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Person, Property, Relationships: A Cont(r)actual View

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Abstract
This article challenges the long-standing boundary that separates human beings from non-human entities, whether animate or inanimate. In doing so, it engages with the jurisprudential strands that debate the transformative power of law in moving towards a fuller recognition of human relations with non-human entities. To this end, the article first examines the legal theoretical strategies that scholars have so far developed to overcome the dichotomous vision that pits humans against non-humans. It then argues for a new model of understanding property, called cont(r)actualisation, which seeks to reconfigure existing strategies. It makes the case that the legal categories of person and object should be brought together under the overarching heading of 'legal entity'. Rather than being built around humans as persons/subjects and non-human entities as objects/objects, law should be built around the contingent points of contact between particular entities in a particular web of relations. In this way, the article advances a view that does justice to how these entities contribute to what human beings are and do.

Keywords Legal person · Legal entity · Non-human entities · Property law · Property rights

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Western legal systems include a remarkable dichotomy in regulating the complex web of relationships of human beings with non-human entities[1] whether animate or inanimate. For one, the European Commission on Human Rights excluded the relationship between a human being and a dog from the scope of the right to respect for family life referred to in Article 8 ECHR (ECRM 18 May 1976 (rev.), No 6825/74, *X. v. Austria*). A resident of Reykjavik could not rely on that right to be allowed to keep a dog despite a municipal ordinance to the contrary.[2] After all, according to the European Commission and the Court, family life refers, 'predominantly, to relationships between living human beings' (ECHR 20 July 2021, no 12886/16, *Polat v Austria*, § 48), 'especially in the emotional field, for the development and fulfilment of one's own personality' (ECRM 18 May 1976 (rev.), No 6825/74, *X. v. Austria*).

Compared to a human's relationships with other humans (persons/subjects), one's relationships with non-human entities (property/objects) are legally framed in a very different way.[3] Of course, the law does also protect the relationship between persons and objects, not least through the right to property (Art. 1 First Protocol ECHR). Property, especially in Continental legal systems, has long constituted a predefined and static category.[4] It is the free tradability (Keenan 2020) of the objects of property rights that is paramount in this analysis: objects are *interchangeable to* (Davies 2016) a particular owner, and *separable from* (Penner 1997) that particular owner. Even more importantly, persons exercise proverbial unilateral and hierarchical *dominion* over the non-human entities that are the object of their property right, particularly over non-living entities. This article aims to contribute to an intense critique that, in the last few decades, has emerged of this static and hierarchical structure of property as a right.[5]

The dichotomy that still characterises human relations with non-human entities stems from the radically binary distinction made in Western legal systems between the static categories of human person on the one hand and non-human object on the other, as mutually exclusive antonyms (Davies and Naffine 2001). We will argue in the following pages that such a radical opposition, in which the object is reduced to a means under the *dominion* of the person, ignores the deep, structural entanglement in the relations between human and non-human entities.

As to the entwinement that we believe exists, Davies (2020b; p. 211) speaks of a 'tightly conceptualised triad' between law, person, and object, rather than a single dichotomy between person and object. She is optimistic about the transformative

[1] We use the term 'entity' to avoid philosophically more controversial concepts such as 'thing'. On the concept of 'thing', see in particular Latour and Weibel (2005).

[2] With reference to the right to respect for *private life*, the balance sometimes strikes a different balance in Belgian tenancy law today. On this, see Vandromme (2017).

[3] Here we leave aside one's relationship to artificial or non-artificial and separated or non-separated elements of their own body and mind.

[4] Art. 3.50 Civil Code; Davies and Naffine (2001); di Robilant (2013). From the late nineteenth century, the *bundle of* rights/bundle *of sticks* theory took off.

[5] Our background is in Continental law. While we are aware of the sharp differences in the (development of) civil and common law systems, as well as the distinction between real and personal property in the common law, we believe our argument, at the level of principles, applies to both legal traditions. See also Milo (2023).

power of law towards a fuller recognition of one's relations with non-human entities.[6] To this end, in this contribution we aspire to come up with a potentially alternative approach.

In our view, the desirable future is to move away from the hierarchical design of law in which human persons have unilateral control over non-human objects. Human beings are part of a web of relationships in which non-human entities also play a role in enabling human beings to be who and what they are. We aim to outline the four steps by which we can make this legally visible and speakable. To do this, we will build on the model of cont(r)actualisation that we have developed in previous work – where cont(r)actualisation has been applied to the issue of non-conventional family relationships.

