

Special Issue Traditions, Myths, and Utopias of Personhood

Law as Magic. Some Thoughts on Ghosts, Non-Humans, and Shamans

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Abstract

Legal metamorphoses between persons/things have been recurrent in history: Persons can become things, animals can turn into persons, and even ghosts can obtain personhood in the legal domain. Law would work then as a form of magic, a powerful instrument to create realities that, although fictional, have very real effects. Drawing on anthropology and legal scholarship, I will show the links between law and magic. In this endeavor, I examine two groups of legal cases from Argentina where people and animals respectively obtained personhood through the magic of law. First, I analyze the so-called human rights trials that are judging the crimes of the last military dictatorship (1976–1983), and I argue that these are working to restore the legal personhood of those who enforcedly disappeared. Second, I examine a series of judgments that have recently ruled—for the first time in modern legal history—that orangutans, chimps, and elephants are “non-human persons.” I conclude this Paper by contrasting legal magic with shamanic practices. I argue that even if these two are linked, it is possible to find in some forms of shamanism a different way of framing the relationship between persons/things that can offer an alternative (to) law.

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“We have come to an age that prides itself on hard facts,
that is found of thinking that everything is debunked.
Yet we are still full of *abracadabras*.”¹

A. Introduction

What if I start with a question? Is it not that every good essay should begin with one? Did I not already start with a kind of interrogation? Let us open this inquiry, then, by asking: What do people, animals, objects, and specters have in common? This might be an intriguing question to begin with. Nevertheless, throughout these pages, I would like to argue that all these entities are “creatures of the law.” In other words, that they all share the way in which law makes and unmakes them, and that law has considered them as persons or things—or even both at once—depending on the context and the historical circumstances. This is to say that all of these entities have in common a very precarious condition in which their existence is animated by and through law, a state that, certainly, we could call magical.

It is known that in some ancient and medieval legal traditions animals and even objects have been considered as having personhood, and accordingly, were usually subjected to punishments for their “deeds”: The practice of the *deodand* in English law—in which animals or objects were punished for crimes or for actions that brought damages to human beings—is just one example of a very extended practice in human history.² We are also aware that in ancient Roman Law, and more recently in U.S. legislation as well, some people were considered things or mere chattel, and thus were subjected to different forms of slavery and forced labor. The place of women and children as part of the belongings of the Roman household and under the absolute domain of the *Pater* is also very well known; a place that has been zealously preserved, with some mitigations, in the majority of modern legal orders. Moreover, nowadays, many legal regimes consider some people less than persons—expatriates, refugees, and inmates in many countries are deprived of rights—and can make abstract entities, such as corporations, states, and NGOs, full persons in law. During the last few years, in some South American constitutions, legal personhood has been granted to nature, such as in Bolivia and Ecuador’s Constitutions, and in some cases, as I show in this Paper, even ghosts and dead people gained legal standing.

¹ John H. Clark Jr., *Abracadabras in the Law*, 229 N. AM. REV. 584 (1930).

² For more about these practices, see EDWARD PAYSON EVANS, *THE CRIMINAL PROSECUTION AND CAPITAL PUNISHMENT OF ANIMALS* (1906); see also Jacob J. Finkelstein, *The Goring Ox: Some Historical Perspectives on Deodands, Forfeitures, Wrongful Death, and the Western Notion of Sovereignty*, 46 TEMP. L. Q. 160–290 (1973).

While these metamorphoses may seem astounding to a lay person, legal scholars are accustomed to seeing how different beings pass from one state to the other in a pendulous fluctuation that seems endless. This ominous dance would be completely irrelevant, though, if not for the fact that the assigned legal state is usually accompanied by faculties or disabilities. In other words, the legal status determines the treatment that we give to these entities, the restrictions that we impose on ourselves in respect to them or that we impose on them in respect to us, and ultimately, the degree of value that we give to their “being in the world.”

