris* by nature, having no dominion", since "no one is slave by nature" (*nulus est servus a natura*)[357] —improperly equating slaves to *alieni iuris,* although these could also be free—, which in any case does not exclude the fact that they do have a "natural need" to be "ruled and governed (*regi et gubernari*)", in the same way that "children are subjected to their parents, or the woman to the man in marriage", all of which enhances the paradoxical status of indigenous people as not being neither fully *sui iuris* nor *alieni iuris*, and neither free nor slaves.

What seems clear for Victoria, however, is that they *were* indeed truly owners both of their properties and of themselves before the arrival of the Spanish, and after examining the legitimate and illegitimate titles upon which the *indios* could have come under the power of the Spanish, he insistently claims that in no circumstance would a war against them be legitimate[358].

These arguments would appear again in the 'Valladolid Dispute' between Juan Ginés de Sepúlveda and Bartolomé de las Casas. De las Casas advocated for the rights of the indigenous population, rejected their equation to animals and aimed to prove that they had "monastic, economic, and political prudence", as shown by their temperance, the correct government of their houses and the proper treatment of their women, their children, and their slaves, as well as the existence of a "public power that we call exercise and execution of justice"[359]. Ginés de Sepúlveda, on the contrary, said that it was a duty of justice, on account

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354 Francisco de Victoria, *De indis et de iure belli relectiones*, I. 22, p. 231. A usual translation of *amens* would be insane, mad or foolish, *in-sane* having a transparent cognate in Latin: *insanus*. However, I choose to translate it as "deprived of reason" because it seems to convey with precision Victoria's point: not whether they are mentally ill (in contemporary terms), but rather whether they have a *mens*, a mind, a soul.

355 Francisco de Victoria, *De indis et de iure belli relectiones*, I. 23, p. 231.

356 Francisco de Victoria, *De indis et de iure belli relectiones*, I. 23, pp. 231 – 232.

357 Francisco de Victoria, *De indis et de iure belli relectiones*, I. 23, pp. 231 – 232. De Victoria replicates here the *Digesta*, 1.5.4 (*servitus est constitutio iuris gentium, qua quis dominio alieno contra naturam subicitur*), but he also seems to suggest that it was not Aristotle's intention to claim there was slavery by nature, which is evidently false: Aristotle, *Politics*, 1255a.

358 See Francisco de Victoria, *De indis et de iure belli relectiones*, II., pp. 233 and ff.

359 Bartolomé de las Casas, *Obras Completas, 6: Apologética Historia Sumaria I* (Madrid: Alianza, 1992), caps. 40 – 45, pp. 463 and ff. The literal citation at p. 488. See also Bartolomé de las Casas, *Brevísima relación de la destrucción de las Indias* (Madrid: Cátedra, 1982).

of the Spanish, to perform a just war in order to eradicate their barbaric way of living and their infidelity[360]. The fact, he says, that they have some public institutions or "houses and a common way of rational living" —all of which he qualifies as servile and barbarian— is not proof of equality with the Spanish conquerors, but simply proof that they are not "bears or monkeys completely absent of reason" (*eos non esse ursos aut simias rationis penitus expertes*)[361]. Mercenary as usual, the appeal to nature seems to serve both sides of the dispute, and although under this light they do remain among the ranks of *homines*, they are portrayed as minors, that is, utterly incapable of ruling themselves. Upon this account, Ginés de Sepúlveda says that the "most eminent philosophers" justify their domination and their subjection to "princes and powers more human and virtuous", all of which is done "in their benefit and accordingly to natural justice"[362].

As part of the ongoing debate, a compilation of Castilian laws — *Reportorio universal de todas las leyes d'estos reynos de Castilla*— would offer an interesting contrast between what is the meaning of man (*hombre*), person (*persona*), and slave (*siervo*) in this juridical context.

"A man", the compilation says, "is the worthiest (*la mas digna*) of all creatures", upon which nonetheless a "distinction by degrees" was necessary between "greater and lesser" (*mayores y menores*). The greater "sheltered, sustained, and defended" (*los amparavan y mantenian y defendian*) the lesser, while these provided their "services and their love in exchange". Moreover, in another degree of distinction, the compilation emphasizes that "all animals in the world were made to serve man"[363].

As to *personas*, in plural, the compilation divides them into free, slaves, and liberated; and then expands the catalogue to the distinguished, the noble, and the vile, saying that although the laws make no distinction between them in terms of judgement (*juyzio*), it is clear that the nobles are not (to be) punished or condemned in the same way as those that are not of the same quality[364].

Finally, the slave (*siervo*) is perhaps the most interesting and fertile among these definitions:

> Slave is one who does not have free administration of his *persona* [365].

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[360] See Juan Ginés de Sepúlveda, *Demócrates Segundo o de las justas causas de la guerra*, ed. y trad. Ángel Losada (Madrid: Instituto Francisco de Vitoria, 1984).

[361] Juan Ginés de Sepúlveda, *Demócrates Segundo*, 19v. 915; p. 37.

[362] Juan Ginés de Sepúlveda, *Demócrates Segundo*, 9v. 425; p. 19 — 10v 503; p. 22.

[363] Hugo de Celso et al (comp.), *Reportorio universal de todas las leyes d'estos reynos de Castilla* (Alcalá de Henares: Imprenta de Juan de Brocar, 1540), f. clxxiij. As a side note, it is worth mentioning the definition of people: "People is the large gathering of both knights and other men of lesser degree" (*pueblo [es] ayuntamiento grande ansi de cavalleros como de otros hombres de menor guisa*), f. ccxciiij. This seems to be an evocation of Gaius' definition of *populus* as including everyone, even patricians; contrasted to the *plebs*, that is, the *populus* minus the patricians: Gaius, *Institutes,* 1.3.

[364] Hugo de Celso, *Reportorio universal de todas las leyes d'estos reynos de Castilla,* f. cclxvij.

[365] Hugo de Celso, *Reportorio universal de todas las leyes d'estos reynos de Castilla,* f. cccxxiij.

Not having the administration, the disposition, the government of one's *persona* is the definition of servitude. This passage seems to mirror the Theodosian approach to *personam habere*, but instead of taking it as part of the role someone plays in the theatre of the trial, it seems to correspond to something much more radical that fits well with the notion of dignity, namely the fact that free-will and rationality call for self-rule, and therefore those *homines* who lack such capacity also lack the distinction that approaches them to the eminent *hypostasis* that is attributed to the Christian god: the rational, self-governing character that defines them as persons. *Homines* can thus be separated from (the disposition of) their *persona*, losing not their 'human' condition, but their ability to rule and dispose of themselves. Similar to the dual nature of Christ, *persona* and *homo* inhabit the same individual substance, and even when the self-ruling faculty is stripped away, the vessel of the *homo* remains somewhat immutable, for there is no immediate and necessary correspondence between one and the other.

It is useful to note that although '*siervo'* is usually translated in medieval and later contexts as 'servant', instead of slave, it is the compilation itself that refers to '*siervo'* when addressing the notion of '*esclavo*' (slave)[366], so that this prolific game of ambiguities would impact the amphibious relation of the *Laws* to the indigenous people, shielding them from slavery, at least in theory and in contrast with Afro-American slaves, but subjecting them to "protective measures" that included both strenuous work and forced conversion.

However, such a contradictory motion that simultaneously separates and unifies *homo* and *persona* is not exclusive to the regulation of the Indies. In fact, it appears also rooted in the Roman tradition regardless of its nexus with the 'discovery' of the 'New World'.

In a legal treaty of 1590 devoted to Roman jurisprudence, Hermann Vultejus writes that the "absolute law" (*jus absolutum*) occupies itself with two topics "whose knowledge does not presuppose anything else: man (*homo*) and thing (*res*)"[367]. Besides using *homo* instead of *persona* for the purpose of the *summa divisio*, Vultejus traces clear differences between the two concepts. After defining man (*homo*) in an Aristotelian fashion as a "political animal, capable of communal life in society"[368], Vultejus claims in the chapter devoted to persons that "to man considered absolutely as a single species" (*hominis absolute considerati species una*), another category follows: "*persona*, [which] is a man with civil capacity" (*persona autem est homo habens caput civile*)[369]. While in the Spanish regulation of the Indies the disposition of one's *persona* marked the essential difference between the free and the slave, here the *persona* is read through the legal notion of capacity, so that the natural capacity of the *homo* is not equal to his or her civil capacity of *persona*, which is to say a legal, political, and by contrast, *artificial* form of capacity.

Although both ideas coincide in the fact that all persons are *homines* —unification— but not all *homines* are persons —separation—, in the former case losing or lacking a *persona*

366 Hugo de Celso, *Reportorio universal de todas las leyes d'estos reynos de Castilla*, f. cxxx.

367 Hermann Vultejus, *Jurisprudentiae romanae a Justiniano compositae libri due* (Marburg: Egenolphus, 1590), lib 1, cap. 4, f. 37.

368 Hermann Vultejus, *Jurisprudentiae romanae,* lib 1, cap. 4, f. 37.

369 Hermann Vultejus, *Jurisprudentiae romanae,* lib. 1, cap. 9, f. 58.

implies slavery, while in the latter case losing or lacking a *persona* implies incapacity. What is this (in)capacity, however? Vultejus gives his answer by appealing to three different attributes:

> So it happens that whoever is free is a person, whoever is a citizen is a person, whoever is in a family is a person, but by the best right of all, it is considered person who has these three capacities together[370].

Freedom, citizenship, and family are the characteristics of the civil capacity that Vultejus ascribes to personhood. Not only, then, the distinction between free and slaves[371], but the distinction between *sui iuris* and *alieni iuris*[372], and even the classical discussion on the loss of capacity —particularly the 'maximum loss of capacity' (*capitis deminutio maxima*), which means losing both freedom and citizenship[373]. The model of *persona* in this case is not the mere *homo*, which upon Vultejus' account is a mere natural foundation, but instead the *paterfamilias* that enjoys the virtues of freedom, family, and citizenship as an actual autonomous entity. That these rights can be lost is evident for Vultejus, and in that case what is being stripped from the distinct individual substance of self-governing nature is not its humanity —its belonging to the *homines*—, but its personhood.

Now, even if this account is much stronger that the one in the definition of *siervo*, it is also quite clear how the bridge between both notions can be traced, for freedom is indeed essential and, as such, the dignity of a *persona* is incompatible with slavery. It is therefore not inconsistent to find, further ahead, some more radically distinct positions, such as the one claiming that "a slave is a [hu]man, not a person" (*servus enim homo est, non persona*)[374].

What matters, however, is that only after this whole theological, philosophical, and juridical peregrination do the notions of slave and *persona* repel each other on account of a certain dignity. As we have seen, the original Roman notion had no issues whatsoever in expanding and contracting its boundaries to entities that will be later refused entrance by Boethius, nor was it interested in their dignity, at least in the sense that we have seen via Aquinas and Hales. Furthermore, the notion of *homo* will remain as an underlying substance for both the person and the slave, an apparently natural but unstable sediment between both artifices that would represent another different frontier.

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370 Hermann Vultejus, *Jurisprudentiae romanae,* lib. 1, cap. 9, f. 68.

371 Gaius, *Institutes,* 1.9.

372 Gaius, *Institutes,* 1.48.

373 Gaius, *Institutes,* 1.159 – 1.160.

374 This passage is found in Hugues Doneau, *Opera omnia. 1: Commentariorum de iure civili tomus primus* (Lucca: Riccomini, 1762) lib. 2, cap. 9, §1, p. 231. Esposito cites this as if Doneau were the author: Roberto Esposito, *Due*, p. 110 and Roberto Esposito, *Terza persona*, p. 100. However, the citation in fact appears in a footnote and it is most likely Oswald Hilliger's, who provided a commentary to Doneau and whose edition became the standard for the work. For a discussion in depth about this citation, see Tzung-Mou Wu, *"Personne" en droit civil français : 1804-1914*, Thèse en Droit (Paris : École des Hautes Études en Sciences Sociales (EHESS) ; Roma : Università degli studi Roma III, 2011), p. 48.

Before moving forward, and as a corollary to the constructions of the conquest, a leap of almost a century will allow to see that very sediment still struggling to consolidate itself. In 1680, Carlos II, king of Spain, commanded a compilation of all the laws that had been produced thus far to rule the Indies —*Recopilación de leyes de los reynos de las Indias*—, which were still nurtured and reprinted by the late 18th century, and in which, tellingly, the "the liberty of the *indios*" was separated from "the rights of slaves"[375].

Here, the ambiguous use of *persona* persists, sometimes appearing yet again as a synonym for *men*, but other times marking a clear distinction, such as the law of 1538 that orders "all the persons that have slaves, black and mulattoes (*todas las personas que tienen Esclavos, Negros y Mulatos*) to send them to church"[376], or the law of 1620 that allows all the members of the Viceroyalty of Perú to travel with all their "servants, slaves, and persons in their service" (*criados, esclavos y personas á su cargo*)[377]. Furthermore, and however convoluted, the laws insisted in the paternalistic and ambivalent measures regarding the indigenous population, which on the one hand granted them rights such as the right to write freely to the king[378] and ratified their "freedom"[379], while on the other hand forbade them to ride a horse[380] and ordered that "no wine should be sold" to the indigenous population for their own "preservation" (*por la conservacion de los Indios*), and on account of "the serious harm caused to [their] health" (*el grave daño que resulta contra la salud*)[381]; in other words, the measures a good father would take to protect his infants, or better yet, his estate.

In any case, to ask this corpus what the "barbarians of the New World" were, is to face an aporia: in the same human body one could find both persons and non-persons.

375 Carlos II, *Recopilación de leyes de los reynos de las Indias II,* edición facsímil coeditada por el Centro de Estudios Políticos y Constitucionales y el Boletín Oficial del Estado (Madrid: Imprenta Nacional, 1998), lib. 6, tit. 2, pp. 201 and ff., and lib. 8, tit. 18, pp. 539 and ff.

376 Carlos II, *Recopilación de leyes de los reynos de las Indias I,* edición facsímil coeditada por el Centro de Estudios Políticos y Constitucionales y el Boletín Oficial del Estado (Madrid: Imprenta Nacional, 1998), lib. 1, tit. 1, ley 13, p. 5.

377 Carlos II, *Recopilación de leyes de los reynos de las Indias I,* lib. 3, tit. 3, ley 14, p. 548.

378 Carlos II, *Recopilación de leyes de los reynos de las Indias II,* lib. 6, tit. 1, ley 45, p. 200.

379 Carlos II, *Recopilación de leyes de los reynos de las Indias II,* lib. 6, tit. 2, ley 1, p. 201.

380 Carlos II, *Recopilación de leyes de los reynos de las Indias II,* lib. 6, tit. 1, ley 33, p. 197.

381 Carlos II, *Recopilación de leyes de los reynos de las Indias II,* lib. 6, tit. 1, ley 36, p. 197.

2.4. Against truth, for the truth

The flourishing, animated mosaic that blended fictions and persons has lost much of its pigment and its composition: instead of relying on fictions to broaden its frontiers, the theological conception of *persona* has reclused itself in the medieval cloisters of an individual substance of rational nature. Whereas the Romans fabricated both life and death "in a complete disregard (*en plein écart*) for nature"[382], so that no part of reality "escaped the artifices of the juridical unreal, to [such] techniques of denaturalisation"[383], the theological edifice took personhood as a bridge for the comprehension of the divine and the dignification of the human in its apparent singularity. As such, an apparent divorce between personhood and fiction seems to take place in the centuries of scholastic production.

Fictions —or rather their uncontrolled way of functioning— puzzled and bewildered medieval canonists and scholars, calling for a contrary motion of restraint. Yan Thomas claims that "medieval law, both civil and canonical, was occupied with pushing back (*faire reculer*) the empire of fiction"[384], while Jean Bart poses that it was only by the renaissance of the 12th century that fictions were rediscovered by commentators and glossators, even if they approached the matter with "certain distrust" on account of "theological reasons"[385]. Nevertheless, a question arises, for if there were indeed some (apparently) seamless transitions in this rediscovery of ancient texts, such as, for instance, understanding 'nature' in "profane" writings as referring to God —under the formula "*natura, id est Deus*"[386]—, why then this apprehension and suspicion towards the procedure of fiction?

The answer may come in the malleability fictions introduced in the Roman fabrications of *persona*, or more precisely, in their fabrications *of* and *upon* nature. Given the easiness with which Roman law produced or denied life, regardless of facts, Yan Thomas says that "to Christianise Roman Law" meant to "domesticate a representation of the world where things, even divine things, were instituted things"[387]. An entirely different conception of the world, one in which the character of sacred came neither from the gods nor from the things in themselves —namely, not as an attribute of the divine, as would be the eminent distinction of God in medieval theology—, but as the result of a procedure of *consecration* that rendered things to the service of the gods[388]. This essentially meant they were unavailable for commerce, and Gaius frames this procedure as stemming "from the authority of the Roman

382 Yan Thomas, *Fictio legis*, p. 29.
383 Yan Thomas, *Fictio legis*, p. 22.
384 Yan Thomas, *Fictio legis*, p. 39.
385 Jean Bart, « *Fictio juris* », *Littératures classiques* 40, 1 (automne, 2000) 25 – 33, p. 25.
386 Yan Thomas, *Fictio legis*, p. 38.
387 Yan Thomas, *Fictio legis*, p. 39.
388 Yan Thomas, *Le sujet de droit*, p. 94. Consecration (*sacrare*) implied also its contrary, profanation, by means of which something sacred returned to the use of humans: Giorgio Agamben, *Profanazioni* (Roma: Nottetempo, 2005), p. 83.

people"[389] and not, in any case, from the things themselves, nor in virtue of the divinity to which they were consecrated. This means that 'sacredness' belonged to the realm of public disposition —a political *oikonomia*—, rather than to the divine disposition of the world, which in turn means that the relationship between nature and the law was of a different texture in both instances.

On this line of thought, Yan Thomas has showed that the Roman legal conception of nature is not something that comes before or that goes beyond its own constructions. "Nature —he says— is not used as the figure of an ultimate and constitutive norm" and therefore 'natural law' is neither preeminent nor transcendental[390]. Instead, as we have seen, nature is in itself an institution, representing simply one of the "concentric circles" in the cartography of the law, conceived and instituted in the same plain as the *ius gentium* and the *ius civile*[391].

Thomas goes to a great length to show that, whenever jurists appealed to nature, be it in terms of freedom or in terms of filiation, they did not mean neither a time nor a place outside of the legal realm, but simply another piece of its composition, which remained at best a physical obstacle for some legal constructions[392], but never a monolith of immutable order. For instance, neither a contradiction nor a moral impediment when the *Digesta* say that slavery is a domination *contra naturam*[393], not only because nature did not provide a different degree of moral or supralegal prohibition, but mostly because natural freedom is itself a construction that "corresponds to precise juridical mechanisms"[394], an artifice that allows the procedure of liberation of the slave to take place:

> Natural freedom is used as an artifice to produce institutional freedom [...] everything happens as if the law (*le droit*) forged nature[395].

Disarmed and dispossessed of any metaphysical and prescriptive attributes of its own, 'nature' in relation to Roman law is hardly anything beyond an artificial point of reference, indeed

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389 Gaius, *Institutes*, 2.5. Gaius distinguishes "sacred things" from "religious things" in terms of the dedication to the "gods above and the gods below", which implies a difference in procedure, since rendering a thing sacred required indeed the will of the Roman people expressed by a *lex* or a *senatusconsultum*, while rendering a thing religious was done by a mere act of will, such as the case of a someone burying a body in his own property. See also Justinian, *Digesta*, 11.7.

390 Yan Thomas, « L'institution juridique de la nature : remarques sur la casuistique du droit naturel à Rome » dans Yan Thomas, *Les opérations du droit*, eds. Marie-Angèle Hermitte et Paolo Napoli (Paris : Seuil-Gallimard, 2011), p. 25. According to Thomas, Cicero's well-known formula of the "true law" being a direct correspondence to the "right reason" (*recta ratio*)[390] stems from a Stoic conception rather than from an actual juridical background. See Cicero, *De Re Publica, De Legibus*, trans. Clinton Walker Keyes (Cambridge: Loeb Classical Library - Harvard University Press, 1928), 3. 33 (22).

391 Yan Thomas, *L'institution juridique de la nature*, p. 22.

392 As an example, Thomas speaks about how, given that only one child can come out of the womb at any given time —a physical obstacle—, even if there are duplets or triplets the law makes a distinction in terms of primogeniture: Yan Thomas, *L'institution juridique de la nature*, p. 24.

393 Justinian, *Digesta*, 1.5.4.

394 Yan Thomas, *L'institution juridique de la nature*, p. 33.

395 Yan Thomas, *L'institution juridique de la nature*, p. 35.

an institution[396]. Moreover, at least in the casuistic discourse of Roman jurists, it is an institution that denounces the inexistence of a *physis* outside of the *nomos*, for the former is just an already outlined and conquered territory onto which the latter can expand. As Yan Thomas says, "far from founding the norms, nature [...] only prepares the terrain for extending them outside of the laws"[397]. Not, indeed, the terrain upon which the map is placed, but a part of the map itself, sometimes clearly marked as a different region or a different realm, but not at all a diverse entity.

Thomas exemplifies this institutionalised nature further via the relationship between nature and property. Things in nature are subjected to two different kinds of ownership in Roman law[398]: on the one hand, some things are enjoyed by everyone and therefore do not belong to anyone in particular, such as rivers, forests, or the sea; while on the other hand some things roam "freely" and become the property of anyone that captures them, such as wild animals, who "return to their natural freedom" (*in naturalem libertatem se receperi*) if the one who captures them is unable to retain them[399]. What does this "return to nature" mean, however? Certainly not that they become inappropriable, that they forever leave the realm of the law, but instead that they return to a state in which they are susceptible to be re-captured by anyone. In other words, in returning to nature these wild animals traverse the frontiers of private property and civil law, but they do not leave the map on which such frontiers are traced.

If this is the case, it is no surprise that personhood and fiction could interweave as we have seen, since life, individuality, existence, or even death are all part of the same institutional framework, an outside included in the inside, everything encompassed within the same cartography.

Conversely, medieval theological constructions situate the notion of nature (*i.e.,* natural law) on an entirely different plane. Just as a framework, if one follows Aquinas' conception of the law, it is clear that instead of an inductive procedure of cases, the law is deduced from a single evident source, whose composition follows an influx that goes from the "eternal law", that is, the disposition of the "divine providence" as "divine reason" [400], to "natural law" intended as a "the rational creature's participation of the eternal law" (*participatio legis aeternae in rationali creatura*)[401]. This rational creature, considering what he had previously stated in terms of personhood, is none other than the non-godly individual substance that dominates over its own acts, namely, the *persona*. Moreover, such a definition

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396 Yan Thomas, *L'institution juridique de la nature*, p. 40.

397 Yan Thomas, *L'institution juridique de la nature*, p. 25. Thomas employs a scholar distinction between "norms" (*normes*) and "laws" (*lois*) that seems to be of a genus and species, so that all laws can be considered norms, but not all norms are necessarily laws, which is clearly the case in contemporary legal orders as well as in Roman law, where the *lex* was certainly not the only source of juridic obligations.

398 Justinian, *Digesta*, 41.1 and ff.

399 Justinian, *Digesta*, 41.1.3.2. Yan Thomas discussion is much deeper in terms of the titles of ownership as opposed to the mere possession. See Yan Thomas, *L'institution juridique de la nature*, pp. 27 – 33.

400 Thomas Aquinas, *Summa Theologiae*, I – II, q. 91, a. 1. resp.

401 Thomas Aquinas, *Summa Theologiae*, I – II, q. 91, a. 2. resp.

of natural law is in contradiction to Ulpian's definition as "that which nature teaches to all animals"[402]. Here, the broad circle of Roman natural law —the cartography itself— is split apart. On the one hand, natural law comes to correspond with divine law in terms of the perfect disposition of the divine providence that includes all creatures, while on the other hand it is confined within the cell of rationality, accessible only to the distinctive individual substances that come the closest to the divine and that receive the natural law by revelation, that is, by a direct promulgation and insertion "by God in man's mind" (*quod Deus eam mentibus hominum inseruit*)[403].

What follows is for human law to deal with "particular determinations" which, not coincidentally, Aquinas links to customs via Cicero[404]. Most importantly, however, is the fact that, according to Aquinas, a human law that "discords with natural law" ceases to be a law and becomes, instead, a "corruption of law" (*legis corruptio*)[405]. Stated differently, this means that the validity of the human —positive— law depends upon its respect to the precepts of natural law, and thus it would follow that no legislator could enact as law anything that contradicts the participation of persons in the eternal law, which is a conception completely alien from the Roman perspective. Yan Thomas conveys this idea when he says that, for both imperial and republican times, the enactment of legislation —of norm-making, to be more precise— knew no limits other than "the positive laws", and certainly knew no "normative superiority of nature"[406]. Regardless of its internal postulates, natural law has not been neither immutable nor universal, having a history of its own in terms of definition and redefinition, in terms of the roles it has played in contrast to other realms or other forms of the juridic.

This, in turn would explain why slavery was not particularly problematic for Roman law, regardless of its *contra naturam* status, since it came to a matter of legal validity in the concentric circles of its composition, and not to a matter of moral permissibility. This also explains how personhood could be applied to both slaves and free people, or better yet, how personhood could be divided into said categories seamlessly, even without the need to reach out for the mechanism of fiction. Since *persona* did not entail any dignity or distinction, slaves being persons was not actually a paradox. On the contrary, when personhood became the name of an individual entity that enjoys both rationality and dignity, the efforts would have to focus on separating the *homo* from the *persona* in terms of rationality and capacity, so that slavery could be explained without questioning the pre-eminence of personhood and, by extension, its application to the Christian god.

In the process of unification of *persona* with the individual substance of rational nature, map and territory are divided, creating a different individual substance, albeit one of a 'lesser rationality' and a 'lesser dignity', a residual in the whole equation: *homines* that are not persons. Beyond the fact that this shows the ambivalent motion of the mechanism of *persona*, both

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[402] Justinian, *Digesta*, 1.1.1. See *supra,* 1.4.

[403] Thomas Aquinas, *Summa Theologiae*, I – II, q. 90, a. 4. ad 1.

[404] Thomas Aquinas, *Summa Theologiae*, I – II, q. 91, a. 3. resp.

[405] Thomas Aquinas, *Summa Theologiae*, I – II, q. 95, a. 2. resp.

[406] Yan Thomas, *L'institution juridique de la nature*, p. 23.

unifying and separating at the same time, it is also quite apparent that those hermeneutic efforts come quite close to a "certainty of the false" that stems from their own constructions. Granted, the scholastic scaffolding does not allow to understand this residual emergence as a fiction, since it zealously follows its own rules in terms of rationality, pre-eminence, and so forth. However, it is here where a dislocation also emerges, for lacking the plasticity of an institutionalised nature, as well as the threshold of fictions that allowed passage between its circles, the theologico-juridical conception of the person falls short in explaining the existence of individual substances of rational nature that are, nonetheless, lacking in dignity, unfree, and subjected to others, and therefore it must construct its own artifices to sustain the contradictions that we have seen in, for instance, indigenous servants and Afro-American slaves, if only to mention the most prominent examples. In attributing personhood to the *oikonomia* of the trinity, and in interlacing the dignity of the divine persons with *homines*, this tradition produces an unstable fiction: instead of a non-human person —nothing unheard of—, it gives as a non-personal *homo*.

What remains in this framework is the fact that the juridical notion of *persona* was not meant to prosper in its multiplicity during the scholastic discussion, forged as it was amidst a disregard for what once was the *institution of nature* and later became the pre-eminent paragon that dictates what is part of the juridical, a criterion located outside of the *homines* as the unsurmountable barrier of eternal law, and inside them in as much as they comply with the government of themselves that implied being a *sui iuris persona*. On the same note, the construction of a *persona* that, although springing from the interplay of the masks, the voices, and the characters, could not stray away from the distinctiveness of a singular divinity, and was consequently not applicable to the outskirts of this new cartography. And yet, in those very outskirts, the mirage of a fiction lingers, there where *persona* and *homo* are both fully merged and fully separated.

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Despite the wariness, a tapestry of legal fictions was indeed woven in the Middle Ages[407], and even if certainly divorced from the apparently boundless constructions that preceded it, this tapestry would leave its traces in the approaches that were to come. Rather than examining particular cases, however, in this instance I would like to focus on the characterisations of these fictions and the effects they produced.

One of the most prominent looms upon which this tapestry was woven, at least on account of the *commentators*, was Bartolus' approach to fiction[408]. In treating the apparently unrelated topic of usurpation and usucapion, but always on the matter of someone being

[407] For a recent study devoted specifically to this topic, see Sara Menzinger, *Finzioni del diritto medievale* (Macerata: Quodlibet, 2023).

[408] Naturally, Bartolus was not alone in this endeavour. As we have already seen, Yan Thomas notes the prior approach of Azo and Accursus in theirs glossas, as well as Cino da Pistoia and Baldus alongside Bartolus with their commentaries. See Yan Thomas, *Fictio legis*, pp. 40 – 44.

captured by the enemy —the question of the *postliminium*[409]—, Bartolus wonders about the status and the function of fiction. After examining several approaches, he provides his own definition:

> Fiction is an assumption made by the law, on a certain matter, of that which is possible, against truth, for the truth (*contra veritatem pro veritatem*)[410].

He then explains every part of the definition. By "on a certain matter" he intends to distance fiction from presumption, since the latter is performed on things that are dubious (*quo dubius est*) while the former on things that are certain (*quod est certum*) —such as, indeed, the captured soldier in a foreign land. "Possible", he says, since one cannot feign the impossible, which is proved *e.g.,* by the laws on adoption that demand the parent to be older than the child, but most importantly because "art[ifice] always imitates nature" (*ars semper imitatur natura*)[411], and therefore whatever is impossible according to nature is also impossible according to the *ars* of the law. Fiction is "against the truth" evidently, as otherwise "we would not be talking about fiction but of truth", but all the same "for the truth" since the fiction "has the same juridical effect *as if it were* the truth" (*habet enim iuris effectum perinde ac si* [!] *esset veritate*). Finally, Bartolus says, fiction as an "assumption made by the law" means that lies and falsities (*mendacia et falsitates*) are excluded, given that these do not have juridical effects[412].

A couple of comments on this definition. First, it is notable how Bartolus uses one of the same formulas Roman law employed in its own fictions —*perinde ac si*— to convey not a singular or specific legal effect, such as the *nasciturus* taken *as if it were* already in the realm of human existence[413], but rather the whole definition of fiction as something that is opposed to, but nonetheless taken *as if it were* the truth. Only in the methodology of glossators and commentators shall we find such a definitory approach, as the commentary extrapolates from the casuistic and formulaic procedure of the text and, in the act of interpretation, decants and reconstitutes a definition that was simply not present in the actual Roman corpus.

Henceforth the admittedly sparse formulas of '*as if*' are sublimated into a general relationship with truth. Not Truth, however, this singularity with majuscule, but a labyrinth composed of its mirrors, which in turn implies that, although far more restricted than the Roman mechanism, fiction allows for everything possible but against the truth to perform *as if it were*: quite literally fictions posing as truths. This is why Bartolus rushes to disregard any

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409 Justinian, *Digesta*, 41.3.15.

410 Bartolus de Saxoferrato, *Lectura super prima parte Digesti novi* (Venice: Wendelin, 1471), D. 41.3.15 (*si is, qui pro emptore…*); f. 158r.

411 Bartolus de Saxoferrato, *Lectura super prima parte Digesti novi,* D. 41.3.15 (*si is, qui pro emptore…*); f. 158. This is, evidently, an entirely different discussion, departing at least from Aristotle: "Art, on the basis of nature carries things further than nature can, or imitates nature": Aristotle, "Physics" in *Aristotle in 23 Volumes*, Vol. 4. Trans. by Philip H. Wiksteed (Cambridge: Harvard University Press – Loeb Classical Library, 1980), 199a15.

412 All this in Bartolus de Saxoferrato, *Lectura super prima parte Digesti novi*, f. 158.

413 Justinian, *Digesta*, 1.5.7.

links with lies as having no juridical effect, but in saying that, he is also saying that anything the law "assumes" —or better yet, fabricates— is not a lie but a fiction, a denial of the truth of a special texture that is neither the truth nor a falsehood, but the threshold that enjoys the eminent status of law while knowingly and purposedly going against the cornerstone of truth[414].

It is not surprising that, immediately after, Bartolus wonders about the origins of fiction, that is, from where does it stem in terms of the law. He begins by saying that fiction "proceeds from and is caused by equity and reason"[415], and since natural law is "common to all animals, even those who lack perception" (*sensu carentibus*) —*i.e.,* reason—, it is therefore not possible to conceive that natural law introduces fictions, as only entities with the capacity of reason would be able to conceive them, and thus it follows that fictions can only come from the fabrications of rational creatures such as statutes and customs, that is, from the *ius civile* and the *ius gentium.*

Furthermore, Bartolus claims, whenever fictions are indeed produced, the laws "feign upon what belongs to natural law (*fingunt super eo quod est ius naturalis*), such as someone living, someone being born, or someone dying (*aliquem vivere aliquem esse natum vel mortuum*)"[416], which evidently shows that what is involved in fabricating the fiction is not natural law, but again civil law and the law of the peoples. Here it is pristine how nature and natural law are intertwined to the point of indistinction, instead of natural law being another realm of the law, and instead of *physis* being an institution of the *nomos*. Quite the contrary. The indivisible coupling of nature and natural law is seen as something beyond or outside the *nomos* that cannot be contrary to the truth in and of itself. Since nature and natural law are always necessarily truthful, if their truth is to be altered it must be done via a mechanism that is not of nature but of the *ars*, a mechanism —fiction— that feigns precisely what in nature is immutable, such as birth, life, and death. In both Roman and Medieval conceptions, fiction is seen as a mechanism of the law, the difference being that in the former nature is also part of the law, a realm of its cartography, while in the latter nature is the territory upon which the map can be traced. This is why Bartolus claims that men cannot invent fiction by their own will (*si homo ex se vellet*), for it is the ministry of the law that allows the falsehood to become the threshold that allows passage between both realms, without which the fiction would simply be a falsehood. As Bartolus himself claims, "it is law that feigns, not man" (*ius fingit non homo*)[417].

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414 A similar procedure —*mutatis mutandis*— can be seen in Augustine's approach to lying, when he says that "not everyone who says something false is necessarily lying", on account of the intention of the speaker, which in turn explains the "lies" (*mendaciorum*) that appear in the Old Testament as a use of figurative language, namely something that is not true but does not intend to deceive: Augustine, "De mendacio liber unus" in *S. Aurelii Augustini opera omnia: patrologiae latinae elenchus*, vol 7 (Roma: Città Nuova Editrice – Nuova Biblioteca Agostiniana, 2001), 2.2 – 5.7.

415 Bartolus de Saxoferrato, *Lectura super prima parte Digesti novi*, f. 158.

416 Bartolus de Saxoferrato, *Lectura super prima parte Digesti novi*, f. 158.

417 Bartolus de Saxoferrato, *Lectura super prima parte Digesti novi*, D. 41.3.15; f. 159.

This also explains why the medieval approach is insistent, as we have seen, on fictions being about facts (*circa facta*) and not about laws[418]. As an artifice, the law does not need the elucubrations of fiction in order to be changed or moulded, as it is always one step away from being modified by any norm-producing act. Nature, on the contrary —being eternal and unmodifiable—, does represent an obstacle that needs to be overcome via the equally artificial mechanism of fiction, albeit one that, imitating nature, must respect the limits of its possibilities.

Juridical fictions must therefore become mirrors of nature: faithful images that do not stray from the origin of what they are reflecting. This is clear, once again, in the example of adoption: a possible although not natural form of kinship stemming from the law, a reflection of how nature behaves[419]. However, saying that the artifices of the law must reflect nature denounces and expands the scission between both realms, and if nature is taken indeed as an unsurmountable barrier that the artifice follows but cannot breach, then it would also be possible to understand fictitious and juridical as meaning one and the same thing.

Exemplary of this idea is the well-known construction of a 'fictive person' by pope Innocent IV. While speaking on the topic of an oath made by convents, Innocent IV (Sinibaldo Fieschi) addresses the issue of pluralities acting as a singularity, saying that it is permissible for all religious colleges to swear through another, since "a college, in a corporate matter, feigns a person" (*cum collegium in causa universitatis fingatur una persona*), and therefore it could swear as an individual and not as a plurality[420].

Here, Innocent takes the matter of pluralities one step further. Instead of speaking of pluralities as merely "taking the place (*loco habentur*) of a person" as the Romans did, he directly applies the condition of *persona ficta* to these religious colleges. The fiction lies not in the way they act, but in the way they are constituted: they do not swear *as if they* were persons but, as fictive persons, they are allowed to swear.

The procedure, according to Thomas, is quite subtle, for it involves changing a single verb, namely the transformation of '*fungitur', i.e.,* 'functioning' or 'performing' into the verb '*fingatur*', *i.e.,* 'feigning', or 'simulating'[421]. Thus, where pluralities or things performed the function that a person would in the theatre of the Romans; in the *Decretals* they mirror individual substances of rational nature in their very composition. The question becomes, then, quite apparent: what are these mirrors made of? Since they are certainly not natural, but an image of nature, and not truths, but a purposeful deviation from truth, their existence cannot be anything other than juridical. In other words, since what is being feigned is not

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418 Accursius, *Digestum vetus*, 4,8.19, p. 94, and 4.8.21, p. 100; Yan Thomas, *Fictio legis*, p. 40.

419 Antonio Dadino Alteserra, *De fictionibus iuris*, p. 3; p. 17.

420 Innocent IV, *Apparatus in quinque libros decretalium* (Frankfurt Am Main: Sigmund Feyerabend, 1570), lib. 2, tit. 20, c. 57. 5, f. 271.

421 Yan Thomas, *Le sujet de droit*, p. 101. It must be noted that there are also difficulties with the copies. In a 1610 edition, for example, speaking about the authority of the arbiters (lib.1, tit. 43, cap. 12), the verb "*fungatur*" appears instead of "*fingantur*", which appears in the 1570 edition I am using here (f. 190), thus changing the meaning from "feigning a paternal authority" to "executing the" or "making use of" a paternal authority.

their way of acting, or the legal effect they produce, but their very existence *as if they were* actual persons, they ought to be made from the same clay of the law, that is, persons whose existence cannot be conceived outside or beyond the legal order. In the Middle Ages, Yan Thomas poses, moral —*i.e.,* legal— personhood is the place where "true and fictive are opposed", for it allows to reconcile the "artificial nature" of a social unification as "gifted with juridical individuality"[422].

Such a 'fictive person' recalls the idea of many souls in a single body, the difference being that this body is not composed of flesh and bone, but it is made exclusively of the words of the law, words that render an individuality, as would the mask with the actor and its many characters, a mechanism that joins and splits apart. This idea, however, should be read under the lens provided by Kantorowicz, who points out that, in the definition of *universitas*, "the essential feature" was not that pluralities were contained in a single body at any given moment, but that "they were that 'plurality' in succession", that is, intrinsically linked to the passage of time, from which the *universitas* could derive its continuity and its "immortality", upon which, in turn, Kantorowicz sees the raise of the marvellous fiction of "the king that never dies"[423].

This means, among other things, that the *natural* and the *artificial* person operate in different ways. As separate entities, nature and its mirrors are not to be confounded, and even if fictive persons do exist, and swear, and act; their reality does not amount to nature and the image in the mirror is never the same as the object it reflects. Hence why Innocent denies excommunication to corporate bodies, since, he says, the "chapter [of a religious order], the people, the clan; these are names of the law, and not persons" (*capitulum, populus, gens et haec nomina sunt iuris et non personarum*)[424]. Both natural and artificial persons are possible, but the latter owe their entire existence to the former: an image, a replica, the re-production of an "original".

With all these caveats in mind, the definition of legal fiction could be, at least for the most part, consolidated upon Bartolus' initial horizon, namely upon a falsehood produced by the law that serves the truth, has a cause on equity and reason, and is possible according to nature. Interestingly, however, just as *persona* was part of the *dispositio* of the trinity in theology, in this theatre of mirrors fiction would also emerge as part of a *disposition*, not of the trinity, but of the law.

The general idea seems to appear firstly in Baldus de Ubaldis, who claims that "when fiction disposes over something (*quando fictio disponit super aliquo*), it is necessary that it has the

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422 Yan Thomas, *Le sujet de droit*, p. 101.

423 Ernst Kantorowicz, *The King's Two Bodies,* pp. 310 – 314. As a side note, it is also worth remembering that Kantorowicz rejects the personification of cities and other political bodies in terms of their "anthropomorphic" representation as the visible body of, for instance, a goddess in antiquity, and instead claims there is an "angelomorphic" approach —up to a certain point, consistent with Boethius—, which in the fictionalisation of their personhood renders them invisible, but "immortal and perpetual", characteristics that evidently do not belong to the *homo*, but do belong to the eminent personhood of God: Ernst Kantorowicz, *The King's Two Bodies,* pp. 303 – 304.

424 Innocent IV, *Apparatus in quinque libros decretalium*, lib. 5, tit. 39, c. 57. 1, f. 557.

terms of a true nature and not those of feigned existence (*quod illud habeat naturam veram et non fictam existentiam terminorum*)"[425]. It is in Andrea Alciati, however, with the due distance between commentators and humanists, where we find it expressed in terms of a *disposition of the law*:

> Fiction is a disposition of the law against truth, on a possible matter, for a just cause[426].

Alciati does not provide any further commentary on such a *dispositio*, other than saying — always following Bartolus— that it is "of the law" since fictions "cannot be induced by men" (*ab homine induci non potest*)[427]. If, however, nature and natural law are both unmodifiable and necessarily true, then it follows that the law disposes only of its own mirrors of nature, and hence it can create possible but fake relationships or entities, whether they are an artificial form of kinship or a fictive person. Here the genitive '*legis*', in its ambiguity, would indicate that the law disposes of —and it is consequently disposed by— itself.

Similarly, Antonio Dadino Alteserra brings forward this disposition from the very introduction of his treatise, in explaining why is it that the law does not abhor fictions, or better stated, why is it that it persists in using them despite its necessary compromise to the truth:

> And what is called a juridical fiction, if you love the truth, is a more just economy and disposition of the law (*magis est iusta economia, et dispositio iuris*), by which legal knots are loosened and the entire reason of fairness and goodness is ordered, composed[428].

Regardless of their essential falsehood, fictions seem to be unrepudiated by the law and even constitutive to a certain degree, since they serve as a mechanism that allows for its own arrangement, its own management, its own *oikonomia*.

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425 Baldus de Ubaldis, *In primam et secundam Infortiati partem. Commentaria* (Venetiis: Iuntas, 1599), ad. lib. 27 Digest., Lex xxxi, alias xviii, 1, f. 34.

426 Andrea Alciati, *Parerga iuris* (Lugduni: Sebastianum Gryphium, 1544), 6. 1, p. 45. The very same definition also appears in Andrea Alciati, *Tractatus de praesumptionibus* (Venetiis: Cominus de Tridino Montisferrati, 1564), 1. 2, f. 5. Here Alciati cites "Bartolus and all the Moderns", where "moderns" refers precisely to "the jurists that wrote after Bartolus": Massimo Brutti, *Le finzioni nella giurisprudenza romana*, p. 112.

Incidentally, in order to sustain that fictions have to imitate nature, and that they should remain in the realm of the possible, Alciati says that not even poets "easily introduce impossible things" (*ne facile impossibilia inducant*), citing the passage of the *Odyssey* (5.345) where Leukothea lends a headscarf to Odysseus so that he can safely reach the shore, since swimming for three days "seemed beyond human strength". It follows that, if not even poets introduce impossibilities, it would be even more illicit for the law to do so. For a discussion of Alciati and Dadino Alteserra alongside humanist literature, see Olivier Guerrier, « Les fictions juridiques et leur rapport au « littéraire » au XVIe siècle », dans Shahid Rahman et Juliele Maria Sievers (eds), *Normes et fiction* (Lille, Université de Lille, 2011) 15 – 30.

427 Andrea Alciati, *Tractatus de praesumptionibus, Parerga iuris*, 6. 1, p. 45.

428 Antonio Dadino Alteserra, *De fictionibus iuris*, *argumentum operis*.

It is worth noting that Dadino Alteserra's use of *economia* is not devoid of a theological background. Further ahead he would expand on his argument, saying that fictions in the law ought not to be criticised, since they "lack a wrongful intention" (*quae dolo carent*), and since a "fraud —*i.e.,* a falsehood, something contrary to the truth— without such a wrongful intention is not a fraud" (*ut fraudem si absit dolus, dolus non esse fraudem*) [429].

To sustain his argument, Dadino Alteserra appeals to a fragment of the *De Sacerdotio* by John Chrysostom, which is worth looking at in context. In the dialogue, Chrysostom narrates the story of a patient with fever and asphyxiation that refused water, and instead stubbornly insisted on wine as a treatment. This prompted his physician to "trick him" by soaking a jar with the aroma of wine and giving it to the patient in the darkness[430]. The archbishop says that the benefits of such trickery are visible not only in "those who treat the body" (*ta sómata therapeúontas*), but also in "those who occupy themselves with the diseases of the soul" (*ton psychikón nosemáton epimeloménous*)[431]. Chrysostom then summarises his view by saying that "great is the power of trickery (*apátes*) as long as it is not used with a wrongful intention (*metá dolerás*)", which in that case must not be called trickery "but economy, and cleverness" (*all'oikonomían tiná kaí sophían*)[432]. This is the passage that Dadino Alteserra cites, in Greek, in order to convey that, although fictions are indeed tricks, namely falsehoods; they lack a wrongful intention and are not to be discarded by the law. In this sense, he adds, "the economy of the juridical is established (*constitit oeconomia iuris*)" by fictions, tools at the disposition of the law to invade territories that are, in principle, alien to it, as is the case with a fraud, a trick, or a falsehood that become cleverness and, in fact, the disposition itself [433].

Mutatis mutandis, it may be said that fictions are part of the ensemble of procedures, tactics, and instruments that constitute a *gouvernementalité* of the law, again, not in the framework of a metaphysical will, but in the contingency of an emergence, an event in which, given the immutability of nature, the law casts it aside and operates in the theatre of its mirrors. If fictions, although false, cannot be ostracised, it is because they are useful and, in a certain sense, *economic*. Just as the *dispositifs de sécurité* Foucault described —that neither prescribe nor prohibit—, fiction is neither true nor false, and hence neither completely part of the law nor completely excluded from it, but all the same a cost-effective procedure that allows to perform operations that can bypass both the immutability of nature and the prescriptions of the law, an aperture and a threshold by which the juridico-political order can economize, govern and re-arrange itself.

According to Massimo Brutti, this idea of usefulness has been present since the very conception of fictions inside the law, in terms of a "relationship between false representation

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[429] Antonio Dadino Alteserra, *De fictionibus iuris*, pp. 8 – 9.

[430] Jean Chrysostome, *Sur le sacerdoce (Dialogue et Homélie)*, trad. Anne-Marie Malingrey (Paris : Les édition du Cerf, 1980), I. 7. 17, pp. 95 – 96.

[431] Jean Chrysostome, *Sur le sacerdoce,* I. 7. 42, p. 97.

[432] Jean Chrysostome, *Sur le sacerdoce,* I. 7. 50, p. 99.

[433] Antonio Dadino Alteserra, *De fictionibus iuris*, pp. 8 – 9.

and useful result"[434] that appears, for instance, in Quintilian's "fictitious argument, which the Greeks call *kath'hypothesin*", a way of "*fingere"* that implies "the proposition of something which, if true, would either solve a problem or contribute to its solution"[435]. Even if the compromise of the law is supposedly with truth[436], the usefulness of fiction, its capacity in rendering itself malleable, ductile, and moveable, *i.e.*, manageable, and economical, justifies its presence and its apparent perpetuity, even after the equation of natural law and nature, or even more so because of it: fiction is an open door to falsehood, understood as nonetheless legitimate and sometimes even necessary.

Granted, this would imply a great deal of effort for jurists and canonists to explain such a legitimacy or such a necessity. Dadino Alteserra himself would reach out for both art and religion in order to hold the ground of the "fairness and goodness", saying that "not only poets and painters delight in vain simulacra", but also did the pagans in religious effigies that replaced human sacrifices, so that "religion would consist more in piety than in atrocity"[437]. Furthermore, he would display his own poetic devices, presenting fictions in a metaphor of illumination and adornment:

> Fictions, undoubtedly, are outstanding colours (*eximii colores*) by which truth is not corrupted but rather illuminated (*sed potius illuminatur*) [438].

The manuscript of the law is illuminated with fictions, useful falsehoods that nevertheless maintain their Bartolian origin, as Dadino Alteserra says they are introduced "by the law (*a iure*), against the truth of things (*contra rei veritatem*) but not against nature (*sed non contra naturam*)"[439]. However, and perhaps most interestingly, he claims that "the power of fictions is such, that sometimes fiction prevails over the truth" (*et fictionis potestas ea est, ut quandoque fictio praeualeat veritati*)[440], which, following his own allegory, means that the illumination takes over the manuscript, that the outstanding colours of falsehood overcome the lacklustre truth of facts and nature, oftentimes in need of an embellishment by the law.

Although this pathway does provide an answer to the issue of why the law — supposedly concerned with truth— allows fictions to flourish within, taking them as part of its arrangement, as a threshold, and as a mechanism of expansion; it is still puzzling that an *artifice,* that can be rearranged by simply modifying the norms, does not forsake such a procedure for good, and that it would come to play a part in its very constitution. This

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434 Massimo Brutti, *Le finzioni nella giurisprudenza romana*, p. 116.

435 Quintilian, *Institutio Oratoria*, trans. by Harold Edgeworth Butler (Cambridge: Harvard University Press, 1922), 5.10.96.

436 As we read in the *Digesta*, jurists are supposed to look for the "true philosophy", and not for the "simulated" one (*veram nisi fallor philosophiam, non simulatam affectantes*): Justinian, *Digesta*, 1.1.1.1.

437 Antonio Dadino Alteserra, *De fictionibus iuris*, *argumentum operis*.

438 Antonio Dadino Alteserra, *De fictionibus iuris*, p. 2.

439 Antonio Dadino Alteserra, *De fictionibus iuris*, p. 2.

440 Antonio Dadino Alteserra, *De fictionibus iuris*, p. 4.

bewilderment would take on the form of a rejection, not only as a contradiction to justice, but as a useless procedure, a criticism embodied by none other than Jeremy Bentham:

> What you have been doing by the fiction—could you, or could you not, have done it without the fiction? If not, your fiction is a wicked lie: if yes, a foolish one [...] Fiction of use to justice? Exactly as swindling to trade[441].

Besides this criticism, to which I shall come back further ahead, another matter calls for attention. Be it from the perspective of Bartolus, who understands fiction as a production of the law, and hence immediately and necessarily opposed to lying; be it from the perspective of Dadino Alteserra, who sees in fiction a display of the *oikonomia* of the law; these falsehoods acquire legitimacy only as assimilated by the law: *ius fingit, non homo*. The question then would be if there could be a fiction that, regardless of its assimilation by the law, could nonetheless serve as part of its rearrangement, that is, an extramural fiction that would be able to perform the law even beyond its compliance or acquiescence, a fiction that illuminates without being summoned. It remains to be seen.

[441] Jeremy Bentham, *The Theory of Fictions*, p. 141.

3. From politics to biology

3.1. Subjection and imputation

In the elusive notion of modernity, the anthology of ruptures and exclusions that characterises the interlacing of *homo* and *persona* would merge with another concept: the subject. Although the Aristotelian *hypokeimenon* had already been treated time and again, it is in modernity where the subject acquires its predominance, becoming the protagonist of a history that descends from the heavens into the hands of these peculiar substances of rational but mortal nature, a nature that was nevertheless already *subjected* from the very beginning to the *persona*, as attested by Boethius. The subject of *the Subject*, however, is boundless. Several histories, archaeologies, and genealogies dedicated entirely to the subject have been — and are still being — written and rewritten. I do not intend to add another folio to such a tome, but I do believe a couple of words are at least necessary, departing from the fact that, while a classical approach would trace a seemingly straight line from Descartes to Kant, and then Hegel —a line that would dissolve afterwards in the hands of Nietzsche, Heidegger[442], or Foucault[443]—; recent approaches focus on denying the status of the subject as a "modern", *i.e.*, Cartesian, invention[444].

In recent years, Alain de Libera has aimed to show how the notion of subject arises as a "chiasma" of conceptions that involve the "denomination of the subject by its accidents" (*accidens denominat proprium subiectum*) and the "potentiality of an agent in its action" (*cuius est potentia eius est actio*) to construct a principle "of denomination of the subject by its action" or a "subjective principle of action" (*actiones sunt suppositorum*)[445]; all of which springs not *with* nor *from* Descartes, but in the Middle Ages as part of the discussion of the Aristotelian inheritance and the scholastic theological constructions. Following Nietzsche's reasoning, De Libera shows how this chiasma ties the notion of agent to the notion of subject, among others, because of a grammatical presupposition by which something that 'is thought' must have something behind that 'is thinking it', namely an object and a subject, as well as the fact that thinking, as an activity, must have someone performing it, its agent.

What Nietzsche[446] himself critiques is how we have taken for granted the grammatic necessity for a pronoun as an immediate equivalence with the *self*, with the *ego* that thinks and acts, and at the same time constitutes the *Subject*. In any case, De Libera says, "the thinking

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442 See the "task of the *Destruktion* of history of ontology" in Martin Heidegger, *Sein und Zeit* (Tübingen: Max Verlag, 1967), §6; pp. 19 – 27. On Heidegger's contribution, see Alain de Libera, *Archéologie du sujet 1*, pp. 125 and ff.

443 "I have tried to get out of the philosophy of the subject by making a genealogy of the subject, studying the constitution of the subject throughout history that has taken us to the modern concept of the self. This has not always been an easy task, since the majority of historians prefer a history of social processes and the majority of philosophers prefer a subject without history": Michel Foucault, « Subjectivité et vérité » dans *L'origine de l'herméneutique de soi: Conférences prononcées à Darthmouth College 1980* (Paris : Vrin, 2013), p. 35.

444 See Olivier Boulnois (éd), *Généalogies du sujet : de Saint Anselme à Malebranche* (Paris : Vrin, 2007).

445 Alain de Libera, *Archéologie du sujet 1*, pp. 49 – 51.

446 Alain de Libera, *Archéologie du sujet 1*, pp. 40 and ff. He cites Nietzsche's *Jenseits Gut und Böse* §17 and *Wille zur Macht*, §484.

subject, man (*l'homme*) as *subject* and *agent* of thought is not a modern creation [...] even less the invention of Descartes. It is the product of an encounter, anything but brief, between Trinitarian theology and philosophy, which, in fact, lasted from late antiquity to the *Âge Classique*"[447].

On the other hand, as Olivier Boulnois points out, the birth of the subject dwells into the distance between Kantian and the Cartesian *ego cogito*[448]. When Descartes "closes his eyes", he finds him*self* to be a "thinking thing (*res cogitans*), a thing that doubts, affirms, denies, that understands a few things and ignores many others, that wants and does not want, that also imagines and feels"[449], a thinking thing that *has* but *is not* necessarily a body[450]. Descartes' acknowledgement of the *res cogitans* constitutes the certitude of his existence —"*ego sum, ego existo*"[451]—, one that had already been expressed in terms of method in the famous *cogito, ergo sum* (*ie pense, donce ie suis*)[452], as the identity of the soul with the self: "this Me, that is, the Soul by which I am that which I am"[453].

Boulnois denies the birth of the subject in this instance on two accounts. Firstly, because the "substantiation of the 'self' (*moi*) is already present in medieval thought", particularly in Avicenna and in Eckhart von Hochheim[454], and secondly, because even if Descartes indeed traces an equivalence between the soul and the self, it is Kant who affirms that such a self is "the subject of all representation [...] the transcendental unity of the consciousness of the self"[455].

Indeed, Kant arrives at the '*I think*' through an operation of "conjunction" (*Verbindung*) of the multiple representations of reality, which he calls "synthesis", an operation that cannot come neither from the senses nor from sensible intuition, and therefore —as "an act of spontaneity of the representational faculty (*Vorstellungskraft*)"—, it must "be named

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447 Alain de Libera, *Archéologie du sujet 1*, p. 343. In France the term *Âge Classique* refers "commonly" to "the period that runs from the end of the 16th to the beginning of the 18th century": Alain Viala, *L'Âge classique et les Lumières : Une histoire brève de la littérature française* (Paris, Presses Universitaires de France, 2015), p. 9.

448 Olivier Boulnois, « Le sujet sans le kantisme : Destruction et analyse philosophique des théories du « moi » chez Michel Foucault » dans Damien Boquet et al, *Une histoire au présent : les historiens et Michel Foucault* (Paris : CNRS Éditions, 2013).

449 René Descartes, *Meditationes de Prima Philosophia*, edición trilingüe con traducción de Jorge Aurelio Díaz (Bogotá: Universidad Nacional de Colombia, 2009), III, 35; f. 99.

450 René Descartes, *Meditationes de Prima Philosophia*, IV, 78; f. 174.

451 René Descartes, *Meditationes de Prima Philosophia*, II, 25; f. 82.

452 René Descartes, *Discours de la méthode pour bien conduire sa raison et chercher la vérité dans les sciences* (Leyde : Imprimerie de Ian Maire, 1637) IV, p. 33. Foucault devoted an extensive comment in his last course at the Collège de France to this "*ergo*", particularly in terms of the "exclusion of madness as the foundational act in the organisation of a regime of truth": Michel Foucault, *Du gouvernement des vivants : Cours au Collège de France 1979-1980*, p. 96.

453 René Descartes, *Discours de la méthode,* IV, p. 34.

454 Olivier Boulnois, *Le sujet sans le kantisme*, p. 3. As already mentioned, Hadot traces it back to Augustine: Pierre Hadot, *De Tertullien à Boèce*, p. 133.

455 Olivier Boulnois, *Le sujet sans le kantisme*, p. 5.

understanding (*Verstand*)"[456]. The foundation of this understanding, as the place where the multiplicity of representations can take place is precisely the "I think" (*Ich denke*), which Kant says "must *be able* (*können*) to accompany all my representations", for otherwise something that "could not be thought" would be represented in me: certainly an impossibility[457]. The representation of something that must come as an underlying foundation, prior to any thought and to any experience, is called "intuition" (*Anschauung*): a spontaneous capacity to unify the multiplicity of representations, which is necessarily a reference to the "I think, in the same subject (*Ich denke, in dem selben Subjekt*) in which this multiplicity is encountered". In other words, the representation of the 'I think' must be able to accompany every single other representation, remaining one and the same, a unity that Kant calls "transcendental", as it refers to the capacity of an *a priori* knowledge, which in any case is self-conscious of its own unity[458].

Additionally, Boulnois refers to another passage, in which Kant speaks of "this I, or this He, or this It (the thing), that thinks" (*dieses Ich, oder Er, oder Es (das Ding), welches denket*) that "does not represent anything beyond a transcendental subject of thoughts = X, known only by means of those thoughts that are its predicates", a representation that cannot be known separately from those thoughts, and around which we turn in a "perpetual circle"[459]. Clearly, then, not the same subject as in Descartes, equivalent to the soul and the self, but merely the representation of some*thing* that must be at the foundation of knowledge, that implies "not a subject of action, but a subject of logical attribution that can be resolved through identity within the entirety of its thoughts"[460]. According to Boulnois, the confusion arises because Kant himself attributes to Descartes "the transformation of the subject, a condition for the possibility of thought, into an object of experience and knowledge", even if Descartes never actually mentions the subject explicitly. In other words, Boulnois forwards, speaking of a Cartesian subject is essentially "to resume Kant's analysis and to take on the historiographical concealment that it implies"[461], and therefore, he concludes, "the modern subject" has "multiple threads", that appear both before and after Descartes[462].

Where does this transcendental subject become a *persona*? For Kant, at least in the *Critique of Pure Reason*, it is a matter of identity in time. In criticising what he calls "the paralogism of personhood (*Personalität*)", Kant argues that a notion of personhood that deems the subject "numerically identical to itself in different times" refers not to the experience of the self, but to the consciousness of the numerical identity of the self in time, so that "in all the time that I am aware of myself, I am aware of such time as belonging to the unity of my

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456 Immanuel Kant, *Kritik der reinen Vernunft* (Hamburg: Meiner Verlag, 1998), §15 [B130], p. 176. I am also relying on the German-Spanish edition: Immanuel Kant, *Crítica de la razón pura*, ed. bilingüe con traducción de Mario Caimi (México D.F.: Fondo de Cultura Económica, 2009).

457 Immanuel Kant, *Kritik der reinen Vernunft*, §16 [B132], p. 178.

458 Immanuel Kant, *Kritik der reinen Vernunft*, §16 [B132 – B136], pp. 178 – 181.

459 Immanuel Kant, *Kritik der reinen Vernunft*, [A346], p. 447.

460 Olivier Boulnois, *Le sujet sans le kantisme*, pp. 5 – 6.

461 Olivier Boulnois, *Le sujet sans le kantisme*, pp. 6 – 7.

462 Olivier Boulnois, *Le sujet sans le kantisme*, p. 11.

self (*meines Selbst gehörig*)"[463], which nevertheless does not apply to the perceptions that others have of me in different times, nor is it "anything different from a formal condition of my thoughts"[464], and hence, from the representation of an identical self as an *a priori* presupposition of understanding, it does not follow that such a self is the same "I (*Ich*)" in the whole time I know myself[465].

If, however, one takes the concept of personhood to be merely "transcendental, that is, the unity of the subject" as the synthesis that allows to know a multiplicity of representations, then the concept of person is "necessary and sufficient for practical use"[466]. The person is indeed the subject on this account, not as the identical existence of someone in time, but as the presupposition that, if someone or something is a thinking entity, then it must necessarily have a foundation for its understanding, that at least to him, or her, or it, is one in its own interior representation of time.

Contrastingly, in the *Foundations for the Metaphysics of Morals*, Kant intertwines personhood with reason as constitutive of his categorical imperative, saying that "man (*Mensch*), and in general any rational being, *exists* as an end in itself and not as a means"[467], upon which he traces the difference between persons and things: "beings whose existence is not dependent on our will", he says, if irrational (*vernunftlose*), can indeed be used as means and they are therefore called things (*Sache*); while "rational beings" (*vernünftige Wesen*), that is, things (*Dinge*) whose mere existence as rational renders them "objective ends" are to be called persons (*Personen*)[468]. A person is therefore a *res cogitans* that, by virtue of being *cogitans*, is also an end in itself, and it is therefore placed at the centre of the categorical imperative.

Hegel, on the other hand, presents personhood in terms of a self-conscious free will that understands itself "as a completely abstract I (*Ich*)", one that "having itself as its object and its end" (*Gegenstande und Zwecke*) is, therefore, a person. Indeed, a recognition of the self as

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463 Immanuel Kant, *Kritik der reinen Vernunft*, [A362], p. 480. See Martin Heidegger, *Sein und Zeit*, §6; p. 22.

464 Immanuel Kant, *Kritik der reinen Vernunft*, [A363], p. 480.

465 Immanuel Kant, *Kritik der reinen Vernunft*, [A365], p. 482.

466 Immanuel Kant, *Kritik der reinen Vernunft*, [A365 – A366], pp. 481 – 482. This would not suffice Hegel, for whom "everything turns on grasping and expressing the True (*das Wahre*), not only as *Substance*, but equally as *Subject* (*als Subjekt*)", implying the negation of the immediate in order to achieve the effective reality of the subject, which is posed only by means of self-reflection in a circular motion of the absolute and its predicates. In other words, he says, "The Subject is assumed as a fixed point to which, as their support, the predicates are affixed by a movement belonging to the knower of this Subject, and which is not regarded as belonging to the fixed point itself; yet it is only through this movement that the content could be represented as Subject. The way in which this movement has been brought about is such that it cannot belong to the fixed point; yet, after this point has been presupposed, the nature of the movement cannot really be other than what it is, it can only be external": Georg Wilhelm Friedrich Hegel, *Phenomenology of Spirit*, trans. by A. V. Miller (Oxford: Oxford University Press, 1977), pp. 10 – 13. True, therefore, must not be simply a substance, but a substance constituted and reached by rationality. In any case, I believe Foucault is right in pointing out that this subject —both the Kantian and thee Hegelian— is a subject without history, for even if it is, in Hegel, the subject of history, it is nonetheless taken as a point of departure, as a virgin pre-supposition.

467 Immanuel Kant, *Grundlegung zur Metaphysik der Sitten* (Hamburg: Meiner Verlag, 2016), 2. 428; p. 53.

468 Immanuel Kant, *Grundlegung zur Metaphysik der Sitten,* 2. 428; p. 53. The explanation for this, however, more than a deduction has the texture of a prayer, for he says that if this were not the case then it would not be possible to find absolute value in anything and thus no practical principle for reason could be found.

an end in itself, not one that springs eminently from its rational nature, as would be the case in Kant, but instead a free will that responds to a process of self-consciousness and self-construction through reason. Furthermore, Hegel defines subject here as "essentially any living being" (*jedes Lebendige überhaupt ein Subjekt ist*), and therefore subjecthood becomes only the "possibility of personhood". In other words, Hegel says, in personhood I find myself to be finite and individual, but nevertheless absolutely free in terms of will, and as such, a "person is the highest a man can be"[469]. What this means, in this context, is that personhood entails "juridical capacity" (*Rechtsfähigkeit*) and provides an imperative of its own: "be a person and respect others as persons" (*sei eine Person und respektiere die anderen als Personen*)[470]. While undeniably close to Kant, the implication lies precisely in the fact that, for Kant, any rational being is immediately and necessarily a person, precisely because of its rational nature; whilst for Hegel personhood entails a process of becoming[471].

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This is, however, half of the story. Following De Libera's analysis, the question of the *res cogitans* goes beyond its accidents or its predicates and gets imbued with a link to its actions, so that "the modern subject" is particularly or most prominently defined by its agency, namely, a certain link of ownership or control over its actions that is casted not as a link of causality, but as a link of *imputation*, *i.e.,* a charge, an accusation, an attribution of responsibility, saying that "it is from the dual meaning that, starting from Aristotle, took the noun 'κατηγορία', namely 'accusation' and 'attribution', that the historical possibility of conceiving 'the subject', as it will be the case in modernity, emerges as both a subject of attribution, a 'psychological' subject; and a subject of imputation, a 'moral' subject"[472].

This is where Hobbes' idea of the person, so far absent, becomes of the utmost relevance. Far from the theological disputes upon the personhood of God, or upon the selfhood of the soul, Hobbes approaches the definition of person immediately by means of imputation as part of his long discourse on the "[natural] man" as the "*matter* and *artificier*" of the *Leviathan*[473].

As it is well known, after defining life as a "motion of limbs", and nature as the government of the world made by God, which *man* imitates in his art; Hobbes defines his

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469 Georg Wilhelm Friedrich Hegel, *Grundlinien der Philosophie des Rechts oder Naturrecht und Staatswissenschaft im Grundrisse* (Frankfurt am Main: Suhrkamp Verlag, 1986), §34 – 35; pp. 92 – 95. A similar note in Schelling, who claims that "life exists only in personhood (*nur in der Persönlichkeit ist Leben*), and all personhood rests on a dark foundation, which must indeed also be the foundation of knowledge": Friedrich Schelling, *Über das Wesen der menchslichen Freiheit* (Hamburg: Meiner Verlag, 2011), p. 85.

470 Georg Wilhelm Friedrich Hegel, *Grundlinien der Philosophie des Rechts,* §36; p. 95.

471 For a closely related reading regarding the "raw" and not-yet-subject human in Kant and the critique tradition, see Gayatri Chakravorty Spivak, *A Critique of Postcolonial Reason: Toward a History of the Vanishing Present* (Cambridge: Harvard University Press, 1999).

472 Alain de Libera, *Archéologie du sujet 1*, p. 98.

473 Thomas Hobbes, *Leviathan*, (New York: Oxford University Press 1998), p. 7.

Leviathan as an "artificial man" of "greater stature and strength", extending the metaphor to an "artificial soul (sovereignty)", to an "artificial reason and will (equity and laws)", and to several other parts of the 'natural' body[474]. The actual definition of person is preceded by a meticulous analysis "of man", which certainly includes notes on his pre-eminence in terms of understanding, speech, reason, curiosity, felicity, and religion —all of which separates him from other creatures[475]—; as well as a meticulous analysis of the natural "faculties of the body, and mind" that are equal among men, and therefore become the source of "diffidence" between them, for all men are then equally capable of obtaining essentially scarce resources, which ultimately leads to a state of war[476]: a time where men "live without a common power to keep them all in awe", a power whose absence makes human life "solitary, poor, nasty, brutish and short"[477].

Only after his elucidation on natural rights, natural laws, and justice, does Hobbes arrive at his definition of person, which appears almost detached from the topics he had been treating. And while the definition certainly presupposes *man* as its foundation, it is also noteworthy that it does not rely on rationality, dignity, or pre-eminence, and not even on its body or its unicity, but instead it is presented solely as a link of imputation:

> A PERSON, is he, whose words or actions are considered, either as his own, or as representing the words or actions of another man, or of any other thing to whom they are attributed, whether truly or by fiction[478].

This attribution of words and actions allows for a rather seamless passage from the natural to the fictitious. "Feigned or artificial person" —Hobbes says— is the one "representing the words and actions of another", whilst "natural person" is the one "considered as his own"[479]. Leaving at the margin the question of the equivalence between fictitious and artificial, which for Hobbes does not seem to represent any issue, the question that arises is that of the entity that represents itself, the one "considered as his own". The pronoun points to "man" as a mere synonym, but given the characterisation he provides, it also seems that the operation is

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474 Thomas Hobbes, *Leviathan*, p. 7. *Man* is, of course, the word Hobbes uses with apparent neutrality, referring to women only in certain passages. It is undoubtedly problematic, since regardless of whether he used it as a neutral noun —as *homo* in Latin— the idea it conveys is that the person and the subject are always necessarily male.

475 See *v.gr.,* Thomas Hobbes, *Leviathan*, 4.22; p. 26. Hobbes reserves the notion of *dignity* to public recognition, as "the public worth of a man [...] set on to him by the Commonwealth": *Leviathan*, 10.18; p. 58.

476 Incidentally, echoing some of the prejudices of the Valladolid dispute, Hobbes mentions that such a state of war may have never existed over all the world, although examples of it can be traced, as is the case with "the savage people in many places of America", who except for the government of small families dependent on lust, "have no government at all; and live at this day in that brutish manner": Thomas Hobbes, *Leviathan*, 13.11; p. 85.

477 Thomas Hobbes, *Leviathan*, 1.13.1 – 9, pp. 82 – 84. For the meaning of the *state of war*, instead of the war itself, see Michel Foucault, *Il faut défendre la société : Cours au Collège de France 1975 -1976* (Paris : Gallimard, 1997), pp. 77 and ff.

478 Thomas Hobbes, *Leviathan*, 16.1; p. 106.

479 Thomas Hobbes, *Leviathan*, 16.2; p. 106.

far more complex, not only because he sometimes speaks about "the person of a man"[480], as something a human bears upon him that does not correspond entirely with his self, but also because dominion over words and acts is present both in nature and in to nature and in artifice, and hence the notion of person would imply not a presentation but a re-presentation, be it of the self or of others.

On this note, after dwelling on the etymology of *prosopon* as face, and *persona* as "disguise, or outward appearance", he traces the analogy of tribunals as stages to conclude that "a *person*, is the same that an *actor* is, both on the stage and in common conversation; and to *personate*, is to *act*, or *represent* himself, or another; and he that acteth another, is said to bear his person, or act in his name"[481].

Here, Hobbes inserts himself in the question of the potentiality of the action as traced by De Libera, and complicates things even further by saying that, in the case of artificial persons, some of them "have their words and actions owned by those whom they represent" and so, he separates the *actor*, the one who acts, who performs the actions and utter the words "owned" by another; from the *author* —the "*dominus*" or "*kyrios*"— of such actions. Therefore, since "by authority, is always understood a right of doing any act", the artificial person is the *actor* that performs and speaks by the authority of the *author*, the one representing the other, acting on his behalf and by his commandment, by his "commission"[482]. What in legal terms would be a relationship of *mandant* and *mandataire,* Hobbes presents in a language close to dramaturgy: the author produces —poeticises— what the actor performs.

The artificial *persona* Hobbes has constructed to sustain his theory has no authority in itself and relies entirely on the one assigned by the natural *persona* behind, that is, by the entity it represents. If so, the question reduplicates. On the one hand —leaving aside Hobbesian notions of state and sovereignty—, Skinner points out how the covenant "engenders two persons who had no previous existence in the state of nature", namely the sovereign, "whom we grant authority to speak and act in our name", and the Common-wealth, "whom we bring into being when we acquire a single will and voice by way of authorising a man or assembly to serve as our representative"[483]. Skinner adds:

> The state is thus [for Hobbes] a person "by fiction". It is never "truly" the case that it performs actions and takes responsibility for them. The only person who ever truly acts in such circumstances is the artificial person of the sovereign, whose specific role is to 'personate' the fictional person of the state[484].

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480 See Thomas Hobbes, *Leviathan*, 2.20.8; p. 134 and Thomas Hobbes, *De Cive: The English version* (Oxford: Oxford University Press, 1983), 8.1; p. 118. He also uses terms such as "the person of the Commonwealth" or "the person of the King".

481 Thomas Hobbes, *Leviathan*, 16.3; pp. 106 – 107. The italics are Hobbes' own.

482 Thomas Hobbes, *Leviathan*, 16.4; p. 107.

483 Quentin Skinner, "A genealogy of the modern state" in *Proceedings of the British Academy*, 162, 325 – 370 (London: The British Academy, 2009) p. 345.

484 Quentin Skinner, *A genealogy of the modern state*, p. 347.

The essence of the "mortal god" of the Leviathan, Hobbes explains, is to be "one person" that embodies the wills of a multiplicity of authors, on account of several covenants, and that "may use the strength and means of them all [...] for their peace and common defence". However, given the equality among men in the state of nature, which provides a fertile soil for diffidence and hostility, such a person must necessarily be artificial, and so indeed the state, the Leviathan, as Hobbes himself presents it right from the very beginning, is the generation of both an artificial and a fictitious person[485]. Artificial, in as much as it is not produced by nature; and fictitious, in as much as it does not correspond with the natural and true *persona* of the *homines*. Neither natural nor true, but nevertheless *ex iusta causa*: a fiction indeed, even for scholastic standards. We seem to be far away from the *civitas* taking the place (*loco habentur*) of private persons as in the *Digesta*, since a new person is evidently formed here, and yet the element of re-presentation, of playing the role and becoming someone else is still very much present, for in addition to being formed, the Leviathan is also being *per-formed*.

This is palpable in the second person that Skinner mentions, which comes immediately afterwards when Hobbes says that "he that carrieth this person —*i.e.*, the person of the Leviathan— is called sovereign"[486]. In other words, an artificial person performing the actions of another, who is already re-presenting a plurality of wills. Furthermore, as Skinner rightly points out, the covenant serves as the catalyst that allows a multitude of men to become a single person, the mechanism by which a multiplicity is taken *as if it were* an individuality:

> Wherefore a Multitude is no naturall Person; but if the same Multitude doe Contract one with another, that the will of one man, or the agreeing wills of the major part of them, shall be received for the will of all, then it becomes one Person; for it is endu'd with a will, and therefore can doe voluntary actions, such as are Commanding, making Lawes, acquiring and transferring of Right, and so forth[487].

A singular will is, therefore, the definitory characteristic of personhood, for it is this singularity that allows the link of imputation to be casted, and for the multiple entity to own and command its own actions and words. Singularity is so essential for imputation that Hobbes claims that "the People" does not retain "supreme power" beyond a "certain day and place publiquely appointed", a brief instance of sovereignty in which the artificial person receives

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485 Thomas Hobbes, *Leviathan*, 17.13; p. 107. This symbiosis calls to mind Innocent's approach to the *persona* of the religious colleges. Skinner comments that "Hobbes had owed an evident debt to a body of Continental treatises on corporations as *personae fictae*" and traces the circulation of his "fictional theory" starting from Samuel Pufendorf, and the reception and translation of his own work both, in continental Europe and in the British Isles all the way to Bentham's reductionism and its assimilation by John Austin, all of it framed upon his own endeavour to trace the genealogy of the —broadly speaking— British modern state: Quentin Skinner, *A genealogy of the modern state*, pp. 349; 356.

486 Thomas Hobbes, *Leviathan*, 17.14; p. 107.

487 Thomas Hobbes, *De Cive*, 6.1; p. 92.

the commandments of the represented, only to vanish immediately afterwards, since "it is no longer the *People*, but a dissolute multitude, to whom we can neither attribute any *Action*, or *Right*"[488]. In other words, on Hobbes' account, while a multiplicity is certainly capable of action, as would be the case of a sedition[489], it is the *attribution* of such an action that becomes problematic, and therefore only in the individuality can we find solid ground to establish the covenant, not to mention the very existence of the artificial person of the state. Imputation, thus, splits the congregation of people into two of itself: on the one hand, the reunion of individual *men*, incapable of attribution; and on the other hand, the artificial person composed by them, embodying the supposedly singular and essentially political will of the Leviathan, which holds nevertheless a fracture at its core between the state and the sovereign.

In any case, Hobbes adds, the unity of imputation does not come from the "*represented*" but appears only in the "*representer*"[490], and so personhood acts as the mechanism by which multiple wills become one, by which the authors can become a single actor.

Coherently, if the person of the state is indeed different from the person of the sovereign, it is also the case that the person of "civill society" is itself the product of several other "civill persons" composed by "a Father, with his *sonnes* and *servants*", that by virtue of a "paternal jurisdiction" grow to become the "civill person" of the family[491].

As attested by the frontispiece of the first edition of the Leviathan, at the same time one and many, personhood appears here not merely as three persons of a single substance as in the trinity, nor as a single body with many souls as in Lucian's actor, but perhaps closer to Spinoza's definition of the human body: a composition "of many individuals (of diverse nature), each of which is highly complex"[492]: a whole fractal of both persons and fictions.

Where does this gargantuan fractal of persons —natural and artificial— encounter the subject? It does so, not in identity with the self in time, but in an apparent paradox of potency and submission. As we have seen, Hobbes calls sovereign he who carries the person of the commonwealth, and as such is capable of every strength and every mean. Any other person, he says, that stands before this singular, boundless, and personified will is "his subject"[493]. In the *De Cive*, he says:

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488 Thomas Hobbes, *De Cive*, 7.5; p. 109.

489 "For although in some great Sedition, it's commonly said, That the *People* of that City have taken up Armes; yet is it true of those onely who are in Armes, or who consent to them. For the *City*, which is *one Person*, cannot take up Armes against it selfe. Whatsoever therefore is done by the multitude, must be understood to be done by every one of those by whom it is made up": Thomas Hobbes, *De Cive*, 6.1; p. 91.

490 Thomas Hobbes, *Leviathan*, 16.13; p. 109.

491 Thomas Hobbes, *De Cive*, 9.10; p. 126. If so far 'man' could have been taken as neutral, here it is clear that the male component is constitutive, since the man has become the *paterfamilias*, the *sui iuris* male whose jurisdiction allows the personhood of the family.

492 Spinoza, *Ethica*, II, *prop*. 13, *post*. 1. For the chasm between Hobbes and Spinoza, and the concepts of *potestas* and *potentia* especially under the reading by Antonio Negri and Michael Hardt, see Sandra Leonie Field, *Potentia: Hobbes and Spinoza on Power and Popular Politics* (New York: Oxford University Press, 2020).

493 Thomas Hobbes, *Leviathan*, 17.14; p. 107.

> Each *Citizen* as also every *subordinate civill Person*, is called the *SUBJECT* of him who hath the *chiefe command*[494].

The subject acquires here another face: it is the product of subjection. The apparent paradox lies in the fact that such a subjection is not only voluntary but comes to be an act of authority. Indeed, the sovereign that impersonates the Leviathan is the actor of the multiple authors, imputed as one in the covenant, so that "every subject is by this institution author of all the actions, and judgments of the sovereign instituted"[495]. In other words, if the sovereign creates subjects, it is because the subjects themselves are the source —the authors— of their subjection. At least, this would be the case if the covenant were indeed homogenous and if the shared will of all, as the basis for contractualism, could be taken as a given. Casting that aside, what remains is that the notion of subject appears, in Hobbes, beyond the inheritance of predicates, accidents, identity, and even action itself, and instead via a link of imputation in terms of the person of the sovereign, and in terms of subjection whenever such a sovereign relates to any and every other person. In this framework there is no opposition, but also no equivalence between person and subject. All *homines* —all *men*— are persons as long as ownership of actions or words can be ascribed to them, but not all persons are *men* and, in any case, any person, natural or artificial, is a subject before the person of the sovereign.

Wondering about "the way in which the human being transforms into the subject" Foucault pointed towards these two senses of subject, namely the "subject attached to his own identity by consciousness or by the knowledge of the self", and the "subject submitted to another by control and dependence"[496], which would in turn show how, if the identity of selfhood and subject has a history on its own, that does not begin and does not end with Descartes, so does the subjection of the self in a regime of truth with techniques, practices, *dispositifs,* and mechanisms that Foucault identified both in Antiquity and in the Middle Ages as the "care for the self" (*souci de soi*)[497]. The Hobbesian subject must be read, indeed, as already subjected, attached, and even disposed of time and again, regardless of the supposed authorship of his own subjection.

Locke's own approach to personhood, on the other hand, seems to intertwine both conceptions, departing from an accounted inheritance of the trinitarian problem in English theological and philosophical disputes[498], and developing the notion as part of the question of 'human understanding'. After claiming that the "identity of man" consists in "the participation of the same continued Life, by constantly fleeting Particles of Matter, in

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494 Thomas Hobbes, *De Cive*, 5.11; p. 90.

495 Thomas Hobbes, *Leviathan*, 18.6; p. 117. On this idea of a "subjected liberty", see Roberto Esposito, *Due*, pp. 114 – 115.

496 Michel Foucault, « Le sujet et le pouvoir » dans *Dits et écrits II : 1976-1988,* (Paris : Quarto Gallimard, 2017), pp. 1042 ; 1046.

497 See Michel Foucault, *Histoire de la sexualité III : Le souci de soi* (Paris : Gallimard, 1984).

498 Particularly in the framework of the dispute with Edward Stillingfleet and around the writings of William Sherlock and Stephen Nye, as recounted in Alain de Libera, *Archéologie du sujet 1*, pp. 101 and ff.

succession vitally united to the same organised Body"[499], and after saying that rationality alone, detached from a body of a certain shape, does not constitute a man, Locke forwards his own definition of person:

> Person [...] is a thinking intelligent Being, that has Reason and Reflection, and can consider itself as itself, the same thinking Thing in different Times and Places: which it does only by Consciousness[500].

If the anachronism is permitted, Locke's seems to hold a Kantian approach to personhood, since it implies a "Sameness of a rational Being", that is, an identity of the self in time. Furthermore, he defines the *self* in a very Cartesian way, as a "conscious thinking Thing" —a literal *res cogitans*— whose substance (spiritual or material) is ultimately unimportant, for it is outlined by being "sensible, or conscious of Pleasure and Pain, capable of Happiness or Misery"[501]. This definition of personhood as consciousness and sameness of the self will, nevertheless, hold an interesting component of imputation, for Locke says that consciousness can be "extended backwards to any past Action or Thought"[502] —and shall I add to any *word*, in Hobbesian language—, so that "personal identity" implies the consciousness of being the same self when performing an action, or better stated, that the action is attributable or imputable given the immutability of the (consciousness of the) self, so that no matter the "distance of time" or the "change of substance", the same consciousness unites "distant Actions into the same *Person*"[503], that is, an identity of the self that allows to attribute actions regardless of temporality and substantiality:

> That with which the *Consciousness* of this present thinking Thing can join itself, makes the same *Person*, and is one *Self* with it, and with nothing else, and so attributes to it *Self,* and owns all the Actions of that Thing as its own, as far as the Consciousness reaches[504].

A link of imputation is precisely that with which the consciousness of the thinking thing can be attributed with its past, which again shrines the notion of ownership and dominion of one's own actions as the definitory characteristic of personhood. Remembrance of past actions

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[499] John Locke, *An essay concerning human understanding* (London: S.Birt et al, 1753), 2.27.6 – 8; pp. 283 – 286. Locke rejects identity as based exclusively on the soul, since this would allow for the soul of a man to join many different bodies, including animal bodies: "But yet I think, no body, could he be sure that the Soul of *Heliogabalus* were in one of his Hogs, would yet say that Hog were a *Man* or *Heliogabalus*": p. 284.

[500] John Locke, *An essay concerning human understanding,* 2.27.9; p. 286.

[501] John Locke, *An essay concerning human understanding,* 2.27.17; p. 292.

[502] John Locke, *An essay concerning human understanding,* p. 287.

[503] John Locke, *An essay concerning human understanding,* 2.27.10; pp. 287 – 288. Later he will say that "if the same Consciousness [...] can be transferred from one thinking Substance to another, it will be possible, two thinking Substances may make one Person. For the same Consciousness being preserved, whether in the same or different Substances, the personal Identity is preserved": 2.27.13; p. 289.