In the following sections, we will first describe the historical transition from an artificialist to a naturalist conception of human beings vis-à-vis non-human entities, and from the original dichotomy between *res* and *persona* in Roman law to the post-Hohfeldian conception of property as a relationship between persons vis-à-vis objects. We will then discuss the blind spots that exist as a result of that conception, and what strategies are proposed in contemporary legal scholarship to remedy them. Finally, we will contribute to the 'prefigurative exercise' (Davies 2016; p. 38) about the future.

From Artificialism to Naturalism, from Materialisation to Dematerialisation

The contemporary legal concept of a person is based on the natural person, in the sense that it is consistent with the biological interpretation of that word as a living human being. It refers either to a living human being (natural person), or to an association or partnership of living human beings in a legal person, or to capital set apart by a natural or legal person (foundation or trust). Although we have become accustomed to it, it is the product of a naturalistic view that only emerged in modern Western legal philosophy. Under Roman law, the meaning of the legal concept *persona* first evolved 'from mask to legal role, to status to legal capacity' (van Beers 2017; p. 573). The last two concepts are particularly relevant here. While 'status' refers to the qualification of an entity as an immutable 'Zurechnungspunkt' (Kelsen 2008; p. 65), i.e. *being* a legal person (Gorovtseff 1925), 'legal capacity' refers to the changeable content of that attribution for this person (*caput*, *having* legal personality; in contemporary legal terminology: the set of rights and duties) (Brożek 2017; Davies and Naffine 2020; Grear 2013; Grzegorczyk 1989; Kurki 2017a, b). In the *ius civile*, the concept of person did not refer to a natural attribute as it was attached *qua* legal attribute to an entity so that it could assume a legally regulated role in relation to all other human and non-human entities (see Horsman and Korsten 2016). In this sense, the concept of person was a fictional concept (Davies and Naffine 2001; Grear 2013; van Beers 2017), in that any entity, including non-human ones, could qualify as a

[6] Along these lines, see also Knorr Cetina (1997).

person (Demogue 1909; Gorovtseff 1926; Grzegorczyk 1989; Houwing 1939). This is why this approach is also named artificialist.

During the Middle Ages this artificialist interpretation progressively withered away. Under the influence of Christianity, the concept of person became 'carnal' and was interpreted as a natural characteristic of a living human being. The artificialist conception was thus replaced by a naturalistic one (de Leeuw and van Wichelen 2020; Dabin 1950; Davies and Naffine 2001; Frow 2020; Grear 2013). That evolution then led to the modern concept of the living human being as an autonomous, moral, and responsible subject, endowed with agency and the ability to pursue a life plan (Brożek 2017; Dabin 1950; Davies and Naffine 2001; De Leeuw and van Wichelen 2020 Frow 2020; Grear 2013; Grzegorczyk 1989; Kurki 2017a, b; Radin 1993; Selkälä and Rajavuori 2017; Strangas 1989).

The living human being became a *legal subject*, with the latter legal concept merging with the legal concept of person (Grear 2013). Based on this transformation, all entities – animate or inanimate (Dabin 1950) – other than living human beings could no longer be considered as autonomous, moral, and responsible subjects, as they are portrayed as deprived of any agency and any possibility of pursuing a life plan (Cornu 1994; ten Haaf 2017). Since they therefore do not exist as subjects, in theory all non-human entities are available for appropriation as objects by human legal subjects, as a means of pursuing their life plan (Busse and Strang 2011; Davies and Naffine 2001; Davies 2016; Keenan 2010).

Well into the twentieth century, this instrumentalisation of objects was firmly confirmed by the doctrine: '*c'est le destin des choses d'avoir une destination qui est de servir l'humanité*' (it is the destiny of things to have a destination which is to serve humanity) (Dabin 1950, p. 112). The existence of non-human entities was thus limited to the possibility of appropriation by human subjects, to become the object of their rights: 'rights over them never filtered down to them' (Williams 1987; p. 421). From the vantage point of liberal-democratic theory, the possessive individual emerged: '[s]ociety becomes a lot of free equal individuals related to each other as proprietors of their own capacities and of what they have acquired by their exercise' (Macpherson 1962; p. 3).