In what follows, I explain these legal metamorphoses as a form of magic, and subsequently, I analyze two recent legal cases of Argentina that show very well how this alchemy of law works, making and unmaking personhood. For this, I draw on anthropological literature and also on an incipient legal scholarship that is trying to show the existing links between law and magic. I especially focus on the work of Colin Dayan, who has made an important contribution to understanding legal metamorphoses as a form of “profane magic”, with which I try to engage critically.³ I conclude the Paper by analyzing the main differences between law’s magic and some shamanic practices that have been studied by anthropologists during the last years with increasing interest. My intention is to show that these shamanic practices, even when sharing similarities with legal metamorphoses, perform a completely different function, allowing humans and non-humans to cross the barrier that actually separates them, thus complicating the current rigid demarcation between persons and things. The ultimate aim of this Paper is to provide some initial steps and to make some considerations towards an inquiry that could show that some forms of shamanism could be means to conceive an alternative (to) law—that is to say, either an alternative law or an alternative to the law—that can allow us to think in different ways of conceptualizing the relationship between persons/things; ways so distinct and different from the current ones that challenge our general understanding of the world and our relation to it.

B. Law *as* Magic

The very curious metamorphosis that beings experiment in law has been carefully studied by legal scholars over the years. Since the Roman *jurisconsultus*, defining the distinctions between *persona* and *res*, to the work of Alexander Nékám,⁴ early in the last century, and the most recent research by Christopher Stone,⁵ among many others, there has been a legal tradition that has paid careful and patient attention to this very particular legal phenomenon. However, as it is highlighted in the introduction to this volume, it can be said

³ See COLIN DAYAN, *THE LAW IS A WHITE DOG* (2013).

⁴ ALEXANDER NÉKÁM, *THE PERSONALITY CONCEPTION OF THE LEGAL ENTITY* (1938).

⁵ CHRISTOPHER STONE, *SHOULD TREES HAVE LEGAL STANDING? AND OTHER ESSAYS ON LAW, MORALS AND THE ENVIRONMENT* (1996).

that many questions still remain without answer and important issues continue undertheorized: How do we conceptualize these metamorphoses that occur within the law? How do we understand this constant legal alchemy? How do we analyze the realities that law creates with the production of persons and things?

To understand these metamorphoses, I propose to think of law *as* a form of magic. In other words, I argue that we can think of some modern legal practices as a secularized way of performing certain material effects through symbolical acts; rituals that work in the imaginary but have unmistakable consequences in the “real” world. To be more precise, I do not mean that law is *as such* magic, but I think that law can be thought *as if* it were a magical practice. That is to say, I would like to argue that many legal acts and its consequences can be categorized under this hermeneutical framework and that this point of view, this methodological outlook, could be fruitful and revealing of some of law’s most obscure features and characteristics.⁶ To be clear: I am not saying that all legal regulations resemble magic, neither that law, in general, should be categorized simply as a magical performance, but that certain legal domains and some particular legal acts, especially in the realm of persons and things, can be understood under this gaze. In short, I am interested in rescuing and exposing the magical dimension of legal acts, or how modern law and its formulas can work effectively and very frequently as magic used to do in other times and places.

Now for some people, this could be a strange lens to frame and consider the law. Some would probably say that with this methodological maneuver we risk placing law in an outdated framework, and more if it is considered that nowadays nobody believes in magic or, even worst, that everybody believes that magic does not exist. So, what is the point then of characterizing law as magic? What is the point of analyzing a “modern” and “rational” institution through the prism of a “primitive” and “irrational” practice? Well, precisely this one: To show that law is neither modern nor rational, and that law shares many features with magic’s alleged “irrational primitivism.” In other words, my point is that the “rationalization” of the legal domain in the West—*fantastically* described by Max Weber⁷—

⁶ For more about “As if” as a perspective to analyze law, see Christopher Tomlins & John Comaroff, “Law as . . .”: *Theory and Practice in Legal History*, 1 U.C. IRVINE L. REV. 1039 (2011); see Catherine L. Fisk & Robert W. Gordon, Foreword to “Law as . . .”: *Theory and Method in Legal History*, 1 U.C. IRVINE L. REV. 519 (2011); see also Stewart Motha, *As if – Law, History, Ontology*, 5 U.C. IRVINE L. REV. 327 (2015).