[504] John Locke, *An essay concerning human understanding,* 2.27.17; p. 292.

seems to transform into a form of accountability, into being able to respond for and address the fact that one has acted in a certain way, or in other words, as Locke himself puts it, it is in "personal identity [...] [where] Right and Justice of Reward and Punishment" is founded[505]. Being a person, therefore, implies a retraceable stream of consciousness that can be imputed with its own actions, and so the two notions of subject are also accounted for, since in being attached to one's own identity by self-consciousness the person is also subjected to justice, at least in terms of the administration of reward and punishment.

If, however, imputation is a matter of self-consciousness, then *man* and *person* need not be one and the same thing, even if they are usually intertwined. Locke addresses this possibility fully with example of non-imputability and non-punishability of actions without consciousness, such as "punishing *Socrate*s waking for what sleeping *Socrates* thought"[506], or with the famous example of someone completely losing their memory beyond any possible recollection[507]. In this later case, Locke says, the confusion arises in defining —yet again— the *I*, in a brilliant passage that allows for a plurality to be taken as a singularity:

> But if it be possible for the same Man to have distinct incommunicable Consciousness at different times, it is past doubt the same Man would at different times make different Persons [!][508].

The same man can have many persons, the same actor many characters, the same body many souls. Not a contradiction, but the very function of the mechanism of personhood that renders these pluralities imputable, accountable, disposable.

That this is not only possible, but an actuality, is explained, says Locke, by the fact that human laws —which he defines as the "sense of mankind in the solemnest declaration of their opinions"— would not punish the sober-man for the mad-man's actions or vice versa, thereby "making them two Persons"[509]. The drunk, fool, furious, or deranged inhabits the same body and it even *is* the same *man*, but it is not the same *person*. Nevertheless, Locke seems to find a contradiction when he says that human laws do however take the sober and the drunk as the same person, and that they do punish the one for the actions of the other, which he explains by some sort of epistemological lacking, given that "in these cases", human laws "cannot distinguish certainly what is real, what is counterfeit", and thus they punish the same

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505 John Locke, *An essay concerning human understanding,* 2.27.18; p. 292.

506 John Locke, *An essay concerning human understanding,* 2.27.19; p. 293.

507 John Locke, *An essay concerning human understanding,* 2.27.20; p. 293.

508 John Locke, *An essay concerning human understanding,* 2.27.20; p. 293.

509 John Locke, *An essay concerning human understanding,* 2.27.20; p. 293. Locke adds that only considering "*human Identity*" the same as "personal Identity" will there be no difficulty in understanding the same man as the same person, for straying away from the criterion of consciousness would not allow to explain phenomena such as identity through resurrection or by overcoming infancy "without involving us in great Absurdities": John Locke, *An essay concerning human understanding,* 2.27.21; p. 294.

man by the actions of both persons. In any case, Locke adds, "in the great Day [...] it may be reasonable to think, no one shall be made to answer for what he knows nothing of"[510].

Whether in such an eschatological view, or in the actual stage of human justice, we find ourselves far from the harbour of Boethius' individual substance of rational nature, for not only are particulars susceptible of an internal, incommunicable division of their self and their consciousness, but also personhood is no longer secluded in rationality, at least as opposed to madness, or in-sanity of mind[511].

Locke insists on consciousness as the definitory notion of the self —constitutive of personhood—, in order to forward his most renowned approach to the matter:

> [Person] is a forensick Term, appropriating Actions and their Merit, and so belongs only to intelligent Agents capable of a Law, and Happiness and Misery. This Personality extends itself beyond present Existence to what is past, only by Consciousness, whereby it becomes concerned and accountable, owns and imputes to *itself* past Actions, just upon the same Ground, and for the same Reason that it does the present[512].

A forensic term. After its excursion in the realms of theology and dramaturgy, *persona* returns to the familiar juridical soil, a soil that it never left entirely, nor has it entirely inhabited. Locke's definition, in any case, abandons the substance, the body and the individuality in order to make personhood rely on the sameness of self-consciousness, and perhaps more importantly, in the consequences that derive thereof. Just as in Hobbes, moreover, the dominion of one's actions implies an accountability for them, and as such, personhood serves as the mechanism by which an "intelligent" and "capable" entity is nevertheless subjected. As Esposito says, regarding Locke, the forensic term allows to render someone "at the same time subject of the law and object of trial (*soggetto di legge e oggetto di giudizio*), at the same time justifiable and justiciable"[513].

If *subject* is the philosophical term that encompasses the paradox of the active agent and the passive object of subjection, *persona* is the juridico-political mechanism by which such a paradox performs upon its stages: plural and singular, agent and subject, bound and yet responsible. *Subject* and *persona* have become almost inseparable by a link of imputation.

On the same vein of forensic terminology, Kant reaches out to imputation in order to explain what the person and its subjection are in juridical terms. In the introduction to the *Metaphysics of Morals*, he provides a glossary of preliminary concepts —one that dances between German and Latin— defining imputation (*Zurechnung; imputatio*) as "the judgment (*Urteil*) by which someone is considered the author (*Urheber; causa libera*) of an action (*Handlung*),

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510 John Locke, *An essay concerning human understanding,* 2.27.22; p. 294.

511 See Michel Foucault, *Du gouvernement des vivants : Cours au Collège de France 1979-1980*, Leçon du 6 février 1980.

512 John Locke, *An essay concerning human understanding,* 2.27.26; pp. 296 – 297.

513 Roberto Esposito, *Le persone e le cose*, p. 25.

thereupon called an act (*Tat; factum*), that stands under the law"[514]. Although the element of representation is absent, the link of imputation persists under the legal qualification of an action as an *act* and its agent as an *author*. Moreover, an act —truly, a juridical act—, is not any action, but one that "stands under the laws of obligation", and as such relates to the subject considered from the perspective of the "freedom of their will". Upon this idea, Kant says, the "actor (*Handelnde*) is considered the author (*Urheber*) of the effects of the act", and both the action and its effects, as bound to an obligation and relating to the free will of the subject, can be finally imputed (*zugerechnet*) to them[515]. Whereas in Hobbes the author is represented by the actor, which may as well include self-representation or *impersonation*, in Kant the author becomes the actor by means of the action that he or she performs as a rational being in the use of their free will; rationality binds the effects of the act and the act itself to a presupposed obligation, and in this sense the subject is indeed commanding its own actions, while also subjected to the commands of morality and law. In other words, a subjected subject, owner of itself but always dominated, tied down.

In this framework, Kant defines person as "the subject whose actions are capable of imputation" (*Person ist dasjenige Subjekt, dessen Handlungen einer Zurechnung fähig sind*), and explains that "moral personality" is "the freedom of the rational being under moral laws", while "psychological personality" refers to "the ability to become conscious of the identity of oneself in different states of existence"[516], a difference that undoubtedly denounces a closeness, for regardless of the distance with Locke, the interplay between identity and consciousness —*i.e.*, personhood— is the mechanism that allows imputation to flourish, so that the epistemological person constitutes itself as a forensic term, as a centre of imputation. Conversely, a "thing is an object that is not capable of any imputation" (*Sache ist ein Ding, was keiner Zurechnung fähig ist*), that is, of being imputed, and whenever an "object of free will lacks freedom", says Kant, it is understood as a thing (*Sache; res corporalis*)[517]. Regardless of whether the Kantian concept of corporeal thing conveys or not the same sense as in Gaius, what is notable is that we have arrived at another *summa divisio*, a reclassification of entities either as persons or things. Here, however, the foundation is of a different sort, not relying on the somewhat vague notion of *homo*, problematic even in the most transparent cases, and not even on rationality itself, but on a certain continuum that allows actions, their authorship, and their effects to be attributed to an entity, one that must be necessarily capable of holding, owning, and responding for these imputations. Whether it relies on consciousness and identity, or on representation, it is

514 Immanuel Kant, *Metaphysische Anfangsgründe der Rechtslehre: Metaphysik der Sitten Erster Teil* (Hamburg: Meiner Verlag, 2018), [227], p. 25.

515 Immanuel Kant, *Metaphysik der Sitten*, [223], p. 25. It is worth mentioning that Kant conditions this imputation to the actor actually knowing the law beforehand, for otherwise there would not be any obligation. In terms of morality, however, it is clear that as a rational being in its free will, the subject ought to necessarily know the moral laws that bind all rational beings *a priori*.

516 Immanuel Kant, *Metaphysik der Sitten*, [223], p. 25.

517 Immanuel Kant, *Metaphysik der Sitten*, [223], p. 26.

the capability of imputation that which defines *persona* in this instance, intertwined not with *homines*, but with all the ramifications of the subject, sovereign or otherwise.

In this sense, it should come as no surprise, for instance, that when Rousseau speaks of the social contract, he also employs the language of personhood, for not only does he say that "every one of us places their person (*sa personne*) under the supreme conduction of the general will", but also that the contract forms a "public person" (*personne publique)*, which "acquires the name of republic or political body" as well as that of "state when it is passive, and sovereign when it is active", emphasising that the subject appears, just as in Hobbes, in terms of submission to the laws of that power[518], and person in terms of its capability of begin imputed.

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If the line between persons and things is not drawn upon the individual substance of rational nature but on the capability of sustaining imputation, then at least two major consequences follow.

On the one hand, the Boethian formula becomes blurred and indistinguishable, for instead of nature, we find fiction or artifice; instead of individuals, we find pluralities; instead of reason, we find madness, drunkenness, or forgetfulness; and even the substantiality is deemed secondary as long as the identity, consciousness, or representation does somehow *subsist*.

On the other hand, the question of 'the State', 'the Nation' or 'the People' can prosper in terms of personhood because juridical or "moral" persons need not rely on any degree of humanity —that is, on sharing characteristics with *homines*— in order to exist[519], not only because they are indeed artifices in every sense of the word, as recognised by Innocent's canon; but also because there is no need to feign that a college or a corporation —or the very gathering of people under a contract or covenant— behave *as if they were human*. Instead, a plurality of *homines*, or even more puzzling, a plurality of things, can be imputed in their actions as a self-conscious, identical, or representative entity would, one that can reclaim the ownership and the dominion for their actions, and respond for their effects. This is not to say that the rich tapestry of metaphors and analogies would disappear —the icon of the

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518 Jean-Jacques Rousseau, *Du contrat social ou principes de droit politique* (Paris : Éditions Sociales, 1968), I. §6 ; p. 57 – 58. It must be noted, however, that Rousseau's both epistemological and political anguish orbited around the "natural man", rejecting reason as the basis for the knowledge of "natural law" since such a knowledge calls for "a great reasoner and a profound metaphysicist". Instead, he goes back to "two simpler operations of the human soul" that come prior to human reason, namely the interest for self-conservation and the natural repugnance to the suffering of other beings: Jean-Jacques Rousseau, *Discours sur l'origine et les fondements de l'inégalité parmi les hommes* (Paris : Éditions Sociales, 1971), pp. 62 – 64. On this reduction of the political to the natural, and citing Rousseau, see Hannah Arendt, *On Revolution*, pp. 104 and ff.

519 Kant, for instance, seems to take for granted the distinction between a "physical" and a "moral" person, stating that both can be judges (*Metaphysik der Sitten*, [227], p. 25; [297], §36, p. 109) or even rulers (*Metaphysik der Sitten*, [316], §48, p. 132) without any further complication.

Leviathan is a clear proof of the contrary—, but it does mean that the fiction of personhood shifts its anchor in order to rely on imputation: these entities, human or not, are taken *as if they were imputable*.

The sameness or identity that serves as a foundation for imputation may be accounted for via the notion of "immortality" of the *universitates*. While death supposes a natural limit to "physical" persons —resolved by the Romans, as we have seen, through fictions— collectivities of persons or things are not susceptible to die, although they are, if one follows Hobbes, prone to vanish into their very composition. On this question, Kantorowickz recounts Baldus calling the city "something universal that cannot perish by death", the *populus* "a collection of men in one mystical body", and the *regnum* "something total which both in persons and things contains its parts integrally" [520]. Such a notion of continuity and identity was ratified by Innocent's "epochal statement about the *universitas* as a fictitious person", which in turn, according to Kantorowicz, relied on the pragmatic issue of the composition of pluralities. As previously mentioned, pluralities necessarily depend upon succession in order to subsist, and in this context the guilt or the punishment of one of its members cannot encompass guilt or punishment for the entity as a whole, which is another reason why Innocent denied excommunication to corporate bodies, since corporations cannot sin or commit crime[521]. This, alongside the doctrine of the *corpus mysticum* of the church[522], allows for a sustainment of the continuity, identity and even immortality of these pluralities:

> The essential feature of all corporate bodies was not that they were "a plurality of persons collected in one body" at the present moment, but that they were that "plurality" in succession, braced by Time and through the medium of Time[523].

Evidently, as Kantorowicz says, this idea of identity by means of succession was anything but an immediate process, and the whole edifice would begin to apply to notions such as "*patria* or *corpus morales et politicum*" only by the 14th century[524]. In turn, this idea would also be applied to the monarchy as a plurality that extends not in space, but in time, so that not only corporations or universalities, but also "the king" would never die[525].

Back in the realms of personhood, however, what this means is that the stream of consciousness and identity that constitutes the basis for imputation —at least in the Lockian and Kantian way— can be introduced into the artificial persons regardless of an actual consciousness or an actual identity, and so the fiction of the *persona* could, in principle, stray

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520 Kantorowicz also speaks about the personhood of collectives "suggested by Roman Law", citing the *Digesta* 46.1.22 (*quia hereditas personae vice fungitur*), as well as the ecclesiastical notions of *universitas fidelium* and *corpus mysticum*: Ernst Kantorowicz, *The King's Two Bodies,* pp. 304 – 305.

521 Innocent IV, *Apparatus in quinque libros decretalium*, lib. 5, tit. 39, c. 57. 1, f. 557.

522 Ernst Kantorowicz, *The King's Two Bodies,* p. 308. See Thomas Aquinas, *Summa Theologiae*, III, q. 8, a. 3.

523 Ernst Kantorowicz, *The King's Two Bodies,* p. 310.

524 Ernst Kantorowicz, *The King's Two Bodies*, p. 311.

525 Ernst Kantorowicz, *The King's Two Bodies*, pp. 312 and ff.

away from the realms of humanity and persist in the form of pluralities of humans or (other) things that, by means of artifice, act and speak *as if* they were subjects of imputation.

3.2. "All men are created equal"

The *United States Declaration of Independence* of 1776 builds upon what *prima facie* would be a commendable statement: "We hold these truths to be self-evident, that all men are created equal". Given the context of black slavery and the systematic dispossession and displacement of indigenous peoples, however, the chasm between text and reality could not have been more pronounced, rendering this proclamation paradigmatic of how foundational texts speak not only for what they say, but also —and perhaps most importantly— for what they bury under a mantle of silence.

This is not to say that there was no consciousness about the apparent paradox, nor that there were no voices specifically in favour of the abolition of slavery. For instance, Thomas Jefferson's draft of the declaration condemned king George III, among others, for the "cruel war against human nature itself, violating its most sacred rights of life and liberty in the persons of a distant people who never offended him, captivating & carrying them into slavery in another hemisphere". The draft, however, was struck out by the United States Congress, "thus leaving a document that exalted liberty and equality but said nothing about the presence of slavery in the new nation"[526]. It has also been noted that "equality" in its "original meaning" referred to the "equal rights of all peoples to self-government" and not to the equality of individuals amongst themselves, an original intention nevertheless promptly blurred by the readers of the *Declaratio*n, which had already acquired the latter sense of equality among people by the time of the abolitionist movement[527]. Regardless of its original intentions, this shows how the paradox was indeed present from the very beginning, operating both as the settlement of the discussion and as the seed of discrepancy.

Inconsistent or not with the original meaning of equality, the actual United States *Constitution* of 1787 was achieved only via a well-known "compromise" upon the literal value of slaves, counting them as "three-fifths of *other persons":*

> Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons [!][528].

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[526] Don E. Fehrenbacher, *The Slaveholding Republic: An Account of the United States Government's Relations to Slavery* (New York: Oxford University Press, 2001), p. 17. Fehrenbacher recounts Jefferson's draft.

[527] Jack Rakove, "Introduction" in *The Annotated U.S. Constitution and Declaration of Independence*, ed. by Jack Rakove (Cambridge: Harvard University Press, 2009), pp. 22 and ff.

[528] This is Article 1, Section 2, Clause 3 of the original Constitution, later superseded by the 14th amendment in 1866 as a result of the Civil War and the abolition of slavery.

The clause aimed to resolve the issue of southern states that would see an increase in their taxes if the whole population of slaves was counted as people and not as property. In an originalistic reading, Jack Rakove claims this was "neither a coefficient of racial hierarchy nor a portent of the racialist thinking", but rather "the closest approximation in the Constitution" to equality among states, given that it aimed at casting no discrimination between the members of the confederacy[529]. And yet it is telling that the foundational text utilised "person" in such an ambiguous fashion, referring to entities that simultaneously were and were not recognised as having the attributes of personhood, a macabre dance that we had already encountered in the Spanish legal treatment of the "*indios*". However, while Spanish laws spoke of a slave (*siervo*) as someone who did not have the free administration of his *persona*[530], the three-fifths clause rearranged said *persona* by fragmenting it, introducing an internal economy that transformed an undoubtedly individual human entity into something that did not amount to a "whole person". Thus, not only can *persona* be or encompass a plurality of entities, but it can also be partitioned and allotted from within, so that someone could literally be counted —to borrow from Brodsky— as "less than one"[531].

This "apportionment" was also problematic from the very beginning. In February 12 of 1788, the *Federalist* addressed the question by saying that, in a framework where representation refers to persons and taxation to property, "slaves partake to both of these qualities: being considered by our laws, in some respects, as persons, and in other respects as property". On the one hand, a slave is compared to an "irrational animal" in as much as he is "compelled to labor", "vendible" and "at all times to be restrained in his liberty and chastised in his body", which in practice amounts to being "degraded from the human rank". On the other hand, given that the slave is "protected [...] in his life and in his limbs, against the violence of all others" and that he is "punishable himself for all violence committed against others", it follows that the slave is "a moral person"[532]. While the paper, of course, did not intend to provide a statement on the definition of person, it does take for granted some outlines of what it means to be one in this context: rationality —at least in order to be part of the "human ranks"—, some degree of protection if not full *dignity*, and the responsibility that derives from the commandment of one's actions, in other words, the capability of being imputed. The paper was emphatic in saying that, "if the laws were to restore the rights which have been taken away, negroes could no longer be refused an equal share of representation", nevertheless, "divested of two-fifths of the Man"[533], these fragmented persons were not only in the murky terrain of ontological undefinition, but in the ruthless reality of extreme subjugation.

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529 Jack Rakove, *Original meanings: politics and ideas in the making of the Constitution* (New York: A.A. Knopf, 1996), p. 74.

530 Hugo de Celso, *Reportorio universal de todas las leyes d'estos reynos de Castilla*, f. cccxxiij.

531 Joseph Brodsky, *Less than one: selected essays* (New York: Farrar, 1986).

532 All of this in James Madison (?), "Federalist No. 54: The Apportionment of Members Among the States" in *Federalist Papers*, ed. by Barbara Bavis et al. (Washington: Library of Congress, 2019).

533 James Madison (?), *Federalist No. 54*.

Needless to say, philosophical discourse was not of much aid, neither in ontology nor in reality. Locke, for instance, while championing the defence of liberty as a natural right, was not only acquainted with, but actively involved as "a shareholder in the Royal African Company involved in American colonial policy in Carolina"[534]. Montesquieu famously stated that slavery responds either to a "free choice" of a man that surrenders himself to tyrants[535], or to the fact that there are countries "where the heat irritates the body and weakens the courage so much that men are inclined to [slavery] only by fear of punishment"[536], which explains why "it is necessary to limit natural servitude to certain specific countries of the earth (*à de certains pays particuliers de la terre*)"[537], namely outside of the geographical —but not of the political— Europe. A similar story with Rousseau, who "could not have not known" about the *Code Noir* and its treatment of black slaves in the French colonies, and yet had nothing to say about it[538]. The discussion, of course, can be framed in the very same idea of original meanings and original intentions, and it need not delve into the semantics of reparation, but the *enlightened* claims for universal equality are necessarily contrasted with an internal economy of the *persona* that, tacitly or explicitly, excluded many from the definition.

A contrasting scene appears in the Haitian constitutional endeavour. Still as a colony of the French Empire, the Haitian constitution of 1801 declared that there could not be slaves "on the territory of Saint-Domingue", that servitude was forever abolished and that "all men (*tous les hommes*) are born, live, and die, free and French"[539], an evident echo of the French *Déclaration* of 1789. Moreover, and not without reason, the constitution established that "all men, whatever their colour, are admissible to all employments"[540]. After the proclamation of independence in January of 1804, a new constitution was sanctioned on May 20, 1805. Among its extraordinary provisions, not only did the constitution abolish slavery (art. 2), but it also inserted several unprecedented criteria for the recognition of property and citizenship,

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534 Susan Buck-Morss, *Hegel, Haiti, and Universal History* (Pittsburgh: University of Pittsburgh Press, 2009), p. 28. See also David Brion Davis, *The Problem of Slavery in Western Culture* (Ithaca: Cornell University Press, 1967) —which Buck-Morss cites—, as well as James Farr, "'So Vile and Miserable an Estate': The Problem of Slavery in Locke's Political Thought", *Political Theory* 14 no. 2 (1986): 263 – 289, and Jennifer Welchman, "Locke on Slavery and Inalienable Rights", *Canadian Journal of Philosophy* 25 no. 1 (1995): 67 – 81.

535 Montesquieu, *L'Esprit des lois,* Tome 1 (Paris : Garnier, 2011), liv.15. chap. 6, p. 266.

536 Montesquieu, *L'Esprit des lois*, liv.15. chap. 7, p. 267.

537 Montesquieu, *L'Esprit des lois*, liv.15. chap. 8, p. 267. Louis Sala-Moulins highlights the similarities with the thought of Sepúlveda in his defence of Spanish domination a couple of centuries earlier, but noting how "Sepúlveda is the horror of the Hispanic debate, while Montesquieu is the hero of the French debate": Louis Sala-Moulins, *Le Code Noir ou le calvaire de Canaan* (Paris: Presses Universitaires de France, 2006), p. 236.

538 Louis Sala-Moulins, *Le Code Noir ou le calvaire de Canaan*, pp. 234 and ff.

539 Article 3 of the 1801 constitution, as recounted by Louis Joseph Janvier, *Les constitutions d'Haïti 1801 – 1865* (Paris: Marpon et Flammarion, 1886), p. 8. Interestingly, in terms of philosophical discourse, Hegel of all people was quite aware of the Haitian revolution, having an impact in his account of slave-servant dialectics even if he never actually pronounced himself on such a source. See Susan Buck-Morss, *Hegel, Haiti, and Universal History.*

540 The constitution was sent to the "central assembly" by Toussaint-Louverture, and was obviously not very well received by Napoleon, who promptly sent Charles Leclerc to reinstate slavery and assert France's domination. On May 20, 1802, the French promulgated a law maintaining slavery in the colonies. See Louis Joseph Janvier, *Les constitutions d'Haïti 1801 – 1865*, pp. 23 – 27.

such as the fact that "no white, whatever its nation, shall set foot on this territory as a master or owner (*de maître ou de propriétaire*) and may not acquire any property here in the future" (art. 12), a provision from which "naturalised white women" and "naturalised Germans and Polish" (art. 13) were explicitly excluded, given their role in the war of independence. What's more, entering into the realms of an *ex iusta causa* contradiction of the truth, article 14 of the 1805 *Constitution* adds:

> Any distinction of colour among the children of the same family, whose father is the head of State, must necessarily cease; Haitians shall henceforth be known only under the generic designation of Blacks (*Noirs*)[541].

Several questions arise on account of this article, such as the head of State being the father of every family, or the very question of race to which I shall come back further ahead. For the time being, however, it is noteworthy how, with the intention of eradicating discrimination, the very conception of a difference in the colour of skin is also eradicated, so that those who had been categorised as "white women and white Europeans" only one article before, are now, by virtue of the constitution, taken as "blacks"[542]. In this sense, only a couple of decades apart, Haiti had condemned slavery twice without any 'compromise' —unlike the *United States Constitution*—, and excluded whiteness from property and dominion, while at the same time included said whiteness in the notion of blackness at the stroke of a singular legal fiction. The notion of person appears as well, not in terms of equivalence with the *homines* that inhabited the territory, but in terms of an eminence that renders the person of the Emperor and the Empress "sacred and inviolable" (*la personne de Leurs Majestés est sacrée et inviolable*)[543].

Personhood shows here the variety of its pigments. On the one hand, it becomes a synonym of a certain dignity, be it the one the sovereign enjoys above his subjects as inviolable and sacred —even there where all difference has been reduced to blackness—; or the one

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[541] Louis Joseph Janvier, *Les constitutions d'Haïti 1801 – 1865*, p. 32. It must be noted that this constitution lasted until December of 1806. This one, in turn, would be abolished one year later.

[542] The question of the identity of Haitians as a "black people" is patent in Janvier as well. His compilation of Haitian Constitutions, published in Paris in 1886, opens like this: "The Haitian people belongs to the black race (*Le peuple haïtien appartient à la race noire*) […] It only reads French books: it loves movement, democratic institutions, and egalitarian theories": Louis Joseph Janvier, *Les constitutions d'Haïti 1801 – 1865*, p. 1.

[543] Article 21 : Louis Joseph Janvier, *Les constitutions d'Haïti 1801 – 1865*, p. 33. If only to highlight the contrast and the tension between two different approaches to the matter, it is also worth noting the particular case of the *Richmond Enquirer*, studied by Marie-Jeanne Rossignol. Unlike other journals, the *Enquirer* published a "truncated and censored" version of the Haitian constitution of 1805, erasing any mention of the abolition of slavery (arts. 2 and 3), as well as articles 12 and 13; since they unmasked the "liberal but slaver" nature of the U.S. constitution and "attacked one of its fundamental values: property". Rossignol's explains: "Indeed, in the South, a consensus is appearing: any discourse questioning slavery, one way or another, is susceptible of inciting slaves to revolt. It must therefore be proscribed": Marie-Jeanne Rossignol, « La première Constitution d'Haïti et la presse américaine : étude de cas », *Revue Française d'Études Américaines*, 52 (1992) 149 – 160. Interestingly, however, the newspaper left article 14 untouched. See Library of Virgina, *Enquirer*, Volume 2, Number 22 (23 July 1805).

that "all men" share equally as a "self-evident truth" that hides more than it reveals. On the other hand, while remaining as a link of imputation to moral agency, it renders itself capable of holding an internal economy, so that those very same men who share equality are not to be confused with those hybrid beings whose existence lacks two-fifths of personhood, being therefore somehow an unfree property responsible for their own acts: irrational animal, object, and imputable all the same, but never a complete and whole person.

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Arendt retraces two recurrent metaphors in the narrative of revolutions[544]. One that she calls "organic", which is "dear to historians and theorists of revolution" —including Marx—, and another, favoured by those who "enacted the revolution", that draws from "the language of theatre", and more specifically from "the Latin word *persona*"[545]. After recounting the etymological meaning of mask and its functions, Arendt says that having a "*persona*, a legal personality" is what differentiated "a private individual from a Roman citizen", so that the "natural Ego" stays behind and serves as a foundation for a "right-and-duty-bearing person, created by the law"[546]. Arendt adds:

> Without his *persona* there would be an individual without rights and duties, perhaps a 'natural man' —that is, a human being or *homo* in the original meaning of the word, indicating someone outside the range of the law and the body politic of the citizens, as for instance a slave— but certainly a politically irrelevant being[547].

As we have seen, the Roman notion of *persona* —with its strata of relations, its use of fictions and its contradictions— is far more complex than the immediate sense of the mask, but besides reflecting a somewhat generalised perception and use of the term, Arendt's reading serves an illustrative purpose, since what she gathers from this idea, if translated into the Hobbesian language of agency, is that *persona* is the actor of the "natural man", that there is

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544 For a pictorial and narrative approach to the topic of revolutions, see Enzo Traverso, *Revolution: An Intellectual History* (New York: Verso, 2021).

545 Hannah Arendt, *On Revolution*, p. 102.

546 Hannah Arendt, *On Revolution*, pp. 102 – 103. Arendt is in fact citing Ernst Barker in his *Introduction* to Otto Gierke's *Natural Law and the Theory of Society 1500 to 1800*. In this passage, Barker adds: "And just as there is an element of feigning, or even of artificiality, about the parts of a play, so there is also an element of feigning, or even of artificiality, about *personae* in law. They are, in a sense, juridical creations, or artifices, or fictions. The term *persona ficta* is not altogether wrong [...] if we apply it to all forms of legal personality —not only to the legal person of the group, but also to the legal person of the individual: Ernest Barker, "Translator's Introduction" in Otto Gierke's *Natural Law and the Theory of Society 1500 to 1800* (Cambridge: Cambridge University Press, 1958), pp. lxx – lxxi.

547 Hannah Arendt, *On Revolution*, p. 103.

indeed a centre of imputation to which rights and duties are ascribed that does not correspond immediately with its *sub-stantia*[548].

This allows Arendt to cast a clear a distinction between the operations performed by the *United States Bill of Rights* of 1791, and the French *Déclaration des droits de l'Homme et du Citoyen* of 1789, both products of revolutions. The *Bill of Rights* came not only chronologically but also thematically after the *United States Constitution*, that is, after the document in which the newly born republic outlined its own anatomy and its own physiology, and so it was "meant to institute permanent restraining controls upon all political power, and hence presupposed the existence of a body politic"[549], albeit one that was already fragmented to begin with and continued to be so despite the literal *amendments* that followed. Conversely, Arendt points out, the French *Déclaration* was not meant to impose an *ex-post* form of control, but instead was meant to be the cornerstone of the whole structure, effectively "reducing politics to nature", in an effort to attach, or better yet, to discover, a form of rights that did not depend on a legal or political status such as personhood, one that was instead settled upon the apparently more solid ground of nature:

> They believed that they had emancipated nature herself, as it were, liberated the natural man in all men, and given him the Rights of Man to which each was entitled, not by virtue of the body politic to which he belonged but by virtue of being born[550].

From the perspective of legal personality as a mask, Arendt extrapolates that, always in the framework of the French Revolution, unmasking the person would mean to unearth and reveal "the natural' human being", and since "the men of the French Revolution had no conception of the *persona*, and no respect for the legal personality"[551], being born becomes, on this account, both sufficient and necessary for rights to come into being. In other words, to have rights and dignity, instead of a person one needs only to be *born* a *man*. The

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548 This link to agency is not gratuitous. Arendt is still following Ernest Barker, who calls legal personality a "mask or, as Pufendorf says a *modus*, which is created by an agency, and attached by that agency to an object". The agencies that attach the mask are, on his account, "the legislator and the judge", and interestingly, since he is speaking of "moral persons", he speaks of the mask being attached to an *object* and not to a *man* or to a *human*. See Ernest Barker, *Translator's Introduction*, *loc. cit*.

549 Hannah Arendt, *On Revolution*, p. 104.

550 Hannah Arendt, *On Revolution*, p. 104.

551 Arendt's point is more refined, however, as she claims the French Revolution aimed at unmasking hypocrisy, which unlike unmasking the person, "would leave nothing behind the mask, because the hypocrite is the actor himself insofar as he wears no mask. He pretends to *be* the assumed role, and when he enters the game of society it is without any play-acting whatsoever. In other words, what made the hypocrite so odious was that he claimed not only sincerity but naturalness, and what made him so dangerous outside the social realm whose corruption he represented and, as it were, enacted, was that he instinctively could help himself to every 'mask' in the political theater, that he could assume every role among its *dramatis personae*, but that he would not use this mask, as the rules of the political game demand, as a sounding board for the truth but, on the contrary, as a contraption for deception.": Hannah Arendt, *On Revolution*, p. 104.

consequence, as Arendt frames it, is of course the Reign of Terror, which "equalised because it left all inhabitants equally without the protecting mask of a legal personality"[552].

The pragmatics of the *Déclaration,* in its supposedly naturalist and universalist call, as we have seen via the example of Haiti, is also paradoxical to say the least, but it is noteworthy that personhood does not appear merely as a synonym of *man*, but rather quite specifically attached to imputation. It appears, firstly, in the context of law as the general will (art. 6), where it says that "all citizens have the right to concur to its formation", be it "personally, or through their representatives" (*personnellement, ou par leurs représentants*), which immediately calls to mind the Hobbesian notion of self-representation and self-impersonation. Secondly, it appears in the context of the presumption of innocence (art. 9) of "every man" (*tout homme*), where it says that excessive harshness in securing his person (*s'assurer de sa personne*) ought to be reprimanded by the law. Both in the law-making and in the law-application processes, person appears as the link of imputation between the natural man that enjoys inalienable and natural rights and the political association of the state: the *locus* where the natural and the political interact, the mechanism by which the one grasps the other. Whether this use of the term is intentionally directed towards a specific conceptual approach, such as the one Locke forwarded, is up to debate, but in any case, it ends up being secondary, as it shows a plurality of emergences —in the Foucauldian sense— and inventions that need not respond to a will, but rather appear, irrupt, and interplay in the framework of the plurality of pigments and shades that have been constructed upon the notion of *persona*.

On a related note, and even if the declaration itself does not exhibit the eminence of the person that comes along the *Declaration of Independence* in the United States or the *Constitution* of Haiti, it does not seem plausible to think, as Arendt does, that "the French Revolution had no conception of the *persona*". Quite the contrary, the *Encyclopédie* holds a rather interesting embroidery of the term and its cognates, departing from the definition of 'man'.

An *homme*[553], says the *Encyclopédie*, is, among many other things, "a sentient, reflective, thinking being", one that lives in society, that can be good or evil, and that "dominates over all other animals", besides being "composed of two substances", namely "body" and "soul"[554].

'Person' (*personne*), in turn, is taken firstly from the grammatical point of view, as the "general relation that the subject of a proposition can have towards the act of speech", referring to the name given by the "Latin grammarians" to these relations and, not coincidentally, providing biblical examples of the person that speaks (first), the person spoken

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552 Hannah Arendt, *On Revolution*, p. 104.

553 Up to this day it is common in French to see and hear '*homme*' used as the equivalent to 'human' in the phrasing of *v.gr.*, 'human rights' (*droits de l'homme*), regardless of the marked scission between rights of man and rights of humans, patent since the very beginning by the appearance of several versions of a *Déclaration des droits de la femme et de la citoyenne* by Olympe de Gouges between 1791 and 1793: Olympe de Gouges, *Les droits de la femme. A la Reine* (Paris, 1791).

554 Denis Diderot et Jean le Rond D'Alembert, *L'Encyclopédie ou dictionnaire raisonné des sciences, des arts et des métiers, par une société de gens de lettres,* Édition Numérique Collaborative et Critique (Paris : Académie des Sciences, 2022), vol. 8, p. 256.

to (second), and the person spoken of (third)[555]. Afterwards, the Boethian approach makes an appearance in the realms of person as a theological concept, where it is defined as "an individual substance, a rational or intelligent nature" (*une substance individuelle, une nature raisonnable ou intelligente*), adding that the term is applied to the three persons of the divinity for a lack of a more suitable term[556], clearly echoing the scholastic debate. The text does refer to Boethius explicitly, but only in order to link the notions of mask, sound and character[557], adding that the roles actors used to play were so "great and illustrious", that 'person' "finally came to signify the spirit (*l'esprit*), as the thing of the greatest importance and dignity in all that concerns men (*la plus grande dignité dans tout ce qui peut regarder les hommes*): thus, men (*les hommes*), angels, and even the Divinity itself, were called persons"[558].

Regardless of the veracity of the proposition, the *Encyclopédie* weaves everything together to provide a plausible explanation of the sources and their meaning, making the whole definition orbit around men, for even the angels and god —which in Boethius came, necessarily, prior to humanity in his deductive reasoning— are now part of what could be deemed important regarding men, and introducing the notion of spirit as a synonym of dignity. This equivalence, moreover, would introduce the difference between a person and a *hypostasis*:

> Purely corporeal beings, such as a stone, a plant, a horse, were called *hypostases* or *supposita*, and not *persons* [!]. This led scholars to conjecture that the same name *person* came to be used to signify some dignity by which one *person* is distinguished from another, such as a father, a husband, a judge, a magistrate, etc.[559].

What the *savants* of the *Encyclopédie* decanted from the scholastic dispute around *hypostasis* and *persona* is a difference between the eminence and dignity of humanity with respect to all other beings, that is, between beings that have a spirit[560] and those who do not, regardless of whether they are *animated*, so that rocks, horses, and plants fall under the same category of

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555 Denis Diderot et Jean le Rond D'Alembert, *L'Encyclopédie,* vol. 12, p. 431. Here the *Encyclopédie* introduces also Aulus Gellius' etymology as *per-sonare.*

556 Denis Diderot et Jean le Rond D'Alembert, *L'Encyclopédie,* vol. 12, p. 432.

557 Denis Diderot et Jean le Rond D'Alembert, *L'Encyclopédie,* vol. 12, p. 432. The citation, somewhat loose, refers to Boethius, *Contra Eutychen*, 3.

558 Denis Diderot et Jean le Rond D'Alembert, vol. 12, p. 432. The *Encyclopédie* also states that 'character' (*personnage*) is "a synonym of man, but always with an accessory, favourable or unfavorable idea" and 'personhood' (*personnalité*) is "a dogmatic term" that refers to whatever "constitutes an individual in the quality of a person": vol. 12, pp. 430 and 431. Subject, on the other hand, is defined as a "member of a state, as opposed to a sovereign". Again, not coincidentally, the entrance cites Hobbes: Denis Diderot et Jean le Rond D'Alembert, vol. 15, p. 643.

559 Denis Diderot et Jean le Rond D'Alembert, *L'Encyclopédie,* vol. 12, p. 432.

560 The *Encyclopédie* divides 'spirit' (*esprit*) into the same categories as 'person': the spirit of god (infinite and bodiless), the spirit of angels (finite but bodiless) and the human spirit (*l'esprit humain*; finite and with a body). The human spirit is, moreover, a "thinking and reasoning substance": Denis Diderot et Jean le Rond D'Alembert, *L'Encyclopédie,* vol. 5, p. 972.

non-persons[561]. Furthermore, this spirit provides a dignity, not necessarily under the same idea of eminence, but in a very close link to the *dignitas* of the Romans as a "public office"[562], and very close as well to the Hobbesian idea of a commission: a distinction from all *other* persons in the form of a public or a private assignment. In sum, then, a person is a *hypostasis* with a "human spirit" —a rational and self-conscious, but finite substance— that is in itself above all other entities and that can, already in this rank of pre-eminence, be entrusted with a further dignity.

Although in a marked contrast with its relative absence in the *Déclaration*, it is clear that there was indeed a whole account of personhood in the intellectual context preceding the French revolution. If nevertheless one remains in the framework of the metaphor of personhood as a mask —or even more so, if one translates the metaphor into the concept of imputation and the personhood derived from it—, Arendt's analysis is still accurate, since the *Déclaration* did strip something away, a certain intermediary or a certain threshold that stood between the "natural man" and the *nomos*, which she addresses by saying that the rights of the French declaration "were not understood as prepolitical rights that no government and no political power has the right to touch or violate, but as the very content as well as the ultimate end of government and power"[563]. As she points out elsewhere, the character of inalienable that was invested to these rights —alongside the character of natural and sacred— in the very preamble of the declaration, would imply that they are "irreducible to and undeducible from other rights or laws"[564].

Instead of a more solid ground, however, this proved to be a far more unstable foundation, as stripping rights from their legal and political context and ascribing them to a bare nature implied there was no way to enforce them, or better yet, that a translation between the political artifices of rights and the natural condition of scarceness and necessity was not possible, which was apparent from the beginning and became impossible not to see in the ruinous context of the 20th century —and two decades in, also in the context of the 21st—, in what Arendt names the "calamity of rightlessness", that is, being deprived not of rights, but of the very "right to have rights"[565]. The paradox was that, breaching the gap between *physis* and *nomos*, the mechanisms that were in place to protect an artificial set of rights were lost in the process; that once the frontiers between the inside and the outside were blurred, there was nothing to reach out for, which Arendt summarised as the "loss of the relevance of speech" and the loss of "all human relationship", that is, "the loss of a general characteristic of the human condition which no tyrant could take away"[566]:

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561 This is most likely a paraphrase of Boethius, *Contra Eutychen*, 2. 28 – 52 in which, as we have seen, Boethius denies the personhood of a tree, of an ox or of a horse.

562 See Giorgio Agamben, *Quel che resta di Auschwitz: L'archivio e il testimone* (Torino: Bollati Boringhieri, 1998), 2.15, pp. 60 and ff.

563 Hannah Arendt, *On Revolution*, p. 105.

564 Hannah Arendt, *The Origins of Totalitarianism* (New York: Harcourt, Brace, Jovanovich, 1973), p. 291.

565 Hannah Arendt, *The Origins of Totalitarianism*, pp. 295, 296, and ff.

566 Hannah Arendt, *The Origins of Totalitarianism*, p. 297.

> Man, it turns out, can lose all so-called Rights of Man without losing his essential quality as man, his human dignity. Only the loss of a polity itself expels him from humanity[567].

Alongside Burke —whom Arendt credits with a "pragmatic soundness" for seeing the "nakedness and solitude of metaphysical abstraction"[568] implied by the newly acquired freedom through the French revolution—, Bentham was also quick to recognise the dislocation produced by this equation of nature with the juridico-political artifices of rights. In his reactionary agenda, Bentham tried to systematically undermine the *Déclaration* by pointing out what, in his own feeling, were the "fallacies" in which it incurred. He begins, among others, by wondering about the addressees of the declaration, in a passage that brings forward the question of indeterminacy of the concepts:

> The description of the persons, of whose rights it is to contain the declaration, is remarkable. Who are they? The French nation? No; not they only, but all citizens and all men. By citizens, it seems we are to understand men engaged in political society: by men, persons not yet engaged in political society —persons as yet in a state of nature.
>
> The word men, as opposed to citizens, I had rather not have seen. In this sense, a declaration of the rights of men is a declaration of the rights which human creatures, it is supposed, would possess, were they in a state in which the French nation certainly are not, nor perhaps any other; certainly no other into whose hands this declaration could ever come[569].

In this passage, Bentham uses 'person' as a global concept, a genus of sorts that includes both 'men' and 'citizens', even if he is puzzled by the separation of both instances, by the abyss created between the ones inside and the ones outside a polity. Bentham, of course, was not preoccupied with defining personhood, but coming from a jurist that inevitably drinks from Hobbesian and Lockian sources, and given that his criticism points exactly towards the

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567 Hannah Arendt, *The Origins of Totalitarianism*, p. 297. In terms of legal theory, the predicament, as Arendt calls it, is that "a conception of law which identifies what is right with the notion of what is good for —for the individual, or the family, or the people, or the largest number— becomes inevitable once the absolute and transcendent measurements of religion or the law of nature have lost their authority. And this predicament is by no means solved if the unit to which the 'good for' applies is as large as mankind itself. For it is quite conceivable, and even within the realm of practical political possibilities, that one fine day a highly organized and mechanized humanity will conclude quite democratically —namely by majority decision— that for humanity as a whole it would be better to liquidate certain parts thereof": Hannah Arendt, *The Origins of Totalitarianism*, p. 299.

568 Edmund Burke, *Revolutionary Writings: Reflections on the Revolution in France and the first Letter on Regicide Peace* (Cambridge: Cambridge University Press, 2014), p. 8.

569 Jeremy Bentham, "Anarchical Fallacies; Being an Examination of the Declarations of Rights issued during the French Revolution" (c. 1795), in *The Works of Jeremy Bentham, published under the Superintendence of his Executor, John Bowring*, Vol. 2 (Edinburgh: William Tait, 1843) 489 – 534, p. 491.

impossibility of any prepolitical rights, it is at the very least interesting to see the equation of person with "human creature" as a seemingly neutral or even extra-political idea, which is evidently not due to the lack of alternative terms. On this account, even when there cannot be —for Bentham— a declaration of rights in the state of nature, persons lie both outside and inside of political society, and consequentially rights are not dependent upon personhood, which is apparently attached naturally to human creatures, but instead upon whether such a creature belongs to a political community. In other words, although the effects are practically the same, where Arendt reads a loss of personhood — *i.e.*, the political mask of imputation that allows rights and duties to be attributed—, Bentham speaks of a loss of citizenship, a recession to the state of nature where one becomes *nothing more than a person*, that is, a human creature. Perhaps both Arendt and Bentham would agree in the fact that there is "nothing sacred" to be found in the "abstract nakedness of being human"[570], although for very different concerns.

After accusing the declaration of being only "a paper" that justified a "past insurrection" and "sowed the seeds of anarchy broad-cast", and after a very long list of "imputations" that are almost a comedic berating[571], Bentham analyses each article in a provocatory attempt to dismantle the whole structure. I will not, of course, occupy myself with the whole text, but I would be remiss not to mention how Bentham vehemently denies that there was ever "a man" that had born or remained free, since "all men [...] are born in subjection —the subjection of a helpless child to the parents on whom he depends every moment for his existence", for which he accuses the first article of the declaration to be "absurd and miserable nonsense!"[572]. Once the haze of his attacks has dissipated, Bentham raises two important arguments against the soundness of natural rights. Firstly, in a Hobbesian and pragmatic approach, he wonders how, in the absence of government, would property, security, and liberty be protected. In other words, even if one concedes that there are such things as natural rights —which he does not—, the question of how to enforce them remains[573]. Secondly, he forwards a more theoretical argument, in what is probably the most renowned passage of his critique:

> But reasons for wishing there were such things as rights, are not rights; —a reason for wishing that a certain right were established, is not that right —want is not supply — hunger is not bread.

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570 Hannah Arendt, *The Origins of Totalitarianism*, pp. 299. Bentham continues his criticism in a rather convoluted and poignant fashion, saying that a "premature anxiety to establish fundamental laws" is the result of the "conceit of being wiser than all posterity", and that a set of fundamental laws that aims to tie the will of said posterity must be deemed "a bawling upon paper". See Jeremy Bentham, *Anarchical Fallacies*…, p. 494.

571 See Jeremy Bentham, *Anarchical Fallacies*, pp. 496 – 497.

572 Jeremy Bentham, *Anarchical Fallacies*, p. 498. Bentham's histrionics —for it is indeed theatrical— goes as far as saying that Descartes was a "philosophical vortex-maker, although a "harmless enough" one at that.

573 To sustain his point, he forwards the example of the "way of life of many savage nations, or rather races of mankind; for instance, among the savages of New South Wales" who have "no habit of obedience". Clearly, not far away from Sepúlveda or Montesquieu: Jeremy Bentham, *Anarchical Fallacies*, pp. 500 – 501.

> That which has no existence cannot be destroyed —that which cannot be destroyed cannot require anything to preserve it form destruction. *Natural rights* is simple nonsense: natural and imprescriptible rights, rhetorical nonsense, —nonsense upon stilts[574].

Hunger is not bread and natural rights are, essentially, wishful thinking. Although brutish and loaded, Bentham's approach arrives at a similar point as Arendt's, making citizenship —in the broad sense of belonging to a community— a necessary condition for rights to exist, just as personhood is on Arendt's account. Even if neither citizenship nor personhood is sufficient for rights to actually exist, there seems to be a missing link between *physis* and *nomos*, one that, under different names, seems to fall under the same category of imputation and attribution. If this is the case, for the product of the French revolution to be anything more than wishful thinking, it would need to render the human creature imputable in itself, with no intermediary such as the person, the citizen, or the subject[575].

Whether such a direct imputation is possible —and if so, how— seems to be at the core of the matter, and I believe fictions play a fundamental role in such an operation. In fact, Bentham's enmity towards them[576] serves as an interesting pathway to this idea.

In his *Theory of Fictions*, Bentham comes back to the question of natural and political (*i.e.* positive) rights. He begins apparently contradicting his criticism of the French declaration, saying that a right that does not respond to an obligation is "the right which every human being has in a state of nature", which may be termed "a naked kind of right"[577]. Conversely, he speaks of a right that does respond to an opposing obligation and, perhaps most importantly, one that implies a "disposition" from the "government" — *i.e.,* the state— to materialise its enjoyment or fulfilment. This is what he calls a "political right", a positively acknowledged and enforceable kind of right, which is the only one that has, according to Bentham, "any determinate and intelligible meaning"[578]. The first thing that is noticeable, in terms of strict legal theory, is how, in the framework of the French declaration, he denies the very *existence* of natural rights, while here he seems to allow for their existence but argues

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[574] Jeremy Bentham, *Anarchical Fallacies*, p. 501. On this passage and its implications, see Hugo Adam Bedau, "'Anarchical Fallacies': Bentham's Attack on Human Rights", *Human Rights Quarterly*, 22, No. 1 (2000), 261 – 279 and Jeremy Waldron (ed.), *Nonsense upon Stilts: Bentham, Burke and Marx on the Rights of Man* (New York: Methuen, 1987).

[575] For the topic of citizenship, see Étienne Balibar, *Citizenship* (Cambridge: Polity Press, 2015).

[576] In his criticism of article 2 of the *Déclaration*, Bentham attacks contractualism by saying that "the origination of governments from a contract is a pure fiction, or in other words a falsehood": Jeremy Bentham, *Anarchical Fallacies*, p. 501. Later on, when attacking article 6 —and using a peculiar etymology— Bentham wonders how is it that the French "have taken the English word 'representatives' [...] instead of their own good word 'deputies'" to refer to the people that can concur in the formation of the law. While 'deputies' seems to refer to an actual command or assignment, 'representative', according to him, is a term "tainted with fiction as well as ambiguity", as attested by its use in relation to the king representing the nation, or the members of parliament representing both the electors and the non-electors: Jeremy Bentham, *Anarchical Fallacies*, p. 508. This has, of course, no foundation at all, and it is rather nonsense upon stilts.

[577] Jeremy Bentham, *The Theory of Fictions*, p. 118.

[578] Jeremy Bentham, *The Theory of Fictions*, pp. 118 – 119.

against their *efficacy*: a natural right simply does not entail enforceability as no "functionaries" would do anything to guarantee its enjoyment[579]. However, the most intriguing part of this approach comes in the fact that, be it natural or political, Bentham treats any right as *fictitious*:

> The word *right* is the name of a fictitious entity; one of those objects the existence of which is feigned for the purpose of discourse —by a fiction so necessary that without it human discourse could not be carried on.
>
> A man is said to have it, to hold it, to possess it, to acquire it, to lose it. It is thus spoken of as if it were a portion of matter such as a man may take into his hand, keep it for a time and let it go again. According to a phrase more common in law language than in ordinary language, a man is even spoken of as being *invested* with it. Vestment is clothing: invested with it makes it an article of clothing, and is as much as to say 'is clothed with it'[580].

Although necessary and useful, rights are nevertheless fictions: *ex iusta causa*, perhaps, but always *adversus veritatem.* The complexity of this approach stems from the fact that, if taken *verbatim*, rights are not fictitious in the sense that they are simple artifices of the law, that is, in the sense that they are created and established, positive in the very literal sense of being posed or im-posed juridico-political mechanisms, but rather something that, in its separation from material truth, is nonetheless essential for the relation between *physis* and *nomos* to sustain itself, something that despite having no matter, that despite not being graspable, acquired, or lost, is nevertheless present. Alternatively, one could also think of these fictions as artifices created in the framework of the political, much like nature in the case of the Romans as read by Yan Thomas, meaning the creation of an *a priori physis* by the *nomos* itself, a point of reference outside of its frontiers.

In any case, if both natural and political rights are fictions[581], the real issue for Bentham is to decide between the fiction that is deceiving and the one that is not, which he seems to frame as the contrast between natural necessities and exposure, and the mantle of protection provided by belonging to a political community. In other words, natural rights are "naked" rights because instead of providing a more solid ground for the political, they leave the human creature absolutely exposed, divested of the enforceable artifice of positive rights.

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579 On this topic, see the clear distinction between validity and efficacy traced by Norberto Bobbio, *Teoria generale del diritto* (Torino: G. Giappichelli, 1993, and of course the common law positivist approach to "functionaries enforcing the law" in H.L.A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1994).

580 Jeremy Bentham, *The Theory of Fictions*, p. 118.

581 As an open pathway, one may also wonder: if "a fiction proves nothing", and both natural and political rights are fictitious, then what would be the point of the latter? We are at the verge of either a complete nihilism so that there are no rights at all, or of a radical realism such as the one that takes Karl Olivecrona to say that "the content of the rules of law may be defined as *ideas of imaginary actions by people* (e.g. judges) *in imaginary situations*" whose application consists in taking those imaginary situations as models for real life: Karl Olivecrona, *Law as Fact* (London: Oxford University Press, 1939), pp. 29 – 30.

On the other hand, Bentham's metaphor of the piece of clothing is telling, for it seems to point to what Arendt called the "right to have rights". If rights are always fictitious, and the difference in their validity comes to a difference in their enforceability, then once again the mantle of their protection comes in the form of link that ties the natural human creature to the *nomos*, an intermediary of attribution.

If a bridge can be traced on account of personhood, it would be one where *persona* becomes this artifice of attribution of rights to natural beings, whether it is the direct imputation of rights to the human creature, or the enforceability of some pre-eminence that lies within the notion, that allows to translate hunger into bread and shadows into a realities, an artifice of the *ars boni et aequi*. Forensic not in the reduced terms of the law, but in the larger sense of the *forum*, and by virtue of the acknowledgement or the invention of "natural, universal inalienable rights", an effort to include into the *polis* all of those who had been previously excluded as non-persons, as things. *Persona,* indeed, taken as the mask and the character, as a re-presentation and a re-duplication that renders the human creature imputable and allows two simultaneous operations that are enclosed in the double nature of the subject: on the one hand, *persona* allows to impute and submit the human creature to a *nomos* via its responsibility, it allows to subject the subject and to render it available for disposition; on the other hand, *persona* provides a mantle of protection in the form of enforceability, as well as agency and re-presentation of the self that allows for that *nomos* to be transformed and performed. The artifice of the *persona*, in sum, produces this double form of subject and subjection.

What both Arendt and Bentham point towards, ultimately, is the question of what would happen if the intermediary link of imputation were to be removed, if one takes the reduction of the *nomos* to the *physis* —or the inclusion of the *physis* by the *nomos*— to its absolute limit, getting rid of the mantle of personhood in a dis-closure, dis-covering or un-covering of the bare and unsacred human nature: a theoretical supposition for the latter, a description of a dire reality for the former. In this polyphonic genealogy of the interplay between fiction and person, this dis-closure could come either as the utter erasure of personhood — the peril that occupied Arendt, as well as Agamben with his notion of "bare life" (*nuda vita*)—, but also as the multiplication *ad infinitum* of persons, an erasure of the *summa divisio* that begins to unfold and for which we have yet to grasp its implications, however ominous or auspicious they may be.

On this note of uncertainty, it is puzzling how, immediately after he had categorised all rights as fictions, Bentham would feel the need to add that "the season of Fiction is now over"[582]. Looking backwards, one has to wonder whether this was, more than a furious condemnation, a clairvoyant prophecy.

[582] Jeremy Bentham, *The Theory of Fictions*, p. 122.

3.3. Human genre to human species

While not the sole occasion where the 'natural human creature' and the 'political man' or 'citizen' intersected, the apparent unification operated by the *Déclaration des droits* marked a shift in tempo and a paradoxical emphasis on the distance between them. As Arendt acknowledges, this was far from being the actual and complete liberation of an underlying nature:

> Man had hardly appeared as a completely emancipated, completely isolated being who carried his dignity within himself without reference to some larger encompassing order, when he disappeared again into a member of a people. From the beginning the paradox involved in the declaration of inalienable human rights was that it reckoned with an "abstract" human being who seemed to exist nowhere, for even savages lived in some kind of a social order[583].

The reverie of a dignity that sprang directly from human nature —attached to it, constitutive of its very anatomy— was immediately dissolved into the broader entity of the *people*, an entity that was yet to be properly outlined, but that would nevertheless define the reach of said dignity. Arendt points out, furthermore, how "mankind" became enshrined into this "family of nations", a seemingly bicephalous creature, simultaneously universal and endlessly divided, where natural inalienable rights inhabited, but were not enforced, up until each nation produced its own emancipatory movement[584]. The question of personhood now turns towards this 'man-kind', this human genre into which every natural human creature is inserted, along with this people, and the implications of the *ipso facto* merging of natural dignity with it.

Much like the subject, which had a substantial history before taking centre stage in modernity, the notion of "human genre" or "human race" was very much present before it acquired vast relevance in the political and philosophical discourse, which Foucault traces back to the second half of the 18th century, and where the apparent biologisation of both concepts marks the shift in tone and relevance[585]. In Latin, *humanus* is the adjective for something that belongs or pertains to the *homines*, while *genus* is usually termed as 'race', 'family', or even 'origin'[586]. No biological —or rather pseudo-biological— connotations were attached to this *human genre*, quite the contrary, "human race" would have been used as a rather comprehensive term. For instance, Cicero speaks of a certain "tie" (*societas*) which "strengthens with our proximity to each other", and although he differentiates between

583 Hannah Arendt, *The Origins of Totalitarianism*, p. 291.
584 Hannah Arendt, *The Origins of Totalitarianism*, p. 291.
585 Michel Foucault, *Il faut défendre la société*, p. 216.
586 See Charlton T. Lewis and Charles Short, *A Latin Dictionary* (Oxford: Clarendon Press, 1879).

"countrymen" (*cives*) and "foreigners" (*peregrini*), or between "relatives" (*propinqui*) and "strangers" (*alieni*), he would nonetheless speak of these "infinite ties uniting the human genre, fashioned by nature herself" (*infinita societate generis humani, quam conciliavit ipsa natura*)[587]. By the time of the *Encyclopédie*, in contrast, the term *humain* had suffered a radical change in tone, coming to mean "that which belongs to the nature of man" (*qui appartient à la nature de l'homme*), and it was even used as a reference to "the *human* body [as] the object of medicine"[588]. I cannot delve on the history —or the genealogies— of humanity as a concept, but it must be noted that, by the 18th century, the focus was already quite altered, in an *episteme* that had broken away with the canons inherited from the 16th century and the supposed centrality of this particular being of many faces —the subject, the man, the person, the human— in modernity[589].

Accordingly, the *Encyclopédie* devotes a whole entrance to the "human species" (*humaine espèce*) in the domains of natural history, speaking of the "variations" of "man considered as an animal": variations in colour, height, form, and in the "nature of different peoples"[590]. These narrations —picturesque and almost comical, were it not for their long-term consequences— are constructed as a veritable logbook depicting the characteristics of essentially each and every member of the enlarged family of the human animal. It says, *v.gr.,* that all the peoples of the north pole are "ugly, rude, superstitious, and stupid" (*tous ces peuples laids sont grossiers, superstitieux & stupides*), that the mixture of Chinese and Russian in the Tartars "has not completely erased the traits of the primitive race" [591], and states that the peoples who inhabit more temperate climates such as those "from Mughal and Persia, the Armenians, the Turks, the Georgians, the Mingrelians, the Circassians, the Greeks and all the peoples of Europe are the whitest, most beautiful and the most proportionate on Earth" (*sont les plus blancs, les plus beaux & les mieux proportionnés de la terre*)[592]. This characterisation includes references to the many variations that occur inside the "black races" and the "white races", as well as commentaries on the diet, the physiognomy, the lifespan, the fertility, and even the

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587 Cicero, "De Amicitia" in *De Senectute, De Amicitia, De Divinatione*, trans. by William Armistead Falconer (Cambridge: Loeb Library – Harvard University Press, 1992) 5. 19 – 20, pp. 128 – 129.

588 Denis Diderot et Jean le Rond D'Alembert, *L'Encyclopédie,* vol. 8, p. 344.

589 This is, of course, Foucault's initial question in *Les mots et les choses*, as an unprecedented change in the ways of seeing, decrypting, registering, representing, and classifying the world —in which the encyclopaedic approach played a major role— with the development of techniques and methods that allowed, among others, the passage from natural history to natural science. See Michel Foucault, *Les mots et les choses : une archéologie des sciences humaines* (Paris : Gallimard, 1966).

590 Denis Diderot et Jean le Rond D'Alembert, *L'Encyclopédie,* vol. 8, p. 344.

591 Denis Diderot et Jean le Rond D'Alembert, *L'Encyclopédie,* vol. 8, p. 345.

592 Denis Diderot et Jean le Rond D'Alembert, *L'Encyclopédie,* vol. 8, p. 346. This passage shows both continuity and discontinuity regarding what today would be read as an openly racist account. Many of those who are represented as the otherness to which Europe refers nowadays are counted here among the "whitest and most beautiful", an otherness that is of course constitutive of the *orientalist* perspective in terms of both knowledge and power. See Edward W. Said, *Orientalism* (New York: Vintage, 1979). Beyond all this name-calling, however, the language itself is rather confusing, so that one may find those same "white, beautiful, proportionate" Europeans being separated into north and south as "a different species of men" (*l'on trouve une autre espece d'hommes*): Denis Diderot et Jean le Rond D'Alembert, *L'Encyclopédie, loc. cit.*

smell of several peoples, not to mention the unsurprising reference to the "savages" of the Hudson Bay, Canada, Mexico, Brazil, and Peru, just to name a few[593].

On what would seem introspection, and almost conscience, the *Encyclopédie* speaks of how "the Blacks in general lack spirit but not sentiment" and how they are "sensible to good and bad treatments", apparently worrying about their reduction *not* "to the condition of slaves [!]", but to the condition of "beasts of burden" (*bêtes de somme*) by the Europeans, despite the fact that them —that is, the Europeans— were "reasonable!" and "Christians!"[594], and despite the fact that "originally there was but a single race of men" (*qu'une seule race d'hommes*)[595], meaning that the lineage of the human animal could indeed be traced to a single common origin, or better yet, to a single universal nature.

The univocal origin, however, seems to be too remote in memory for national identity to be abandoned, and thus, regardless of whether other peoples can think or not, if they can feel or not, or if they have or lack spirit, the universal condition of a species does not suffice for rights to be attributed. In the framework of an *universitas* divided by how close or far away each nation is to whiteness and purity, a natural universal dignity is simply out of the equation.

As paradoxical as it may seem, this segregated universality is in fact constitutive of the idea of nation that was becoming the core discourse of rights and that would also develop into racism as a modern construction, separating communities not on account of their lineage in an almost mythical or tribal sense — *v.gr.* the Romans as descendants of Aeneas—, but rather based on certain characteristics that pose as extra-historical or extra-political, precisely because they are supposedly *natural.* The paradox shows itself pristine, for nature is now as constitutive as ever of the historical and the political, and yet it must act as an exterior point of reference to build upon.

As Étienne Balibar has shown, the divisions that explain and legitimise the discourses of racism, nationalism, or sexism are rooted in supposedly "essential differences" that would imply "transhistorical [and] mutually exclusive groups" that are "always conceived and instituted as hierarchies"[596] which, in this quest to unearth some shared but exclusive characteristic that would definitively conclude what *human* means, would also convey the question for the "supra-human and infra-human", and even if this question of hierarchy is not the totality of racism, it is certainly an "essential component"[597]. On the same note, he explains, when nations —in the sense of something defined by culture, geography, and blood— try to "save" or "civilise" humanity, they must do so by addressing their singularity as the criterion, renouncing in part to what defines them in order to include the broad spectrum of all *other* nations. Thus, universal and inalienable natural rights that could only arrive from the emancipated French Nation, white enough, pure enough, proportionate

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593 Denis Diderot et Jean le Rond D'Alembert, *L'Encyclopédie,* vol. 8, p. 347.

594 Denis Diderot et Jean le Rond D'Alembert, *L'Encyclopédie,* vol. 8, p. 347.

595 Denis Diderot et Jean le Rond D'Alembert, *L'Encyclopédie,* vol. 8, p. 348.

596 Étienne Balibar, Le racisme : encore un universalisme, dans *Mots : les langages de la politique*, 18 (1989), 7 – 20, p. 7.

597 Étienne Balibar, *Le racisme : encore un universalisme*, p. 13.

enough, particular enough and civilised enough to reach the high point of —to quote Bentham— "universal broad-cast". A similar story, of course, with any nation that has set up to "improve" humanity by making it look more like its reduced self.

In this context, Balibar poses, it is not that racism and universalism coexist within a society that has a certain amount of the one or the other. Instead, they are defined precisely as the contrary of one another in a strong Hegelian sense, meaning that one affects the other "from the interior", and perhaps most importantly, that the one is tainted with traces of the other, so we can expectedly find the aporia of "universal racism"[598]. Although no nation holds an "ethnic basis" of "prehistorical filiation", several institutions are 'universally' conceived in order to construct the identity and the unity of the nation, such as the army and the school, creating a "fictive ethnicity (*ethnicité fictive*) that allows to represent the population of a nation-state, the people par excellence, as a community": an individual process of self-identity that nevertheless "all modern nations" either "create or try to create"[599].

Balibar further developed this entanglement between universalism and racism, particularly focusing on the notion of institution, which he takes as the "essential mediation between individuals and historical collectivities: it is what determines the formation of their subjectivity"[600]. This institution, he says, is the source of that fictive ethnicity, of that set of "racial signifiers" that, "at least imaginarily" allow to trace the "frontier between the national, and the non-national, or between the 'true' nationals and the 'false' nationals", a frontier that must be considered by the state in its "implicit promise" of protection of nationals before foreigners[601].

However, it seems this fictive ethnicity is in itself another institution, or at the very least, dare I forward, an *artifice* that narrates a national identity in reference to an outside that rests upon some pseudo-biological traits —posed as metahistorical characteristics—, that nevertheless is produced, poeticised, or institutionalised from within. In the framework of this quasi-monolithic *institution* that Balibar seems to have in mind, the mechanism of *persona*, in its ambivalence as eminence and imputation, could allow to adhere the natural human creature to the narration of fictive ethnicity and, consequently, to the historical collective of the people, or, in this case, to the nation-state. In other words, if the racial signifiers are not actually *in* nature and are instead produced to sustain a certain link of subjection, then *persona* could serve as the point of contact —one of many, most likely— where human nature meets its political and racialised re-presentation, yet another threshold where the natural is

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598 Étienne Balibar, *Le racisme : encore un universalisme*, pp. 13 – 14. Balibar recounts the example of Fichte and his "messianic" nationalism, whose rippling effect is well-known, and that nevertheless was a nationalism "explicitly antiracist, antibiological [...] completely opposed to any genetic or genealogical representation of the national entity", radically critical of "a 'natural' conception of the nation": Étienne Balibar, *Le racisme : encore un universalisme*, pp. 8 – 9.

599 Étienne Balibar, *Le racisme : encore un universalisme*, p. 18.

600 Étienne Balibar, « Racisme, sexisme, universalisme », dans *Des Universels : Essais et conférences* (Paris : Galilée, 2016), p. 23. Balibar explains that this institution could be equated to the concept of "power (*pouvoir*)" or even that of "power relations (*relations de pouvoir*)" in the Foucauldian sense, as long as one "does not forget that these power relations are inscribed in the materiality of the institutions".

601 Étienne Balibar, *Racisme, sexisme, universalisme*, pp. 23 – 24.

embodied with its mask of political belonging in terms of being sufficiently national, sufficiently white, etc.

Balibar, in turn, adds that the institution *universalises* in untying individuals from their traditional conceptions of belonging or subjection —namely belonging to a region, or to a dialect— and subjects them instead to the more encompassing institution of the nation-state, which opens up the "apparent paradox" of "the foundational revolutions of modernity that have proclaimed the universality of the rights of man" while at the same time excluding "from citizenship the manual workers, the women, the slaves or more generally the colonised", exclusions that are somehow "deeper and more unconscious" that the exclusions derived from a "particularistic communitarianism",

> Because [these exclusions] can only be justified if, in one way or another, *the other*, *the excluded* internal or external, is somehow represented as "non-human" or "non-person", if they are removed from the human species, or more precisely from what is supposed to constitute (and thereby becomes) *the normative essence of the human*, or *the final goal of the development of humanity* [602].

If *physis* and *nomos* are intertwined to the point of indistinction, then no otherness can be exclusively political, but rather necessarily political as well as necessarily "natural". If human nature and the mask of personhood become indistinguishable from one another, therefore in losing the mask one also loses the nature. If everything human is included in the singularity of a nation, a people, or a race that can claim universal rights, then everything outside its realms is simultaneously non-personal and non-human[603].

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Foucault traces back to the 17th century, first in England and subsequently in France, the emergence of a discourse that takes the idea of war as a historical constant to a very specific kind of conflict: the war of races (*la guerre des races*)[604]. Foucault finds the appearance of these questions regarding "ethnic differences, difference in tongues, difference in strength, vigour, energy, and violence; differences of savagery and barbarism" that were to outline the matrix

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[602] Étienne Balibar, *Racisme, sexisme, universalisme*, p. 25.

[603] The biological discourse of what it means to be human would evidently change from the times of the natural history of the *Encyclopédie* and would allow to assess that the *homo sapiens* is not to be divided into different races or different species. As useful and even scientific as it may be, such a discourse is nevertheless deployed and used in a mercenary fashion, and it is called-upon to build or re-build the fictive ethnicity that is deemed necessary in a certain time and place. As an example, as of 2023, France sees its right-winged politicians using the notion of "French of paper" (*français de papier*) to designate migrants or their children whose "real" nationality is always questioned for not being "French by heart" (*français de cœur*) or, in the more traditional language of nationalism, for lacking an *ius sanguinis*. See Marc-Olivier Bherer, « 'Français de papier', une formule xénophobe au service de la division de la nation », *Le Monde*, 25 octobre 2023.

[604] Michel Foucault, *Il faut défendre la société*, p. 51.

upon which social conflicts would be disputed[605], and that were coined in —and apparently confined to— the development of early colonial rule. Rather than staying in the outskirts, they gradually became part of the more cardinal discourse of "centralised and centralising power", which would in turn see the constant of conflict not as the one between two "human genres", but in the 'true' and 'pure' race that finds itself in the anguish of defending its "biological estate" (*patrimoine biologique*) from "degeneration" by means of measures and discourses of "elimination, segregation, and normalisation"[606]:

> Not "we have to defend ourselves against society", but rather "we have to defend society against all the biological perils of this other race, of this sub-race, of this counter-race that we are in the process, despite ourselves, of constituting"[607].

In a development that would stop seeing a plurality of different races, such as those illustrated in the *Encyclopédie*, and instead would turn into a "biological monism" that sees a single race menaced by "a certain number of heterogeneous elements" (*e.g.*, the foreigner, the sick, the deviant, the poor). According to Foucault, by the end of the 19th century this concern for the biological dangers that inhabit alongside and within the social fabric, and not beyond its borders, would reach the "biological and centralised" characteristic of a "State racism", replacing the state as the apparatus that was supposed to ensure the domination of one race upon another, and instead moving towards the idea of a state that must protect the "integrity, superiority, and purity of the race"[608]. The two paradigmatic and catastrophic ways in which such a state racism developed into the 20th century are well known: on the one hand, the theatrical, mythical, and eschatological paraphernalia of the Nazi regime; and on the other hand, the "quiet hygiene of an ordered society" of the Soviet regime[609].

If Foucault centres his own analysis on the 18th and the 19th centuries, however, it is because it is there where he finds a particular phenomenon: "the inclusion of life by power"[610]. In the same vein of an interplay between knowledge and power that had characterised Foucault's thought all the way from his earlier approaches to the prison and the clinic, the disclosure of such an interplay in the realms of sexuality and race provided him with a perspective on how these practices were not springing only in the conventional *topoi,*

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605 Michel Foucault, *Il faut défendre la société*, p. 51. Foucault adds: "On the one hand, a frankly biological transcription, one that operates well before Darwin and that borrows its discourse with all its elements, its concepts, its vocabulary from a materialistic anatomo-physiology. It will also stand on a certain philology, and it will be the birth of the theory of races in historico-biological sense of the term".

606 Michel Foucault, *Il faut défendre la société*, p. 53.

607 Michel Foucault, *Il faut défendre la société*, p. 53.

608 Michel Foucault, *Il faut défendre la société*, pp. 70 – 71. I leave aside the whole development of centuries that Foucault judiciously recounts in the intestine transformation of the "historic war" and the "class struggles" into the "struggle for life".

609 Michel Foucault, *Il faut défendre la société*, p. 72.

610 Michel Foucault, *Il faut défendre la société*, p. 213.

such as the state or society, but also, and most importantly, "upon man as a living being" (*sur l'homme en tant qu'être vivant*)[611], upon births, deaths, and diseases; upon wars and executions; both in the hidden corners of repression and upon the illuminated spaces of discipline; inside and out the crevices of the body, in the arcane geographies of pleasure and the scaffolds of their condemnation; in sum, indeed, upon life itself.

To this apprehension, to this capture of life in all its extension by power Foucault gave the name of bio-power (*bio-pouvoir*)[612], which he saw as the overturning —the completion— of the classical sovereign right of "make die and let live" (*faire mourir; laisser vivre*) into the admittedly more sophisticated and economic power of "make live and let die" (*faire vivre et laisser mourir*)[613], taking death not as the moment where power is actually executed, but as the final frontier where every living entity escapes the exercise of (sovereign) power. To borrow from Santayana, who famously claimed that "only the dead have seen the end of war"[614], here only the dead may (hope to) see the end of power.

The development of this biopower, according to Foucault, emerges under two different forms. On the one hand, an "anatomo-politics of the human body" which centres itself upon the "the parallel growth of its usefulness and docility", and its "integration to efficacious and economic systems of control", all of it rendered possible by disciplinary mechanisms[615] —as anticipated in *Surveiller et punir*[616]. On the other hand, "a bio-politics of the population" centred on the body as traversed by the "mechanics of the living" and the questions regarding natality, mortality, longevity and so forth[617]:

> Western man learns little by little what it means to be a living species in a living world, to have a body, conditions of existence, probabilities of life [...] What could be called the 'threshold of biological modernity' in a society is the moment when the species becomes a stake in its own political strategies. For millennia, man remained what he was for Aristotle: a living being, and moreover capable of a political existence; the modern man is an animal in politics whose life of living being is in question[618].

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611 Michel Foucault, *Il faut défendre la société*, p. 213.

612 Michel Foucault, *Histoire de la sexualité I,* p. 184. He would expand on the term in his Courses at the Collège de France: "Biopower, that is, this series of phenomena [...] the set of mechanisms by which, what in the human species constitutes its fundamental biological traits, can enter into a certain politics, into a political strategy, into a general strategy of power, or stated differently, how society —Western, modern societies— departing from the 18th century have taken into account the fundamental biological fact that the human being constitutes a human species": Michel Foucault, *Sécurité, territoire, population,* p. 3.

613 Michel Foucault, *Il faut défendre la société*, p. 214. On an alternative version: "the power of make live (*faire vivre*) or reject to death (*rejeter dans la mort*)": Michel Foucault, *Histoire de la sexualité I,* p. 181.

614 George Santayana, *Soliloquies in England and Later Soliloquies* (New York: Charles Scribner's Sons, 1922), p. 102.

615 Michel Foucault, *Histoire de la sexualité I,* p. 183.

616 Michel Foucault, *Surveiller et punir,* pp. 159 and ff.

617 Michel Foucault, *Histoire de la sexualité I,* p. 183.

618 Michel Foucault, *Histoire de la sexualité I,* pp. 187 ; 188.

Western and modern, *man* has now crossed this biological threshold and is now deemed a *species*, rather than a *genre*; a *race*, rather than a *community*; alas, a living being unbearably aware of its living status.

Agamben recounts the passage through this threshold in his studies of the "bare life" (*nuda vita*), where he identifies the mere fact of living (*zoé*) —a life dispossessed of any political qualification, shared by "animals, men, or gods"— as contrary to the politically qualified life (*bíos*) that corresponds exclusively to the inhabitants of a political community, that is, not the mere 'natural' fact of living, but life that needs others and is, by definition, a quest for the good life (*eu zen*)[619]. In this framework, he says, "the entrance of the *zoé* into the sphere of the *pólis*, the politicisation of naked life as such constitutes the decisive event of modernity"[620], the apprehension of that living matter —an apparently untouchable realm— that, according to Foucault, was indeed included into the interplay of knowledge and power by the 18th century.

The image that should come to mind, however, is not that of the Leviathan that suddenly turns its gaze into an untouched life frolicking in some sort of state of nature, but rather, the gradual emergence of techniques, sciences, and observations that rendered life something graspable, profitable, exploitable. Indeed, an *inventio*, an *eureka* in the perpetually fluctuating sense of both an invention and a discovery, by which life was extrapolated from the living and included into the dynamics of certain mechanisms and certain *dispositifs*, a life invented and discovered as matter of arrangement and disposition.

The metamorphosis of the human genre into a human species, then, as mediated by *dispositifs de sécurité* aims at managing and administering the species as a population. Not a question of rights, duties, sovereignty, and legitimacy, but of morbidity, natality, migration, disease, and the economics of it all in terms of scarcity and production[621]. Yet again, it is a matter of *gouvernementalité* [622], in which people are counted, measured, and disposed of as any

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619 Giorgio Agamben, *Homo sacer,* pp. 3 – 4.

620 Giorgio Agamben, *Homo sacer*, p. 7. On this topic, Paolo Godani comments: "It is not about the production of bare life realised from the supplementarity of the *bios*, that is, the production of a *zoé* as a substrate or residue of *bios*, but the elevation of *zoé* itself as the supreme form of a neutralised *bios*": Paolo Godani, *Il corpo e il cosmo*, p. 88.

621 Mirabeau's treatise on population of 1756 opens by wondering whether a population is "useful" (*utile*), and later states: "Food, conveniences, and the pleasures of life are wealth (*richesse*). The earth produces it, and the labour of men gives it form [...] the first of goods (*biens*) is to have men (*hommes*), and the second is to have land. The multiplication of men is called *Population*. The increase of the product of the earth is called *Agriculture*. These two principles of wealth are intimately linked to each other": Victor Riquetti, marquis de Mirabeau, *L'ami des hommes ou Traité de la population* (Avignon, 1756), pp iii; 10.

In 1798 Malthus published his famous work, directly addressing the issues of population and scarcity: "Population, when unchecked, increases in a geometrical ratio. Subsistence increases only in an arithmetical ratio, a slight acquaintance with numbers will shew the immensity of the first power in comparison of the second": Thomas Robert Malthus, *An essay on the principle of population, as it affects the future improvement of society* (London: J. Johnson, 1798), p. 14.

On a similar note, Foucault traces the objectives of the force of police, by saying that it was meant to address the "number of men" (*nombre des hommes*), the necessities of life, health and sanitation, the occupation of time, and the circulation of both men and things: Michel Foucault, *Sécurité, territoire, population*, pp. 330 – 333. See also, Paolo Napoli, *Naissance de la police moderne : pouvoir, normes, société* (Paris : La Découverte, 2003).

622 Michel Foucault, *Sécurité, territoire, population*, p. 111. See *supra,* 1.4.

other population, as any other species. As Agamben notes, it is the transformation of an "essentially political body" into an "essentially biological" one, in which the "democratic" concerns are mirrored or doubled as "demographic"[623], as horribly demonstrated by the Nuremberg Laws of 1935 and the division of the 'German people' into two different populations based on their supposedly racial traits, which allowed for a different set of treatments, and ultimately led to the massive process of extermination of the members of that population who was demographically disposed of but not democratically acknowledged[624].

Thus, a communion and a scission, of if I may, a *divisio* and a *confusio*. On the one hand, the administration of human life surfaces as something in common with other living entities in the make-live processes traversed by statistics, that go from the usefulness of vaccination, transplants, and disease control all the way to the terror of the extermination camps and the administration of death. On the other hand, a detachment of the *homines* from what Arendt and Bentham identified as an almost natural —or at the very least essential— character of the *zoon politikon* under the name of citizenship, dignity or even personhood: the scission between the *zoon* and the *politikon*, between life and its consubstantial political community which amounts not so much to the inclusion of other living entities into the *polis,* but to the stripping of life from any distinctive characteristic. Regardless of the species — or better yet, precisely as *a* species— human life comes to be nothing more than a *nuda vita*, a bare life.

When legal protections finally arrived —not at dusk, as the owl of Minerva, but at the dawn of the day after, when the smoke had already settled— the discourse on rights would be also ascribed to this biological barrier, so that the *droits de l'homme* would finally become *human rights,* in an effort to include the whole of the "human family" into a concept of inherent dignity[625] that cannot be denied to any member of the species, that is, to the *homo sapiens*.

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623 Giorgio Agamben, *Quel che resta di Auschwitz*, pp. 78 – 79.

624 Giorgio Agamben, *Quel che resta di Auschwitz*, pp. 79 – 80. Agamben speaks of the continuum of degradation that goes from the "non-Arian" to the "Jewish", from the "Jewish" to the "deported", then the "prisoner" (*Häftling*), and finally the "*Muselmann*", namely the prisoner that has been utterly reduced to the almost indistinguishable frontiers of death.

625 See the *Universal Declaration of Human Rights* (1948), especially the preamble, arts. 1 and 6. The supporting documents for the drafting of the *Declaration* can be found at "Universal Declaration of Human Rights (1948), Drafting History", https://research.un.org/en/undhr/draftingcommittee —for which I cite here only the number of the document and its date— and show a lot of variations on the subject of humanity, personality (*i.e.*, personhood) and dignity. Some examples include the 1947 draft of the preamble saying that "all Members affirm their faith in the dignity and worth of the *human person*" (E/CN.4/36; 26 November 1947, p. 1), or the discussion on whether "legal personality" ought to include "associations" and other entities with "juridical personality" (E/CN.4/21; 1 July 1947, p. 37), which sparked a debate that had, *v.gr.*, Mexico advocating for the respect of "*human* personality" (E/CN.4/82/Add.1; 16 April 1948, p. 2), and Brazil and Uruguay advocating for the use of "human being" instead of "person" in order to exclude "juridical persons" (E/CN.4/82/Add.2, p. 10; 22 April 1948). At the other shore, the United Kingdom pointed out that "juridical personality" was a term that "may convey some defined meaning in relation to some systems of law, but some other rendering is required to make the provision generally intelligible" (E/CN.4/82/Add.4, p. 5; 27 April 1948) and finally —as late as December 1948— suggested that the term "every human being" should be redrafted as "everyone" (A/C.3/SC.4/1, p. 1; 1 December 1948), which ended up being the definitive text of art. 6, removing the *human* component of the article in English and in French, although not in

This biological term, under which all humans are still classified, was coined by Carl Linnaeus in a text of 1735 —with a prominent edition in 1758—, where he places the *homo sapiens* as the "most perfect of the creations and the highest on the cortex of the Earth" (*homo sapiens, creatorum operum perfectissimum, ultimum et summum, in Telluris cortice*), but includes the species as part of the animal realm, particularly in the category of "primates", and not in a unique category above or beyond. He also, and not negligibly, subdivided the species into the "red American" (*Americanus rufus*), the "white European" (*Europaeus albus*), the "yellow Asian" (*Assiaticus luridus*), the "black African" (*Africanus niger*), and the peculiar category of the "monstruous" (*monstrosus*)[626]. In the contemporary reading of his taxonomy, only the *homo sapiens* survives as an all-encompassing term for *human.*

Under a mantle synonymity that is everything but transparent, *persona* as the individual substance of rational nature and as a centre of imputation becomes acquainted with its biological substratum. Regardless of the undeniable significance of the *Universal Declaration of Human Rights*, its approach is symptomatic of this hall of mirrors in which the (pseudo)biological reshapes the political, so that it becomes pivotal in the arrangement of the living, a realm in which human dignity finds its birthplace, since all *homo sapiens* have dignity; but also its grave, since all *homo sapiens* are just one among many other species of the animal realm.

When Gregory Stanton, in 1996, included "dehumanisation" as one of the stages of genocide[627], he showed how despite this introduction to the animal realm, the processes of extermination of groups usually involved displacing the biologically unique character of the *homo sapiens* to other "lesser" species, particularly by assimilating them to vermin or viruses, which is performed no matter how evident it is in scientific terms that one belongs to the same species. The dignity of the *homo sapiens*, being a fragile protection at best, can easily be dismissed by a fiction: these *persons* may be *human*, but it is *as if they were* some other animal, one whose death is not grievable[628], and whose life is, therefore, disposable[629].

Spanish. All of this, of course, only to illustrate the intestine dispute on the terms and their reach even for a *Declaration* that was nevertheless conceived as having no legal binding for the signatory states.

626 Carl Linnaeus, *Systema naturæ per regna tria naturæ, secundum classes, ordines, genera, species, cum characteribus, differentiis, synonymis, locis*, I (Holmia: Laurentii Salvii, 1758), pp. 7; 20 – 24. Under the same category of *homo*, but of a different species, he would include the "troglodytes".

627 Gregory H. Stanton, "The Ten Stages of Genocide" (1996), Genocide Watch, available at: https://www.genocidewatch.com/tenstages.