In such a strict dichotomy between subjects and objects, ownership of (and other rights *in rem* over) objects is a relation – and this begs the questions: a relation between whom and/or what? After the Enlightenment, the concept of property referred to a direct relationship between subject and object (Gorovtseff 1925; Macpherson 1978). Non-human objects were located outside the human subject, which was considered to have no intrinsic relation to them and thus to be completely independent of them. Yet, despite this categoreal separation between subject and object, the two categories were immediately intertwined (Davies 2020b), for property was precisely considered the '*Dasein der Persönlichkeit*' (there being a personality) (Hegel 2017, § 51).

The way to complete one's subjectivity and individuality (Davies and Naffine 2001) was to make it '*objektiv*' (objective) (Hegel 2017, § 45) by taking possession of objects in the external sphere. By placing their will in external objects (Keenan 2010), subjects constitute both the subject and the object as such (Grzegorczyk 1989; Keenan 2015). The nineteenth-century personalist theory of the continental concept of patrimony of Charles Aubry and Charles Rau (1953, § 573) also reflects this view:

'L'idée de patrimoine est le corollaire de l'idée de personnalité'; the patrimony is the 'émanation de la personne'.

In contrast to that materialised conception of property as a relationship between a person and an object, post-Hohfeldian (Hohfeld 1913, 1917) legal theory defined property as a relationship between persons/subjects with *respect to* objects (Dabin 1950; Davies and Naffine 2001; Davies 2007; Gorovtseff 1926; Gorovtseff 1927; Rahmatian 2011). Thus, although property still relates to objects, the relationship is dematerialised: the underlying material object is legally 'translated' into a bundle of abstract powers, which then becomes the immaterial object of ownership (Busse and Strang 2011; Cooper 2007; Davies and Naffine 2001; Gorovtseff 1925).[7] In this way, property exists in rights that relate to social conduct (Rahmatian 2011) – especially the right to exclude others (Macpherson 1978), so that 'dominion over things is also imperium over our fellow human beings' (Cohen 1927; p. 13. See also Rahmatian 2017). The consequence of this movement is that the person and the object become further removed from each other as entities between which an absolute distinction exists (Mosko 2015).

Blind Spots between Person and Object

The evolution towards the naturalistic conception of personhood has resulted in the complete objectification of non-human entities. The latter have legal relevance only insofar as human subjects do things with them. What objects are and do entirely depends on the meaning they have in the eyes of human beings, and on how that meaning, in the dematerialised conception of property, is encoded in legal relations between human beings. The artificialist conception of personhood still allowed quite some leeway in the precise legal demarcation of human versus non-human entities. In the naturalistic conception, that leeway has, theoretically, fully disappeared because of the *summa divisio* between human persons and non-human property. That principled dichotomy is, however, coming under increasing pressure (Davies and Naffine 2001). In what follows, we indicate three trajectories in which this is occurring.

First, various strands of jurisprudence emphasise the cultural-historical rather than the natural character of the dichotomy between human and non-human entities (Busse and Strang 2011; Davies and Naffine 2001; Frow 2020). On this wavelength, the delimitation of the naturalistic notion of person to *living, autonomous, human* entities always requires a prior legal decision on borderline cases (Davies and Naffine 2001). Whether entities are already or still *alive* (usually from somewhere between conception and birth to somewhere between clinical or brain death and decay), *autonomous* (think of the discussions about minors and vulnerable adults), and *human* (especially artificial intelligence, cyborgs, chimeras, and hybrids) (de Leeuw and van Wichelen 2020; Pietrzykowski 2017; van Beers 2020) is, after all, a societal and, subsequently, legal decision and not a natural distinction (Nékám 1938). Legal doctrine has strug-

[7] See also Aubry and Rau (1953), § 573: 'Le droit n'envisage pas les choses […] dans leur materialité, mais en tant qu'ils sont l'objet de droits et d'obligations' (the law does not consider things […] in terms of their materiality, but as a subject of rights and obligations).

gled to fill in the blind spots with different views on the essence of (subjective) rights, for example by conjuring interest theories and will theories (Dabin 1950; Gorovtseff 1926; Kurki 2017a, b), or by distinguishing between active and passive capacity (Brożek 2017; Dabin 1950; Grzegorczyk 1989; Houwing 1939; Kurki 2017; Strangas 1989).