⁷ See MAX WEBER, *ECONOMY AND SOCIETY. AN OUTLINE OF INTERPRETATIVE SOCIOLOGY* 641 (G. Roth & C. Wittich eds., 1978). Even when the use of the term “rationalization” is notoriously vague in Weber’s analysis, this usually designates a general movement towards a systematic, methodological, universal, self-conscious way of thinking. That is to say, a form of thought “based on human reason and not on external systems like magic.” See Assaf Likhovski, *Protestantism and the Rationalization of English Law: A Variation on a Theme by Weber*, 33 L. & SOC. REV. 365 (1999). It is interesting to highlight that terms such as “magic” and “irrationalism” have in this context more or less an interchangeable meaning. Moreover, according to Weber’s description of the rationalization process, modern law and magic should be considered as being mutually exclusive phenomena. It is this discontinuity between magic and law that I want to question in this Paper.

never entirely happened in absolute terms, that this was merely an adjustment of the *rationale*, a shift in the imaginary domain of law rather than a change to *Rationality*.

I think that despite that we live, or, to be more precise, that we believe that we live, in an era well detached of our past “primitive” customs, maybe in a technological posthumous time beyond modernity, perhaps already in the future, or just in a postmodern hereafter; we can still think of legal transmutations as if they were a magical practice, a practice which thinking is magical, and which effects are, in some way, magical too. That is to say, even whether we supposedly live in a “disenchanted world,”⁸ an era devoid of mysterious forces, stripped of all uncanny powers, where rationality and technological advances seem to have entirely colonized our imaginaries, I would like to propose that our *logos* and *techné* are still imbued and pervaded in its core with our most ancient beliefs and practices. To say it differently, and as some scholars have pointed out recently, it is necessary to problematize the relationship between “enchantment” and “disenchantment,” particularly its teleological narrative, as there are reasons to argue that they might be simply two sides of the same coin.⁹ It would be possible to think that the process of rationalization and secularization itself created a fictional enchanted religious-magical past from which the modern era is seen, retrospectively, to have departed. In this regard, western modernity would have constituted itself as the epitome of rationalization and secularization by means of casting out the shadow of “irrationality” towards the past and the distant. It could be said that our world “enchanted” other worlds to become “disenchanted” itself.¹⁰

Hand in hand with this, the process of rationalization can be understood as the enactment of a large concealment of “irrational” practices and beliefs in institutions and social practices in the West, that not for being hidden stops being active and having social and political consequences. If this is true, the value of pointing out the magic that still pervades our law is to put in evidence these processes of suppression/repression. In this regard, this endeavor is taken not for the sake of a “re-enchantment of law,” as some may think or may want, but with the aim of showing the effects of power that this concealment has had and still has. Our task should be to trespass the fictional opposition between “enchantment” and “disenchantment,” in the understanding that this is entirely part of the same dynamic that erects persons and things and other binaries that structure our legal imaginary. In some way, the project that seeks to set aside the logic of enchantment/disenchantment goes hand in hand with the one that wants to leave behind the dichotomous oppositions between beings. But, before going any further, let us see how law acts magically.

⁸ See WEBER, *supra* note 7, at 405.

⁹ See Shai J. Lavi, *Enchanting a Disenchanted Law: On Jewish Ritual and Secular History in Nineteenth-Century Germany*, 1 U.C. IRVINE L. REV. 813 (2011); see also Tomlins & Comaroff, *supra* note 6, at 1060–61.

¹⁰ See Lavi, *supra* note 9, at 813–42.

C. The Magic(s) of Law: Perspectives in Anthropology and Legal Theory

If we consider for one moment what magic really is for us and how magic really works in societies that believe or believed in it, we immediately see that law and magic are historically and structurally linked. Historically, there are many testimonies of societies where law and magic worked closely together, and where they could not be totally isolated from each other in social practices. In this regard, for example, the studies of Georges Dumézil showed that long ago in Proto-Indo-European societies the functions of sovereignty were usually distinguished in two complementary parts: One juridical and related to the human world, the other sacred and magical and rooted in the supernatural order.¹¹ Law and magic were then a manifestation of the same underlying phenomenon, two sides of the same coin. It is interesting to note that it is possible to trace these two functions of sovereignty even well into the Middle Ages, as March Bloch has shown in his important study on the “thaumaturge-kings” in France and England, where curative powers and the performance of miracles were attributed to the kings.¹² This characteristic twofold function of sovereignty, based on law and magic, has been seen also in many “chieftainships” of societies from very different cultural roots, either in America, Africa, Asia, or Oceania.¹³ To be clear, I am not claiming the existence of a “universal” condition here, but it is important to acknowledge that the intertwinement between law and magic has been very common in human societies over different times and cultures.