628 See Judith Butler, *Frames of war: when is life grievable?* (London: Verso, 2010).

629 *Mutatis mutandis,* just as slaves were undoubtedly *homines* in Ancient Rome, there is no doubt that Jews were still members of the human species in the eyes of the Nazi regime, but they were taken *as if they were not* to produce their death more easily. More recently, a similar dislocation has been taking place in the Gaza conflict that started with the terror attack by Hamas on October 7, 2023. Two days later, in order to justify the escalation and the indiscriminate attacks that were reaching both combatants and civilians, Israels' Defence Minister, Yoav Gallant, referred to the residents of the Gaza strip as "human animals" (אדם בחיות —literally, a "beast or animal *adam*"—), an apparent cognate of *homo sapiens* that, nonetheless, justifies the indiscriminate attacks. See Emmanuel Fabian, "Defense minister announces 'complete siege' of Gaza: No power, food or fuel", The Israel Times, 9 October 2023, https://www.timesofisrael.com/liveblog_entry/defense-minister-announces-complete-siege-of-gaza-no-power-food-or-fuel/, and Oliver Holmes and Ruth Michaelson, "Israel declares siege of Gaza as Hamas threatens to start killing

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In the interlacement of fiction and *persona*, a political power traversed by biological concepts was of course bound to manifest itself in sex and gender, usually under the idea of acts according to and against nature[630]. Leaving aside the insurmountable scope of the matter, I would like to mention a case that seems paradigmatic and involves both the notion of fiction and a biological concern.

In 1987, the Supreme Court (*Tribunal Supremo*) of Spain produced an emblematic ruling that considered the case of a *man* who, after a surgical procedure of "sex change" requested to be registered as a *female*. The Court considered how the petitioner[631] had an "artificially reconstructed vagina [...] functional and with a depth of seventeen centimetres, ending in a sac-like form" as well as the fact that "he has adopted a female sexual and emotional role practically since childhood" and that "he has a female urinary meatus, female pubic and cranial hair, lacks facial hair, has breasts, and self-administers female hormones"[632], in order to assess that a certain change had indeed been produced, adding that the solution of the issue ought to be "strictly juridical", since a "purely biological" solution would be impossible given that the petitioner's "masculine chromosomes remain immutable"[633]. The Court added:

> It might be a fiction of a female (*una ficción de hembra*) [!], if you will, but the Law (*el Derecho*) also extends its protection to fictions. Because fiction plays as important a role in Law as hypotheses do in exact sciences. Both are mere suppositions that must be admitted to legitimise certain consequences in pursuit of scientific truth, justice, or social utility [...] This fiction must be accepted for transsexuality; because the male who has undergone transgender surgery does not become female, but must be considered as such for having ceased to be male through removal and suppression of primary and secondary characteristics and presenting sexual organs similar to female ones, along with psychological and emotional characteristics typical of this gender[634].

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hostages", The Guardian, 10 October 2023, https://www.theguardian.com/world/2023/oct/09/israel-declares-siege-on-gaza-as-hamas-claims-israeli-strikes-killed-captives.

630 "Without a doubt, the 'against nature' (*contre-nature*) aspect was marked by a particular abomination. But it was perceived only as an extreme form of 'against the law' (*contre la loi*) [...] The prohibitions related to sex were fundamentally of a juridical nature. The 'nature' on which they used to be placed upon was still a kind of law (*une sorte de droit*)": Michel Foucault, *Histoire de la sexualité I,* pp. 52 – 53.

631 Since Spanish allows the elision of the pronoun, the Court does not use "he" or "she" explicitly, although it does refer to the petitioner always as a male.

632 Tribunal Supremo de España, STS, 2 de Julio de 1987, 2º. 2. Available at: https://vlex.es/vid/77042810.

633 Tribunal Supremo de España, STS, 2 de Julio de 1987, 3º. 1.

634 Tribunal Supremo de España, STS, 2 de Julio de 1987, 3º. 1. It should be noted how a dissenting vote considered that the "genetic and chromosomic sex" of the petitioner was still masculine, regardless of the "outward anatomy" or

A "*fiction of female*"[635]. Regardless of its self-perception, the Court clearly employs a biological language that nevertheless had to be translated into the grammar of the law in order to protect the rights of the petitioner, who was finally indeed registered as female.

Neither a person, nor a human: such a biopolitical ruling constructs itself upon the ground of a binary distinction that necessitates the mechanism of fiction in order to address a challenge to the outlines of the *nomos* by means of a radical transformation of the body. Common ground for punishment (*suplice*) and discipline, as Foucault has shown, the very flesh is now also exposed to management, disposition, governmentality.

the "feeling" of the petitioner, and hence deemed that the surgical procedure was not sufficient in order to modify the registry: Tribunal Supremo de España, STS, 2 de Julio de 1987, Voto Particular.

635 For a feminist take on the ruling and its implications, see Paula Viturro, «Ficciones de Hembras», *Revista Jurídica de la Universidad Interamericana de Puerto Rico* 38, no. 1 (September – December 2003): 137 – 150.

II. PERSONHOOD OF NON-HUMAN ENTITIES

Como si el ser un hombre quisiera decir algo.

GABRIEL CELAYA

A semblance of truth sufficient to procure for these shadows of imagination that willing suspension of disbelief for the moment, which constitutes poetic faith.

SAMUEL TAYLOR COLERIDGE

4. Thresholds

4.1. Some animals are more personable than others

Once human nature has strayed from the pastures of the *homines*, becoming ingrained in the biological soil of the *homo sapiens*, another layer of complexity and ductility is added to the notion of personhood. If being a human, a person, or a subject is reduced to a biological taxonomy —or better yet, to a biopolitical consideration—, then the supposed eminence and dignity of the human species faces the challenge of being one among many, allowing personhood or subjecthood to be extended to any other animals that, for one reason or another, could be assimilated to the "human family".

If humanity means nothing but the *ex natura* appurtenance to the *homo sapiens* species, it would be counterintuitive to extend this characteristic to any other animals, at least from a strict biological approach, and thus the idea of a '*human person*' would not be a pleonasm, but rather the sign of a scission between the species and its dignity: a biological occurrence that is invested with the artifice of a certain pre-eminence. But if, on the other hand, humanity, subjecthood, or personhood are taken to mean some upstanding and desirable way of existing —framed as a certain dignity with certain *inherent* rights—, then the extension of these categories could be performed upon a myriad of criteria that could be shared by other species, from perception and consciousness to genetic kinship, language, or the ability to feel pain.

Regardless of the arguments deployed to defend the soundness of any given ethical, juridical, or political stance regarding non-human animals, my interest lies on the effects of subjectification and disposition regarding a seemingly extension of personhood, subjecthood or even humanity to non-human animals, which unsurprisingly arrives often via the threshold of fictions.

The usual starting point for this extension is the acknowledgement of a form of domination of humans over animals, with a variety of dyes that appears all throughout the spectre of Western thought, particularly with the biblical narration in which *man* reigns over the whole of the creation[1]. A similar topic can be found in Greek thought, both before and after Aristotle's own "natural order" in the *Politics*. Hesiod, for instance, says that whereas "the son of Cronos" provided mankind with justice, "fishes and beasts and winged fowls should devour one another, for justice is not among them"[2]. Epictetus, in turn, claims that animals are not "born for their own sake, but for service", to the point where "one small child with a rod can drive a flock of sheep"[3]. Further away in geography and time, Hobbes will

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1 Genesis 2. Not exclusively in the Genesis, however. In his first letter to the Corinthians, Paul marks this distance by saying: "All flesh is not the same flesh: but there is one kind of flesh of men (*sarx anthrōpōn*), another flesh of beasts, another of fishes, and another of birds.": 1 Corinthians 15: 39. For a commentary on the flesh and its significance for Christian thought, see Paolo Godani, *Il corpo e il cosmo*, pp. 64 and ff.

2 Hesiod, "Works and Days" in *Theogony, Works and Days, Testimonia*, trans. by Glenn Most (Cambridge: Harvard University Press – Loeb Classical Library, 2018), 275 – 280, pp. 108 – 109.

3 Epictetus, "Arrian's Discourses" in *The Discourses as Reported by Arrian, The Manual, and Fragments*, trans. by W.A. Oldfather, (Cambridge: Harvard University Press – Loeb Classical Library, 1989), 1.16.2.

speak of the "dominion over beasts" as springing "from the right of nature" and not from positive law[4], adding that it is impossible "to make covenants with brute beasts" given the impossibility to communicate and "translate any right" that may come as a result of the covenant[5].

That being said, an entirely different line can be traced in which animals are not subservient to men, from the exemplary treatise *On Abstinence from Killing Animals* by Porphyry[6] to Schopenhauer's claim of cognition as the "fundamental characteristic of animality (*Thierheit*)"[7] and Bentham's accusation of "insensibility of the ancient jurists" that degraded animals to things, which is still nowadays at the centre of the discussion of animal rights:

> The day may come when the rest of the animal creation may acquire those rights which never could have been withholden from them but by the hand of tyranny [...] What else is it that should trace the insuperable line? Is it the faculty of reason, or, perhaps the faculty of discourse? But a full-grown horse, or dog, is beyond comparison a more rational, as well as a more conversible animal, than an infant of a day, or a week, or even a month, old. But suppose the case were otherwise, what would it avail? The question is not, *Can they reason?* nor *Can they talk?* but, *Can they suffer?* [8].

For the grammar of the law, indeed, animals are *res* in the very framework of the actual *summa divisio*. Albeit moveable by themselves (*se moventes*)[9], and even if "semi-vocal" (*semivocale*), as Varro would put it, the fact that animals are things is traditionally accounted for in terms of lacking either reason or a soul —just as pluralities—, or to be more precise, an intellective, rational soul, that would in itself allow for the eminence that *homines* seem to possess, or at the very least, concede to themselves. On this note, for instance, Cicero points out that if "beasts

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4 Thomas Hobbes, *De Cive*, 7.10; p. 120.

5 Thomas Hobbes, *Leviathan*, 1.14.22; p. 92.

6 Porphyry, *On Abstinence from Killing Animals* (Ithaca: Cornell University Press, 2000).

7 Arthur Schopenhauer, *The World as Will and Representation*, I (Cambridge: Cambridge University Press, 2010) §6, p. 42. He will nevertheless qualify this "cognition" later on: "People surpass animals as much in power as in suffering. Animals live only in the present; humans, meanwhile, live simultaneously in the future and the past. Animals satisfy their momentary needs; people use ingenious arrangements to provide for the future, even for times they will never experience. Animals are completely at the mercy both of momentary impressions and the effects of intuitive motives; people are determined by abstract concepts independent of the present moment.": Arthur Schopenhauer, *The World as Will and Representation*, I, §8; p. 59.

8 Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (London: T. Payne and Son, 1789), pp. cccviii – cccix. This fragment, which is a footnote in Bentham's text, is the basis for Peter Singer's utilitarian approach to equality of consideration of non-human animals: Peter Singer, *Animal Liberation* (New York: Harper Collins, 2002), p. 67.

9 See Justinian, *Digesta*, 21.1.1.

possessed reason" (*si ratio esse in belvis*), they would "each assign pre-eminence to their own species" (*suo quasque gene plurimum tributuras fuisse*)[10].

While contemporary orders approach the matter in a more sympathetic fashion, appealing to the character of animals as "sentient beings", as a general rule there is still a certain reluctance to extend personhood to non-human animals. General rules, however, are *general* and not *absolute* precisely because they have exceptions, and in this case these exceptions do not only come to ratify the rule, but they also highlight a paradox by which the extension of personhood has arrived much earlier —and apparently more seamlessly— to entities that are not necessarily alive nor animated in the usual sense of the terms, such as rivers or forests. However, before going into the exceptions, and most importantly, into the reasons that sustain them, I would like to make a literary excursus in order to illustrate —illuminate with a fiction, as Dadino Alteserra would say— how is it that the extension of personhood conveys processes of subjection and subjectification, a certain operation that allows to grasp, attribute, or impute these non-*homines* and non-human animals that try to, or that have actually entered into the cartography of personhood.

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In Anatole France's *L'île des pingouins*, a monk named Maël arrives in an island filled with penguins, which he mistakenly takes for a group of "men living according to natural law"[11]. He decides that it is his duty —his mission— to teach them the ways of the divine law, going as far as baptising the penguins[12]. The deed stirs paradise into a turmoil in which the heavenly hosts debate whether the baptism of a penguin is legitimate or null, and raising the question of the fate of these soulless penguins that have been bestowed with the grace of baptismal waters. After the character of saint Damasus argues for the effectiveness of the baptism, notwithstanding its uselessness, saint Winwaloe forwards:

> But to this account [...] one would baptise in the name of the Father, the Son, and the Holy Spirit, by sprinkling or immersion, not only a bird or a quadruped, but also an inanimate object, a statue, a table, a chair, etc. This animal would be Christian, this idol, this table would be Christian! It is absurd![13].

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10 Cicero, *De natura deorum*, 1.27. Such a perspective would be deemed, by some contemporary accounts, as a form of "speciesism", namely "a prejudice or attitude of bias in favour of the interests of members of one's own species and against those of members of other species": Peter Singer, *Animal Liberation*, p. 6. Even if an accusation to anthropocentric speciesism, that is, the one performed by the *homo sapiens*, the prejudice may very well be present in other species. Admittedly, so far, there is no way to conclusively tell if reason in non-human animals would operate in such a fashion, however it does show how Cicero sees the bridge between reason and eminence, and it raises the question of a "speciesism" that goes the other way around.

11 Anatole France, *L'île des pingouins* (Paris : Calmann-Lévy, 1909), p. 21.

12 Anatole France, *L'île des pingouins,* p. 24.

13 Anatole France, *L'île des pingouins,* p. 28.

Baptising the penguins, so it seems, would open the door to all sorts of animate and inanimate entities to be counted among the herd of the Christendom, rendering everything non-human —that nevertheless is touched by the sacrament— liable to the obligations of a Christian, regardless of whether they can behave accordingly to their moral or religious duties, to the point where the character of saint Augustine finds but one solution: "the penguins will go to hell", despite the fact that they "do not even have a soul"[14]. Christ himself judges that, in his "blind zeal", the act of Maël "had created great theological difficulties for the Holy Spirit and had brought disorder in the economy of the mysteries (*dans l'économie des mystères*)"[15]: indeed, a re-arrangement of the *oikonomia* of the world.

After much deliberation, implicating Tertullian, Irenaeus, and Catherine —always as characters, and not as their actual theological counterparts—; Christ commands the transformation of these birds "into men (*en hommes*)"[16]. Armed with "the name of the lord", Maël finally says to the penguins: "Be men!" (*soyez des hommes!*)[17], and so they do, retaining some characteristics of penguins but, nonetheless, becoming *human*, and acquiring, by the office of baptism, the burden of a soul.

Anatole France, of course, had not intention to delve into the philosophical meaning of a non-human animal entering the circle thus far reserved —with all the due exceptions we have seen— to human animals[18]. Nevertheless, his extraordinary poeticization of the metamorphosis of the penguins allows for some interesting extrapolation, departing from the fact that a metamorphosis must indeed occur, even if it is not physical as in the novel. This is because, regardless of human intent, animals do not occupy themselves with the artifices of politics and law, and even if one takes nature as an institution, its function as a frontier requires some operation to be performed in order to produce the interchange between the inside and the outside. In other words, echoing the language of evolutionary theory, either the non-human animal or the biopolitical habitat are bound to mutate.

On a more radical sense, just as the penguins do not acquire humanity by the mere imposition of the sacrament, the denomination of an animal as a non-human person is not, in and of itself, capable of achieving its metamorphosis, even if one conceives the law as a performative language. The non-human animal that enters the realm of the *personae* must be grasped both in its living status and in its very species in order to be attributed with rights: it must become its subject, that is, it must be subjected and rendered imputable. Since there are no persons in nature, a declaration may indeed be necessary, but its effects will depend on how is it that the non-human animal is introduced into the biopolitical framework. What can

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14 Anatole France, *L'île des pingouins,* p. 34.

15 Anatole France, *L'île des pingouins,* pp. 34 – 35.

16 Anatole France, *L'île des pingouins,* p. 43.

17 Anatole France, *L'île des pingouins,* p. 46.

18 In a preface of 1907, he comments: "I don't have to consider penguins here before their metamorphosis. They only begin to belong to me when they leave zoology to enter history and theology. It is indeed penguins that the great saint Maël transformed into men": Anatole France, *L'île des pingouins,* p. v.

be derived from Arendt, Foucault and Agamben's accounts is that the *homo sapiens* has been introduced in this biopolitical framework by means of its birth, firstly as a member of a nation-state, and then as a member of the population of its species, declared and deemed a *human person* in a form that can be enunciated as 'you belong (to the human species), therefore you are (a person)'.

Lacking the pre-condition of being part of the human species, for non-human animals the operation ought to be performed by other means. For instance, one could expand the pre-condition, so that belonging to a "living species", to a "sentient species", or to a "conscious species" is deemed sufficient, and therefore everything that is alive, sentient, or conscious can also be considered a person. In this case, the operation is performed by taking personhood to be an artifice sufficiently ductile to be elongated at will and addressing the issues that arise with any of these accounts. One could alternatively maintain the boundaries of personhood and introduce some non-humans as an exception, reaching out to fiction and claiming that, even though personhood is indeed reserved to the population of the *homo sapiens*, this or that animal, this or that species, can be taken *as if it were* human. One could even extend this fiction up to an aporia, by virtue of which anything non-human can be taken *as if it were* human, and so humanity becomes totalising to the point of including even its own negation. That all these operations are possible is remarkable and responds to an array of mechanisms that can emerge within a certain *dispositif*, allowing it to include and exclude, to dispose and re-arrange, in this case, not persons and things as the art of government, but the realm of the living in the framework of a governmentality.

This becomes even clearer if, for instance, the extension of personhood to non-human animals is seen as a right that can be attributed to them *ad libitum* (*v.gr.*, via a legislative or judicial act). In this case, even if personhood is not the cornerstone of a certain protection — or as Arendt puts it, the right to have rights—, the attribution must have something to sustain it, a centre of imputation upon which the claim can fall, upon which the predicate can indeed be predicated.

Despite the very laudable purpose of protecting, shielding, or preserving a certain species, a sub-jection must be performed, either because penguins receive an immortal soul, or because they acquire the capability to be imputed as subjects of rights.

Baptismal waters, it seems, beget their own form of thirst.

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Outside of literature, there are, so far, a couple of examples of a non-human animals recognised as either persons or as subjects of rights.

In a 2016 case of *habeas corpus*[19], a court in Mendoza, Argentina[20], declared a chimpanzee named *Cecilia* as a "non-human subject of right", arguing that "great apes", given their genetic and behavioural proximity to humans, "are sentient beings (*seres sintientes*)", and therefore, subjects[21]. Interestingly, the ruling cites, among others, Jeremy Bentham, and Peter Singer, saying that suffering "is the vital characteristic from which the condition of subject of right must be attributed"[22]. In all actuality, Singer disregards any claims for rights, saying they are "irrelevant to the case for Animal Liberation", and that "the language of rights is a convenient political shorthand"[23]. His argument, instead, is for the morality of equal consideration, for which he deems suffering a sufficient condition to the equal worth of sentient life in an open utilitarian framework. Although he does not speak of personhood, he does refer to dignity:

> Once we ask why it should be that all human beings —including infants, the intellectually disabled, criminal psychopaths, Hitler, Stalin, and the rest— have some kind of dignity or worth that no elephant, pig, or chimpanzee can ever achieve, we see that this question is as difficult to answer as our original request for some relevant fact that justifies the inequality of humans and other animals[24].

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19 For an analysis of the juridical figure of the *habeas corpus* under a biopolitical lens, which also includes a discussion of the case at hand, see Daniel J. García López, «Has de tener un cuerpo que mostrar: el grado cero de los Derechos Humanos» en *Isegoría: Revista de filosofía moral y política*, 59 (2018), 663 – 682.

20 Tercer Juzgado de Garantías, Poder Judicial de Mendoza, *Expediente Nº. P-72.254/15*, disponible en «Sistema Argentino de Información Jurídica», http://www.saij.gob.ar/declara-chimpance-cecilia-sujeto-derecho-humano-ordenando-su-traslado-nv15766-2016-11-03/123456789-0abc-667-51ti-lpssedadevon. A similar protection had been previously granted, on the 18 December 2014, by Argentina's Supreme Court to an orangutan named *Sandra*.

In contrast, an attempt to protect a spectacled bear named *Chucho* in Colombia was rejected by the Colombian Constitutional Court, since the *habeas corpus* was deemed inapplicable to other species: Corte Constitucional de Colombia, *Sentencia SU-016/20*. For a recent analysis of this case, see Edward Mussawir, "On the juridical existence of animals: the case of a bear in Colombia's Constitutional Court", in Alexis Alvarez-Nakagawa and Costas Douzinas (eds), *Non-Human Rights: Critical Perspectives* (Cheltenham: Edward Elgar Publishing, 2024).

21 Tercer Juzgado de Garantías, *Expediente Nº. P-72.254/15*, pp. 30; 41. The judge says that chimpanzees and other great apes are "not a thing, not an object that can be disposed of as one disposes of an automobile or a real estate", but instead "subjects of rights with juridical capacity and factually incapable" that reach "the intellectual capacity of a 4-year-old child". Afterwards, the court proceeds to dispose of the chimpanzee by sending her to a "sanctuary" as a measure of protection.

Moreover, the language is convoluted. At some point, the ruling speaks of "persons as non-human subjects of rights (*personas en tanto sujetos de derechos no humanos*) that possess a catalogue of fundamental rights" (p. 34), while in the decisive part of the ruling, which I am citing here, it declares *Cecilia* "*un sujeto de derecho no humano*", which can be taken in its ambivalence as a "non-human subject of right" or a "non-human subject of the law". While the context and the intention may be clear, the ambivalence is telling in and of itself.

22 Tercer Juzgado de Garantías, *Expediente Nº. P-72.254/15*, p. 31.

23 Peter Singer, *Animal Liberation*, p. 8.

24 Peter Singer, *Animal Liberation*, p. 239.

Singer does not seem to envision any trouble in placing criminal psychopaths, Hitler, and Stalin, alongside infants and the intellectually disabled as cases of —apparently— *not enough worth*. Besides the questions this raises, what strikes as deeply problematic is how Singer establishes a comparison with the undefined notion of "normal humans", an *Idealtypus* of sorts, from whose distance worthiness can be measured, and from which the lives of those who lack this 'normality' are taken as neither immediately nor necessarily preferable to the life "of other animals"[25]. Where to find the "normal human" and what is to become of the 'ab-normal' or the 'sub-normal' seem to be questions that are also irrelevant to this view.

The second exception to the consideration of non-human animals as *res* comes from the Loyalty Islands in the French overseas territory of New Caledonia. In the framework of a "unitary principle of life", dear to the Kanak people, it became possible to recognise the legal personhood of "certain elements of nature", according to the Code of the Environment as promulgated in 2016[26]. By June of 2023, the development of this principle brought the actual recognition of sharks and sea turtles as "natural entities subjects of right" (*entités naturelles sujets de droit*)[27]. This comes as part of an effort to "institute a device (*dispositif*) of protection of the living"[28] that draws an extensive list of the protected entities including their realm, family, genus, and their species[29], as well as a catalogue of rights that include the right not to be a property, the right to "naturally exist", the right not to be put under servitude, and the freedom of circulation in "their natural environment", among others[30]. Such a regulation came under the mantle of a lengthy process of revindication of a "particular link" that the Kanaks hold with nature, that involves the capability of "any living element to be a vehicle for the sacred" and the fact that "the positioning of each individual in time and space, in the place entrusted to them, conditions their identity". Since "identity is the source of a person's

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25 Peter Singer, *Animal Liberation*, p. 239. As a contrast, and from the shores of legal language, Steven Wise does advocate for the actual "legal personhood of chimpanzees and bonobos": Steven Wise, *Rattling the Cage: Toward Legal Rights for Animals* (New York: Da Capo Press, 2017), p. 4. In a rather careless and not particularly rigorous recount of the history of philosophy and law —which seems to conduct itself towards the United States as its teleology—, Wise minds no attention to the concept of person and instead gathers sources of what he frames as a tradition of domination of humans over animals. An exemplary paragraph: "The Roman *jus naturale* was no passing phase. As we will see, it merged with Saint Augustine's blend of Stoic philosophy and biblical cosmology to pass largely unchanged into the common law, first of England, then of the United States. It formed the loom upon which the Roman lawyers and jurisconsults wove their civil law and later generations their powerful idea of natural rights, upon which the American Declaration of Independence, every American constitution, many foreign constitutions, and much of modern international human rights law rests. Ironically, it created both a powerful force for human liberty and animal slavery": Steven Wise, *Rattling the Cage*, p. 34.

26 *Code de l'environnement de la province des Îles Loyauté*, art. 110-3.

27 *Code de l'environnement de la province des Îles Loyauté*, livre 2, titre 4 (as modified on June 29, 2023), art. 242-17. For the modifications introduced and the list of species that fall under the new regime of protections, see: https://www.province-iles.nc/consultation-publique/consultation-en-ligne-especes-protegees.

28 *Code de l'environnement de la province des Îles Loyauté*, art. 241-1.

29 *Code de l'environnement de la province des Îles Loyauté*, arts. 241-2 and 241-3.

30 *Code de l'environnement de la province des Îles Loyauté*, art. 242-18.

existence (*de la personne*)" it follows that "by destroying nature in this worldview, man destroys himself (*l'homme se détruit lui-même*)"[31].

Besides the recurrent theme of non-Western approaches being used as a means to render the extension of personhood possible —a topic to which I shall come back further ahead[32]— what's interesting in this view is that the subjectification of sharks and sea turtles is not performed by means of an equivalence with the *homo sapiens*, leaving behind the question of whether these species have a soul, an intellect, or a body sufficiently akin to those of humans. Rather, the process implies an introjection of the *homo sapiens* into a generality, providing it with a role to play, not only in the manifestation of the sacred, but in the grand scheme of "time and space", of one's "entrusted place" that confers identity. If this is indeed the justification, beyond the mere and quite explicit intention of protecting the environment, the underlying claim is quite radical, since personhood would nevertheless imply a certain identifiability, a capability of being singled out, or better yet, imputed.

It seems two contrasting processes are occurring in these recognitions. The chimpanzee in Argentina was already identified and singled out as an individual —so much so that it had a name— and its personhood was derived from a generalisation of its species and its genre as being similar enough to humans to be imputed with the ability to suffer. In other words, even if the distance was nevertheless marked, only by equating the grand apes' population to the human population could the non-human animal be metamorphosised into a subject of rights, perpetuating human personhood —its eminence, its dignity— as the paragon. In contrast, sharks and sea turtles in New Caledonia are also singled out, not as individuals, but exclusively from the standpoint of their species. Moreover, they are deemed persons not because of their singularity as a species, but because every living entity can potentially receive the eminence of the sacred, or in this case, the eminence of personhood.

In the first instance, personhood responds to the unique closeness of certain beings to the frontiers of human personhood —worthy enough because of its capability to suffer—; while in the second, personhood responds to the common capacity of subjecthood that a living status provides, regardless of whether they appertain or not to the *homo sapiens* species. In the former, something must become human enough —*homo sapiens* enough— to be a person; in the latter, humanity is irrelevant, and the personhood *in potentia* stems from life. The former is a biopolitical approach that attaches protection to a certain biology, sufficiently capable to be imputed and therefore subjected; the latter is a biopolitical approach that takes the fact of living as imputable enough regardless of the plurality of ways in which life could manifest itself.

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[31] Roch Apikaoua et Jean-Paul Briseul, « Vision du monde et Droit de l'environnement » dans « Dossier : A la rencontre de l'Océanie et de l'Occident, pour la construction d'un droit calédonien de l'environnement », *Revue juridique, politique et économique de Nouvelle-Calédonie*, 11, 1 (2008) ; as recounted by Victor David, « La lente consécration de la nature, sujet de droit : Le monde est-il enfin Stone ? » dans *Revue juridique de l'environnement* 37, 3 (2012), 469 – 485.

[32] See *infra* 6.1.

This calls to mind what Deleuze, speaking about Foucault, calls "a process of subjectivation, that is, the production of a mode of existence" that cannot be seen or even performed with a particular subject, if it not by depriving it "from all interiority and even from all identity"[33]. In this sense, only when the chimpanzee Cecilia is taken as part of a population sufficiently akin to the humans, that is, only when dissolved into such a generality, may she acquire its subjecthood; and contrastingly, only when the *homo sapiens* becomes sufficiently diluted into the realm of the living is it sufficiently identifiable, and therefore, in this miasma of the living, it can be seen as something that occupies a certain place, just as sharks and turtles that, by this very fact, can also become persons. Deleuze adds:

> Subjectivation has nothing to do with the "person": it's an individuation, whether particular or collective, that characterises an event (a time of day, a river, a wind, a life...). It is an intensive mode and not a personal subject. It's a specific dimension without which one could neither surpass knowledge nor resist power[34].

Here, Deleuze seems to understand person as a concrete individuality, and since the process of subjectivation is not performed via a concrete entity, it is clearly not a matter of a "personal" subject. What he points towards, however, is the fact that as paradoxical as it may seem, the process of individuation can also be collective, and just as baptism subjectifies birds, quadrupeds, statues, or tables, so a collective individuation can subject a time of day, a river, a wind, a life, or better yet, all life.

These processes may be seen through a different lens. Speaking of the "primacy of the living", Dominique Bourg and Sophie Swaton argue that the three criteria that are usually applied to separate animality from humanity —tools, language, and culture[35]— are not as clear demarcation lines as they are thought to be, since many different animals develop and make use of these criteria, most prominently simians, but also insects and birds. Moreover, they pose that any actual difference between animality and humanity comes not in the presence or the absence of those elements, but rather in the degree in which all of them are in fact already present[36]. They go as far as saying that, given the radical differences between communities of the *homo sapiens* species, "it does not make a lot of sense to talk about a human *nature* (*nature humaine*)" [37], so that one is "not born human" but rather "becomes human by multiple insertions that support themselves in biological processes"[38], ultimately taking them to the conclusion that "the fabrication of the human (*la fabrication de l'humain*) probably implies

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33 Gilles Deleuze, « La vie comme ouvre d'art », dans *Pourparlers : 1972 – 1990* (Paris : Minuit, 2003), 129 – 138, p. 135.

34 Gilles Deleuze, *La vie comme ouvre d'art*, p. 135.

35 Dominique Bourg et Sophie Swaton, *Primauté du vivant : essai sur le pensable* (Paris : Presses Universitaires de France, 2021), p. 99.

36 Dominique Bourg et Sophie Swaton, *Primauté du vivant,* p. 106.

37 Dominique Bourg et Sophie Swaton, *Primauté du vivant,* p. 107.

38 Dominique Bourg et Sophie Swaton, *Primauté du vivant,* p. 108.

to a unique level the inclusion of the non-human"[39]. The idea, then, is that *humanity* is nothing more than a fabrication —a fiction, perchance? — that has no referent in nature, no actual materiality other than a seemingly artificial line traced upon certain criteria that are as moveable as any other.

However, humanity need not be the only fabrication. As we have seen, biology —the scientific discourse on life— was fabricated upon the invention/discovery of life itself, detached from the creatures to which it appertained[40]. Foucault's analysis of the archaeology of such a discourse also casts a light on the arbitrariness of the concept of living, for in the classification of nature in realms (mineral, vegetal, animal) life "does not constitute a manifest threshold from which entirely new forms of knowledge are required", but it is rather "a classification category, relative like all others", a threshold that one can "glide (*faire glisser*) all along" the scale of nature[41].

Recent studies on the perception of plants, or the discussion of living status of viruses are just two examples of how "life" is not a characteristic that springs from entities, but rather something that is attached as a discursive practice. Casting an analogy, life is to these creatures what sacredness is to the *res* in Roman law: a process of consecration, a declaration that, by its mere nature, can be and in fact is persistently revisited and modified. If life — the *living*— begins to acquire the pre-eminence humanity used to have, it is not because of a mantle of ignorance being lifted —the recognition of the *homo sapiens* as one among many species counts by now almost three centuries—, but because fabrications such as scientific discourses are moveable things, and so the repositioning of the living is the process of a threshold being traced further away, the emergence of a new frontier. Whether it is the frontiers of the *polis* that expand, or the drawing of some sort of "natural reserve" in which the living enjoy freedom of movement, the process is still performed at the level of the cartography.

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In her famous *Cyborg Manifesto*, Donna Haraway poses that not only the boundaries between animal and human, but also those between natural and artificial, and those between physical and non-physical have been "breached"[42]. In terms of the rupture between humanity and animality, she addresses the same criteria of "language, tool use, social behaviour and mental

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39 Dominique Bourg et Sophie Swaton, *Primauté du vivant,* p. 110.

40 "We want to create histories about biology in the 18th century, but we do not realise that biology did not exist and that the division of knowledge, which has been familiar to us for more than a hundred and fifty years, cannot be valid for an earlier period. And if biology was unknown, it was because of a very simple reason: it was life itself which did not exist (*c'est que la vie elle-même n'existait pas*). There were only living beings, and we appeared through a grid of knowledge constituted by *natural history*": Michel Foucault, *Les mots et les choses*, p. 139.

41 Michel Foucault, *Les mots et les choses*, pp. 173 – 174. See also Michel Foucault, « Croître et multiplier » dans *Dits et écrits I : 1954-1975*, pp. 967 – 972.

42 Donna Haraway, "A Cyborg Manifesto: Science, Technology, and Socialist-Feminism in the Late Twentieth Century" in *Simians, Cyborgs, and Women: The Reinvention of Nature* (New York: Routledge, 1991), pp. 151 – 153.

events" to say that none of them "convincingly settle the separation of human and animal", and that movements for animal rights, more than "irrational denials of human uniqueness" are in fact a recognition of a connection that comes along with the breach of the barrier between nature and culture[43].

The second and third distinctions, however, are far more interesting, for just as this human uniqueness becomes blurred over the background of nature, it also does so in face of entities that are neither physical nor organic, at least in the common use of these terms, implying a defiance to the newly acquired threshold of the living as the actual frontier of personhood.

In this framework, in which personhood and humanity are yet again separated, or at least not strictly intertwined, it is difficult not to wonder whether robots —in the broad spectrum of the term— or artificial intelligences are not to become persons as well. One could argue that at least some of these entities would be able to comply with even the strict terms of Boethian personhood: an individual substance of rational nature may very well be introjected into the (admittedly artificial) body of an entity that, in terms of intellective capacities, may very well surpass those of any human. Being bodyless or soulless, yet again, is not an issue for personhood, and if life is deemed as a series of functionalities rather than a certain metaphysical attribute, then we are not far away from saying that AI's or robots can be taken, at the very least and just like other animals, *as if they were* human.

If only as another excursus, two instances that account for this perspective. In Karel Čapek's *R.U.R.* —the first work in which the word 'robot' appears, coined by the author's brother—, the body of robots is in fact "organic", with skin that "feels like human skin" and material "you wouldn't know" it's different from that of a human, ultimately even receiving "nerves for pain"[44]. Not incidentally, robots seem to develop, early on, something akin to a consciousness or a soul:

> HALLEMEIER: Nothing particular. Occasionally they seem to go off their heads. Something like epilepsy, you know. It's called Robot's cramp. They'll suddenly sling down everything they're holding, stand still, gnash their teeth —and then they have to go into the stamping-mill. It's evidently some breakdown in the mechanism.
> DOMIN: A flaw in the works that has to be removed.
> HELENA: No, no, that's the soul!
> FABRY: Do you think that the soul first shows itself by a gnashing of teeth?[45].

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43 Donna Haraway, *Simians, Cyborgs, and Women,* p. 152.

44 Karel Čapek, *R.U.R. (Rossum's Universal Robots): A Fantastic Melodrama* (New York: Doubleday, Page and Co, 1925), act 1, p. 22 – 23; 47.

45 Karel Čapek, *R.U.R.,* act 1, pp. 46 – 47. When further ahead the character of Helena Glory asks why they don't give robots a soul, she receives three different answers: "That's not in our power [...] That's not in our interest [...] That would increase the cost of production".

At the end of the play, Čapek creates some sort of artificial eternal return: after humanity has been brought to the edge of extinction, two of the robots —Helena and Primus—become Adam and Eve[46], beginning a new era in which the machines are indeed capable of everything humans were capable of —love, sacrifice, reproduction—, effectively replacing them completely as a renewed albeit *artificial nature*.

While such a horizon seems still far away, the discussion on the personhood of these entities has already begun. In 2017, the European Parliament passed a resolution with recommendations for legislation on robotics[47], which begins by recalling "Mary Shelley's Frankenstein's Monster to the classical myth of Pygmalion, through the story of Prague's Golem to the robot of Karel Čapek"[48] as the possibility to build a machine that is *almost* human, and among many others, forwards the proposition of creating a "specific legal status for robots" that comes in the form of personhood:

> Calls on the Commission, when carrying out an impact assessment of its future legislative instrument, to explore, analyse and consider the implications of all possible legal solutions, such as [...] creating a specific legal status for robots in the long run, so that at least the most sophisticated autonomous robots could be established as having the status of electronic persons responsible for making good any damage they may cause, and possibly applying electronic personality to cases where robots make autonomous decisions or otherwise interact with third parties independently[49].

What an "electronic personality" would entail is left undefined in the text, but the context is illuminating in at least a couple of aspects.

Firstly, the provision makes it clear that this personhood should be applied to "the most sophisticated autonomous robots", which immediately calls to mind the eminence that stems from the Boethian definition of personhood: just as humans, creatures of the divine persons, enjoy the dignity of personhood because of their resemblance to their creator; so too shall robots, artifices of human persons, enjoy the dignity of personhood in as much as they come close enough to their fabricators. Indeed, the text refuses the legal status of persons to all machines and instead reserves it for only those who are able to "make autonomous decisions" and interact "independently". In a different but closely related language, this personhood seems strictly reserved to those "who have dominion over their acts" (*quae habent*

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46 Karel Čapek, *R.U.R.,* act 3, p. 187. In other versions of the play, there is a more explicit account of how this metamorphosis mirrors the "blessing of the sixth day", when humans are created.

47 European Parliament, *Resolution of 16 February 2017 with recommendations to the Commission on Civil Law Rules on Robotics (2015/2103(INL)):* https://www.europarl.europa.eu/doceo/document/TA-8-2017-0051_EN.html#ref_1_3.

48 European Parliament, *Resolution of 16 February 2017*, Introduction, lit. a.

49 European Parliament, *Resolution of 16 February,* Liability, §59, lit. f.

dominium sui actus), as Aquinas would put it[50], or to those "whose words or actions are considered as their own", in the language Hobbes used to define what a person is[51].

Secondly, the provision establishes that this form of personhood is nevertheless strictly linked to liability and responsibility, and not to a certain dignity that implicates the enjoyment of rights. In this case, the extension of personhood to "electronics" is not performed in order to better *protect them*, as seems to be the case with non-human animals, but instead it aims to protect humans *from them*, using personhood as a mechanism of capture that renders them responsible, traceable, accountable: personhood clearly being nothing more than a centre of *imputation.* If personhood is ascribed to the *homo sapiens* species, then robots are taken here *as if* they were both natural and human, only in terms of a governmentality that, in subjecting, subjectifies, and in subjectifying, subjects.

On the other hand, the frontier between natural and artificial being effectively breached, the notion of humanity is compelled to be simultaneously fragmented and recomposed in terms of its animality and its artificiality, and hence the notion of "cyborg" that Haraway forwards as "a hybrid creature, composed of organism and machine"[52]. The ambivalence is not only present in the composition, however. Haraway rightly points out that a "cyborg world is about the final imposition of a grid of control on the planet" just as much as it could be "about lived social and bodily realities in which people are not afraid of their joint kinship with animals and machines, not afraid of permanently partial identities and contradictory standpoints"[53]. Not only the substance, then, but the implications of this paradoxical subjectification where human is both a fundamental starting point, tied to a specific biology, as well as an artifice that reclaims transformation and attribution. Just as Deleuze says, the characterisation of this event of dissolution and recomposition as a subject and, eventually, as a person.

On this note, Haraway adds that "the cyborg is a kind of disassembled and reassembled, postmodern collective and personal self", but she also qualifies it as "not subject to Foucault's biopolitics" given that the "cyborg simulates politics, a much more potent field of operations"[54]. While I shall come back to the idea of simulation, albeit from a different perspective, I can forward right now that I do not believe the elision of biopolitics to be plausible in these terms, precisely because of the totalising premises of the dissolution of the human into the realms of its composition, where the living is not given but produced, even if artificially.

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50 Thomas Aquinas, *Summa Theologiae*, I, q. 29, a. 1. resp.

51 Thomas Hobbes, *Leviathan*, 16.1; p. 106.

52 Donna Haraway, *Simians, Cyborgs, and Women,* p. 1.

53 Donna Haraway, *Simians, Cyborgs, and Women,* p. 154.

54 Donna Haraway, *Simians, Cyborgs, and Women,* p. 163.

4.2. Forests, rivers, nature

Persons, as we have seen, may appear far away from the frontiers of the human species, in the bodies of sharks, turtles, and sooner than later, in robots and other forms of artificial intelligence.

If chimpanzees and other great apes seem to nevertheless constitute the most evident interstice —the ecotone between the realms of humans and other animals—, then plants seem to constitute the most immediate interstice between the living and the non-living, at least when it comes to the issue of subjecthood. While it is undoubtable in the biological discourse that plants are *alive*, it is an entirely different question whether they are to be acknowledged with the same (or at least some of the) rights that begin to appear in favour of certain species, and more precisely, whether they are to be rendered imputable subjects or persons.

Bourg and Swaton pose that, for a long time, plants have been considered "the *lumpenproletariat* of the living", marking the transition between organic and inorganic, as well as between life and non-life[55]. Even if bacteria and viruses would seem to be bio-logically more problematic in terms of these interstices, plants are deemed as more capable to question the frontiers regarding living as a sufficient condition for subjecthood, personhood, or at the very least for some sort of attribution of rights —which in and of itself shows how the frontier is anything but stable. Bourg and Swaton acknowledge that plants would not "satisfy the classical criteria of individuality", that longevous as they are many plants "ignore death" and that they "do not have vital organs"[56]. Nevertheless, they speak of the "agency (*agentivité*) of plants, namely their activities without subject"[57], citing examples such as the reaction of some wild species that secrete a defence hormone when attacked, and how certain acacias can communicate the presence of antelopes between themselves, rendering their leaves uneatable. "Everything happens —they say— as if (*comme si*) plants knew the digestive system of animals and their vulnerabilities", which provides a framework in which, according to the authors, we could speak of the intelligence of plants, "provided we do not attribute it individually to plants, precisely lacking individuality and in any case lacking interiority [...] a form of ecosystemic intelligence, without subject"[58].

Following this line of thought, we have agency and intelligence without subjectivity, interiority, and individuality. In Hobbesian language, this could be seen as an agency without authorship, and in Lockian or Kantian terms, it could be deemed an agency incapable of

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55 Dominique Bourg et Sophie Swaton, *Primauté du vivant,* p. 112.

56 Dominique Bourg et Sophie Swaton, *Primauté du vivant,* p. 115.

57 Dominique Bourg et Sophie Swaton, *Primauté du vivant,* p. 117.

58 Dominique Bourg et Sophie Swaton, *Primauté du vivant,* pp. 118 – 119. Maeterlinck had already forwarded, in 1907, that "many traces of an astute and vibrant intelligence" could be seen in plants, speaking of their branches' efforts to reach light or the "struggle of trees in danger": Maurice Maeterlinck, « L'intelligence des fleurs » dans *Œuvres IV: la vie de la nature* (Bruxelles : A. Versaille, 2010), p. 181.

imputation, given the lack of self-consciousness or interiority. Under this perspective, plants are indeed hybrid creatures that act without imputation: non-personal and non-subjective *actors*. If, however, one follows Deleuze's idea of subjectivation as a process that in fact deprives "from all interiority and even from all identity"[59], the notion of an ecosystemic intelligence —composed of several entities[60], working in the form of an 'as if'— comes close to the idea of the several bodies that compose the human body in Spinoza, the several souls that inhabit Lucian's actor, or the several people that constitute pluralities or multitudes: a process of individuation that needs not indivisibility, but only certain sameness that allows for a multiplicity to act *as if* it were a singular individual.

Many bodies, many souls, many people rendered as something singular is part of what the mechanism of personhood allows, and in this sense, we could either speak of a subjectless personhood, in the sense of an entity that acts, but has no dominion over its actions —an imputable predicate without subject—; or instead we could speak of something that, in being identified as an intelligence is regardless taken as capable of action —despite the plurality of its composition—, and in being attributed or imputed with action is in fact subjected under the mechanism of personhood. The issue is yet again the chiasmatic and paradoxical meaning of subject. In the former case, 'subject' is taken as the owner of the actions that here becomes absent, in the latter case, 'subject' is the result of a process of subjection.

While the idea of an intelligence and an agency without subject seems appealing, it does not come without issues. Firstly, if actions are to be actually something other than motions, events or *things* that happen, the attribution to the plurality of entities that are alive and that act collectively but do not *respond* for those actions begs the question of their authorship. As we have seen in Hobbes[61], it may very well that an actor *impersonates* the owner of an action, or better yet, his or her will, and in doing so the actor performs the action on account of another, it re-presents another. The question would be, then, who is to be imputable for such an action, who gives account of said action if it is indeed a matter of agency and not a matter of mere contingency. If plants, in this instance, are not to be taken as the subject of their actions, that is, as their authors, then it would be necessary to think whether an unimputable, unattributable, authorless action is indeed an action, or if it is maybe the fiction of an agency, the resemblance of an act that may be individualised via a certain mechanism, perhaps *ex iusta causa*, but always as a conscious artifice. Whatever the case, one would wonder whether this resemblance of an action does not dissimulate an exogenous authorship —namely, a human authorship— that is displaced by virtue of the very dis-simulation.

The second and potentially more crucial concern revolves around the true purpose of such an acknowledgment. Bourg and Swaton pose that, so far, the scope of our (*i.e.,* human)

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59 Gilles Deleuze, *La vie comme ouvre d'art*, p. 135.

60 At the margin of the problem of mind and body, it would be easy to cast an analogy by which several parts of the human body aid in the communication and the expression of an intelligent action, and hence participate in such an action. A multiplicity of *topoi* where intelligence arises is not unaccounted for, even in the human species.

61 Thomas Hobbes, *Leviathan*, 16.4; p. 107.

moral and political obligations is traced by a line that goes either between humans and other animals, or at the very best, between animals and other living entities, a "demarcation line" outside of which "there is no obligation that could be opposed to us"[62]. Therefore, in ascribing or recognising an agency to plants, the demarcation line of human obligations is extended, aiming to take "all living beings at least as moral patients"[63].

Leaving aside the interesting question of what a "*moral patient"* would imply, this seems to mean that only by reading the biological behaviour of plants under the grammar of agency can these entities be better protected. The question is, then, why would this be either necessary or sufficient for such a protection to come to be, and most importantly, whether this is not a process of subjectification in itself. If the agency of plants means nothing beyond the fact that they ought to be acknowledged and respected as living entities, precisely because they are part of the living matter, the transplantation into this form of discourse seems to emerge as part of some sort of an economy of agency and an economy of intelligence. In such a motion, the potency of a subject that commands its own actions is excluded, but the behaviour —agency and intelligence—, disseminated in several bodies, is nonetheless susceptible of being gathered, accumulated, and disposed of.

Once again, commendable as it may be in terms of purpose, it seems no coincidence that this agency had already emerged in the framework of juridical language under the form of "damage calculation" and the "welfare economics position"[64]. In 1972, Christopher Stone forwarded the idea that trees should have a (legal) standing, that is, that trees should be able to represent "themselves" and "their interests" before a court: a sort of *personam habere,* under the Theodosian formula. Initially a thought experiment, and then an endeavour to "restore his credibility"[65], Stone forwarded his idea always in a very pragmatic framework of damages and restoration, what in systems of common law is called *tort law,* and in continental European law is called *civil responsibility*. Besides establishing a set of criteria[66], Stone "quite seriously" proposed "that we give legal rights to forests, oceans, rivers, and other so-called "natural objects" in the environment —indeed, to the natural environment as a whole"[67], by a rather simple operation of taking these entities as legal persons[68]. He added that "the legal problems of natural objects" ought to be handled in the same way "as one does [with] the problems of legal incompetents—human beings who have become vegetive", so that a representative or

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62 Dominique Bourg et Sophie Swaton, *Primauté du vivant,* p. 124.

63 Dominique Bourg et Sophie Swaton, *Primauté du vivant,* p. 125.

64 Christopher Stone, *Should Trees Have Standing? Law, Morality, and the Environment* (Oxford: Oxford University Press, 2010), p. 13.

65 Christopher Stone, *Should Trees Have Standing?*, p. xii.

66 "(1) a suit in the object's own name (not some human's); (2) damages calculated by loss to a nonhuman entity (not limited to economic loss to humans); and (3) judgment applied for the benefit of the nonhuman entity": Christopher Stone, *Should Trees Have Standing?*, p. xii. The criteria are only explicitly formulated in this way in the introduction and the epilogue, both of which were written after the original article was published in 1972.

67 Christopher Stone, *Should Trees Have Standing?*, p. 3.

68 Christopher Stone, *Should Trees Have Standing?*, p. 159.

guardian is appointed in favour of those entities[69] that, moreover, can communicate their wants or needs in "ways that are not terribly ambiguous"[70].

This adjudication of personhood, as I said earlier, comes under precise historical circumstances, where generalised concern for the protection of the environment was in its very infancy and so were the provisions of environmental law. In this framework, the problem is presented, alongside the supposedly moral arguments, in terms of costs and profit:

> The argument for "personifying" the environment, from the point of damage calculations, can best be demonstrated from the welfare economics position. Every well-working legal-economic system should be so structured as to confront each of us with the full costs that our activities are imposing on society [...] Wherever it carves out "property" rights, the legal system is engaged in the process of *creating* monetary worth [...] I am proposing we do the same with eagles and wilderness areas as we do with copyrighted works, patented inventions, and privacy: *make* the violation of rights in them to be a cost by declaring the "pirating" of them to be the invasion of a property interest[71].

Not so much a moral responsibility that accounts for an agency or an intelligence, but the imposition of a centre of imputation of economic interests and value[72], a market in which these newly born persons seem to have a say in as much as they prove to be *worthy*, mirroring the utilitarian worry about the worth or value of certain humans in face of other animals.

In his efforts to understand the phenomena of government and administration, Foucault presented the market as "a place of truth" (*lieu de vérité*) or "veridiction", and as "a place of justice" (*lieu de justice*) or "jurisdiction"[73], in other words, not the place where truth and justice are *found,* but rather, the place where truth and justice are *constructed*. This truth is fabricated on account of the supposed "natural" self-regulation of the market, that provides a "natural price" and in turn serves as the norm for measuring the "good government"[74]. Foucault's intention, of course, was that of tracing the practice of the frugality of government alongside the appearance of economic and political liberalism, but this idea can be extrapolated in order to see how, in the pragmatics of the law —which for Stone is always

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69 Christopher Stone, *Should Trees Have Standing?*, p. 8.

70 He provides the (not very felicitous) example of a lawn that "wants (needs) water [...] by a certain dryness of the blades and soil —immediately obvious to the touch— the appearance of bald spots, yellowing, and lack of springiness after being walked on": Christopher Stone, *Should Trees Have Standing?*, p. 11. One would have to wonder at the very least whether the lawn wants or needs to be walked on.

71 Christopher Stone, *Should Trees Have Standing?*, pp. 13 – 14. The emphases are Stone's.

72 Interestingly, Stone claims his views were criticised as a "transparently communistic agenda", since the personalisation of all these entities would imply the disappearance of the concept of ownership: Christopher Stone, *Should Trees Have Standing?*, p. xv.

73 Michel Foucault, *Naissance de la biopolitique : Cours au Collège de France 1978-1979* (Paris : Galimard, 2004), pp. 31 – 32.

74 Michel Foucault, *Naissance de la biopolitique,* pp. 33 – 34.

compelled towards the "creation of monetary worth"— the procedure of personalisation becomes a tactic aimed at that very purpose, by introducing the agency of these entities as assets in the interplay of a market economy.

Disguised as the fulfilment of moral obligations that stem from a certain form of intelligence, the consecration of these entities as persons allows to dissect and dispose of them in their worth, for in their scarcity and in their uniqueness, they become susceptible of being protected as a free self-regulating market would, not by simply making them unavailable for human commerce —as the actual procedure of consecration would in Roman law—, but instead assessing the truth and the justice of their very existence in terms of value, or in other words, in terms of the utility they serve, in terms of the worthiness and the usefulness of their protection under the general rules of supply and demand.

Foucault forwards the encompassing notion of *interests* as the interplay between exchange —the fabrication of a truth via a "natural price" that regulates itself— and utility, which constitutes a "limit to public power" that is to be "exercised only where it is positively and precisely useful"[75]. Thus, where Foucault reads the government as an appropriate administration of interests, as a manipulation thereof[76], one could read the personalisation of these entities as the gate by which they are transformed into interests themselves, and thus subjected to a process of governmentality. In this sense, not only trees but all of the living becomes a category that is not protected by personhood because it deserves or has a right to be protected, but instead a category that becomes more valuable precisely because it is invested with this aura of scarcity, unavailability, and utmost value; in sum, protected through the *persona* because it is in the human interest to economically dispose and utilise the living.

This protection or acknowledgement comes, then, with a certain form of subjection, that, always extrapolating from Foucault, can be read as a form of calculation or rationality[77], that is, as a way of transforming these *res* into "economical subjects" (*sujets économiques*) or "subjects of interest" (*sujets d'intérêt*)[78], that respond not to the good-will of a moral stance, but to the market as the place whey their truth as persons is established, and its living status administered in the justice of scarcity and distribution.

Thus, an agency without authorship, disseminated but manageable, that on account of its worth is invested with the mantle of personhood, serving here as the catalyser that allows to construct a truth upon their very disposition, be it economical or biopolitical.

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75 Michel Foucault, *Naissance de la biopolitique,* p. 46.

76 "A complex game between individual and collective interests, social utility and economic profit, between the equilibrium of the market and the regime of public power, it is a complex game between fundamental rights and independence of the governed": Michel Foucault, *Naissance de la biopolitique,* p. 46.

77 Michel Foucault, *Naissance de la biopolitique,* p. 315.

78 Michel Foucault, *Naissance de la biopolitique,* p. 316.

Recurrent as it is nowadays, the idea of a personified nature is not an invention of the 21st century. In his *Natural History*, for instance, Pliny says that Earth (*terra*) is venerated as a mother because of its merits, adding that "she belongs to men (*hominum*) as the sky belongs to god" and characterising it —or rather, her— as "kind and gentle and indulgent, ever a handmaid in the service of mortals" (*benigna, mitis, indulgens, ususque mortalium semper ancilla*)[79]. His literary personification moves forward as to identify in earth a body that is tortured, dissected, disembowelled:

> Water, iron, wood, fire, stone, growing crops, are employed to torture her at all hours, and much more to make her minister to our luxuries than our sustenance. Yet in order to make the sufferings inflicted on her surface and mere outer skin seem endurable, we probe her entrails, digging into her veins of gold and silver and mines of copper and lead; we actually drive shafts down into the depth to search for gems and certain tiny stones; we drag out her entrails, we seek a jewel merely to be worn upon a finger[80].

In contrast, later in the text Pliny speaks about the pre-eminence of *men* among all other animals —or to be more precise, among those who are animated (*animantium*)—, saying that "the first place will rightly be assigned to man (*homini*) for whose sake 'great nature' (*natura magna*) appears to have created all other things (*cuncta alia genuisse*)". He adds that men must pay "a cruel price" for the place they occupy, however, to the point where it is "hardly possible to judge whether [nature] has been more a kind parent to man or more a harsh stepmother", for even though nature provides humans with seemingly endless resources, it also casts "man alone [...] naked on the naked ground [...] wailing and weeping", so that any trace of a smile takes weeks to appear in the faces of infants[81]. Infancy, moreover, is a period of "bondage":

> And thus when successfully born he lies with hands and feet in shackles, weeping —the animal that is to lord it over all the rest, and he initiates his life with punishment because of one fault only, the fault of being born [...] On man alone of living creatures is bestowed grief, on him alone luxury [...] he alone has ambition, avarice, immeasurable appetite for life, superstition, anxiety about burial and even about what will happen after he is no more. No creature's life is more precarious, none

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79 Pliny, *Natural History*, Vol 1, trans. by H Rachkham (Cambridge: Harvard University Press – Loeb Classic Library, 1955), 2. 58. 154 – 156, pp. 289 – 291.

80 Pliny, *Natural History* Vol 1, 2. 58. 157 – 158, pp. 292 – 293.

81 All of this in Pliny, *Natural History*, Vol 2, trans. by H Rachkham (Cambridge: Harvard University Press – Loeb Classic Library, 1957), 7. 1. 1 – 2, pp. 506 – 507.

> has a greater lust for all enjoyments, a more confused timidity, a fiercer rage[82].

Prodigal as it is harsh, it seems nature gives and takes in the same capricious fashion as any other god.

An antipode of this personification —quite common also in different latitudes— can be found in Spinoza. As counterintuitive as it would seem to seek a different point of view in a thought renowned for equating the substance of god with nature[83], and that has been accused of pantheism, panentheism, and atheism practically at the same time[84], Spinoza is adamant in his efforts to remove any notion of (good or bad) will in nature, any sort of agency that stems from o appertains to it[85].

In the appendix of the first part of his *Ethica*, Spinoza says that if "men (*homines*) think of themselves as free", it is because they are not ever conscious about the causes of their appetite and their will, and because "[they] always act for the sake of an end" (*homines omnia propter finem agere*), imputing such an end to everything around them, from the "eyes for seeing and the teeth for eating" to the "sun for illuminating and the sea for nourishing fishes"[86]. This tendency, Spinoza says, explains why those *homines* take everything in nature —all things (*res*)— to be useful means (*media*) for their purpose, and whenever something is not made for their convenience, such as tempests and disease, they take it to be the judgements of the gods that surpass human affairs. He says that, nevertheless, "nature has no preassigned end to itself, and that all final causes are nothing but human inventions (*figmenta*)", particularly inventions that "everyone has decided according to the arrangement of the brain (*pro dispositione cerebri*) or [...] as affections of the imagination (*imaginationis affectiones*)"[87].

Perhaps the clearest instance of this critique comes in the use Spinoza gives to the term *conatus*, which as Godani points out, is equivocal and "perverted" —in the literal sense of turned around or overturned— in the *Ethica*. From designating "a thrust, an effort, or a tendency that one does not struggle to imagine as *characteristic of life itself*", in Spinoza the

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82 Pliny, *Natural History Vol 2*, 7. 1. 3 – 5, pp. 508 – 509.

83 "For we show in the appendix of the first part that nature does not act for the sake of an end; indeed, that eternal and infinite being, which we call God or nature (*Deum seu naturam appellamus*), acts with the same necessity by which it exists": Spinoza, *Ethica*, IV, *praef.* Same idea later on when he says, non-coincidentally, that "it is not possible for man not to be part of nature", which he "demonstrates" by saying that "the power by which singular things, and consequently man, are conserved, is the same as the power of God or nature (*est ipsa Dei sive natua potentia*)": *Ethica*, IV, *prop.* 4. This is an idea that is expressed from the very beginning, where Spinoza claims that "no substance can be given or conceived outside of God (*extra Deum*)" and that "whatever is, is in God, and nothing without God (*nihil sine Deo*) can be conceived": Spinoza, *Ethica*, I, *props.* 14 and 15.

84 For a recollection of the documents of the famous *querelle*, see Pierre-Henri Tavoillot, *Le crépuscule des Lumières : les documents de la « querelle du panthéisme » 1780-1789* (Paris : Éditions du Cerf, 1995).

85 The contrast is even more interesting given that Pliny uses a very close phrasing to that of Spinoza, saying that "the power of nature is that which we call god" (*naturae potentia, idque esse quod deum vocemus*): Pliny, *Natural History Vol 1*, 2. 5. 27, pp. 186 – 509.

86 Spinoza, *Ethica*, I, *appendix.*

87 Spinoza, *Ethica*, I, *appendix*.

conatus "plays an almost inverse role: indicating the *static persistence* of every being"[88]. In this sense, Spinoza claims that "each thing (*res*) strives (*conatus*) to persist in its own existence"[89], and that such an effort to persist in being "is nothing beyond the actual essence of the thing itself (*ipsius rei*)"[90]. In a framework of a nature that is consubstantial to god, *i.e.*, in a movement that constitutes some sort of *inertia*, things are perpetually striving to persist what they already are. This includes the "mind" (*mens*), that not only strives to persist in being as everything else, but "it is also conscious of its effort (*et hujus sui conatus est conscia*)", a consciousness that is called "will" (*voluntas*) when it refers exclusively to the mind, and "appetite" (*appetitus*) when it refers to both the mind and the body[91]. It is only here that anything like a will appears in terms of mind and consciousness, decidedly not in the terms of a nature that looks to provide and punish, that has ends in itself other than those who are illicitly ascribed to it by the ones that actually possess a will and an appetite.

What's noticeable is that Spinoza is careful to speak of *things*: not bodies, not animals, not humans. As we have seen, this is not because of a lack of vocabulary, since he addresses the body —specifically the human body— time and again, and since he also speaks, for instance, of "irrational animals" or "brutes" as capable of feeling[92]. Instead, his choice of words comes in harmony with a nature that accounts for a totality that has no ends, nor is it a means subservient to human desire, regardless of whether part of said totality is classified as alive. The *conatus*, as Godani says, "has nothing to do with a vital impulse", since Spinoza "attributes it to *every single thing*: an atom, a stone, this house, no less than plants, animals, and humans, possess a *conatus* [...] the conatus indicates only this: the being-there (*esserci*) of a thing that is"[93]. In other words, every entity of the reality that we address as nature is characterised neither by its generosity nor by its cruelty, and not even by the contingency of living, but by the inertia of merely being there.

A similar approach can be found in Nietzsche[94]. Referring to Spinoza, Nietzsche rejects the instinct of conservation as the "cardinal instinct of an organic being", saying that "above all, something living (*etwas Lebendiges*) wants to unleash its force" in as much as "life itself is will to power"[95]. Given that Nietzsche addresses the will as a "verbal unity", that is, as a composite gathering "a plurality of feelings (*Gefühlen*)" alongside "a thought (*Gedanken*)

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88 Paolo Godani, *Il corpo e il cosmo*, pp. 117 – 118.

89 Spinoza, *Ethica*, III, *prop.* 6.

90 Spinoza, *Ethica*, III, *prop.* 7.

91 Spinoza, *Ethica*, III, *prop.* 9 and *scholium*.

92 Spinoza, *Ethica*, III, *prop.* 57, *scholium*.

93 Paolo Godani, *Il corpo e il cosmo*, p. 118. In Italian, "*esserci*" is the literal translation of "*Dasein*", with all is Heideggerian background, which Godani evidently has in mind. Hence why I translate it as "being-there".

94 For another dialogue between Spinoza and Nietzsche, see Elettra Stimilli, *Filosofia dei mezzi*, pp. 86 – 92.

95 Friedrich Nietzsche, *Jenseits von Gut und Böse: Vorspiel einer Philosophie der Zukunft* (Hamburg: Meiner Verlag, 2013), §13, pp. 19 – 20. I am basing my own translation on the French and the Spanish versions: Friedrich Nietzsche, « Par-delà bien et mal : prélude à une philosophie de l'avenir » dans *Œuvres*, trad. par Patrick Wotling (Paris : Flammarion, 2020) and Friedrich Nietzsche, *Más allá del bien y del mal,* trad. de Ariel Sánchez Pascual (Madrid: Alianza, 1997). See also: Friedrich Nietzsche, *Beyond Good and Evil: Prelude to a Philosophy of the Future* (Cambridge: Cambridge University Press, 2002).

that commands" and "an affect (*Affekt*) of superiority"[96], and given his references to the "organic processes and functions"[97]; it is easy to see how no "teleological principles"[98] can be found in nature, for conservation —*mutatis mutandis*, the *conatus*— is not that which moves the living, but rather the will to power that is indistinguishable from life itself.

Nietzsche addresses the matter even more directly by saying that we must "beware of thinking that the world is a living being (*ein lebendiges Wesen*)", for not only do we scarcely know what the organic actually is, but we would be wrong to take for "general, essential, [and] eternal" that which, being "unspeakably derived, late, rare, [and] accidental", is only found on the cortex of Earth[99]. "The formation of the organic", he adds, is by no means the rule, but instead "the exception of the exceptions", in no way translatable or transposable to any other entities, and its attribution with human characteristics, appetites, or moral judgements seems to him out of the question, given that the universe "absolutely does not strive to imitate humans (*den Menschen nachzuahmen*)"[100]. It seems evident that, if there is such a thing as an *imitatio* regarding nature, it is one where artificers imitate nature, just as medieval jurists envisioned, and not the other way around. In this framework of chaos, no purposes, no laws, and no means, but only an accidentally organic matter:

> Let us beware of saying that there are laws in nature. There are only necessities: there is no one who commands, no one who obeys, no one who transgresses. If you know that there are no purposes, then you also know that there is no chance: for only alongside a world of purposes does the word "chance" make sense. Let us beware of saying that death is opposed to life. The living is only a type of the dead (*Das Lebende ist nur eine Art des Todten*), and a very rare type at that [...] matter is as much an error as the God of the Eleatics[101].

Being an exception among exceptions, it is not surprising that life has also been rejected as a necessity for entities to be invested with personhood, subjecthood, and the protection that they supposedly ensure.

Calling upon a "dislocation of personhood" and attempting to combat "the neoliberal hegemony by appealing to cooperative interpretations of evolutionary principles", Federico Luisetti has recently proposed "an ecology of nonlife", whose "protagonists are nonbiological subjects that resist the neoliberal globalisation of nature"[102]. From the opposite shore of

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96 Friedrich Nietzsche, *Jenseits von Gut und Böse,* §19, p. 24.

97 Friedrich Nietzsche, *Jenseits von Gut und Böse,* §36, pp. 46 and ff.

98 Friedrich Nietzsche, *Jenseits von Gut und Böse,* §13, pp. 19 – 20.

99 Friedrich Nietzsche, *Die fröhliche Wissenschaft* (Hamburg: Meiner Verlag, 2014), §109, p. 121. The French translation in Nietzsche, *Œuvres*, pp. 140 – 151.

100 Friedrich Nietzsche, *Die fröhliche Wissenschaft,* §109, p. 122.

101 Friedrich Nietzsche, *Die fröhliche Wissenschaft,* §109, p. 122.

102 Federico Luisetti, *Nonhuman Subjects: An Ecology of Earth-Beings* (Cambridge: Cambridge University Press, 2023), pp. 3 – 5.

Nietzsche and Spinoza, Luisetti argues that "rocks, ice, water, and air are now perceived as ecological, legal, and political subjects, the most vulnerable beings in the neoliberal planet"[103]. Although he does not clarify who exactly is the *perceiver* of these newly born subjects —clearly deprived of self-consciousness—, and although the resistance he predicates comes closer to the Spinozian *conatus* that strives in the fact of being than in the effort of resisting[104], Luisetti forwards a critique to this "biocentric" approach and proposes a much broader arrange of subjects, that need not be occupied with *living*:

> Emerging multispecies people (mountain-people, river-people, desert-people) ask that we rethink the terrestrial condition from the perspective of subjects that are not persons or alive, as organisms are. These beings belong to a relational field, but their eccentric subjectivity troubles biocentric conceptions of life and personhood. They disclose subjective worlds within the planetary world, removed from the history of life[105].

What Luisetti calls here an "emergence of multispecies people" seems to be more precisely the emergence of a classification of several non-living entities *as if they were people*, that is, the emergence of a discourse, of a new taxonomy whose veridiction and jurisdiction takes the presence of an entity as sufficient for its qualification as a subject: a discourse that transmutes objects into subjects, that takes every *Körper* as a *Leib*.

Granted, Luisetti does not envision every non-living entity as part of his eccentric ecology. Instead, he confines it to what he calls "geobodies" or "earth-beings" —that is, entities that are not artificially produced—, for even if "stones, air, and waterbodies do not communicate, feel, and think as biological organisms", they do share with humans and other organisms the "terrestrial condition"[106]. In this framework, he claims that the fact that some non-living entities are being recognised as subjects, most prominently via legal instruments, proves that these "natural entities are now joining [the] field of biosocial morality"[107], guarding his distance, he says, from new forms of animism, totemism, or even Christian symbolism regarding nature[108]. Ultimately, Luisetti poses that "stones, valleys, air, ice, and waterbodies are *revealed* —the emphasis is mine— as ecopolitical subjects", and that this "decolonial ecology [...] disentangles geobodies from the language of life and the *dispositif* of Western personhood" [109].

This "revelation of subjects" and this disentanglement from the *dispositif* of Western personhood does not seem to be sound. As we have seen, the classification of certain non-

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103 Federico Luisetti, *Nonhuman Subjects*, p. 5.

104 On the discourse of life as resistance, see Michel Foucault, *Naissance de la clinique* (Paris : Presses Universitaires de France, 2009), pp. 125 and ff, especially pp. 147 – 149.

105 Federico Luisetti, *Nonhuman Subjects*, p. 5.

106 Federico Luisetti, *Nonhuman Subjects*, p. 14.

107 Federico Luisetti, *Nonhuman Subjects*, p. 22.

108 Federico Luisetti, *Nonhuman Subjects*, pp. 11; 18.

109 Federico Luisetti, *Nonhuman Subjects*, p. 11.

living entities as subjects is already deeply entangled with —and it even springs from— the mechanism of personhood, which allows to render entities disposable and imputable by a *dispositif of sécurité*, which in turn encompasses the functioning of the whole juridical apparatus.

Moreover, subjection, on Luisetti's account, seems to be part of the very essence or nature of entities, one among several characteristics that apparently surge from the fact of these entities' being-there, a metaphysical category that can appear just as form or colour in Aristotle. Subjects, however, do not simply emerge in the world, nor are they uncovered as treasures that were hiding below a cortex of prejudices. Subjects are produced, fabricated, apprehended, tied down and *subjected* precisely by discourses, practices, and classifications. In fact, Luisetti comes close to this idea when he says that these entities belong "to a relational field", meaning, I assume, that these bodies interact with organisms, or allow organisms to be, as a milieu in which they can exist. The problem, however, is that a subject's interaction with other entities does not communicate its status; subjecthood is not some sort of Midas' touch by means of which the contact of one body provides another with its characteristics. Rather, subjecthood is a process of rendering or arranging something, as the emergence of this new taxonomy would imply.

While the idea of resisting or opposing a colonial and neoliberal hegemony is appealing, what Luisetti calls a revelation or an emergence is not the description of a phenomenon that begins to uncover and arrive, on the contrary, it is symptomatic of such a taxonomy that renders an entity worthy in the utilitarian sense and valuable as an "economic subject", capable of its own "interests".

Upon this ecology of nonlife, it would not be absurd to think that a natural occurring *substance*, with a vast relational field and an extremely evident economic worth, such as petroleum —literally an oil from rocks— would *emerge* as a subject in its exasperating need to be protected due to its scarcity, its usefulness, and its value [110]. In this case, the golden touch of subjecthood turns out benefitting the very hegemony that it supposedly resists. Conversely, one could argue that the very interstice of life and death that is a virus, as we have witnessed, is actually quite capable of resisting and even challenging the neoliberal economy, and in that sense its interest to reproduce incessantly is to be addressed as sufficiently considerable for it to have a say in the plurality of subjects that reject ecocentrism.

What Luisetti does is in fact what both Nietzsche and Foucault denounce as a mistake, that is, believing that something flows or arrives *ex nihilo*, in Foucault's case, the subject; in Nietzsche's case, morality; and for both, the very notion of truth: believing that such an arrival or appearance has no history, no set of knowledges and practices that constitute it, no power relations attached to it. In this eccentric ecology, subjects are begotten as an *Ursprung*, when in reality they are not surging but being invented, classified, named, disposed of. The actual emergence, always historically situated, is that of a *dispositif* that uses personhood and subjecthood to re-arrange not only the living, but also the inert.

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[110] Hermitte touches briefly on this hypothetical: Marie-Angèle Hermitte, « La nature, sujet de droit ? » dans *Annales. Histoire, Sciences Sociales*, 1 (EHESS : 2011), p. 175.

A new mosaic seems indeed to be arranged, not upon the Subject as an eminent category of distinction, dominion, and dignity, but upon a subjection by means of which the concept of subject becomes an all-encompassing term, that includes the totality of the *summa divisio*. If everything that exists —by this mere fact— is rendered a subject, then the circular prison has closed upon itself, for the subject is no longer the eminent distinction of the *persona*, but the substratum of a *res*: the void that gathers and embraces everything that is.

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In this metamorphosis of nature into a subject of rights, or rather, into an infinity of subjects, Yan Thomas sees the persistence of a certain anthropocentrism, however unintended, since "whatever our thoughts and discourses, the values we claim to protect only exist by the very act by which we declare them to be values", and since the "nature instituted as a subject" only makes sense in the framework of the very human act of institutionalising, so that "man (*l'homme*) is at the centre of the fiction that nature is a subject just as much as he is [at the centre] of the contrary fiction that it is an object" [111].

Rather than a full *personalisation*, that is, the metamorphosis of a *thing* into a *person*, Marie-Angèle Hermitte poses that it may be possible to think about these transformations as forms of *personification*, that is, as figures of speech. She argues that there are "subtle mechanisms of personification at work" when "animals, plants, and various elements of nature" interact with juridical constructs, even if they do "remain things". She provides examples of how the law may attribute traditionally human characters to non-human entities (suffering, reason, affection), which she calls "substantive personification"; or how some of these entities may acquire a certain "voice" during legal procedures (such as trees or rivers representing "their own interests"), which she calls "procedural personification"[112]. In this sense, rather than expanding upon the metaphysics of what a person is, the question returns to the casuistic issues that are resolved via an artifact such as fiction, for, as Hermitte says, "even when there is personification, the shadow of the thing remains visible"[113].

By now, there is a surprisingly vast array of juridical instruments that take what in principle would be non-living entities (rivers, mountain ranges, ecosystems) and render them persons or subject(s) of right(s). At the very least, the examples outnumber the cases of non-human animals that have been addressed as *personae*, which, as anticipated, seems to convey the fact that the extension of personhood or subjecthood is more easily performed towards entities sufficiently far away from the traditional frontiers of personhood, so as not to trace an uncanny valley of sorts, as would be the case with certain animals or, for that matter, with artificial intelligences. Hermitte herself refers to article 120 of the Swiss Constitution of 1999

[111] All of this in Yan Thomas, *Le sujet de droit*, p. 93.
[112] Marie-Angèle Hermitte, *La nature, sujet de droit ?*, 173 – 212, pp. 175 – 176.
[113] Marie-Angèle Hermitte, *La nature, sujet de droit ?*, p. 182.

as the "extreme point or personification of non-humans", since it speaks about the "dignity of the creature" (*der Würde der Kreatur*) —that is, of everything created[114].

However, there are several other instances where this personification —extreme, as Hermitte calls it— involves in fact an actual effort of *personalising*, of investing with *personae* and its subjection a plurality of entities that do not simply acquire some superficial characters. These examples have been adding up in the last years via different juridical manifestations, and I will limit myself to a couple of mentions that show the deeply puzzling issues that arise on account of such *personalisations*.

After Switzerland's recognition of dignity, in any case confined to the living, the Ecuadorian Constitution of 2008 was a pioneer in establishing that "nature shall be the subject of those rights that are recognised to it by the Constitution"[115], particularly the right of "nature or Pacha Mama" to have "its existence fully respected", to its "preservation and regeneration of its vital cycles, structure, functions, and evolutionary processes" and to its "restauration"[116].

In 2016, the adjudication came from the judiciary, when the Constitutional Court of Colombia declared the Atrato River a "subject of rights", ordering its "protection, conservation, preservation, and restoration", entrusting the tutorship and legal representation of the river's rights to the state and the ethnic communities that inhabit the river's basin[117]. From then on, several other entities have acquired the status of subjects of rights via many different judicial rulings of different levels: from the Colombian Amazonia and the Páramo de Pisba in 2018, to several other rivers in the years following the Constitutional Court's decision. Perhaps most intriguing is how, in 2023, the Colombian Special Peace Jurisdiction declared that the Cauca River not only was a "subject of rights", but also a "victim" of the armed conflict[118]. The recognition as victim relies upon the premise that "the first requirement for the accreditation [of a victim status] is the expression of will", which in the case of the Cauca River was conveyed by the communities that inhabit the river basin, who endured, for many years, the passage of countless people being murdered and thrown into the river, turning it into a "mass grave", with gruesome practices that included burning and filling the bodies with rocks, as well as the visual exposure of the bodies going down the river as a form of intimidation.

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114 *Bundesverfassung der Schweizerischen Eidgenossenschaft* (1999), art. 120 – 2. Hermitte's discussion of the provision is quite interesting. The German, French, and Italian versions of the Swiss Constitution are all official, but while the German and the Italian versions utilise this formula of "dignity of the creature", the French version speaks of the "integrity of living organisms" (*l'intégrité des organismes vivants*). Hermitte points out that this reference to dignity "leaves one perplexed", since "it imposes itself on the persons who cannot, even if they want to, adopt or accept behaviours that would degrade the ideal image that society has of humanity. It is therefore difficult to see how one could impose on a poppy to behave like an ideal poppy": Marie-Angèle Hermitte, *La nature, sujet de droit ?*, pp. 187 – 188.

115 *Constitución de la República del Ecuador* (2008), art. 10

116 *Constitución de la República del Ecuador* (2008), arts. 71 – 72.

117 Corte Constitucional de Colombia, *Sentencia T-622 de 2016*.

118 Jurisdicción Especial para la Paz (JEP) de Colombia, *Auto No. 226 del 11 de julio de 2023*. This ruling gathers all the other instances in which the judiciary has invested non-organic entities with personhood.

The legal effects and their philosophical meaning of this personalisation are puzzling. Firstly, the ruling equates subject and person, saying that the concept of legal personhood does not fall "exclusively upon natural persons, but upon entities with the possibility of being titular of rights, obligations, and judicial representation"[119], from which the court seems to derive that any person is a subject, and any subject is a person. Secondly, since the river has to express its *own will*, the court understands not only that communities can *speak for* the river —the procedural personification that Hermitte analyses—, but it also seems to understand that the suffering of these communities constitutes or makes part of the "suffering" of the river[120], almost as if the communities themselves were not sufficiently capable to embody and convey their own suffering, and needed instead a channel via which they could express and somehow validate what they endured. In other words, the personalisation of the river in this case serves as an amplifier of human suffering and human will, the very literal mask through which the voice re-sounds and without which, one would have to assume, such a voice would be left unheard in the theatre of the juridical procedures: a *per-sona.*

This is also accentuated by another of the court's arguments, which considers the rights of future generations to benefit *from* the river and *from* the environment[121], so that the river is subjectified on account of its function and its purpose, on account of its utility and its instrumentality, and not because of its "own standing", because of some supposedly moral progress, or because of some "eccentric subjectivity". Instead, this illustrates the residual anthropocentrism that Yan Thomas emphasises, and poses that indeed, just as Spinoza and Nietzsche envisioned, it is the human will, affection, or desire that performs the re-arrangement of the mosaic of personhood, creating the foreground actors that embody the authors in the background, creating the means that are taken as if they were ends, ultimately creating the feigned *personae* whose shadows denounces the whole fabrication.

A different approach shows itself in what are perhaps the most renowned cases in personalisation of non-living entities so far: the Te Awa Tupua River, declared by the Parliament of New Zealand as a "legal person", with "all the rights, powers, duties, and liabilities of a legal person" in 2017[122]; and the Ganges and Yamuna Rivers in India, who were declared "juristic/legal persons/living entities" on the same year:

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119 Jurisdicción Especial para la Paz, *Auto No. 226 del 11 de julio de 2023*, p. 22.

120 Jurisdicción Especial para la Paz, *Auto No. 226 del 11 de julio de 2023*, pp. 14 and 24.

121 A similar set of arguments was produced for the declaration of the Lagoon of Mar Menor in Spain as a subject of rights with legal personhood. The law that operated the declaration addressed that it was necessary "to take a qualitative leap [...] in line with international legal vanguard and the global movement for the recognition of nature's rights", recognising the lagoon and its ecosystem in this fashion "based on its intrinsic ecological value and intergenerational solidarity, thus guaranteeing its protection for future generations", which in turn "strengthens and expands the rights of the people living in the lagoon area, who are threatened by ecological degradation: the so-called biocultural rights". It must also be noted that the declaration aimed for "autonomous governance of the coastal lagoon": a transparent ensemble of governmentality practices. For all this see: Cortes Generales de España, *Ley 19/2022, de 30 de septiembre, para el reconocimiento de personalidad jurídica a la laguna del Mar Menor y su cuenca*.

122 Parliament of New Zealand, *Te Awa Tupua (Whanganui River Claims Settlement) Act 2017*, part 2, subpart 2, §14. Back in 2014, the Te Urewera area was declared a "legal entity" including the same set of "rights, powers, duties, and liabilities of a legal person": Parliament of New Zealand, *Te Urewera Act 2014*, part 1, subpart 3, §11.

> Accordingly, while exercising the *parens patrie* jurisdiction, the Rivers Ganga and Yamuna, all their tributaries, streams, every natural water flowing with flow continuously or intermittently of these rivers, are declared as juristic/legal persons/living entities having the status of a legal person with all corresponding rights, duties and liabilities of a living person in order to preserve and conserve river Ganga and Yamuna[123].

This is, of course, not the place to address the similarities or the differences between legal systems, contexts, or decisions[124]. What is interesting in these cases, is that the fiction of personhood calls for these entities to be taken *as if they were* living beings, and it is only in the fact that they are *alive* that they can become persons, once again, in a form that can be enunciated as 'you belong (to the living), therefore you are (a person)'[125].

One could certainly argue that life need not be defined in terms of organs, organisms, or species, that instead an ecosystem such as a river or a mountain range holds in itself sufficient characteristics of life that it can be deemed as living in and by itself, and that, therefore, in providing these entities with personhood it is not a matter of an *as if*, but rather a description of what life means from a more expansive view. In this instance, the debate goes back to what Innocent IV called "names of the law, and not persons" (*haec nomina sunt iuris et non personarum*)[126], and to life being not a property of the entities, but rather this gliding threshold that taxonomy, biology, law, or any given discursive practice can arrange and rearrange at will.

From the perspective of the juridical, the act of personifying to the point of personalising is not as revolutionary or as useful as it may seem. As Marie-Angèle Hermitte claims, "to pass off (*faire passer*) the elements of nature into the category of persons does not change the structure of categories". Instead, she poses, what would be "much more disruptive to the coherence of the law" would be "to introduce a *sui generis*, third category between persons and things [...], forging a new anthropology of cohabitation where the law has a role to play alongside politics, sciences, and philosophies"[127]. This third way, however, would at least require a simultaneous revisiting of the notion of subject as well as the acknowledgement that nature will not come to be anything other than it already is.

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123 High Court of Uttarakhand at Nainital (India), *Opinion on Writ Petition (PIL) No.126 of 2014* (March 20, 2017), p. 11. The court arrives at this conclusion, among others, by considering the personhood of idols, images, and deities in the Indian judicial precedent.

124 See Victor David, « La nouvelle vague des droits de la nature : La personnalité juridique reconnue aux fleuves Whanganui, Gange et Yamuna » dans *Revue juridique de l'environnement* 3, 42 (2017) 409 – 424.

125 "Te Awa Tupua is an indivisible and living whole from the mountains to the sea, incorporating the Whanganui River and all of its physical and metaphysical elements": Parliament of New Zealand, *Te Awa Tupua (Whanganui River Claims Settlement) Act 2017*, part 2, subpart 2, §13 (b).

126 Innocent IV, *Apparatus in quinque libros decretalium*, lib. 5, tit. 39, c. 57. 1, f. 557.

127 Marie-Angèle Hermitte, *La nature, sujet de droit ?,* p. 201 – 202.

On this note, perhaps the most alluring idea is a fairly neutral one —if such a thing can be said in the realm of subjection—, provided by Haraway:

> So, nature is not a physical place to which one can go, nor a treasure to fence in or bank, nor as essence to be saved or violated. Nature is not hidden and so does not need to be unveiled. Nature is not a text to be read in the codes of mathematics and biomedicine. It is not the "other" who offers origin, replenishment, and service. Neither mother, nurse, nor slave, nature is not matrix, resource, or tool for the reproduction of man.
>
> Nature is, however, a *topos*, a place, in the sense of a rhetorician's place or topic for consideration of common themes; nature is, strictly, a commonplace [...] Nature is also a *trópos*, a trope. It is figure, construction, artifact, movement, displacement. Nature cannot pre-exist its construction[128].