Second, the asserted categoreal distinction between subjects and objects has always been under question due to the many instances of objectification of subjects and of subjectification of objects. Examples of the objectification of subjects (Davies and Naffine 2001; Davies 2016) can be seen throughout the history of slavery, over coverture,[8] and contemporary forms of objectification of women's bodies – for example, in the context of surrogacy, the capitalist organisation of the labour market, and debates about the qualification of human bodily material. All of these examples boil down to the question of whether, and to what extent, (parts of) persons can (also) be an object that are or are not susceptible to (their own) property or other rights *in rem* (Cooper 2007; Davies and Naffine 2001; Davies 2016; Macpherson 1962; Penner 1997; Williams 1987).

Conversely, the strict dichotomy between human and non-human entities is also at odds with cases of the subjectification of objects for the purpose of granting legal protection vis-à-vis humans – for example, of non-human animals or of natural or cultural heritage (Davies 2016; Underkuffler 2003; Williams 1987). Such legal protection was traditionally justified by invoking underlying moral, economic, aesthetic, and other types of interests of humanity in general or of specific human beings in particular (Cornu 1994; Dabin 1950; Gorovtseff 1926). However, contemporary doctrine increasingly deems this diversion through human interests to be too unsteady and suggests recognising non-human entities as holders of their own interests or even rights – without therefore upgrading them to (fully-fledged) persons (Kurki 2017a; Vatter 2020). In this vein, some writers propose the introduction of intermediate legal categories (Strangas 1989; Vatter 2020).

Here it is somewhat paradoxical that the naturalistic concept of person, modelled on humans, is extended to non-human entities – for example, to non-human animals, by virtue of their biological resemblance to humans (e.g. sentient beings) or moral affinity to humans (e.g. companion animals) (Alvarez-Nakagawa 2017; Selkälä and Rajavuori 2017; Strangas 1989), or to artificial intelligence, as entities created by humans and with an intellectual resemblance to (and even superiority over) them (Michalczak 2017). Grear (2013; p. 79) describes this as the 'anthropomorphic traction' of law: the flesh-and-blood human being is also the prototype for the legal visibility and speakability of other entities. At the same time, the argument for extending visibility and speakability to them is different for each entity: it can be biological, ethical, or intellectual. As a result, extension plays out differently for each type of entity.

[8] *Coverture* was the more far-reaching English variant of the husband's marital power in Continental systems. In *Commentaries on the laws of England*, William Blackstone writes: 'By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband: under whose wing, protection, and *cover*, she performs everything; […] is said to be[…] under the protection and influence of her husband […].' The text is available at https://www.gutenberg.org/files/30802/30802-h/30802-h.htm (accessed 8 May 2023).

While the first two trajectories summarised thus far insist on the boundary between person and object being less clear (Davies and Naffine 2001), or blurred (Radin 1993), a third, more fundamental one claims the strict dichotomy between subjects and objects to be paradoxically incompatible with the personality theories of property on which the *summa divisio* between person and object is ultimately built (Busse and Strang 2011; Keenan 2010; Radin 1993). The traditional interpretation of property does not allow for legal visibility and speakability of one's relationships with objects that have remarkable personal significance 'especially in the emotional field, for the development and fulfilment of one's own personality' (ECRM 18 May 1976 (rev.), No 6825/74, *X. v. Austria*). Building on Margaret Radin's (1982; 1993) take on this matter, we will refer to these objects as *personal*.[9]

The double meaning of the term *property* better illustrates what we mean in this context: someone's property can, as it were, reveal her/his properties. In particular, someone's group belonging (part-whole; for instance, as a member of a family) can thus be expressed in property (subject-object; for instance, family souvenirs). Fascinating empirical research has been conducted on this within small communities (Cooper 2007; Strathern 2011). The classification of property in law does not distinguish personal property from other property, let alone the kinds that enjoy special status (Keenan 2010, 2020). This sometimes gives rise to discussions in case law and legal doctrine. Family souvenirs are the main example here: for family members, they are the point of reference to their family belongings.