Nevertheless, the interesting aspect of this is that the affinity between law and magic has been not only historical, but also functional and structural. Is magic not, similar to law, a way to control, to shape, to mold the world at our will, to create an order, in accordance with certain rules that we created? This is the definition of magic that an important part of the anthropological theory has been defending—of course, not without internal disputes and much controversy—since the inception of this discipline in the Nineteenth Century. It could be argued that the anthropological discourse has always tried to bring law and magic together, most of the times even without noticing it, trying to explain the one with recourse to the other, and such a conscious or unconscious strategy could be seen as a symptom of the structural homology that exists between these two phenomena.

To begin, it can be said that the anthropological literature has shown a long time ago the normative character of magic, and inversely, the magical character of norms. In his classic study, *The Golden Bough*, James Frazer argues that magic is actually a system based on laws

¹¹ See GEORGES DUMÉZIL, *MITRA-VARUNA: AN ESSAY ON TWO INDO-EUROPEAN REPRESENTATIONS OF SOVEREIGNTY* (D. Coltman trans., 1988).

¹² See generally MARC BLOCH, *LOS REYES TAUMATURGOS* (M. Lara & J. Rodríguez Aguilar trans., 2006).

¹³ See HUTTON WEBSTER, *MAGIC. A SOCIOLOGICAL STUDY* 287–93 (1948), reviewing many examples of chieftainships in different cultures.

that would be immanent in nature and that would govern it. Thus, in ancient times, what we call magic today, would have been merely the belief that a set of rules determined the production of events in the world, rules, that if used by men, would allow them to control the occurrence (or not) of certain events. The magician's act constitutes a manipulation of these laws to her advantage through *interpretive practices*—reading the omens, the natural phenomena, the will of the gods, etc.—and through practices that are based on *analogical thinking*. These are usually called the “laws of sympathy,” which Frazer divided into the “law of similarity” and the “law of contact,” which means, alternatively, that the like produces the like and that contact results in contagion (in concrete, that an image can produce the object itself, or that the part is the same as the whole). Frazer exemplifies the working of these laws with very interesting rituals that involve the use of effigies, in forms including drawings, images, objects or puppets that represent or are part of a person/thing in question. Under certain conditions, that are defined by the laws of sympathy, acting over these objects produces effects over the persons/things that they represent or belong to.¹⁴ In the bottom of this rationale, of course, we found at work the “association of ideas”—as E. B. Tylor, who inspired Frazer's work, has characterized these ideational connections¹⁵—or what has been called, more recently, *mimesis* by the Australian anthropologist Michael Taussig.¹⁶ The most important thing to remark, nevertheless, is that for Frazer, magical practices would be destined to *produce* certain effects in the world through the manipulation of these laws of sympathy: Magic would be, then, a *creative* practice in accordance with certain rules or laws.

It has to be noted that, for Frazer, as for many other anthropologists that followed him, the comparison to make was between magic and science—not between magic and law. The aim was to show that magic was an antecedent of scientific thinking, a “pseudo-science,” as, for example, Malinowski called it,¹⁷ or a wrong way of conducting science.¹⁸ In this comparative endeavor, however, the occurrence of a very paradoxical and interesting phenomenon can

¹⁴ JAMES FRAZER, *THE GOLDEN BOUGH: A STUDY IN MAGIC AND RELIGION* 11–13 (1925).

¹⁵ E. B. TAYLOR, *1 PRIMITIVE CULTURE* 116–19 (1920).

¹⁶ See MICHAEL TAUSSIG, *MIMESIS AND ALTERITY* 47–58 (1993), describing Frazer's sympathetic magic as a form of mimesis. With this characterization, Taussig points out that behind all forms of sympathetic magic lies as a foundation the mimetic faculty, that is, the capacity to imitate, to mimic or to double, a trait shared by all human beings, and we can add, by some non-human beings as well. For Taussig, this mimetic faculty is at the core of what produces resemblance and difference.