Populated and constructed by *subjects* persistently preoccupied with their ends and their means, *nature* —the institution— is a cartography traced upon a territory of entities that simply *are there*, in a *conatus* of existence and, every so often, in the exceptional accident of organic life. All of these entities may very well be better off by persisting as the much-needed soil upon which inhabitance is possible, the much-needed construction of a place in the world and in discourse, whose eradication is worrisome because it implies the annihilation of those very ends, of those very means, of those very worries. *Nature* —the substratum—, in any case, does not need to be a person or a subject, and it certainly does not need to imitate any *ars* in partitioning itself in categories that have no meaning beyond the boundaries of such a cartography:

> Do you want to live "according to nature (*Gemäss der Natur*)"? Oh, you noble Stoics, what a deception of words! Imagine a being like nature, extravagant without measure, indifferent without measure, without intentions and considerations, without mercy and justice, fertile and barren and uncertain at the same time, imagine the indifference itself as a power —how *could* you live according to this indifference? [...] Your pride wants to prescribe and assimilate to nature, even nature, your morality, your ideal [...] But this is an old eternal story: what happened with the Stoics then still happens today, as soon as a philosophy begins to believe in itself. It always creates the world in its own image (*die Welt nach ihrem Bilde*); it cannot do otherwise; philosophy is this tyrannical

[128] Donna Haraway, "The Promises of Monsters: A Regenerative Politics for Inappropriate/d Others", in *Cultural Studies*, ed. by Lawrence Grossberg et al. (New York: Routledge, 1991), 295 – 337, p. 296.

> impulse itself, the most spiritual will to power, to the "creation of the world'", to the *causa prima* [129].

Before moving forward into the effects of these metamorphosis, and the possibility of apertures and fragmentations in these seemingly solid processes, it is necessary to pay another visit to the cartography, this time in terms of the frontiers of fictions.

[129] Friedrich Nietzsche, *Jenseits von Gut und Böse,* §9, pp. 13 – 14.

4.3. The frontiers of fiction

In contrast to philosophy —or at least to part of its history—, for the law truth has been, since its virtual dawn, a rather malleable thing, a fabrication that by the very fact of being pronounced, glides over the facts, regardless of whether it conforms to them or negates them. In this sense, Ulpian coined the idea that "a matter that has been judged is taken as the truth" (*res iudicata pro veritate accipitur*)[130], or in other words, that a legal judgement determines, constructs, and *performs* its truth. The jurist Sigismondo Scaccia, in 1629, provided in turn what is perhaps the most literary account of why the *res iudicata* is taken as the truth:

> Because it turns white into black, creates an origin, equates squares to circles, ties with natural bonds of blood and provides the false with the effects of the true, concerning the effects of the law, although not essentially, and therefore it need not be concerned about how truth holds itself (*et ideo non est curandum qualiter se habeat veritas*)[131].

The law need not be concerned with the truth, because fiction —that "certainty of the false"[132], that "triumph of the false"[133] — plays an strategic role in the governmentality of the law, regardless of whether it is done in the name of justice (*ex iusta causa*), or more openly as a means to dispose of things that do not fit in the narrative that the juridical intends to create, thereby preserving itself despite its encounter with reality. If black becomes white[134], but "not essentially", it is because the falsity of fiction is far more ambiguous than a certainty or a triumph would suggest. Not only since it is possible to have a "coexistence of the true and the false" in the law, as Jean Bart poses, *v.gr.,* in the simulation of contracts[135], but because, in the specific case of fiction, it is "a falsehood known by everyone and admitted by everyone"[136]. When a certain falsehood is believed, assented, and sustained by everyone, it becomes the *fictive truth* upon which the law settles, regardless of whether something took place or not, and it is somehow "compulsory" to believe it did whenever a *res iudicata* asserts it happening: the truth of the judgement replaces the facts, not exclusively by the ministry of the law, but also by some sort of common agreement.

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130 Justinian, *Digesta*, 1.5.25. Also in Justinian, *Digesta*, 50.17.207.

131 Sigismondo Scaccia, *Tractatus de sententia, et re judicata* (Coloniae: Metternich et fili, 1738), gl. 14, q. 2, n. 7; p. 276.

132 Yan Thomas, *Fictio legis*, p. 17.

133 Jean Bart, *Fictio juris*, p. 27.

134 Or vice versa, as is the case with the Haitian Constitution.

135 Jean Bart, *Fictio juris*, p. 26. A concrete example is that of someone giving something away but hiding the donation behind a false sell. Counterintuitive as it may seem, this is a legal possibility even if the intention is indeed to trick others into believing a sell has occurred, and not a gift. The desired and actual juridical effect is "hidden behind a mask taking the form of a different act" or a different effect, the latter being "ostensible". Not the same as fictions, of course, but interesting nevertheless as part of the disposition of truth by the law.

136 Jean Bart, *Fictio juris*, p. 26.

Although the judgement is evidently juridical, there is nevertheless a certain exteriority to it, for the facts are taken, yet again, *as if* they had indeed occurred: they are both re-narrated and im-posed, resulting not only in the resolution of a certain matter on the juridical plain, but in a metamorphosis of the facts that are not to be seen as what they are —or more precisely, as what they were—, just as the square becomes a circle and the bonds of blood appear or disappear.

Giambattista Vico, who gracefully called ancient Roman law a "serious poem" and its jurisprudence a "rigorous poetry"[137], approached the matter of both persons and fictions in an appropriately poetic fashion. This is not the place to address the whole extension of Vico's work, but it is worth noting that, in his *Scienza Nuova,* he intended to perform a "philosophy of authority" that could demonstrate how "fables were true and rigorous histories (*vere e severe istorie*) of the customs of the most ancient peoples", and how "theological poets [...] founded the gentile nations with fables of the gods"[138].

Upon this framework, in which fable and truth are chronologically intertwined, and apparently simultaneously produced, Vico approaches the etymology of *persona* as mask, posing that "under the person or mask of a father of a family were hidden all of its children and its servants, under a royal name or the insignia of household were hidden all of its [relatives]"[139], so that famous names such as Ajax, Horace, and Roland, performing certain heroic deeds, were only a manner of speaking, a narration of what the family or household had performed. This stems from the fact that, according to Vico, "the authors of Roman law" inhabited a time in which they were not able to "understand intelligible universals" (*intendere universali intelligibili*), and therefore had to "make fantastic universals" (*fecero universali fantastici*) which were later re-produced as the names and persons in the forum[140]. He argues that, since these ancient authors "did not understand abstract forms, they imagined them corporeal [...] and animated", so that, for instance, "they feigned inheritance as the owner of hereditary things" (*finsero l'eredità signora delle robe ereditarie*)[141].

Fables were therefore true because, in a supposed inability to understand, these "early nations" recurred to poetic and narrative devices in order to grasp the essence of reality, and therefore any narration was true in as much as it showed reality for what it was through the prism of an early poetic fabrication. The conclusion Vico draws is that "ancient jurisprudence was all poetic", meaning that

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137 Giambattista Vico, *La scienza nuova* (Bari: Laterza, 1928), part 2, lib. 4. cap. 2; p. 119.

138 Giambattista Vico, *La scienza nuova,* part 1*, idea dell'opera*, §7; p. 9.

139 Giambattista Vico, *La scienza nuova*, §1033; pp. 121 – 122.

140 Giambattista Vico, *La scienza nuova*, §1033; pp. 121 – 122. Vico rejects the etymology of *persona* as *personare* (resound) given that theatres were sufficiently small for the voice to be heard without a mask, and instead poses that it comes from a verb —*personari*— that would mean "dressing in animal pelts, which was allowed to heroes", conjecturing via Hercules, that "Italians call characters (*personaggi*) men with a high degree and great representation", hence, *personae* with their eminent presence: §1034; p. 122.

141 Giambattista Vico, *La scienza nuova*, §1035; p. 123.

> it feigned facts as unfacts, unfacts as facts (*fingeva i fatti non fatti, i non fatti fatti*), the born as not-yet-born, the living as dead, the dead as living in their recumbent inheritances; it introduced so many empty masks without subjects, that were deemed "*iura imaginaria*", reasons fabled by fantasy; and it placed all its reputation on inventing such fables that would sustain the gravity of the laws and provide reason to the facts. Therefore, all the fictions of the ancient jurisprudence were masqueraded truths[142].

This is a fascinating passage. Not only does it recount the major instances of fictions of personhood in Ancient Rome as necessary mixtures of the true and the false, but it also provides a simultaneously compelling and disquieting idea: these masks, these *personae* have no subject behind them. In other words, these fictions provide a subjectless personhood, just as the one that seemed to have appeared with plants as imputable predicates without subject, or even in the more radical Deleuzian sense, in which "subjectivation" implies the erasure of all interiority and all identity, transposed here as the process of personalisation by means of which even a void can sustain the mask of personhood, just as indeed those who being dead remain alive, or those who without being born are nevertheless counted as already in existence.

Regardless of this idea, to which I shall come back further ahead, the interweavement between truth and falsehood is in itself noteworthy. Yet again, not so much a certainty of the false but instead some sort of no man's land in which neither the true nor the false prevail, a threshold in which one may easily become the other. This is grasped by Stefano Velotti, who argues that, in Vico, "the *logos* arises on a ground where truth and fiction are indistinct", a ground in which "speaking the truth" is the same as "telling a fable", and in which "language itself is 'fable' and 'myth', and is also *vera narratio*"[143]. Velotti argues that, upon Vico's account, "the spoken word […] necessarily claims" to speak the truth, even in its fabled form, so that "fiction—eternally unmaskable, revocable, and contingent— reveals itself as the necessary vehicle, as the supporting structure of truth"[144]. In other words, truth and falsehood sharing a *topos* without excluding one another.

This indistinction is not exclusive to Vico. For instance, Emilio Garroni's reading of the relationship between lying and literature, far away from Vico's pretension, poses that the difference between "real lies and non-lies", and the "literary lie", is found not only in the intention as "its first and unfathomable condition", but also in the fact that a literary work exhibits "something like a real and an actual indistinction between truthfulness and non-truthfulness"[145]. The reason is that a literary work finds its truth, its actuality —or, as Garroni says, its "veracity"— "in the very moment" in which we understand that it is "non-veridical",

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142 Giambattista Vico, *La scienza nuova*, §1036; p. 123.

143 Stefano Velotti, *Sapienti e Bestioni: Saggio sull'ignoranza, il sapere e la poesia in Giambattista Vico* (Parma: Pratiche Editrice, 1995), p. 94.

144 Stefano Velotti, *Sapienti e Bestioni*, p. 94.

145 Emilio Garroni, «Osservazioni sul mentire» in *Filmcritica* (Montepulciano: Il Grifo, 1989), 615 – 631, p. 628.

since the very conditions of a literary work are, "by definition [...] both veridical and deceitful"[146].

In other words, for a literary work not to be something other than it is, in order to avoid betraying its essence, it ought to remain truthful to its own fictionality, and always move through this interstitial space in which a falseness is necessarily seen as true, and truth is necessarily understood as false. Literary narration, Garroni acknowledges, is limited in terms of portraying reality, for it cannot "follow all the movements, all the changes in mood, all the modulations of expressions, all the hesitations, repetitions, vacuities, uncertainties [...] all the phenomenology of actions, all the nuances of characters' reactions"[147]. Instead, a literary narration operates by leaving behind certain elements, for —unlike the cartographers in Borges' short story— a narration does not intend to, nor is it capable of reduplicating reality, but it is only capable of *conveying* it, of re-presenting or imitating it: by all means a literal *as if*. In Garroni's words, "[a narration] must necessarily proceed by cuts, highlights, general considerations external or internal to the characters, by descriptive inserts that explain aspects of events or a single moment of action, in short, by glances thrown here and there, in order to reconstruct the narrative path temporally and spatially" [148].

Whether within the limited context of literary narration, or within Vico's conception of a *logos* that arrives at a truth via fiction, there exists a potentiality within this interstitial realm of indeterminacy, which, as we shall explore presently, may foster a different perspective regarding the interlacement between personhood and its plurality of fictions.

Turning back to the realm of legal fictions, Velotti highlights an intriguing evolution in Vico's thought regarding their function within the juridical. Back in 1708, seventeen years prior to the publication of *La scienza nuova*, Vico had already addressed legal fictions alongside legal interpretations, taking them as devices the law used to maintain itself immutable: "legal fictions —he says— were nothing else than productions of ancient jurisprudence and exceptions to the laws (*exceptiones legum*) by which the ancient legal experts [...] made facts conform to laws"[149]. In other words, in order to maintain the law as it is, facts had to be adjusted, the real truth bending in favour of the juridical fictive truth.

However, once Vico approaches this interplay between truth and falsehood, fictions no longer serve as an anomaly that preserves the *status quo* of the law —quite literally the exception that ratifies the rule—, but instead they become, as Velotti says, the "very condition for laws to appear [...] encompassed as the 'examples' that precede the 'abstract' concepts"[150], which the ancient authors were not capable to fully grasp, and for which they had to convey meaning and truth by means of fiction.

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146 Emilio Garroni, *Osservazioni sul mentire*, p. 629.

147 Emilio Garroni, *Imagine, linguaggio, figura: osservazioni e ipotesi* (Roma: Laterza, 2010), p. 93.

148 Emilio Garroni, *Imagine, linguaggio, figura,* p. 93.

149 Giambattista Vico, *De nostri tempore studiorum ratione : La méthode des études de notre temps* (Paris : Les Belles Lettres, 2010), xi, 77 – 79 ; p. 51.

150 Stefano Velotti, *Sapienti e Bestioni*, p. 147.

Indeed, Vico closes his disquisition by saying that "man (*uomo*) is nothing but mind, body, and speech (*mente, corpo e favella*), being speech in the middle of mind and body", and explaining that certainty regarding justice began "by the mute times of the body", that then passed to certain "ideas or formulas of words" via articulated speech, and "finally, with the entire scope of our human reason explained, it ended up concluding in the truth of ideas about the just, determined by reason from the ultimate circumstances of facts"[151].

If Vico's approach is sound, regardless of its historicity, fictions are therefore of such a texture that, whenever present, the borderlines between fictive truth and real truth become blurred and indistinguishable, a feature of fictionality that the *nomos* deploys not only or simply to modify its apprehension of facts when cases become difficult in the grammar of the law, but as anticipated, a mechanism that allows for the rearrangement of that very *nomos*, that allows to move its own frontiers: from the silence of the bodies to the universal formulas of reason, the truth of legal justice has been embodied by *fictive truths* that serve as the cartography upon which the law may settle. Fictions, as we shall see presently, may be seen as a moveable frontier, a neither false nor true narration that serves as a threshold by means of which the governmentality of the juridico-political can incorporate its exterior, taking the outside *as if* it were already within the realms of its corpus.

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Earlier, I presented juridical fictions as a synecdoche that would allow to unveil or foreshadow the virtually boundless territory of fiction itself. Unveiling a virtually boundless territory is clearly beyond my scope here, or my capacities for that matter. However, the synecdoche stands, for if legal fictions are indeed *fictions*, that is, not mere lies or falsehoods, it is not because of their juridical pedigree, as Bartolus posed, but rather because of their capability to render the true and the false indistinguishable from one another.

Fiction, on the other hand, is not by any means a monopoly of the juridical, and although aesthetics and literary theory are persistently occupied by fiction, providing an extensive corpus regarding its ontology, its epistemology, and its effects[152], I will content myself with a couple of accounts that follow on the aperture provided by legal fictions as a small part of a much larger domain, which could also provide a framework of comprehension for a set of bifurcating pathways that personhood has begun to develop.

The first account is that of a certain kind of acceptance in relation to fiction, the "falsehood known and accepted by everyone" that Jean Bart poses.

In a renowned passage of his *Biographia Literaria*, recounting the birth of the *Lyrical Ballads*, Samuel Taylor Coleridge wonders about a sort of poetry in which "incidents and agents were to be supernatural", and in which the interest would come "by the dramatic

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151 Giambattista Vico, *La scienza nuova*, §1045; p. 127.

152 For an introduction to the matter, see Alison James, Akihiro Kubo, Françoise Lavocat (eds), *The Routledge Handbook of Fiction and Belief* (New York: Routledge, 2024).

truth" of emotions that "would naturally accompany such situations, supposing them real"[153]. In other words, a framework of unreality in which real emotions appear, the natural appearing in the face (and because) of the super-natural, truth relying on supposition. Upon this idea, Coleridge wrote a felicitous passage summarising the notion of a "poetic faith" that allows this superposition of the real and the unreal:

> [...] my endeavours should be directed to persons and characters supernatural, or at least romantic; yet so as to transfer from our inward nature a human interest and a semblance of truth sufficient to procure for these shadows of imagination that willing suspension of disbelief for the moment, which constitutes poetic faith[154].

In this beautifully crafted definition of what it means to submerge oneself into the substance of fabrications, poetic faith calls for an assent of will. There is, first of all, an awareness: the content of this poem —this fabrication— is indeed supernatural, this poem negates reality, this poem is false. Such an awareness should be enough to reject it, to negate its falsehood, but instead of a mere will to believe, what Coleridge poses is that an interlude must be created between the awareness of its falsehood and the reaction it produces, an interlude that, willing and momentary, accepts the content as a non-truth that, nevertheless, is true in its presence and in its resemblance. Poetic faith, therefore, dwells neither in truth nor in falsehood, but in *veri-similitude*: sufficiently close to the true so as to displace its immediate rejection, sufficiently close to the false so as to beget this temporary and willing suspension of disbelief.

In other words, knowing that it is false, and nonetheless allowing it to speak *as if* it were true; knowing that Galatea is made of marble and believe in her pulsating veins and the warmth of her kiss; knowing that the soil is but a cartography, and yet inhabit it as if it were the actual territory. On this account, the shadows of imagination that are both persons and incidents —or persons and things, in a more familiar language— subsist because even though they are false, they do resemble the truth to the point of indistinction.

Fiction, a semblance of truth, which by definition is not the truth, works moreover as an act of faith, but not a faith *ex nihilo*. Further ahead, speaking about the effects of poorly written characters, Coleridge emphasises the distance between "fictitious" and "false" in terms of awareness, saying that "the reader not only *knows*" whenever a character or the circumstances are convoluted to the point of improbability, that is, whenever the sufficient semblance of truth is not achieved[155], but that "by the fruitless endeavours to make [the

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153 Samuel Taylor Coleridge, *Biographia Literaria or Biographical Sketches of My Literary Life and Opinions*, Vol 2 (London: Routledge & Kegan Paul, 1983), c. 14; p. 6.

154 Samuel Taylor Coleridge, *Biographia Literaria*, ch. 14; p. 6.

155 Coleridge provides the example of poem where the protagonist is not only poet and a philosopher, but also a chimney-sweeper, which constrains the author to fabricate a whole biography "with all the strange and fortunate accidents which had concurred in making him at once poet, philosopher, and sweep!": Samuel Taylor Coleridge, *Biographia Literaria*, ch. 22; p. 133.

reader] think the contrary, he is not even suffered to *forget it*"[156]. Here, Coleridge comes back to the idea of a "*negative* faith" —the very suspension of disbelief—, but he adds that it "simply permits the images presented to work by their own force, without either a denial or affirmation of their real existence by the judgement"[157]. This seems to contradict the role of will in the whole operation of poetic faith, but it also seems to be an emphasis on how verisimilitude is necessary in order for the fiction to be indeed *fictitious* and not simply *false*, given that the fictitious will not be produced —Coleridge says— if the machinations are *evidently* false given their proximity to "words and facts of known and absolute truth". On this note, it would seem that the suspension of disbelief should come from an effective semblance of truth and not from "the baffled attempts of the author to *make* [the reader] believe"[158]. The conditions, in other words, must be conducive, for otherwise the fiction shall appear as a mere falsehood, and consequently the whole suspension of disbelief will not flourish.

Even when Coleridge is speaking about poetry and its specific matters (namely, the reader, the character, the author), his account of poetic faith provides a framework in which the interplay between person and fiction can be read, or even more so, interrogated. If personhood is extended both in theory and in practice via the threshold of fiction, if these two mechanisms operate jointly to go beyond the usual frontiers that equate *persona* with the *homines*, or with the modern idea of the human species, it is not difficult to see how a certain poetic faith is necessary for these entities to be *as if they were* persons, or better yet, how the suspension of disbelief regarding their personhood has to be performed on account of some sufficient semblance to the supposedly original substratum, which would explain how is it that the attribution can glide between seemingly unrelated domains, from intelligence to the ability to embody spirits, from sentient life to inert 'resistance'. This, in turn, would mean that it is this verisimilitude that allows to subjectify and render any given entity *imputable* —even lacking self-consciousness or individuality—, or to be deemed sufficiently *worthy* to be disposed of as a person.

Just as with the literary narration, the 'veracity' of this metamorphosis comes in its being fictitious —in the form of its operativity or its function[159]— and only in the presence of a sufficient semblance of truth can the suspension of disbelief arise as the poetic faith that allows these persons to be. This does not mean that the *factual truth* of personhood is that of *homines* or humans, or that humans are necessarily and immediately the referent to which all other entities must resemble. As we have seen, the very historicity of *persona* has seen it gliding over a myriad of entities and criteria, and so the eminence of our contemporary notion and its close nexus with *homines*, humans, the sentient, or the living has come precisely as several forms of redefinition, of re-narration. While it may be the case that in common language a person is a human and a human is a person, it should also be clear that the interlacement of

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156 Samuel Taylor Coleridge, *Biographia Literaria*, ch. 22; p. 133. The emphases are Coleridge's.

157 Samuel Taylor Coleridge, *Biographia Literaria*, ch. 22; p. 134.

158 Samuel Taylor Coleridge, *Biographia Literaria*, ch. 22; p. 134.

159 For some of the epistemological implications of this idea, see Jean-Marie Schaeffer, « Quelles vérités pour quelles fictions ? » dans *L'Homme*, 175 – 176 (2005), 19 – 36.

fiction and *persona* persistently modifies both the referent and the meaning, for the mosaic of personhood is indeed composed of moveable pieces and a variety of arrangements, all of which include fiction as the mechanism that disposes of a reality that serves as its substratum. If the poetic image "works by its own force", as Coleridge says, it is because its verisimilitude products the conditions of its felicity, the factuality upon which its veracity is constructed by the voluntary suspension of disbelief.

That being said, whilst poetic faith in literature may be born out of the contact between the text and the reader in solitude, juridical fictions are bound to be shared if they are to become indeed the theatre of juridical effects and truths, and not the soliloquy of a private language. In this sense, Coleridge's account could be qualified, not only as a suspension of disbelief, but also as a *game of make-believe*.

Preoccupied by the representational arts, Kendall Walton has forwarded an interesting approach to fiction via the notion of make-believe, which he takes not in the sense of an author that tries to force poetic faith, as Coleridge denounced, but in the sense of a situation governed by certain prescriptions. It is a world, a game, in which the fictional is the truth, at least for those involved, regardless of the whether there is an author of such prescriptions. Walton forwards that a fiction is something that is "true in some fictional world"[160], as it is true what happens within the context of a novel, or within a representational work of art, which is true regardless of its correspondence to reality. In this sense, we could see that it is utterly irrelevant whether Odysseus existed or not, but it is indispensable to acknowledge that he tricked Polyphemus, escaped Circe's curse, went to the underworld, and got back to Ithaca after an almost endless journey from the city of Ilion —fictional itself for the longest time.

Walton poses that one way in which fictional worlds are created is by means of "props", that is, "generators of fictional truths, things which, by virtue of their nature or existence, make propositions fictional", encompassing anything from a doll in a child's game to the paint on the canvas that constitutes the couple strolling in Seurat's *La Grande Jatte*[161]. He argues that there is "a certain convention, understanding, [or] agreement" in place, which he calls a "principle of generation", and which allows for something to be rendered as something other than it is for the purpose of the game: a snow mound becomes a fort, a doll becomes a girl, splotches of paint become a couple in a park[162]. He adds that such a principle may be explicitly stipulated, as when children say "let's pretend that stumps are bears", or conversely, "never explicitly agreed on or even formulated, and imaginers may be unaware of them"[163].

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160 Kendall Walton, *Mimesis as Make-Believe: On the Foundations of the Representational Arts* (Cambridge: Harvard University Press, 1990), p. 35. There is a close link to children's make-believe games, namely when they play "house and school, cops and robbers" and so on, for in these games children are of course *pretending*, but in the fiction of the game the fictional truth is, indeed, the truth: Kendall Walton, *Mimesis as Make-Believe*, p. 4.

161 Kendall Walton, *Mimesis as Make-Believe*, pp. 37 – 38.

162 Kendall Walton, *Mimesis as Make-Believe*, p. 38.

163 Kendall Walton, *Mimesis as Make-Believe*, p. 38.

Given that it is not necessarily an imposition, as the law does with its own fictions, and not even agreed by those involved in the game, as would be the case with a "social contract" that has never occurred; it may be concluded that this "principle of generation" is a principle simply because it is allowed to produce its effects, because the players interact *under* it, *before* it, and *with* it consciously or not, because there is, if not an actual assent, at least a suspension of its rejection, a suspension of disbelief. A fictional truth, then, implies the acceptance of the "prescription or mandate" that a certain thing is "*to be* imagined", even if it contradicts reality, for otherwise the fictional world in which they inhabit falls apart, or as Walton himself says: "anyone who refuses to imagine what was agreed on refuses to 'play the game' or plays it improperly"[164].

Consciously or not, Walton's idea of prescription almost echoes Kant. In his third critique, Kant frames the notion of aesthetic judgement as the "middle term between understanding and reason", as well as the bridge between the "faculty of knowledge" and the "faculty of desire", in the form of a "feeling of pleasure or displeasure"[165]. In a nodular point of his query, Kant argues for a "subjective" but nonetheless "universal communicability" as necessary to produce aesthetic pleasure, so that the faculties of knowledge and representation — "by which an object is given"— are in a state of "free play" (*freien Spiele*) that involves "imagination (*Einbildungskraft*), which gathers the different elements of intuition" and "understanding (*Verstand*), for the unity of the concept uniting the representations"[166]. Since these subjective conditions are universally shared —Kant argues—, so too is the "universal subjective validity of the delight", from which it follows that we demand the judgement of pleasure as "necessary" (*notwendig*) for everyone else, as if the pleasure were "the quality of the object"[167], or as if it were indeed universally valid. Judgement, in this sense, becomes the passageway between the reign of causality that is nature to the realm of ends that is freedom[168].

Evidently, Kant is not occupied by fictions, but at least an inverted mirror of Walton's fictionality seems to be possible in a passageway that is universal even if subjective, and that involves the necessary presence of imagination in the form of an inescapable procedure before the representation of an object, it is at the very least an opening to "a *poetic* relationship with the sensible"[169], as well as the source of the faculty to invent and create[170].

Whether one thinks of the fictions of personhood as stemming directly from the various legal constructions, or from the need to individualise, unify, impute, or render entities disposable in a (bio)political framework, the *fictional truth* of this status is sustained only in as

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164 Kendall Walton, *Mimesis as Make-Believe*, p. 39.

165 Immanuel Kant, *Kritik der Urteilskraft* (Hamburg: Meiner Verlag, 2022); p. 4; pp. 42 – 44. For the English translation: Immanuel Kant, *Critique of Judgement*, trans. by James Creed Meredith (Oxford: Oxford University Press, 2007).

166 Immanuel Kant, *Kritik der Urteilskraft*, §9; pp. 66 – 67.

167 Immanuel Kant, *Kritik der Urteilskraft*, §9; p. 68.

168 Immanuel Kant, *Kritik der Urteilskraft*, p. 18.

169 Elettra Stimilli, *Filosofia dei mezzi*, p. 63.

170 See Emilio Garroni, *Creatività* (Macerata: Quodlibet, 2010), pp. 133 – 167.

much as the prescription to imagine things as persons is accepted, or at least not explicitly rejected. It is sustained in as much as there is a shared context of narration in which the entity that appears, by its mere presence, is imagined, represented, or taken *as if* it were a *persona*, which in turn arises only in the context of a prescription that compels to *make as if* this or that entity is indeed a *persona*. The persistent ambiguity surrounding whether it is, or it becomes indeed a person is the clear sign of its indistinction, the texture of fiction at work by which it is impossible to determine whether this is truth in fact or only in the fictional world; or better yet, whether we are inhabiting the truth or the semblance of truth, the territory or the cartography.

What's more, it seems that fiction in this instance prescribes what the very semblance of truth is to be, re-arranging time and again the conditions for the equation: if it is human, it is a person; if it is alive, it is a person; if it exists, it is a person. Not a lie, not a deception, and not even a contradiction, but simply the terms of an endlessly reconstituting narration that re-places one semblance of truth with another in a shared game of verisimilitude, a collective dream of sorts[171] in which poetic faith involves a *mise en scène*, a cohabitation between the actors and the props, that by virtue of the very character of the game of make-believe can become actors themselves.

It goes without saying that the stage of personhood is not a work of representational art, and I do not intend to say that it is *but* a game of make-believe. I do believe, however, that the interlacement of fictions and persons can be read under this perspective, and that it provides a looking glass of its function and its effects in terms of subjectification and truth, mostly when considering the purpose of such games:

> Worlds of make-believe are much more malleable than reality is. We can arrange their contents as we like by manipulating props or even, if necessary, altering principles of generation. We can make people turn into pumpkins [...][172].

Or pumpkins into people. This malleability, according to Walton, provides not only the chance to freely experiment and explore life alternatives without *real* consequences, but also to manipulate the contents of those very games.

Walton's optimism regarding fiction seems to acquire a dissonant tone when applied to the idea of person, however, since it becomes much closer to the notion a governmentality that, preserving the categories of the *summa divisio*, re-arranges its contents in terms of availability, imputability, and worth. Similarly, if fiction renders the true and the false

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171 I borrow this notion from Bergson's analysis of the comedic character of disguises: "'A red nose is a painted nose', 'a black man (*un nègre*) is a disguised white', absurdities still for the reasoning reason, but very certain truths for simple imagination. There is therefore a logic of the imagination that is not the logic of reason [...] it is something like the logic of the dream, but of a dream that would not be abandoned to the whim of individual fantasy, being the dream dreamed by the entire society": Henri Bergson, *Le rire : essai sur la signification du comique* (Paris : Presses Universitaires de France, 2007), p. 32.

172 Kendall Walton, *Mimesis as Make-Believe*, p. 67.

indistinguishable from one another, the idea that there are no real consequences is at stake, for the real has been replaced by its resemblance, reality by virtuality: what happens on the stage —in the game of make-believe— is indivisible from what is actually happening.

It is not difficult, moreover, to see how notions such as *persona*, rights, dignity —maybe even the law itself[173]— can only produce their effects in the framework of a shared context with prescribed conditions of understanding, that is, in the framework of a game of pre-suppositions. On this note, Garroni comments that both language and games —and their interaction in the so-called linguistic games— are bound to obey certain rules, without which "neither language nor the game would exist", in a framework of "creativity-regularity" (*creatività-regolarità*)[174], so that the rules or prescriptions of the game become their necessary albeit not sufficient condition[175].

This, of course, does not mean that "the game" is predetermined or natural, and neither are its rules. On the contrary, it explains why such a game is susceptible of re-creation, since, going back to a Foucauldian language, it is always the product of an interplay of techniques, strategies, discourses, mechanisms, *dispositifs*; in short, it is a product of what Foucault called "regimes of truth":

> Each society has its regime of truth (*son régime de vérité*), its "general policy" of truth: that is to say, the types of discourses it welcomes and makes function as true (*fait fonctionner comme vrais*), the mechanisms [!] and instances that allow to distinguish between true or false statements, the way in which they sanction one or the other; the techniques and procedures that are valued for obtaining truth; the status of those who are responsible for saying what works as true[176].

Not an immediate correspondence between narration and a certain reality, but rather a theatre that provides the cryptography of what is true and what is false. Fiction, indeed, as part of an ensemble of several mechanisms, techniques, and procedures that do not simply

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173 If, for instance, a chess player refuses to move the knight in its particular fashion, arguing that real knights and horses move freely, he would not be allowed to play the game. If, however, all the chess players decide to liberate the knight from its three squares imprisonment, then the very game of chess has been modified, abolished, or replaced. A similar stance can be predicated of the entire juridical apparatus, albeit clearly with conditions and sanctions that are much more radical, not to mention the part of the whole apparatus that strives to maintain itself, as attested by the classical problem of the one who does not accept the Social Contract or the Leviathan. On the idea of law as a socially constructed game, see Pierre Bourdieu, *La force du droit : éléments pour une sociologie du champ juridique* (Paris : Éditions de la Sorbonne, 2017), and Alf Ross, "Tû-Tû" in *Harvard Law Review* 70, No. 5 (1957) 812 – 825.

174 Emilio Garroni, *Creatività*, p. 103. "Regularity", in this framework, should be read as "abiding to rules or patterns", and not in terms of frequency. Garroni goes on examining the linguistic approaches of rule-governed and rule-changing games: see Emilio Garroni, *Creatività*, pp. 111 – 131.

175 Emilio Garroni, *Creatività*, p. 106.

176 Michel Foucault, « La fonction politique de l'intellectuel », dans *Dits et écrits II: 1976-1988* (Paris : Quarto Gallimard, 2017), p. 112. Foucault will describe, at length, the regime of truth of Christianism in the constitution of the self through "acts of truth", such as confession, penitence, etc. See Michel Foucault, *Du gouvernement des vivants,* pp. 91 and ff.

say: "this is true, this is false", but instead: "this is how the truth is constructed", an ever-moving arrangement in which anything can be *taken as if* it were the truth: *pro veritate habetur*.

If sharks, apes, plants, rivers, mountains, and robots are all *taken as* persons, within the framework of the contemporary eminence of *persona*, despite not complying with the theological inheritance of an individual substance of rational nature, of the *persona*, it is because both fact and the semblance of truth are malleable, moveable, and disposable things in this game of mirrors, and so are these mechanisms.

Such is therefore the tacit agreement of these fictions: one only must not question the rules of the game and allow the operation of a suspension of disbelief. Whether they respond or not to the pedigree of the law is, once again, secondary at best, and this exteriority shows that even when they can be deployed and used by the juridical, fictions can and do modify the game of the juridico-political. Their fertility lies therefore not in the prescription, which is the usual realm of the law, but in the fact that they are susceptible of reconfiguration, that they can modify reality and its production, or as Rancière puts it, that they allow for different sets of ways in which it is possible to "identify events and actors", as well as "other ways to tie and build common worlds and common stories", both in the "confessed fictions of literature and the unconfessed fictions of politics"[177]:

> To build with sentences the perceptible and thinkable forms of a common world by determining situations and the actors of these situations, by identifying events, establishing between them links of coexistence or succession and by giving to these links the modality of the possible, the real, or the necessary[178].

Neither true, nor false: the moveable frontiers of a game that is nevertheless possible, real and sometimes even necessary in the contingency of its admitted rules and the regimes in which they are produced.

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When asked by Moriaki Watanabe about the presence of theatre in his writings, almost as if it "governed the general economy of [his] discourse", Foucault pointed out the distance that exists between philosophy and theatre: while the function of philosophy, he says, is to "distinguish between the real and the illusion [...] between truth and falsehood", theatre

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[177] Jacques Rancière, *Les bords de la fiction* (Paris : Seuil, 2017), p. 16.

[178] Jacques Rancière, *Les bords de la fiction*, p. 16. Further ahead, in a closely related language, Rancière speaks about the fictionalisation in literary realism: "We could, without contradiction, invent and claim to not have invented... It's the loss of reference points that allows us to separate one reality from another and therefore to treat their indistinction as a game (*traiter leur indistinction comme un jeu*)": Jacques Rancière, *Les bords de la fiction*, p. 136.

"completely ignores these distinctions", since "accepting the non-difference between the true and the false, between the real and the illusory is the condition of theatre's functioning"[179].

Foucault adds that his interest lies not in describing the "scene upon which we have tried to distinguish the true and the false, but [...] the constitution of the scene and the theatre"[180]. His concern was not only stylistic, but also methodological, since theatre provided the right framework to develop a philosophy that, as we have seen, was not concerned with the metaphysical eternal but that, starting from Nietzsche, became concerned by a diagnosis of actuality, concerned by the "event" (*événement*)[181]:

> Indeed, it is a certain way of grasping through philosophy (*de ressaisir par le biais de la philosophie*) what theatre is occupied with, for theatre is always occupied with an event, the paradox of theatre being precisely that this event repeats itself in eternity or at least in an indefinite time, since it always refers to a certain repeatable, previous event. Theatre captures the event and stages it (*le thêatre saisit l'événement et le met en scene*)[182].

The actuality of a repeatable event is, literally, *mise en scène*, into a place whose nature is to accept the non-difference between the true and the false. If the task of philosophy is indeed the diagnosis of knowledges and forces that constitute a theatre of actuality, then the plural and repeated event of personalisation and subjectification is exemplary of an event in philosophical sense, since it arises only by means of the constitution of a theatre of fictions, a willing pleonasm in which not only the very categories of persons and things are interrogated, but also the very regimes of truth in which they flourish, as well as the subjection they produce.

In this framework, in which the very constitution of the theatre is in question, the second aperture of the synecdoche that I have previously announced comes in the form of fiction as the space in which the scene is performed, the *topos* in which the event is (re)presented.

In a convoluted text of 1966, devoted to the literature of Maurice Blanchot, Foucault poses that while truth in Ancient Greece trembled on account of the utterance 'I lie', the utterance 'I speak' "challenges (*met à l'épreuve*) all modern fiction"[183], taking fiction not as theatre specifically, but as literature. He argues that, instead of being self-referential in some form of interiority, by which the signs speak about themselves, when modern literary language says 'I speak' it sees itself from a distance, so that "the subject of literature (the one

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179 Michel Foucault, « La scène de la philosophie », dans *Dits et écrits II: 1976-1988* (Paris : Quarto Gallimard, 2017), p. 571.

180 Michel Foucault, *La scène de la philosophie*, p. 572.

181 Michel Foucault, *La scène de la philosophie*, p. 573.

182 Michel Foucault, *La scène de la philosophie*, p. 574.

183 Michel Foucault, *La pensée du dehors* (Saint-Clément-de-Rivière : Fata Morgana, 2018), p. 9.

who speaks and the one it speaks about) would not be language in its positivity, but rather the void where it finds its space whenever enunciated in the nakedness of 'I speak'"[184].

Foucault argues that the "event" in modern literature does not present itself as the question of whether what is being said is true or false, but instead as the acrobatics of a subject that goes outside itself in order to contemplate the very act of speaking. Saying 'I lie' is problematic because it poses the question of truth; saying 'I speak' is problematic because it poses the question of subjecthood in its ambivalent meaning. Hence, not an encounter with oneself, but rather an estrangement, a distance, indeed a void upon which the subject can double as the one who speaks, and the one spoken of: the place where the first and the third persons encounter, and in which their distance becomes more evident. In pronouncing 'I say', the subject is thus doubled as agent and patient, the subject becomes its own object, and this partition reveals an interstice between them. Language takes account of itself only in the blurring of the subject, not in the interiority of self-reflection, but in the exteriority of this nakedness[185].

In his effort to grasp this "*pensée du dehors*", Foucault argues for a fictive language that, instead of reconducting to the interiority of self-reflexion and self-consciousness, stays anchored in this newly revealed interstice, so that the language of fiction "should no longer be the power that tirelessly produces and makes images shine, but the force that instead untangles them". Consequently —as Foucault reads Blanchot's literature—, "fictions are rather than images, the transformation, the displacement, the neutral intermediaries, the interstice between images"[186].

While his concern is eminently literary, I believe it is interesting to read into this account of fiction as an interstice, as the very *topos* upon which the event takes place, in this case, the events of personalisation and subjectification, the space between *persona* and its mirrors. In a telling passage, Foucault says:

> The fictional is never in things or in men (*le fictif n'est jamais dans les choses ni dans les hommes*), but in the impossible verisimilitude (*vraisemblance*) of what is between them: encounters, proximity of what is furthest, absolute concealment there where we are. Fiction consists, therefore, not in making the invisible visible, but in showing how invisible is the invisibility of the visible[187].

Neither things nor men, neither *res* nor *personae*, fiction appears here as an in-between, as an interstice. I had already pointed out at fictions being thresholds, permeable membranes that serve as passageways between the inside and the outside of the vast inhabitants of the *persona*

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184 Michel Foucault, *La pensée du dehors,* p. 13.

185 Michel Foucault, *La pensée du dehors,* p. 13. This void, this space —Foucault adds— characterises "the Western fiction of our day", and therefore "it is no longer neither a rhetoric nor a mythology".

186 Michel Foucault, *La pensée du dehors,* p. 23.

187 Michel Foucault, *La pensée du dehors,* p. 24.

and the *nomos*. Now, following this idea of event and interstice, the threshold is extended to the extracellular space, or to leave behind the biological analogy, fiction becomes, on the one hand, the mechanism by which the true and the false are undistinguished in the re-presented event of the extension of personhood and its subjection; and on the other hand, the substratum of the stage in which such an indistinction operates, both the product and the constituent of this game of make-believe.

Moreover, in this framework fiction does not serve the purpose of re-vealing an invisible truth, that is, it does not comply with the juridical paradox of a *contra veritatem, pro veritatem* falsity, as the one posed by Medieval commentators. Instead, it allows only to see the degree in which truth is assembled upon the substratum of fiction, what Foucault calls the invisibleness of its visibility.

At this point, the temptation to simply equate both mechanisms by saying: 'alas, *persona* is nothing *but* a fiction' should be abandoned, for the interplay goes much deeper, and fiction appears as constitutive not only of the *persona* and its extensions, but of the whole place where the event is represented: not only a fictional truth in a fictional world, but the matter of which the fictional world is composed.

In its relation to *persona*, fiction seems to operate in the same way Foucault describes the operation of the law (*la loi*) in the very same text: neither the interiority of a conscience that commands over "cities, institutions, conducts, and gestures", nor an "internal prescription", but instead "the outside that envelops them [...], the night that bounds them, the void that surrounds them"[188]. Fiction, here, not only prescribes that something is "to be imagined", nor is it the content of such an imagination, but it is the environment upon which imagination is possible, the void upon which truth and falsehood both rely, the clay that makes both the outlines of a figure and the ground where it stands.

I do not mean, of course, that fiction is some sort of metaphysical materiality, nor am I deriving any fictional ontology. My intention, more modest, is to say that in the several interlacements of fiction and person we have seen so far, fiction does not simply play the role of a counterpart or a reflection, but instead serves as the soil that allows for the emergence of an event of subjection and subjectification, one in which the mechanism of *persona* is used, even though fiction is, nevertheless, a mechanism itself.

Via the porthole of legal fictions, the light from another vast realm filters, and even if dim, it is under this light that the illuminations of the territory and the cartography of personhood are both performed. In the government of such adornment, the question of its justice, of its usefulness, and of its worth is always changing in terms of a general economy of both men and things, the apparent dichotomy that has revealed itself to be a moveable and re-composable mosaic.

As anticipated, the light and colours that illuminate the event of personalisation and subjectification can be either the mere product and rearrangement of such a disposition, or an aperture by which the categories of person, subject, and thing can be reinterpreted, if not

[188] Michel Foucault, *La pensée du dehors,* pp. 33 – 34.

entirely rethought. In any case, the very malleability of the texture that constitutes both the theatre and the representation, allows to hold —as Hernando Valencia Villa— that in this game "nothing is decided in advance, any outcome is possible, every victory is precarious, and every defeat is reversible"[189].

With the synecdoche and its possibilities explored, and having fiction in these terms of exteriority and constituency, we shall now move forward into the effects of these interlacements of fiction and person.

[189] Hernando Valencia Villa, *Cartas de batalla: una crítica del constitucionalismo colombiano* (Bogotá: Universidad Nacional de Colombia, 1987), p. 31.

5. SIMULACRA AND ERASURES

5.1. Vacant as vast

Revisiting the initial dissection —the actual *summa divisio*— shows us that essentially everything that could be deemed definitory of the person as an opposition to a thing has been somehow breached, or, to put in in an analytic language, that none of the characteristics that seem to distance one concept from the other seems to hold the place of a necessary condition. We have seen how persons, at least under an endless game of fictionality, need not be *homines* nor human; need not hold an estate nor enjoy freedom; need not be subjects nor individuals; need not be able to act nor to speak; need not have a body nor a soul; need not be rational, sentient, imputable, or alive: they apparently only need to be *some* thing.

Under this premise, it would be impossibly difficult to say that there is indeed any actual difference between *res* and *persona*, opening up to the paradox of a universal personhood in which the principle of determination by negation —*determinatio negatio est*[190]— is vanquished, and so, just as the person falls into the all-encompassing category of the *res* in the metaphysics of the law, it seems now *persona* is itself an all-encompassing category in which everything fits, or at least, in which everything is susceptible to be fitted. The protection, resistance, rights, or dignity of all these entities, however commendable, is also neither a necessary nor a sufficient condition for personhood, since *human persons* are as unprotected as ever, regardless of their apparently unquestionable status, and since all other entities could be protected, regardless of whether they have a *persona* attached to them or not.

This being the case, then, the question of why such metamorphoses come to be, and most importantly, the effects they produce ought to be addressed. I believe part of the answer may be found in the production of a *persona* that acts as a continent without content, a meaningless framework that may emerge amidst a form of governmentality of the living in which the eminent subject —agent, master of itself— is nullified, and in which the process of subjectification is performed by means of the very mechanisms that rendered such an exceptionality possible.

In an almost confessional, albeit non-apologetic passage, Foucault forwards the line of fictionality he traced in relationship to theatre, by saying:

> As for the problem of fiction [...] I very well realise that I have never written anything but fictions (*je n'ai jamais rien écrit que des fictions*). I do not mean to say that this is, however, outside of truth (*hors vérité*). It seems to me that there it is possible to make fiction work inside truth, of inducing effects of truth with a discourse of fiction, and of causing the discourse of truth to generate, to fabricate something that does not yet exist, that it therefore "fictionalises (*fictionne*)". We "fictionalise" history from a

[190] Probably best formulated by Spinoza in Baruch Spinoza, "Epistola L, viro humanissimo, atque prudentissimo Jarig Jelles" in *Tutte le Opere* (Milano: Bompiani, 2010), pp. 2076 – 2077.

> political reality that makes it true; we "fictionalise" a politics that does not yet exist from a historical truth[191].

Whether Foucault had in mind his own approach to theatre or literature is ultimately irrelevant. What's interesting in this instance is the possibility he poses of transmuting fiction into truth, the very idea of fabrication, of a *poiesis* that arises from the negation of truth, whether it is in terms of a game of make-believe, in terms of poetic faith or in any form of fiction that stems, yet again, neither from the sovereignty of the juridico-political order, nor from the supposed eminence of personhood, but from the very texture and functioning of the mechanism.

That being the case, however, there is an unsettling possibility in taking this malleability up to the extreme, one that can be best seen, I would argue, through the lens provided by Jean Baudrillard, and that allows to see the nullification of this eminent subject that supposedly comes along with the attribution of personhood.

Upon defining *simulation* as "feigning to have what one does not have" (*simuler est feindre d'avoir ce qu'on n'a pas*) and *dissimulation* as "feigning not to have what one has" (*dissimuler est feindre de ne pas avoir ce qu'on a*), Baudrillard explains that simulation is not actually a process of "feigning", given that it "challenges (*remet en cause*) the distinction between the 'true' and the 'false', the 'real' and the 'imaginary'" [192], just as we have seen, fiction does, or better yet, as fictions do.

In this context, Baudrillard approaches the matter of religious representation, stating that iconoclasts not only understood how the representation of god via icons became the actual object of veneration —replacing the "pure and intelligible Idea of God"—, but they also suspected that these images, these literal *simulacra* could hide the fact "that God has never existed, that only the simulacrum of God has ever existed, and that God himself has never been anything but his own simulacrum", which provided the "metaphysical anguish" in which the destruction of his images flourished[193]. Reversing the anguish of the iconoclasts, iconolaters venerated the icons, Baudrillard says, precisely because they anticipated the "disappearance of God in its images", and because they "may have known that [the images] no longer represented anything [...] that it is dangerous to unmask the images, since they conceal (*dissimulent*) that there is nothing behind"[194].

In other words, albeit from diverging paths, both iconoclasts and iconolaters arrived at the suspicion that behind the image of god there may be no God, that behind the supposed representation of divinity there would be only a void, and since such a radical emptiness could apply even to the divine being itself, or Baudrillard puts it, "if God himself can be simulated, that is, reduced to signs", then it follows that these images and these signs have a "deadly

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191 Michel Foucault, « Les rapports de pouvoir passent à l'intérieur des corps », dans *Dits et écrits II 1976-1988* (Paris : Quarto Gallimard, 2017), p. 236.

192 Jean Baudrillard, *Simulacres et simulation* (Normandie : Galilée, 2018), p. 12.

193 Jean Baudrillard, *Simulacres et simulation,* pp. 14 – 15.

194 Jean Baudrillard, *Simulacres et simulation,* p. 15.

power (*puissance meurtrière*)" that can annihilate the very reality, not by hiding it nor by my making it unreal, but instead by making it its own simulacrum: a copy without an original[195].

Convoluted and complex as it is, Baudrillard's idea is that we have arrived at a time of simulations, that is, a time in which true and false are indistinguishable from one another because the copies of reality have no original referent, because an image, a sign, a character does not simply pretend to be something else, as would be the case with a game of make-believe, but it conceals —dissimulates— the fact that there is nothing behind. Simulation is, therefore, opposed to representation because in representation the sign, the image, or the character does hold some relation, however vague it may be, to the reality of the entity it re-presents, in what Baudrillard calls "a principle of equivalence". On the contrary, simulation has no equivalence with reality, no material substratum that it represents, for it negates and "puts to dead any reference"[196].

What does all this have to do with the interlacement between fiction and person? Translating Baudrillard's concern, this negation of reality could mean that, perhaps, the extension of personhood through the mechanism of fiction conceals how, behind the apparent eminence and power of the concept, there is in fact a nothingness, that *persona* is itself nothing but a void. This, in time, would open up another set of pathways, relying on whether there is indeed a subjacent reality to the person, or if its intertwining with fiction is simply the sign of the simulation, the tell-tale mark of a nothingness posing as something.

As is well known, Baudrillard traced some sort of chronology of images, marking the "successive phases" by which signs go from "dissimulating something" to "dissimulating that there is nothing". According to him, the image starts by being "the reflection of a profound reality", which corresponds to what he calls the "order of the sacrament". Secondly, the image "masks and denatures a profound reality", which corresponds to "the order of the malefice". Thirdly, the image "masks the *absence* of a profound reality", no longer being an appearance but "playing" *as if it were*, which belongs to "the order of sortilege". Finally, the image "has no relation to any reality whatsoever: it is its own pure simulacrum", which instead of belonging to the realm of appearances, is now part of the realm of simulation[197], of that insurmountable challenge to the distinction between truth and falsehood.

This categorisation has been utterly visited and revisited, yet I intentionally leave behind its successive character, as well as Baudrillard's own concern with the totality of the real, only to apply it to *persona* and its *fictitious* extensions. Within this framework, we may wonder about the function of attributing *persona* via fiction to entities that do not belong to the moveable criteria of *homines*, humans, entities with souls, the living, etc. In other words, we may wonder about the operation performed through these extensions of the frontiers of personhood.

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[195] Jean Baudrillard, *Simulacres et simulation,* p. 16.

[196] Jean Baudrillard, *Simulacres et simulation,* p. 16.

[197] Jean Baudrillard, *Simulacres et simulation,* p. 17.

On this note, if the attribution of personhood shows or reflects a profound reality, such as the supposedly intrinsic dignity of the concept or the aura of protection that comes with it, then in the plane of a "sacrament" a person is feigned to embody or to communicate the pre-eminence that belongs to the human, or the living, or the natural, supposing the criterion is sufficiently solid for it to serve as a foundation of the extension. This seems to be the case for the theological approach of Boethius and Thomas Aquinas, for whom, as we have seen, personhood is the attribute of the divine that *homines* partake in, and it is only in the sense of being individual substances of rational nature that humans can be deemed persons, even if they lack the attribute of infinity or immortality. One could argue for a similar structure regardless of the criterion, and so, for instance, other rational animals could also partake in the eminence and dignity of the *personae,* whether divine or not, on account of — for instance— their rationality or their capability to suffer.

If, on the contrary, the attribution of personhood does not reflect but conceals, that is, if personalisation *dissimulates* the distance between the referent and the extension, then we shall find dignity, eminence, and inherent rights in the plane of malefice: an altered and distorted 'nature', which marks the distance in those attributes between *fictive* persons and their *actual* counterparts, given that what is concealed is the fact that the attribution is not easily transposable[198]. On this note, for instance, the attribution of a *persona* to animals or plants via fiction is explained not as sharing an underlying nature (sufficiently rational, sufficiently human, sufficiently alive) but instead, as being insurmountably different. Precisely because there is no underlying substratum, fiction is employed to dissimulate the distance, allowing to attribute personhood to a myriad of entities in spite of such disparity.

On the other hand, provided that the attribution conceals not a distorted reality, but its complete absence, then we move on the plane of the sortilege. Here the multiplication of *personae* does not transpose a supposed dignity or eminence, but instead denounces that said dignity and eminence do not exist, cloaking their absence *as if they* were indeed present: *persona* becomes the mask that veils the nothingness of its attributes, a centre of imputation that subjectifies but does not concede the agency of the subject. Here, the sortilege of an inert *persona* acquires sense.

Ultimately, then, in this bridge to Baudrillard's approach, we would face the simulation: the omnipresence of *persona* as its own simulacrum. Here the event of personalisation does not feign anything, but instead it dissimulates the fact that there is no original to be feigned. The fictions of *persona*, in this instance, do become the *persona* itself, for

198 Deleuze comes close to this idea in one of his courses: "Christian theology elaborated a very early and beautiful concept that already foreshadows the difficult relationship between art and religion. It's the idea of the image without resemblance [...] God created man in his image and resemblance. Through sin, man retained the image— that, even God could not take away— but he lost the resemblance. Sin is the act by which man becomes an image without resemblance. How is this possible? That an image is an image and yet not similar? An image without resemblance is precisely what painting sends us [...] Indeed, an icon is not representation, it is presence. And yet it is an image, the image as presence": Gilles Deleuze, *Sur la peinture : Cours mars-juin 1981* (Paris : Minuit, 2023), Cours du 28 avril 1981, pp. 110 – 111.

the attribution not only conceals that there is no subjacent reality, but it directly denounces that *persona means* nothing. Not a body, not a soul, not a species, not a reason, not a life, not a presence: the mere link of imputation and subjection tied to any entity, to any *thing*.

Needless to say, this is neither Baudrillard's topic, nor the totality of my own view. It is a fictionalisation in the sense Foucault provided, a magnifying glass that may allow us to see the effects at play in the theatre of these tacitly assented, malleable, economic, and useful fictions, upon a stage where the true and the false are impossible to discern. In other words, a fictionalisation for the sake of understanding, for the sake of the production of a certain knowledge.

In the latter two cases specifically, namely, in the sortilege and the simulacrum of personhood, what arises as problematic is not the erasure of the *persona* and its meaning, which as we have seen, is anything but stable or even useful. What is truly problematic is the production[199] of a new relationship towards entities that maintains subjection without agency, dignity, or eminence, the production of an indistinction between the one who speaks, and the one spoken of, that is, between the one that owns him or herself, and the one that is disposed of: the production of a multiplicity of subjectless persons or personless subjects, in the form of masks that individualise and impute, while simultaneously conceal a subjacent emptiness with the pomp and circumstance of the artifice of fiction.

Perhaps Foucault never wrote indeed anything but fictions. However, as Deleuze comments in a beautiful passage, "never have fictions produced so much truth and reality"[200], for these fictions do "induce truth effects" and "fabricate things that do not yet exist"[201]. In other words, these extensions of the frontiers of personhood do fictionalise, poeticise, and bring forth ungraspable new *topoi* to enunciate and to inhabit, while being themselves also the product of similar procedures.

The puzzle, or if we may, the labyrinth that arises in the midst of the interlacement between *fictio* and *persona* flourishes precisely because of a multiplicity of what Deleuze, citing Melville, calls a world of "superimposed surfaces, archives, or layers", that are nevertheless traversed by a "central fissure", and that captures us in a "double movement": one must wander the surfaces while trying to reach into the interior of the fissure[202]. At the interior, as Melville himself conjectured, we may indeed find nothingness:

> But, far as any geologist has yet gone down into the world, it is found to consist of nothing but surface stratified on surface. To its axis, the world being nothing but superinduced superficies. By vast pains we mine into

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199 As Foucault pointed out, "it is necessary to stop always describing the effects of power in negative terms: it 'excludes', it 'represses', it 'suppresses', it 'censors' it 'abstracts', it 'masks', it 'conceals'. In fact, power produces; it produces the real (*le pouvoir produit; il produit du réel*); it produces domains of objects and rituals of truth. The individual and the knowledge that can be gained from them are part of this production": Michel Foucault, *Surveiller et punir,* p. 227.

200 Gilles Deleuze, *Foucault* (Paris : Minuit, 2001), p. 128.

201 Michel Foucault, *Les rapports de pouvoir passent à l'intérieur des corps*, p. 236.

202 Gilles Deleuze, *Foucault,* p. 128.

> the pyramid; by horrible gropings we come to the central room; with joy we espy the sarcophagus; but we lift the lid —and no body is there! — appallingly vacant as vast is the soul of man![203].

Appallingly vacant as vast may be the fictions of personhood that roam and inhabit the layers, the surfaces, the fissure, the theatre, and the labyrinth.

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Based, among others, upon Schmitt's famous definition of the sovereign as the one who "decides upon the state of exception"[204], Agamben has outlined the "paradox of the sovereign" as the one who simultaneously inhabits "the inside and the outside the juridical order"[205].

In this context, Agamben defines the exception not as something that merely lies outside or beyond the norm and becomes incorporated via its prohibition or its regulation — such as madness and the psychiatric hospital, or criminality and prison. Rather, the exception is the *product* of the very suspension of the norm[206]. It is a situation in which the norm retreats itself in order to make space for something else to be incorporated. Thus, the void created by the suspension of the law is what defines and, quite literally, outlines the exception. Agamben's example is the *Lager*, the Nazi concentration camp, which appears neither outside the framework of the Weimar Constitution nor as its contradiction, but rather in the void created in its indefinite suspension[207].

On this account, Schmitt's sovereign is the only one who can decide to introduce a suspension of the law, a literal *state of exception* in which the law is still there as a carcass albeit emptied of content, allowing a different regulation that would ordinarily be outside its boundaries to enter the now empty space. Agamben reprises Schmitt's own reading of the exception, moreover, to show how state of exception and state of nature are ultimately one and the same 'free space' upon which the order arises, in a paradoxical and non-orientable topology:

> State of nature and state of exception are merely two sides of a single topological process in which, like a Möbius strip or a [Klein] bottle, what was presupposed as external (the state of nature) now reappears internally (as the state of exception), and sovereign power is precisely this impossibility of discerning external and internal, nature and exception, *physis* and *nomos*[208].

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203 Herman Melville, *Pierre or, The Ambiguities* (New York: Hendricks House, 1957), p. 335.

204 Carl Schmitt, *Politische Theologie: Vier Kapitel zur Lehre von der Souveränität* (Berlin: Duncker & Humblot, 2004), p. 13.

205 Giorgio Agamben, *Homo sacer*, p. 19.

206 Giorgio Agamben, *Homo sacer*, p. 22

207 See Giorgio Agamben, *Stato di eccezione* (Torino: Bollati Boringhieri, 2003).

208 Giorgio Agamben, *Homo sacer*, p. 44.

Agamben poses an inescapability: nature and exception are simply the intertwining faces of a single surface, one that is simultaneously produced by the *nomos* and serves as its foundation. Here, a couple of things to be noted.

On the one hand, it is difficult not to trace a bridge between this ambivalence and the account of fiction I have been drawing so far. In both instances, the geometry becomes estranged, or as Deleuze says, the surface becomes stratified, precisely because it serves the double purpose of solid foundation and device of extension. In the case of fiction, the paradoxical topology of a surface of falsity that progressively becomes (indistinguishable from) the truth; while in this case, the presupposition of nature that is betrayed when its backwards face is revealed to be the exception produced by the very *nomos*.

On the other hand, it is worth noting how we have already found a similar paradoxical topology enunciated in terms of the law, on account of Yan Thomas' approach to nature as an institution in itself [209]. Thomas poses, once again, that there is no virginal, pre-existing state of nature, but only the institution of an outside of the law that is nevertheless always and already inside, since it is itself produced by the law: effectively, a state of exception.

This topological conception becomes ratified elsewhere, when Thomas remarks, almost in passing, that the concept of 'limit' in law functions as a very literal *limes*, that is, as an extension of law's empire beyond its own boundaries, some sort of pre-emptive occupation of an otherwise empty space, one that "protects" and "defines the law through its successive advances [...] a line that gives provisional shape and unstable figure to the institutions"[210]. Commenting this very passage, Agamben notes that "the *limes* appears as the essential *dispositif* of expansion of the legal sphere: it is by provisionally placing things and situations outside the law or by striking them with prohibition that the law continuously ensures its grasp on human affairs"[211].

The function of the limit is reversed, or rather, finally revealed. The *limes*, as Yan Thomas poses, moves before the rest of the empire does, a pioneer so to speak that prepares the expansion on the condition that, under this perspective, there is no outside of the law. To include by prohibition or to exclude by permission, the limit appears not as the barrier that stops the transit from the inside to the outside, but instead as a mechanism[212] that prepares the movement of the borderlines and plays a fundamental role in their re-creation, just as the exception does, in this nauseating interplay of inclusion and exclusion.

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[209] See *supra,* 2.4.

[210] Yan Thomas, *Le sujet de droit*, p. 107.

[211] Giorgio Agamben, « La vie et le droit », dans Paolo Napoli (comp.), *Aux origines des cultures juridique européennes : Yan Thomas entre droit et sciences sociales* (Rome : École Française de Rome, 2013) 249 – 258, p. 258. The original is in French, hence why *dispositif*, and not *dispositivo*.

[212] Agamben equates the prohibition and the state of exception as forms by which the law "reemerges each time in its advance towards what it has excluded": Giorgio Agamben, *La vie et le droit*, p. 258. This would make them both mechanisms under the same heterogeneous network or *dispositif*.

If this is indeed the case, then the dissonance of the extension of personhood can be heard more clearly upon several aspects.

Firstly, instead of an aperture to different realms, the expansion shows itself as the *product* of an already pre-disposed and pre-settled *nomos*, so that the entities that are being attributed with personhood are not so much reconsidered in terms of their nature, nor fostered in an apparent recognition of their importance or their eminence. Rather, they are only one part of the re-composition of the topology of the juridico-political, their personhood being, on the one hand, the product of the emergence of new regimes of truth constructed by fiction, and on the other, a different disposition in terms of a more effective governmentality.

Secondly, such an expansion implies an endless and paradoxical process. As we have seen, the extension of personhood has not been confined to some supposedly unique forms of life or existence, special entities that somehow reveal or entail the dignity of the eminence of the *persona*. Quite the contrary, in this ever-changing topology the rules of the game are also perpetually moving, and thus, for instance, everything that feels, everything that is alive, everything that is natural, everything that is present, everything that *is* must ultimately be considered a person. Needless to say, this does not imply new forms of resistance, but instead denounces the advances of the *limes,* that in turn foreshadows the advances of the whole apparatus. What was once seemingly outside of the disposition of the *persona*, in terms of worthiness or subjection, becomes trapped under the mantle of personalisation that subjects without subjectifying.

The consequence, under this perspective, is fairly easy to predict. Instead of a communal partaking of the pre-eminence and dignity of *persona,* in which *every thing* enjoys the ambrosia it supposedly provides to humans, what arrives is that such an eminence would be lost even for *human persons*.

In the inherited theological conception of *persona*, from which the dignity and pre-eminence of later conceptions stem, the special consideration for the *human person* arises because, despite being mortal, it shares god's rationality as an *exception*. As we have seen, this can be transposed —not without problems— to the exceptional eminence of the human genre and the human species, at least on the theoretical plane when, in the modern language, it is taken as rational, self-conscious and, as such, an end in itself. When it leaves this realm, however, the particularity of the exception dissolves into the multiplicity of entities, losing its vigour. Therefore, it is not coincidental that, in the framework of his claim that "all significant concepts of the modern theory of the state are secularised theological concepts", Schmitt traces the analogy between exception and miracle (*das Wunder*)[213]. If the miracle is a miracle, it is because it is extra-ordinary and arrives only in very particular circumstances that by no means constitute the rule. Rather, it is an unusual interference that Schmitt classifies, further ahead, as quite literally a "*deus ex machina*"[214].

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213 Carl Schmitt, *Politische Theologie*, p. 43.

214 Carl Schmitt, *Politische Theologie*, p. 44.

The miracle operates by irrupting into the general order of things just as the exception irrupts into the general order of the law, not by adapting itself to that order, but instead acting in open contradiction to it, or better yet, by suspending the normality and making space for its extra-ordinary operation to take place: if the Red Sea parts in two to let Moses and his people cross, it is not because the seas work in this fashion under natural law, but because in this very particular instance the divine power intervenes directly, regardless of the natural prescriptions the same divinity has produced.

In close relation to this analogy, and commenting upon the distinction between ruling (*regno*) and governing (*governo*) —that is, between general will expressed as general rules, and direct management of worldly affairs—, Agamben shows through Malebranche that, if God were to "multiply to infinity his miraculous interventions, there would be neither government nor order, but only chaos and, so to speak, a pandemonium of miracles (*un pandemonio di miracoli*)"[215].

What would this paradox of a "pandemonium of miracles" mean for the extension of personhood? Upon Boethius' and Aquinas' accounts, the individual substance of rational nature embodied a condition of dignity that was to remain exclusively in the sphere of the *homines*, for which the theological proof subsisted: no other mortal creature was as close to god as *man* himself, because of his direct descent. Similarly, in the modern conception, no other entity held the eminence of being an end in itself, via reason, self-consciousness, and self-representation. However, when the miracle of sharing godly attributes, or the miracle of being supposedly unique among all other entities reproduces itself *ad infinitum*; particularly in this case, when personhood is ascribed to any and every entity, the nature of the miracle dissolves, and the state of exception, as Benjamin announced, becomes the rule[216], so that the very notion of pre-eminence becomes distorted and, ultimately, non-existent.

In other words, if the eminence of personhood is equated to the mere act of living, or even to "sharing the terrestrial condition", then not only is the very notion of eminence lost on account of ontological indeterminacy, but it also would appear that *persona* has been deprived of one of its attributes, becoming therefore not a safeguard, but part of a mechanism that, in multiplying itself, also multiplies its ineffectiveness.

To be clear, this is not an intent to upkeep some sort of nostalgia for human pre-eminence on my part. On the contrary, my claim is that any attempt to transpose the eminence that human persons supposedly enjoy ends up producing the dissonant form of, to borrow from Musil, a *persona* without attributes. Such a deprivation, then, departs from the presence of personhood and the paradoxical absence of any pre-eminence and dignity: a simulacrum both vacant and vast, an empty space of exception in which the baroque

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[215] Giorgio Agamben, *Il regno e la gloria,* p. 296.

[216] Walter Benjamin, *Über den Begriff der Geschichte* (Berlin: Suhrkamp Verlag, 2010), §VIII, p. 87. For the English translation, see Walter Benjamin, "Theses on the Philosophy of History" in *Illuminations* (New York: Schoken Books, 2007), p. 257. Most English versions translate "*Ausnahmezustand*" as "state of emergency", which is conceptually not the same as the state of exception.

adornment of the façade conceals the absence of an actual structure, all of it built with the non-orientable geometry of fiction.

In a telling passage, Agamben speaks of the state of exception as the "juridically empty space" in which "the law is in force in the figure (*la legge vige nella figura*) —that is, etymologically, in the *fiction*— of its own dissolution"[217]. As personhood is extended to various entities, it risks becoming an empty signifier that operates in the shadow of its original meaning. The fastuous entrance of an entity into the sanctuary of personhood conceals the fact that is only being absorbed by a *limes* that provides the adornment of eminence without any substance. Not, therefore, the inclusion of new entities into a meaningful juridico-political category, but rather the production of its spectre, not even *fictional* —which, since the beginning, is part of its very constitution— but rather, *phantasmatic.*

[217] Giorgio Agamben, *Homo sacer,* p. 44.

5.2. Subjected but subjectless

At this stage, a memento is called for. Just as there is no "meta or transhistorical will" that governs the strategic function of the *dispositif* in Foucault[218], there is also no univocal demiurge behind the phenomena of the interlacement between person and fiction, or to be more precise, there is no dramatist erecting the theatres in which this intertwining operates. This is not to say that there are no decisions being made. It is of course a decision to take rivers or forests *as if* they were persons, just as it is to take rationality, life, or sentience as the criterion to situate personhood itself. However, the fact that such decisions do appear does not respond to any sort of puppeteer, nor to any sort of metaphysical mould. This is not even the case in the framework of Schmitt's decisionism, since both the decision and the state of exception are always historically contingent and situated in the very context of the irruption of forces, discourses, tactics, etc., that constitute the emergence in a Nietzschean and Foucauldian sense.

Nevertheless, a question still stands regarding the very strategic function of this mechanism: why would it be more *economical* — in terms of a cost-effective and reasonable disposition— to personalise all these entities? Why does the emergence of forces, discourses, decisions, and arrangements construct this extension of personhood via fiction? Or, better yet, what is it that all these instances produce and reproduce in the theatre of a *dispositif de sécurité* and a governmentality, that allows fictions to become its truth, and allows personhood to be its protagonist?

Part of the answer, as we have just seen, is that not only there is no *necessary* link between dignity and *persona* but also, and most importantly, that this dissolution is revealed to be the *product* of the extension of personhood.

In other words, through the multiplication of the exception, and the indeterminacy of truth and falsehood, *persona* becomes the dissimulation of the inexistence of such an eminence. Simply put, it seems there is no newly acquired dignity in becoming a person, and those who have it attached, by no matter what criterion, do not enjoy it either. As such, neither great apes nor turtles, neither rivers, mountains, nor robots come to integrate some sort of enlarged family of rights that were restricted to the humans, and that only now are being extended. Rather, their consecration conceals the fact that *persona* has been re-casted as a meaningless title, one that no longer implies any kind of pre-eminence, and that conceals its void by providing the appearance of an actual attribution.

Needless to say, this is not a moral judgement. One may very well argue that the very notion of dignity or pre-eminence as separation needs to be reconsidered, and as such the attribution of personhood serves the purpose of equalising all entities regardless of their composition, provenance, and so on. Under this framework, for instance, a utilitarian approach could account for the equal worth of animal life and human life via the extension

[218] Michel Foucault, *Le jeu de Michel Foucault*, p. 299.

of personhood, just as one could, perhaps from a different perspective, pose the worth of the *persona* of oil in face of any other entities. The point, in any case, is that this concealed lack of pre-eminence is constitutive of the extension of personhood, and it is in this fashion that it emerges in the contingency of this governmentality that performs the mechanisms of *fictio* and *persona*. Thus, what is being produced in this framework is nothing less than a non-eminent person.

It is not only pre-eminence, however. The emergence of this ever-growing plurality of persons and its fictitious texture, I believe, produces at least two other instances of effects that ought to be considered. On the one hand, the practical issue of representation. On the other, the production and exposure of a bare life, a *nuda vita*.

The first question has been posed by Haraway as a form of silencing, particularly in terms of a relationship with or towards nature.

As a brief recapitulation[219], Haraway rejects the reification and the possession of nature, as well as its mystification as a utopia, a hidden treasure, "a mother, a nurse, or a matrix"[220]. She instead argues for nature to be understood as "a *topos*", a commonplace in a rhetorical sense, as well as "a *trópos*" by which nature is understood as a "figure, construction, artifact, movement, displacement" that "cannot pre-exist its [own] construction" [221]. Haraway poses, moreover, that nature is "made, as both fiction and fact" —fiction taken here as artifact and narration—, and that such a construction implies "many actors, not all of them human, not all of them organic, not all of them technological" in the formation of nature[222]. On this note, she rejects both the idea of a complete denaturation of the world on account of hyper-production, as well as the perspectives of a transcendental naturalism that seeks to recover some sort of long-lost nature, forwarding instead the notion of a "differential artifactualism"[223].

Upon said framework, Haraway poses difficult questions to some of the salvific narratives that aim to cast new forms of relationship with both natural and artificial entities. For instance, she challenges the image of the white-Western researcher that holds hands with chimpanzees in Tanzania as a gap-closing gesture, showing how these "transcendentals of nature and society meet here in the metonymic figure of softly embracing hands from two worlds, whose innocent touch depends on the absence of the 'other world' the 'third world', where the drama actually transpires". This is a critique regarding the silence around processes of independence of many African nations and the erasure of their own relationships to nature[224]. Similarly, she discusses the idea of the European representation of Amazonia as "'empty' of culture" or as a "'purely' biological entity"[225], as if indigenous and non-indigenous

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219 See *supra*, 4.2.

220 Donna Haraway, *The Promises of Monsters*, p. 296.

221 Donna Haraway, *The Promises of Monsters*, p. 296.

222 Donna Haraway, *The Promises of Monsters*, p. 297.

223 Donna Haraway, *The Promises of Monsters*, p. 299.

224 Donna Haraway, *The Promises of Monsters*, pp. 307 – 308.

225 Donna Haraway, *The Promises of Monsters*, pp. 309 – 310.

people did not exist, and as if they had not had any relationship with the Amazonian rainforest whatsoever for several generations. She concludes that, quite on the contrary, the "Amazonian Biosphere is an irreducibly human/non-human collective entity"[226].

Here, the persistent question arises, one that is phrased time and again in the actual examples of the extension of personhood to non-human entities: the question of who speaks *for* them. In pragmatic terms, of course, the issue comes in a strictly juridical perspective in the same way it is done with, *e.g.,* children on account of them not being fully capable before the law when it comes to manage their own estate. However, the question had been raised before in terms of the very *constitution* of the person in Hobbes[227], and it is in this more radical philosophical vein that Haraway faces it.

She addresses the issue through a question about the protection of species in the Amazonian biosphere: "Who speaks for the jaguar?". She deems this question "wrong on a fundamental level" because it mirrors the structure of another question, often raised by some 'pro-life' groups in the abortion debate: "Who speaks for the fetus?"[228]. She argues that these claims for representation, framed indeed as a quest for protection, entail a "distancing operation" that disempowers those who are deemed "too close" to the represented entities, namely, the people that inhabit alongside the jaguar, and the woman carrying the foetus:

> Both the jaguar and the fetus are carved out of one collective entity and relocated in another, where they are reconstituted as objects of a particular kind—as the ground of a representational practice that *forever* authorizes the ventriloquist. Tutelage will be eternal. The represented is reduced to the permanent status of the recipient of action, never to be a co-actor in an articulated practice among unlike, but joined, social partners.
>
> Everything that used to surround and sustain the represented object, such as pregnant women and local people, simply disappears or re-enters the drama as an agonist [...] Pregnant women and local people are the least able to "speak for" objects like jaguars or fetuses because they get discursively reconstituted as beings with opposing "interests." Neither woman nor fetus, jaguar nor Kayapo Indian is an actor in the drama of representation. One set of entities becomes the represented, the other becomes the environment, often threatening, of the represented object. The *only* actor left is the spokesperson, the one who represents[229].

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226 Donna Haraway, *The Promises of Monsters*, p. 311.

227 See *supra,* 3.1.

228 Donna Haraway, *The Promises of Monsters*, p. 311.

229 Donna Haraway, *The Promises of Monsters*, p. 312. On a different but related note, see Gayatri Chakravorty Spivak, "Can the Subaltern Speak?" in Patrick Williams and Laura Chrisman (eds.), *Colonial Discourse and Post-Colonial Theory* (New York: Columbia University Press, 1994), 66 – 111.

This is a powerful and complex analysis. Firstly, it shows another paradoxical topology in which a void is created between an entity and any others surrounding it, which Haraway appropriately calls "integument" —from *integumentum, i.e.*, a covering, as in the tissue that covers the body. As we have seen, many individual bodies constituting a single entity is nothing new, as the idea was already present in the Spinozian conception of the human body and in Hobbes' frontispiece, not to mention that it is upon this notion that the personalisation of entire ecosystems relies. What Haraway brings forward, however, is that in its isolation as a voiceless entity, deemed *worthy* of someone speaking on its behalf, the represented object introduces an exception to the agency and disposition of those who interact with it, and even, as is the case with the pregnant woman, the disposition and agency of the individual but complex body that sustains the represented object. Thus, a woman may very well dispose of her body *except* when it comes to the particular part of her entrails that has been isolated as a singularity worth of protection, which is done by rendering her not an actor, not an agent, not a voice, but a "maternal environment", and by transforming the foetus into a (state of) exception included in her own corporality[230].

Similarly with the jaguar, the turtle, the chimpanzee, the shark, the river, the mountain: all of them may be individualised and personalised not because of themselves, but because of their capability to produce spaces of exception in which the agency of others becomes blurred or completely lost, that is, not on account of pre-eminence, which as we just saw is simply not an attribute of their *personae*, but on account of their utility in the framework of a governmentality. Once again, as Deleuze says, it is the production of "mode of existence" that implies the deprivation of "any form of interiority or identity"[231].

Secondly, the analysis also reveals the production of several forms of silencing in the context of personhood. Although this is not Haraway's main focus, it can be easily derived from her theatrical approach to representation, which comes close to the dramatic tradition of *persona*. As we have seen, this idea of *speaking for* has already been used in the personalisation and personification of non-human entities, such as the state or a community speaking on behalf of a river, a mountain range, or nature itself —or even, sometimes, the other way around. It is also present, of course, in the metaphorical approach to the mask as *per-sonare*, and in Hobbes' equation of person and actor, which in turn means that the unity of imputation comes not in the "*represented*" but in the "*representer*"[232].

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230 Donna Haraway, *The Promises of Monsters*, p. 312. Haraway bases her criticism of this "maternal environment" as the product of two very powerful discursive realms — the juridical and the medical—, citing Ruth Hubbard's feminist criticism of "maternal and fetal medicine". Hubbard explicitly links this idea to personhood: "So the fetus is on its way to being a person by virtue of becoming a patient with its own legal rights to medical treatment. As we have seen, once the fetus is considered a person, pregnant women may lose *their* right to refuse treatment by becoming no more than the maternal environment that must be manipulated for the fetus's benefit [...] It is not unusual to find pregnant women referred to as the 'maternal environment', but now even that term directs too much attention to them. They are becoming 'the fetus in situ', the vessel that holds the fetus, the ideal patient who does not protest or talk back": Ruth Hubbard, *The Politics of Women's Biology* (New Brunswick: Rutgers University Press, 1990), pp. 176 – 177.

231 Gilles Deleuze, *La vie comme ouvre d'art*, p. 135.

232 Thomas Hobbes, *Leviathan*, 16.13; p. 109.

In Haraway's example, the represented objects are, of course, silent. The foetus and the jaguar do not speak for themselves, and it is this essential silence what seems to justify the attribution of representation. This need not be the case, however, as evidenced by the cases of human persons that are not *allowed* to speak: from the strictly juridical cases of legal incapacity to the historical cases of entire populations deemed incapable of self-government, such as the indigenous population of the Americas who were not subjects of self-determination but objects of protection[233], and therefore, silent. The immanent silence of the represented object is therefore not consubstantial to the entity, although it is convenient. This silencing is, in fact, the *product* of the operation by which an entity becomes representable, with or without its will, and it is in this sense that the notion of "*representer*" forwarded by Hobbes acquires its sense as centre of imputation.

Needless to say, both fiction and *persona* may serve as mechanisms to produce this silencing: whether by entitling those entities with the worth or the need for representation, by taking them *as if they* spoke and were only silenced in a particular set of circumstances (*v.gr.* the *nasciturus*), or by taking them *as if they had interests* of their own, introjecting completely alien categories to the indifferent *topos* of nature, using such fictions to re-produce entities as nothing but interests in themselves. Nevertheless, one may also argue, as I will further ahead, that even silent entities may indeed have 'something to say' —a conscious metaphor— for themselves with their very presence, a possibility that is in any case obstructed by this form of silencing through representation[234].

On the other hand, the silencing that Haraway actually denounces is the one of those who are "too close". As she says, the spokesperson, the representative is the only one that supposedly holds the necessary distance with the represented entities so that "their interests" are preserved. Thus, in the analogy of the theatre, the represented entities are only there via "the most disinterested ventriloquist", which on account of the silencing produced by the very operation of representation, may also silence the pernicious "environment" of the mother or the community. The consequence is that any form of communication can only be performed directly with said ventriloquist —and not through it—, for it is the only one capable of reading, as a new form of clairvoyance, the interests of the objects of representation.

To follow upon one of my previous examples, it would not be difficult to envision the consecration of oil as a person, so that it can "speak for itself" via a ventriloquist public or private, and at the same time silence the pernicious entities that surround it, such as the peoples opposing its extraction that are too close to understand the *interest* of the oil to flow freely, an interest that seems to oppose its "resistance" as merely lying underground or underwater. This is of course, a fabrication —and a provocation— of mine, but it shows quite clearly the double operation that Haraway denounces upon the context of the *persona*.

Moreover, there is a relevant element of temporality in the production of these silences that contributes to the metamorphosis. On the one hand, given that silence is the only form

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[233] As discussed earlier, this is not to say that they were not, in fact, persons. See *supra*, 2.3.

[234] Only in the situated circumstances of an emergence of this particular form of representation.

of its existence, the represented entity will never be able to actually 'say' anything for itself. It will always 'speak' and 'act' only through the ventriloquist: a sort of inaccessible god whose commandments are only expressed via the authority of a particular interpreter. On the other hand, the surrounding entities, constitutively and inescapably opposed to the represented objects, are themselves reconstructed as some sort of natural enemy, one that by its mere existence endangers the 'interests' of the represented object, and therefore those natural enemies are not entitled to a concern of their own. In this sense, the represented object serves as the mere placeholder for the actual speaker, or if I may, as the prop in the game of make-believe in which jaguars and foetuses speak, but only under the prescriptions of a ventriloquist. Contrastingly, the woman and the community become the background, the threatening conditions that never amount to an entity capable of agency. It may very well happen that the foetus, the jaguar, the mother, and the communities are all deemed *personae*, but suddenly, by the distance and the exceptionality of representation, all of them are immovable and silent, and only the ventriloquist does act and speak.

This begs the question of who the ventriloquist is. Haraway sees the answer quite clearly in the figure of the scientist, who surpasses the "the lawyer, judge, or national legislator" in conveying the interests of "nature", that is, the "permanently and constitutively speechless objective world" [235]. Beyond the evident historical issues of addressing scientific discourse as neutral, impartial, and objective, as if it were not traversed by dynamics of power, the interesting question may be the operation of translation. The ventriloquist seems to acquire either the figure of the prophet, to whom nature reveals itself, or the figure of the clairvoyant, who by his or her own exceptionality, can read the fabric of nature and derive from it a certain will. In any case, the essential fact in this translation is the requisite of a certain distance: sufficiently close to read the object, sufficiently far away as to not become the environment or the object itself.

On the terms of a piercing genealogy, this in fact denounces another form of a "*pathos* of distance": not the one that separates the "high-placed" and the "high-minded" from their lower counterparts[236], but the one that allows to allocate in the silent the words of the ventriloquists, and in doing so, to present as an emanation (*Ursprung*) the emergence (*Entstehung*) of the supposed interests of non-human entities.

Furthermore, what Haraway's examples of ventriloquists have in common —besides being actual instances of representatives— is that the distance functions as another form of fiction: it is *as if* the representatives were not part of nature, *as if* they were not themselves invested and traversed by a set of knowledges, powers, practices, techniques, and interests —economic, social, historical—, and *as if* these interests were not conveyed in the translation. Both the prophet and the clairvoyant have their own perspective, however, and as such, they have their own way of modifying via their interpretation —via their fictions, Vico would

[235] Donna Haraway, *The Promises of Monsters*, p. 312.

[236] Friedrich Nietzsche, *Zur Genealogie der Moral* (Hambrug: Meiner Verlag, 2013), §1.2, p. 15. I am following the English translation: Friedrich Nietzsche, *On the Genealogy of Morality*, trans. by Carol Diethe (Cambridge: Cambridge University Press, 2006).

say— the object of their representation. In other words, two forms of an *as-if*: having the object *as if* it spoke, having the speaker *as if* it were silent.

This is not to say that each and every instance of representation and personalisation is constructed in this fashion, nor is it an analysis immediately appliable to every situation. As we have seen, for instance, personhood sometimes arises as a clear form of imputation and liability, as is the case so far with robots, or it could very well try and maintain all the voices on a levelled plain. What this does show, however, it's how in the particularity of an emergence and its *dispositifs*, the mechanisms of *persona* and fiction do not necessarily produce a plurality of voices —a polyphony of equally speaking subjects—, but instead they may produce a silent choir composed of objects and their "environments", all of them dressed in the mantle of personhood, present only as a speech that is not theirs to command.

Not only the extension of personhood produces non-eminent subjects, therefore, but it also allows for the simultaneous silencing of both the newly born and the already-present persons, so that *persona* is no longer necessarily a voiceful subject, but a voiceless presence, much more malleable, much more manageable.

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The governmentality of an endless extension of personhood via fiction —upon a plane in which truth and fiction intertwine, making them infinite mirrors of each other—, seems to produce a choir of silent, petrified and non-eminent *personae*. As I said earlier, however, there is yet another effect at play: the production and exposure of a bare life, which in Agamben's reading is presented as the *nuda vita*, a life without attributes, literally a nude life deprived of any qualification beyond the fact that it merely *is*.