There is debate whether and, if so, to what extent family souvenirs are (therefore) removed from the common rules of (matrimonial) property law or inheritance law, and whether the venal value of family souvenirs is relevant in that context (Jonghmans 1980; Leclercq 1948; Sace 1991; Vandenberghe and Snaet 1997, nos 31 (tombs and monuments) and 32 (family heirlooms); Verwilghen 1990. France: Demogue 1928; Zenati 1996. Germany: Löhning 2020). There is also discussion in the context of distraint about a possible special regime for family souvenirs and other personal objects, whether or not with regard to their venal value (de Leval 1988; Dirix 2018). In liability law, limited attention is paid to the full compensation of damage to personal objects or (domestic) animals and of moral damage in that connection. Traces of the special protection of personal objects can also be found in public law, for example the punishment of the violation of the secrecy of correspondence as one of the crimes against persons (Declerck 2011).

In the light of these conundrums, some authors advocate a 'rematerialisation' of the concept of property to grant visibility and speakability to the role that non-human entities play in the life and identity of humanity in general or of human beings in particular (Busse and Strang 2011). In this context, Radin elaborated a theory of personal (Radin 1982) or constitutive (Radin 1993) property – such as of the family home[10] or a wedding ring – which individuals are particularly attached to as persons, and for which she proposed a special property regime. This theory explicitly refers to the Hegelian and Lockean descriptions of property as constitutive of personality (Radin

[9] To be distinguished from the English law category of personal property as opposed to real property.

[10] The family home enjoys very strong protection, especially in family (property) law. This relates (more) to other considerations than to its personal nature; hence, this protection is not discussed further here.

1993). On this account, violations of personal property result in violations of the person (Davies and Naffine 2001); thereby foregrounding the close connection between the protection of one's property and one's privacy, for example in the inviolability of the home (Radin 1993).

In summary, these research strands concur that '[p]reviously taken-for-granted notions of "persons", "things" and "relations" are thoroughly destabilised' (Hann 2011; p. xv; See also Keenan 2015; Pottage 2004). Despite this, the division between person and object proves difficult to dismantle. Indeed, the blind spots between person and object discussed above give rise only to circumventing strategies: by shifting the boundary between person and object; by relativising the categories of person and object through the objectification of persons and the subjectification of objects; by assigning rights to entities other than persons; by recognising that person and object are not necessarily mutually exclusive categories that cannot overlap, so that an entity can be both person and object at the same time; still, by crafting intermediate categories.

The main problem here is that these strategies remain within the existing conceptual frameworks of the categories of person and object. As such, the dichotomy between the two is left untouched. The central position remains occupied by the person/subject, as the only entity with agency, albeit sometimes in a new capacity in relation to objects, such as custodian, steward, trustee, or as husbandry (Cooper 2007; Davies and Naffine 2001; Davies 2007, 2020b; De Leeuw and van Wichelen 2020; Vatter 2020). It follows that the meaning of non-human entities is still measured against the rights and interests of humans, for example, as a duty of an owner towards non-owners (di Robilant 2013).

Going deeper, we agree with those who think it is time for a new ontology and a related new epistemology (Davies 2016; M. de la Cadena 2018; Vatter 2020) – one that transcends the traditional dichotomous conception of subject and object to produce new guidelines on how to make relations between humans and non-human entities legally visible and speakable (Davies 2020a). For example, a relatively recent strand in legal theory is concerned with the significance of natural or cultural heritage for humanity in general and for (un)particular groups of living human beings in particular (Alexander 2020; Davies and Naffine 2001; Davies 2016, 2020a; di Robilant 2013; Vatter 2020). This strand does fundamentally question the premise of the *summa divisio*: 'rather than regarding the thing as purely fungible and interchangeable, its distinctness in a connected ontology can be brought out' (Davies 2016; pp. 52–53).

Cont(r)actualisation

A first step in the desirable future approach we propose is a recognition that the legal concepts of person and object have always been artificial. Thomas (2002) points the finger here at the misconception that hypothesises that there exists a 'natural' distinction between person and object in Roman law, with the latter serving the former. Rather, objects were negotiated entities, whose properties were determined in

disputes.[11] It was, so to speak, the *actio* (action) between *personae* (persons) that made qualification as *res* possible at all (Rahmatian 2011; Villey 1946–1947). On this account, both persons and objects are proxies for legal activity, in function of which their interpretation is flexible.