¹⁷ BRONISLAW MALINOWSKI, *MAGIC, SCIENCE AND RELIGION AND OTHER ESSAYS* 67 (1948).

¹⁸ It is important to highlight that those early anthropologists lost sight of the normative character of the natural sciences to which they were attempting to compare magic. As it is easy to notice, legalistic assumptions, called “laws of nature” and a legalistic methodology, called “scientific method,” are in the foundations of all natural sciences. This unawareness might be the reason of anthropologists' difficulties to see straightaway the close relationship between law and magic, and also of their recurrent, although, involuntary, associations of these two phenomena.

be appreciated. If, on the one hand, the anthropologists usually lost sight of the close connection between magic and law, on the other hand, maybe inadvertently but also very frequently, pointed out the characteristics that associated the one with the other. In this regard, they constantly highlighted that magic was more than merely a way of understanding the world, and that this practice also had an instrumental character, many times related to the exercise of power and sovereignty. In other words, anthropologists usually highlighted that magic was a practice to order, to mandate, to command, and thus, a phenomenon closely related to legal practices. Consequently, according to Frazer, for example, what distinguishes magic of religion and thus, what therefore brings magic near to law, is the *coactive* character of the former: The magic rite acts over the nature and the phenomena—even over the gods and the spirits—forcing them, obliging them to conform to human desires; religion, in contrast, tries to reach a conciliation with nature and the gods, to gain their indulgences and favors. Thus, if religion *implores*, magic—such as law—*commands*.

Marcel Mauss, in his study, *A General Theory of Magic*, was who probably pointed out more clearly, although maybe unintentionally, the magical character of law, or how legal acts can easily turn into magical rites. In this important study, Mauss starts arguing that magic might be confused with legal actions, but that we can and we should analytically distinguish them. This confusion originates in that magic has been linked traditionally to a system of *jural* obligations, since in many places certain words and gestures constitute binding sanctions. Mauss explains that legal actions often acquire a ritual and a sacramental character, such as in contracts, oaths, and trials. Nevertheless, for Mauss, despite the similarities, these rites are not magical in principle, to the extent that they only produce contractual obligations. But, immediately, he also points out that if these rites do more than merely establish binding relations and if they assume a special kind of efficacy, a productive or creative character, they cease to be legal to become magical actions. According to Mauss, magic rites are able to produce more than mere contracts, they are eminently creative, they “do” things.¹⁹ It seems that for Mauss, even though he does not put it in these terms, it is as if law were permanently at risk of falling into the realm of magic. In this regard, it can be argued that Mauss’ attempt to differentiate law of magic actually ends up showing how the law works magically. After all, it makes no sense to restrict the legal domain to contractual obligations—the only way that Mauss finds to distinguish law and magic—and even this distinction loses all its force if one thinks that establishing a binding relation also implies a creative act. Let us not forget that in this study, Mauss attempts to isolate magic of other phenomena, not only from law, to justify its autonomy as a field of scholarly inquiry; and from this need comes up the stilted character of some of his analytical distinctions. In any case, I think that Mauss’ analysis points out, to his chagrin, how difficult it is to distinguish law from magic. And I would argue that this distinction does not work because law shares what we could call the “mystic force,” to paraphrase Jacques Derrida, of magic, and because

¹⁹ MARCEL MAUSS, A GENERAL THEORY OF MAGIC 23–24 (Robert Brain trans., 1972).

underneath the apparently rational characteristics of contemporary law, still dwells a very vivid magical thought.²⁰ Thus, in its structural and instrumental aspects, magic and law are part of the same social and cultural phenomenon.

It is important to highlight that the magical elements underlying legal acts have been underscored also by legal scholars over the years. While these happened intermittently and usually unsystematically, it is necessary to acknowledge that many jurists have had a better eye than many anthropologists when it came to pairing law with magic. The Scandinavian school of legal realism deserves a special mention here—particularly in the works of Axel Hägerström and Karl Olivecrona²¹—that was probably one of the first in pointing out these “mysterious,” as they called it, aspects of the law. More contemporarily, a diversity of legal scholars coming out from different backgrounds have highlighted as well an interesting array of issues related to the “magic” of the legal domain.²² Since all these studies would deserve careful consideration, I would like to pause here just on one of them, on Colin Dayan’s magnificent *The Law is a White Dog*.²³ The reason for this is that I would like to engage critically with this work, inasmuch as it specifically analyzes legal metamorphosis between persons and things as a form of legal magic.