A central point in Agamben's thought, the *nuda vita* makes its appearance with the publication of *Homo sacer* in 1995, although, as I will touch upon briefly further ahead, it was already central in Walter Benjamin's *Zur Kritiz der Gewalt* of 1921. Before moving forward, however, a clarification is due regarding Agamben's approach.

As we have seen, the latter Agamben takes the totality of existence as belonging to two categories: the living entities and the "*dispositivi* in which they are ceaselessly caught"[237]. If one admits this partition, then it is clear that the multiple instances of the extension of personhood via fiction cannot be anything but a *dispositivo*, one of the many that allow to "capture, direct, determine, intercept, shape, control, and secure the gestures, conducts, opinions, and speech of living beings"[238]. Here, the notion of *oikonomia* becomes all the more telling. Agamben takes the process of subjectification as the contact between the living and the *dispositivi* to the point where these are responsible for the "hominization (*ominizzazzione*) [...] of the animals we classify under the rubric of *homo sapiens*"[239]. In such a renewed *oikonomia*

[237] Giorgio Agamben, *Che cos'è un dispositivo*, p. 21.

[238] Giorgio Agamben, *Che cos'è un dispositivo*, p. 22.

[239] A similar notion, more recently, in Giorgio Agamben, *La voce umana* (Macerata: Quodlibet, 2023), p. 60.

of the living, the inescapability presents itself therefore not only in biopolitical terms, but in ontological and metaphysical terms. *Persona*, under this lens, would be the name of a subjectified but subjectless entity, not because the mechanisms of *persona* or fiction produce such an entity, but because any contact between the living and the *dispositivi* result in this form of subjection, from the panopticon and the prison, to the pen and language itself[240], and so *persona* is yet another form of the counterpart of the living in the totality of existence.

This is not the framework on which I construct my own approach here, since I believe the *nuda vita* —and the biopolitical concerns it raises— ought to be historically situated in the framework of the emergence as defined by Foucault, that is, as the product of regimes of knowledge and power that are not governed by any metaphysical will; and because I believe Agamben's latter approach is ultimately reductionistic. This is the reason why the notions of *dispositif* and *dispositivo* seem to me to be at antipodes, and the reason why I will remain therefore in Agamben's first approach to the *nuda vita* —far more nuanced than its latter instalments.

As previously stated[241], Agamben approaches the notion of *nuda vita* through the opposition of a mere life (*zoê*), common to all sorts of living entities, to the politically qualified life (*bíos*) that belongs to those who inhabit the *polis*[242]. His original intention, upon such a distinction, was to "correct", or "integrate" the Foucauldian approach to biopolitics, saying that the matter is not actually to address the inclusion of the *zoé* into the *polis* — "in itself very old"— but to address how the exception of such an inclusion has actually become the rule, and how the "space of the *nuda vita* comes to progressively coincide with the political space"[243], just as bare life and political life cannot be distinguished from one another.

This correction, moreover, poses that "the living man" (*l'uomo vivente*) is not only the "object" of biopolitics in modern democracy, but also its "subject", understood as the aporia of being its agent, but also the subjected entity of biopower, so that "the freedom and happiness of men" is played "in the same space — the '*nuda vita*'— that marked their

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240 Agamben arrives at this approach many years after his first incursion into the question of the *nuda vita*, implying a whole dimension of the development of his thought that goes beyond the outlines of my own query. Suffice to say that, between the publication of *Homo sacer,* and *Che cos'è un dispositivo* and *Il regno e la gloria* —where the concept of *oikonomia* is probably most developed—, there is an interval of at least a decade, and it is at this point where his metaphysical partition becomes clearly outlined.

241 See *supra*, 3.3.

242 Giorgio Agamben, *Homo sacer,* pp. 3 – 4. There is, to me at least, a close relationship between *nuda vita* and a juridical concept that, to my knowledge, Agamben has never made apparent, although it is plausible to think it was in his mind when using the notion. The concept is that of *nuda proprietas*, literally "nude property", which refers to the ownership (*dominium*) of an object that nevertheless is stripped from the right to use it or to enjoy its fruits or profits, that is, literally disrobed from the right of what the Romans called "*usufructus*". It appears prominently in Gaius' own discussion of the figure: "since the owner can cede the usufruct to another, so that this has the usufruct and the other retains the bare property (*ipse nudam proprietatem retineat*): Gaius, *Institutes*, 2.30. Evidently, this figure comes strikingly close to the idea of something without attributes or clothing, a nude life, a nude property. This is, of course, a topic for another time.

243 Giorgio Agamben, *Homo sacer,* p. 12.

[reduction to] to servitude (*asservimento*)"[244]. In other words, Agamben poses, not only life has suddenly become the concern of political and juridical powers, but political and juridical powers have *subjected* life in the paradoxical form of the bare life. This is not far away from Foucault's own approach, given that in his own views, biopolitics —as is the case with any other form of power— produces, among others, the subject itself[245].

In his own quest, Agamben applies the paradox of sovereignty as a topology that is neither fully inside nor fully outside of the *nomos* in order to read the historically situated figure of the "*homo sacer*". The definition, which he takes from Festus Grammaticus, shows the interesting contradiction of a life that, by means of an operation of "*sacratio"*, cannot be sacrificed to the gods, since it already appertains to them; and yet it can be killed with impunity, since it is no longer part of the human community: excluded from both the human and the divine law, and therefore completely exposed to violence without any protection[246], the *homo sacer* belongs to both spheres only by exception. Agamben traces then the link between the non-orientable topology of the *homo sacer* to the non-orientable topology of the sovereign:

> Sovereign is the sphere in which it is possible to kill without committing homicide and without celebrating a sacrifice, and sacred, that is, killable and unsacrificeable, is the life that has been captured in this sphere [...] The sacredness (*sacertà*) of life, intended today to be asserted against sovereign power as a fundamental human right in every sense, originally expresses, instead, precisely the subjection of life to a power of death (*soggezione della vita a un potere di morte*), its irreparable exposure in the relationship of abandonment[247].

Besides the symmetric game of mirrors between the sovereign and the *homo sacer*[248], there are two key elements in this passage: capture and subjection. The life of the *homo sacer* is the life *captured* by sovereign power, and its sacredness lies in its *subjection* to death.

The concept of 'capture' is central to Agamben because it integrates the notion of exception as an *ex-capere*, as a "capture outside"[249]. The topology in motion of human law and divine law produces, by means of this double exclusion, the central space of sovereign power and the inhabitance of the *homo sacer.* The one, boundless, lawless and irresistible by definition,

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244 Giorgio Agamben, *Homo sacer,* p. 13.

245 Agamben published *Homo sacer* in 1995, at a time where Foucault's courses at the Collège de France were not easily available, but the production of a subjectivity in terms of biopolitics is palpable in the whole *Histoire de la séxualité* (1976 – 1984).

246 Giorgio Agamben, *Homo sacer,* pp. 79 – 90, and especially p. 91.

247 Giorgio Agamben, *Homo sacer,* pp. 92 – 93.

248 Further ahead he makes this contrast more explicit by saying: "At the two extreme limits of the order, the sovereign and the *homo sacer* present two symmetrical figures that have the same structure and are correlated: the sovereign is the one respect to whom all men (*tutti gli uomini*) are potentially *homines sacri*, and *homo sacer* is the one respect to whom all men act as sovereign": Giorgio Agamben, *Homo sacer,* pp. 93 – 94.

249 Giorgio Agamben, *Homo sacer,* p. 22.

and the other completely isolated, quite literally trapped in the outskirts of any regulatory framework, in what constitutes therefore the double face of the very same state of exception that Agamben identifies as the state of nature. The *homo sacer* is, therefore, captured in its absolute freedom, under the constant menace of a state in which every decision is possible and no right is guaranteed. Not, however, a state of nature in terms of the freedoms and the wills of those who will later bound themselves by the contract or the covenant, but instead a state of nature that "refers immediately to life", a life that does not belong to a beast or a human, but to the interstice of the *homo sacer* that drowns in the moat between the two realms[250].

In other words, the very exposure, the nakedness of the bare life is what becomes captured as the exception that becomes the rule. Recalling Arendt's analysis[251], Agamben poses that this exposure, and its subsequent capture, are not merely a formal proposition, but rather real effects at play when it comes to the "inscription of natural life into the juridico-political order of the nation-State". The mere fact of being born is introduced as the "source and bearer of rights"[252], re-placing the *persona* that Arendt took as the equivalent for the legal personality and the mask of political agency[253]: indeed, the politicisation of the bare life, its exposure without its traditional mantle of protection, and therefore captured outside any frontier.

Whether in the form of a newborn that is immediately casted into the political arena, or in the form of the *homo sacer* that is excluded from both divine and human laws, Agamben's depiction of this bare life is bleak to say the least. Since it serves as the mirror of sovereign power in his own account, Agamben does not seem to envision a life that, in its exposure, can nevertheless be anything else that the passive agent of violence and capture: not only, therefore, a bare life in the sense of its exposure, but a life that is completely devoid of living.

This idea is further developed in his analysis of the *habeas corpus* as the form in which the body, as "revindication and exposure", appears as the "new subject of modern politics and democracy"[254], for the target of the dynamics of sovereign power is indeed the *corpus,* and not the person, not the citizen and not even the *homo*. In this sense, he says, the body is a "two-faced being (*essere bifronte*) bearer of both the subjection to sovereign power and of individual freedoms"[255].

To cast a spurious metaphor, Agamben seems to find bare life in the nudity of Galatea: a mere body (*Körper*), as real and as human as possible, but exposed and defenceless, impossibly far from a living body (*Leib*). A "life" closer to the cadaver —the *soma*— than to a life. While it is clear that such an exposure is indeed problematic, and that it is indeed a valid way to interrogate the effects of, for instance, the declarations of rights that were produced

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250 Giorgio Agamben, *Homo sacer,* p. 121.

251 See *supra*, 3.2.

252 Giorgio Agamben, *Homo sacer,* p. 140.

253 Hannah Arendt, *On Revolution*, pp. 103 – 104.

254 Giorgio Agamben, *Homo sacer,* pp. 136 – 137.

255 Giorgio Agamben, *Homo sacer,* p. 138

by the 'enlightened' revolutions, it should also be apparent that life is not simply the recipient of a sovereign power that ties it at will, presupposing there are no dynamics of power involved in both the body and life.

As Arendt herself posed, it may be true that the French Declaration ended up creating a framework of exposure and abuse by "reducing politics to nature" —whose effects are well-known—, but it is also true that its authors envisioned emancipation, and hence why they attempted to liberate the "natural in all men" by attaching rights to birth and not to the appurtenance to a body politic[256]. In this sense, what the French Declaration saw was not a bare, reduced, and exposed life susceptible of capture, but instead a more radical and powerful cornerstone for a political project. That the declarations of rights, and particularly the liberal individual rights, create the conditions for other forms of power to be produced is undeniable, as undeniable it is that they produce new forms of subjection and subjectivity, but this does not mean that life is nothing but a receptacle of such a power.

Moreover, at least from Bichat and his contemporaries, the paradox of an exposed life traces its character as a resistance to death and disease, not only in terms of the individual that lives and dies, but in terms of the cells and tissues of which such an individual is composed[257]: a never-ending encounter in which life is shaped by those very resistances. Even if life is indeed "a very rare type of death", in the organic accident that Nietzsche described[258], it is still involved in a power that grows, breaths, moves, and struggles, a power that essentially produces and reproduces forms of life.

That being said, however, what can be gathered from Agamben's depiction is this aporia of products is the multiple forms of power that are exercised in the juridico-political realm. They effectively produce forms of agency, capacity, freedom, and overall performative presence, not to mention life itself as a fact and as a discourse, but they also produce the instruments that subject them, that bind them and tie them down, all of it encompassed in the paradox of the subject.

This is indeed what he poses in terms of sacredness and subjection. The sacredness of life —and not its sanctity[259]— lies precisely in the paradox of being "killable and unsacrificeable", one that mirrors, and amplifies, the other paradox of being a subjected subject. As we have seen, the chiasma of agency and attributes of the subject is transmuted into the self-consciousness and identity that constitutes an imputable subject, that is, the "forensic term" of the *persona*. In this instance, however, what Agamben seems to denounce is much more radical.

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256 Hannah Arendt, *On Revolution*, p. 104.

257 Michel Foucault, *Naissance de la clinique*, pp. 147 – 149. Foucault speaks of both "exposure" and "opposition" in the knowledge that derives from the confrontation to death in terms of this form of "vitalism".

258 Friedrich Nietzsche, *Die fröhliche Wissenschaft,* §109, p. 122.

259 See Yan Thomas, « De la « sanction » et de la « sainteté » des lois à Rome. Remarques sur l'institution juridique de l'inviolabilité » dans Yan Thomas, *Les opérations du droit*, eds. Marie-Angèle Hermitte et Paolo Napoli (Paris : Seuil-Gallimard, 2011), pp. 85 – 102. For a fairly recent analysis of the notion of "*sanctum*", in contraposition to Agamben, see Thomas Berns, « Du *Sacer* au *Sanctus* : contre Agamben à partir du droit romain », *Archiv für Rechts-und Sozialphilosophie*, 102 (2016), 441 – 454.

Firstly, because this paradox is indeed inscribed upon the corporality and upon the bare life, and as such it shows the development of biopolitics in the 20th century, whose effects are amply known. The bare life Agamben speaks about is, of course, human life, the only one that thus far has been endowed with an ensemble of attributes and that becomes, by virtue of those attributes, the 'good life', the 'politically qualified life' or even the life "worth living" —which needless to say are to be taken neither as natural nor as desirable, but always as the product of a regimes of verification and subjection[260].

This life, exclusive to humans —to *men,* in Aristotle's conception—, excludes the life of animals and gods, which are already, and by definition, natural and therefore *bare*. Agamben is not occupied with life as a general discourse or as a physiological function, but rather with the exposure of human life that, in the framework of the exception that becomes the rule, takes the form of the *nuda vita* of the *Muselmann*, the prisoner of the concentration camp that was essentially casted down from the "world of men". Not even an actual *zoé*, as they no longer possessed instinct or "anything natural"[261], but the epitome of the *bare life*.

The state of exception as the rule is also neither a theoretical nor a general framework. If Agamben poses that the concentration camp has replaced the *polis* in becoming the "biopolitical paradigm of the West"[262], it is because the concentration camp and the *Muselmänner* were produced under the Weimar constitution, whose rights and protections never were actually abolished by the Nazi regime, but simply "suspended until further notice" via the *Reichstag Fire Decree* of 1933[263]. It is therefore not in spite of or against the constitutional framework that the ineffable erasure of human dignity is produced, but in its breast and via its own mechanisms as a form of indefinite suspension: what Agamben —via Benjamin— describes as a law that "is in force (*vige*; *gilt*) but has no meaning"[264]. On this form of endless provisionality, the *subject* of action, dignity, and attributes may also be in force, but it has no meaning.

Secondly, Agamben's warning is much more radical because the sacredness of bare life does not account for any sort of agency. The notion of person as a centre of imputation is indeed, if I may borrow from Agamben's own terminology, a form of *capture,* by means of which a subject is tied down in its freedom of agency to the notion of responsibility, or better yet, by means of which the freedom of action implies a form of accountability and liability that decisively links the subject to the *nomos*.

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260 For instance, Agamben analyses the concept of the life worthy of being lived in terms of the eugenics programme of the Nazi regime, in which the proposal by Karl Binding and Alfred Hoche —jurist and physician, respectively— was to annihilate the life that was unworthy to live (*der Vernichtung lebensunwerten Lebens*): Giorgio Agamben, *Homo sacer,* pp. 150 and ff.

261 Giorgio Agamben, *Homo sacer,* p. 206.

262 Giorgio Agamben, *Homo sacer,* p. 202.

263 Giorgio Agamben, *Homo sacer,* p. 187. See also, Giorgio Agamben, *Stato di eccezione,* pp. 24 and ff.

264 Giorgio Agamben, *Homo sacer,* p. 59. Agamben cites a letter from Benjamin to Gershom Scholem on Kafka's *Der Process*, dated September 20, 1944.

However, this notion takes for granted that, as Locke says, "only intelligent Agents" are capable of personhood[265], and as such it is precisely in the fact that they are indeed able to act and to respond for their actions that their exposure to accountability is sustained, so that they embody —as I said earlier— the paradox of being bound and yet responsible [266]. The fact that the person is an imputable subject, moreover, implies *authorship* in Kantian (and Hobbesian) terms, and consequently separates the free but imputable subjects from the objects that cannot be imputed *because* they cannot act, re-tracing the dissection between persons and things[267].

In the case of the *nuda vita*, on the contrary, the sacredness of life does not appear as the two faces of being tied down and nevertheless capable of action, but instead as the paradox of life having an almost divine status at the expense of being trapped outside any form of protection. In other words, there is no underlying agency that sustains or produces both the action and the subjection for those actions, there is no action and no authorship whatsoever, but only the simulacrum of a godly presence that rests in the mere fact of living, concealing that, in its quasi-divine attributes, there is nothing preventing it from being obliterated: life is sacred not because it cannot be touched, but because it has been exposed *as if* it were untouchable.

If Agamben is right, and the exception of bare life has indeed become the rule, then the mechanism of *persona* can be read as part of the operation of *sacratio*, producing not only non-eminent and silent entities in constitutive terms, but also subjectless and yet subjected persons, or to use the telling language of Bourg and Swaton, an ensemble of "moral patients"[268] whose sacredness —whose *persona*— rests only in the fact of being alive, in the bare life incapable of any freedom, any action, any authorship. This seems to be, ultimately, what the criterion of life as sufficient for personhood embodies.

Once again, this is not a moral judgement. It may be desirable or useful in some framework to abolish the very notion of action and authorship. It may also be important to hold life as sacred, regardless of the instances of exception. On the other hand, as I said earlier, life is neither necessarily nor exclusively *bare* life. In its very complexity, it may very well be reconsidered in terms of its resistance, of its movement, of its actual presence, regardless of the category of person. Finally, it is clear that the mechanism of *persona* is not by any means the way in which such an operation of *sacratio* was performed in neither the strictly juridical approach of Festus nor in the concentration camp, since the very concept of *nuda vita* implies the suppression of such a category.

However, what I find valuable is the interrogation of the effects of power that *persona* has under this lens: rendering and producing entities entirely exposed and disposable that, nonetheless, hold the status of untouchable. It is precisely this simulacrum that, providing an

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[265] John Locke, *An essay concerning human understanding,* 2.27.26; pp. 296 – 297.

[266] See *supra*, 3.1.

[267] Immanuel Kant, *Metaphysik der Sitten*, [223], p. 26.

[268] Dominique Bourg et Sophie Swaton, *Primauté du vivant,* p. 125.

aura of inviolability, casts the entities into the disposition of a governmentality: moveable and re-arrangeable at will as the images and reliquaries of a temple.

If the sacredness of human life is not in fact a space of inviolability, but the very condition in which its utmost violation is performed, then it is difficult not to wonder whether the re-settling of the criterion for personhood in life would not carry in itself the very same effects. When everything alive becomes a person by virtue of being alive, regardless of any other attribute, or better yet, precisely because such a *persona* has no attributes, what is being produced is not the rich politicisation of natural life, in which every entity has agency and authorship on its own, but rather the reduction of any form of life to its bare minimum, in their exposure as nothing-but-a-life, irreplaceable in their action, authorship, and agency, only in as much as these capacities are already meaningless.

In a biopolitical framework such as the one Agamben describes, the role of *persona* and its fictions seems to appear indeed as the thresholds by means of which a plurality of entities become consecrated to the bare life: a form of *sacratio* that has been already seen in the exceptionality of human life, and that now leaves the frontiers of the humans in order to occupy spaces that were previously unconquerable.

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Although this is not the place to engage myself thoroughly with Walter Benjamin's thought, a brief excursus through his own approach to bare life may be useful if only to highlight its nuances in contrast to Agamben's.

In his effort to perform the "the task of a critique of violence", which he frames upon the distance between law and justice, and between means and ends[269], Benjamin arrives at the concept of a "bare life" amidst the opposition between two different forms of violence. On the one hand, the legal, law-producing, law-maintaining violence he calls "mythic", and on the other hand, the law-annihilating (*rechtsvernichtend*) violence he calls "divine", which opposes mythic violence[270] and appears in the human realm as "pure immediate" (*reine unmittelbare*) revolutionary violence[271].

Benjamin traces this confrontation in a close relation to a powerful image: blood. Mythic violence, he claims, is characterised by lethal bloodshed, whilst divine violence, although also lethal, is nevertheless bloodless. Upon this distinction, he claims that "blood is the symbol of bare life" (*Denn Blut ist das Symbol des bloßen Lebens*), and in being essentially blood-shedding, mythic violence also finds its limit over the living in this *bloßes Leben*, as there is

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269 Walter Benjamin, „Zur Kritik der Gewalt" im *Gesammelte Schriften* II.1 (Frankfurt am Main: Suhrkamp, 1991), p. 179. I am using a recent and revised English translation: Walter Benjamin, *Toward the Critique of Violence: A Critical Edition*, ed. by Peter Fenves and Julia Ng (Stanford: Stanford University Press, 2021).

270 Walter Benjamin, *Zur Kritik der Gewalt*, p. 199. Benjamin poses a theological argument: mythic —legal— violence, "inculpates and expiates at the same time" (*verschuldend und sühnend zugleich*), as opposed to divine violence that actually accomplishes "atonement" (*entsühnend*).

271 Walter Benjamin, *Zur Kritik der Gewalt*, p. 202.

nothing beyond the blood it spills. Moreover, mythic violence, which both founds and preserves the law, introduces the living, "innocent and unfortunate", into a never-ending process of inculpation and expiation[272]. Benjamin closes this passage by saying that, while "mythic violence is blood-violence that falls upon bare life for the sake of violence; divine violence is pure violence over all life for the sake of violence itself"[273]. The pureness of divine violence contrasts with the thirst for blood of mythic violence, which iterates and reiterates a guilt that has its origin, and its end, in the operation of the production and the preservation of law.

Further ahead, Benjamin returns to the notion of bare life when facing the claim of sanctity —*i.e*, inviolability— of life, whether applied to "all animal and even vegetable life, or limited to the human". Here, he claims that "if existence (*Dasein*) means nothing more than bare life", then it cannot be said that it is worth more than a "just existence". Yet, he adds, if "existence (or better, life)" means the "aggregate state of 'human being' (*Mensch*)", then it certainly follows that "not-being a human" is a more terrible condition "than the mere (*bloße*) not-yet-being of the just human being"[274]. Benjamin, in other words, poses that there is indeed a notable distance between bare life and human existence, regardless of the sanctity of life specifically in humans:

> The human's worth simply does not coincide with the bare life of the human (*dem bloßen Leben des Menschen*), neither with the bare life within him nor with any other of his conditions and properties, not even with the uniqueness of his bodily person (*seiner leiblichen Person*)[275].

Neither the life nor the body, therefore, constitute for Benjamin the worth of the human being, which surpasses both death and its living body (*Leib*).

This becomes relevant under the lens of another passage, where Benjamin traces the difference between this 'living body' (*Leib*) and the 'mere body' (*Körper*), by saying that the living body is "a function" of the mere body, which in turn constitutes its "substance"[276].

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[272] Walter Benjamin, *Zur Kritik der Gewalt*, pp. 199 – 200.

[273] Walter Benjamin, *Zur Kritik der Gewalt*, p. 200. For this complex and ambiguous passage I am following Julia Ng's translation: Walter Benjamin, *Toward the Critique of Violence*, pp. 57 – 58. The German *"um ihrer selbst"*, translated as "for the sake of violence" can also refer (and it often does) not to violence, but to bare life. In contrast with divine violence, however, which is "pure" and "for the living", it seems the more correct interpretation is that mythic violence is done for the sake of violence itself and not for the sake (or on account) of "mere life", which is both its object and its limit, or if we may, its means. Given that there is no manuscript, and that the typescript is heavily corrected, the difficulties in the transcription are noteworthy, to the point where Adorno himself mis-transcribed at least one term in his inaugural anthology of Benjamin's writings from 1955: see Walter Benjamin, *Toward the Critique of Violence*, pp. 61; 292.

[274] Walter Benjamin, *Zur Kritik der Gewalt*, p. 201.

[275] Walter Benjamin, *Zur Kritik der Gewalt*, p. 201.

[276] Walter Benjamin, „Schemata zum Psychophysischen Problem" im *Gesammelte Schriften* VI (Frankfurt am Main: Suhrkamp, 1991), p. 79. This fragment is also included in Walter Benjamin, *Toward the Critique of Violence: A Critical Edition*, pp. 98 – 107. See *supra*, 1.3.

Upon this distinction, in a complex eschatological framework, he traces a definition of person of his own: "the restricted reality that is constituted by the foundation of a spiritual nature in a mere body (*Körper*) is called the person"[277]. Benjamin then establishes a relation between the *Körper* and God, in terms of resurrection; and a relation between the *Leib* and humanity (*Menschheit*), as the function that embodies the historical (*i.e*, finite) life.

What is interesting, however, is the double paradox that Benjamin poses.

On the one hand, it is in the *Körper,* and not in life, where the person lies. The function of living is not the substance of personhood, but indeed only a finite aggregate. If there is any dignity and worth in the human being —in its *persona*—, it can only be found in the mere body that, able to transcend biological life via resurrection, can be the receptacle of such a distinction. In other words, since life is indeed shared with other entities, it cannot therefore hold the dignity, worthiness, distinction, or sacredness of a *persona*. It is upon this notion — sustained of course by the eschatology of resurrection— where the bare life and the human being become separated, where the latter surpasses the former.

On the other hand, Benjamin seems to approach the *Leib* as simultaneously one and many. He speaks of "individuality" (*Individualität)* as the "principle of the living body", but such an individuality is not the character that, for instance, Kant traced as the unity of a transcendental subject or as an *a priori* presupposition for understanding, nor the Lockian approach to an imputable consciousness. Rather, this individuality is closer to the one that Hobbes was trying to grasp in the agency of the Leviathan as a single person, or even better, as the Spinozian body composed of many others. As such, in Benjamin, each individual human is outlined by the living body of humanity as whole, which surpasses and encompasses "all particular living embodiments" [278].

Furthermore, while this humanity is indeed the end of the historical function of living, it is also described by Benjamin as having a remarkable potency, for the *Leib* of humanity — this living body of this finite historical life— can also incorporate "inanimate beings (*Unbelebtes*), plants, and animals", that is, the whole of nature into its living body "through technology (*Technik*)"[279], an entirely different approach from that of the latter Agamben and its Heideggerian framework of capturing *dispositivi* and *Gestellen*, and also from the first Agamben in terms of bare life as being essentially the object of capture by sovereign power and biopolitics.

Granted, this inclusion of the whole of nature, that Benjamin advocates for, appears as subservient to the happiness of "humanity and its limbs", that is, the living bodies of each individual, but this approach does foreshadow an interaction with nature as a reciprocal construction that is not based solely upon the mere fact of living, upon bare life, which in itself holds both the beginning and the end of its supposed worth. Such a construction clearly

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277 Walter Benjamin, *Schemata zum Psychophysischen Problem*, p. 80.

278 Walter Benjamin, *Schemata zum Psychophysischen Problem*, p. 80. See *supra*, 3.1.

279 Walter Benjamin, *Schemata zum Psychophysischen Problem*, p. 80.

echoes Haraway's idea of a mutual but differentiated production and re-production of humans, as well as the *topos* and the *tropos* of nature.

Although Benjamin's concern is clearly theological, his approach is certainly compelling. Firstly, because in a framework of immanence, the idea that the mere presence is sufficiently powerful to interrogate the inhabitance of a common *topos* seems to answer the need to address non-human and non-living entities, neither necessarily nor exclusively through the masks of personhood and subjecthood. The mere *Körper* is therefore potentiated in its actual mere existence, without (re)producing categories and mechanisms that may very well silence, expose, and erode their effects in other instances.

Secondly, because this conception of a one and multiple *Leib* allows to not take life as the ultimate immovable frontier that stands still before an irredeemable operation of capture. This is indeed what Benjamin criticises at the very end of his *Critique*, where he poses that the dogma of the sanctity of life may, in fact, consecrate "the designated carrier of inculpation: bare life" (*der gezeichnete Träger der Verschuldung ist: das bloße Leben*)[280]. Instead, this living body — this life— is moveable, plastic and it holds, perhaps, the traits of a certain will to power[281] that is both completed and demised in multiple individualities. Function, power, knowledge, and resistance, a life that is itself capable of conceiving and producing other instances of both collective and individual lives, not bare, but abundant and adorned.

Agamben's warning regarding bare life is, in any case, a powerful one. There are indeed historical and concrete reasons to be weary of mere biological life as the principle, means, and end of human life and its extension to other spheres. However, Benjamin's own approach to bare life goes beyond itself, so to speak, and retraces the potentialities of the *Körper* and the *Leib*, in a relationship to humanity and nature that may surpass the bloodshed of mythic violence. Admittedly, in a secular framework Benjamin's own approach is problematic, and his account of divine violence opens up a whole line of query on its own that goes well beyond the matter of personhood, but in any case there is indeed an aperture in these set of layers, surfaces, and simulacra in which attributes may be "in force" but signify nothing.

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This reading of the interlacement of *persona* and fiction, in its contemporary extensions, has shown the production of entities that operate and are constituted *as if* they held the eminent theological distinction and dignity the concept of *persona* once embodied, when in fact they conceal a dismantling operation of the very category. They are nevertheless persons by fiction, in the sense of being produced in the interstice between true and false, in a form of indistinctiveness that arises as the very negation of the constitution of the category, so that

[280] Walter Benjamin, *Zur Kritik der Gewalt*, p. 202. The term *Verschuldung*, just as *Schuld*, refers not only to "guilt", but also to "debt". See Elettra Stimilli, *Debito e colpa* (Roma: Ediesse, 2015).

[281] An interesting account of the nuances of Benjamin and Nietzsche in James McFarland, *Constellation: Friedrich Nietzsche and Walter Benjamin in the Now-Time of History* (New York: Fordham University Press, 2012).

non-persons become persons by remaining true to their unaltered self. Thus, an emergence of *personae* that have no eminence, but only the appearance thereof. *Personae* that have no voice, and in fact produce silence and are silenced themselves. *Personae* that cannot act and cannot therefore be agents or authors of their own, while they nonetheless enter the realm of an exposed and immovable sacredness that takes their bare life as the fulfilment of their own promises, and therefore already disposable as lives without any attributes.

As such, this is the emergence of *subjected but subjectless personae*: useful simulacra with a role to play in a certain governmentality, but nevertheless characterised by a lack of characteristics, attributed with a lack of attributes, imputable only in as much as they can be tied down and disposed as worthy interests. Layers of blessings and impositions that conceal the vacant and vast space of a figure that may appear, both in fact and discourse, as newly formed persons, but whose appearance conceals that the very category has come to mean nothing.

To the question of why it would be more *economical* to personalise all these entities, of why this emergence produces such an arrangement, it seems clear that the answer appears, as anticipated, in the very notion of governmentality.

On the one hand, the banner of protection, with which most of these extensions of personhood are performed, conceals its own simulacrum, so that entities that are invested with such a mantle dissimulate not only their own lack of eminence, voice, and action, but the very fact that none of these instances and attributes appear in these new forms of personhood, in which truth, fiction, and falsehood intertwine to the point of indeterminacy. Not, therefore, the reflection of a profound reality, and not even a distortion of such a reality, but the *dissimulation* of *persona* as the mask that veils the nothingness of its attributes, as well as the decanted emergence of a *persona* with no original to be feigned, the erasure of its subjacent constructs, maintaining only the imputation of certain "interests of their own" that are more easily administered, economised, governed: an endless mosaic of personhood that serves as the façade for a void, an illuminated map that coincides in all of its extension with the absence of territory.

On the other hand, none of the entities we have seen arising as new persons or new subjects of rights become in fact attributed with any form of eminence, voice, or action. The jaguars, the turtles, the chimpanzees, the sharks, the rivers, and the mountains seem to come to neutralise, inoculate, or deactivate the attributes of the *persona,* both in human beings and in themselves, given that instead of providing attributes that were supposedly consubstantial to the category, the personalisation of certain entities allows to strip them from their attributes and their safeguard, be it by equalising all of them as worthy interests, by silencing them and reducing every entity to a silent choir, or by erasing what in the paradox of the subject retained the capacity to act and be the master of one's own words and actions. The *personae*, old and new, become therefore more manageable, arrangeable, and disposable in the framework of a governmentality that consecrates even the unliving, and in doing so, exposes and introduces any and every entity into a biopolitical calculation.

In these terms of governmentality, it is not surprising how, as Stimilli has shown, the very concept of nature has been introduced in the economic discourse. In a "neoliberal turn —she says— capital has transformed this plunder [of nature] into an ecological narrative [...] an actual ecological regime" in which "the production of value and the exploitation" do not come *from* nor are directly applied *to* nature, but "*through* it", constructing and tracing a symmetry between "human capital and natural capital"[282].

Just as the mask of the *persona* did not prevent *homines* from being slaved, bought, sold, used, and administered under the rule of Roman law, and instead such a mask served as the way in which such a government and such a disposition were deployed, it is clear that, *mutatis mutandis*, the extension of personhood to each and every entity may not be in fact a mantle of protection, but instead a form of exposure to new forms of government, of governmentality, in which *persona* comes closer to be a mere *interest*: sometimes valuable, sometimes sacrificeable.

[282] Elettra Stimilli, *Filosofia dei mezzi*, pp. 149 – 150. A similar criticism from a legal perspective in Alain Pottage, "Why nature has no rights" in Alexis Alvarez-Nakagawa and Costas Douzinas (eds), *Non-Human Rights: Critical Perspectives* (Cheltenham: Edward Elgar Publishing, 2024). For a more nuanced approach to the ecological issues this neoliberal turn raises, under the idea of "plantations" as "simplified ecologies designed to create assets for future", see Anna Lowenhaupt Tsing, "A Threat to Holocene Resurgence Is a Threat to Livability" in M. Brightman, J. Lewis (eds.), *The Anthropology of Sustainability: Beyond Development and Progress* (London: Palgrave Macmillan, 2017), 51 – 65.

6. APERTURES, FRAMES, VOICES

6.1. Articulations, perspectives, frames

The interrogation of this *événement* has shown a process that renders personhood a spectre of itself, via an ensemble of fictions and the interstice between the true and the false. Nevertheless, a different and in many ways opposite pathway of interrogating its effects is possible, in which subjectivity is not reduced to subjection and in which a polyphony may indeed be at place. In this pathway, I believe there are traces to follow in the potency of the impersonal and the grain of the voice via Simone Weil and Roland Barthes; in the possibility of articulations, framings, and perspectives in Haraway, Butler and Viveiros de Castro: as well as in a Foucauldian reading of *parrhesia*. Here, the concept of *persona* will paradoxically appear quite absent, for it is precisely in its outskirts, in in its contradiction, from where its fissures and its layers can be better grasped.

Simone Weil approaches the concept of person in a short essay of 1943 —the year of her death—, in which she rejects the idea of personhood as the sanctuary for whatever is supposed to be sacred in human life. While her account is heavily inspired by her own mysticism, I am more interested in the challenges she poses to the idea of *persona* not only as an eminent distinction, but also as the nodal point of protection and as a centre of gravity for rights that are granted to the entity that embodies it.

Weil begins her criticism by stipulating that "there is in every man (*chaque homme*) a certain thing that is scared". Such a thing, however, is not "his person"[283]. Instead, what is sacred in every man, she argues, "it's him. Him entirely. His arms, his eyes, his thoughts, everything" for if whatever is sacred in him were to be in its "human person", then one could "easily gouge his eyes out" and even if blind, "he will still be a human person as much as before"[284].

At first glance, this could be taken as a piercing yet admittedly naïve criticism of a system of protection based on rights. When attempting against someone's life, the right not to be harmed remains intact, as attacking the entity that holds the *persona* leaves the *persona* intact in Weil's example. However, Weil claims that rejecting someone is "to wound justice", while, rejecting "someone's person" is instead not deeply problematic —at least in the "common vocabulary" she refers to—, implying that, to a certain extent, someone's *persona* can indeed be violated, and therefore true inviolability lies elsewhere.

This apparent oxymoron goes deeper into a certain epistemological impossibility to define what personhood and respect to personhood is, almost as Augustine does when he appeals to the human inability to grasp the ineffability of the trinity. However, at stake is not simply the theoretical issue of providing a definition or an outline for personhood, for which

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[283] Simone Weil, *La personne et le sacré : collectivité, personne, impersonnel, droit, justice* (Paris : Éditions Allia, 2022), pp. 7 – 8.

[284] Simone Weil, *La personne et le sacré,* p. 8.

we have already encountered virtually endless instances. The problem, for Weil, is how the ungraspability of the concept provides a fertile ground for "all kinds of tyrannies" when it is "taken as the rule for public morality"[285]. In other words, just as the criterion for attributing personhood is moveable and unreliable, so are its outlines and its effects, and as such it is not only problematic but perilous to have it at the centre of the juridico-political constructions, which she directly ties to the *Déclaration des droits* of 1789, but becomes all the more pressing in terms of the context of the Second World War in which it was written.

If not the person, then, what is sacred in this context? For Weil, the answer is the expectation, "from early infancy to the tomb, at the heart of every human being", to be the recipient "of good and not of harm". "The good (*le bien*) — she adds— is the only source of the sacred"[286]. While perplexing on account of its attachment to mysticism, Weil's answer is nevertheless woven in terms of justice in a clear contrast to the law, and as such it is also ingrained in terms of will, faculties, and freedom, not to mention her concern for the philosophical issues of labour. In any case, her answer is open-ended.

Much more grounded, however, and interesting at least for the problem at hand, is how this sacredness appears, or manifests itself in the human being, as the *impersonal*: "All that is impersonal in man (*impersonnel dans l'homme*) is sacred, and that alone"[287].

This is new category. So far, the discussion of personhood has found its opposite in things: *objects* that lack whatever attributes make an entity susceptible (or capable) of holding the mantle of personhood, a category that has included, and still does, animated and alive entities. This impersonal, however, does not strip down or cast away the entity to the realm of things. Quite the contrary, at least in this definition. As the logical opposite of personal, and as a middle ground between the realms of persons and things, the non-personal comes to represent whatever remains in humans and their activities once the *persona* is lifted, remaining nevertheless essentially human and deeply entangled with eminence and distinction, in spite of —and in open contradiction to— the *persona*. In the context of the extension of personhood it should be immediately apparent why this concept is enigmatic and interesting: it is a negation of the *persona* that not only maintains but surpasses its character, instead of simply falling back to the default thinghood of the *res*.

Weil situates the impersonal in the human affairs whose authorship has been lost to memory, or in any case, in the activities that do not serve the expansion of the *persona* —here, very close to *character*— and instead survive as a testament of "things that are of the outmost importance" and that are "essentially anonymous", such as "Gregorian chant, roman churches, The *Iliad*, [and] the invention of geometry" [288]. Weil adds:

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285 Simone Weil, *La personne et le sacré,* p. 9.

286 Simone Weil, *La personne et le sacré,* p. 10.

287 Simone Weil, *La personne et le sacré,* p. 16. With a different set of implications, Esposito follows Beneveniste to pose how the third grammatical person acts as a non-person that lies "at the intersection between nobody and anybody": Roberto Esposito, *Terza persona*, p. 130. For his commentary on this category in Weil see also *Terza persona*, pp. 122 and ff.

288 Simone Weil, *La personne et le sacré,* p. 18.

> It is by chance that the names of those who have entered [such domain] are preserved or lost; even if they are preserved, they have entered into anonymity. Their person has disappeared. Truth and beauty inhabit this realm of impersonal and anonymous things. It is [this realm] that is sacred[289].

The person has disappeared and what remains after such a disappearance is sacred, on account of its anonymity. Needless to say, and *mutatis mutandis*, this comes very close to the reversal operated by Benjamin in terms of the *Körper* and the *Leib*, but it also shows its paradoxical character right from the very beginning. The sacred has already been used to designate the totality of the concrete human being, and now it moves to its oblivion by means of anonymity.

As such, the impersonal is an intense and immediate presence, but also the ethereal remains of an absence: both the choir and the echo of voice, it ends up being just as ungraspable as the person. Weil's point, in any case, is up to a certain point self-evident. It is certainly not the *persona* —the imputable character, name, and authorship— behind the *Iliad* that which makes it invaluable. It is valuable *per se*, but valuable *per se* is also the entity that holds the *persona* of Homer. What, or where, is therefore this ambivalent sacredness? It cannot, of course, be the person, but most importantly, it cannot be the subject either in any of its dimensions. Weil's argument is precisely that the imputable trace of self-consciousness —the basis for the subject as author and the subjected entity— is lost in the impersonal. This is why, she says, "truth and beauty —the sacred in science and art, respectively— are impersonal", because actual truth and actual beauty, in her conception, are not susceptible to the contingency of the personal mistake[290].

Transposing this mystical characterisation into the problem at hand, it should seem evident that the importance of any entity is not in its *persona*, that is, in its being a centre of imputation, either of rights or duties. The "truth and beauty" of the animal, the tree, the river, the mountain —of nature itself— lies precisely in the fact that it is an irrefutable presence, nevertheless anonymous. The importance of it all lies in the fact it holds no interest in itself, that it knows no authorship, that if it 'speaks', it does so not via a ventriloquist, but through its mere presence and its mere silence. Upon this account, if the personalisation of entities dismantles the very category of personhood and transmutes every *thing* into an *interest of sufficient worth*, the impersonal and the unimputable may allow to devise an aperture, a hint at the fissure that traverses the layers of sedimented constructions, even if —or precisely because— sacredness, truth, and beauty are all shaped, produced, and reproduced by processes of power and by regimes of verification and enunciation.

This is, of course, the home of the paradox. Since the impersonal is also at risk of a contrary motion, where all individuality is lost, Weil is quick to reject the equation of the

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289 Simone Weil, *La personne et le sacré,* p. 18.

290 Simone Weil, *La personne et le sacré,* p. 19.

impersonal with the collective. She denies the possibility of a link between the collective and sacredness, framing this rejection under the banner of Nazism, which she sees as the "idolatry" of the collective as sacred[291]. Then, she moves forward to two familiar places. On the one hand, she appeals to the paradoxical individuality of the impersonal, by saying that the "sacred character of human beings" must be "addressed to beings susceptible of hearing it", which *prima facie* would seem to be a reprise of reason and a certain capacity to act. On the other hand, she states that those collectivities are also not capable of acting or hearing, because "a collectivity is not someone, except by fiction; it does not have an existence, except an abstract one; speaking to it is a fictitious operation"[292]. The conclusion is that no collectivity is capable of protecting the sacredness of human beings.

It is no coincidence that the very question of collectivities acting *as if they were* individual persons arises again. Of course, Weil speaks from the opposite shore, and instead of defending the fictitious action of collectivities as valid, as an action nonetheless, she reaches out to fiction to denounce the certainty of the false, showing how such a personhood serves as the mechanism by means of which individuality becomes erased. This is of course inadmissible on her account, and thus the disqualification of collective entities as capable of action: it is the state —the collective entity by antonomasia— that which under the mask of a recollection of wills expresses the annihilation of each and every one of them, nothing less than a "fictitious operation" that feigns a multiplicity of unified wills where there is perhaps one and perhaps none.

Moreover, Weil finds herself again trapped in this double form of the impersonal: the spectral presence of the metaphysical categories of truth, beauty, and perfection, alongside the sacredness of concrete actual human beings. The way in which she reconciles this idea is by appealing to a certain form of channelling both realms, not in terms of the subject, but in terms of the *topos* it inhabits, saying that in order "to accomplish the mysterious germination of the impersonal part of the soul [...] there must be [...] space around each person [...] solitude, silence"[293]. Weil moves here between two realms that are distant to the current discussion. On the one hand, yet again, her mysticism, but also the struggle of the working class, or better yet, of each individual worker's struggle inside the factory where such needs are simply not accomplished. Regardless, her point seems to be that it is this silence, this solitude, and this space where individuality may flourish and reach the realms of the anonymous impersonal, even by means of manual labour: it is the solitude and the space where the *Iliad*, the chant, the architecture, and the geometry clan flourish in their perfection. However, it is still not clear how the impersonal can materialise itself as the sacred remainder that goes beyond the *persona*, so that the concrete human may keep his eyes alongside his integrity intact.

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[291] Simone Weil, *La personne et le sacré,* p. 21. The antipode of this idolatry of the collective, embodied by Nazi Germany, is the obsession with the expansion of the person, which she deems as "losing the sense of the sacred", embodied by "the France of the 1940".

[292] Simone Weil, *La personne et le sacré,* pp. 24 – 25.

[293] Simone Weil, *La personne et le sacré,* p. 27.

A similar, and perhaps more viable approach can be found in a short analysis by Roland Barthes, in which he speaks of the "grain of the voice" (*grain de la voix*) as the specific and individual character of a voice that, even if it sings a non-particularly remarkable or original tune, holds its own individuality because of the corporality that produces it[294]. The grain of the voice has nothing to do with its timbre, and even less so with the interpretation, but instead it is situated at the level of the signifier, at the production of the voice, at its material form of production, there, where "significations flourish" [295].

One of his examples is particularly telling, for it directly invokes the absence of the *persona*. A Russian cantor, he says, becomes present in its corporality, "from the depths of the caverns, muscles, mucous membranes, cartilages, and from the depths of the Slavic tongue, as if the same skin covered both the inner flesh of the performer and the music he sings"[296], and it is precisely in this material presence where the distance from its *persona* arises:

> This voice is not personal (*cette voix n'est pas personnelle*): it expresses nothing of the cantor, of his soul; it is not original (all Russian cantors have roughly the same voice), and at the same time it is individual: it makes us hear a body that, certainly, has no civil status, no "personality", but is nevertheless a separate body [...] The "grain" would be this: the materiality of the body speaking its mother tongue[297].

Neither personal nor original, but at the same time individual and separate. Moreover, not necessarily linked to the metaphysics of the soul —which from the very beginning have been intertwined with personhood—, but the actual body and the actual presence as the foundation of such a distinction. This indeed captures and moves forward Weil's point, for not only is the body of the cantor and its presence addressed, but also the fact that he is not only singing, but interpreting music that already belongs to the anonymous realm of the impersonal, and thus —to use a French expression— it makes body (*fait corps*) with the impersonal to eventually produce the layers and instances of meaning. Although telling, Barthes speaks not only of the voice, for "the grain is the body in which the voice chants, it is in the hand that writes, in the limb that executes"[298], perhaps not sacred, but an individual impersonal, and thus not only the Gregorian chant, but indeed the *Iliad*, the several architectures, and the variations in geometry.

I believe this approach, however marginal, may indeed be more fruitful for understanding the link between the impersonal and individuality. It is of course not a formula, and it could not certainly provide neither a replacement for the metaphysical conception of the paradoxical subject, nor an entire reconfiguration of its imputable character as *persona*,

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294 Roland Barthes, « Le grain de la voix » dans *L'obvie et l'obtus : essais critiques, III* (Paris : Seuil, 1982), pp. 236 – 245.

295 Barthes employs Julia Kristeva's concepts of pheno-text and geno-text in order to pose this distinction: Roland Barthes, *Le grain de la voix*, pp. 238 – 239; 241.

296 Roland Barthes, *Le grain de la voix*, p. 238.

297 Roland Barthes, *Le grain de la voix*, p. 238.

298 Roland Barthes, *Le grain de la voix*, p. 243.

but in any case seems to be a different form of layering and framing the question of how to propose, for instance, the grammar of a non-personal account of 'rights' and 'political involvement', in which the body and its production serve as one of its foundations. Whether a *Körper* or a *Leib*, this would need to account for different kinds of corporalities, and one may in fact take Barthes' analysis forward in order to address the effects of a body where the voice, the writing, and the architecture *make body* with the bodies that produce them.

Before moving forward, however, Weil provides another interesting account, one that reminds the call for divine violence in Benjamin but adopts the form of grace. Wondering about the worker's struggle for a better salary, she poses a simile with selling one's soul not for a certain price, but for its double. Weil argues that this form of thought, this "spirit of bargaining" is at the core of the law and the discourses on rights, which aim "to destroy virtue in advance"[299]:

> The notion of right (*droit*) is linked to that of distribution, of exchange, of quantity. It has something commercial about it. It inherently evokes the trial, the pleading. Law (l*e droit*) is sustained only in a tone of revindication, and when this tone is adopted, it means that force is not far behind to confirm it, otherwise, it is ridiculous[300].

Within this framework, asking any monetary compensation for the exploitation of the self is destroying virtue in advance, just as transforming one's sacredness into a commodity. This has already appeared very clear, for instance, in Stone's proposal of the legal standing for trees[301], eminently enrooted in a form of law and a form of rights that are nothing more than a compensation for damages, so that trees become themselves quantifiable interests and calculable costs in the veridiction of the market, in what may be deemed not only a flashback but also a foreshadowing of the dismantling of personhood and its redefinition.

In this sense, regardless of whether Weil's account is satisfactory in terms of establishing sacredness in the concrete human entity, her criticism of this metamorphosis of the invaluable into a quantifiable set of costs is indeed coherent with the exposure of the sacred, paradoxically, as that which can essentially be rearranged, governed, and disposed.

Finally, it is indeed in terms of exposure that Weil approaches fragility and mortality, for not only bare life is difficult to understand, but also the fragility of death that is not mediated by the reassurance of tomb and the ritual of its disposition. "The sight of certain corpses —she says— that are like cast-off (*comme jetés*) on a battlefield, with an aspect both

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299 Simone Weil, *La personne et le sacré,* pp. 30 – 31.

300 Simone Weil, *La personne et le sacré,* p. 31. The formula that links force and law inseparably comes, most likely, from Pascal, who nevertheless phrases it in terms of justice: "Justice without force is impotent, force without justice is tyrannical" (*La justice sans la force est impuissante. La force sans la justice est tyrannique*): Blaise Pascal, *Pensées* (Paris : Garnier, 1991), §135, p. 200. For a similar approach to ends and means in Benjamin, see also §116, pp. 193 – 194. See also Jacques Derrida, "Force of law: the 'mystical foundation of authority'" in *Deconstruction and the possibility of justice*, ed. Drucilla Cornell *et al.* (New York: Routledge, 1992).

301 See *supra*, 4.2.

sinister and grotesque, causes horror. Death appears naked, unadorned, and the flesh shudders"[302]: to the bare and nude life corresponds also a bare and nude death, and the experience of its spectacle is so repulsive, that even those who suffer the bareness reject it, "like a leprosy of the soul" [303].

Death and mortality, which in Boethius, to a vast degree, defined his *persona* and his sense of humanity, here become the figure of the sacredness that Agamben denounced as utter exposure, one in which not even death is granted a sanctuary. Whether an anonymous and impersonal presence can alleviate such a sight is, at the very least, doubtful, but even bare life and bare death speak through their presence, and if the sight has become the rule and it is thus impossible to ignore, then they may as well not conceal the simulacrum of the person, but be the vocal testament of its inherent fragility, the *corpus* of a voice that speaks its mother tongue.

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To address the issues representation raises in terms of silencing, Haraway proposes what she calls an "articulation". In this framework, whose practical implications I leave aside here, she poses the notion of "actants" as "collective entities doing things in a structured and structuring field of action", which are precisely those beings, those entities who become "*stripped*" by "representation" as "an act of possession of a passive resource"[304], such as the foetus or the jaguar who are silent, but also those who become silent, as the "maternal environment" and the Amazonian inhabitants, respectively. She suggests that, if representation implies this undesirable form of silencing and possession, perhaps articulation between humans and non-humans becomes possible, not by translating everything into the language-mediated relationships of the former, but instead by promoting the "empty space, the undecidability [...] [the] ultimate *unrepresentability*" of those non-human entities, precisely because their actions —that would not constitute "acts" in the Kantian and in the juridical sense— appear in the radical difference from the actions of humans, precisely because of their non-personal character.

Such a distance is marked in a rather (willing or otherwise) Heideggerian fashion. Just as physics replaces the jar with a "cavity that receives a liquid", turning it into an "*object*" (*Gegenstand*) that is "represented to us"[305], so do doctrines of representation and objectivity get rid of the "world" in the operation of rendering non-human entities as actions or interests via their supposed representation.

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[302] Simone Weil, *La personne et le sacré,* pp. 54 – 55.

[303] Simone Weil, *La personne et le sacré,* p. 55. This is the reason why fragility and death are incommunicable, and it is there where she invokes the *deus ex machina* of grace, where "the spirit of justice and spirit of truth become one". For the concept of "grace" and its meaning within Esposito's own approach, see Timothy Campbell, "'Enough of a Self': Esposito's Impersonal Biopolitics", in *Law, Culture and the Humanities,* 8.1 (2012): 31–46.

[304] Donna Haraway, *The Promises of Monsters*, p. 313.

[305] Martin Heidegger, *Das Ding*, p. 171. See *supra*, 1.1.

Taking this Heideggerian perspective even further, one could say that not only is the "world" or "nature" denied as an entity by reading it as an object, but representation also becomes an im-position (*Ge-stell*)[306], one whose operation silences the entities upon which it is placed —as we have already seen—, and at the same time brings such a silence into a linguistic form of interests completely alien to their very existence, im-posing a relational framework beyond the boundaries of any actual representation: not actually *listening* to the "voice of nature", but instead a technique of make-believe in which the imposition of a voice renders the entity assimilable and disposable. From this perspective, representation is not a metaphysical safeguard but effectively a technique, a *Gestell*, a *dispositif*, one whose application to "nature" as a whole becomes —as Stimilli points out— "an imposition that neutralises individual means" in order to transform it, in its totality, into a "predominant *instrumentum*"[307] that serves equally constructed purposes.

Haraway's point is not to "go back to nature" in some sort of naïve or anti-intellectual view that rejects science, but instead coming to terms with the very notion of "nature" as the product of "representational practices", and of dynamics of knowledge and power involved in them[308].

Just as Foucault pointed out how life itself was both discovered and fabricated as part of the birth of the biological discourse[309], Haraway departs from nature not being in fact a sort of paradise lost that would appear either before a certain moment in time, or beyond the boundaries of a certain scientific approach, but rather a nature that is in itself an invention of the way in which the *topos* of the world is read and interpreted, and as such it is susceptible of transformation and redefinition. Similarly, *persona* (and its multiple instances) is not some sort of elixir that returns things to a form of pristine protection, but a mosaic of constructions, fictionalisations, powers, and knowledges that constitute useful and historically situated mechanisms that are, therefore, multiple and even contradictory. *Listening* or *going back to nature*, just like the attributions of a *persona*, are in fact forms of fiction that serve as techniques in a certain governmentality.

Where is, therefore, the articulation Haraway proposes, if human agency and its very onto-logical existence is always language-mediated? Her answer seems to appear in terms of a certain focus, of a certain frame.

She takes, for instance, the case of a "Kayapó man videotaping his tribesmen *[sic]* as they protest a new hydroelectric dam on their territory". This may be read as the paradoxical "boundary crossing" of preserving "an unmodern way of life with the aid of incongruous

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306 Martin Heidegger, *Die Frage nach der Technik*, §10 and §§23 – 24, pp. 7 – 21.

307 Elettra Stimilli, *Filosofia dei mezzi*, p. 132. Akin to this idea is Haraway's approach to the question of "who speaks for the earth", where "whole earth" becomes the "sign of an irreducible artifactual social nature": Donna Haraway, *The Promises of Monsters*, p. 318.

308 Donna Haraway, *The Promises of Monsters*, p. 313.

309 Michel Foucault, *Les mots et les choses*, p. 139. Haraway, in turn, would point out "the organism has been translated into problems of genetic coding", essentially turning biology as a "kind of cryptography": Donna Haraway, *A Cyborg Manifesto*, p. 164.

modern technology", which responds exclusively to a voyeuristic purpose of entertainment and spectacle[310] for a viewer that finds it alluring to see a non-personal, "primitive" human acting *as if* he were indeed a "modern" subject, that is, *capable* of using a camera.

Haraway poses, instead, that this event is a form of articulation that co-involves all of the human and non-human entities —including the audience—, transcending the dynamic of represented entities (plants, animals, nature, but also the Kayapó people itself) being taken as "objects" that, suddenly, cross an invisible metaphysical barrier and become "Subjects" that "represent themselves". She poses that no boundary violation is involved, for "unmodern" or "closer to nature" life, and "modern" or "postmodern" camera recordings are categories that simply do not apply[311], given that notions such as "nature" and "society" are themselves products of knowledge and power, and therefore not clearly defined frontiers.

Before getting close to a definition, Haraway presents many other examples, all of them convoluted and paradoxical in some way. From the problematic conception of the planet as "Mother Earth", that arises from a snapshot of the planet from space, she derives the image of "a complex collective entity, involving many circuits, delegations, and displacements of competencies" that comes to be only in the framework of the "space race [...] and the militarization and commodification of the whole earth"[312]. From the "'semantics' of defense and invasion" and the internal and external mirroring relationship of the immune system, she extrapolates the "artifactual body of 'social nature'" that knows no foreign "invader", and therefore does not need to be saved[313]. If they are paradoxical and convoluted, it is precisely because an account of articulation is itself also paradoxical and convoluted:

> That is what articulation does; it is always a non-innocent, contestable practice; the partners are never set once and for all. There is no ventriloquism here. Articulation is work, and it may fail. All the people who care, cognitively, emotionally, and politically, must articulate their position [...][314].

Articulation is not unproblematic. Quite the contrary, it seems to thrive in problematisation. What Haraway proposes, I believe, is yet another instance of a technique, of a mechanism,

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310 Beyond my scope here, of course, but nevertheless clearly linked is Debord's definition of spectacle not as "an ensemble of images, but [as] a social relationship between persons, mediated by images [...] a *Weltanschauung*, a vision of the world that has been objectivised", so that "objective reality is present on both sides [...] reality emerges inside spectacle and the spectacle is real" in a world where "the true is a moment of the false": Guy Debord, *La société du spectacle* (Paris : Champ Libre, 1971), §4 – 9, pp. 10 – 11.

311 All of this in Donna Haraway, *The Promises of Monsters*, p. 314. As a counterexample, or rather a parallel example of this articulation, Haraway cites the case of an agreement, in 1990, between several peoples living in the Amazon, environmental organisations, and media in which the peoples' control over the territory, their presence, their interests, and their knowledge were considered, in an effort to find common ground for both human rights and ecological protection without displacing neither the peoples' stakes in the matter, nor the stakes of any other actors and entities.

312 Donna Haraway, *The Promises of Monsters*, p. 318.

313 Donna Haraway, *The Promises of Monsters*, pp. 322 – 324.

314 Donna Haraway, *The Promises of Monsters*, pp. 314 – 315.

one that appears in a historical set of circumstances and that addresses the problems of those very circumstances.

On the other hand, she poses that both language and bodies are "the effect of articulation", so that human language and rational discourse, for instance, are only processes or articulation that do not exclude the "speechless [...] but highly articulate" nature of "Nature":

> An articulated world has an undecidable number of modes and sites where connections can be made. The surfaces of this kind of world are not frictionless curved planes. Unlike things can be joined—and like things can be broken apart— and vice versa. Full of sensory hairs, evaginations, invaginations, and indentations, the surfaces which interest me are dissected by joints[315].

Haraway proposes a "rhizomatic" image: heterogenous, multiple, segmentable, cartographic, composed of several plateaus[316]. The very metaphors she produces involve a multiplicity of textures, forms, edges, and interactions, all of which can be found in the fractality of the body and the world, both of them articulated in linguistic and non-linguistic terms, as well as traversed by narrations, constructions, and fictions.

As I understand it, articulation is both a perspective and a practice, a frame that encapsulates and brings forth a multitude of presences, on the one hand, and a technique to allow those presences to co-exist, not in the peaceful stroll of an idyllic state, but also not necessarily in a perpetual state of war. Rather, something in between, much greyer, layered, fissured, and subtle. Something that, just as articulations in the body, traces links between members whose form or function do not align, and just as language, traces links between bodies. Following this metaphor, if articulations cause pain and language is often equivocal, such a pain and such an equivocation does not denounce the impossibility of the articulation, but rather the fact that it is actually taking place. Furthermore, sometimes an artificial entity must be articulated into a natural body and —we're not far from this— viceversa. In sum, a chimeric and artifactual frame in which fundamental distinctions become less fundamental and less distinct, and in which other forms of difference may arise.

Personhood and its many fictions may appear under this frame, they may serve the purpose of a certain articulation, but if the questions raised before are to be conjured, their appearance would have to imply coming to terms with their fictionality, taking the fictions of personhood as the *mise en scène* of a poetic faith, of a game of make-believe; coming to terms with the anguish both iconoclasts and iconolaters felt, without the reverence that stems in one sense or the other. Not, therefore, a rigid representation that silences and renders all of the *personae* non-eminent, as well as subjected but subjectless entities, but instead embracing the

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315 Donna Haraway, *The Promises of Monsters*, p. 324.

316 Gilles Deleuze et Félix Guattari, *Capitalisme et schizophrénie 2 : Mille Plateaux* (Paris : Minuit, 1980), pp. 9 – 37.

fictions, ruptures, and contradictions of these fictional and malleable truths upon which human and non-human entities can erect their *topoi* and their frames.

However, as Judith Butler has shown, the very notion of frame —be it photographic, artistic, linguistic, narrative, or epistemological— is problematic in itself:

> The frame does not simply exhibit reality, but actively participates in a strategy of containment, selectively producing and enforcing what will count as reality [...] the frame is always throwing something away, always keeping something out, always de-realizing and de-legitimating alternative versions of reality, discarded negatives of the official version[317].

Based on how the war is framed and therefore presented, Butler claims that any given frame disregards certain versions of war —*i.e.*, certain versions of reality—, creating "a rubbish heap whose animated debris provides the potential resources for resistance", as well as "specters [...] that haunt the ratified version of reality". The frame itself is both a mechanism of narrating reality and an imposition that outlines the narration, and it may serve, for instance, as Butler's points out, to provide an "interdiction on mourning" [318]. However, if these frames are themselves the effects of power and knowledge relationships, and both nature and artifice are narrated, depicted, constructed, and in this very sense, they are both framed and traversed by those relationships, then one may grasp such a strategic function —just as in Foucault's *dispositif*— in order to re-narrate and reconstitute both artifice and nature, which is precisely part of the "the epistemological problem" that arises with any of these approaches, be it representation, imputation, articulation, or framing, for "they are themselves operations of power".

Moreover, part of this epistemological issue is that the (ontological) question of "*What is a life?*" is also itself conditioned by the "specific mechanisms of power through which life is produced"[319]. Butler's interest in framing, therefore, is indeed quite close to the issue of exposure, silencing, subjection, corporality, and personhood, in a clearly Foucauldian *frame*.

She claims that, since "to be a body" —social or individual— "is to be exposed to social crafting and form", and since, accordingly, the "epistemological capacity to apprehend a life is partially dependent on that life being produced according to norms that qualify it as a life", the frames that we use to apprehend what a life is (and the effects thereof) constitute different forms of subjection and subjecthood, in a *perpetuum mobile* in which "Subjects are constituted through norms which, in their reiteration, produce and shift the terms through which subjects are recognised"[320].

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[317] Judith Butler, *Frames of War,* p. xiii.
[318] Judith Butler, *Frames of War,* p. xiii.
[319] Judith Butler, *Frames of War,* p. 1.
[320] Judith Butler, *Frames of War,* pp. 3 – 4.

The problem as posed by Butler, however, is that these norms that *make* a life and define its recognisability as a life, produce their own exterior —an operation that is consubstantial to the very notions of frame and norms—, so that these frames produce and reproduce an outside in which something may be "living" but it is also, and paradoxically, "not a life"[321].

It seems a full circle has been traced to the issue of bare life. However, Butler's approach is much more malleable than Agamben's, for instead of a relationship of exception, she poses that these frames are essentially moveable and breakable. When the frame that defines what a recognisable life breaks, she says, "the orchestrating designs of the authority who sought to control the frame" are exposed[322]. Beyond a specific authority and its designs, and much more situated in the emergency of a governmentality, what Butler poses is that the "renditions of reality" —the multiple narrations of both nature and artifice in Haraway— do change and make themselves visible. Not incidentally, Butler claims that, in terms of personhood, these "norms", these frames that render something recognisable as a subject, or as a life, are almost tautological, for they refer to "a universal potential" that "belongs to all persons as persons", but take for granted the fact that personhood is already a frame that accounts for "the form of the human", and that takes a life as worthy of protection only inasmuch as it follows this prescription of form[323]. Nevertheless, the virtually endless mutations and appearances of personhood —the cartography and the mosaic its genealogy traces— serve as testimony of the contrary: not a human form as a normative immutability, but instead an always moveable and even ungraspable concept that has appeared both in the *polis* and in the *physis*, both in heaven and upon earth.

In any case, the relevance of Butler's analysis in this instance lies in how

> The frames that [...] decide which lives will be recognizable as lives and which will not, must circulate in order to establish their hegemony. This circulation brings out or, rather, *is* the iterable structure of the frame. As frames break from themselves in order to install themselves, other possibilities for apprehension emerge[324].

Circulation is the structure of norms and frames under which lives are constructed and recognised. Contrary to the very literal sense conveyed by the words, both frames and norms are essentially moveable, replicating the idea of a moveable and ever-changing mosaic in terms of personhood and its interlacement with fiction. Just as power and knowledge are

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321 Judith Butler, *Frames of War,* p. 8.

322 Butler's call for "an authority" ought not to be read under the form of a general theory, but instead in the frames of war she is studying, immediately related to particular historical circumstances such as the tortures in the Abu Ghraib prison by the United States Military, as well as its practices, particularly under the Bush administration: Judith Butler, *Frames of War,* pp. 63 and ff.

323 Judith Butler, *Frames of War,* pp. 5 – 6.

324 Judith Butler, *Frames of War,* p. 12. Butler takes apprehension here not in the very physical act of seizing something, but as a form of "marking, registering, acknowledging without full cognition": Judith Butler, *Frames of War,* p. 5.

always unstable, always in relationship, so too are the frames they produce. This does not mean, of course, that their effects are not real, nor should it be taken as some sort of meaningless hope. What Butler shows with the act of framing is precisely that some lives are not deemed worthy enough of protection on account of the frames that narrate and produce them, for which the genealogy of personhood provides in fact a fragmented landscape, from women and children in antiquity all the way to the prisoners of concentration, re-education and forced labour camps, passing through colonial slavery and servitude. What this does say is that even the pervasive forms of power that do produce subjection and oppression also produce the outside by which they could be break —an outside that, by a non-orientable topology, can also be an inside—, not in a messianic eschatology, but by the very fashion in which they operate, so that these spectres and resistances are just as much a product of norms and frames as their other visible and invisible effects.

In this (literal) framework, Butler poses that life, in order to be protected and deemed as such, ought to be acknowledged as precarious, that is, as requiring "various social and economic conditions [...] to be sustained as a life", a social and reciprocating exposure by means of which one's life is "in the hands of the other", just as much as their —often anonymous— lives depend to some degree upon us[325]. This exposure to otherness implies, in turn, the condition of grievability, the presupposition that, if a life is deemed worthy of preservation despite organic and natural decay, such a life "would be grieved if it were lost". The consequence, therefore, is that grievability is the condition for recognisability of a live as precarious, and both precariousness and grievability are conditions for a life to be not only the physiological process of living, but a life worthy of mourning, a life "exposed to non-life" that needs social conditions to be sustained, a life that calls for its *care* as a life[326].

However, while precariousness is a necessary condition for a life to be recognised as such, it not a sufficient condition for such a life to be "a priori worthy of protection". In her critique of the right to life, Butler presents two postulates regarding this passage between precariousness and care. First, that "there is a vast domain of life not subject to human regulation and decision, and that to imagine otherwise is to reinstall an unacceptable anthropocentrism at the heart of the life sciences". Second, that "degeneration and destruction are part of the very process of life, which means that not all degeneration can be stopped without stopping […] the life processes themselves" [327]. The conclusion is that "life itself" is not the actual issue, "but always and only the conditions of life"[328]:

> The question is not whether a given being is living or not, nor whether the being in question has the status of a "person"; it is, rather, whether the social conditions of persistence and flourishing are or are not possible. Only with this latter question can we avoid the

[325] Judith Butler, *Frames of War,* p. 14.
[326] Judith Butler, *Frames of War,* p. 15.
[327] Judith Butler, *Frames of War,* p. 18.
[328] Judith Butler, *Frames of War,* p. 23.

> anthropocentric and liberal individualist presumptions that have derailed such discussions[329].

On the one hand, this shows why 'the living' —the organic and physiological form that we call life— does not work as a criterion for personhood, and why, in addressing certain animals or certain plants (and not bacteria or viruses) as persons, what is involved is a selective process of framing those particular lives as grievable. It is thus not a process of representation for the sake of the lives themselves, but an operation of redefinition that moves the criterion according to circumstances of an emergence. This may be deemed as an articulation, as we just saw, but the *persona* becomes problematic in terms of imputation and disposition, and hence why a frame in which an *ad nauseam* multiplication of *personae* renders the very category of *persona* innocuous for protection, as well as useful in terms of silencing, disposition, and governmentality: vacant as vast, subjected but subjectless.

On the other hand, the very operation of the frame denounces that it is indeed moveable, but that such a circulation is not innocuous in itself. Rather, the circulation of frames, just as power, essentially produces, and in doing so, what once was an entity worthy of protection may be re-produced and re-presented as an interest worthy of protection, reduced to its utility and its usefulness, all while simultaneously creating the simulacrum of a protection under the fiction of the *persona*, which is what I believe in fact arises in this new framing process, and precisely what Butler frames herself as both anthropocentric and (neo)liberal. Despite good faith, personhood does not provide grievability, precariousness, or recognisability.

In this sense, the *frame of articulation* makes sense by potentiating the negative space between human and non-human entities, which may be translated still as persons and non-persons, or persons and the impersonal, establishing links with and upon the "ultimate *unrepresentability*" of entities that inhabit and perform a shared *topos*. Moreover, such an articulation may even be preserved in the opposition of persons and things if, indeed, as we have already seen, thinghood provides in fact protection when it becomes consecrated as being out of commerce[330].

Evidently, the process could be entirely different, and a frame of articulation could end up necessitating the dismantling of the binary distinction between persons and things. However, I believe the contemporary practices of extension of personhood are not the path that leads to this purpose, at least in terms of the supposed protection they envision and the actual subjection they provide. The problem, in any case, remains in the inherent difficulties of articulation, provided the radical difference between the entities it is meant to encompass, and the moveable frames under which they come to be what they are.

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[329] Judith Butler, *Frames of War,* p. 20.

[330] Yan Thomas, *Le sujet de droit*, p. 93.

A different, albeit still open-ended perspective may be found in close relationship to the issues of framing and articulating, which could serve as yet another provocation.

Speaking about the hybridisation between "common law" and "customary law" that gives birth to the recognition of rights of non-human entities —particularly in reference to the Te Awa Tupua case— Bourg and Swaton present their interest "in this idea of intertwining (*maillage*) between two traditions", arguing that "behind all these new legal institutions, there are almost systematically, if not always, indigenous peoples", an intertwining that, according to them "cannot be replicated in Europe"[331].

This seems to be, *prima facie*, a case of articulation that is rendered impossible on account of the absence of indigenous populations in Europe. This is contestable on many levels, departing from the definition of what Europe is, and whether ethnic minorities in the continent count or not as sufficiently heteronomous as to constitute the otherness necessary to be deemed an indigenous community under this perspective. In the context at hand, however, what strikes as problematic is the essentialism of this otherness, which implies some sort of discovery of the benefits of establishing a community with these other 'human non-persons', as well as the immediate generalisation of indigenous communities as some sort of ontological park-rangers whose relationship with nature is nothing less of an enviable equilibrium, one that stems naturally, and that other humans have somehow lost.

While it is true that in many of the cases of extension of personhood we have seen there is some degree of involvement of indigenous communities, some more felicitous than others, it should be noted that not only does this not provide any guarantee of alterity in the results[332], but also that there is a quick generalisation involved that does not help in the process of articulation, not accounting for neither the epistemological nor the ontological issues this articulation poses.

As part of disciplinary concern in anthropology, Eduardo Viveiros de Castro has advocated for a method of "controlled equivocation", by means of an exchange of perspectives, one that shows quite clearly what is the problem with an approach that is essentialist and that takes the rhetoric of 'going back' to a certain pre-modern nature. He begins by showing that there is indeed some common ground, for instance, in terms of Amerindian cosmogony:

> If there is one virtually universal Amerindian notion, it is that of an original state of nondifferentiation between humans and animals, as described in mythology. Myths are filled with beings whose form, name, and behavior inextricably mix human and animal attributes in a common context of intercommunicability, identical to that which defines the present-day intrahuman world [...] For Amazonian peoples, *the original common condition of both humans and animals is not animality but,*

[331] Dominique Bourg et Sophie Swaton, *Primauté du vivant,* p. 150. This is, of course, not exclusive to these authors.

[332] See Federico Luisetti, *Nonhuman Subjects*, p. 17.

> *rather, humanity*. The great separation reveals not so much culture distinguishing itself from nature as nature distancing itself from culture: the myths tell how animals lost the qualities inherited or retained by humans. Humans are those who continue as they have always been. *Animals are ex-humans (rather than humans, ex-animals)*[333].

The common ground, however, is not readily translatable. Where Western tradition searches the "noble savage" in order to find what it has lost in its transition towards culture, this perspective shows that the point of departure is radically different and even opposed to such a *representation*. In this shared Amerindian view, humans are not the residual of an abandonment of nature, but the archetype from which the whole of nature is constructed. This explains why not only "going back to nature" makes no sense, but also why non-human entities are taken as subjects. Since "the universe is peopled by different types of subjective agencies", Viveiros de Castro says, instead of different perspectives about the same objects, these entities "see each other (and each other only) as humans see themselves, that is, as beings endowed with human figure and habits, seeing their bodily and behavioural aspects in the form of human culture"[334].

He provides an illuminating example: jaguars —jaguars again— see blood as humans see manioc beer, and humans see manioc beer as jaguars see blood, that is, as a nutritious liquid for consumption[335]. It is not that the liquid is the same and the perspective is different. Instead, it is the fact that there are different objects (blood and beer are not the same liquid) that are perceived in the same way (nutritious food). This is the core issue in the endeavour of translation for the anthropologist, and by extension the core issue in any attempt of articulation: that there is an essential equivocation, an almost incommunicable space between the two, and that there is a "constant epistemology and variable ontologies, the same representations and other objects, a single meaning and multiple referents"[336], by virtue of all entities being "human" in essence.

Under this *frame*, Viveiros de Castro poses that the personification of non-human entities in this context does indeed mean the "conscious intentionality and a social agency that define the position of the subject", but in an inversed relationship: instead of being persons because they are human, both human and non-human entities are "*human"* because they are subjects that can act intentionally[337], that is, *because* they are persons. At the antipode

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[333] Eduardo Viveiros de Castro, "Exchanging Perspectives: The Transformation of Objects into Subjects in Amerindian Ontologies" in *Common Knowledge* 10 (3) (2004), 463 – 484, pp. 464 – 465. The emphases are his.

[334] Eduardo Viveiros de Castro, "Perspectival Anthropology and the Method of Controlled Equivocation" in *Tipití: Journal of the Society for the Anthropology of Lowland South America* 2 (1) (2004) 3 – 22, p. 6.

[335] Eduardo Viveiros de Castro, *Perspectival Anthropology*, p. 6; *Exchanging Perspectives*, p. 471.

[336] Eduardo Viveiros de Castro, *Perspectival Anthropology*, p. 6. He goes on to say: "Therefore, the aim of perspectivist translation [...] is not that of finding a "synonym" (a co-referential representation) in our human conceptual language for the representations that other species of subject use to speak about one and the same thing. Rather, the aim is to avoid losing sight of the difference concealed within equivocal 'homonyms' between our language and that of other species, since we and they are never talking about the same things."

[337] Eduardo Viveiros de Castro, *Exchanging Perspectives*, p. 467.

of Boethian personhood, this idea implies that one becomes human on account of being at least potentially able to intentionally act, and instead of becoming a person as Hegel calls for, entities come closer to their original humanity, that is, to their original "nature". This is why animals, plants, rivers, and mountains are indeed "subjects", but it is not by any means an extension of personhood that responds to the abandonment of some human perversion.

There are yet some other caveats. While it is true that "much of the Amerindians' practical engagement with the world presupposes that present-day nonhuman beings have a spiritual, invisible, prosopomorphic side", it is also true that they "do not spontaneously see animals and other nonhumans as persons; [for] the personhood or subjectivity of the latter is considered a nonevident aspect of them". Animals are still animals, plants are still plants, rivers are still rivers. The communication with these entities, or better yet, with the subjects in them, is always mediated by the shaman, the one who holds the "capacity [...] to cross ontological boundaries deliberately and adopt the perspective of nonhuman subjectivities". On this operation of translation there is indeed mediation, and perhaps most importantly, there is a specific knowledge that mediates the intervention and that allows for the very metamorphosis of those entities into persons, in other words, "it is necessary *to know how* to personify nonhumans, and it is necessary to personify them in *order to know*"[338]: the personification is therefore neither universal nor immediate, but it is itself an operation that implies a knowledge and a power. Granted, this may not be the same scenario as the ventriloquist Haraway denounces, but the presence of a certain knowledge and a certain technique is nevertheless necessary, and therefore it is not a matter of intertwining the vision of two separate communities, but rather the very frames under which such a vision springs and it is performed, with all the frictions that such an operation may imply.

Moreover, the personhood of these entities is not uniform:

> Amerindian cosmologies do not as a rule attribute personhood (or the same degree of personhood) to each type of entity in the world. In the case of animals, for instance, the emphasis seems to be on those species that perform key symbolic and practical roles, such as the great predators and the principal species of prey for humans. Personhood and "perspectivity"—the capacity to occupy a point of view— is a question of degree and context rather than an absolute, diacritical property of particular species[339].

Not, therefore, the paradise lost of human-nature equilibrium, but instead a complex network of practices and knowledges that even establish a hierarchical character among species. This is in part why articulation is "hard work", because part of its equivocation lies in the representation one party makes of the other, which denies the actuality of their own perspective. Indigenous communities may and do have economic interest in soil exploitation,

[338] All of this in Eduardo Viveiros de Castro, *Exchanging Perspectives*, pp. 468 – 469.

[339] Eduardo Viveiros de Castro, *Exchanging Perspectives*, p. 469.

they may respect the subject of a river and still use indiscriminately, or they may respect the "*persona*" of certain animals of prey and still benefit from the consumption of their flesh.

If there is indeed articulation, it lies in not denying or satanizing the uncomfortable parts of radically different perspectives. Moreover, it is not in the sameness where such an articulation lies, so that the jaguar that speaks or the mountain that acts necessarily become subjectless persons, but in the fact it is precisely as non-subjects and non-persons that they would have "something to say". This is what I will propose presently.

To conclude, and serving as a transition, a literary remark. In a meditative passage of Dino Buzzati's *Il deserto dei tartari,* the protagonist —lieutenant Giovanni Drogo— hears a voice, some singing during the nocturnal watch of the fortress. He seeks the source of this dirge in one of his men, but looking at the possible culprit directly shows Drogo that the sentinel's mouth is closed, that the song is in fact not coming from him. Puzzled, the source of the sound eludes him, until he realises:

> It was the water, a distant waterfall cascading down the slopes of the nearby cliffs. The wind that swayed the long stream, the mysterious play of echoes, the different sounds of the stones struck by the water made of it a human voice, which spoke words of our life, always just on the verge of being understood but never quite comprehended (*ne facevano una voce umana, la quale parlava: parole della nostra vita, che si era sempre a un filo dal capire e invece mai*). It was not the soldier humming, not a man sensitive to the cold, to punishments and to love, but the hostile mountain [...] perhaps everything is like this, we believe that there are creatures around us similar to ourselves, but instead, there is only cold, stones that speak a foreign tongue (*pietre che parlano una lingua straniera*)[340].

A tongue so foreign that is no longer a language, but a voice still; not a person, not a subject, but the grain of a voice that sings in silence and presence as its mother tongue.

[340] Dino Buzzati, *Il deserto dei tartari* (Milano: Mondadori, 2020) X, p. 65.

6.2. Polyphony: a parrhesia of things

Contemporary intertwinements between *persona* and fiction produce, we have seen, a multiplicity of issues that are not accounted for nor conjured up by the mere halo of protection they attempt to provide. The spectres these intertwinements produce, in other words, are yet to be fully grasped. Beyond the alternative lenses I just provided, that allow to problematise the matter even further, I would like to propose, as a form of closure, a fictionalisation of my own —a conscious certainty of the false, a game of make-believe.

Considering the unrepresentable character of non-human entities and their constitution as 'actants', and given that any *mise en scène* is a frame of its own, allowing for a certain characterisation and arrangement of reality; the simple idea I intend to forward here is to fictionally interlace, not these entities with a *persona* and its subjection, but rather with a practice, a technique, and indeed a game, all of which are encapsulated in one particular Foucauldian reading of the term *parrêsia*. Specifically, I propose to interweave the concern for these non-human entities, not with personhood and subjection, but with a *parrêsia* that appears as the voice and the truth of essentially powerless things[341].

Although spurious, since it is not backed up by Foucault's own thought nor by his *corpus*, my approach is not capricious. In an elegantly crafted passage, Foucault calls *parrêsia* one of the forms of the dramatics of discourse (*dramatique du discours*), meaning how those involved in such a dramatic stage are tied down and affected by the truth they are themselves producing, and how, ultimately, the "very event of enunciation of truth can affect the being of the enunciator"[342]. Moreover, this fiction gathers from a provocation: "there is no truth-telling (*dire-vrai*) without illusions" for, he says, these illusions are, in fact, truth's "casted shadow"[343].

Regardless of whether some forms of (articulate) language can be found in certain non-human animals, it is evident that the majority of entities that have thus far been classified as *things* —as *res*— do not speak, at least not in terms of a 'rational' and propositional language that humans can *grasp*. And yet, the tendency to pretend *as if* they did speak is one of the cornerstones of theatre, literature, and other games of make-believe. A dramatic and literary device, an actual *personification*, which provides usually silent entities with a voice and a speech

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341 Bruno Latour has already proposed the idea of a "Parliament of Things" in which a genuine intertwinement of politics and science would allow for the representation of things, particularly of "natures" that are "already present but with their representatives". While this accounts for the need to address hybridisation, my approach is entirely different as I will show presently. See Bruno Latour, « Le Parlement des choses » dans *Nous n'avons jamais été modernes : Essai d'anthropologie symétrique* (Paris : La Découverte, 2006), pp. 194 – 198, as well as Bruno Latour, « Esquisse d'un Parlement des choses » *Ecologie & politique* 2018-1 (56), pp. 47 – 64.

342 Michel Foucault, *Le gouvernement de soi et des autres : Cours au Collège de France 1982-1983* (Paris : Gallimard, 2008), p. 66. Foucault provides many examples: the prophet, the seer, the philosopher, but also the orator, the counselor, the magistrate (*ministre*), the critique, and the standard-bearer of a revolution.

343 Michel Foucault, *Le gouvernement de soi et des autres,* p. 85.

of their own[344], regardless of whether they are indeed personalised, that is, whether they *have* a *persona*. This fictive voice, I propose, can be seen as a form of *parrêsia*.

Before going into detail, a general recount of the concept is called for. The term *parrêsia* —in Latin, *libertas* or *licentia*— comes from '*pan rêma*', that is, 'say-everything' or 'tell-all' (*tout-dire*)[345], usually translated as 'frank-speaking' (*franc-parler*)[346]. In the long history of its presence, however, the term has seen both positive and negative connotations, from the act of speaking without any regard for timing, conventions, or reason, to the useful, necessary, and unreserved declaration of a truth.

Foucault occupied himself with *parrêsia* mostly during the last two years of his life, carrying out an extensive research that went from the epicurean and Stoic forms of frank speech, all the way to the Cynic and early Christian representations of a truth-saying that is embodied in —and becomes indivisible of— the conduction of one's life.

Alongside this tripartite idea of say-everything, truth-telling, and frank-speaking, *parrêsia* is characterised by Foucault as a freedom on behalf of the one who speaks, but also as a game rule (*règle de jeu*)[347], or even as the "liberty of a game [...] that makes it so that one can use whatever is pertinent for the transformation, the modification, the improvement of the self"[348]. Moreover, although this game allows for an "*animi negotium*, [for a] 'management' of the soul", it is not a management performed or profited by the parrhesiast —the one that enunciates it openly and frankly. Quite the contrary, it is truth that is to be inscribed in the soul of those who hear it, so that such a truth can produce its effects before a given challenge, a hardship, an "*épreuve*"[349].

The problem of the *parrêsia* for Foucault, as usual, is the problem of the constitution, production, and government both of the self and the others, as a regime of truth that is, of course, inscribed in language, but that differentiates itself from other forms of language, enunciation, and *veri-diction*.