Within the context of erstwhile legal institutionalism, Romano (2019) also insisted on artificialism in legal descriptions. Romano qualified non-human entities as legal because they are part of networks produced within the legal playing field. Precisely by legal techniques, law takes these entities into account, qualifies them, and knots a range of legal consequences to them. In the same vein, Nékám (1938) refers to the social evaluation of the need for protection as the substrate of the legal qualification (as a person) of any entity. In this way, 'a plant or an animal, a human being or an imagined ghost' (Nékám 1938; p. 26) etc. becomes a node in the legal web of relationships. Within the artificialist view, the law describes entities to integrate them, and on that basis creates legal effects in the non-legal web of relations in which those entities are nodes. In this sense, the law is merely a technique of description as performative activity with institutional and constitutive consequences (Bourdieu 1987; Croce 2018a, b), something legal doctrine incidentally endorses (Busse and Strang 2011; Cooper 2007; Davies 2020a; Pottage 2004).

A second step is the recognition that non-human entities also play a constitutive role in the complex web of relationships in which every human being is embedded. This implies a further recognition that non-human entities are not extrinsic to human entities, as they are 'in fact integrated in all scales of human embodiment' (Davies 2020b; p. 206). This is the meaning of the idea of an entangled world (Davies 2016): what human entities are, cannot be separated from the constitutive influence that non-human entities have on them. '[H]uman existence is conditioned existence, it would be impossible without things' (Arendt 2018, p. 9). As a result, the strict delimitation of the individual subject gets diluted, and with it the hierarchical, discontinuous, absolute, and solid conception of the legal categories of person and object. All entities must be seen as entangled, continuous, relative, and permeable or even fluid processes, in the sense of interlocking chains of humans and non-humans exercising agency in different ways, which must be mapped to fully grasp the identity of each.[12] It is precisely the metamorphosis from the *bounded*, 'separative', self to the *bonded*, enmeshed, person – from isolation to relationship – that Nedelsky (1990) urges the law to accommodate.

Consequently, and as a third step, we argue, with Nékám (1938), that the legal categories of person and object should be brought together under a(n overarching) neutral heading of 'legal entity'. The category 'person' could then disappear to avoid confusion about its content, due to the historical entanglement between *homo* and *persona* within Western legal systems. To be clear, this does not imply that 'person' should be abolished as a relevant separate legal category, but rather that it would

[11] Also in this sense on the concept of 'thing', see Latour and Weibel 2005.

[12] See also, from an anthropological point of view, on the *dividuality* of the subject, particularly as permeability and divisibility: Busse and Strang (2011, pp. 5–6, 7); de la Cadena (2020, p. 9); Frow (2020; pp. 273–288); Hann (2011; p. 7). Famously, the concept of dividuality was advanced by Strathern (1988).

become, at the most, only one marker on the 'continuous scale of legal entities' (Nékám 1938; p. 116), alongside other legal categories.

Along with the legal concept of person, its connotation with the legal subject as the exclusive holder of rights over objects should also be abandoned. To make its agency legally visible and speakable, *any* entity, whether human or non-human, animate or inanimate, need not be qualified as a holder of rights, let alone as a legal subject (De Leeuw and van Wichelen 2020; Grear 2013; Pietrzykowski 2017). Humans would no longer have (only) rights and obligations towards each other in relation to (French: *à l'égard de*) non-human entities, but also obligations towards (French: *envers*) those entities (Davies 2016; Strangas 1989). On this reading, the essence of property shifts from a right to exclude to a duty to include[13] – regardless of whether the recipient of that duty is a human or non-human entity (Davies 2020a; Strangas 1989. *Contra*: Kurki 2017).

These obligations would not only be negative, such as the prohibition of seizure of personal property, but could also be positive, even beyond considerations of public interest (Di Robilant 2013). For example, a person could have positive obligations towards personal items belonging to a deceased relative (Keenan 2010), towards an animal that has assisted him (say, a guide dog-at-rest) (Strangas 1989), towards the house in which he lives (say, by moisture control) (Gorovtseff 1926). Legal techniques that are in place – such as stewardship, the trust, or the fiduciary – accommodate the claimability of duties for the benefit of all legal entities. Revisiting of the old debates on interest theory or will theory as the basis of subjective rights is not necessary for this purpose (Dabin 1950; Strangas 1989). Nor does property as a right *in rem* need to disappear at all, only to be (further) put into perspective. In sum, 'we own the object, but it also owns us, in that it limits our behaviour' (Davies 2007; p. 109). Ownership thus truly becomes a relation of belonging (Keenan 2010).