We have to start by saying that Dayan’s argument is that law works exactly as magic, as a tool that creates realities and, in turn, undoes them; realities that, although fictional, have very material effects for all those who are involved in legal proceedings. Furthermore, Dayan specifically compares law with shamanism and with voodoo, and in that process shows that law and magic share not only ritualistic, sacred, spectacular features, but also the protean capability of changing the world by using words. In Dayan’s terms, “law words . . . wield the power to transform.”²⁴

Even when Dayan doesn’t say it in these terms, following the “speech act theory,” it could be argued that both law and magic have a “performative” character. As I said before, magic

²⁰ See Jacques Derrida, *Force of Law: The Mystical Foundation of Authority*, in *ACTS OF RELIGION* 241–42 (2002). Aligning with Derrida’s claim, I can say that both law and magic need people to believe in them (give some credit or have some kind of faith in them) to be able to work and to have efficacy.

²¹ See KARL OLIVECRONA, *LAW AS FACT* (1971); Karl Olivecrona, *Legal Language and Reality*, in *ESSAYS IN JURISPRUDENCE IN HONOUR OF ROSCOE POUND* 151–91 (R.A. Newman ed., 1962).

²² See generally *LAW AND MAGIC: A COLLECTION OF ESSAYS* (C. Corcos ed., 2010); see also Tomlins & Comaroff, *supra* note 6; Fisk & Gordon, *supra* note 6; Jessie Allen, *A Theory of Adjudication: Law as Magic*, 41 *SUFFOLK U. L. REV.* 773 (2008); Lior Barshak, *The Totemic Authority of the Court*, 11 *L. & CRITIQUE* 301 (2000); Kaius Tuori, *The Magic of Mancipatio*, *LV REVUE INTERNATIONALE DES DROITS DE L’ANTIQUITÉ* 499 (2008); Christopher H. Hanna, *The Magic in the Tax Legislative Process*, 59 *SMU L. REV.* 649 (2006); Suzanne Last Stone, *Rabbinic Legal Magic: A New Look at Honi’s Circle as the Construction of Law’s Space*, 17 *YALE J.L. & HUMAN.* 97 (2013).

²³ See DAYAN, *supra* note 3.

²⁴ *Id.* at xiii.

was characterized by anthropologists as a means to perform, to produce the world, an instrument that molds and transforms reality with its incantations and ritual practices. Stanley Tambiah has focused on this aspect of magic using the speech act theory with wonderful analytical results.²⁵ But, what needs to be stressed here is that, as it is very well known, law has also been characterized as a performative discourse; actually law has been described as the performative speech act *par excellence*.²⁶ Thus, what Dayan points out here—although with different analytical tools—is possibly one of the main characteristics that indicate the common ground between law and magic: Its discursive character and its performative nature.

It should be noted that the most interesting aspect of Dayan's work is how it tracks in history the irrational aspect and the magical thinking in law, and how this search becomes a way of understanding the bizarre legal alchemy by which people can become objects and this latter, persons. Thus, at a general level, Dayan seeks to show how personhood is built and shaped by law, and in a particular plane, how certain people and certain things have been subjected historically to different forms of metamorphosis through legal rituals. Nonetheless, it should be said that Dayan's argument is highly critical of legal magic. Dayan characterizes law as a "bad profane magic" because the metamorphosis that it produces is usually aimed at creating on one side of the spectrum totally disable beings. Through law, capabilities and disabilities are distributed among the entities of the world. Persons have rights, things are mere objects of rights: The former may possess, the latter may be possessed. Accordingly, Dayan studies many historical examples as well as case law to show this protean character in law that objectifies and thus dispossess entities making them possessions. She mainly focuses on slaves, prisoners, and animals, and convincingly demonstrates that law has usually acted as a *magic of dispossession*.²⁷