If *parrêsia* is not a form of rhetoric, Foucault says, it is because it is not an "artificial —*i.e.*, false— discourse" that attempts to "seduce", "convince", or in general have any "pathetic effects" in the addressee of the discourse[350], nor one that creates dependency of the listener, as would be the case with flattery. Instead, "the objective of *parrêsia* is to ensure that the receiver finds himself in a situation where he no longer needs the discourse of the other [...] precisely because the discourse has been true"[351]. Truth needs neither reiteration nor reassurance, and since by virtue of the very rules of the game the speech is free, the parrhesiast

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344 Usually part of children's fantasies, just as games of make-believe. A telling example is Maurice Ravel's and Sidonie-Gabrielle Colette's *L'enfant et les sortilèges* (1925), a lyrical piece where animals speak, and objects come to life.

345 Michel Foucault, *Le courage de la vérité : Cours au Collège de France 1983-1984* (Paris : Gallimard, 2009), p. 11.

346 Michel Foucault, *Le gouvernement de soi et des autres,* pp. 42 – 43.

347 Michel Foucault, *L'herméneutique du sujet* : *Cours au Collège de France 1981-1982* (Paris : Gallimard, 2001), p. 158.

348 Michel Foucault, *L'herméneutique du sujet*, p. 232.

349 Michel Foucault, *L'herméneutique du sujet*, p. 386.

350 Michel Foucault, *L'herméneutique du sujet*, pp. 350 – 351.

351 Michel Foucault, *L'herméneutique du sujet*, pp. 362 – 363.

has no interest in the truth that he pronounces, other than to allow the disciple to better know, improve, and take care of himself, in a framework of "generosity" [352].

So far, then, at least two things to be noted. On the one hand, this notion of *parrêsia* as a game that, moreover, ought to rely on some kind of prior organisation or pact:

> *Parrêsia* can be organised, developed, and stabilised in what one might call a parrhesiastic game (*un jeu parrèsiastique*) [...] The people, the Prince, the individual must accept the game of *parrêsia*. They must themselves play it and recognise that the one who takes the risk of telling them the truth must be listened to. And this is how the true game of *parrêsia* will be established, from this sort of pact that if the parrhesiast shows his courage by telling the truth against all odds, the one to whom this *parrêsia* is addressed must show his greatness of soul by accepting being told the truth[353].

Not coincidentally, this idea of a pact between those involved is quite similar to what Walton proposed as a "principle of generation", that is, an agreement that prescribes a conduct in terms of a game of make-believe[354]. Whenever a game of *parrêsia* is performed, those involved must assume that its felicity depends upon their compliance to such a principle. As a legendary example, Alexander —king, embodiment of the gods, the sun on earth— accepts the truth of his insignificance from Diogenes, who calls upon him for covering up the actual sun, acting as the parrhesiast in this theatre that, beyond the boundaries of its own fiction, would be fundamentally impossible[355].

This framework of either a tacit or an explicit agreement of a prescription is the one I would like to propose, one in which non-human entities are the props —in the language of Walton— and could also play the part of parrhesiasts, so that everyone involved in the game is obligated to accept their truth. In other words, what I propose is to stage a play of *parrêsia* in which these entities are listened to, not as persons, but as the fictional voices and the actual presences they are.

On the other hand, if rhetoric is indeed a technique that allows someone to "say something that may be not what he thinks at all [...] to say a completely different thing from what he knows" but saying it in a way that will convince[356], then at least two things follow. First, that rhetoric is the domain of ventriloquists, of those who supposedly speak for and

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352 Michel Foucault, *L'herméneutique du sujet*, pp. 368 – 369. Later on, this epicurean form of *parrêsia* passes from the master to the disciples, so that they can openly speak about their thoughts and weaknesses to their master, anticipating the "practice of confession": Michel Foucault, *L'herméneutique du sujet*, pp. 371 – 372.

353 Michel Foucault, *Le courage de la vérité*, pp. 13 – 14.

354 Kendall Walton, *Mimesis as Make-Believe*, p. 38. See *supra* 4.3.

355 This does not mean, of course, that the game cannot go wrong, as attested by Plato playing the part of the parrhesiast and ending up sold in slavery by Dionysius of Syracuse. In any case, an "exemplary" form of *parrêsia* is accomplished: "A man stands before a tyrant and tells him the truth": Michel Foucault, *Le gouvernement de soi et des autres,* pp. 48 – 54.

356 Michel Foucault, *Le courage de la vérité,* pp. 13 – 14.

represent the interests of (mostly) silent entities, all the more evident whenever the mechanism of *persona* is used in order to render those entities interests in themselves. Second, it follows that silent things are by definition not good rhetoricians, since their only truth is their very existence, and therefore they are only 'capable' of the frankness of being. All these entities, all these things, engage almost exclusively with their existence as their truth.

The question, then, is how exactly can a *thing* engage itself with its truth, how can its existence be included in a game of *parrêsia*, or better yet, how can such an existence be a parresiastic truth?

On the one hand, the answer has already been found, I believe, in the Spinozian conception of *conatus*, by which "each thing (*res*) strives (*conatus*) to persist in its own existence"[357]. The *conatus,* present in all things, does not respond to the any kind of will, nor to a discourse of means and ends under which nature, rivers, forests, or any given species of non-human animal is to be deemed something different from what it already is, to be transposed into the practice of subjection via the fiction of a *persona*. In fact, far away from the notion of person or subject of rights, it is here where any trace of a "resistance" may be found, as a germinal concept of physics:

> The inherent force of matter is the power of resisting (*materiæ vis insita est potentia resistendi*), by which each body, as much as it is in itself, perseveres in its state [...] Thus, also, the inherent force can, most fittingly, be called by the name of inertia (*vis inertiæ*)[358].

This inherent force of striving to be what they are, untranslatable and unrepresentable in terms of will and purpose, is the *topos* where the truth of any and every non-human entity can coincide and engage itself in a game of *parrêsia,* taken to be "in a way, the bare (*nue*) transmission of the truth itself"[359]. Outside of the frames that have produced and reproduced a bare life, fiction may reconstitute the frame by providing a *bare truth of the mere presence*.

Such a truth and such a presence are themselves also produced, framed, and constructed, in this instance more than in any other, by means of fiction. Thus, when I speak of "hearing" these non-human entities, I do not mean anything beyond a precise metaphorical voice, a silence that speaks, if I may, in which things state, restate, and strive to persevere in their presence as what they are: forests as forests, rivers as rivers, animals as animals, all of them imbued with living and inert components that inhabit them, and also us. To stop, consequently, the frenzy of baptising penguins, turtles, and rivers, and instead to listen to their songs and the echoes they produce in the artic landscape, in other creatures, on

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357 Spinoza, *Ethica*, III, *prop.* 6.

358 Isaac Newton, *Philosophiæ Naturalis Principia Mathematica* (London: Jussu Societatis Regiae, 1628), Def. III, p. 2. I do not mean to imply, of course, that political resistance is to be reduced to its physical properties. If anything, it is a noteworthy perspective that allows to ponder what is truly added by the supposed protection of the *persona*, as well as the link with the physical and "geometric demonstration" of ethics in Spinoza.

359 Michel Foucault, *L'herméneutique du sujet*, p. 366.

the rocks and in the air, in the undergrowth and in the deep infinity of the ocean, far deeper than the depths of the soul, wondering —pondering— what could be lost in their absence.

It is an articulation of perspectives that, again, implies mistakes, misunderstanding, equivocation, and untranslatability, but one that nevertheless is capable of grasping the grain of the voice of entities that, for the most part, have existed before and probably will exist after humanity, in their infinite mutations, in a foreign language that need not be translated in order to be heard, and need only be heeded as a *vis insita* that does not suffer the drawbacks of reason or will, but springs and perseveres even when stationary. Indeed, as Nietzsche poses, "extravagant without measure, indifferent without measure, without intentions and considerations, without mercy and justice, fertile and barren and uncertain at the same time [...] indifference itself as a power"[360].

What I propose is a game of make-believe in which both silences and presences speak, one in which the voice is not the monologue of ventriloquists, but rather such fertility and such barrenness speaking in the impersonal of their being, in the difficult task of an articulation. Nature —Borgesian cartography and territory, continent, and entity— owes nothing and acknowledges nothing. It is. And as a minimal part of its constituency, the task of hearing and grasping its voice, the task of producing a felicitous metaphor, not to mention the risk of not doing so; all of it is entirely human, for the *conatus* only strives to be what it already is.

Granted, the concept of *conatus* is not sufficient, and the play is not complete. There is something still lacking in terms of what sort of *parrêsia* does this imply, of how this link between parrhesiast and listener —between non-human and human— is to be traced. These issues can be addressed by framing the precise type of *parrêsia* I envision in this instance.

In the course of his research, Foucault draws one form of *parrêsia* that goes beyond the act of truth-saying and the right to speak freely, into a discourse about injustice, dissymmetry, and lack of proportion, which ultimately manifests itself as the discourse of the weak, the discourse of the powerless[361].

Foucault extrapolates this idea by following Euripides' *Ion*. One of the topics of the play is the injustice brought upon Ion and his mother, Creusa, who was raped by Apollo and subsequently abandoned to give birth alone. This series of events, in fact, reverses the story of Apollo himself, whose birth was the product of the illegitimate encounter between Zeus and Leto, and nevertheless was considered august instead of shameful. Creusa reproaches, then, the dissymmetry of treatment for events that arise upon similar causes, in what Foucault identifies as what would later be called *parrêsia*:

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360 Friedrich Nietzsche, *Jenseits von Gut und Böse,* §9, p. 13.

361 *Powerlessness* is central concept in Iris Marion Young's interesting approach to justice, although with vastly different implications and contexts, even if Marion Young herself works under a Foucauldian framework. For the concept and its implications as one of the "five faces of oppression", see Iris Marion Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990), p. 56.

> Now this act of speech, by which one proclaims injustice in the face of [the] powerful who has committed that injustice, while being weak, abandoned, without power [...] The poor, the unfortunate, the weak, the one who has nothing but his tears (*celui qui n'a que ses larmes*) [...] what can the powerless (*l'impuissant*) do, when he is the victim of injustice? He has only one thing to do: turn against the powerful. And publicly, before all [...] he addresses the powerful and tells him what his injustice has been[362].

Although quite distinct from other manifestations, this is truly *parrêsia*. First, because it is pronounced in as open and frank a manner as possible. Second, because it involves a game in which the powerful must listen, precisely because the parrhesiast, having nothing but his tears, has nothing left to lose: it is a voice that speaks in and from its very nudity. Third, because it is not rhetoric, it has no convincing purpose or power for that matter, it is a matter-of-fact statement of one who enunciates the dissymmetry of their position and whose claim for justice is also, in itself, powerless.

On this note, it is worth noting that any form of *parrêsia*, and this one is no exception, characterises itself by having no performative power, for its effects are completely unknown and there is no way to guarantee that the enunciation of an injustice —the truth of its existence— would remedy that injustice, nor will it change the powerlessness of the parrhesiast. In other words, unlike performative utterances that are coded to produce a certain effect, on account of the context and the character of the one that utters the statement, the parresiastic game may be completely useless, and yet it "leaves a situation open"[363].

Finally, and as a consequence of this open situation, any *parrêsia* —all the more with the one enunciated by the powerless— implies a risk for the parrhesiast. As exemplified by the risk taken by Plato when addressing Dionysus, by Socrates when confronting the Athenian assembly that will ultimately sentence him to death, or even by Diogenes who may have been murdered in the streets by Alexander:

> *Parrhêsia* [...] is to open for the one who tells the truth a certain space of risk, it is to open a danger, to open a peril where the very existence of the speaker will be at stake [...] The parrhesiasts are those who, ultimately, accept the possibility of dying for having told the truth. Or more precisely, parrhesiasts are those who undertake to speak the truth at an undetermined price, which can go as far as their own death[364].

Nowhere is this risk and this potential fruitlessness more palpable than in the *parrêsia* of the powerless, since they are already and necessarily in the entrails of a disproportion of power,

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362 Michel Foucault, *Le gouvernement de soi et des autres,* p. 124.

363 Michel Foucault, *Le gouvernement de soi et des autres,* p. 60.

364 Michel Foucault, *Le gouvernement de soi et des autres,* p. 56.

and having been stripped down to bareness, their presence can be erased with relative easiness and relative impunity.

This "courage of truth", however, does not appear only in the speaker, but also and perhaps more tellingly, it appears in the listener, "who accepts to receive as true the injuring truth he hears"[365]. Such a courage, springing in this case from the acceptance of a game of make-believe by virtue of which non-human entities can 'say' the truth of their *conatus* and their presence, implies indeed the acceptance of the "wounds of truth" (*les blessures de la vérité*)[366].

Now, interweaving these instances, the theatre I propose seems to approach non-human entities in a paradoxical way. On the one hand, as entities that are not interests on their own, striving only as a *conatus* of indifference in relation to humans; and on the other hand, as the powerless that state their truth via such an indifference. How can, however, indifference as a form of power and powerlessness coincide? The answer lies in the fact that non-human entities are not deemed powerless in terms of their being, but in the game of governmentality and management in which they are involved and in which they are "represented", in which they can "act" only by being transmuted into moral patients, interests worthy of protection, or subjected but subjectless persons.

If they are taken as powerless props and speaking *things*, however, always in the frame of the metaphor, it is because their *conatus* is not an interest, it is their very being, "the actual essence of the thing itself (*ipsius rei*)" [367], that is, what they already *essentially* are.

Given that their voice is not —and it need not be— a speech, this parresiastic game need not respond to a certain condition or context, as would be the case with performative utterances, nor to a social or political precondition or status, as would be the case with citizenship[368] or indeed personhood. Instead, it relies on the courage of expressing one's truth. That truth being, of course, the lack of political power, as excluded from the mechanisms and techniques of the game where it is produced, as well as the truth of a presence that speaks through its silence. Thus, we have a truth in face of a dissymmetry that is pronounced by those who have not even tears, but only their *conatus*, their bare presence and their bare truth. As for the injustice, it appears, of course, in the form of an unrelenting disposition of these entities, either by rendering them something they are not, or by rearranging the very conditions of their existence, often to the point of erasure.

Before the many instances of such an injustice, what can be found is an indifferent and silent entity, one that nevertheless speak its *conatus* as its truth, and that

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365 Michel Foucault, *Le courage de la vérité,* p. 14.

366 Michel Foucault, *Le courage de la vérité,* p. 15.

367 Spinoza, *Ethica*, III, *prop.* 7.

368 This point is contentious, to say the least, and Euripides' *Ion* is a testament of such a contention, taking the side of a *parrêsia* that is inherited not by paternal but by maternal line, and that responds to a certain "rooting" in the territory. See Michel Foucault, *Le gouvernement de soi et des autres,* pp. 98 – 99.

> [...] has no power, has no means of retaliation, cannot truly fight, cannot take revenge, and is in a profoundly unequal situation. So, what is left for them to do? Only one thing: to speak, and at their own risk and peril, to stand before the one who has committed the injustice and speak (*prendre la parole et, à ses risques et périls, se dresser devant celui qui a commis l'injustice et parler*). And at that moment, their speech—this is what we call *parrhêsia*[369].

*Parrêsi*a: entities that speak with their own existence, and whose silent voice is in itself the truth of their presence and the effort to strive in being.

In order to do that, however, the theatre itself must be addressed. First of all and perhaps needless to say, if I speak of a theatre in this instance it is because I have in mind the fictionalisation in Foucauldian terms, that is, the "production of effects of truth through fiction"[370], as well as the very idea of an event that accepts "the non-difference between the true and the false, between the real and the illusory" which, as we have seen, is "the condition of theatre's functioning"[371]. On the other hand, as for the actual framework of the *parrêsia* itself, Foucault traces its implications in the *Ion*, particularly in terms of truth-telling in democracy, establishing a mutual necessity between democracy and *parrêsia*[372], coming back to Polybus to try and grasp the link between *isegoria* and *parrêsia*.

Isegoria, Foucault says, is the "statutory right to speak", that is, the fact that according "to the constitution of the city (its *politeia*), everyone has the right to give their opinion", an element that he deems "constitutive of citizenship". Evidently, he claims, in order for the *parrêsia* to exist, the *politeia* must provide every citizen with this equal right to speech. However, *parrêsi*a is neither reduced to (nor the same as) this "constitutional right" of speaking. Instead, it appears in this relationship as the very game by means of which, not only one speaks freely from the point of view of the right to do so, but he does it by "saying what he truly thinks is true", and in doing so, one occupies himself with the care and the conduction of the whole city, taking the risks that such an effort comprises[373].

If *isegoria* corresponds to a *politeia* —*i.e.,* to the constitutional framework—, then *parrêsia* is the core of a *dunasteia*, that is, the "exercise of power or the game by which power is effectively exercised", what quite literally constitutes, produces, forms, and performs the "political game, its rules, its instruments", who are themselves "linked in a certain way to

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369 Michel Foucault, *Le gouvernement de soi et des autres,* p. 125. Foucault cites here a passage from the *Rhetorica ad Herennium*, where *parrêsia* is translated as *licentia*: "There is *licentia* when, before people whom we must respect or fear, we express —using our right to speak— a deserved reproach toward them or those they love, regarding some error": [Anonymous], *Rhétorique à Herennius*, trad. G. Achard (Paris, Belles Lettres), livre 4, §48, p. 191.

370 Michel Foucault, *Les rapports de pouvoir passent à l'intérieur des corps*, p. 236.

371 Michel Foucault, *La scène de la philosophie*, p. 571.

372 Michel Foucault, *Le gouvernement de soi et des autres,* pp. 140 – 144.

373 All of this in Michel Foucault, *Le gouvernement de soi et des autres,* p. 145.

truth"[374]. In other words, the problem of the regime of truth in which a certain governmentality and certain forms of subjection are produced.

Thus, a *parrêsia* of things —of non-human entities that serve as props for a theatre in which their presence is a voice— need not be concerned with the *politeia* or the *isegoria*, that is, with whether they hold the sufficient entity to be counted amongst those who are citizens, persons, or subjects, capable of speech and action in an institutional and constitutional framework. Such a framework is, in fact, the one that provides a fertile ground for the extension of personhood, and the consequent subjection and lack of any eminence, dignity or protection such an extension implies.

Instead, a *parrêsia* of things is concerned with the *dunasteia* of how the rules of the constitutional game are actually conceived, produced, archived, and modified. It is not a matter of who (or what) has the right to speak, but a matter of how these entities do 'speak' via their impersonal silence, and a matter of what this silence says in the truth of its bare presence. In such a theatre, entities remain untranslatable, and yet, they face the many dissymmetries that threat their effort to be what they are. This conscious negation of truth, this fiction of a silence that speaks, of a language that is not a language, allows them to state and reinstate such an effort. In other words, their presence and their silence come to be the courage of their truth.

On such a note, this game of *parrêsia* serves indeed as the "hinge (*charnière*) between *politeia* and *dunasteia*"[375], as a threshold, just as the fiction upon which is based, in which the prescription of the game of make-believe is to attend to such a voice, to care for the articulate production of its meaning, and to address the questions of governmentality and truth they pose without recurring to new forms of subjection[376].

The conception of these entities as fictionalised parrhesiasts aims to face and limit the "foolishness, madness, and blindness"[377] of a governmentality that disposes them without any regard, it aims to be a limit —to borrow from the concerns of the Greeks — to the very *hybris* by which the *mundus* becomes inhospitable for the form of precarious life that is human life; the opposition of a truth that allows for a better conduction of the *politeia*, whatever its meaning may be[378].

In this threshold and in this game, the fiction of a voice renders all the more powerful the truth of an urgency that shows itself in its nudity, in its bareness, so that these entities can

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374 Michel Foucault, *Le gouvernement de soi et des autres,* p. 146.

375 Michel Foucault, *Le gouvernement de soi et des autres,* p. 147.

376 This poses, of course, several questions that I cannot raise here, from the pragmatics of such a theatre —for which articulation, equivocation and actual mistakes are to be expected— to its actual use, given that the truth of the powerless is, *prima facie*, also powerless and often fruitless. However, the fact that these truths have sometimes produced new frames, new forms of life, forms of care, and new regimes of enunciation and veridiction allows to envision also here new frames upon the circulation and the production that characterise power.

377 Michel Foucault, *Le gouvernement de soi et des autres,* p. 148.

378 "The true discourse, and the emergence of the true discourse, is at the very root of the process of governmentality. If democracy can be governed, it is because there is a true discourse": Michel Foucault, *Le gouvernement de soi et des autres,* p. 167.

show upon their bodies, upon their being-there, upon their thinghood, the "visible theatre of the truth"[379], or better yet, the visible truth of their dramaturgy.

That being said, perhaps it would be wiser to recur to music as the metaphor that truly encapsulates a multiplicity of voices that speak simultaneously without cancelling each other out[380]. In the *Epistle V*, whose authorship is disputed[381], Plato —or the *fiction* of Plato— speaks of each type of government as having "its own voice (*phônê*), as if they were living beings"[382]. This passage is recounted by Foucault to bring forward the idea of a "*sumphônia*" —a literal gathering of voices—, holding the key to a virtuous government: "understanding what is the *phônê*, what is the voice of each *politeia*, and then governing in accordance with this *phônê* "[383].

Perhaps not a symphony, always imbued with the notion of a singular will, but rather the emergence of a polyphony: a multitude of voices that —from the silence that constitutes it and in which it germinates— grants each voice a contrapuntal, multiple, and non-subordinate presence.

If voices and silences shape this territory, then to craft a polyphony from a cartography is, I believe, a laudable fiction.

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379 Michel Foucault, *Le courage de la vérité,* p. 169.

380 This idea has been visited from many angles. Fraser, for instance, and on a very different shore, speaks of "an ensemble of discursive resources available to members of a community": officially recognised idioms, concrete vocabularies, paradigms of argumentation, narrative conventions and modes of subjectification that "form a heterogeneous field of polyglot possibilities and diverse alternatives": Nancy Fraser, "Struggle over needs: outline of a socialist-feminist critical theory of late-capitalist political culture" in *Fortunes of Feminism: From State-Managed Capitalism to Neoliberal Crisis* (New York: Verso, 2020), 69 – 111, pp. 76 – 77.

381 See the commentary in Plato, "Timaeus. Critias. Cleitophon. Menexenus. Epistles" in *Plato in Twelve Volumes*, Vol. 9, trans. by R.G. Bury (Cambridge: Harvard University Press, 1989), p. 449, as well as the commentary in Platon, *Lettres*, trad. de Joseph Souilhé (Paris : Les Belles Lettres, 1977), p. lxxxix – xc.

382 Plato, *Epistles*, V, 321d, pp. 450 – 451.

383 Michel Foucault, *Le gouvernement de soi et des autres,* p. 249.

Conclusions

Mosaic, tapestry, plateau, fugal fantasy, illuminated manuscript, cartography, polyphony: many metaphors, many characters have appeared in this theatre. Needless to say, what seems most evident is not a definitive resolution but rather a myriad of open questions.

The florilegium of instances traced throughout this work has shown, I hope, the intricate ways in which the interplay of fiction and personhood unfolds across the interstices between several realms. What has emerged here is a genealogy in which fixed boundaries are unveiled as fluid and moveable thresholds, interstices where personhood, fiction, truth, subjectivity and subjection are perpetually produced, managed, shaped, and reshaped.

As anticipated, my purpose has been to unearth the conditions that allow a series of metamorphoses —of personalisations— to come to be, and to reveal the effects of subjection and truth that they pose. Framed here into a diptych, these conditions and these effects, I believe, raise a multiplicity of issues.

Firstly, this work shows how personhood, in its strict juridical sense, was not initially conceived as a mantle of dignity or inherent protection. It served, instead, as a device that allowed the grammar of the law to better dispose of entities that were able to perform a certain patrimonial operation, which was neither conceptually nor practically opposed to the notion of thing. Furthermore, it showed that such a device was often constructed and performed via several forms of fiction, certainties of the false that extended the concept to things and pluralities, and even disregarded the nature of life and death. In other words, it showed that the frontiers of the concept were anything but stable, and in any case not linked to a notion of dignity, which would arrive much later in the genealogy of the concept.

Secondly, the diptych shows how the definition of personhood —and the plurality of fictions it works with— are not confined within the boundaries of the juridical, but instead flourished in the sentences of the grammarians, upon the stage of the actors and dramaturges, and as a central presence in patristic and Medieval thought, passing through the difficult and convoluted endeavour to grasp notions such as substance, hypostasis, essence, subsistence, subject and, of course, the *persona* of the Christian god. In a bridge that was traced between the Tertullian formula of one substance, three persons, to the Boethian definition of a rational nature, individual substance; this construction became a mirror of the divine attributes, and through this form of acknowledgement the concept acquired a dignity that equated it with reason, government, and disposition of the self, creating, among others, *homines* that were not necessarily persons. *Persona* appears, time and again, as a threshold, one that paradoxically separates and unifies.

Alongside the dignity and the eminence of the rational and capable subject, whose dignity and inherent rights were seemingly consubstantial with its *persona*, the role it plays was also seen in terms *imputation*, of being held responsible and accountable for the sameness of

consciousness that implies such a particular use of reason, and so the eminent the subject appears also as imputable, graspable and, ultimately, disposable.

By analysing particular instances of contemporary personhood and subjectification, the work has evidenced how the attributes and criteria of the *persona* are themselves also moveable and mutable. Species as varied as great apes, sharks, and turtles have been recently bestowed with the baptismal waters of personhood, sometimes because of their closeness to the human biology in terms of their rational capabilities, sometimes in terms of their living or sentient status —extended to plants and their living networks—, but also sometimes by addressing the very irrelevance of *humanity* as a definitory concept. Whatever the criteria, what persists in these instances is the production of subjectless subjects, entities whose *persona* appears under the banner of protection and recognition but are in fact, by those very means, transformed into *imputable interests*, *moral patients*, or *disposable assets* in a regime of truth that acknowledges personhood only to render the very mechanism ineffective in terms of agency, dignity, and freedom.

In this way, the thesis exposes the paradox inherent to contemporary debates about extending personhood. By expanding the domain of the 'person', these fictions simultaneously diminish the agency of those they seek to represent. Rather than exploring the supposed benefits of this extension, this work critiques the very need for subjectification itself, questioning the presuppositions that drive these juridical and philosophical constructs.

This has been seen clearly in the instances of forests, rivers, and nature itself being deemed *personae* or subjects of rights, not only because of the ineffectiveness of the measures in terms of actual protection, but in terms of how such a metamorphosis into persons does not provide any form of eminence or agency whatsoever. In other words, we have seen how the process of personalisation is neither necessary nor sufficient for such a protection to arise, and how this acknowledgement, deemed a form of moral recognition and progress, emerges in the form of an economy of agency and intelligence, in which the subject that commands its own actions is nowhere to be found, but it is nonetheless susceptible of being gathered, accumulated, and disposed of. Furthermore, these extensions of personhood produce non-eminent and voiceless subjects, not only in those entities who are subjected to the metamorphoses, but also on the human persons whose character of *persona* comes to signify nothing.

Contrastingly, the interstitial character of fiction, in its ability to move at the same time in the realm of the true and the false, in the potency of verisimilitude, allows to conceive the frame of a theatre where both fertility and barrenness can be performed, where roles of persons and things can be reversed, modified, and rearranged, where presence and absence, agency and passivity, can become one another, just as the square that becomes a circle, or a death that begets life.

Under one light, these metamorphoses can appear in their profound emptiness, so that the eminent mantle of the *persona* —its dignity, its protection— is revealed not only as vacant, but also as actively capable of dismantling the protections it aims to create. Moreover, the estranged and stratified geometry of the interlacement between person and fiction implies

the question of the topology of sovereign power, the perpetuation of states of exception and the rise of bare life, one that becomes sacred not because it cannot be touched, but because it has been exposed *as if it* were untouchable. *Persona* provides, here, an aura of inviolability that in fact allows for a more economical disposition in a certain governmentality of the living.

As opposed to this rather bleak perspective, this work proposes a frame of articulation between the personal and the impersonal, a theatre of make-believe where a polyphony of silences is neither a contradiction nor a falsehood, but a fiction for the sake of truth, where the waters of the river are not concerned with having a name or being sacred, where the rocks, cascades, and forests speak in the non-personal presence of their *conatus*. Each one of these terms embodies, as we have seen, a whole structure, a whole epistemic framework and a variety of issues: from the willing equivocation to the perpetuum mobile of frames, from the difficult relationship between truth and falsehood to the potential fruitlessness of voices that speak, without an interpreter, via their own forms of silence. These are, on the one hand, perspectives that allow to re-think and re-approach the matter, but also fictionalisations in themselves, by no means dogmatic or programmatic. Not formulas, but props, in a way, so that a game of make-believe can be played in realms that do not linger on the narratives of subjection. As a counterpoint to these mechanisms of subjection, these provocations aim to reimagine forms of engagement that elude the economy of personhood altogether, that bypass the frenzy of personalisation and challenge the very assumption that personhood is a necessary or useful condition for protection, recognition, or agency.

They are modest attempts to inhabit and wander the thresholds, crevices, surfaces, labyrinths, and frontiers of the cartography of a shared existence.

While the fantasy of the Borgesian map resides in its dimension, its reality lies in the way it merges with the accidents and the frontiers of the territory, whose rigorous tracing figures itself an infinitely renewable and illuminated palimpsest, one that speaks and poeticizes in untranslatable languages, which is indeed mosaic, plateau, fugal fantasy, cartography, and polyphony.

BIBLIOGRAPHY

CITED WORKS

Accursius. *Digestum vetus: mit der Glossa ordinaria von Accursius Florentinus und Summaria von Hieronymus Clarius*. Venice: Baptista de Tortis, 1494. https://www.digitale-sammlungen.de/en/view/bsb00051835?page=536,537

Agamben, Giorgio. *Categorie italiane: studi di poetica e di letteratura*. Roma: Laterza, 2010.

Agamben, Giorgio. *Che cos'è un dispositivo*. Roma: Nottetempo, 2006.

Agamben, Giorgio. *Homo sacer: il potere sovrano e la nuda vita*. Torino: Einaudi, 2005.

Agamben, Giorgio. *Il regno e la gloria: per una genealogia teologica dell'economia e del governo*. Torino: Bollati Boringhieri, 2014.

Agamben, Giorgio. « La vie et le droit », dans Napoli, Paolo (comp.). *Aux origines des cultures juridique européennes : Yan Thomas entre droit et sciences sociales*. Rome : École Française de Rome, 2013, 249 – 258.

Agamben, Giorgio. *L'uso dei corpi*. Vicenza: Neri Pozza, 2014.

Agamben, Giorgio. *Profanazioni*. Roma: Nottetempo, 2005.

Agamben, Giorgio. *Quel che resta di Auschwitz: L'archivio e il testimone*. Torino: Bollati Boringhieri, 1998.

Alciati, Andrea. *Parerga iuris*. Lugduni: Sebastianum Gryphium, 1544. https://www.digitale-sammlungen.de/en/view/bsb10146708?page=,1

Alciati, Andrea. *Tractatus de praesumptionibus*. Venetiis: Cominus de Tridino Montisferrati, 1564.

Aquinas, Thomas. *Summa Theologiae.* Bilingual ed. Trans. by Laurence Shapcote. Green Bay: Aquinas Institute, 2020. Available at: https://aquinas.cc/la/en/~ST.I

Arendt, Hannah. *On Revolution*. New York: The Viking Press, 1963.

Arendt, Hannah. *The Human Condition*. Chicago: Chicago University Press, 1998.

Arendt, Hannah. *The Origins of Totalitarianism*. New York: Harcourt, Brace, Jovanovich, 1973.

Aristotle. "Generation of Animals" in *Aristotle in 23 Volumes*, Vol. 13. Trans. by A. L. Peck. Cambridge: Harvard University Press, 1963.

Aristotle. "Historia Animalium" in *Aristotle in 23 Volumes*, Vol. 9. Trans. by H. Rackham Cambridge: Harvard University Press, 1979.

Aristotle. "Metaphysics" in *Aristotle in 23 Volumes,* Vols. 17 and 18. Trans. by H. Tredennick and G. C. Armstrong. Cambridge: Harvard University Press – Loeb Classical Library, 1990.

Aristotle. "Oeconomica" in *Aristotle in 23 Volumes*, Vol. 18. Trans. by H. Tredennick and G. C. Armstrong. Cambridge: Harvard University Press – Loeb Classical Library, 1990.

Aristotle. "Physics" in *Aristotle in 23 Volumes*, Vol. 4. Trans. by Philip H. Wiksteed. Cambridge: Harvard University Press – Loeb Classical Library, 1980

Aristotle. "Poetics" in *Aristotle in 23 Volumes*, Vol. 23. Trans. by H. Rackham. Cambridge: Harvard University Press, 1932.

Aristotle. "Politics". in *Aristotle in 23 Volumes*, Vol. 21 Trans. by H. Rackham. Cambridge: Harvard University Press – Loeb Classical Library, 2005.

Augustine of Hippo. "De Civitate Dei" in *S. Aurelii Augustini opera omnia: patrologiae latinae elenchus*, Vol 5. Roma: Città Nuova Editrice – Nuova Biblioteca Agostiniana, 1990. https://www.augustinus.it/latino/cdd/index2.htm

Augustine of Hippo. "De mendacio liber unus" in *S. Aurelii Augustini opera omnia: patrologiae latinae elenchus*, 7. Roma: Città Nuova Editrice – Nuova Biblioteca Agostiniana, 2001. https://www.augustinus.it/latino/menzogna/index.htm

Augustine of Hippo. «De trinitate», dans *Oeuvres de saint Augustin*, 15. Trad. par M. Mellet et Th. Camelot. Paris : Desclée de Brouwer, 1955.

Balzac, Honoré de. *Le Colonel Chabert.* Paris : Folio-Gallimard, 1999.
Balibar, Étienne. *Des Universels : Essais et conférences*. Paris : Galilée, 2016.
Balibar, Étienne. Le racisme : encore un universalisme, dans *Mots : les langages de la politique*, 18 (1989), 7 – 20, p. 7.
Barker, Ernest. "Translator's Introduction" in Otto Gierke's *Natural Law and the Theory of Society 1500 to 1800*. Cambridge: Cambridge University Press, 1958
Bart, Jean. « *Fictio juris* ». *Littératures classiques* 40, 1. (Automne, 2000) 25 – 33. https://www.persee.fr/doc/licla_0992-5279_2000_num_40_1_1483
Barthes, Roland. « Le grain de la voix » dans *L'obvie et l'obtus : essais critiques, III*. Paris : Seuil, 1982.
Bates, Mathew. *The Birth of the Trinity: Jesus, God and Spirit in the New Testament and Early Christian Interpretations of the Old Testament*. Oxford: Oxford University Press, 2015.
Baudrillard, Jean. *Simulacres et simulation.* Normandie : Galilée, 2018.
Beauvoir, Simone de. *Le deuxième sexe II.* Paris : Gallimard, 1976.
Bello, Andrés. *Proyecto de Código Civil*. Santiago: Imprenta Chilena, 1853. https://libros.uchile.cl/files/presses/1/monographs/767/submission/proof/34/index.htm
Bentham, Jeremy. "Anarchical Fallacies; Being an Examination of the Declarations of Rights issued during the French Revolution" (c. 1795). In *The Works of Jeremy Bentham, published under the Superintendence of his Executor, John Bowring*, Vol. 2. Edinburgh: William Tait (1843) 489 – 534.
Benjamin, Walter. „Schemata zum Psychophysischen Problem" im *Gesammelte Schriften* VI. Frankfurt am Main: Suhrkamp, 1991.
Benjamin, Walter. *Toward the Critique of Violence: A Critical Edition*. Ed. by Peter Fenves and Julia Ng. Stanford: Stanford University Press, 2021.
Benjamin, Walter. *Über den Begriff der Geschichte*. Berlin: Suhrkamp Verlag, 2010.
Benjamin, Walter. „Zur Kritik der Gewalt" im *Gesammelte Schriften* II.1. Frankfurt am Main: Suhrkamp Verlag, 1991.
Bentham, Jeremy. *An Introduction to the Principles of Morals and Legislation*. London: T. Payne and Son, 1789. https://gallica.bnf.fr/ark:/12148/bpt6k93974k/.item.
Bentham, Jeremy. *The Theory of Fictions*. Ed by C.K. Ogden. London: Kegan Paul, 1932.
Boethius, Anicius Manlius Severinus. *Theological Tractates. The Consolation of Philosophy*. Cambridge: Harvard University Press, 1968.
Boulnois, Olivier. « Le sujet sans le kantisme : Destruction et analyse philosophique des théories du « moi » chez Michel Foucault » dans Damien Boquet et al, *Une histoire au présent: les historiens et Michel Foucault*. Paris: CNRS Éditions, 2013. https://books.openedition.org/editionscnrs/24048
Borges, Jorge Luis. *Obras Completas*. Buenos Aires: Emecé, 2007.
Bourg, Dominique et Swaton, Sophie. *Primauté du vivant : essai sur le pensable*. Paris : Presses Universitaires de France, 2021.
Buck-Morss, Susan. *Hegel, Haiti, and Universal History*. Pittsburgh: University of Pittsburgh Press, 2009.
Butler, Judith. *Frames of war: when is life grievable?* London: Verso, 2010.
Buzzati, Dino. *Il deserto dei tartari*. Milano: Mondadori, 2020.
Brouwer, René. "Funerals, Faces, and Hellenistic Philosophers: On the origins of the concept of person in Rome". In *Persons: A History*. Ed. by Antonia LoLordo. Oxford: Oxford University Press, 2019.
Brutti, Massimo. «Le finzioni nella giurisprudenza romana», *Specula Iuris* 2, no. 1 (2022) 109 – 173. doi.org/10.30682/specula0201d.
Čapek, Karel. *R.U.R. (Rossum's Universal Robots): A Fantastic Melodrama*. New York: Doubleday, Page and Co, 1925. https://babel.hathitrust.org/cgi/pt?id=uva.x000465798.

Carlos II. *Recopilación de leyes de los reynos de las Indias I y II.* Edición facsímil coeditada por el Centro de Estudios Políticos y Constitucionales y el Boletín Oficial del Estado. Madrid: Imprenta Nacional, 1998.

Casas, Bartolomé de las. «Historia de las Indias». En *Obras Completas 5: Historia de las Indias III*. Madrid: Alianza, 1994.

Celso Hugo de, et al (comp.). *Reportorio universal de todas las leyes d'estos reynos de Castilla*. Alcalá de Henares: Imprenta de Juan de Brocar, 1540. https://books.google.fr/books?id=4NHwpYLGoCMC

Chrysostome, Jean. *Sur le sacerdoce (Dialogue et Homélie)*. Trad. Anne-Marie Malingrey. Paris : Les édition du Cerf, 1980.

Cicero. *De natura deorum*. Trans. by H. Rackham. Cambridge: Harvard University Press – Loeb Classical Library, 1951.

Cicero. *De Officiis*. Trans. Walter Miller. Cambridge: Loeb Classical Library - Harvard University Press, 1990.

Cicero. *De Re Publica, De Legibus.* Trans. Clinton Walker Keyes. Cambridge: Loeb Classical Library — Harvard University Press, 1928.

Cicero, *De Senectute, De Amicitia, De Divinatione.* Trans. by William Armistead Falconer. Cambridge: Loeb Library - Harvard University Press, 1992.

Cicero. *On invention*. Trans. H.M. Hubbell. Cambridge: Loeb Classical Library - Harvard University Press, 2006.

Coleridge, Samuel Taylor. *Biographia Literaria or Biographical Sketches of My Literary Life and Opinions*, Vol 2. London: Routledge & Kegan Paul, 1983.

Dadino Alteserra, Antonio. *De fictionibus iuris tractatus quinque*. Paris: Petrum Lamy, 1659. https://archive.org/details/bub_gb_xRHQdjqLTV8C/mode/2up

David, Victor. « La lente consécration de la nature, sujet de droit : Le monde est-il enfin Stone ? » dans *Revue juridique de l'environnement* 37, 3 (2012), 469 – 485. https://www.cairn.info/revue-juridique-de-l-environnement-2012-3-page-469.htm.

Deleuze, Gilles. *Deux régimes de fous : textes et entretiens 1975 – 1995*. Paris : Minuit, 2003.

Deleuze, Gilles. *Foucault.* Paris : Minuit, 2001.

Deleuze, Gilles. *Nietzsche et la philosophie*. Paris : Presses Universitaires de France, 2010.

Deleuze, Gilles. *Pourparlers : 1972 – 1990*. Paris : Minuit, 2003.

Deleuze, Gilles. *Sur la peinture : Cours mars-juin 1981*. Paris : Minuit, 2023.

Derrida, Jacques. « Tympan » en *Marges de la philosophie*. Paris : Minuit, 1972.

Descartes, René. *Discours de la méthode pour bien conduire sa raison et chercher la vérité dans les sciences*. Leyde : Imprimerie de Ian Maire, 1637. https://gallica.bnf.fr/ark:/12148/btv1b86069594/f4.double

Descartes, René. *Meditationes de Prima Philosophia*. Edición trilingüe con traducción de Jorge Aurelio Díaz. Bogotá: Universidad Nacional de Colombia, 2009.

Diderot, Denis et D'Alembert, Jean le Rond. *L'Encyclopédie ou dictionnaire raisonné des sciences, des arts et des métiers, par une société de gens de lettres.* Édition Numérique Collaborative et Critique. Paris : Académie des Sciences, 2022. http://enccre.academie-sciences.fr/encyclopedie/.

Diogenes Laertius. *Lives of eminent philosophers*. Cambridge: Harvard University Press – Loeb Classical Library, 1965.

Dionisio Tracio. *Gramática – Comentarios Antiguos*. Trad. Vicente Bécares Botas. Madrid: Gredos, 2002.

Diomedes. *Ars Grammatica* [*Diomedis vetustissimi ac diligentissimi grammatici emunctum opus*…]. Venezia: Guglielmo da Fontaneto di Monferrato, 1518. Available at https://archive.org/details/bub_gb_IQ7B_yQtAQQC/page/n23/mode/2up.

Doneau, Hugues. *Opera omnia. 1: Commentariorum de iure civili tomus primus*. Lucca: Riccomini, 1762. https://www.digitale-sammlungen.de/en/view/bsb10494340.

Dussel, Enrique. *Les Evêques hispano-américains : défenseurs et évangélisateurs de l'indien 1504-1620*. Wiesbaden: Franz Steiner, 1970.
Epictetus. "Arrian's Discourses" in *The Discourses as Reported by Arrian, The Manual, and Fragments*. Trans. by W.A. Oldfather. Cambridge: Harvard University Press – Loeb Classical Library, 1989.
Esposito, Roberto. *Due: la macchina della teologia politica e il posto del pensiero.* Torino: Einaudi, 2013.
Esposito, Roberto. *Le persone e le cose*. Torino: Einaudi, 2014.
Esposito, Roberto. *Terza persona: politica della vita e filosofia dell'impersonale*. Torino: Einaudi, 2007.
Fehrenbacher, Don E. *The Slaveholding Republic: An Account of the United States Government's Relations to Slavery*. New York: Oxford University Press, 2001
Foucault, Michel. *Dits et écrits I : 1954-1975*. Paris : Quarto Gallimard, 2001.
Foucault, Michel. *Dits et écrits II : 1976-1988.* Paris : Quarto Gallimard, 2017.
Foucault, Michel. *Du gouvernement des vivants : Cours au Collège de France 1979-1980*. Paris : Galimard, 2012.
Foucault, Michel. *Histoire de la sexualité I : La volonté de savoir*. Paris : Gallimard, 1976.
Foucault, Michel. *Histoire de la sexualité II : L'usage des plaisirs.* Paris : Gallimard, 1984.
Foucault, Michel. *Histoire de la sexualité III : Le souci de soi.* Paris : Gallimard, 1984.
Foucault, Michel. *Le corps utopique, Les hétérotopies.* Paris : Lignes, 2009.
Foucault, Michel. *Le courage de la vérité : Cours au Collège de France 1983-1984*. Paris : Gallimard, 2009.
Foucault, Michel. *Le gouvernement de soi et des autres : Cours au Collège de France 1982-198*. Paris : Gallimard, 2008.
Foucault, Michel. *Les mots et les choses : une archéologie des sciences humaines*. Paris : Gallimard, 1966.
Foucault, Michel. *L'herméneutique du sujet* : *Cours au Collège de France 1981-1982*. Paris : Gallimard, 2001.
Foucault, Michel. *Il faut défendre la société : Cours au Collège de France 1975 -1976*. Paris : Gallimard, 1997.
Foucault, Michel. *Naissance de la biopolitique : Cours au Collège de France 1978-1979*. Paris : Galimard, 2004.
Foucault, Michel. *Naissance de la clinique*. Paris : Presses Universitaires de France, 2009.
Foucault, Michel. *Sécurité, territoire, population : Cours au Collège de France 1977-1978*. Paris : Gallimard, 2004.
Foucault, Michel. « Subjectivité et vérité » dans *L'origine de l'herméneutique de soi : Conférences prononcées à Darthmouth College 1980*. Paris : Vrin, 2013.
Foucault, Michel. *Surveiller et punir : naissance de la prison*. Paris : Gallimard, 1975.
France, Anatole. *L'île des pingouins*. Paris : Calmann-Lévy, 1909. https://gallica.bnf.fr/ark:/12148/bpt6k66343r.
Frontisi-Ducroux, Françoise. *Du masque au visage : Aspects de l'identité en Grèce ancienne*. Paris : Flammarion – Champs arts, 2012.
Gaius. *The Institutes of Gaius*: *Part I, text with critical notes and translation*. Translated by Francis de Zulueta. Oxford: Oxford University Press, 1958.
Garroni, Emilio. *Creatività*. Macerata: Quodlibet, 2010.
Garroni, Emilio. *Imagine, linguaggio, figura: osservazioni e ipotesi*. Roma: Laterza, 2010.
Garroni, Emilio. «Osservazioni sul mentire» in *Filmcritica* (Montepulciano: Il Grifo, 1989), 615 – 631.
Gellius, Aulus. *The Attic Nights*. Edition by John C. Rolfe. Cambridge: Harvard University Press, 1927. http://data.perseus.org/citations/urn:cts:latinLit:phi1254.phi001.perseus-eng1:5.19
Godani, Paolo. *Il corpo e il cosmo: per una archeologia della persona*. Vicenza: Neri Pozza, 2021.
Hadot, Pierre. « De Tertullien à Boèce. Développement de la notion de personne dans les controverses théologiques », dans *Problèmes de la personne : Colloque du Centre de Recherche de Psychologie Comparative*. Berlin, Boston: De Gruyter Mouton, 1973, 123 – 134. https://doi.org/10.1515/9783110813050.
Hales, Alexander of. *Glossa in quatuor libros sensentiatum Petri Lombardi*. Firenze: Quaracchi, 1951.
Haraway, Donna. *Simians, Cyborgs, and Women: The Reinvention of Nature*. New York: Routledge, 1991.

Haraway, Donna. "The Promises of Monsters: A Regenerative Politics for Inappropriate/d Others", in *Cultural Studies*, ed. by Lawrence Grossberg et al. New York: Routledge, 1991.
Harnack, Adolf von. *Lehrbuch den Dogmengeschichte*. Zweiter Band. Freiburg: J. C. R. Mohr, 1888. Available at https://archive.org/details/lehrbuchderdogm02harn/page/n5/mode/2up
Hegel, Georg Wilhelm Friedrich. *Grundlinien der Philosophie des Rechts oder Naturrecht und Staatswissenschaft im Grundrisse*. Frankfurt am Main: Suhrkamp Verlag, 1986.
Heidegger, Martin. *Gesamtausgabe 1. Abteilung: Veröffentlichte Schriften 1910-1976, Band 7: Vorträge und Aufsätze*. Frankfurt am Main: Vittorio Klostermann, 2000.
Heidegger, Martin. *Saggi e discorsi*, Trad. Gianni Vattimo. Milano: Mursia, 1991.
Marie-Angèle Hermitte, « La nature, sujet de droit ? » dans *Annales. Histoire, Sciences Sociales*, 1 (EHESS : 2011) 173 - 212. https://www.cairn.info/revue-annales-2011-1-page-173.htm.
Herrero Abán, Carlos. «Facsímil y transcripción de las Leyes de Burgos». En Rafael Sánchez Domingo y Fernando Suárez Bilbao (coord.). *Leyes de Burgos de 1512. V Centenario*. Madrid: Dykinson, 2012.
Hesiod. "Works and Days" in *Theogony, Works and Days, Testimonia* Trans. by Glenn Most. Cambridge: Harvard University Press – Loeb Classical Library, 2018.
Hippolytus of Rome. *Contra Noetum*. Introd. and trans. by Robert Butterworth. London: Heytrhop Monographs, 1977. https://archive.org/details/contranoetum0000hipp/page/52
Hobbes, Thomas. *De Cive: The English version*. Oxford: Oxford University Press, 1983.
Hobbes, Thomas. *Leviathan*. New York: Oxford University Press 1998.
Homer. *The Iliad*. Trans. by A.T. Murray. Cambridge: Harvard University Press, 1924. Available at: http://data.perseus.org/texts/urn:cts:greekLit:tlg0012.tlg001.perseus-eng1.
Hufnagel, Alfons. „Die Wesensbestimmung der Person bei Alexander von Hales" in *Freiburger Zeitschrift für Philosophie und Theologie*, 4 (1957) 148 – 174. https://doi.org/10.5169/seals-761519.
Husserl, Edmund. „Zur Phänomenologie der Intersubjektivität", Erster Teil, *in Husserliana: Gesammelte Werke*, Bd. XIII. Den Haag; Martinus Nijhoff, 1973.
Husserl, Edmund. „Zur Phänomenologie der Intersubjektivität", Zweiter Teil, in *Husserliana: Gesammelte Werke*, Bd. XIV. Den Haag; Martinus Nijhoff, 1973.
Innocent IV. *Apparatus in quinque libros decretalium*. Frankfurt Am Main: Sigmund Feyerabend, 1570. https://www.digitale-sammlungen.de/en/view/bsb10144637.
Innocent IV. *In quinque libros Decretalium nec non in Decretales per eundem editas quae modo sunt in sexto decretalium libro*. Venettis: H. Scoti, 1610.
JanMohamed, Abdul R. *The Death-Bound-Subject: Richard Wright's Archaeology of Death*. Durham: Duke University Press, 2005.
Janvier, Louis Joseph. *Les constitutions d'Haïti 1801 – 1865*. Paris : Marpon et Flammarion, 1886.
Justinian. "Digesta" in *Corpus Iuris Civilis*. Edition by Theodor Mommsen. Berlin: Weidmannsche Buchhandlung, 1872. https://droitromain.univ-grenoble-alpes.fr/Corpus/digest.htm.
Kant, Immanuel. *Crítica de la razón pura*. Ed. bilingüe con traducción de Mario Caimi. México D.F.: Fondo de Cultura Económica, 2009.
Kant, Immanuel. *Critique of Judgement*. Trans. by James Creed Meredith. Oxford: Oxford University Press, 2007.
Kant, Immanuel. *Grundlegung zur Metaphysik der Sitten*. Hamburg: Meiner Verlag, 2016.
Kant, Immanuel. *Kritik der Urteilskraft*. Hamburg: Meiner, 2022.
Kant, Immanuel. *Kritik der reinen Vernunft*. Hamburg: Meiner Verlag, 1998.
Kant, Immanuel. *Metaphysische Anfangsgründe der Rechtslehre: Metaphysik der Sitten Erster Teil*. Hamburg: Meiner Verlag, 2018.
Kantorowicz, Ernst. *The King's Two Bodies: A Study in Mediaeval Political Theology*. Princeton: Princeton University Press, 1957.

Libera, Alain de. *Archéologie du sujet 1 : Naissance du sujet*. Paris : Vrin, 2007.
Linnaeus, Carl. *Systema naturæ per regna tria naturæ, secundum classes, ordines, genera, species, cum characteribus, differentiis, synonymis, locis*, I. Holmia: Laurentii Salvii, 1758. https://www.biodiversitylibrary.org/item/10277#page/12/mode/1up.
Locke, John. *An essay concerning human understanding*. London: S.Birt et al, 1753.
Lucian. "The dance". In *Lucian in eight volumes,* V. Trans. by. A. M. Harmon. Cambridge: Harvard University Press, 1972.
Luisetti, Federico. *Nonhuman Subjects: An Ecology of Earth-Beings*. Cambridge: Cambridge University Press, 2023.
Madison, James. "Federalist No. 54: The Apportionment of Members Among the States" in *Federalist Papers*. Ed. by Barbara Bavis et al. Washington: Library of Congress, 2019. https://guides.loc.gov/federalist-papers/text-51-60#s-lg-box-wrapper-25493430
Marcus Aurelius. *M. Antonius Imperator Ad Se Ipsum*. Ed. by Jan Hendrik Leopold. Leipzig: B.G. Teubneri, 1908. http://data.perseus.org/citations/urn:cts:greekLit:tlg0562.tlg001.perseus-grc1:1.1.1
Mauss, Marcel. « L'Esprit Humain: La Notion de Personne Celle de "Moi"». In *The Journal of the Royal Anthropological Institute of Great Britain and Ireland*, 68 (Jul. - Dec., 1938), 263-281.
Melville, Herman. *Pierre or, The Ambiguities*. New York: Hendricks House, 1957.
Montesquieu. *L'Esprit des lois,* Tome I. Paris : Garnier, 2011.
Newton, Isaac. *Philosophiæ Naturalis Principia Mathematica*. London: Jussu Societatis Regiae, 1628. https://gallica.bnf.fr/ark:/12148/bpt6k3363w/f12.
Nietzsche, Friedrich. *Die fröhliche Wissenschaft.* Hamburg: Meiner Verlag, 2014.
Nietzsche, Friedrich. *Jenseits von Gut und Böse: Vorspiel einer Philosophie der Zukunft*. Hamburg: Meiner Verlag, 2013.
Nietzsche, Friedrich. *Zur Genealogie der Moral*. Hambrug: Meiner Verlag, 2013.
Ovid. *Metamorphoses*. Trans. by Frank J. Miller. Cambridge: Harvard University Press – Loeb Classical Library, 1958.
Papinian. *Mosaicarum et romanarum legum collation*. Edition and translation by Moses Hyamson. London: Oxford University Press, 1913. https://archive.org/details/cu31924029129876.
Plato. "Protagoras" in *Laches, Protagoras, Meno, Euthydemus*. Trans. by W.R.M. Lamb. Cambridge: Harvard University Press – Loeb Classic Library, 2006.
Plato. "Republic" in *Plato in Twelve Volumes*, Vols. 5 & 6. Trans. by Paul Shorey. Cambridge: Harvard University Press, 1969.
Plato, "Timaeus. Critias. Cleitophon. Menexenus. Epistles" in *Plato in Twelve Volumes*, Vol. 9. Trans. by R.G. Bury. Cambridge: Harvard University Press, 1989.
Pliny. *Natural History*, Vol 1. Trans. by H Rachkham. Cambridge: Harvard University Press – Loeb Classic Library, 1954.
Pliny. *Natural History*, Vol 2. Trans. by H Rachkham. Cambridge: Harvard University Press – Loeb Classic Library, 1957.
Pothier, Robert-Joseph. « Traité des personnes et des choses » dans *Ouvres de Pothier*, édité par M. Dupin. Paris : Bechet Ainé, 1825.
Paulo III. «Sublimis Deus». En Carlos Gutiérrez, *Fray Bartolomé de las Casas: sus tiempos y su apostolado.* Madrid: Imprenta de Fortanet, 1878. https://archive.org/details/fraybartolomdel00castgoog/page/424/mode/2up.
Quintilian. *Institutio Oratoria*. Trans. by Harold Edgeworth Butler. Cambridge: Harvard University Press, 1922.http://www.perseus.tufts.edu/hopper/text?doc=Quint.+Inst.+5+10.96&fromdoc=Perseus%3Atext%3A2007.01.0063.
Rakove, Jack. "Introduction" in *The Annotated U.S. Constitution and Declaration of Independence*. Ed. by Jack Rakove. Cambridge: Harvard University Press, 2009.

Rakove, Jack. *Original meanings: politics and ideas in the making of the Constitution*. New York: A.A. Knopf, 1996.
Rancière, Jacques. *Les bords de la fiction*. Paris : Seuil, 2017.
Rousseau, Jean-Jacques. *Du contrat social ou principes de droit politique* (Paris : Éditions Sociales, 1968)
Rossignol, Marie-Jeanne. « La première Constitution d'Haïti et la presse américaine : étude de cas ». *Revue Française d'Études Américaines*, 52 (1992) 149 – 160. https://doi.org/10.3406/rfea.1992.1464.
Sala-Moulins, Louis. *Le Code Noir ou le calvaire de Canaan*. Paris : Presses Universitaires de France, 2006.
Saxoferrato, Bartolus de. *Lectura super prima parte Digesti novi*. Venice: Wendelin, 1471. https://www.digitale-sammlungen.de/en/view/bsb00046933?page=306,307.
Scaccia, Sigismondo. *Tractatus de sententia, et re judicata*. Coloniae: Metternich et fili, 1738. https://www.digitale-sammlungen.de/en/view/bsb11056994?q=%28Sigismundi+Scacciae%29&page=,1
Schlossmann, Siegmund. *Persona und prósōpon im Recht und im christlichen Dogma*. Kiel: Lipsius & Tischer, 1906.
Schmitt, Carl. *Politische Theologie: Vier Kapitel zur Lehre von der Souveränität*. Berlin: Duncker & Humblot, 2004.
Seneca. *Ad Lucilium Epistulae Morales* III. Trans. by Richard M. Gummere. Cambridge: Harvard University Press, 1989.
Singer, Peter. *Animal Liberation*. New York: Harper Collins, 2002.
Skinner, Quentin. "A genealogy of the modern state" in *Proceedings of the British Academy*, 162, 325 – 370. London: The British Academy, 2009.
Sophocles. "Antigone" in *Sophocles. Vol 1: Oedipus the king. Oedipus at Colonus. Antigone.* Trans. by F. Storr. Cambridge: Harvard Univeristy Press - Loeb Classical Library, 1962.
Souza Salles Sergio de, *et al.* "Dignity is said in many ways: a re-reading based on Thomas Aquinas". *Conhecimento & Diversidade*, v. 14, n. 34 (Sep – Dec 2022), 271 – 286. https://www.proquest.com/docview/2778390617
Spinoza, Baruch. *Éthique*. Édition annotée et traduite sous la direction de Maxime Rovere. Paris : Flammarion, 2021. Latin text from: https://thelatinlibrary.com/spinoza.html.
Stimilli, Elettra. *Filosofia dei mezzi: per una nuova politica dei corpi.* Vicenza: Neri Pozza, 2023.
Stone, Christopher. *Should Trees Have Standing? Law, Morality, and the Environment.* New York: Oxford University Press, 2010.
Tertullian. *Adversus Praxean*. Introd., trans. and comment. by Ernest Evans. London: SPCK, 1948. https://www.tertullian.org/latin/adversus_praxean.htm
Theodosius II, *Theodosiani libri XVI cum Constitutionibus Sirmondianis; et Leges novellae ad Theodosianum pertinentes*. Edition by Theodor Mommsen and Paul Meyer. Berlin: Weidmannsche Buchhandlung, 1905. https://droitromain.univ-grenoble-alpes.fr/Constitutiones/Novellae_theod_Mommsen.htm.
Thomas, Yan. « *Fictio legis* : L'empire de la fiction romaine et ses limites médiévales », *Droits*, 21 (1995) : 17 – 63.
Thomas, Yan. *Les opérations du droit*, eds. Marie-Angèle Hermitte et Paolo Napoli. Paris : Seuil-Gallimard, 2011.
Thomas, Yan. « Le sujet de droit, la personne et la nature : sur la critique contemporaine du sujet de droit » *Le Débat*, Vol. 3 no. 100 (1998) : 85 – 107.
Thomas, Yan. « *Vitae necisque potestas* : Le père, la cité, la mort » *Du châtiment dans la cité. Supplices corporels et peine de mort dans le monde antique.* École Française de Rome (1984) : 499 - 548.
Ubaldis, Baldus de. *In primam et secundam Infortiati partem. Commentaria*. Venetiis: Iuntas, 1599.
Valencia Villa, Hernando. *Cartas de batalla: una crítica del constitucionalismo colombiano*. Bogotá: Universidad Nacional de Colombia, 1987.
Varro, Marcus Terentius. *On agriculture*. London: Loeb Classical Library, 1934.

Varro, Marcus Terentius. *On the Latin langauge II*. Cambridge: Harvard University Press - Loeb Classical Library, 1938.
Velotti, Stefano. *Sapienti e Bestioni: Saggio sull'ignoranza, il sapere e la poesia in Giambattista Vico*. Parma: Pratiche Editrice, 1995.
Victoria, Francisco de. *De indis et de iure belli relectiones*. Ed. by Ernest Nys. Washington: Carnegie Institution, 1917.
Vico, Giambattista. *De nostri tempore studiorum ratione : La méthode des études de notre temps*. Paris : Les Belles Lettres, 2010.
Vico, Giambattista. *La scienza nuova*. Bari: Laterza, 1928.
Viveiros de Castro, Eduardo. "Exchanging Perspectives: The Transformation of Objects into Subjects in Amerindian Ontologies" in *Common Knowledge* 10 (3) (2004), 463 – 484.
Viveiros de Castro, Eduardo. "Perspectival Anthropology and the Method of Controlled Equivocation" in *Tipití: Journal of the Society for the Anthropology of Lowland South America* 2 (1) (2004) 3 – 22. https://digitalcommons.trinity.edu/tipiti/vol2/iss1/1
Vultejus, Hermann. *Jurisprudentiae romanae a Justiniano compositae libri due*. Marburg: Egenolphus, 1590. https://www.digitale-sammlungen.de/en/details/bsb10182135
Walton, Kendall. *Mimesis as Make-Believe: On the Foundations of the Representational Arts*. Cambridge: Harvard University Press, 1990.
Weil, Simone. *La personne et le sacré : collectivité, personne, impersonnel, droit, justice.* Paris : Éditions Allia, 2022.
Williams, Scott. "Persons in Patristic and Medieval Christian Theology". In *Persons: A History*. Ed. by Antonia LoLordo. Oxford: Oxford University Press, 2019.

REFERENCED WORKS

Adhikari, Mohamed (ed). *Civilian-Driven Violence and the Genocide of Indigenous Peoples in Settler Societies*. London: Routledge, 2021.
Agamben, Giorgio. *Opus Dei: archeologia dell'ufficio*. Torino: Bollati Boringhieri, 2012.
Agamben, Giorgio. *Stato di eccezione*. Torino: Bollati Boringhieri, 2003.
Aires Queja, Berta. «La Apologética Historia Sumaria y el debate sobre la naturaleza del indio», en Bartolomé de las Casas, *Obras Completas, 6: Apologética Historia Sumaria I*. Madrid: Alianza, 1992.
Albanese, Bernardo. *Le persone nel diritto privato romano*. Palermo: Università di Palermo, 1979.
Alemán Monterreal, Ana. "Precisiones terminológicas sobre *ostentum* D.50,16,38 (Ulpianus libro 25 ad Edictum)" en *Fundamentos romanísticos del derecho contemporáneo* 2 (2021) 3 – 18. https://boe.es/biblioteca_juridica/anuarios_derecho/anuario.php?id=R_2021&fasc=2
Alfonso X. *Las Siete Partidas: edición de 1807 de la Imprenta Real*. Tomo III. Madrid: Real Academia de la Historia, 2021. https://www.boe.es/biblioteca_juridica/publicacion.php?id=PUB-LH-2021-217.
[Anonymous]. *Rhétorique à Herennius*. Trad. G. Achard. Paris, Belles Lettres.
Aristotle. "On the soul" in *Aristotle in 23 Volumes*, Vol. 8. Trans. by W.S. Hett. Cambridge: Harvard University Press, 1986.
Baschet, Jérôme. *Corps et âmes: une histoire de la personne au Moyen Âge*. Paris : Flammarion, 2022.
Beauvoir, Simone de. *Le deuxième sexe I.* Paris: Gallimard, 1976.
Bedau, Hugo Adam. "'Anarchical Fallacies': Bentham's Attack on Human Rights", *Human Rights Quarterly*, 22, No. 1 (Feb., 2000), 261 – 279.
Bergson, Henri. *Le rire : essai sur la signification du comique.* Paris : Presses Universitaires de France, 2007.
Bherer, Marc-Olivier. « 'Français de papier', une formule xénophobe au service de la division de la nation », *Le Monde*, 25 octobre 2023.

https://www.lemonde.fr/idees/article/2023/10/25/francais-de-papier-une-formule-xenophobe-au-service-de-la-division-de-la-nation_6196300_3232.html.
Benjamin, Walter. "Theses on the Philosophy of History" in *Illuminations*. New York: Schoken Books, 2007.
Berlin, Isaiah. "Two concepts of liberty" in *Four Essays on Liberty*. Oxford: Oxford University Press, 1969.
Berns, Thomas. « Du *Sacer* au *Sanctus* : contre Agamben à partir du droit romain ». *Archiv für Rechts- und Sozialphilosophie* 102, 3 (2016), 441 – 454.
Bird, Greg and Tusa, Giovanbattista (ed.). *Dispositif: A Cartography*. Cambridge: MIT Press, 2023.
Boulnois, Olivier (éd). *Généalogies du sujet : de Saint Anselme à Malebranche*. Paris : Vrin, 2007.
Breyer, Gertraud. *Etruskisches Sprachgut im Lateinischen unter Ausschluss des spezifisch onomoastischen Bereiches*. Leuven: Peeters, 1993.
Bretone, Mario. *I fondamenti del diritto romano: le cose e la natura*. Roma: Laterza, 2001.
Bobbio, Norberto. *Teoria generale del diritto*. Torino: G. Giappichelli, 1993.
Brodsky, Joseph. *Less than one: selected essays.* New York: Farrar, 1986.
Buckland, W.W. « L'Edictum provinciale ». *Revue historique de droit français et étranger* 13, No. 1 (1934) 81 – 96. https://www.jstor.org/stable/44757464.
Butler, Judith. *Senses of the subject*. New York: Fordham University Press, 2015.
Burke, Edmund. *Revolutionary Writings: Reflections on the Revolution in France and the first Letter on Regicide Peace*. Cambridge: Cambridge University Press, 2014.
Bourdieu, Pierre. *La force du droit : éléments pour une sociologie du champ juridique*. Paris : Éditions de la Sorbonne, 2017.
Boyaci Gülenç, Nihal Petek. "An Enquiry on *Physis–Nomos* Debate: Sophists", *Synthesis Philosophica* 61, 1 (2016) 39 - 53.
Campbell, Timothy. "'Enough of a Self': Esposito's Impersonal Biopolitics", in *Law, Culture and the Humanities,* 8.1 (2012): 31–46. https://journals.sagepub.com/doi/abs/10.1177/1743872110387552
Casas, Bartolomé de las. *Brevísima relación de la destrucción de las Indias.* Madrid: Cátedra, 1982.
Casas, Bartolomé de las. *Obras Completas, 6: Apologética Historia Sumaria I*. Madrid: Alianza, 1992.
Castro, Paulus de. *Segunda Super Digesto Veteri*. Lyon: Trechsel, 1535. https://www.digitale-sammlungen.de/en/view/bsb10494459?page=,1&q=%28%22fictio+imitatur+naturam%22%29
Cormier, Philippe. *Généalogie de personne*. Paris: Ad Solem, 2015.
David, Victor. « La nouvelle vague des droits de la nature : La personnalité juridique reconnue aux fleuves Whanganui, Gange et Yamuna » dans *Revue juridique de l'environnement* 3, 42 (2017) 409 – 424.
Davis, David Brion. *The Problem of Slavery in Western Culture*. Ithaca: Cornell University Press, 1967.
Debord, Guy. *La société du spectacle*. Paris : Champ Libre, 1971.
Deleuze Gilles et Guattari, Félix. *Capitalisme et schizophrénie 2 : Mille Plateaux*. Paris : Minuit, 1980.
Delsalle, Paul. *Histoires de familles : les registres paroissiaux et d'état civil, du Moyen Âge à nos jours. Démographie et généalogie*. Besançon : Presses universitaires de Franche-Comté, 2009.
Derrida, Jacques. "Force of law: the 'mystical foundation of authority'" in *Deconstruction and the possibility of justice*, ed. Drucilla Cornell *et al*. New York: Routledge, 1992.
Dörrie, Heinrich. „Hypostasis: Wort- und Bedeutungsgeschichte" in *Nachrichten der Akademie der Wissenschaften in Göttingen*, 1,3 (1955) 35 – 93. Göttingen: Vandenhoeck & Ruprecht.
Dussel, Enrique. «Meditaciones anticartesianas: sobre el origen del antidiscurso filosófico de la modernidad». En Grosfuguel, Ramón y Almanza Hernández, Roberto (eds). *Lugares descoloniales: espacios de intervención en las Américas*. Bogotá: Pontificia Universidad Javeriana, 2012) 11 – 58.
Farr, James. "'So Vile and Miserable an Estate': The Problem of Slavery in Locke's Political Thought", *Political Theory* 14 no. 2 (1986): 263 – 289. https://www.jstor.org/stable/191463.

Field, Sandra Leonie. *Potentia: Hobbes and Spinoza on Power and Popular Politics*. New York: Oxford University Press, 2020.
Fraser, Nancy. *Fortunes of feminism: From State-managed capitalism to neoliberal crisis.* New York: Verso, 2020.
Frost, Tom. "The Dispositif between Foucault and Agamben", *Law, Culture and the Humanities*, 15, 1 (2019): 151– 171. https://journals.sagepub.com/doi/pdf/10.1177/1743872115571697.
García Garrido, Manuel J., "Sobre los verdaderos límites de la ficción en derecho romano" en *Anuario de historia del derecho español*, N.º 27- 28. Madrid: Ministerio de Justicia, 1957. https://dialnet.unirioja.es/servlet/articulo?codigo=2051578.
García López, Daniel J. «Has de tener un cuerpo que mostrar: el grado cero de los Derechos Humanos» en *Isegoría: Revista de filosofía moral y política*, 59 (2018), 663 – 682.
Goffman, Erving. *The Presentation of Self in Everyday Life*. Edinburgh: University of Edinburgh, 1956.
Gouges, Olympe de. *Les droits de la femme. A la reine.* Paris, 1791. https://gallica.bnf.fr/ark:/12148/bpt6k64848397/f1.item
Guerrier, Olivier. « Les fictions juridiques et leur rapport au « littéraire » au XVIe siècle » dans Shahid Rahman et Juliele Maria Sievers (eds). *Normes et fiction*. Lille, Université de Lille, 2011, 15 – 30. https://shs.hal.science/halshs-01219626.
Gunten, F. von. "La notion de personne dans la Trinité d'après Alexandre de Halès" in *Divus Thomas : Jarhbuch für Philosophie und Spekulative Theologie*, 28. Universität Freiburg (1950) 32 – 62. https://doi.org/10.5169/seals-762200.
Guthrie, W.K.C. *A history of Greek Philosophy Vol. 3: The Sophists*. Cambridge: Cambridge University Press, 1977.
Hadot, Pierre. *Études de patristique et d'histoire des concepts*. Paris : Les Belles Lettres, 2010.
Hadot, Pierre. *Exercices spirituels et philosophie Antique*. Paris : A. Michel, 2002.
Hart, H.L.A. *The Concept of Law.* Oxford: Clarendon Press, 1994.
Henríquez Herrera, Ian. "La regla de la ventaja para el concebido y el aforismo "infans conceptus pro iam nato habetur" en el derecho civil chileno". *Revista de Derecho (Valparaiso)*, v. 1, núm. 27. Pontificia Universidad Católica de Valparaíso (2006) 87 – 113. https://www.redalyc.org/articulo.oa?id=173620058004.
Heidegger, Martin. *Sein und Zeit*. Tübingen: Max Verlag, 1967.
Hubbard, Ruth. *The Politics of Women's Biology.* New Brunswick: Rutgers University Press, 1990.
Hufnagel, Alfons. "Die Wesensbestimmung der Person bei Alexander von Hales" in *Freiburger Zeitschrift für Philosophie und Theologie*, 4 (1957) 148 – 174.
Hurbon, Laënnec. "The Church and Afro-American Slavery". In Enrique Dussel (ed). *The Church in Latin America 1492 – 1992*. Kent: Burns&Oates, 1992.
James, Alison; Kubo, Akihiro; Lavocat, Françoise (eds). *The Routledge Handbook of Fiction and Belief*. New York: Routledge, 2024.
Jannot, Jean-René. "Phersu, phersuna, persona". *Publications de l'école française de Rome* 172 (1993) : 281–320.
Justinian. "Codex Iustinianus" in *Corpus Iuris Civilis*, Edition by Theodor Mommsen and Critical Edition by Paul Krüger. Berlin: Weidmannsche Buchhandlung, 1877. https://droitromain.univ-grenoble-alpes.fr/Corpus/CJ6.htm.
Krauskopf, Ingrid. "Phersu". In *Dizionario della civiltà etrusca*. Ed. Mauro Cristofani Firenze: Giunti, 1985.
Latour, Bruno. « Le Parlement des choses » dans *Nous n'avons jamais été modernes : Essai d'anthropologie symétrique*. Paris : La Découverte, 2006, 194 – 198.
Latour, Bruno. « Esquisse d'un Parlement des choses » *Ecologie & politique* 2018-1 (56), 47 – 64. Available at https://shs.cairn.info/revue-ecologie-et-politique-2018-1-page-47?lang=fr
Lewis, Charlton T, and Short, Charles. *A Latin Dictionary*. Oxford: Clarendon Press, 1879. https://logeion.uchicago.edu.
Library of Virgina, *Enquirer*, Volume 2, Number 22. 23 July 1805. https://virginiachronicle.com/?a=d&d=EN18050723.1.2

Loraux, Nicole. *La cité divisée : l'oubli dans la mémoire d'Athènes*. Paris : Payot & Rivages, 1997.
Maeterlinck, Maurice. *Œuvres IV: la vie de la nature*. Bruxelles : A. Versaille, 2010.
MacLachlan, Bonnie. *Women in Ancient Rome: A Sourcebook*. London: Bloomsbury, 2013.
Malthus, Thomas Robert. *An essay on the principle of population, as it affects the future improvement of society* London: J. Johnson, 1798. https://archive.org/details/essayonprincipl00malt.
Marion Young, Iris. *Justice and the Politics of Difference*. Princeton: Princeton University Press, 1990.
McClure, Laura K. *Women in Classical Antiquity: From Birth to Death*. Hoboken: Wiley-Blackwell, 2019.
McFarland, James. *Constellation: Friedrich Nietzsche and Walter Benjamin in the Now-Time of History*. New York: Fordham University Press, 2012.
Menzinger, Sara. *Finzioni del diritto medievale.* Macerata: Quodlibet, 2023.
Moatti, Claudia. *Res publica: histoire romaine de la chose publique*. Paris : Fayard, 2018.
Mussawir, Edward. "On the juridical existence of animals: the case of a bear in Colombia's Constitutional Court". In Alexis Alvarez-Nakagawa and Costas Douzinas (eds), *Non-Human Rights: Critical Perspectives*. Cheltenham: Edward Elgar Publishing, 2024.
Napoli, Paolo. *Naissance de la police moderne : pouvoir, normes, société*. Paris : La Découverte, 2003.
Nietzsche, Friedrich. *Más allá del bien y del mal.* Trad. de Ariel Sánchez Pascual. Madrid: Alianza, 1997.
Nietzsche, Friedrich. *Œuvres.* Trad. par Patrick Wotling. Paris : Flammarion, 2020.
Nietzsche, Friedrich. *On the Genealogy of Morality*, trans. by Carol Diethe. Cambridge: Cambridge University Press, 2006.
Nussbaum, Martha. *Women and human development: the capabilities approach*. Cambridge: Cambridge University Press, 2000.
Olivecrona, Karl. *Law as Fact*. London: Oxford University Press, 1939.
Origène. *Commentaire sur saint Jean* 2. Trad. par Cécile Blanc. Paris : Éditions du Cerf, 1970.
Orwell, George. *Animal Farm*. New York: Harcourt, Brace and Co, 1946.
Palma, Antonio. "Il nascituro come problema "continuo" nella storia del diritto" in *Teoria e storia del diritto privato* 7 (2014). https://www.teoriaestoriadeldirittoprivato.com/vii-annata-2014.
Panezio di Rodi. *Testimonianze*. Edizione, traduzione e commento a cura di Francesca Alesse. Napoli: Bibliopolis, 1997.
Parsons, Talcott and Shils, Edward. *Toward a General Theory of Action: Theoretical Foundations for the Social Sciences*. Cambridge: Harvard University Press, 1951.
Pascal, Blaise. *Pensées*. Paris : Garnier, 1991.
Platon. *Lettres*. Trad. de Joseph Souilhé. Paris : Les Belles Lettres, 1977.
Pohlenz, Max. *La Stoa: storia di un movimento spirituale*, Vol. 1. Firenze: La Nuova Italia, 1967.
Pottage, Alain. "Why nature has no rights". In Alexis Alvarez-Nakagawa and Costas Douzinas (eds), *Non-Human Rights: Critical Perspectives*. Cheltenham: Edward Elgar Publishing, 2024.
Ramelli, Ilaria. "Origen, Greek Philosophy, and the Birth of the Trinitarian Meaning of *Hypostasis*", *Harvard Theological Review* 105, no. 3 (July 2012): 302 – 350, https://doi.org/10.1017/S0017816012000120.
Riquetti, Victor, marquis de Mirabeau. *L'ami des hommes ou Traité de la population*. Avignon, 1756. https://link.gale.com/apps/doc/U0101016555/MOME?u=usparis1&sid=gale_marc&xid=4c0e012f&pg=1.
Rolker, Christof. "The two laws and the three sexes: ambiguous bodies in canon law and Roman law (12th to 16th centuries)", in *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Kanonistische Abteilung* 100 (2014) 178 - 222. https://kops.uni-konstanz.de/server/api/core/bitstreams/09a2eda4-b0f9-4e4e-8c33-8bf3eec1ab95/content
Rousseau, Jean-Jacques. *Discours sur l'origine et les fondements de l'inégalité parmi les hommes.* Paris : Éditions Sociales, 1971.
Ross, Alf. "Tû-Tû" in *Harvard Law Review* 70, No. 5 (1957) 812 – 825.
Said, Edward W. *Orientalism*. New York: Vintage, 1979.

Santayana, George. *Soliloquies in England and Later Soliloquies*. New York: Charles Scribner's Sons, 1922.
Schaeffer, Jean-Marie. « Quelles vérités pour quelles fictions ? » dans *L'Homme*, 175 − 176 (2005), 19 − 36. https://doi.org/10.4000/lhomme.29493
Schelling, Friedrich. *Über das Wesen der menchslichen Freiheit*. Hamburg: Meiner, 2011.
Schopenhauer, Arthur. *The World as Will and Representation*, I. Cambridge: Cambridge University Press, 2010.
Spinoza, Baruch. "Epistola L, Viro Humanissimo, atque Prudentissimo Jarig Jelles" in *Tutte le Opere*. Milano: Bompiani, 2010.
Spivak, Gayatri Chakravorty. *A Critique of Postcolonial Reason: Toward a History of the Vanishing Present*. Cambridge: Harvard University Press, 1999.
Spivak, Gayatri Chakravorty. "Can the Subaltern Speak?" in Patrick Williams and Laura Chrisman (eds.), *Colonial Discourse and Post-Colonial Theory* (New York: Columbia University Press, 1994.
Stanton, Gregory H. "The Ten Stages of Genocide" (1996), Genocide Watch, https://www.genocidewatch.com/tenstages.
Stimilli, Elettra. *Debito e colpa*. Roma: Ediesse, 2015.
Tavoillot, Pierre-Henri. *Le crépuscule des Lumières : les documents de la « querelle du panthéisme » 1780-1789*. Paris : Éditions du Cerf, 1995.
Titius, Gottlieb Gerhard. *De fictionum Romanarum natura et inconcinnitate*. Leipzig: Schedius, 1724.
Traverso, Enzo. *Revolution: An Intellectual History*. New York: Verso, 2021
Trolio, Gaia di. «Gaio commentatore dell'editto provinciale». *Revista General de Derecho Romano* 33 (2019). https://www.iustel.com/v2/revistas/detalle_revista.asp?id=11&numero=33
Tsing, Anna Lowenhaupt. "A Threat to Holocene Resurgence Is a Threat to Livability" in M. Brightman, J. Lewis (eds.), *The Anthropology of Sustainability: Beyond Development and Progress,* London: Palgrave Macmillan, 2017, DOI 10.1057/978-1-137-56636-2_4.
Tzung-Mou Wu. *"Personne" en droit civil français : 1804-1914*. Thèse en Droit. Paris : École des Hautes Études en Sciences Sociales (EHESS) ; Roma : Università degli studi Roma III, 2011. https://theses.hal.science/tel-00738952.
Vaihinger, Hans. *The Philosophy of 'As if': A System of the Theoretical, Practical and Religious Fictions of Mankind*. Trans. by Charles Kay Ogden. London: Kegan Paul, 1935.
Viala, Alain. *L'Âge classique et les Lumières : Une histoire brève de la littérature française*. Paris, Presses Universitaires de France, 2015.
Virno, Paolo. *Avere: sulla natura dell'animale loquace.* Torino: Bollati Boringhieri, 2020.
Viturro, Paula. «Ficciones de Hembras», *Revista Jurídica de la Universidad Interamericana de Puerto Rico* 38, no. 1 (September − December, 2003): 137 − 150.
Welchman, Jennifer. "Locke on Slavery and Inalienable Rights", *Canadian Journal of Philosophy* 25 no. 1 (1995): 67 − 81. https://www.jstor.org/stable/40231899?seq=1.
Waldron, Jeremy (ed.). *Nonsense upon Stilts: Bentham, Burke and Marx on the Rights of Man*. New York: Methuen, 1987.
Wise, Steven. *Rattling the Cage: Toward Legal Rights for Animals*. New York: Da Capo Press, 2017.

FICTIO VEL PERSONA : SEUILS, FRONTIERES, GENEALOGIE - RESUME EN FRANÇAIS

Note explicative :

Puisque le présent travail a été réalisé en cotutelle et qu'il a été rédigé à l'origine en anglais, il est nécessaire, conformément à la convention de cotutelle et en tant qu'obligation statutaire, de présenter un résumé en français. Pour une meilleure d'organisation, j'ai réalisé le résumé de chaque chapitre plutôt que le résumé de l'ensemble du document. De plus, j'ai évité de répéter les références bibliographiques, étant donné que le corpus bibliographique est déjà mentionné dans le texte de la thèse et que le présent résumé, naturellement, ne s'en détache pas. Je renvoie donc les lecteurs aussi bien aux notes de bas de page qu'à la bibliographie.

I. CARTOGRAPHIE DE LA PERSONNALITÉ

1. UNE MOSAÏQUE DE LA PERSONNALITÉ

1.1. Personnes ou choses

Nous commençons par une dissection. Gaius divise « l'ensemble du droit » (*omne ius*) en trois domaines principaux : le droit des personnes, le droit des choses et le droit des actions – c'est-à-dire le droit qui régit les relations entre personnes et choses. Cette division tripartite, reprise plus tard dans le *Digesta* par Hermogénius, souligne la primauté de la personne. Le droit est fondamentalement conçu pour les *homines*, faisant de la régulation de leur statut une préoccupation majeure.

La distinction fondamentale, la *summa divisio*, dans le droit des personnes consiste à classer tous les hommes (*omnes homines*) soit comme libres, soit comme esclaves. Ici, « *summa* » revêt un double sens : il désigne à la fois la division première et la division essentielle du système juridique. Même ceux soumis à une domination sévère – les esclaves – sont inclus dans la catégorie des personnes, malgré leur absence d'autonomie. Cette inclusion révèle une stratification de la personne qui, bien que paraissant paradoxale, constitue la base de la classification juridique romaine.

L'approche de Gaius est résolument pragmatique. Sa classification vise à résoudre des problèmes juridiques immédiats plutôt qu'à formuler de simples distinctions philosophiques abstraites. De la même manière qu'il distingue entre personnes libres et esclaves, il applique une méthode analogue aux choses dans le deuxième livre de ses *Institutiones*. Il divise alors les choses en celles soumises au droit divin et celles régies par le droit humain, en les subdivisant en catégories telles que privé versus public, corporel versus incorporel, et mobile versus immobile. Ces subdivisions, bien que détaillées, conduisent parfois à des contradictions apparentes.

Une contradiction frappante apparaît lorsqu'un homme (*homo*) est simultanément présenté comme exemple de choses corporelles (*res corporales*) – placé aux côtés de la terre, des vêtements et des métaux précieux. Cette inclusion est déconcertante car, d'une part, les hommes sont d'abord définis comme des personnes et, d'autre part, ils figurent dans la taxinomie des choses. Ainsi, le véritable *summa divisio* pourrait être compris non pas seulement comme la dichotomie libre/esclave, mais comme l'acte primordial de séparation des personnes et des choses. Autrement dit, chaque entité est d'abord introduite dans le cadre juridique en tant que « chose » (*res*), à partir de laquelle la personne est ensuite délimitée comme un statut particulier.