This is where cont(r)actualisation comes into play: rather than around humans as persons/subjects and non-human entities as objects/objects, law would be built around the contingent *points of contact* between specific entities in a specific web of relationships. That web of relations then becomes a network of intersecting forces and things in space. Within that contingent assemblage, it is the web of relations that agitates rather than the individual entities that compose it.[14] Like the concepts of person and property, points of contact do not easily allow themselves to be captured in static, predefined legal categories. They are constantly malleable, depending on the lateral (in space) and vertical (in time, across generations) contingency of the assemblage of which they are a part (Keenan 2010, 2015). In lieu of a binary approach, a plural description on a continuous scale (Nékám 1938) is needed. Only in this way can and should the law make the relationship between human and non-human entities visible and speakable.

[13] See Alexander (2020; p. 219); Keenan (2010; p. 434); Keenan (2010; pp. 166 ff.). For Germany, see also expressly § 14 (1) GG: 'Eigentum verpflichtet. Sein Gebrauch soll zugleich dem Wohle der Allgemeinheit dienen'.

[14] This line of reasoning resonates with that of many authors that are contributing to this topic. See, for example, Alvarez-Nakagawa (2017; p. 1274); Cooper (2007; p. 636); Davies (2016; pp. 38 and 47); Frow (2020; p. 280); Keenan (2010; pp. 426, 427 ff., 434); Keenan (2015; pp. 5–6, 8); Keenan (2020; p. 544); Latour (1996; p. 239); Underkuffler (2003; p. 111); Vatter (2020; p. 226).

Here then, comes the fourth and final step. Regulating points of contact in a non-dichotomous ontology implies using a legal language of (objective) law instead of the modern, individualistic language of (subjective) rights (*contra*: Kurki 2017a), as they are individualistic in nature (Alexander 2020) as is the whole modern legal language of subjective rights.[15] The ways in which non-Western legal systems deal with coexistence on earth – in contrast to the colonial past – could provide an example for us at this stage (De Leeuw and van Wichelen 2020; Keenan 2020 kám 1938). Those examples are already well documented, for example in the African concept of *ubuntu* (Keirse 2014), in the thinking of Aboriginal, Andean, Māori, Melanesian, and First Nations (Busse and Strang 2011; Davies 2020b; de la Cadena 2019; Frow 2020; Keenan 2020; Vatter 2020) and in Ancient Egypt (Nékám 1938). These examples can be helpful in designing the Western legal landscape that is to come.

We contend that the model of cont(r)actualisation that we have developed in recent years is likely to contribute to the transformation we are pinpointing here. We initially designed cont(r)actualisation as a transformative model for the legal recognition of non-traditional family configurations between parents and children, on the one hand (Swennen and Croce 2017; Swennen 2019), and between adults on the other (Swennen 2020; Croce and Swennen 2021). In doing so, we aspired to challenge the traditional view of family law categories as predefined, static statuses. We suggested replacing it with a model in which the law gives law-users themselves room to shape their fragmented family constellations.

We believe cont(r)actualisation can be of use in making humans' relationships with non-human entities legally visible and speakable. Whilst it is not for this article to cut deeper into the ontological grounds of this legal recognition model, to be brief we can say here that it is both a relationist and anti-essentialist conception. Relationism means that everything that exists, only exists within a network of connections between nodes, where 'node' can be understood as anything relevant within a network. Only within the boundaries of a given network can one thus determine what makes a given entity what it is. A married couple's wedding ring provides us with a good example here. The meaning and role of that wedding ring for this married couple are different from the meaning and role of similar entities (rings) within similar networks (relationships).

In order to determine this meaning and role, it is therefore insufficient merely to determine the form or material composition of the ring in general, or even the status that the ring has within the institution of marriage. For based on this status, one could only indicate what wedding rings mean in similar contexts, not what a particular wedding ring is in a particular context. It is quite unlikely that wedding rings within different networks will have exactly the same nodes – although some wedding rings may share some nodes, such as the meaning assigned to them by the couple, the material they are made of, or the jeweller where they were bought.