Cette double catégorisation nous oblige à confronter une tension dans les définitions à partir de deux perspectives. Selon une interprétation, toute entité – indépendamment de sa désignation ultérieure en tant que personne – intègre le système juridique en tant que chose. Dans cette perspective, le concept de *res* sert de substrat universel, le « contenant » initial dans lequel toutes les entités sont incorporées. Ce n'est qu'après l'établissement de cette catégorie universelle que le système juridique peut distinguer les personnes des choses. Ici, la substance d'une personne est, en fait, la chose même dont elle dérive ; le droit appréhende l'individu d'abord comme une entité matérielle avant de lui attribuer un statut distinct.

Cette conception trouve un écho philosophique dans l'interrogation de Heidegger sur la nature d'une chose (*Ding*). Heidegger soutient qu'une chose est ce qui « se tient par elle-même » (*etwas Selbständiges*) jusqu'à ce qu'elle nous soit représentée comme un objet (*Gegenstand*). Ce processus de re-présentation, notamment par l'analyse scientifique, « annule » l'essence intrinsèque de la chose en la réduisant à des propriétés mesurables ou fonctionnelles. Par exemple, une carafe n'est pas appréhendée dans sa totalité de chose en soi, mais est compris comme une « cavité qui reçoit un liquide ». Heidegger en conclut que l'essence d'une chose consiste à « rassembler » ou « assembler » – un acte qui, en relation avec le temps, confère la permanence. Cette perspective renforce l'idée que le concept de *res* dans le droit n'est pas statique, mais un principe actif et unificateur qui regroupe toutes les entités sous un dénominateur commun.

De plus, le terme « chose » porte en lui de profondes connotations étymologiques et communautaires. Dans l'allemand ancien, « *thing* » désignait à l'origine une assemblée de personnes réunies pour discuter d'une affaire. Ce sens de rassemblement s'harmonise avec la notion latine de *res* en tant que *causa* – matière, action ou controverse – qui, à son tour, informe le concept de *res publica*. Loin d'être une abstraction, le terme « chose » incarne l'idée d'une affaire d'intérêt commun, un concept qui subsiste dans les langues romanes (*cosa, chose*) et souligne la capacité d'une chose à « rassembler » ou unir.

Ainsi, dans le système de Gaius, le *res* n'est pas simplement une substance inerte, mais un continuum dynamique dans lequel chaque entité est d'abord introduite. Les personnes sont ainsi définies de manière double : elles sont à la fois des « choses » dans un sens métaphysique englobant et, par l'acte juridique de différenciation (la *summa divisio*), elles émergent comme une catégorie distincte dotée de droits et de rôles spécifiques. Elles sont à la fois des substances capables de se suffire à elles-mêmes et des entités qui, lorsqu'elles font l'objet d'un examen juridique, sont extraites du champ général des choses.

Une seconde perspective issue de l'analyse de Gaius est la fluidité inhérente de ces catégories. En subordonnant la personne à la catégorie universelle des choses, Gaius suggère que la distinction entre personnes et choses n'est pas un état absolu et immuable, mais plutôt un état marqué par l'instabilité et la transformation potentielle. Roberto Esposito, par exemple, observe qu'à la Rome antique, personne ne demeure une *persona* durant toute sa vie ; chaque individu traverse des périodes où il ressemble à des « choses possédées ». Cette observation se manifeste dans le statut juridique des enfants – qui font partie d'un patrimoine paternel – et des esclaves, qui peuvent passer du statut d'objets à une forme de personne.

Dans ce cadre dynamique, la frontière entre personne et chose est mutable, reposant sur le concept sous-jacent de *res* comme substrat facilitant de telles transformations.

La carte juridique ainsi tracée ressemble à la cartographie borgésienne qui finit par se confondre avec le territoire qu'elle représente. D'une part, les êtres humains sont provisoirement désignés comme *personae* ; d'autre part, toutes les entités, quelle que soit leur catégorisation finale, sont d'abord traitées comme des *res* –des substances appréhendées et définies par des processus jurido-politiques. Bien que cette division ait structuré les fondements du droit romain et, par extension, de nombreux systèmes juridiques modernes, sa fluidité se révèle dans les débats contemporains. Les défis juridiques actuels – tels que la reconnaissance juridique des entités naturelles ou le statut de l'intelligence artificielle en tant que personnes – témoignent que la division binaire entre personnes et choses demeure une construction provisoire, toujours sujette à réinterprétation et à reconfiguration.

Au sein même du domaine des personnes, d'autres gradations apparaissent. Bien que le droit trace une ligne nette entre personnes et choses, toutes les personnes ne bénéficient pas d'une égalité juridique, politique ou sociale. Certains individus occupent des positions centrales dans la définition légale de la personne, tandis que d'autres restent en marge. Ce phénomène se reflète dans la différenciation entre hommes libres et esclaves, ainsi que dans les disparités liées au genre et à l'âge. L'idée selon laquelle « certains sont plus égaux que d'autres », empruntée à Orwell, illustre l'inégalité inhérente même au sein d'une catégorie supposée unifiée.

La question fondamentale se pose alors : pourquoi une telle division est-elle nécessaire si, comme l'analyse le montre, la distinction entre personne et chose ne repose pas uniquement sur les propriétés intrinsèques des entités ? Si être une personne ne garantit pas l'immunité contre la domination – si même les personnes peuvent se voir dépossédées de leurs droits et réduites à l'état de choses – qu'est-ce qui justifie l'acte même de les différencier ? La réponse réside peut-être non pas dans l'état ontologique de l'être, mais dans la capacité relationnelle de « posséder » une personne. Pour les Romains, la personne n'était pas une qualité inhérente, mais quelque chose qu'une entité pouvait posséder – ou perdre. Cette idée est incarnée dans l'expression *personam habere*, qui suggère que la personne fonctionne comme un masque, un rôle conférant une capacité juridique susceptible d'être accordée ou retirée.

Cette notion est particulièrement évidente dans le domaine juridique. « Avoir une personne » signifiait disposer de la capacité d'apparaître en justice, de participer en tant que sujet juridique et, en définitive, d'être reconnu comme détenteur de droits. Les esclaves, bien que techniquement considérés comme des personnes dans le *summa divisio*, étaient systématiquement privés du droit de participer aux procès. L'interdiction faite par Théodose d'admettre les esclaves aux audiences, ainsi que la codification ultérieure par Justinien de la notion de « personne légitime » dans un tribunal, soulignent que, dans la pratique, la personne est un rôle conféré par les institutions juridiques et sociales plutôt qu'un état absolu. En ce sens, la capacité d'« avoir une personne » constitue la pierre angulaire des droits et de l'autonomie juridique.

De même, la capacité de posséder un patrimoine est étroitement liée à la notion de personne. La propriété s'étendait même au contrôle de son propre corps, distinguant ceux qui pouvaient posséder des biens de ceux qui ne le pouvaient pas. Ici, la distinction entre personnes et choses ne vise pas à protéger les individus de l'asservissement, mais à permettre l'établissement d'un système dans lequel certaines entités sont aptes à posséder d'autres. La transition d'un statut de propriétaire à celui d'être possédé, et vice versa, était médiatisée par le concept juridique de *personam habere* – un mécanisme fondamental du droit romain.

Historiquement, même les mesures de protection accordées aux personnes ne se fondaient pas sur une simple opposition à l'état de chose. Comme l'a noté Yan Thomas, les personnes étaient souvent protégées « non pas en tant que non-choses, mais en tant que choses hors commerce. » Autrement dit, la dignité juridique était assurée en excluant certaines entités du domaine du commerce (*res nullius*). Seules les choses exclues des transactions économiques pouvaient être considérées comme possédant un statut inaliénable. Ce paradoxe renforce l'idée que la distinction juridique entre personnes et choses n'est pas une barrière absolue, mais un outil dynamique destiné à réguler la propriété, les droits et les relations de pouvoir.

En résumé, la dissection du droit par Gaius en catégories de personnes et de choses révèle une interaction complexe entre une substance universelle (*res*) et le statut spécifique, conféré socialement, de la personne. Bien que les hommes entrent initialement dans le système juridique en tant que choses, ils sont ensuite distingués par le *summa divisio* qui les marque comme personnes – des entités dotées de rôles, de droits et de responsabilités particuliers. Pourtant, cette distinction n'est pas fixe ; elle est fluide et historiquement conditionnée, comme le confirment la philosophie de Heidegger et les observations d'Esposito.

La carte juridique ainsi tracée est celle dans laquelle chaque entité est d'abord appréhendée comme une chose, pour être ensuite reconfigurée en tant que personne ou rester une chose, selon les considérations sociales, juridiques et économiques. Les débats juridiques modernes – allant de la reconnaissance des entités naturelles au statut de l'intelligence artificielle – témoignent de la pertinence continue et de la malléabilité de cette division antique. Même au sein du domaine de la personne, les variations de pouvoir et de statut rappellent que les catégories juridiques sont des outils de gouvernance plutôt que des reflets d'une nature humaine immuable.

En définitive, la nécessité de distinguer personnes et choses ne semble pas reposer sur les propriétés inhérentes des entités elles-mêmes, mais sur la capacité de « posséder » une personne. Pour les Romains, la personne était un rôle – un rôle qui conférait la capacité d'apparaître en justice, de posséder des biens et de participer au contrat social des droits et des obligations. Ainsi, *personam habere* incarne la dynamique transformative au cœur du droit romain : un processus par lequel les entités passent de l'existence en tant que simples choses à une participation active en tant que personnes, et, par moments, peuvent même revenir à un statut plus proche de celui de choses.

Ainsi, l'interaction entre ces catégories n'est pas une abstraction formelle, mais un système vivant et dynamique qui continue d'informer la pratique juridique et la réflexion philosophique. La lecture nuancée de la personne comme une qualité susceptible d'être acquise ou perdue, associée à la notion globale de *res* comme substrat universel, souligne non seulement l'ingéniosité pragmatique du droit romain, mais nous invite aussi à reconsidérer la fluidité des identités juridiques modernes. En reconnaissant que la personne est autant une fonction d'un statut relationnel qu'une condition ontologique, nous sommes appelés à réexaminer les fondements mêmes de la subjectivité juridique dans notre contexte contemporain. Ce réexamen révèle la pertinence persistante de la *summa divisio* de Gaius – une division qui, bien que semblant binaire, recèle en son sein les germes de la transformation et de la redéfinition, une vérité qui résonne à travers les siècles et continue de façonner notre compréhension du droit, de la société et du soi.

1.2. Les frontières de la personnalité

En développant la métaphore du plateau, l'image qui se dessine est celle d'une acropole, un point central et élevé où les entités sont indiscutablement considérées comme des personnes, tandis que celles qui s'éloignent du centre tendent progressivement vers la catégorie des choses. Ces limites, bien que clairement définies, restent néanmoins mobiles et sujettes à transformation.

Si l'on comprend les personnes comme des *homines*, le centre de l'acropole dans la Rome antique correspond au citoyen adulte, libre, masculin – le *sui iuris*, c'est-à-dire celui qui est régi par sa propre loi, semblable à l'être autonome (αὐτό-νομος) en grec. À l'opposé, la périphérie est occupée par les femmes, les étrangers, les enfants et les esclaves. Bien qu'ils soient tous des *homines* et, en principe, des personnes, ils se distinguent nettement en termes de capacité et de liberté devant la loi.

Le *sui iuris* s'oppose à l'*alieni iuris*, ceux qui sont soumis à la volonté d'autrui – que ce soit en raison d'une forme de propriété romaine (*mancipium*), du mariage (*manus*) ou parce qu'ils sont enfants ou esclaves placés sous le pouvoir du *paterfamilias* (*potestas*). Ce dernier, dans son expression maximale, se manifeste par la *vitae necisque potestas*, la faculté d'exercer sans restriction le pouvoir sur la vie et la mort de ceux qui sont sous son autorité.

Yan Thomas approfondit l'analyse de la *vitae necisque potestas* en soulignant que, dans le cas du *paterfamilias*, ce pouvoir ne résulte pas d'un acte punitif hypothétique, mais constitue une condition intrinsèque à la relation. Pour le fils, cette faculté signifie que le fait de ne pas tuer est, en soi, un acte qui concède la vie ; autrement dit, le pouvoir de tuer inclut implicitement celui de permettre de vivre. Cette paradoxe – où l'autorité paternelle s'exerce à la fois dans la capacité d'ôter la vie et dans celle de l'accorder – place le fils dans un état constant d'exposition à la mort, malgré (ou précisément étant donné) son potentiel à devenir *sui iuris*.

Foucault définit la souveraineté comme la faculté de « faire mourir ou laisser vivre », et Agamben interprète la relation père-fils comme une manifestation de la *nuda vita* (la vie nue), montrant ainsi que la division entre qui détient le pouvoir et qui en est soumis ne se limite pas à l'univers domestique, mais s'étend également au domaine politique. Ainsi, la capacité – ou son absence – (la différence entre être *sui iuris* et *alieni iuris*) se présente comme le seuil interne de la personnalité dans la société romaine. Dans ce sens, « avoir une personne » (*personam habere*) ne suffit pas à garantir la dignité, puisque, comme le souligne Thomas, un sujet pleinement porteur de droits est nécessairement un *paterfamilias*.

Ce principe se reflète dans le paradoxe de ceux qui, malgré un pouvoir politique apparent – tel le magistrat, qui, pourtant, demeure soumis à l'autorité paternelle – occupent une position intermédiaire. Le *Digeste* propose une solution conceptuelle à ce dilemme : en situation publique, le fils peut prendre la place du paterfamilias (*loco patris familias habetur*), se configurant ainsi en « quasi-père » oscillant entre la pleine capacité et la soumission totale. Ce mécanisme, qui s'étend également aux cas atypiques – comme celui de l'esclave

administrant ses propres biens ou de l'étranger traité comme un quasi-citoyen– démontre la flexibilité de l'ordre juridique romain, où les frontières entre personne et chose se révèlent perméables et ouvrent la voie à des fictions légales.

D'autre part, le traitement réservé à la femme dans le système romain illustre avec acuité ces frontières de la personnalité. Bien que les femmes soient reconnues en tant que *homines* et, en principe, en tant que personnes, leur position est marquée par de fortes limitations en matière de capacité et de liberté. Soumises soit à l'autorité du paterfamilias, soit, après le mariage, à celle de leur mari (*manus*), elles se voient également refuser l'accès à la sphère publique – exclues des emplois civils, de la magistrature et de toute fonction impliquant l'exercice du pouvoir. L'impossibilité d'adopter, selon Gaius, ne serait pas tant liée à leur sexe qu'à l'absence de *potestas*, c'est-à-dire à l'incapacité d'exercer pleinement des droits, ce qui les relègue en périphérie de l'acropole de la personnalité.

Aristote aborde également cette question en affirmant que la relation entre hommes et femmes est, par nature, celle du gouvernant et du gouverné, en raison d'un déficit d'autorité dans la délibération chez la femme. Bien qu'il reconnaisse que, tout comme les enfants, les femmes possèdent une capacité délibérative, celle-ci est jugée insuffisante pour leur conférer le statut de gouvernantes à part entière, contrairement aux hommes libres. Par ailleurs, le *Digeste* insiste sur le fait que l'exclusion des femmes des fonctions publiques ne relève pas d'un manque de jugement, mais d'une tradition normative (*nomos*) limitant leur action.

Le cas des esclaves ouvre un autre chapitre dans la définition de la personnalité. Bien que les esclaves soient, en théorie, des *homines* et des personnes, leur position se caractérise par une soumission extrême. La *vitae necisque potestas* exercée sur eux se manifeste de manière « naturelle », découlant de leur condition de servitude – non pas en vertu du *ius civile*, mais du *ius gentium*. Cette distinction conceptuelle signifie que, bien que les effets pratiques (comme la possibilité d'être exécutés sans formalités juridiques, au moins en principe) soient similaires, la relation de pouvoir entre maître et esclave possède une nature différente.

Aristote offre une vision double de l'esclave : d'une part, il le définit comme une « possession animée » (*ktēma ti empsychon*), indiquant que l'esclave est un instrument appartenant au maître ; d'autre part, il le décrit comme un être destiné par nature à appartenir à autrui. Cette ambiguïté conduit à une catégorisation difficile : les esclaves sont-ils des choses ou des personnes ? La question se précise lorsque la condition de l'esclave est comparée à la mort – état dans lequel, soumis à la *vitae necisque potestas*, l'esclave se trouve en position intermédiaire, ni pleinement vivant ni simplement chose, oscillant ainsi à la frontière entre les deux.

Hannah Arendt approfondit cette réflexion en affirmant que la dégradation de l'esclave équivaut à un « sort pire que la mort », puisqu'il est transformé en quelque chose de proche d'un animal domestiqué. Cette métamorphose tragique signifie que, malgré sa condition d'être vivant, l'esclave se situe si près du seuil que, en réalité, il appartient au domaine du néant. Varron, dans son *De re rustica*, renforce cette vision en classant les esclaves aux côtés des animaux, différenciés uniquement par leur capacité à émettre un langage

articulé – les esclaves, en tant qu'instruments vocaux, occupent alors une position intermédiaire entre les êtres pleinement humains et les objets inanimés.

C'est dans ce contexte que Esposito introduit le concept de « *Doppelnatur* », soulignant que l'esclave incarne une double nature : il est, simultanément, un être humain et une chose. En tant qu'« instrument parlant », l'esclave se trouve dans l'ambiguïté d'être à la fois personne et non-personne, reflétant ainsi l'instabilité de la personnalité dans la société romaine. Cette ambiguïté apparaît également dans la manière dont l'ordre juridique traite l'esclave : il n'est pas considéré comme une *res nullius* (chose n'appartenant à personne), mais bien comme une entité corporelle, quoique dénuée de la pleine capacité délibérative caractéristique des citoyens libres.

En somme, l'analyse des frontières de la personnalité dans la Rome Antique révèle que la condition de personne n'assure ni une dignité intrinsèque ni une protection contre la domination. La personnalité se présente comme un mécanisme mutable dont le seuil est établi en fonction de la capacité et de la position dans l'ordre social : le *sui iuris* occupe le centre, tandis que l'*alieni iuris* se trouve en périphérie, regroupant femmes, enfants et esclaves. Cette division ne structure pas seulement les relations familiales – par le biais de la *vitae necisque potestas* et de la figure du paterfamilias – mais s'étend également au domaine politique, en déterminant qui peut exercer pleinement la capacité de gouverner et d'être gouverné.

La flexibilité du système juridique romain se manifeste dans la possibilité pour certains individus de transiter entre ces seuils – comme dans le cas du « quasi-père » ou du « quasi-citoyen » – ce qui démontre que les frontières de la personnalité sont, en fin de compte, des constructions factuelles fondées sur des conventions et des fictions juridiques.

Parallèlement, la comparaison entre le traitement des femmes et celui des esclaves souligne que, bien que ces groupes soient formellement reconnus comme personnes, leurs rôles et capacités au sein de l'architecture juridique et sociale demeurent profondément limités, les reléguant à des positions périphériques par rapport à l'idéal du citoyen pleinement libre.

Enfin, la réflexion sur ces frontières ouvre la voie à des problématiques contemporaines dans lesquelles des phénomènes ou entités, bien que paraissant être des choses, adoptent des comportements ou des attributs de personnes, remettant ainsi en question la rigidité de cette ancienne division. La personnalité à Rome n'est donc pas un attribut immuable, mais un construit dynamique qui, malgré son apparente solidité, se révèle perméable et susceptible de transformation en fonction des besoins de l'ordre juridique et politique.

1.3. Pas des personnes, mais…

Jusqu'à présent, la personnalité a été traitée comme synonyme des *homines*, indépendamment de leurs capacités et libertés variables – et ce, même si les frontières internes de ce domaine sont continuellement redessinées. Or, nous faisons maintenant face à un paradoxe : au sein du concept de personne, on commence à trouver des entités qui ne se conforment pas entièrement à l'une ou l'autre des catégories – telles que des pluralités d'individus agissant comme un tout, la personnalité suspendue d'un fœtus ou encore des patrimoines agissant à la place de personnes. Cela révèle que la topologie de la personnalité n'est pas définie par des barrières impénétrables, mais par des marges flexibles pouvant inclure ou exclure, accorder ou refuser le statut de personne. Il s'agit, en essence, d'un lieu d'indétermination – un fossé entre la division fondamentale des personnes et des choses – où les fictions juridiques prospèrent.

Un paradoxe majeur est celui des pluralités agissant comme un seul être. Philosophiquement, le problème de considérer une pluralité comme une entité unique a longtemps été débattu : comment un corps composite, ou un État composé de nombreux individus, peut-il être considéré comme une seule personne ? Les *Digesta* abordent cette question en indiquant que « le terme 'public' fait souvent référence au peuple romain, car les corps politiques prennent la place (*loco habentur*) des personnes privées. » Cette fiction juridique de « *loco habentur* » illustre comment la personnalité se transforme, passant d'une simple identification aux *homines* à un rôle que peuvent assumer des entités collectives.

Antonio Dadino Alteserra, dans son traité *De fictionibus iuris*, montre que la loi simule que des choses dénuées de perception ou d'âme soient des personnes – des exemples incluent les corps politiques, les municipalités et même l'Église. De même, Pothier soutient que les corps ou communautés, bien qu'ils manquent d'âme, sont traités comme des personnes juridiques capables d'acheter ou de vendre. Ces fictions juridiques fabriquent une individualité à partir d'une pluralité, les liant ensemble en une personne unifiée.

Foucault explore davantage cet entrelacement en examinant comment les mécanismes disciplinaires opèrent sur des corps pluriels – tels que les écoles, les prisons et les usines – qui, par abstraction juridique, fonctionnent comme une entité unique. Dans ce cadre, une pluralité est transformée en une personne juridique non par une unité organique, mais par une volonté imposée par la loi. En somme, seule une entité qui n'est pas intrinsèquement une personne peut assumer le rôle de personne, soulignant ainsi la nature paradoxale de la personnalité juridique.

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La créature dans l'utérus – celle qui doit encore naître, communément désignée sous le nom de *nasciturus* – pose un défi profond au tissu politico-juridique, constituant un véritable pont à la frontière entre personnes et choses. Affirmer qu'une chose est vouée à exister revient à

admettre qu'elle n'est pas (encore) en existence. Ce paradoxe est à la fois inquiétant et évident : bien que « personne » soit normalement synonyme d'espèce humaine, l'exigence de la naissance comme condition d'existence signifie que le fœtus, bien que de forme humaine, ne peut être pleinement considéré comme une personne qu'après sa naissance.
Le droit romain exprime cette nuance de manière saisissante. Ainsi, l'une des formulations déclare :

> Quiconque est dans l'utérus est traité comme s'il était en existence humaine (*perinde ac si in rebus humanis esset*), dans la mesure où son propre intérêt est en jeu ; bien qu'il ne puisse être d'aucun avantage pour autrui avant sa naissance[384].

Ainsi, le fœtus n'est pas doté de la pleine personnalité, mais est traité « comme si » il en était un à des fins purement pragmatiques, par le biais d'une fiction juridique qui permet d'attribuer préalablement certains droits et obligations.

Les formules juridiques varient encore davantage. Parfois, le *nasciturus* est considéré comme « *in rerum natura esse* » (existant dans la nature des choses), ou même « *pro superstite esse* » (comme s'il survécu) à l'acte de naissance. Dans chaque cas, un mécanisme de « comme-si » est mis en œuvre : l'inexistant se voit temporairement conférer un statut mimant celui d'une personne, statut qui disparaît si l'enfant naît vivant, ou se confirme s'il naît mort. Conformément à la pratique jurisprudentielle romaine, la naissance est ainsi exigée comme condition nécessaire à une véritable existence. Par exemple, il est affirmé que « quiconque est encore dans l'utérus n'est pas un *pupillus* » et qu'« un enfant à naître n'est pas déjà considéré comme un homme », car avant la naissance, l'enfant n'est perçu que comme faisant partie intégrante du corps de la femme, voire de ses entrailles.

Cette approche juridique vise des objectifs pratiques précis. En feignant la personnalité pour le *nasciturus,* le droit garantit l'ordre de la succession et le respect des droits de propriété – ne serait-ce que provisoirement. Une fois né, si l'enfant est vivant, la fiction juridique s'annule ; s'il naît mort, la fiction se confirme, effaçant rétroactivement toute existence juridique de l'enfant.

Cependant, la naissance n'est pas en elle-même une condition suffisante pour l'acquisition de la personnalité. Deux conditions se révèlent essentielles : d'abord, l'enfant doit naître avec une « forme humaine » reconnaissable. Ensuite, l'enfant doit naître vivant. Un autre texte affirme :

> Ceux qui naissent morts ne sont considérés ni comme nés ni comme engendrés, car ils n'ont jamais pu être appelés enfants [385].

Ainsi, l'acte de naissance doit produire non seulement une séparation physique de la mère, mais également l'émergence d'un corps vivant et autonome – un *Leib*, et non un simple *Körper*.

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[384] Justinian, *Digesta*, 1.5.7.
[385] Justinian, *Digesta*, 50.16.129.

Les codes juridiques ultérieurs viennent réaffirmer ces principes. Le Code civil français de 1804, par exemple, stipule que, en matière de succession, il faut « exister nécessairement » au moment de l'ouverture de la succession. Le Digeste de Louisiane précise en outre que, bien que les êtres dans l'utérus puissent être traités « comme s'ils étaient déjà nés » à certaines fins juridiques, les enfants nés morts sont considérés comme s'ils n'avaient jamais été nés ni conçus. Ces formulations soulignent que la viabilité, la vie effective, est le fondement même de la personnalité.

La tension entre l'existence anticipée et l'existence effective est poussée encore plus loin par Andrés Bello. Dans son projet de code civil pour le Chili, Bello proclame :

> L'existence juridique de toute personne commence à la naissance, c'est-à-dire une fois complètement séparée de la mère.

Il ajoute qu'une créature qui meurt dans l'utérus – ou dont on ne peut prouver la survie au moment de la séparation – « sera réputée n'avoir jamais existé. » La formulation de Bello, inspirée par le droit romain (notamment les *Digesta*), illustre comment le système juridique recourt à une fiction radicale : si le *nasciturus* ne survit pas à la naissance, ses droits anticipés et son existence sont annulés rétroactivement.

Sur le plan philosophique, cette discussion conduit à distinguer entre un « simple corps » (*Körper*) et un « corps vivant » (*Leib*). Husserl insiste sur le fait qu'un corps externe ne se contente pas d'être un objet matériel, mais doit être perçu comme un « corps vivant » doté de sensation et de conscience. L'exemple classique de la sculpture de Pygmalion – merveilleusement façonnée mais inanimée jusqu'à l'intervention de Vénus – illustre parfaitement cette transformation. Jusqu'à ce qu'un corps s'anime, il reste un cadavre, une chose humaine dépourvue de personnalité. Dans la Grèce antique, le terme *soma* désigne précisément le corps inanimé, contrairement à *Leib* qui exprime l'expérience vécue et animée du corps.

Le registre civil joue un rôle crucial dans ce dispositif. L'existence juridique d'une personne n'est pas seulement une donnée biologique, elle est inscrite dans des documents qui relatent le passage de la naissance au décès. L'analyse de Foucault sur le « réseau de l'écriture » montre que des institutions – hôpitaux, écoles, prisons – participent à ce processus de capture, de classification et de légitimation de la personnalité. Sans cette inscription, même un corps parfaitement formé peut être rendu juridiquement invisible, une sorte de *damnatio memoriae.*

L'exemple de *Le Colonel Chabert* de Balzac illustre de façon frappante ce phénomène : un homme, bien que pleinement vivant, est déclaré légalement mort et ses droits sont ainsi effacés, l'inscription de la mort prévalant sur la réalité biologique.

En définitive, la personnalité du *nasciturus* – et l'appareil juridique construit autour de celle-ci – révèle un éloignement entre la notion abstraite de « personne » et l'être humain concret. La « personne » en droit est une abstraction, un point d'imputation de droits et d'obligations qui ne correspond pas nécessairement aux caractéristiques physiques ou

psychologiques de l'individu. Un individu peut exister sans que sa personnalité juridique lui soit attribuée, tandis qu'une entité abstraite, grâce à une fiction juridique, peut en être dotée.

Dans ce contexte, la fiction apparaît comme le seuil par lequel les entités entrent ou sortent de l'ordre juridique.

Ici, la fiction juridique n'est pas un simple outil de commodité ; elle constitue le mécanisme même par lequel le droit fabrique la personnalité, traçant une frontière mouvante entre ce qui est considéré comme personne et ce qui est relégué au domaine des choses.

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Enfin, dans ce passage d'indistinction, nous ne rencontrons pas des êtres humains, mais des choses qui agissent comme si elles étaient des personnes. Une approche assimile les choses aux *homines* par analogie — considérez le *peculium*, les biens confiés à un esclave ou à un enfant, qui « naît, grandit, décroît et meurt » et donc « ressemble à un homme (*simile esse homini*). » Cependant, cette analogie littéraire diffère du cas d'une chose assumant le rôle d'une personne.

Plus pertinent encore est le concept *d'hereditas iacens*. Définie de manière large, il s'agit d'un héritage ni accepté ni refusé par les héritiers, « gisant » (*iacet*) en attente de fusion avec un autre patrimoine. La question juridique centrale porte sur la période entre le décès et l'acceptation de l'héritage, durant laquelle les créanciers peuvent poursuivre le patrimoine et des différends surgissent. En réponse, le droit romain adopta une solution double : parfois, l'héritage est dit « soutenir » le défunt, re-présentant celui-ci comme une volonté sans corps ; d'autres fois, il fonctionne comme s'il était une personne, transférant ainsi effectivement la personnalité au patrimoine.

Par exemple, un esclave intégré dans un héritage peut être désigné comme héritier parce que l'héritage occupe la place du défunt (*defuncti locum optinere*). Cette disposition crée une dynamique circulaire : l'esclave est simultanément la propriété d'un patrimoine personnifié — une chose — et son potentiel propriétaire — une personne — tandis que l'héritage oscille entre posséder et être possédé. Ainsi, la fiction juridique brouille la frontière entre personne et chose, engendrant un jeu contrapuntique de rôles qui demeure perpétuellement indéterminé.

1.4. Une mosaïque animée

Jusqu'à présent, il ne semble exister aucun critère définitif pour définir la personnalité. Le corps peut être compris comme un *Körper*, un *Leib* ou même une entité incorporelle ; ni la perception ni l'âme ne constituent des marqueurs suffisants, puisque des pluralités peuvent être considérées comme des personnes en leur absence ; et même « humain » ne suffit pas, car un être incomplet ou un ensemble d'objets peut revêtir la personnalité. Ces observations soulèvent deux questions essentielles : premièrement, si des choses peuvent être incluses dans le domaine des personnes, quelle fonction la personnalité sert-elle réellement ? Et deuxièmement, étant donné que la personnalité semble apparaître et disparaître à volonté, quel est le rôle précis de la fiction juridique dans sa formation ?

Yan Thomas soutient que la conception romaine de la personnalité remplit une fonction double, voire contradictoire. D'une part, elle unit et rassemble – évoquant la représentation heideggérienne d'une chose – et, d'autre part, elle divise et scinde. Thomas décrit la personnalité comme une « unité d'ordre managérial », une unité abstraite et extensible qui ne coïncide pas avec le sujet physique ou psychologique, mais avec toute entité capable de détenir un patrimoine. Pour parvenir à cette unité managériale, le droit doit opérer une véritable dissociation entre sujets et corps afin de composer « les personnes ». Dans ce contexte, le *subjectum iuris* joue le rôle de « support d'un droit donné », soulignant comment certains corps (qu'ils soient considérés comme *Körper* ou *Leiber*) peuvent être sujets, objets, ou aucun des deux, et comment ces rôles peuvent évoluer. Roberto Esposito conçoit de manière similaire la personnalité comme « un artefact technique qui non seulement ne coïncide pas avec un être vivant donné, mais le scinde (*lo sdoppia*) en deux plans différents, au point qu'un individu puisse revêtir plusieurs personae ».

Bien que profondément enracinée dans la tradition juridique romaine, la *persona* n'est pas simplement le *nomen iuris* d'un être vivant appartenant au genre humain. Elle fonctionne plutôt comme un mécanisme par lequel un ordre politico-juridique capte les entités et les rend disponibles pour sa gestion. Ce mécanisme ne consigne pas la singularité propre d'une entité ; il révèle au contraire une fracture entre l'entité et le rôle qui lui est assigné – un artefact élaboré par le droit (un *ars*, une *techné*) pour introduire des rôles dans la mise en scène de son théâtre. Dans ce système, le terme *res* agit comme le catalyseur entre la « chose en tant que chose » du monde naturel et la catégorie conventionnelle des entités régies par le droit. Ainsi, la *persona* devient un dispositif qui confère à certains êtres des caractéristiques adaptées à la gestion politico-juridique, leur permettant d'être différenciés ou assimilés à d'autres entités selon les besoins.

Ces caractéristiques assignées sont toutefois muables. Alors que la *persona* peut désigner un membre pleinement capable et vivant du genre humain doté d'un ensemble codifié de droits, elle peut également désigner une femme, un esclave ou un enfant – chacun soumis à des conditions distinctes de vie, de capacité et de liberté. La *persona* peut également renvoyer à une pluralité traitée comme un individu, à un être humain non encore formé

supposé exister, ou encore à un ensemble d'objets substituant un défunt. Qu'il soit capable ou non, inerte ou vivant, humain ou non, *persona* n'est pas simplement un concept binaire mais un mécanisme multiple qui agrège des entités diverses pour en assurer la gestion, révélant ainsi la fissure entre l'un et le multiple – une mosaïque animée qui inspire et exhale continuellement les fragments de sa propre composition.

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Avant d'aller plus loin, un excursus est nécessaire pour clarifier deux termes techniques récurrents dans ce travail : mécanisme et dispositif. Bien que j'aie utilisé le terme « mécanisme » pour aborder à la fois la personne et la fiction, sa signification reste volontairement floue et imbriquée avec celle de « dispositif ». Ces vocables ne sont pas neutres ; ils portent une charge méthodologique et théorique qui requiert une définition.

Le point de départ est Michel Foucault, dont l'œuvre rend le dispositif quasi omniprésent, malgré son hésitation à offrir une définition univoque. Dans une interview du 10 juillet 1977, Foucault a décrit le dispositif comme « un ensemble décidément hétérogène de discours, institutions, arrangements, architectures, décisions réglementaires, lois, mesures administratives, énoncés scientifiques, propositions philosophiques, morales et philanthropiques ». Autrement dit, il s'agit du réseau (*réseau*) formé par ce qui est dit et non-dit. De plus, Foucault insiste sur le fait que ce réseau ne concerne pas seulement le lien entre les éléments, mais aussi la nature de ce lien : un discours peut fonctionner tant comme programme d'une institution que comme justification ou dissimulation de pratiques, s'inscrivant ainsi dans un « jeu » de changements de positions et de fonctions.

En outre, Foucault conçoit le dispositif comme une formation qui répond stratégiquement à une urgence. Par exemple, le dispositif de contrôle de la folie servait à organiser une « population flottante » que la société mercantiliste trouvait encombrante. Il précise, toutefois, que cette fonction stratégique ne résulte pas d'une volonté méta ou transhistorique, mais émerge d'un état de forces – une « émergence », dans l'esprit de Nietzsche, concernant la généalogie de la morale.

Deleuze propose ensuite une image évocatrice du dispositif comme un enchevêtrement, un « écheveau ». Il le décrit comme « multilinéaire », composé de fils de natures diverses qui suivent des directions variées. Ces fils – lignes de visibilité, d'énonciation, de force et de rupture – se fracturent et se bifurquent, créant un jeu contrapuntique où sujets et contre-sujets apparaissent et disparaissent, tel une mosaïque animée réassemblant ses propres fragments.

Dans cette perspective, Deleuze tire deux conséquences méthodologiques. D'abord, il rejette les universaux (l'Un, la Vérité, le Sujet) car ils sont des processus – unification, vérification, subjectivation – qui émergent d'un dispositif donné plutôt que de préexister. Ensuite, il oriente la philosophie non plus vers l'éternel, mais vers la compréhension du « nouveau » et de la créativité variable produite par les dispositifs, qu'il classe en fils de stratification et fils d'actualisation.

Alors que Foucault et Deleuze mettent l'accent sur la nature hétérogène et contingente du dispositif, Agamben le réinterprète comme ce qui remplace les universaux. Il ramène le dispositif au latin *dispositio* – arrangement ou gouvernement – et soutient que les *dispositivi* impliquent un processus de subjectivation qui « produit leur sujet ». Agamben va jusqu'à diviser l'existence en deux groupes : les êtres vivants et les *dispositivi* dans lesquels ils se retrouvent piégés. J'estime cependant que la lecture d'Agamben occulte l'insistance de Foucault sur la discontinuité et la contingence.

Esposito, de son côté, relève que le point commun entre les dispositifs foucauldiens et la technique heideggérienne (*Gestell*) est la production d'un sujet en séparant l'existence d'elle-même. Dans le contexte romain, il décrit la persona comme un dispositif qui sépare l'identité physique et psychique d'un individu de son identité juridique.

Quant au terme « mécanisme », Foucault, dans *Sécurité, Territoire, Population*, distingue trois modes d'exercice du pouvoir : le mécanisme juridique (prohibitif), le mécanisme disciplinaire (prescriptif) et le dispositif de sécurité, qui ne prohibe ni ne prescrit mais régule, limite ou atténue la réalité. Cela conduit à sa notion de « gouvernementalité » – un ensemble d'institutions, de procédures, d'analyses, de calculs et de tactiques permettant d'exercer une forme de pouvoir très complexe, ciblant la population et s'appuyant sur les dispositifs de sécurité comme instrument technique essentiel.

Enfin, il apparaît qu'il existe une relation partie-tout entre mécanisme et dispositif. Le mécanisme est une manière dont un dispositif agit – en capturant les entités et en assurant leur appréhension – garantissant ainsi le fonctionnement du dispositif lui-même. À la fois à l'échelle micro et macro, ces mécanismes servent de seuils, des lieux de transition où une entité se transforme en une autre, à l'image d'une protéine membranaire dans une cellule, perméable et dynamique. Dans cet enchevêtrement fractal, la personne et la fiction sont mécanismes qui ne sont jamais ancrées mais migratoires, continuellement réassemblées dans le jeu mouvant du pouvoir et du savoir.

2. THEATRE, GRAMMAIRE, THEOLOGIE, RAISON

2.1. Un corps, plusieurs âmes

Dans l'évolution de la personnalité – que Pierre Hadot a justement décrite comme le passage « de Tertullien à Boèce » (c'est-à-dire, du IIe au VIe siècle de notre ère) – se dessinent deux grands mouvements : d'une part, la personnification du Dieu chrétien, et d'autre part, le confinement de la *persona* aux seuls individus humains. Parallèlement, le domaine des fictions juridiques évolue, passant de la « certitude du faux » à une imitation des possibilités de la nature, accompagnée d'une dimension morale rappelant la pensée chrétienne.

Avant de pénétrer dans les sphères médiévales, il convient de rester un peu plus longtemps sur ce seuil. Jusqu'à présent, la personnalité a été étroitement liée aux pragmatiques du droit, mais lorsqu'il s'agit de la personnalité de Dieu, les termes grecs *prosopon* et *hypostase* viennent s'associer à la *persona* latine, non seulement en vertu d'équivalences de traduction, mais aussi grâce aux conceptualisations juridiques, grammaticales, théâtrales et philosophiques qui se sont développées autour de ces termes. Ainsi, le domaine juridique n'est pas le seul où se rencontrent la personnalité et la fiction.

Aulu-Gelle offre un éclairage intéressant sur l'étymologie de *persona*, en la reliant au masque théâtral qui permet à la voix de l'acteur de résonner sur scène. Il écrit :

> Avec esprit, par Hercule, et avec habileté, Gavius Bassus interprète... que le terme 'persona' vient de la résonance (*personando*). Parce que la tête et la bouche, couvertes par le masque, canalisent la voix en une sortie unique et concentrée, elles produisent des sons plus clairs et plus résonnants. C'est donc pour cette raison qu'on l'a appelé '*persona*', avec la lettre 'o' allongée par la forme du mot.

Bien que René Brouwer rejette l'origine de *persona* à partir de *personare*, il conserve le lien essentiel avec le masque. Brouwer explique que le mot viendrait d'un personnage d'origine étrusque, Phersu, décrit comme « une figure participant à des jeux d'une violence variable honorant les défunts, avec un masque barbu comme attribut le plus visible », le terme *phersuna* signifiant « appartenant à Phersu ». Les Romains, semble-t-il, auraient adopté le terme ainsi que les rites funéraires impliquant des masques auprès des Étrusques, et la *persona* en viendrait à incarner la représentation des ancêtres, une représentation que Marcel Mauss définit par l'expression « l'homme s'y fabrique une personnalité superposée ».

Ce lien entre masque et *persona* se retrouve également dans le terme grec *prosopon*, qui, en contexte théâtral, désigne à la fois le masque et le visage. Frontisi-Ducroux explique que le *prosopon* est « ce qui se trouve devant les yeux d'un observateur… une collection d'éléments qui s'offrent au regard » de manière réversible, servant à la fois d'objet observé et d'observateur. On trouve ainsi, dans l'*Iliade*, le *prosopon* désignant le visage – lorsqu'Achille

« souille son gracieux visage » (*charíen d'éischyne prósōpon*) en apprenant la mort de Patrocle – et, d'un point de vue anatomique, Aristote dans l'*Historia Animalium* précise que seule l'homme a la partie sous le crâne appelée visage, à la différence d'un poisson ou d'un bœuf.

Dans la *Poétique* d'Aristote, le masque apparaît quant à lui comme un exemple de distorsion de la réalité opérée par la comédie, bien que l'auteur se montre incertain quant à son origine. Brouwer cite la *Suda* byzantine, indiquant que Thespis, dans ses premières tragédies, « se frottait le visage (*prosopon*) avec du plomb blanc », avant d'introduire ultérieurement l'usage de masques en lin (*ten ton prosopeion chresin*).

Un passage remarquable de Lucien de Samosate, contemporain de Gaius, dans son *De Saltatione*, enrichit cette discussion. Dans un dialogue sur la danse et la performance, Lucien relate la surprise d'un étranger – un « barbare », selon ses termes – lorsqu'il aperçoit « cinq masques (*prósōpa*) disposés pour un seul interprète », ce qui l'amène à déclarer :

> Ce corps (*sōma*), en effet, est un, mais il contient de nombreuses âmes (*pollàs tàs psychàs*).

Ce renversement contredit l'aspiration du droit romain à une personnalité univoque remplacant la multiplicité, en suggérant qu'un seul corps peut abriter une pluralité d'âmes, chacune représentant une personne distincte. La relation entre l'âme et la personnalité devient ainsi fluide : d'une part, l'âme semble être une condition pour posséder la personnalité, d'autre part, l'âme elle-même peut constituer la personne, mutable comme un masque qu'on peut acquérir, remplacer ou même abandonner.

Lucien montre également la transition du *prosopon* en tant que simple masque à celui qui représente le caractère qu'un individu incarne sur scène. Il affirme que « le but de la danse est de jouer un rôle » (*hypókrisis*), fonction également assurée par les rhétoriciens, en ajoutant qu'« il n'y a rien de plus louable que de s'adapter aux rôles (*prosōpois*) que l'on assume ». Frontisi-Ducroux souligne que, qu'il s'agisse du théâtre ou d'une cérémonie, la fonction du masque n'est pas de cacher le visage, mais de l'abolir et de le remplacer, annulant ainsi l'identité du porteur pour la substituer au personnage qu'il incarne. Par conséquent, des figures telles qu'Œdipe ou Antigone occupent le corps d'autrui, leur masque signalant l'interaction entre présence et absence, et exposant la division entre le corps matériel et les rôles qu'il présente.

Cette conception de la personnalité comme rôles publics mutables est également illustrée par le langage juridique romain, qui utilise des expressions telles que « tenir, soutenir ou assumer une personne » (*personam sustinere, personam gerere*) et « occuper la place d'un rôle » (*personae vicem gerere*), soulignant ainsi la scission entre le *subjectum iuris* – la notion doctrinale d'un individu soumis au droit – et la fonction que le droit attribue à cet individu, permettant à chacun de jouer divers rôles, que ce soit en tant que paterfamilias, esclave ou citoyen.

Par ailleurs, Lucien insiste sur l'importance du corps. Elettra Stimilli, dans son analyse des moyens (*mezzi)* et de leur subordination aux fins (*fini*), montre que les corps, bien qu'ils soient souvent considérés comme subordonnés dans la trajectoire linéaire de la raison, sont

les instruments immédiats de la vie. Stimilli s'appuie sur Spinoza, qui, après avoir défini les « corps les plus simples (*corporibus simplicissimis*) » se différenciant uniquement par leur mouvement, décrit un ensemble de corps « contraints de rester ensemble » (*et omnia simul unum corpus sive individuum componere*) pour constituer le corps humain. Pour Stimilli, le corps humain est « multiple et différencié, en lui-même social et communautaire ». Cette multiplicité évoque la notion lucienne d'un corps unique abritant de nombreuses âmes, et soulève le paradoxe entre unité et pluralité, un paradoxe qui se retrouve aussi dans la construction juridique des entités, où des pluralités appelées « corps » forment une seule personne.

Foucault, dans son *Le corps utopique* (1966), rappelle que dans la Grèce homérique, seul le cadavre (*soma*) désignait le corps comme une unité, et non ses parties. Cependant, Foucault met en avant l'idée de dispersion : le corps devient une utopie, un non-lieu. Il décrit la perception fragmentée de son anatomie, avec des crevasses et des surfaces que l'on peut toucher sans pouvoir voir entièrement – un corps « indissociablement visible et invisible », à la fois « vie et chose ». Stimilli observe que cette dissociation constitue « une expérience sociale de fragmentation sans synthèse univoque », le corps étant toujours ailleurs, dans le regard d'autrui. Cette exposition est constitutive de la personnalité, car c'est à travers l'interaction que de multiples personae émergent d'un même corps.

Foucault poursuit en introduisant l'idée du corps comme « grand acteur utopique », orné de masques, de maquillage et de tatouages, qui non seulement embellissent mais inscrivent une langue secrète et sacrée, reconfigurant l'espace qu'il occupe et le transformant en un « espace imaginaire » communiquant avec l'univers des divinités ou celui d'autrui. La fonction du masque, du maquillage et du tatouage est de déplacer le corps au-delà de ses limites matérielles, l'amenant dans l'espace clos du religieux ou dans le réseau invisible de la société.

Cette idée s'étend à la performance des rôles sociaux. Les fonctions institutionnalisées, qu'elles soient religieuses ou civiles, reposent sur cette exposition publique dans laquelle l'individu, malgré son genre, adopte un rôle spécifique. Simone de Beauvoir, par exemple, affirme que la femme doit se « déguiser » pour assumer la persona féminine, devenant ainsi un avatar d'un sujet absent. Ainsi, de nombreux masques et personnages convergent sur un même récipiendaire, ce qui rejoint la conception dramatique de la *persona* en droit romain. Cette double inscription – celle du *subjectum iuris* et celle de la fonction – révèle que la personnalité est une construction mutable, fragmentée et multiple.

Ce jeu d'amalgamation et de fragmentation, loin d'être une évolution linéaire, témoigne de la capacité de la *persona* à opérer comme un dispositif stratégique—un mécanisme qui, dans le théâtre de la vie sociale et politique, capture et transforme continuellement la réalité.

2.1. *Una substantia, tres personae*

Dans son *Tékhnē Grammatikḗ*, Dionysius Thrax et, plus tard, Varron montrent que les verbes admettent « trois personnes » – c'est-à-dire, celle « dont » le discours provient, celle « à qui » il est adressé et celle « dont » il est parlé. Dans le domaine grammatical, la transition de *prosopon* à *persona* semble sans couture, et cette notion devient le terreau fertile de formulations théologiques ultérieures. Les premiers penseurs chrétiens, notamment Tertullien dans *Adversus Praxean*, s'appuient sur ce modèle grammatical pour distinguer le Père, le Fils et l'Esprit Saint. Tertullien soutient qu'« il ne pourrait être possible que celui qui parle, celui à qui l'on s'adresse et celui dont on parle ne soient la même chose », posant ainsi les bases de sa formule trinitaire : *una substantia, tres personae* – une substance, trois personnes.

Tertullien ne se contente pas d'une analogie grammaticale. Il aborde aussi la notion de personnalité d'un point de vue ontologique, affirmant que, pour que le Fils soit distinct du Père, il doit posséder une substantialité propre. Dans un passage difficile, Tertullien explique que « le discours, la sagesse et la raison » (*sit sermo et in sophiae et in rationis*) forment une substance (*das aliquam substantiam esse*) qui se manifeste dans le Fils – lui permettant d'être vu à la fois comme une chose et comme une personne (*ut res et persona*). Autrement dit, c'est en reconnaissant que le Fils a sa propre substance, distincte de celle du Père, qu'il peut être affirmé comme une personne à part entière ; sinon, il sombrerait dans le « vide inane et incorporel » que Praxéas, son adversaire, défend.

Tertullien renforce cette distinction par l'usage de métaphores poétiques. Il emploie des images telles que « l'arbre et ses racines, la rivière et sa source, le soleil et ses rayons » pour montrer que, bien que la racine et l'arbre, la source et la rivière, le soleil et ses rayons soient distincts, ils restent conjoints – différant non pas en statut mais en degré (*non statu sed gradu; nec substantia sed forma*). Ces métaphores soutiennent l'idée que le Père et le Fils, bien qu'ils partagent une même substance, se distinguent par leur mode de manifestation. Ainsi, la formulation trinitaire de Tertullien repose à la fois sur un héritage grammatical et sur une insistance métaphysique : ce n'est qu'en conférant au Fils une substance distincte (qu'elle soit comprise comme *ousia* ou *hypokeimenon*) qu'il peut être considéré comme une personne distincte.

Le débat sur le sens juridico-théologique du terme *persona* dans la tradition patristique est ancien. Pierre Hadot souligne que, même si *persona* possédait initialement des connotations juridiques, à l'époque des débuts du christianisme, il avait acquis une multitude de sens. Hadot classe les emplois de ce terme chez Tertullien en trois catégories : le sens grammatical, le sens renvoyant au visage, et un sens ambigu où il est difficile de distinguer entre l'idée vague d'individu et le sens grammatical ou dramatique de la personne. Ainsi, alors que Tertullien utilise *persona* pour soutenir sa doctrine trinitaire, il le fait avec une richesse mêlant grammaire, théâtre et réflexion ontologique.

Un développement intéressant apparaît plus tard chez Tertullien, qui avance une formule variant en disant : *una persona, duae substantiae* – une personne, deux substances –

appliquée à Christ. Ici, le Fils est compris comme ayant une double nature : l'une divine et immortelle (le corps *sui generis* du *logos*) et l'autre humaine et mortelle, faite de chair. Tertullien insiste sur le fait que cette double substantialité ne crée pas une troisième entité, mais coexiste dans une seule personne. En effet, pour que le Fils soit à la fois Dieu et homme, ses natures divine et humaine doivent être distinctes tout en étant unies dans une seule personnalité. Cette conception fait écho aux débats sur les fictions juridiques romaines, où une même entité peut être représentée par différents masques juridiques sans perdre son unité.

La discussion sur *persona* s'enrichit par l'invocation de l'*oikonomia*. Si les analogies grammaticales servent à articuler la distinction trinitaire, Tertullien fait également appel à la notion d'*oikonomia* – l'administration du foyer divin – pour expliquer la dynamique entre le Père, le Fils et l'Esprit Saint. Il utilise des termes tels que « soutenir » ou « tenir » la personne (*personam sustinere, personam gerere*) pour indiquer que la différenciation des personnes résulte non seulement d'une séparation de substance, mais aussi de la fonction ou de la disposition attribuée dans l'ordre divin. Ainsi, Tertullien anticipe les débats théologiques ultérieurs dans lesquels l'*oikonomia* devient essentielle pour comprendre comment un Dieu unique se révèle en trois personnes.

L'ambiguïté du terme latin *substantia* complique encore le projet de Tertullien. Historiquement, *substantia* désigne à la fois l'*ousia* (essence) et l'*hypokeimenon* (substratum). L'insistance de Tertullien sur le fait que le Fils doit avoir une substance distincte du Père s'appuie en partie sur des idées stoïciennes – par exemple, Marc Aurèle utilise l'analogie du soleil qui, malgré des obstacles, émet une lumière commune – suggérant qu'une substance unique peut se manifester à travers des entités distinctes. Tertullien semble concevoir une « nature articulée » pouvant se diviser en degrés différents, une vision en résonance avec la doctrine stoïcienne de son temps.

Un autre aspect de la pensée de Tertullien émerge dans sa conception de la personne de Christ. En réponse à Praxéas, il affirme que la distinction entre le Père et le Fils n'est établie « non par une séparation de substance, mais par disposition » (*non ex separatione substantiae sed ex dispositione*). Dans cette perspective, le logos divin, bien qu'ayant la même substance que le Père, se différencie par son rôle et sa forme extérieure. Tertullien parvient ainsi à affirmer que Christ est, en un seul individu, à la fois divin et humain, sans créer de troisième entité. Cette doctrine, bien que contre-intuitive, permet de préserver le monothéisme tout en reconnaissant la plénitude des attributs divins et humains de Christ.

La discussion sur *persona* chez Tertullien fait ainsi le lien entre les discours grammaticaux, théâtraux et juridiques. Hadot relève que Tertullien utilise le terme de manière à brouiller la frontière entre son sens initialement juridique et ses développements ultérieurs métaphysiques et théologiques. Par exemple, la référence de Tertullien aux psaumes qui « soutiennent la personne du Christ » montre comment l'imagerie littéraire et liturgique sert à attribuer au Fils une fonction distincte, rappelant les trois personnes grammaticales (*qui loqueretur, ad quem, de quo*). Cette synthèse de la grammaire, du théâtre et de la réflexion philosophique permet à Tertullien de construire une vision nuancée de la Trinité,

où les trois personnes sont différenciées par leur rôle tout en partageant une substance divine commune.

Plus tard, les penseurs comme Boèce affineront la notion de *persona* en la définissant comme une nature rationnelle individuelle, et le terme grec *hypostasis* émergera pour désigner la réalité concrète et effective d'un objet – une forme définitive qui marque le passage de l'être à l'existence. Augustin, quant à lui, résout les difficultés terminologiques en affirmant que « trois personnes » est le résultat de la pauvreté du langage humain, réduisant ainsi la *persona* à l'individu tout en lui permettant d'englober des entités non humaines et des rôles abstraits.

Enfin, un passage aristotélicien rappelle qu'un homme vivant en dehors de la *polis* peut être considéré « soit comme une bête, soit comme un dieu » (*hōste ē thēríon ē theós*). Cela suggère que divers êtres – l'animal, l'homme, la communauté, la polis, et même les dieux – peuvent légitimement être appelés des *personae*. Dans la perspective de Tertullien, *persona* sert ainsi de mécanisme pour pluraliser l'unité et unifier la pluralité, réunissant les héritages de la grammaire et du théâtre dans l'idée d'une substance unique organisée en trois personnes, et d'une personne unique pouvant revêtir deux natures, deux substances, voire deux corps différents.

2.2. *Naturae rationabilis individua substantia*

Boèce commence son traitement de la *persona* en confessant sa perplexité. Après avoir exposé plusieurs définitions de la nature, il affirme que la question de définir la *persona* relève d'un « doute extrême », la seule certitude étant que la nature est le sujet de la *persona*, et qu'on ne peut prédire la *persona* au-delà de la nature (*personae subiectam esse naturam nec praeter naturam personam posse praedicari*). Pour Boèce, cela signifie que la notion de personne ne peut concerner que des substances. Cette prémisse le conduit rapidement à établir une taxinomie : il distingue entre des entités corporelles et incorporelles, vivantes et inertes, sensibles et insensibles, rationnelles et irrationnelles. De cette déduction, il conclut qu'on ne peut attribuer la qualité de personne aux corps dépourvus de vie (car personne ne qualifie une pierre de personne), ni aux êtres vivants dépourvus de perception (aucun arbre n'est considéré comme une personne), ni à ceux privés d'esprit et de raison (car aucun animal vivant par instinct n'est une personne). En revanche, il affirme que l'homme, Dieu et les anges sont des personnes.

Paradoxalement, Boèce admet également que des entités sans corps peuvent posséder une *persona* — une nécessité pour protéger la personnalité de Dieu et du Christ. Dans son analyse, la vie, la perception et la raison sont des conditions nécessaires à la personnalité, tandis que le corps lui-même n'est ni nécessaire ni suffisant. Boèce conclut que la personnalité ne peut être attribuée qu'à des entités singulières et individuelles — et non aux universaux. Ce n'est pas le genre « homme » qui est une personne, mais un homme défini et déterminé. Fort de ces arguments, il proclame sa célèbre définition : « La définition de la personne a été découverte : une substance individuelle de nature rationnelle (*naturae rationabilis individua substantia*) »

Conscient des problèmes terminologiques, Boèce précise aussitôt que sa notion de *persona* correspond à ce que les Grecs appelaient *hypostasis*. Il note que le terme latin provient des masques (*personis*) utilisés dans les comédies et tragédies pour représenter les intérêts des hommes (*homines*), également appelés *prosopa*. Cependant, Boèce abandonne rapidement ce lien dramatique pour introduire la notion de subsistance (*subsistentia*). Il soutient que, bien que les essences puissent exister dans les universaux, la substantialité ne se trouve que dans les particuliers. « De toute évidence, » affirme-t-il, l'*hypostasis* est « le nom des subsistances qui ont acquis une substance au moyen des particuliers. » En effet, Boèce traduit l'*ousia* par *subsistentia* et l'*hypostasis* par *substantia*, ce qui implique qu'une essence ne peut se manifester qu'à travers une substance concrète.

Cette taxinomie précise permet à Boèce d'analyser ce que signifie qu'un homme soit une personne : un homme singulier se caractérise par (i) une essence ou subsistance, (ii) une substance, et (iii) une *persona*. Dans le système de Boèce, Dieu est une seule essence qui possède trois *hypostaseis*, que l'on appelle personnes uniquement « en quelque sorte ». De plus, Boèce soutient que la nature est soumise à la *persona* ; aucune personne ne peut être prédite au-delà de la nature.

Plus tard, alors qu'il fait face à son exécution, Boèce se remémore sa découverte de façon plus intime en personnifiant la Philosophie, qui lui demande : « Qu'est-ce que l'homme ? » Il répond : « Je sais et je confesse être un animal rationnel et mortel. » Lorsque la Philosophie insiste, il conclut sèchement : « Rien, » soulignant ainsi son désespoir et les limites inhérentes à l'existence humaine. Ici, homo et *persona* sont intimement liés — non par un manteau juridique, ni simplement par une analogie avec le locuteur, mais par l'affirmation autonome que le seul animal rationnel et mortel est l'homme.

La définition de la personnalité proposée par Boèce a traversé les siècles, souvent contestée, mais demeurant un point de départ indispensable. Plus tard, Thomas d'Aquin raffinera cette notion dans la *Summa Theologiae*, définissant la *persona* comme « *rationalis naturae individua substantia* » et soulignant que la véritable personnalité requiert autonomie, auto-gouvernance et libre arbitre. Dans ce cadre mis à jour, seule une substance individuelle de nature rationnelle peut être considérée comme une personne, excluant ainsi les entités insensibles, irrationnelles et non libres.

Ainsi, la taxinomie de la personnalité établie par Boèce — fondée sur la nécessité de la vie, de la perception et de la raison, mais pas exclusivement sur la corporalité — montre que seules les substances individuelles et rationnelles peuvent être qualifiées de personnes. Sa définition demeure un point pivot dans les débats sur la nature de la personnalité.

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Dès excursions grammaticales de Tertullien aux cloîtres de la scolastique, une inversion du mécanisme de la *persona* s'est opérée. Il ne s'agit plus d'un simple personnage inscrit dans la mystérieuse *oikonomia* d'une monarchie tripartite, mais bien de la dignité d'une substance individuelle de nature rationnelle. Ce n'est plus une analogie – un *modum dixere* qui permettait d'atteindre ce mystère en termes humains – mais une participation à l'éminence divine reconnue chez les *homines*, ces créatures qui se rapprochent le plus de la personne incorporelle du divin. Ce n'est pas la personnification des dieux comme s'ils étaient humains, mais la personnification des humains comme s'ils étaient des dieux : unification, dignité, communion.

Alors que les lectures scolastiques se poursuivaient, la *persona* continua néanmoins à jouer une fonction divisive au-delà des cloîtres, voire au-delà des mers. Contrairement aux idées reçues, il ne semble pas que les conquistadors espagnols et portugais aient initialement perçu des créatures dépourvues d'âme lors de leur premier contact avec le « Nouveau Monde ». Ils virent vraisemblablement d'autres *homines* semblables à eux, même si ces peuples étaient qualifiés de « sauvages et barbares » à maintes reprises.

Dans un contexte marqué non par la réflexion philosophique mais par l'extermination et le génocide, les Européens venus au Nouveau Monde ne se demandaient pas s'ils massacraient des personnes, des humains ou des entités dotées d'âme. La présence de l'âme n'était d'ailleurs pas l'apanage exclusif des *homines* — comme le témoignent « les âmes nutritives et sensibles » partagées par toutes les créatures animées —, et le fait d'avoir une

âme n'a jamais empêché quiconque d'être violé ou assassiné. L'extermination s'inscrivait plutôt sous le manteau de la domination « légitime » de la civilisation sur la barbarie.

Cela dit, tant l'âme que la reconnaissance des indigènes comme *homines* jouaient un rôle dans le débat sur la brutalité espagnole. En 1511, le frère dominicain Antonio de Montesinos condamna publiquement le traitement réservé aux indigènes dans un sermon célèbre, déclarant :

> Ne sont-ils pas des hommes ? N'ont-ils pas d'âmes rationnelles ? N'êtes-vous pas obligés de les aimer comme vous vous aimez vous-mêmes ?

Ces questions, rhétoriques et boéciennes, ne laissaient aucun doute pour Montesinos quant à la qualité d'âmes rationnelles des indigènes, et donc leur statut d'*homines* et de personnes. Pourtant, le roi qualifia ce sermon de « scandaleux » et affirma qu'il n'avait aucune « fondation théologique ni juridique », déclenchant ainsi un débat de longue haleine en Espagne. En 1512, les *Leyes de Burgos* furent promulguées, établissant un cadre juridique censé bénéficier aux « Indiens », bien que ces lois se révélassent problématiques et paradoxales.

D'une part, ces lois amorçaient un processus qui se perpétua durant toute la domination espagnole, établissant des mesures paternalistes pour « sauver » ou « délivrer » les indigènes de leur nature pécheresse. Ainsi, le préambule justifiait l'imposition de la foi comme « nécessaire à leur salut », puisque les *Indios* étaient « naturellement enclins à l'oisiveté et aux vices mauvais ». D'autre part, les lois introduisaient un usage complexe du terme *persona*, parfois synonyme d'*homines*, et parfois utilisé pour souligner la distance entre les Espagnols et leurs protégés infantilisés. Par exemple, les lois se présentaient comme « bénéfiques, tant pour le salut de leurs âmes que pour le bien et l'utilité de leurs personnes », tout en ordonnant que « toutes les personnes qui possèdent des *Indios* doivent leur fournir un logement », impliquant ainsi que *persona* et *Indios* constituaient deux catégories distinctes – le maître protecteur et le serviteur protégé. Cette ambiguïté juridique offrait aux juristes une faille exploitable. Au-delà de l'âme, il s'agissait de déterminer le statut des indigènes en tant qu'entités individuelles de nature rationnelle, et ainsi la *persona* apparaissait comme un seuil ambivalent, les plaçant à la fois à l'intérieur et à l'extérieur de son domaine, faisant d'eux la frontière mouvante entre animaux et hommes, entre civilisation et barbarie.

Le débat se poursuivit, et en 1537, la bulle papale *Sublimis Deus*, promulguée par Paul III, affirma que « les *Indios* sont de véritables hommes » et ne devaient en aucun cas être privés de leur liberté ou de leur *dominium*. Plutôt que de résoudre la question, la bulle accentua le paradoxe : elle imposait une intervention paternaliste pour les ramener dans le giron chrétien, tout en reconnaissant leur capacité à posséder leurs terres et eux-mêmes. Par la suite, des traités juridiques distinguèrent la capacité naturelle de l'homme de la capacité civile de la *persona*, soulignant que la véritable personnalité implique liberté, citoyenneté et famille.

Ainsi, alors que le débat se poursuivait – notamment le Débat de Valladolid entre Ginés de Sepúlveda et Bartolomé de las Casas – l'usage ambigu de *persona* devint un mécanisme déterminant pour définir qui est une personne. Il servait à inclure les indigènes

en tant qu'*homines* rationnels tout en les excluant du plein droit à l'autonomie en les présentant comme mineurs, établissant ainsi une frontière mouvante entre animaux et hommes, entre liberté et subjection.

2.4. Contre la vérité, pour la vérité

La mosaïque florissante et animée qui associait jadis fictions et personnes a perdu une grande partie de sa composition vibrante. Plutôt que d'utiliser les fictions pour élargir ses frontières, la conception théologique de la *persona* s'est retirée dans les cloîtres médiévaux d'une substance individuelle de nature rationnelle. Alors que les Romains fabriquaient vie et mort « en plein écart avec la nature » – veillant à ce qu'aucune part de la réalité n'échappe aux artifices dénaturalisateurs du droit – l'édifice théologique transforma la personnalité en un pont pour comprendre le divin et dignifier l'humain dans sa singularité. Ainsi, un divorce apparent s'installe entre la personnalité et la fiction durant la période scolastique.

Les glossateurs et commentateurs médiévaux, déconcertés par le fonctionnement débridé des fictions, cherchèrent à les restreindre. Yan Thomas affirme que « le droit médiéval, tant civil que canonique, s'occupait de faire reculer l'empire de la fiction », tandis que Jean Bart note que ce n'est qu'à la renaissance du XIIe siècle que les commentateurs redécouvrirent les fictions antiques – quoique avec une méfiance théologique. Pourtant, si les textes anciens furent réintroduits de façon apparemment sans couture – par exemple, en interprétant la « nature » dans des écrits « profanes » comme renvoyant à Dieu (*natura, id est Deus*) – pourquoi alors cette appréhension envers la procédure de la fiction ?

La réponse réside peut-être dans la malléabilité des fictions que le droit romain utilisait pour construire la *persona*, ou plus précisément, pour fabriquer la nature elle-même. Étant donné la facilité avec laquelle le droit romain produisait ou niait la vie, indépendamment des faits, Thomas observe que « christianiser le droit romain » signifiait « domestiquer une représentation du monde où les choses, même divines, étaient instituées en tant que choses ». Dans cette nouvelle conception, le caractère sacré n'était pas un attribut intrinsèque du divin, mais le résultat d'une procédure de consécration – rendant les choses inaccessibles au commerce et leur conférant leur sacralité par l'autorité du peuple romain plutôt que par elles-mêmes. Ainsi, la sacralité appartenait au domaine de la disposition publique – une *oikonomia* politique – plutôt qu'à un ordre divin transcendant.

Thomas démontre en outre que la conception romaine de la nature n'était pas une norme ultime. « La nature n'est pas utilisée comme la figure d'une norme ultime et constitutive, » explique-t-il, si bien que la loi naturelle n'est ni prééminente ni transcendante. Au contraire, la nature est en elle-même une institution – l'un des cercles concentriques de la cartographie juridique aux côtés de *l'ius gentium* et de *l'ius civile*. Les juristes qui invoquaient la nature, que ce soit en termes de liberté ou de filiation, ne se référaient pas à un ordre externe et immuable, mais à une composante de la construction même du droit, servant d'obstacle physique dans certaines constructions juridiques plutôt que comme un monolithe. Par exemple, lorsque les *Digesta* affirment que l'esclavage est une domination *contra naturam*, ce n'est pas parce que la nature impose une interdiction morale, mais parce que la liberté naturelle elle-même est un artificiel juridique ; comme le souligne Thomas, « la liberté naturelle est utilisée comme un artificiel pour produire la liberté institutionnelle […] tout se passe comme si le droit forgeait la nature. »

Ainsi, dépouillée de tout poids métaphysique, la nature, en relation avec le droit romain, n'est guère plus qu'un point de référence artificiel – une institution au sein du système juridique. Dans ce cadre, l'interaction entre la personnalité et la nature n'est pas transcendante, mais simplement une autre partie de la carte juridique, soumise aux mêmes règles et mécanismes mutables.

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Malgré les réserves, une véritable tapisserie de fictions juridiques fut tissée au Moyen Âge, et bien qu'elle fût certainement dissociée des constructions apparemment illimitées qui la précédaient, cette tapisserie laissa des traces dans les approches ultérieures.

En traitant de sujets apparemment sans rapport comme l'usurpation et l'usucapion – toujours dans le contexte d'une personne capturée par l'ennemi (la question du *postliminium*) –, Bartolus s'interroge sur le statut et la fonction de la fiction. Après avoir examiné plusieurs approches, il propose sa propre définition :

> La fiction est une supposition faite par le droit, sur une certaine matière, de ce qui est possible, contre la vérité, pour la vérité (*contra veritatem pro veritatem*).

Bartolus explique ensuite chaque composante de cette définition. Par « sur une certaine matière », il entend distinguer la fiction de la présomption, laquelle opère sur des choses douteuses (*quo dubius est*) alors que la fiction s'applique à ce qui est certain (*quod est certum*) – comme le soldat captif dans une terre étrangère. Il précise que l'adjectif « possible » est employé, car nul ne peut feindre l'impossible – ce qui est démontré par les lois sur l'adoption qui exigent qu'un parent soit plus âgé que l'enfant – et surtout parce que « l'artifice imite toujours la nature » (*ars semper imitatur natura*), ce qui signifie que ce qui est impossible selon la nature l'est également selon l'artifice du droit. La fiction est « contre la vérité », car sinon nous parlerions de vérité, mais en même temps « pour la vérité » puisque la fiction « a le même effet juridique que si elle était la vérité » (*habet enim iuris effectum perinde ac si esset veritate*). Enfin, Bartolus précise que la fiction, en tant que supposition faite par le droit, exclut les mensonges et les faussetés (*mendacia et falsitates*), car ceux-ci ne produisent aucun effet juridique.

Il est remarquable que Bartolus utilise la même formule « *perinde ac si* » que le droit romain employait pour ses propres fictions, non pas pour indiquer un effet juridique particulier – tel que le *nasciturus* traité comme s'il était déjà dans le domaine de l'existence humaine – mais pour définir globalement la fiction comme quelque chose qui s'oppose à la vérité tout en étant pris pour la vérité. Ce mode d'expression, repris par les glossateurs et commentateurs, permet d'extraire une définition qui n'était pas explicitement présente dans le corpus romain.

Dès lors, les formules succinctes du « comme-si » se sublimant dans une relation plus générale avec la vérité. Toutefois, il ne s'agit pas de la Vérité absolue, mais d'un labyrinthe de miroirs qui implique que, bien plus restreinte que le mécanisme romain, la fiction permet

à tout ce qui est possible, contre la vérité, d'agir comme si c'était la vérité. Autrement dit, ce sont littéralement des fictions qui se font passer pour des vérités. Bartolus rejette ainsi tout lien avec le mensonge – lequel n'aurait aucun effet juridique – et affirme que tout ce que le droit « suppose » – ou mieux, fabrique – n'est pas un mensonge, mais bien une fiction, une négation d'une vérité particulière qui n'est ni totalement vraie ni fausse, mais le seuil jouissant du statut juridique tout en allant sciemment à l'encontre de la pierre angulaire de la vérité.

Par la suite, Bartolus s'interroge sur les origines de la fiction dans le droit. Il affirme que la fiction « procède et est causée par l'équité et la raison ». Puisque la loi naturelle est « commune à tous les animaux, même à ceux qui manquent de perception » (*sensu carentibus*) – c'est-à-dire que seule une entité dotée de raison peut concevoir une fiction – il en découle que les fictions ne peuvent provenir que des fabrications des créatures rationnelles, telles que les statuts et les coutumes, c'est-à-dire du *ius civile* et du *ius gentium*. De plus, Bartolus affirme que, lorsque des fictions sont produites, les lois « feignent ce qui appartient à la loi naturelle » (*fingunt super eo quod est ius naturalis*), telles que le fait de vivre, d'être né ou de mourir. Cela montre clairement que l'invention de la fiction ne relève pas de la loi naturelle, mais bien du droit civil et du droit des peuples. La nature et la loi naturelle sont ainsi indissociables, non pas comme un domaine extérieur mais comme une partie intégrante de la cartographie juridique. Puisque la nature et la loi naturelle sont intrinsèquement véridiques, toute altération de leur vérité doit se faire par un mécanisme qui n'appartient pas à la nature mais à l'artifice – un mécanisme, à savoir la fiction, qui feint ce qui, dans la nature, est immuable (la naissance, la vie, la mort). Dans les conceptions romaine et médiévale, la fiction est perçue comme un mécanisme du droit ; la différence étant qu'en droit romain, la nature fait aussi partie du droit, tandis qu'en droit médiéval, la nature est le territoire sur lequel la carte peut être tracée.

Bartolus conclut que l'homme ne peut inventer la fiction de sa propre volonté (*si homo ex se vellet*) ; c'est le ministère du droit qui permet à la fausseté de devenir le seuil de passage entre les deux domaines, sans quoi la fiction ne serait qu'un mensonge. Comme Bartolus l'affirme lui-même, « c'est le droit qui feint, non l'homme » (*ius fingit non homo*).
Cette conception explique aussi pourquoi l'approche médiévale insiste pour que les fictions portent sur des faits (*circa facta*) et non sur des lois. En tant qu'artifice, le droit n'a pas besoin des élucubrations de la fiction pour être modifié, puisqu'il est toujours à un pas d'être altéré par un acte normatif. La nature, en revanche, éternelle et immuable, constitue un obstacle que l'artifice de la fiction doit surmonter, tout en imitant la nature dans le respect de ses limites.

Les fictions juridiques doivent ainsi devenir des miroirs de la nature : des images fidèles qui ne s'écartent pas de leur origine, tout en transformant la réalité juridique. Par exemple, dans le cas de l'adoption, une forme de parenté, bien que non naturelle, dérivée du droit, reflète le comportement de la nature. Affirmer que les artifices du droit doivent refléter la nature, c'est dénoncer et étendre la scission entre ces deux domaines. Si la nature est considérée comme une barrière insurmontable que l'artifice suit sans la franchir, alors « fictif » et « juridique » ne feront qu'un.

Pour illustrer cette idée, le pape Innocent IV propose la construction d'une « personne fictive ». En abordant le sujet des serments faits par les couvents, Innocent IV (Sinibaldo Fieschi) affirme qu'il est permis à tous les collèges religieux de prêter serment par procuration, car « un collège, dans une affaire collective, feint une personne » (*cum collegium in causa universitatis fingatur una persona*), et peut ainsi prêter serment comme s'il s'agissait d'un individu et non d'une pluralité.

Innocent va encore plus loin en appliquant directement la condition de *persona ficta* aux collèges religieux. Ici, la fiction ne réside pas dans leur manière d'agir, mais dans leur constitution même : ils ne jurent pas comme s'ils étaient des personnes, mais en tant que personnes fictives, ils sont autorisés à prêter serment.

Selon Thomas, cette subtilité consiste à transformer le verbe « *fungitur* » (fonctionner, jouer un rôle) en « *fingatur* » (feindre, simuler). Ainsi, alors que, dans la pratique romaine, des pluralités ou des choses jouaient la fonction d'une personne, dans les *Décrétaux*, elles reflètent l'individualité des substances rationnelles. La question se pose alors : de quoi sont faites ces images ? Elles ne sont pas naturelles, mais bien des images de la nature ; non des vérités, mais des déviations volontaires de la vérité. Leur existence doit être juridiquement fondée, puisqu'elles sont issues de la même matière que les personnes dont l'existence ne peut être conçue en dehors de l'ordre juridique. Au Moyen Âge, Yan Thomas affirme, la personnalité morale (juridique) est le seuil où « le vrai et le fictif sont opposés », permettant ainsi de concilier la nature artificielle d'une unification sociale dotée d'individualité juridique.

En somme, malgré leur fausseté intrinsèque, les fictions juridiques sont des instruments indispensables du droit. Elles servent de miroirs à la nature, des images fidèles qui ne s'écartent pas de leur origine tout en transformant la réalité juridique. Comme le montrent Baldus de Ubaldis et Andrea Alciati, la fiction est « une disposition du droit contre la vérité, sur une matière possible, pour une cause juste », et elle est produite par le droit, non par l'homme (*ab homine induci non potest*). Même si la loi naturelle et la nature restent éternellement véridiques, les fictions juridiques, en tant que déviations délibérées de cette vérité, fonctionnent comme un mécanisme nécessaire et économique – une ouverture dans l'ordre juridique permettant de contourner l'immuabilité de la nature et les contraintes du droit.

3. DE LA POLITIQUE A LA BIOLOGIE

3.1. Assujettissement et imputation

Dans la notion insaisissable de la modernité, l'anthologie des ruptures et des exclusions qui caractérise l'entrelacement des *homines* et de la *persona* se fond avec un autre concept : le sujet. Bien que l'*hypokeimenon* aristotélicien ait été traité maintes fois, c'est dans la modernité que le sujet acquiert sa prédominance, devenant le protagoniste d'une histoire qui descend des cieux vers les mains de ces substances particulières de nature rationnelle, mais mortelle – une nature qui, dès le départ, était déjà soumise à la *persona*, comme l'atteste Boèce. Le sujet du Sujet, cependant, est sans limites. De nombreuses histoires, archéologies et généalogies consacrées au sujet ont été – et continuent d'être – écrites et réécrites. Je ne souhaite pas ajouter un nouveau folio à un tel ouvrage, mais il me semble nécessaire d'apporter quelques éclaircissements, partant du fait que, tandis qu'une approche classique tracerait une ligne apparemment droite de Descartes à Kant puis à Hegel – une ligne qui se dissout ensuite aux mains de Nietzsche, Heidegger ou Foucault –, les approches récentes tendent à nier le statut du sujet en tant qu'invention « moderne » cartésienne.

Ces dernières années, Alain de Libera a montré comment la notion de sujet émerge comme un « chiasme » de conceptions impliquant à la fois « la dénomination du sujet par ses accidents » (*accidens denominat proprium subiectum*) et « la potentialité d'un agent dans son action » (*cuius est potentia eius est actio*), afin de constituer un principe de « dénomination du sujet par son action » ou un « principe subjectif de l'action » (*actiones sunt suppositorum*). Cela ne provient ni de Descartes, ni d'une quelconque invention moderne, mais s'enracine au Moyen Âge dans la discussion de l'héritage aristotélicien et les constructions théologiques scolastiques. Suivant le raisonnement de Nietzsche, De Libera montre comment ce chiasme relie la notion d'agent à celle de sujet, notamment en raison d'une présupposition grammaticale selon laquelle ce qui est pensé doit avoir quelque chose derrière qui le pense – c'est-à-dire, un objet et un sujet – et parce que penser, en tant qu'activité, nécessite la présence d'un agent.

Ce que Nietzsche critique lui-même, c'est que nous tenions pour acquis la nécessité grammaticale d'un pronom comme équivalence immédiate avec le moi, avec cet ego qui pense et agit et constitue en même temps le Sujet. Quoi qu'il en soit, De Libera affirme que « le sujet pensant, l'homme en tant que sujet et agent de pensée, n'est pas une création moderne […] ni l'invention de Descartes. Il est le produit d'une rencontre – loin d'être brève – entre la théologie trinitaire et la philosophie, rencontre qui s'est étendue de l'Antiquité tardive jusqu'à l'Âge Classique. »

D'un autre côté, comme le souligne Olivier Boulnois, la naissance du sujet se situe dans l'écart entre l'ego kantien et le cogito cartésien. Lorsque Descartes « ferme les yeux », il se découvre en tant que « chose pensante (*res cogitans*) », chose qui doute, affirme, nie, comprend quelques choses et en ignore beaucoup, qui veut et ne veut pas, qui imagine et ressent, une chose pensante qui possède un corps sans que celui-ci ne définisse nécessairement son essence. La reconnaissance par Descartes de la *res cogitans* constitue la certitude de son

existence – « *ego sum, ego existo* » – déjà exprimée de manière méthodique dans le fameux *cogito, ergo sum*, en identifiant l'âme au moi : « ce Moi, c'est-à-dire, l'âme par laquelle je suis ce que je suis ».

Boulnois rejette ici la naissance du sujet pour deux raisons : premièrement, parce que la substantiation du « moi » est déjà présente dans la pensée médiévale – notamment chez Avicenne et Eckhart von Hochheim –, et deuxièmement, parce que, même si Descartes établit une équivalence entre l'âme et le moi, c'est Kant qui affirme que ce moi est « le sujet de toute représentation […] l'unité transcendantale de la conscience du moi ».

Kant parvient au « Je pense » par une opération de « conjonction » (*Verbindung*) des multiples représentations de la réalité, qu'il nomme « synthèse ». Cette synthèse, qui ne peut provenir ni des sens ni de l'intuition sensible, doit être un acte de spontanéité de la faculté de représentation (*Vorstellungskraft*) et se nomme alors « entendement » (*Verstand*). Le fondement de cet entendement est précisément le « Je pense » (*Ich denke*), que Kant affirme devoir « accompagner toutes mes représentations » (*können*), car sans cela quelque chose « qui ne pourrait être pensé » se manifesterait en moi – ce qui est impossible. La représentation du «Je pense » doit ainsi accompagner chaque représentation, demeurant une unité que Kant qualifie de « transcendantale » et qui fonde la connaissance a priori.

De plus, Boulnois cite un autre passage dans lequel Kant évoque « ce Je, ou ce Il, ou cet Être (*das Ding*) qui pense » (*dieses Ich, oder Er, oder Es, welches denket*), lequel « ne représente rien au-delà d'un sujet transcendantal de la pensée, connu uniquement par les pensées qui le prédestinent ». Il s'agit donc non pas du même sujet que celui de Descartes – équivalent à l'âme ou au moi – mais seulement de la représentation d'un sujet fondamental à la connaissance, que l'on peut résoudre par l'identité dans l'ensemble de ses pensées. Boulnois en conclut que le sujet moderne se compose de « multiples fils » apparaissant à la fois avant et après Descartes.

Où ce sujet transcendant devient-il une *persona* ? Pour Kant, du moins dans la *Critique de la raison pure*, cela relève de l'identité dans le temps. En critiquant ce qu'il appelle « le paralogisme de la personnalité (*Personalität*) », Kant soutient qu'une notion de personnalité fondée sur l'identité numérique du moi à différents moments ne se réfère pas à l'expérience vécue du moi, mais à une condition formelle de ses pensées, de sorte que « tout le temps où je me connais, je perçois ce temps comme appartenant à l'unité de mon moi (*meines Selbst gehörig*) ». Cela ne s'applique pas aux perceptions des autres à différents moments, ni n'est « rien d'autre qu'une condition formelle de mes pensées ». Par conséquent, la représentation du « Je pense » doit accompagner toutes les représentations, demeurant une unité que Kant qualifie de « transcendantale » et qui constitue le fondement nécessaire à la connaissance a priori.

D'autre part, Boulnois mentionne un passage où Kant parle de « ce Je, ou de cet Il, ou de cette Chose qui pense », lequel « ne représente rien au-delà d'un sujet transcendantal de la pensée, connu uniquement par les pensées qui le prédestinent ». Ce n'est pas le même sujet que chez Descartes – équivalent à l'âme ou au moi –, mais la représentation d'un sujet

fondamental, résolue par l'identité de l'ensemble de ses pensées. Selon Boulnois, cela signifie que le sujet moderne comporte « de multiples fils » qui apparaissent avant et après Descartes. Enfin, Kant et Hegel convergent en liant la personnalité à la capacité de raison et à l'autonomie. Pour Kant, tout être rationnel est immédiatement une personne par sa seule rationalité, tandis que pour Hegel, la personnalité émerge d'un processus d'autoconscience et de libre arbitre – un processus qui confère à l'individu une capacité juridique (*Rechtsfähigkeit*) et impose l'impératif de « se comporter en personne et de respecter les autres en tant que personnes » (*sei eine Person und respektiere die anderen als Personen*). Ainsi, le sujet moderne n'est pas simplement le cogito cartésien, mais une entité complexe et multiforme qui fonde la pensée moderne.

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Cela n'est, cependant, qu'une partie de l'histoire. Suivant l'analyse de De Libera, la question du *res cogitans* dépasse ses accidents et ses prédicats pour s'enrichir d'un lien avec ses actions. Dans la modernité, le sujet se définit principalement par son agentivité – un lien de propriété ou de contrôle sur ses actions qui se manifeste non pas comme un simple rapport de causalité, mais comme un lien d'imputation, c'est-à-dire une charge ou une attribution de responsabilité. Dès Aristote, le nom κατηγορία, signifiant à la fois « accusation » et « attribution », a permis d'envisager historiquement le sujet comme à la fois un sujet psychologique (celui à qui sont attribuées des qualités) et un sujet moral (celui dont on tient compte).

C'est ici que la notion de personne, telle que développée par Hobbes et jusqu'ici absente de notre discussion, prend toute son importance. Loin des disputes théologiques sur la personnalité de Dieu ou sur l'identification de l'âme, Hobbes aborde immédiatement la définition de la personne en termes d'imputation dans le cadre de son vaste discours sur « l'homme [naturel] » en tant que matière et artificier du Léviathan. Après avoir défini la vie comme un « mouvement des membres » et la nature comme l'ordre gouverné par Dieu que l'homme imite, Hobbes présente son Léviathan comme un « homme artificiel » de stature et de force supérieures – étendant la métaphore à une « âme artificielle » (la souveraineté) ainsi qu'à une « raison et une volonté artificielles » (l'équité et les lois). Sa définition de la personne découle d'une analyse minutieuse de la prééminence de l'homme en termes de compréhension, de parole et de raison, tout en soulignant l'uniformité des facultés corporelles et mentales qui, par leur rareté, génèrent la diffidence dans l'état de nature, condition où les hommes « vivent sans pouvoir commun pour les tenir en respect », rendant ainsi la vie humaine « solitaire, pauvre, méchante, brutale et courte. »

Ce n'est qu'après avoir exposé les droits naturels, les lois naturelles et la justice que Hobbes arrive à sa définition de la personne, qu'il présente exclusivement comme un lien d'imputation :

> Une PERSONNE est celui dont les paroles ou les actions sont considérées, soit comme les siennes, soit comme représentant les paroles ou les actions d'un autre, que ce soit véritablement ou par fiction.

Cette imputation des paroles et des actions permet un passage fluide du naturel au fictif. Pour Hobbes, une « personne feinte ou artificielle » est celle qui représente les paroles et les actions d'autrui, tandis qu'une « personne naturelle » est celle dont les actes sont considérés comme exclusivement les siens. L'opération est complexe : Hobbes évoque non seulement « la personne d'un homme » comme quelque chose que l'être humain porte en lui, mais il suggère également que le contrôle de ses actions résulte d'une représentation – qu'elle soit de soi-même ou d'autrui.

Hobbes complique davantage la question en distinguant l'acteur – celui qui accomplit et prononce des actes au nom d'un autre – de l'auteur, ou « *dominus* » (*kyrios*), qui confère l'autorité. En termes juridiques, cela correspond à la relation de mandant et de mandataire : l'auteur produit l'acte, tandis que l'acteur l'exécute sous autorité. La *persona* artificielle ainsi construite n'a aucune autorité propre ; elle repose entièrement sur la *persona* naturelle qu'elle représente. Skinner observe que le pacte engendre deux personnes : le souverain, à qui l'on confère le pouvoir de parler et d'agir en notre nom, et la communauté, qui naît lorsque l'on contracte une volonté unique. Skinner ajoute :

> L'État est ainsi, pour Hobbes, une personne par fiction. Il n'arrive jamais, véritablement, qu'il accomplisse des actions et assume leur responsabilité. La seule personne qui agit réellement est la personne artificielle du souverain, dont le rôle spécifique est de personnifier la personne fictive de l'État.

Pour Hobbes, la volonté singulière est la caractéristique déterminante de la personnalité, car c'est cette singularité qui permet d'attribuer les actions. Ainsi, bien que chaque homme soit considéré comme une personne dès lors qu'on peut lui imputer des actes, tous les êtres, qu'ils soient naturels ou artificiels, restent sujets par rapport au souverain. Locke, quant à lui, conjugue ces conceptions en définissant la personne comme « un être intelligent pensant, doté de raison et de réflexion, capable de se concevoir comme lui-même, la même chose pensante à différents moments et en différents lieux, uniquement par la conscience. » Pour Locke, la continuité du moi – et donc l'imputation des actes – repose sur l'unité de la conscience, qui constitue le fondement de la responsabilité morale.

Ainsi, dans le cadre juridico-politique moderne, l'imputation – ce lien par lequel les actes et la responsabilité sont attribués – se révèle être le mécanisme déterminant de la personnalité. Ce n'est pas uniquement la substance naturelle de l'homme, mais la capacité à posséder ses actions et à être tenu pour responsable qui distingue une personne d'un simple objet.

3.2. “All men are created equal”

La Déclaration d’Indépendance des États-Unis de 1776 débute par une assertion qui paraît louable : « Nous tenons ces vérités pour évidentes, que tous les hommes sont créés égaux. » Pourtant, compte tenu du contexte de l’esclavage des Noirs et de la dépossession systématique des peuples indigènes, l’écart entre cet idéal et la réalité était immense. Ce paradoxe confère à la Déclaration un caractère paradigmatique : elle proclame la liberté et l’égalité tout en dissimulant, sous un manteau de silence, les injustices cruelles de son époque.

Cela ne signifie pas pour autant qu’il n’y avait aucune conscience de ce paradoxe ni qu’aucune voix ne prônait l’abolition de l’esclavage. Par exemple, l’ébauche originale de Thomas Jefferson condamnait le roi George III pour avoir mené une « guerre cruelle contre la nature humaine elle-même, violant ses droits les plus sacrés à la vie et à la liberté dans la personne d’un peuple lointain qui ne l’avait jamais offensé, en les captivant et en les emmenant en esclavage dans un autre hémisphère ». Toutefois, le Congrès retira ces condamnations, laissant un document qui exalte la liberté et l’égalité tout en omettant toute mention de l’esclavage. De plus, le terme « égalité », dans son sens originel, renvoyait aux droits égaux de tous les peuples à l’autonomie et non à une égalité entre individus, une nuance rapidement estompée par les lecteurs ultérieurs et le mouvement abolitionniste.

Le paradoxe se creuse avec la Constitution des États-Unis de 1787, qui résolut la question par un fameux « compromis » en comptant les esclaves comme « trois cinquièmes de personnes ». Cette clause visait à alléger la charge fiscale des États du Sud en limitant le nombre d’esclaves, évitant ainsi toute discrimination entre les États. Selon Jack Rakove, plutôt que d’établir un coefficient de hiérarchie raciale, il s’agissait de l’approximation la plus rapprochée de l’égalité entre les États dans la Constitution. Pourtant, il est frappant que le texte fondateur utilisât le terme « personne » de manière aussi ambiguë, désignant simultanément des entités dotées et non dotées de la pleine personnalité—une danse macabre rappelant le traitement juridique espagnol des indigènes. Alors que le droit espagnol considérait l’esclave comme privé de l’administration libre de sa *persona*, la clause des trois cinquièmes fragmentait la personnalité, réduisant effectivement un être humain à, comme disait Brodsky, « moins d’une personne ».

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La tapisserie des fictions juridiques, bien que soigneusement tissée au Moyen Âge, enregistre néanmoins des paradoxes persistants. Suivant l’analyse d’Arendt, deux métaphores récurrentes se dégagent dans le récit des révolutions : l’une « organique », chérie par les historiens et théoriciens révolutionnaires (y compris Marx), et l’autre empruntée au langage du théâtre, étroitement liée au terme latin *persona*. Après avoir exposé l’origine étymologique du masque et ses fonctions, Arendt soutient que posséder une « persona, une personnalité juridique » distingue l’individu privé du citoyen romain : l’ego naturel reste en retrait, tandis

que le droit crée une personne investie de droits et de devoirs. Sans sa persona, l'individu se verrait réduit à un « homme naturel » – un être sans droits ni pertinence politique, semblable à un esclave.

Selon Arendt, traduite en termes hobbesiens, la *persona* joue le rôle d'acteur pour l'« homme naturel ». Il existe ainsi un point central d'imputation, un lieu où les droits et les devoirs sont attribués, qui ne correspond pas nécessairement à la substance sous-jacente. Cette dualité se manifeste dans la comparaison entre le Bill of Rights des États-Unis de 1791 et la Déclaration des droits de l'Homme et du Citoyen de 1789. Le document américain, qui suit la Constitution, visait à instituer des contrôles permanents sur le pouvoir politique en présupposant un corps politique déjà fragmenté, tandis que la Déclaration française se voulait la pierre angulaire de l'ordre politique, réduisant la politique à la nature et affirmant que les droits découlent du simple fait de naître, et non de l'appartenance à un corps politique particulier.

Pour Arendt, cette lecture révèle que les textes fondateurs ne se contentent pas d'exprimer des idéaux, mais portent aussi en eux un voile de silence sur les injustices. Par exemple, la Déclaration d'Indépendance proclame que « tous les hommes sont créés égaux » alors que la réalité de l'esclavage des Noirs et du déplacement des peuples indigènes témoigne d'un fossé énorme entre le texte et la réalité. Ainsi, la notion de « personne » apparaît comme un terme ambigu, employé pour désigner des entités qui, d'une part, jouissent de droits et de dignité, et d'autre part, sont fragmentées par des mécanismes internes du droit.

Les débats philosophiques n'ont guère permis de résoudre cette contradiction. Locke, tout en défendant la liberté comme un droit naturel, était lui-même actionnaire dans la Royal African Company, illustrant ainsi la dissonance entre théorie et pratique. Montesquieu, quant à lui, observait que l'esclavage résultait soit d'un choix libre de soumission à la tyrannie à cause des conditions climatiques de certains pays qui affaiblissent le courage, obligeant les hommes à accepter l'esclavage par crainte de la punition. Rousseau, de son côté, connaissait bien le Code Noir appliqué dans les colonies françaises, mais n'en critiquait guère l'application. Ces voix divergentes montrent que le paradoxe de l'égalité était inscrit dès le départ dans les textes fondateurs, proclamant des droits universels tout en excluant systématiquement certains individus de la pleine personnalité.

Un contraste saisissant apparaît dans l'expérience constitutionnelle haïtienne. En tant que colonie de l'Empire français, la constitution haïtienne de 1801 proclamait l'abolition de l'esclavage sur le territoire de Saint-Domingue et affirmait que « tous les hommes naissent, vivent et meurent libres et français », en écho à la Déclaration de 1789. De plus, la constitution déclarait que « tous les hommes, quelle que soit leur couleur, sont admissibles à tous les emplois ». Après l'indépendance en janvier 1804, une nouvelle constitution, en 1805, abolit l'esclavage et introduisit des critères inédits pour la reconnaissance de la propriété et de la citoyenneté. Par exemple, il était stipulé qu'aucun Blanc, quelle que soit sa nation, ne pouvait poser le pied sur ce territoire en tant que maître ou propriétaire, et que les femmes blanches naturalisées ainsi que les Allemands et Polonais naturalisés étaient explicitement exclus. Plus encore, l'Article 14 de la constitution de 1805 imposait que toute distinction de

couleur entre les enfants d'une même famille, dont le père est le chef de l'État, devait cesser ; les Haïtiens seraient dorénavant désignés uniquement sous la dénomination générique de « Noirs ».

La notion de personne, dans ce contexte, se déploie avec une grande richesse de nuances. D'une part, elle devient synonyme d'une certaine dignité – celle dont jouit le souverain, élevé au-dessus de ses sujets – même lorsque toute différence est réduite à la couleur noire ; d'autre part, elle sert de lien d'imputation à l'agentivité morale, permettant de maintenir une économie interne dans laquelle, bien que tous partagent l'égalité, certains êtres se voient fragmentés, réduits à « moins d'une personne » en raison d'une perte partielle de leur dignité. Ainsi, l'ensemble des textes fondateurs, par le biais de mécanismes juridiques comme le compromis des trois cinquièmes, révèle une dichotomie où les idéaux d'égalité se heurtent à la réalité de la subjugation extrême.

En somme, la Déclaration d'Indépendance et l'expérience constitutionnelle haïtienne illustrent l'ambiguïté de la notion de personne. Alors que ces textes proclament que « tous les hommes sont créés égaux », leur mise en œuvre, à travers des mécanismes internes de répartition – qui fragmentent la persona et imposent une économie interne – démontre que l'égalité proclamée cache une réalité de subjugation. La tension entre les idéaux universels et l'application fragmentée de la personnalité est ainsi révélée, soulignant que l'égalité, tout en étant un droit auto-évident, reste tributaire des artifices juridiques qui, en fin de compte, définissent qui est considéré comme une personne.

3.3. Du genre humain à l'espèce humaine

La Déclaration des droits inaugure une interaction complexe entre la « créature humaine naturelle » et « l'homme politique » ou citoyen. Bien que l'idée d'un être abstrait doté de droits inaliénables émerge, elle est rapidement mise en question par le fait que même les « sauvages » appartiennent à un ordre social. Comme le relève Arendt, l'homme n'apparaît pas pleinement comme un être émancipé, isolé et porteur de dignité intrinsèque ; il se dissout aussitôt dans l'appartenance à un peuple. Ainsi, le rêve d'une dignité issue directement de la nature humaine est absorbé par l'entité plus vaste – encore indéfinie – du peuple, et ce, jusqu'à ce qu'une nation engendre son propre mouvement émancipateur.

Le concept de « genre humain » ou « race humaine » circule bien avant la modernité dans les discours politiques et philosophiques. Dans le latin, *humanus* signifie ce qui appartient aux hommes, tandis que *genus* désigne la race, la famille ou l'origine, sans connotation pseudo-biologique à l'origine. Par exemple, Cicéron évoquait « ces liens infinis unissant le genre humain, façonnés par la nature elle-même », tout en distinguant compatriotes et étrangers. Pourtant, dès l'époque de l'Encyclopédie, le terme « humain » subit une transformation : il en vient à désigner ce qui appartient à la nature de l'homme, voire à référer au corps humain en médecine. Ce changement marque un éloignement des canons de la Renaissance et redéfinit la centralité du sujet – l'homme, la personne, le citoyen – dans la modernité.

L'Encyclopédie contribue à une taxonomie pseudo-scientifique en détaillant les variations de couleur, de taille, de forme et même la « nature » des différents peuples. Des descriptions picturales, parfois presque comiques, caractérisent par exemple les peuples du pôle Nord comme « laids, grossiers, superstitieux et stupides », tandis que ceux d'Asie, d'Europe ou du Moyen-Orient sont exaltés comme « les plus blancs, les plus beaux et les mieux proportionnés ». Ces récits, allant jusqu'à commenter la physiognomonie, l'alimentation, la fertilité, la durée de vie, et même l'odeur, montrent que, malgré l'idée d'une origine unique, l'appartenance à une nation – définie par des critères de blancheur, de pureté et de proportion – reste indispensable pour attribuer une dignité naturelle.

Cette origine universelle se révèle trop abstraite pour renverser l'importance de l'identité nationale. Les droits naturels se voient ainsi reconfigurés dans le cadre de l'État-nation, qui s'appuie sur des critères spécifiques, souvent exclusifs. Balibar démontre que les divisions servant à légitimer le racisme, le nationalisme ou le sexisme reposent sur des différences prétendument essentielles, établissant des hiérarchies. Des institutions telles que l'armée et l'école forgent une « ethnicité fictive » qui représente la population d'un État-nation, distinguant le « vrai » national du non-national. Dès lors, la nature humaine et ses droits inaliénables se lient aux critères sélectifs de l'État, reléguant ceux qui en sont exclus au statut de non-personnes, voire de non-humains.

Foucault approfondit cette analyse en retraçant l'émergence d'un discours, initialement centré sur les différences ethniques au XVIIe siècle, qui se cristallise dans la notion de « guerre des races ». Les premières rencontres coloniales font apparaître des

différences de langue, de force et de sauvagerie qui sont progressivement absorbées par la logique du pouvoir centralisé. Le conflit n'est alors plus vu comme une opposition entre différents genres humains, mais comme une lutte d'une « race pure » pour défendre son « patrimoine biologique » contre la dégénérescence. Ce glissement pave la voie au racisme d'État. À la fin du XIXe siècle, l'inquiétude concernant les dangers biologiques au sein même de la société aboutit à une biopolitique de la population. Celle-ci se déploie en deux volets complémentaires : l'anatomo-politique du corps humain – focalisée sur son utilité, sa docilité et son intégration dans des systèmes économiques – et une biopolitique de la population qui gère natalité, mortalité et vitalité globale.

Cette évolution marque la transformation du pouvoir souverain traditionnel – « faire mourir et laisser vivre » – en un pouvoir moderne qui tend à « faire vivre et laisser mourir ». Pour Foucault, le biopouvoir étend l'exercice du pouvoir à la vie elle-même, en englobant naissances, maladies, guerres et mesures disciplinaires. Agamben prolonge cette réflexion avec la notion de « *nuda vita* » (vie nue), illustrant comment les individus, dépouillés de leur identité politique, se réduisent à une existence purement biologique. Le passage du genre humain à l'espèce humaine n'est donc pas uniquement sémantique ; il reflète une réorganisation profonde des droits, où seuls ceux qui se situent dans le giron protecteur de la nation jouissent de droits universels, tandis que les autres sont exclus et déshumanisés.

La taxonomie initiée par Carl von Linné en 1735 – révisée en 1758 – en est un exemple marquant. Bien que Linné ait exalté le *homo sapiens* comme « la création la plus parfaite » et le sommet de l'évolution, il classe également les humains parmi les animaux, subdivisant l'espèce en catégories telles que l'« Américain roux », l'« Européen blanc », l'« Asiatique jaune », l'« Africain noir » et même les « monstrueux ». Aujourd'hui, même si le terme *homo sapiens* prédomine, l'héritage de ces classifications pseudo-biologiques continue d'influencer des pratiques d'exclusion.

Au cœur de ces transformations se trouve la manière dont la vie humaine est administrée. Autrefois perçus comme des sujets politiques dotés d'une dignité intrinsèque, les individus deviennent progressivement des objets de régulation – comptés, mesurés et organisés à l'instar d'autres entités biologiques. L'analyse de Gregory Stanton sur la « déshumanisation » dans les génocides illustre comment, lors d'exécutions massives, le caractère unique et protégé du *homo sapiens* est effacé en assimilant les groupes ciblés à des nuisibles ou des virus, rendant leur vie jetable et soulignant la fragilité de la dignité humaine lorsqu'elle est réduite à des termes purement biologiques.

En somme, le passage du genre humain à l'espèce humaine révèle une reconfiguration profonde des droits et de l'identité politique. Les aspirations originelles de la Déclaration des droits – visant à inscrire une dignité universelle et abstraite – se trouvent inextricablement liées aux critères sélectifs, souvent exclusifs, de la nation et de la race. La biopolitique moderne, telle que théorisée par Foucault et Agamben, et même Balibar, démontre que la gestion de la vie humaine ne s'effectue pas uniquement par la proclamation de droits universels, mais par un réseau de pratiques disciplinaires, statistiques et institutionnelles qui réduisent l'existence humaine à une matière purement biologique – une « vie nue » – où

l'interaction entre le naturel et le politique, l'universel et le particulier, demeure au cœur des débats sur l'identité, les droits et l'appartenance.

II. La personnalite des entites non-humaines

4. Seuils

4.1. Certains animaux sont plus personnalisables que d'autres

Une fois que la nature humaine a quitté les pâturages communs des *homines* pour s'enraciner dans le sol biologique du *homo sapiens*, une couche supplémentaire de complexité se superpose à la notion de personnalité. Si être humain, personne ou sujet se réduit à une simple taxonomie biologique – ou, plus précisément, à une considération biopolitique –, alors la prétendue prééminence et la dignité inhérentes de l'espèce humaine se voient remises en cause. Dans un tel cadre, la personnalité pourrait être étendue à d'autres animaux, suggérant que les qualités qui définissent l'humanité (comme la perception, la conscience, le langage ou même la capacité de ressentir la douleur) ne sont pas exclusivement humaines.

Cependant, l'humanité se définissait uniquement par l'appartenance *ex natura* à l'espèce *homo sapiens*, conférer la personnalité aux animaux non humains semblerait contre-intuitif. Dans ce cas, la personnalité soulignerait une scission entre les espèces et la dignité qui est attribuée exclusivement aux humains – un trait biologique investi d'un artifice de prééminence. Inversement, si l'on conçoit l'humanité comme une manière d'exister digne, investie de droits inhérents, alors les critères permettant d'être une personne pourraient s'élargir pour inclure diverses capacités partagées par d'autres espèces. La conscience, la faculté de souffrir ou encore la parenté génétique pourraient ainsi constituer des bases suffisantes pour étendre la subjectivité au-delà des frontières de notre espèce.

Les débats sur l'extension de la personnalité tournent souvent autour de processus de subjectivation et de l'emploi de fictions. Traditionnellement, le point de départ de ces débats a été l'acceptation de la domination de l'homme sur les animaux, thème récurrent dans la pensée occidentale. Les récits bibliques, par exemple, illustrent le règne de l'homme sur toute la création ; de même, la pensée grecque – tant avant qu'après la notion d'« ordre naturel » d'Aristote dans la *Politique* – présente les animaux comme subordonnés. Hésiode déclare que, tandis que « le fils de Cronos » apporta la justice à l'humanité, « poissons, bêtes et oiseaux ailés se dévoreraient mutuellement, car la justice n'est pas en eux ». Épictète va plus loin en affirmant que les animaux « ne naissent pas pour eux-mêmes, mais pour le service », allant jusqu'à suggérer qu'« un petit enfant muni d'une baguette peut conduire un troupeau de moutons ». Hobbes renforce cette vision en soutenant que le pouvoir sur les bêtes découle du « droit de la nature » plutôt que d'un droit positif, notant qu'il est impossible « de conclure des pactes avec les bêtes » en raison de l'impossibilité de communiquer.

Pourtant, une tradition alternative existe – celle dans laquelle les animaux ne sont pas nécessairement subordonnés à l'homme. Des ouvrages tels que *De l'abstinence de tuer des animaux* de Porphyre, l'affirmation de Schopenhauer selon laquelle la cognition est la « caractéristique fondamentale de l'animalité » ou encore la critique virulente de Bentham, dénonçant

« l'insensibilité des anciens juristes » qui réduisaient les animaux à de simples objets, remettent en cause les hiérarchies établies. Bentham pose en effet la question suivante :

> Le jour viendra peut-être où le reste de la création animale pourra acquérir ces droits qui n'auraient jamais pu leur être refusés que par la main de la tyrannie [...] Qu'est-ce donc qui devrait tracer la ligne infranchissable ? Est-ce la faculté de raisonner, ou peut-être celle de parler ? Mais un cheval ou un chien adulte est, sans comparaison, un animal plus rationnel et plus communicatif qu'un nourrisson d'un jour, d'une semaine, ou même d'un mois. Mais supposons que ce ne soit pas le cas, qu'est-ce que cela changerait ? La question n'est pas : Peuvent-ils raisonner ? ni Peuvent-ils parler ? mais : Peuvent-ils souffrir ?

Dans la grammaire du droit, les animaux ont traditionnellement été classés comme des *res* (choses) dans la *summa divisio*, principalement parce qu'ils sont considérés comme dépourvus d'une âme rationnelle – la qualité même qui confère aux *homines* leur statut élevé. Cicéron remarque, par exemple, que si « les bêtes possédaient la raison », elles « attribueraient à chacune la prééminence de leur propre espèce ». Même si les approches contemporaines tendent à reconnaître les animaux en tant qu'êtres sentients, une réticence subsiste quant à l'extension de la personnalité aux non-humains. Toutefois, l'existence d'exceptions – cas où la personnalité est étendue à des entités qui ne sont pas strictement vivantes, comme les rivières ou les forêts – souligne la paradoxale malléabilité de notre conception du sujet.

Un excursus littéraire illustre parfaitement cette dynamique. Dans *L'île des pingouins* d'Anatole France, un moine nommé Maël débarque sur une île peuplée de manchots, qu'il prend à tort pour des « hommes vivant selon la loi naturelle ». Convaincu de sa mission divine, il baptise ces animaux. Cet acte plonge le paradis dans le tumulte : les chœurs célestes débattent de la légitimité du baptême d'un animal, saint Winwaloe lançant, avec ironie, que si l'on baptise « au nom du Père, du Fils et du Saint-Esprit » par aspersion ou immersion, alors non seulement un oiseau ou un quadrupède, mais aussi un objet inanimé – une statue, une table, une chaise – deviendrait chrétien. Face à cette absurdité, saint Augustin conclut que « les pingouins iront en enfer » parce qu'ils « n'ont même pas d'âme ». Finalement, par intervention du Christ lui-même, Maël ordonne aux pingouins : « Soyez des hommes ! » et, dans une transformation miraculeuse mêlant fiction et processus de subjectivation, les pingouins se transforment en êtres quasi-humains, conservant certaines de leurs caractéristiques tout en acquérant l'âme et la subjectivité propre à l'homme.

Cet épisode littéraire illustre comment la personnalisation implique une transformation des entités qui la subissent. La question se pose alors : comment les animaux non humains peuvent-ils être intégrés dans le cadre biopolitique réservé traditionnellement aux *homo sapiens* ? Selon Arendt et Agamben, la subjectivité humaine est conférée dès la naissance dans un État-nation et par l'appartenance à l'espèce humaine. Pour les animaux non humains, cette opération doit s'effectuer par d'autres critères, soit en élargissant les

conditions préalables (sentience, conscience), soit en recourant à des exceptions —fictions— juridiques.

Deux exemples contemporains illustrent ces approches divergentes. En 2016, un tribunal de Mendoza, en Argentine, a déclaré qu'une chimpanzé nommée Cecilia était un « sujet de droit non humain ». La décision s'appuie sur la proximité génétique et comportementale entre les grands singes et les humains, qualifiant ces derniers d'êtres sentients – un argument renforcé par des références à Bentham et à Peter Singer. Bien que Singer qualifie parfois le langage des droits de « raccourci politique pratique », son insistance sur la souffrance comme critère fondamental laisse entendre que cette capacité peut suffire à conférer une certaine forme de dignité proche à celle de la personnalité.

Un second cas, contrasté, émane des îles Loyauté en Nouvelle-Calédonie. Dans le cadre d'un « principe unitaire de vie » cher aux Kanaks, le Code de l'Environnement de 2016 a reconnu certains éléments de la nature – en l'occurrence, les requins et les tortues marines – en tant qu'« entités naturelles sujets de droit ». Cette innovation juridique ne repose pas sur une comparaison avec l'humain, mais sur l'idée que toute entité vivante, du fait de sa capacité à participer au sacré et à l'ordre naturel, mérite des droits. Parmi ces droits figurent le droit de ne pas être considérée comme une propriété, le droit d'exister naturellement, celui de ne pas être soumise à l'asservissement, ainsi que la liberté de circulation dans leur environnement naturel.

Ces deux cas mettent en lumière des processus contrastés d'extension de la personnalité. Dans le premier, l'animal non humain se voit individualisé par sa similitude avec l'humain – notamment par la capacité de souffrir –, alors que dans le second, la personnalité s'attribue à tout ce qui vit, en vertu d'une participation à l'ordre sacré de la nature. Dans les deux cas, la personnalité apparaît finalement comme une fiction juridique, un centre d'imputation attribuant droits et responsabilités, indépendamment de la filiation biologique.

Dominique Bourg et Sophie Swaton contestent les critères traditionnels – outils, langage et culture – qui auraient permis de distinguer clairement l'animal de l'humain. Nombre d'animaux, y compris les primates, les insectes ou les oiseaux, manifestent ces capacités à divers degrés. La « nature humaine » ne serait donc pas une qualité inhérente et immuable, mais bien une construction, une frontière arbitraire qui pourrait être repensée pour inclure le non-humain.

En définitive, l'humanité apparaît comme une fabrication, une fiction établie à partir d'un ensemble de critères susceptibles d'être étendus ou redéfinis. Les discours scientifiques sur la vie montrent que celle-ci n'est pas un seuil absolu, mais une catégorie discursive malléable. Le repositionnement du vivant – qu'il s'agisse de l'élargissement du champ politique ou de l'établissement de réserves naturelles – annonce l'émergence d'une nouvelle frontière où les droits et la subjectivité sont réimaginés.

Au-delà du domaine des animaux non humains, ces débats s'étendent également à celui des entités artificielles. Dans son *Cyborg Manifesto*, Donna Haraway soutient que les frontières entre l'animal et l'humain, le naturel et l'artificiel, le physique et le non-physique,

ont été profondément « franchies ». Haraway affirme que les mouvements pour les droits des animaux ne sont pas de simples dénis irrationnels de l'unicité humaine, mais la reconnaissance d'interconnexions inhérentes entre humains, animaux et machines.

Cette remise en question des frontières traditionnelles soulève alors une question provocante : les robots ou intelligences artificielles pourraient-ils se voir attribuer la personnalité ? Dans *R.U.R.* de Karel Čapek – œuvre qui a introduit le terme « robot » – les machines sont décrites avec des qualités organiques, comme une peau qui « se sent comme la peau humaine » et même des « nerfs capables de ressentir la douleur ». Dans un dialogue mémorable, les robots manifestent des comportements rappelant des réactions humaines, suggérant qu'ils pourraient développer une forme de conscience ou même une âme. Bien que le texte de Čapek n'apporte pas de réponse définitive, il remet en cause l'idée que la personnalité serait réservée à l'humain biologique.

Sur le plan juridique, cette discussion a des implications concrètes. En 2017, le Parlement Européen a adopté une résolution invitant la Commission à étudier la possibilité de créer un statut juridique spécifique pour les robots autonomes sophistiqués – ce que l'on désigne souvent par « personnalité électronique ». Cette proposition n'a pas pour but d'accorder des droits aux machines pour les protéger, mais plutôt d'attribuer une responsabilité juridique en les rendant traçables et imputables pour leurs actes. Ainsi, dans ce cadre, la personnalité fonctionne comme un mécanisme d'imputation, garantissant que les robots capables de décisions autonomes soient tenus responsables.

En somme, l'extension de la personnalité aux animaux non humains – et même aux entités artificielles – révèle le caractère mutable et construit de ce que nous qualifions d'« humain ». Qu'elle se fonde sur la capacité à souffrir, la participation à un ordre naturel sacré ou la faculté d'agir de manière autonome, la personnalité émerge à la fois comme une fiction juridique et comme un processus dynamique de subjectivation. Les frontières entre humain et non-humain, entre le naturel et l'artificiel, se redéfinissent sans cesse à travers des pratiques discursives qui remettent en cause les hiérarchies établies et nous invitent à repenser l'essence même de la dignité, des droits et de l'identité dans un monde en mutation rapide.

4.2. Forêts, rivières, nature

L'idée de la personnalité a longtemps dépassé les frontières strictes de l'espèce humaine. Comme nous l'avons vu auparavant avec les grands singes et même les robots, les entités non humaines peuvent devenir des espaces où la subjectivité est à la fois remise en question et reconfigurée.

Les plantes, par leur nature, occupent un interstice immédiat. Si la biologie affirme sans équivoque que les plantes sont vivantes, la question demeure de savoir si elles doivent se voir accorder des droits similaires à ceux qui tendent à être reconnus pour certains animaux. Des chercheurs tels que Bourg et Swaton soulignent que, historiquement, les plantes ont été considérées comme « le lumpenprolétariat du vivant » — une classe ambiguë se situant entre l'organique et l'inorganique, entre la vie et la non-vie. Elles soutiennent que les plantes ne répondent pas aux critères classiques d'individualité : nombre d'entre elles vivent pendant des siècles, semblant défier la mort, et elles ne possèdent pas d'organes vitaux définis. Pourtant, les plantes manifestent une certaine « agentivité » en sécrétant des hormones de défense lors d'attaques ou en communiquant des signaux d'alerte (par exemple, les acacias prévenant la présence d'herbivores). Ce comportement, qualifié d'« intelligence écosystémique » dépourvue des marqueurs traditionnels de la subjectivité, nous incite à repenser les conditions requises pour conférer la personnalité.

Cela conduit à la notion d'agentivité dépourvue de subjectivité. Dans une perspective hobbesienne, les actions des plantes peuvent être vues comme des processus survenant sans auteur conscient — une « agentivité sans auteurs ». Dans des termes lockéens ou kantien, l'absence de conscience de soi signifie que ces actions ne peuvent être imputées à un sujet. Ainsi, les plantes apparaissent comme des actrices hybrides : elles accomplissent des fonctions et interagissent avec leur environnement sans recevoir l'imputation qui confère la pleine subjectivité. Toutefois, cela soulève une question cruciale : si les plantes ne sont pas réellement les sujets de leurs actions, à qui attribuer cette agentivité ? Le comportement observé serait-il simplement une fiction — une projection du désir humain de classifier et de contrôler la nature ? Ou peut-on légitimement parler d'un « acte » même lorsqu'il est non imputable ?

Une seconde préoccupation concerne le but d'une telle reconnaissance de l'agentivité. Bourg et Swaton soutiennent que nos obligations morales et politiques ont traditionnellement été délimitées par une ligne de démarcation séparant les humains des autres animaux. Étendre l'agentivité aux plantes, et par extension aux forêts et aux rivières, élargirait ces obligations à tous les êtres vivants. Pourtant, si l'agentivité des plantes se réduit à leur comportement biologique lu à travers le prisme de l'agentivité, une telle reconnaissance pourrait simplement servir à les intégrer dans une économie préexistante de l'intelligence — un système leur attribuant un certain statut juridique ou moral sans transformer véritablement leur nature. En d'autres termes, reconnaître l'agentivité des plantes serait moins une question d'octroi de droits intrinsèques que l'adaptation d'un processus de subjectivation centré sur l'humain.

Cette extension juridique et morale se manifeste notamment dans des propositions telles que celle avancée par Christopher Stone en 1972. Stone soutenait que des objets naturels comme les arbres, les forêts et les rivières devraient avoir la capacité juridique de « se représenter eux-mêmes » devant un tribunal. Son idée, d'abord pensée comme une expérience intellectuelle, s'est transformée en une demande sérieuse d'octroi de droits aux objets naturels afin de prendre en compte les dommages et d'assurer leur restauration. Dans ce cadre, la personnalisation de la nature ne relève pas tant d'une reconnaissance de sa valeur morale intrinsèque que d'un mécanisme de conversion des préjudices environnementaux en coûts mesurables. Comme l'explique Foucault, le marché apparaît comme « un lieu de vérité » où les systèmes juridiques et économiques fabriquent une valeur. En attribuant une personnalité juridique aux forêts et aux rivières, le système crée une « valeur naturelle » qui permet d'en contrôler l'usage. La protection de la nature devient ainsi non seulement une question d'éthique, mais aussi de gestion : les entités naturelles sont valorisées en fonction de leur rareté et de leur utilité, leurs droits étant médiatisés par un processus de gouvernementalité qui les transforme en sujets économiques.

Les personnifications historiques de la nature viennent complexifier encore ce débat. Dans son *Histoire naturelle*, Pline personnifie la Terre en tant que mère bienveillante, qui, malgré ses qualités nourricières, souffre sous le poids de l'exploitation humaine. La nature y est présentée à la fois comme pourvoyeuse et comme victime, une dualité où la prééminence de l'homme se paie au prix d'une grande vulnérabilité. Cette personnification littéraire contraste avec les critiques philosophiques ultérieures. Spinoza, par exemple, rejette les interprétations téléologiques de la nature. Dans la première partie de son *Éthique*, il soutient que la nature n'a pas de finalité préétablie ; chaque entité lutte simplement (par son conatus) pour persister dans son être, une inertie impersonnelle qui ne traduit ni volonté ni dessein moral. Nietzsche, de son côté, rejette l'idée même que le monde puisse être considéré comme un être vivant. Pour lui, attribuer à la nature des qualités telles qu'une volonté inhérente ou un jugement moral relève d'une réduction abusive, puisque la formation organique dans la nature est l'exception plutôt que la règle. Toute imitation des attributs humains par la nature est l'œuvre d'artificiers plutôt que de la nature elle-même.

Dans les débats contemporains, une « écologie du non-vivant » émerge comme une remise en cause radicale du biocentrisme. Federico Luisetti, par exemple, propose une écologie dans laquelle des entités non biologiques — pierres, glaces, eaux, airs — seraient reconnues en tant que sujets. Sa vision des « peuples multispecies » appelle à repenser la condition terrestre du point de vue de sujets qui ne sont pas vivants au sens traditionnel, des « géobodies » ou « êtres de la terre » partageant avec les organismes la condition terrestre. Toutefois, cette approche demeure ancrée dans les mécanismes de la personnification : il s'agit d'un processus discursif reclassifiant la matière inerte comme dotée d'une forme de subjectivité, non pas parce qu'elle possède intrinsèquement des droits, mais parce qu'elle se trouve intégrée dans un système de valorisation économique. L'attribution de la qualité de « sujet » à ces entités se confond ainsi avec un processus de classification qui reflète le fonctionnement des systèmes juridiques et économiques.

Ainsi, l'extension de la personnalité aux forêts, aux rivières et à la nature se révèle profondément paradoxale. D'une part, reconnaître l'agentivité de ces entités peut apparaître comme une tentative exclusivement humaine d'élargir notre cercle de sollicitude morale. D'autre part, le processus de subjectivation — que ce soit par la personnification juridique ou l'imputation économique — risque de réduire la nature à un actif calculable, soumis aux impératifs de la rareté et de la valeur marchande. Dans cette mosaïque émergente, la subjectivité ne se limite plus à l'individu humain mais devient une catégorie englobante, englobant à la fois le vivant et l'inerte. Le sujet, tel qu'il est construit par les discours juridiques et économiques, finit par se dissoudre dans un substrat qui « rassemble et embrasse tout », effaçant ainsi les distinctions traditionnelles entre le naturel et l'artificiel, le vivant et le non-vivant.

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Dans cette transformation de la nature en sujet de droits – ou plutôt en une infinité de sujets – Yan Thomas souligne l'anthropocentrisme persistant au cœur de nos constructions juridiques et morales. Il affirme que les valeurs que nous prétendons protéger n'existent que par l'acte même de les déclarer, et que l'idée d'une « nature instituée comme sujet » ne prend sens qu'au sein des institutions humaines. Autrement dit, l'homme se trouve au centre à la fois de la fiction selon laquelle la nature serait un sujet et de la fiction opposée qui la réduit à un simple objet.

Marie-Angèle Hermitte propose de comprendre cette transformation non pas comme une personnalisation complète – c'est-à-dire la métamorphose d'une chose en personne – mais plutôt comme un processus de personnification, une figure de style. Elle distingue la « personnification substantielle », où le droit attribue à des entités non humaines des traits typiquement humains (tels que la souffrance, la raison ou l'affection), de la « personnification procédurale », dans laquelle des entités comme les arbres ou les rivières se voient conférer une voix dans les procédures juridiques. Pourtant, même lorsque cette personnification s'opère, elle soutient, l'ombre de l'essence originelle de la chose reste perceptible.

Un nombre croissant d'instruments juridiques transforment désormais ce qui serait en principe des entités non vivantes (rivières, chaînes de montagnes, écosystèmes) en personnes ou en sujets de droits. Ces exemples sont plus nombreux que ceux concernant les animaux non humains, ce qui suggère que l'extension de la personnalité s'applique plus aisément aux entités éloignées des frontières traditionnelles de la subjectivité humaine. Hermitte évoque, par exemple, l'article 120 de la Constitution Suisse de 1999 comme un exemple extrême de personnification des non-humains, en garantissant la « dignité de la créature » pour toute la création.

Au-delà de ce niveau abstrait, des efforts concrets visent à investir la nature non vivante d'une véritable personnalité. La Constitution de l'Équateur de 2008, par exemple, déclare que « la nature sera le sujet des droits qui lui sont reconnus par la Constitution », conférant à la *Pachamama* le droit à l'existence, à la préservation, à la régénération et à la

restauration. De même, en 2016, la Cour constitutionnelle de Colombie a déclaré le fleuve Atrato sujet de droits, ordonnant sa protection et confiant sa représentation légale à l'État et aux communautés ethniques locales. Des décisions ultérieures ont étendu cette notion à d'autres rivières colombiennes, et en 2023, la Juridiction Spéciale de Paix a même qualifié le fleuve Cauca de « victime » du conflit armé. Dans ce dernier cas, la volonté du fleuve est interprétée par l'expression de la souffrance des communautés riveraines, amplifiant ainsi la douleur humaine à travers la personnalisation du fleuve.

Les effets juridiques et philosophiques de ces personnifications sont complexes. D'une part, les décisions judiciaires estompent la distinction entre sujet et personne en affirmant que toute entité susceptible de détenir des droits et des obligations peut être considérée comme une personne. D'autre part, en exigeant que le fleuve « exprime sa volonté » via la médiation des communautés, la décision canalise la souffrance humaine dans l'identité du fleuve. Cela révèle, comme le souligne Yan Thomas, un anthropocentrisme résiduel où la volonté et le désir humains reconfigurent la mosaïque de la personnalité, imposant des valeurs humaines à des entités non humaines.

D'autres approches viennent nuancer la question. Des cas notoires incluent la déclaration, en 2017, du fleuve Te Awa Tupua en tant que personne juridique par le Parlement néo-zélandais, ainsi que des décisions similaires concernant les fleuves Gange et Yamuna en Inde, reconnus comme personnes juridiques avec tous les droits, devoirs et obligations correspondants. Ces cas reposent sur l'idée que, pour qu'une entité soit véritablement considérée comme une personne, elle doit être reconnue comme vivante – selon un principe du type « tu appartiens au vivant, donc tu es une personne ». On pourrait soutenir que la vie ne se définit pas uniquement par des critères biologiques, car un écosystème tel qu'un fleuve ou une chaîne de montagnes peut présenter, de manière plus large, des caractéristiques de vie.

Du point de vue juridique, reclasser les éléments naturels dans la catégorie des personnes ne modifie pas fondamentalement la structure des catégories existantes. Comme le soutient Hermitte, « faire passer les éléments de la nature dans la catégorie des personnes ne change pas la structure des catégories. » Ce qui serait véritablement disruptif, ce serait d'introduire une catégorie sui generis – un espace intermédiaire entre personnes et choses – afin de forger une nouvelle anthropologie de la cohabitation, où le droit jouerait un rôle aux côtés de la politique, des sciences et des philosophies. Une telle transformation exigerait néanmoins une redéfinition simultanée de la notion de sujet, en reconnaissant que la nature reste telle qu'elle est.

Haraway offre une perspective intéressante : la nature n'est ni un lieu physique à sécuriser, ni un trésor à enfermer, ni un texte à déchiffrer uniquement à travers les mathématiques ou la biomédecine. La nature est un *topos* – un lieu commun, une figure, un artefact construit – qui ne préexiste pas à sa propre construction. Habitant ce lieu, des sujets préoccupés par leurs propres fins transforment la nature en une cartographie d'entités existant grâce à un conatus de l'être. Sa valeur réelle réside non pas dans sa personnification

ou sa personnalisation, mais dans son rôle de socle indispensable à la vie et au discours, un fondement dont l'éradication signifierait la perte de nombreux moyens et fins.

En définitive, bien que la personnalisation de la nature ait engendré une prolifération de revendications juridiques et éthiques – transformant rivières, forêts et écosystèmes en sujets de droits – elle reste profondément liée à des processus anthropocentriques.

L'institutionnalisation de la nature en tant que sujet reflète la volonté humaine, imposant un ordre fabriqué à une réalité qui existe indépendamment. La nature n'a pas besoin d'être une personne ou un sujet ; elle se comprend comme le substrat fondamental sur lequel coexistent toutes les formes de vie et d'inertie. Le défi consiste à reconnaître cela sans contraindre la nature dans des catégories qui servent principalement les intérêts humains, afin de préserver son caractère intrinsèque face aux impératifs juridiques et économiques centrés sur l'homme.

4.3. Les frontières de la fiction

Pour le droit, la vérité a toujours été une construction malléable – une fabrication produite par l'acte même de sa proclamation plutôt que par une correspondance objective aux faits. Ulpien résumait cette idée en affirmant qu'« une affaire jugée est prise pour vérité » (*res iudicata pro veritate accipitur*). Dans ce paradigme juridique, le jugement construit la réalité : ce qui est déclaré vrai remplace les événements réels par une sorte de fiction admise. Sigismondo Scaccia, en 1629, expliquait de manière poétique que le processus juridique transforme ce qui est faux en effets équivalents à la vérité, même si ce n'est pas essentiellement le cas.

La fiction joue ainsi un rôle stratégique dans la gestion du droit. Ce n'est pas que le droit soit indifférent à la vérité ; il use délibérément d'une « certitude du faux » voire d'un « triomphe du faux » pour concilier, voire redéfinir, la réalité. Dans les contrats juridiques, par exemple, les éléments vrais et faux coexistent comme une pratique commune et admise, de sorte que la vérité d'un jugement devient obligatoire dès lors que la *res iudicata* l'affirme. De cette façon, les faits sont re-narrés et imposés, subissant une métamorphose qui transforme ce qui était carré en cercle ou altère les liens naturels.

Giambattista Vico éclaire davantage ce phénomène en qualifiant le droit romain antique de « sérieux poème » et sa jurisprudence de « poésie rigoureuse ». Dans sa *Scienza Nuova*, Vico soutient que les sociétés primitives, « incapables » de saisir des universaux abstraits, recouraient à la création d'« universaux fantastiques » par le biais de fables poétiques. Ces fables – véritables en leur genre – servaient de base pour nommer et conceptualiser le monde. Vico explique que, sous le masque ou la persona d'un patriarche, par exemple, tous les enfants et domestiques étaient implicitement inclus ; des noms tels qu'Ajax, Horace ou Roland ne représentaient pas de simples identités individuelles, mais la narration d'actions collectives, familières. Dans ce cadre, la frontière entre vérité et fiction s'efface : la fabrication poétique devient un moyen d'exprimer la réalité, si bien que la jurisprudence antique, avec ses « masques sans sujet », apparaît comme une fusion du vrai et du faux.

Ainsi, le domaine juridique opère dans un espace interstitiel où les fictions ne sont pas de simples tromperies, mais des instruments nécessaires qui créent, transforment et soutiennent le droit.

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Auparavant, j'ai présenté les fictions juridiques comme une synecdoque, une porte d'entrée dans le vaste territoire, presque infini, de la fiction. Bien qu'en dévoiler l'étendue complète dépasse ici le cadre possible, l'idée centrale demeure : les fictions juridiques ne sont pas de simples mensonges, mais des constructions capables d'effacer la frontière entre vrai et faux. Comme l'affirmait Bartolus, c'est précisément leur aptitude à rendre le vrai et le faux indiscernables qui leur confère leur pouvoir.

Pourtant, la fiction n'est pas l'apanage du droit. Alors que l'esthétique et la théorie littéraire explorent depuis longtemps son ontologie et ses effets, je m'attache ici à quelques approches qui développent la fiction juridique dans un cadre plus large—un cadre qui éclaire également la manière dont la notion de personnalité se divise et évolue.

Dans sa *Biographia Literaria*, Samuel Taylor Coleridge réfléchit à une poésie dans laquelle le lecteur est tenu d'adopter une « foi poétique ». Coleridge écrit, en ces termes, que ses efforts créatifs doivent se porter vers des figures surnaturelles ou romantiques afin de transférer, de notre nature intérieure, un intérêt humain, une apparence de vérité. Cette « suspension volontaire de l'incrédulité », même en étant pleinement conscient que le poème est faux, crée un intervalle entre la reconnaissance de sa fausseté et la réponse émotionnelle qu'il suscite.

Pour Coleridge, la foi poétique réside dans la vraisemblance plutôt que dans une vérité absolue. On peut savoir que Galatée est faite de marbre tout en imaginant la chaleur de son baiser ; on peut reconnaître qu'une carte n'est qu'une représentation et néanmoins habiter mentalement son territoire. Les ombres de l'imagination subsistent parce que, bien qu'elles soient fausses, elles ressemblent étroitement à la vérité—au point que la distinction s'efface.

De plus, Coleridge distingue le « fictif » du « faux » en remarquant que, lorsque le récit est si alambiqué que sa véracité devient improbable, le lecteur en prend pleinement conscience. Plutôt que de forcer la croyance, cette conscience permet aux images d'agir de leur propre force. En somme, la suspension de l'incrédulité – et donc l'efficacité de la foi poétique – repose sur une apparence de vérité suffisamment convaincante, plutôt que sur de vaines tentatives de faire croire.

Ce cadre a des implications importantes pour l'extension de la personnalité par le biais de la fiction. Si la personnalité doit être attribuée à des entités par le seuil de la fiction, une « foi poétique » partagée doit nous permettre de traiter divers êtres comme s'ils étaient des personnes. Dans cette optique, l'attribution de la personnalité ne repose pas nécessairement sur une substance rationnelle inhérente ; elle dépend plutôt de la ressemblance avec une vérité que nous reconnaissons collectivement, même si cette vérité est elle-même une construction.

En effet, la fiction prescrit les conditions selon lesquelles la vérité apparaît en réarrangeant nos critères : si quelque chose est humain, vivant ou existe, il se voit ainsi accorder la personnalité. Ce n'est pas un simple mensonge ou une tromperie, mais une narration en perpétuelle reconstitution—un jeu collectif de vraisemblance dans lequel la suspension de l'incrédulité est essentielle. La notion de « make-believe » développée par Kendall Walton renforce cette idée. Selon lui, un monde fictif se crée par l'intermédiaire de « props », des générateurs de vérités fictives qui transforment un objet—une poupée, un monticule de neige, une tache de peinture—en quelque chose d'autre, grâce à un accord partagé, souvent implicite. Sans cet accord, le jeu s'effondre.

De plus, ce « principe de génération » rappelle l'idée kantienne de jugement esthétique comme passerelle entre l'entendement et le désir, où les conditions subjectives

atteignent une validité universelle communicable. Comme le souligne Garroni, la langue et les jeux dépendent de règles sans lesquelles ni le langage ni le jeu ne pourraient exister.

Ainsi, si des entités telles que les requins, les singes, les plantes, les rivières, les montagnes, et même les robots sont considérées comme des personnes dans notre conception contemporaine de la personnalité, c'est précisément parce que le fait et l'apparence sont devenus malléables dans ce jeu de miroirs. L'accord tacite consiste à suspendre son incrédulité et à accepter les règles prescrites, permettant aux fictions juridiques et culturelles de reconfigurer les frontières de la personnalité.

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Foucault distingue la philosophie du théâtre en soulignant que, tandis que la philosophie cherche à différencier réalité et illusion, le théâtre efface délibérément ces frontières. Dans le théâtre, accepter l'absence de différence entre le vrai et le faux est fondamental, car il met en scène des événements qui se répètent et se transforment sans cesse. Pour Foucault, l'intérêt ne réside pas dans la question de la vérité ou de la fausseté, mais dans la manière dont le théâtre crée un espace—un interstice dynamique—où se déroulent les processus de personnalisation et de subjectivation, brouillant la ligne entre personnes et choses.

Foucault soutient que la fiction n'est pas simplement le reflet de la réalité, mais le terreau même d'où émerge la subjectivité. Elle constitue l'environnement qui permet la suspension de l'incrédulité, offrant aux entités—qu'elles soient personnes, objets ou même vides—une apparence de réalité. La fiction démêle et recompose l'interaction entre le fait et l'apparence, devenant à la fois produit et fondement d'un jeu de l'imaginaire.

Ce rôle interstitiel de la fiction, qui capte « l'invisibilité de sa visibilité », permet de reconfigurer sans cesse la notion de personnalité. Comme le souligne Hernando Valencia Villa, dans ce jeu rien n'est prédéterminé ; chaque résultat est mutable, chaque victoire précaire, chaque défaite réversible. Un tel cadre ouvre la voie à l'exploration des effets profonds de la fiction sur la personnalisation et la subjectivation.

5. SIMULACRES ET EFFACEMENTS

5.1. Vide comme vaste

Revisiter la dissection initiale—ce que l'on pourrait appeler la véritable *summa divisio*—révèle que toutes les caractéristiques traditionnellement censées définir la personne par opposition à une chose ont été érodées. Dans ce jeu infini de fictionnalité, la personne n'a pas besoin d'être un *homo*, un humain, de posséder un bien ou de jouir de liberté ; elle n'a pas à être un sujet, un individu, capable d'agir ou de parler, dotée d'un corps ou d'une âme, rationnelle, sensible, imputable ou vivante. En somme, il suffit qu'elle soit « quelque chose ». Ce constat mène au paradoxe où il devient impossible de distinguer véritablement entre *res* et *persona* : la négation qui les séparait s'efface, et la personnalité se transforme en une catégorie universelle englobant presque tout ou, du moins, susceptible d'y être intégrée. Par conséquent, la protection, les droits ou la dignité octroyés à ces entités ne sont ni nécessaires ni suffisants pour garantir la personnalité. Les personnes humaines, malgré leur statut apparemment incontestable, demeurent vulnérables, tandis que d'autres entités peuvent être protégées, qu'elles disposent ou non d'une « *persona* ».

Si les frontières entre personne et chose se sont effacées, il faut alors se demander pourquoi ces métamorphoses se produisent et quels en sont les effets. Une partie de la réponse réside dans la production d'une persona qui fonctionne comme un « continent sans contenu » —un cadre dépourvu d'identité substantielle—émergeant dans une forme de gouvernementalité du vivant où le sujet autrefois éminent, l'agent maître de lui-même, est annulé. Dans un tel système, la subjectivation s'opère par les mêmes mécanismes qui ont rendu possible toute exception.

Foucault, dans un passage presque confessionnel mais non apologétique, aborde le problème de la fiction en déclarant : « Je n'ai jamais rien écrit que des fictions ». Il ne veut pas dire pour autant que la fiction soit en dehors de la vérité ; il soutient plutôt qu'il est possible de faire fonctionner la fiction à l'intérieur de la vérité, d'induire des effets de vérité par un discours fictif, de fabriquer quelque chose qui n'existe pas encore. Nous « fictionnons » l'histoire à partir d'une réalité politique qui la rend vraie ; nous « fictionnons » une politique qui n'existe pas encore à partir d'une vérité historique. Qu'il s'agisse de l'approche théâtrale ou littéraire de Foucault importe peu ; l'essentiel est de démontrer la possibilité de transmuter la fiction en vérité, une poïèse qui naît de la négation même de la vérité. Cette transformation ne provient ni de la souveraineté de l'ordre juridico-politique ni de la prétendue éminence de la personnalité, mais de la texture et du fonctionnement du mécanisme lui-même.

Pourtant, une possibilité troublante se dégage si l'on pousse cette malléabilité à l'extrême — une possibilité mieux éclairée par le prisme de Jean Baudrillard. En définissant la simulation comme « feindre d'avoir ce qu'on n'a pas » et la dissimulation comme « feindre de ne pas avoir ce qu'on a », Baudrillard soutient que la simulation n'est pas simplement un processus de feinte ; elle remet en cause la distinction entre le vrai et le faux, le réel et

l'imaginaire — tout comme le fait la fiction. Dans ce contexte, Baudrillard aborde la représentation religieuse en notant que les iconoclastes ont compris comment la représentation de Dieu par les icônes, remplaçant la « pure et intelligible Idée de Dieu », pouvait dissimuler le fait que « Dieu n'a jamais existé, que seul le simulacre de Dieu a existé, et que Dieu lui-même n'a jamais été rien d'autre que son propre simulacre ». Cette « angoisse » a favorisé la destruction de ses images, tandis que les iconolâtres vénéraient ces icônes précisément parce qu'ils anticipaient la disparition de Dieu dans ses images et comprenaient qu'il était dangereux de les dévoiler, car elles dissimulaient qu'il n'y eût rien derrière.

Autrement dit, iconoclastes et iconolâtres convergent vers l'hypothèse qu'au-delà de l'image de Dieu ne subsiste qu'un vide. Si Dieu peut être simulé — réduit à des signes —, alors ces images et ces signes possèdent une « puissance meurtrière » capable d'annihiler la réalité, non pas en la cachant ou en la rendant irréelle, mais en la transformant en son propre simulacre, une copie sans original. L'idée de Baudrillard est que nous vivons désormais à une époque de simulations où le vrai et le faux se confondent parce que les copies de la réalité n'ont plus de référent original. Un signe, une image ou un personnage ne fait pas que prétendre être autre chose ; il dissimule le fait qu'il n'y a rien derrière lui. Contrairement à la représentation —où le signe conserve, même vaguement, une relation avec la réalité (un « principe d'équivalence ») — la simulation n'a aucune équivalence avec la réalité.

Qu'est-ce que tout cela signifie pour l'entrelacement entre fiction et personne ? À la lumière de Baudrillard, l'extension de la personnalité par le biais de la fiction dissimule peut-être qu'au-delà de l'apparente éminence et du pouvoir du concept se trouve un néant, que la *persona* n'est en réalité qu'un vide. Cela ouvre la voie à de nouvelles interrogations : existe-t-il une réalité sous-jacente à la personne, ou son entrelacement avec la fiction n'est-il que le signe de la simulation, la marque indélébile d'un néant se faisant passer pour quelque chose ?

Baudrillard trace une sorte de chronologie des images : d'abord, l'image est « le reflet d'une réalité profonde » (l'« ordre du sacrement ») ; ensuite, elle masque et dénature cette réalité (l'« ordre du maléfice ») ; puis, elle dissimule l'absence d'une réalité profonde (l'« ordre du sortilège ») ; et enfin, elle ne renvoie à aucune réalité, devenant ainsi son propre pur simulacre, relevant du domaine de la simulation et défiant la distinction entre vérité et fausseté.

Cette catégorisation nous aide à comprendre la fonction de l'attribution de la *persona* par la fiction aux entités qui ne répondent pas aux critères traditionnels de l'humain—aux entités qui ne sont ni *homines*, ni dotées d'âme, ni vivantes au sens strict.

D'un côté, si l'attribution reflète une réalité profonde – une dignité intrinsèque ou une aura protectrice –alors, dans un sens « sacramentel », une personne est feinte pour incarner la prééminence de l'humain. C'est l'approche théologique de Boèce et de Thomas d'Aquin, pour qui la personnalité est l'attribut divin dont bénéficient les *homines*, et seules les substances individuelles de nature rationnelle peuvent être considérées comme des personnes. On pourrait soutenir que d'autres animaux rationnels pourraient partager cette dignité sur la base de leur rationalité ou de leur capacité à souffrir.

Inversement, si l'attribution de la personnalité ne reflète pas mais dissimule – si la personnalisation camoufle l'écart entre le référent et l'extension – alors la dignité et les droits se situent sur un plan de maléfice : une nature déformée dans laquelle l'écart entre les personnes fictives et leurs homologues réels est marqué par ce qui est dissimulé. Par exemple, lorsqu'on attribue une *persona* à des animaux ou des plantes via la fiction, ce n'est pas parce qu'ils partagent une nature rationnelle ou vivante sous-jacente, mais parce qu'ils sont perçus comme insurmontablement différents. Dans ces cas, la fiction sert à masquer l'absence d'un substrat commun, permettant ainsi d'attribuer la personnalité à une myriade d'entités disparates.

Enfin, si l'attribution dissimule non pas une réalité déformée mais son absence totale, nous entrons dans le domaine du sortilège. Ici, la multiplication des personae ne confère pas une dignité supposée, mais dénonce que cette dignité est inexistante, masquant son absence comme si elle était pourtant présente. La *persona* devient alors le masque qui voile le néant de ses attributs, un centre d'imputation qui subjectivise sans accorder de véritable agence. Ainsi, le sortilège d'une *persona* inactive prend tout son sens.

Finalement, l'événement de la personnalisation ne feint plus rien, il dissimule simplement l'absence d'un original à imiter. Les fictions de la *persona* deviennent la *persona* elle-même, car l'attribution cache non seulement l'absence d'une réalité sous-jacente, mais dénonce aussi que la *persona* ne signifie rien—ni corps, ni âme, ni espèce, ni raison, ni vie, ni présence—se résumant à un simple lien d'imputation et de subjection.

Inutile de dire que ce n'est ni le sujet principal de Baudrillard ni l'intégralité de ma vision. Il s'agit ici d'une fictionnalisation au sens de Foucault, une loupe qui révèle les effets des fictions tacitement admises, malléables, économiques et utiles sur une scène où le vrai et le faux se confondent. En d'autres termes, c'est une fictionnalisation visant à comprendre et produire un certain savoir. Dans les cas du sortilège et du simulacre de la personnalité, le problème n'est pas tant l'effacement de la *persona* et de sa signification (qui, comme nous l'avons vu, est loin d'être stable ou utile) que la production d'une nouvelle relation aux entités, maintenant la subjection sans agence, dignité ou prééminence, une indistinction entre celui qui parle et celui dont on parle, entre celui qui se possède et celui qui est simplement disposé. Il s'agit, donc, de produire une multiplicité de personnes sans sujet, ou de sujets sans personnalité, sous forme de masques qui individualisent et imputent tout en dissimulant un vide sous-jacent derrière l'artifice de la fiction.

Peut-être Foucault n'a-t-il en effet jamais écrit que des fictions. Cependant, comme le commente Deleuze dans un beau passage, « jamais les fictions n'ont produit autant de vérité et de réalité », car elles induisent des effets de vérité et fabriquent des choses qui n'existent pas encore. Autrement dit, ces extensions des frontières de la personnalité fictionnalisent, poétisent et font émerger de nouveaux *topoi* insaisissables pour énoncer et habiter, tout en étant elles-mêmes le produit de procédés similaires.

Le labyrinthe qui naît de l'entrelacement entre *fictio* et *persona* s'épanouit précisément en raison d'une multiplicité de « surfaces superposées, archives ou couches », traversées par

une « fissure centrale » qui nous saisit dans un double mouvement : il faut errer sur les surfaces tout en tentant d'atteindre l'intérieur de la fissure.

Au cœur de cette dernière, comme le conjecturait Melville, on peut trouver le néant : aussi vides que vastes puissent être les fictions de la personnalité qui errent et habitent les couches, les surfaces, la fissure, le théâtre et le labyrinthe.

5.2. Assujettis mais sans sujet

À ce stade, il convient de rappeler qu'il n'existe aucune volonté transcendantale ni demiurge métaphysique orchestrant l'interaction entre la personne et la fiction. Aucun marionnettiste – ni même un dramaturge universel – ne construit les théâtres dans lesquels s'opère cet entrelacement. Bien que des décisions soient prises – par exemple, traiter les rivières, les forêts ou la sensibilité comme critères de la personnalité – ces choix surgissent de manière historique et contingente plutôt que d'un moule métaphysique unique (même dans le décisionnisme de Schmitt, où décision et état d'exception sont contextuels).

Cela soulève la question : pourquoi est-il plus économique, en termes de disposition rentable, de gouvernementalité, d'attribuer la personnalité à des entités si diverses ? Que produisent ces forces, discours et arrangements émergents dans un dispositif de sécurité et une gouvernementalité qui font de la fiction leur vérité et de la personnalité leur protagoniste ? Une partie de la réponse réside dans le fait qu'aucun lien nécessaire n'existe entre la dignité et la *persona*. En effet, la multiplication des exceptions – et l'indétermination entre vrai et faux – révèle que la persona fonctionne comme une dissimulation de toute prééminence acquise. Autrement dit, qu'on considère les grands singes, les tortues, les rivières, les montagnes ou les robots, aucun d'eux n'intègre véritablement une famille élargie de droits autrefois réservés aux humains ; leur consécration ne fait que masquer la redéfinition de la persona en un titre dénué de sens, qui n'implique aucune véritable dignité.

Il est important de préciser que cette observation n'est pas un jugement moral. On pourrait soutenir que la notion de dignité en tant que critère séparateur doit être repensée, afin que la personnalité puisse égaliser toutes les entités, indépendamment de leur origine ou de leur composition. Toutefois, le point essentiel demeure : le manque dissimulé de prééminence est inhérent à l'extension de la personnalité, produisant ce que l'on pourrait appeler une « personne non éminente ».

Au-delà de cette perte de prééminence, la pluralité croissante des *personae* et la texture fictive de leur extension génèrent d'autres effets. D'une part, il y a la question pratique de la représentation ; d'autre part, la production et l'exposition d'une vie nue, une *nuda vita*.
Haraway a posé la première comme une forme de mise au silence dans notre relation à la nature. Elle conteste la réification et la possession de la nature ainsi que sa mystification en tant qu'utopie – « mère », « nourrice » ou « matrice ». Elle soutient plutôt que la nature doit être comprise comme un « *topos* » ou un « *trópos* » – une construction, un artefact ou un mouvement qui ne préexiste pas à sa propre formation, mais qui est conçu simultanément comme fiction et comme fait, avec de nombreux acteurs (humains, organiques ou technologiques) participant à sa construction.

Ainsi, l'extension stratégique de la personnalité par la fiction révèle non seulement l'absence d'une nouvelle dignité acquise, mais expose également des questions plus profondes sur la représentation et la mise au silence des entités dans la nature. En les représentant, les entités deviennent l'excuse pour opérer un déplacement du discours et de l'agence, comme

c'est le cas paradigmatique du fœtus, représenté puisqu'il ne peut pas parler, et au même temps, cela implique le silencement de la mère en la transformant dans un environnement maternel que ne peut pas, elle non plus, parler. Ainsi, la représentation de la nature et des animaux pourrait jouer contrairement à la bonne foi de leur protection, en les rendant des entités encore plus incapables de « parler par eux-mêmes ».

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L'extension infinie de la personnalité par la fiction ne crée pas un chœur vivant d'individus autonomes, mais plutôt une chorale de personae silencieuses, pétrifiées et non éminentes. Dans ce processus, un autre effet se fait sentir : la production et l'exposition d'une vie nue, ou *nuda vita* selon Agamben – une vie dépouillée de tout attribut au-delà de l'existence pure. Agamben introduit la *nuda vita* avec *Homo sacer* (1995), bien que ses racines remontent à Walter Benjamin (1921).

Agamben emploie en outre le paradoxe de la souveraineté comme modèle topologique pour expliquer l'*homo sacer*. S'appuyant sur Festus Grammaticus, il décrit une vie qui, par l'opération de la « *sacratio* », ne peut être sacrifiée aux dieux parce qu'elle leur appartient déjà – et qui peut pourtant être tuée impunément, puisqu'elle est exclue des lois humaines et divines. Dans cet état, l'*homo sacer* est pris entre une liberté absolue et une vulnérabilité totale, capturé par le pouvoir souverain par un double processus de « capture » (*ex-capere*) et de subjection. La nudité de la vie nue devient alors non seulement une condition d'exposition, mais aussi l'exception qui finit par devenir la règle.

Ce mécanisme de capture transforme la naissance en « source et porteuse de droits », remplaçant ainsi la *persona* traditionnelle en tant que masque de l'agence politique. Qu'il s'agisse d'un nouveau-né propulsé dans la vie politique ou de l'*homo sacer* banni de toute protection légale, la représentation de la vie nue par Agamben est sombre : c'est une vie rendue passive, dépourvue d'agence et réduite à un simple objet de violence souveraine.

De plus, la dynamique de ce dispositif s'étend dans l'ensemble du domaine juridico-politique, où le pouvoir engendre à la fois des capacités d'action et des instruments de subjection. Dans ce système, l'extension de la personnalité par la fiction dilue finalement la prééminence humaine. Comme Schmitt affirmait que les concepts majeurs de la théorie moderne de l'État sont des idées théologiques sécularisées, l'extension infinie de la personnalité réduit le miracle de l'unicité humaine à un simulacre – une *persona* sans attributs, un masque silencieux qui soumet sans véritable permettre l'agence.

6. OUVERTURES, CADRES, VOIX

6.1. Articulations, perspectives, cadres

Haraway aborde les effets problématiques de la représentation – sa tendance à réduire et à museler les entités non humaines en objets passifs – en proposant la notion « d'articulation ». Dans son cadre, les actants sont des entités collectives qui, plutôt que d'être réduites à l'état de possession par la représentation (comme le fœtus ou le jaguar silencieux en face de l'environnement maternel et les peuples indigènes), peuvent interagir en préservant leur « espace vide » ou leur indécidabilité ultime. Cette articulation ne transforme pas chaque entité non humaine en un sujet traditionnel, mais reconnaît leur caractère fondamentalement non personnel en soulignant le fossé entre leurs actions et les actes propres à l'agence humaine.

Haraway soutient que la représentation transforme le monde en un objet – un processus analogue à celui par lequel la physique remplace un vase par une « cavité » recueillant un liquide – dépouillant ainsi la nature de sa « mondanité » intrinsèque. Plutôt que d'écouter la « voix de la nature », la représentation lui impose une voix, muselant ainsi son expression propre. De ce point de vue, la représentation n'est pas une garantie métaphysique, mais une technique – un *Ge-stell* ou dispositif – qui neutralise l'agence individuelle et transforme la totalité de la nature en un « instrumentum » prédéfini servant des objectifs construits.

L'objectif de Haraway n'est pas de rejeter la science ni de prôner un retour à une nature idéalisée. Au contraire, elle souligne que la « nature » est elle-même le produit de pratiques représentationnelles, façonnée par des dynamiques de pouvoir et de savoir. Tout comme Foucault a montré que la vie fut à la fois découverte et fabriquée dans le discours biologique, Haraway affirme que la nature est une invention – constamment redéfinie par les cadres par lesquels le monde est interprété. De même, les multiples instances de persona ne sont pas des élixirs miraculeux qui restaurent les entités à un état de protection originel, mais plutôt des mosaïques de constructions, de fictionnalisations et de savoirs servant de mécanismes historiquement situés, parfois contradictoires, pour gouverner la vie.

Où se situe alors l'articulation ? Haraway illustre son concept par l'exemple d'un homme Kayapó filmant sa « tribu » protestant contre un barrage hydroélectrique – un moment qui défie les frontières conventionnelles en préservant un mode de vie « non moderne » à l'aide de la technologie moderne. Cet événement n'est pas un simple cas de représentation, mais une articulation qui implique à la fois des entités humaines et non humaines – y compris le public – transcendant ainsi la dynamique réductrice consistant à traiter la nature comme de simples objets. Dans cette articulation, aucune frontière n'est violée, car des catégories telles que « nature » et « société » sont elles-mêmes des produits de pouvoir et de savoir, sans frontières fixes.

De plus, Haraway note que le processus de cadrage de la réalité est intrinsèquement dynamique. Comme le souligne Judith Butler, les cadres participent activement à la formation de ce qui est reconnu comme réalité en excluant des versions alternatives et en générant un « tas de déchets » de négatifs rejetés qui pourront alimenter ultérieurement la résistance. Ainsi, les normes et les cadres circulent – produisant une mosaïque en constante évolution de la personnalité entrelacée de fiction. Ces cadres mutables déterminent non seulement quelles vies sont reconnues comme dignes, mais, paradoxalement, peuvent aussi les rendre non protégées en les réduisant à de simples intérêts soumis à des calculs économiques et politiques.

La notion d'articulation proposée par Haraway offre une alternative transformatrice au silence imposé par la représentation. En favorisant un cadre qui met en lumière l'« espace vide » et l'indécidabilité des entités non humaines, l'articulation permet une coexistence plus fluide et dynamique – dans laquelle la personnalité n'est pas simplement imposée comme une catégorie statique, mais continuellement reconstituée par l'interaction de cadres mouvants.

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Les perspectives indigènes, telles qu'articulées par Eduardo Viveiros de Castro, offrent une alternative convaincante à la représentation. Pour de nombreuses communautés amérindiennes, la relation entre humains et non-humains n'est pas définie par des frontières rigides. Leurs cosmogonies décrivent plutôt un état originel de non-différenciation dans lequel humains et animaux partagent une essence commune. Les humains, loin d'être la catégorie résiduelle laissée par la nature, sont perçus comme l'archétype à partir duquel se construit l'ensemble de la nature. Cette vision indigène contredit l'idée d'un « retour à la nature » en tant qu'état perdu et pur, en affirmant que toutes les entités sont interconnectées et que leurs subjectivités émergent de pratiques partagées plutôt que de qualités inhérentes.

La méthode de « l'équivocation contrôlée » proposée par Viveiros de Castro est essentielle ici. Il soutient que les entités non humaines ne se voient pas automatiquement attribuer la personnalité ; au contraire, la personnalité se construit par un processus culturel de négociation et de traduction. Dans les contextes indigènes, les chamans et spécialistes rituels traduisent le monde non humain, permettant aux animaux, aux plantes et aux paysages d'être compris comme des sujets – non en les rendant identiques aux humains, mais en reconnaissant leurs modes d'existence uniques. S'il est vrai que « une grande partie de l'engagement pratique des Amérindiens avec le monde suppose que les êtres non humains d0aujourd'hui ont un côté spirituel, invisible et prosopomorphe », il est tout aussi vrai qu'ils « ne voient pas spontanément les animaux et autres non-humains comme des personnes ; [car] la personnalité ou la subjectivité de ces derniers est considérée comme un aspect non évident d'eux ». Les animaux restent des animaux, les plantes restent des plantes, les rivières restent des rivières.

En favorisant un « espace vide » où les différences restent ouvertes, l'articulation permet un échange plus dynamique. Elle rejette l'idée qu'une représentation doive imposer

un récit figé et soutient plutôt une interaction fluide où les subjectivités non humaines émergent sans être absorbées par des paradigmes centrés sur l'humain.

6.2. Polyphonie : une parrhésie des choses

Les entrelacs contemporains entre *persona* et fiction génèrent une multitude de problèmes non résolus – des spectres qui dépassent l'aura protectrice que tente d'offrir la personnalité conventionnelle. Ces entrelacs, en fusionnant vérité et fausseté dans un jeu infini, posent une série de défis que les cadres juridico-politiques traditionnels ne parviennent pas à appréhender entièrement. Pour clore cette réflexion, je propose ma propre fictionalisation — une certitude consciente du faux, un jeu d'imaginaire — qui reconfigure le rapport entre les entités non humaines et l'imposition de la personnalité.

L'idée ici n'est pas d'imposer aux entités non humaines une *persona* assimilable aux humains, mais de les engager dans une pratique fondée sur une lecture foucaldienne de la *parrêsia*. Dans ce modèle, les entités non humaines ne sont pas forcées de se conformer aux critères traditionnels de la subjectivité ; elles sont plutôt abordées en tant qu'actants — porteurs dynamiques d'une vérité inhérente, exprimée non par un langage conventionnel mais par leur seule présence et leur silence

Je propose ainsi de reconfigurer notre approche des entités non humaines en abandonnant l'imposition d'une *persona*. Au lieu de les transformer en sujets imités des humains, nous pourrions leur permettre de s'exprimer à travers une pratique *parrhesiastique*. Leur « voix » ne se manifeste pas nécessairement par un langage articulé, mais par leur simple présence — leur *conatus*, cette impulsion inhérente (selon Spinoza) à persister dans leur être, devient une transmission nue de vérité. Cela remet en question l'hypothèse selon laquelle seule une parole articulée peut transmettre du sens.

Au cœur de cette approche se trouve l'idée que la *parrêsia* n'est pas seulement un acte individuel de vérité, mais un jeu collectif, fondé sur un pacte implicite ou explicite entre les participants. Comme le « principe de génération » de Walton, la *parrêsia* suppose que l'énonciateur et l'auditeur acceptent le risque inhérent à une parole sincère. L'épisode légendaire d'Alexandre et de Diogène illustre bien que celui qui ose dire la vérité sans artifice doit être accueilli par un auditeur capable d'accepter cette vérité sans flatterie ni manipulation.

De plus, alors que la rhétorique relève souvent du domaine des ventriloques qui parlent pour les silencieux, la véritable *parrêsia* consiste à reconnaître que même les entités non humaines « parlent » par leur seule présence. Leur silence n'est pas un vide, mais une expression active de leur conatus, qui témoigne d'une existence non médiatisée par le discours conventionnel.

Cette dynamique d'articulation et de *parrêsia* engendre une polyphonie — une multiplicité de voix qui coexistent sans qu'aucune ne domine l'ensemble. Dans cet espace polyphonique, la distinction binaire entre sujet et objet se dissout, permettant aux entités humaines et non humaines de contribuer à un chœur partagé et en constante évolution. La vérité n'est plus imposée par des critères figés de personnalité, mais émerge d'un échange complexe de voix, de silences et de risques. Ce cadre reconfiguré remet en cause le modèle

juridico-politique dominant qui étend la personnalité comme un manteau protecteur, en neutralisant souvent l'agence, et ouvre de nouvelles possibilités pour comprendre la vie politique et esthétique.

La polyphonie qui résulte de ce jeu parrhesiastique n'est pas la voix d'une volonté unique, mais une mosaïque de voix diverses qui coexistent et se répondent, redéfinissant sans cesse les frontières entre humain et non-humain, sujet et objet. Cet espace repensé nous invite à écouter les innombrables voix —même celles du silence— et à envisager une vérité dynamique et inclusive, produite par l'interaction continue de multiples expressions, qui remet en question l'extension traditionnelle de la personnalité et ouvre la voie à une nouvelle compréhension du pouvoir, de la fiction et de la vérité.

CONCLUSIONS

Mosaïque, tapisserie, plateau, fantaisie fugale, manuscrit illuminé, cartographie, polyphonie : autant de métaphores, autant de personnages sont apparus sur cette scène. Inutile de dire que ce qui semble le plus évident n'est pas une résolution définitive, mais bien une myriade de questions ouvertes.

Le florilège des instances retracées au cours de ce travail a montré, je l'espère, les manières complexes dont se déploie l'interaction entre fiction et personnalité aux interstices de plusieurs domaines. Ce qui a émergé ici est une généalogie dans laquelle les frontières fixes se révèlent être des seuils fluides et mobiles, des interstices où la personnalité, la fiction, la vérité, la subjectivité et la subjection sont perpétuellement produites, gérées, façonnées et reconfigurées.

Comme prévu, mon objectif a été de dévoiler les conditions qui permettent l'apparition d'une série de métamorphoses – de personnalisation – et de révéler les effets de la subjection et de la vérité qu'elles engendrent. Encadrées ici dans un diptyque, ces conditions et ces effets, je pense, soulèvent une multiplicité de problématiques.

Premièrement, ce travail montre que la personnalité, dans son sens juridique strict, n'a pas été conçue à l'origine comme un manteau de dignité ou une protection inhérente. Elle servait plutôt de dispositif permettant à la grammaire du droit de disposer plus efficacement des entités capables de réaliser une certaine opération patrimoniale, opération qui n'était ni conceptuellement ni pratiquement opposée à la notion de chose. De plus, il a été démontré que ce dispositif était souvent construit et exécuté par diverses formes de fiction – des certitudes du faux qui étendaient le concept aux choses et aux pluralités, allant jusqu'à négliger la nature même de la vie et de la mort. En d'autres termes, il a été montré que les frontières du concept étaient tout sauf stables, et en tout cas non liées à une notion de dignité, laquelle n'arrivera que bien plus tard dans la généalogie du concept.

Deuxièmement, le diptyque montre que la définition de la personnalité – et la pluralité de fictions avec lesquelles elle opère – ne se cantonnent pas aux limites du juridique, mais se sont épanouies dans les sentences des grammairiens, sur la scène des acteurs et des dramaturges, et comme présence centrale dans la pensée patristique et médiévale, traversant la difficile et complexe tentative de saisir des notions telles que substance, hypostase, essence, subsistance, sujet et, bien sûr, la *persona* du dieu chrétien. Dans un pont établi entre la formule tertullienne d'une substance en trois personnes et la définition boéthienne d'une nature rationnelle en tant que substance individuelle, cette construction est devenue le miroir des attributs divins et, par cet aveu, le concept a acquis une dignité l'associant à la raison, au gouvernement et à la disposition de soi, créant, entre autres, des *homines* qui n'étaient pas nécessairement des personnes. La *persona* apparaît, encore et encore, comme un seuil qui, paradoxalement, sépare et unit.

Parallèlement à la dignité et à l'éminence du sujet rationnel et capable – dont la dignité et les droits inhérents semblaient consubstantiels à sa *persona* – le rôle qu'il joue a également été analysé en termes d'imputation, c'est-à-dire comme étant tenu responsable et

imputable de la similitude de conscience qu'implique cet usage particulier de la raison, et le sujet éminent apparaît ainsi aussi comme imputable, saisissable et, en fin de compte, jetable.

En analysant des instances particulières de personnalité contemporaine et de subjectivation, ce travail a mis en évidence comment les attributs et critères de la *persona* sont eux-mêmes mouvants et mutables. Des espèces aussi variées que les grands singes, les requins et les tortues ont récemment reçu les eaux baptismales de la personnalité, parfois en raison de leur proximité avec la biologie humaine en termes de capacités rationnelles, parfois en termes de statut de vivant ou de sensible – étendu aux plantes et à leurs réseaux vivants –, mais aussi parfois en remettant en question l'irrélativité de l'humanité comme concept définitoire. Quels que soient les critères, ce qui persiste dans ces cas, c'est la production de sujets sans sujet, des entités dont la *persona* apparaît sous la bannière de la protection et de la reconnaissance mais qui, par ces mêmes moyens, sont transformées en intérêts imputables, en patients moraux ou en actifs jetables dans un régime de vérité qui reconnaît la personnalité seulement pour rendre le mécanisme lui-même inefficace en termes d'agence, de dignité et de liberté.

Ainsi, la thèse expose le paradoxe inhérent aux débats contemporains sur l'extension de la personnalité. En élargissant le domaine de la « personne », ces fictions diminuent simultanément l'agence de celles qu'elles cherchent à représenter. Plutôt que d'explorer les bénéfices supposés de cette extension, ce travail critique le besoin même de la subjectivation, questionnant les présupposés qui sous-tendent ces constructions juridiques et philosophiques. Cela a été clairement démontré dans les cas de forêts, de rivières et même de la nature elle-même, qualifiées de *personae* ou de sujets de droit, non seulement en raison de l'inefficacité des mesures de protection effectives, mais aussi parce que cette métamorphose en personne ne confère aucune forme d'éminence ou d'agence. En d'autres termes, nous avons vu que le processus de personnalisation n'est ni nécessaire ni suffisant pour qu'une telle protection émerge, et que cette reconnaissance, considérée comme une forme de reconnaissance morale et de progrès, se manifeste sous la forme d'une économie d'agence et d'intelligence, dans laquelle le sujet capable de commander ses propres actions est introuvable, mais reste néanmoins susceptible d'être rassemblé, accumulé et disposé. De plus, ces extensions de la personnalité produisent des sujets non éminents et muets, non seulement parmi les entités soumises aux métamorphoses, mais également chez les êtres humains dont le caractère de *persona* finit par ne plus signifier rien.

En contraste, le caractère interstitiel de la fiction, par sa capacité à évoluer simultanément dans le domaine du vrai et du faux et par la puissance de la vraisemblance, permet de concevoir le cadre d'un théâtre où la fertilité et la stérilité peuvent être jouées, où les rôles des personnes et des choses peuvent être inversés, modifiés et réarrangés, où présence et absence, agence et passivité, peuvent s'unir, tout comme un carré qui devient un cercle ou une mort qui engendre la vie.

Sous un certain éclairage, ces métamorphoses apparaissent dans leur vide profond, de sorte que le manteau éminent de la *persona* — sa dignité, sa protection — se révèle non seulement vacant, mais également capable d'abolir activement les protections qu'il est censé

créer. De plus, la géométrie étranglée et stratifiée de l'entrelacement entre la personne et la fiction soulève la question de la topologie du pouvoir souverain, de la perpétuation des états d'exception et de l'émergence de la vie nue, qui devient sacrée non pas parce qu'elle ne peut être touchée, mais parce qu'elle a été exposée comme si elle était intouchable. La *persona* offre ici une aura d'inviolabilité qui, en réalité, permet une disposition plus économique dans une certaine gouvernementalité du vivant.

Opposé à cette perspective plutôt morne, ce travail propose un cadre d'articulation entre le personnel et l'impersonnel, un théâtre d'imaginaire où une polyphonie de silences n'est ni une contradiction ni une fausseté, mais une fiction au service de la vérité, où les eaux d'une rivière ne se préoccupent pas d'avoir un nom ou d'être sacrées, où les roches, cascades et forêts s'expriment dans la présence non personnelle de leur conatus. Chacun de ces termes incarne, comme nous l'avons vu, une structure épistémique complexe et soulève une variété d'enjeux : de l'équivocation volontaire au *perpetuum mobile* des cadres, de la relation difficile entre vérité et fausseté à l'éventuelle futilité des voix qui parlent sans interprète.

Ce sont, d'une part, des perspectives qui permettent de repenser et de réaborder la question, mais aussi des fictionnalisations en elles-mêmes, non dogmatiques ni programmatrices, de simples accessoires permettant de jouer un jeu d'imaginaire dans des domaines qui ne s'attardent pas sur les récits de la subjection. En contrepoint à ces mécanismes de subjection, ces provocations visent à réimaginer des formes d'engagement qui échappent entièrement à l'économie de la personnalité, contestant l'hypothèse même selon laquelle la personnalité est une condition nécessaire ou utile pour la protection, la reconnaissance ou l'agence.

Ce sont des tentatives modestes d'habiter et d'arpenter les seuils, les crevasses, les surfaces, les labyrinthes et les frontières de la cartographie d'une existence partagée.

Alors que la fantaisie de la carte borgésienne réside dans sa dimension, sa réalité se trouve dans la manière dont elle fusionne avec les accidents et les frontières du territoire – tracée de manière rigoureuse comme un palimpseste infiniment renouvelable et illuminé qui parle et poétise dans des langues intraduisibles – qui est en effet mosaïque, tapisserie, plateau, fantaisie fugale, manuscrit illuminé, cartographie, polyphonie.