[15] In that respect, Villey (1946-1947, p. 203) points out: "N'est-on pas entraîné à mal comprendre la signification de certains mots, tel et en premier lieu le mot de *jus*, qu'à notre avis les modernes ont grand tort de traduire 'droit' subjectif?" (Are we not led to misunderstand the meaning of certain words, such as, first of all, the word *jus*, which, in our opinion, is very wrongly translated by the modern world as subjective 'right'?).

If one wants to establish the identity of the non-living entity called 'ring' – not in general, but within the relational network of two individuals – one must find out what this entity does in the particular network of which it is a part – what it evokes, what it means, what it represents, what its value is, what material it is made of, who its designer is, and so on. What a particular ring is in a particular network can only be determined by the ethnographic method proposed by Latour (2005a), which implies that 'there is only science of the particular'. Determining the identity of this entity 'ring' within this network 'marriage' requires a much greater effort than simply determining the identity of rings in general within the institution of marriage in general. Anti-essentialism is therefore one of the main consequences of relationism.

If that is the case, cont(r)actualisation is a recognition model that helps to show us why and to what extent non-human entities are relevant to people's lives and identities – showing, in other words, what non-human entities do, 'especially in the emotional field, for the development and fulfilment of one's own personality' (ECRM 18 May 1976 (rev.), No 6825/74, *X. v. Austria*). In the conception we champion, in line with the artificialist notion of property, law figures as a *descriptive activity* tracing and explaining how actors interact with each other and create points of contact. These actors articulate these points contractually in such a way that they can be accommodated within an existing legal category – such as 'marriage' or 'parent', or thus also 'ring' – and that allows for that category to be revised and extended. In this way, those actors literally become law-users. In doing so, they contribute to the aligning of legal categories with the social reality that categories are meant to describe. In the model of cont(r)actualisation, the production and revision of legal categories becomes contingent on the ways in which actors articulate their points of contact.

Beyond doubt, a relevant difference between human and non-human entities remains: the latter cannot cont(r)actually articulate *what* they do within their network, *how* they do it, and how they want the law to regulate that what and how. It is therefore not as law users that non-human entities can legally enter the picture. This does not alter the fact that the legal description of social reality is also productive for the status of non-human entities – which can be more than inert carriers of human making of meaning.[16]

[16] It is worth noting, in passing, that the relationalist and anti-essentialist model we propose evidently raises concerns about legal certainty and about the social and economic costs of researching each specific assemblage (see Schneider 1992, pp. 520–522) to which to attach appropriate legal consequences. One way to address concerns is to assume general identities by default, as a template. Margaret Radin, for example, proposed 'shared understandings that are, for now, too entrenched to be revisable by individuals' (previously: 'consensus') as a yardstick for considering property as personal, in the sense of relevant to 'human flourishing' (previously: 'healthy self-constitution') (1993, pp. 4–5). But law users should also have the ability to adapt the template to their particular assemblage. This does not risk law becoming a potluck (Munt 2013; pp. 228–250). Existing examples in legislation (e.g. art. 643 Code civil du Québec; § 2047 German BGB) and legal doctrine (Cornu 1994; p. 229), in particular on personal objects in inheritance law, show how open norms provide scope without disproportionately compromising legal certainty. In this respect, law users are entitled to (only) semi-autonomy (Swennen and Croce 2017, pp. 551–553).

Conclusion

The cont(r)actual approach we advocate goes far beyond merely re-emphasising the artificiality of the current legal categories of person and object and of the dichotomy severing them. Far beyond, it can also help do justice to the contingency and mutually constitutive nature of the relations between human and non-human entities that make up an assemblage. To this end, the concepts of person and object themselves must be thoroughly rethought and the concept of (subjective) right itself must also be questioned. To this end, the metaphysical vision on which cont(r)actualisation is based has transformative potential because 'ceasing to be modernist, it reverses the Great Divide' (Latour 1996; p. 238) between person/subject and object/object with a relational and anti-essentialist view of the world. It relativises existing legal concepts by recognising that 'modernism in philosophy was a brief parenthesis in intellectual history' (Hache and Latour 2010, p. 326. Also Frow 2020; Nékám 1938). Going beyond merely rethinking the dichotomy between person and object, such a desirable transformation also further questions the dichotomy between property law and contract law. In this sense, cont(r)actualisation offers the possibility of combining an artificialist approach to legal categories with a new focus on relationships. For cont(r)actualisation implies that the identification of people's property relations with objects requires the identification of how the former affect the life and identity of the latter, and vice versa.

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