In what follows, I focus on two cases from Argentina in which it might be argued that law acts by giving personhood to beings that were denied as persons before. In some way, these are cases of re-possession through the law, that is to say, the reverse of the process that is so well described by Dayan. The reason that guides me in this endeavor is not the desire to give a more apologetic picture of legal magic, to counteract Dayan's "pessimistic" outlook, as it might be thought, but to pave the way to show, at the end of this Paper, that there might be forms to neutralize the "bad magic" of modern law, and additionally, alternatives to it. That is to say, I would like to believe in a magic that *personifies/subjectifies* and thus

²⁵ See STANLEY TAMBIAH, *CULTURE, THOUGHT, AND SOCIAL ACTION: AN ANTHROPOLOGICAL PERSPECTIVE* 78–79, 123–169 (1985); see also STANLEY TAMBIAH, *MAGIC, SCIENCE, RELIGION, AND THE SCOPE OF RATIONALITY* 58 (1990).

²⁶ See JOHN AUSTIN, *HOW TO DO THINGS WITH WORDS* (1962); and Jacques Derrida, *Declarations of Independence*, 15 *NEW POLITICAL SCIENCE* 7–15 (1986); and MAUSS, *supra* note 19, at 241.

²⁷ See DAYAN, *supra* note 3, at xii–xiii, 33–34, 40, 56, 87, 209, 215. These pages are particularly on point, although this issue is analyzed throughout the entire work.

creates able beings, a magic of resurrection or re-possession, rather than of “dis-possession.”

D. Ghostly Personhoods: Argentina’s “Disappeared”

The first case that I would like to consider is that of the enforcedly disappeared people in Argentina—people denied as such by the State during the last military dictatorship—and the process through which they recovered their personhoods through several legal mechanisms implemented after the return to democracy. I believe that this is a very interesting example of legal metamorphosis because it shows how people that were totally denied as holders of rights, could recover later, through different legal rituals and performances, if not their lives, at least their political and legal standing. This is as well, interestingly, a form of legal *resurrection*, that implies the creation of a *ghostly personhood* that disrupts, to say the least, the binary traditional opposition between persons/things.²⁸

During 1976–1983, Argentina was ruled by a military dictatorship that widely violated the rights of the population. During this time, nearly 30,000 people were enforcedly disappeared. This practice involved the abduction of individuals targeted as political opponents by the military government—carried out in secret operations by military officers, police personnel, or other security forces—and the illegal detention of these people in clandestine centers located primarily in military or police facilities, where they were tortured and, for the most part, killed. Their bodies were then thrown into the water, incinerated, or buried in unmarked graves. Confronted by relatives and human rights organizations, the State refused to give any information about their final destiny. Thousands of *habeas corpus* petitions—an instrument typically used in Argentina to challenge the legality of a person’s detention—were presented all over the country at courts by familiars requesting the immediate *appearance* of all those missing, but every time, the Government denied its involvement and any responsibility.²⁹

Once the dictatorship fell and the democratic rule returned, one of the most significant challenges was to determine how to consider these people who were not *legally* dead, but that certainly were neither alive. And this was not merely a moral, historical or philosophical question to address but also a very important legal problem to sort out.³⁰ In 1979, the

²⁸ In Argentine law, death represents the end of legal personhood, and a dead person (a corpse) is considered a “thing” that is “out of the market” (is not commercial or tradable). See RICARDO LORENZETTI, 1 RESPONSABILIDAD CIVIL DE LOS MÉDICOS, 57–86 (1997).

²⁹ For an explanation of the phenomenon of the enforced disappearances in Argentina, see EMILIO CRENZEL, MEMORY OF THE ARGENTINE DISAPPEARANCES (2011); JO FISHER, MOTHERS OF THE DISAPPEARED (1989).

³⁰ It was imperative to determine the legal status of the disappeared in order to regulate several important aspects of social life: Family issues (*patria potestas*, adoptions, inheritances), labor and pension issues, state compensations, etc.

dictatorship established a legal procedure through which the disappeared could be declared “presumptively dead.”³¹ However, in 1994, the second democratic government elected after the fall of the dictatorship decided to create a new special legal category called “absence by enforced disappearance,” in response to the demands of an important part of the relatives of the victims.³² In this regard, many familiars and some political organizations refused to recognize the deaths of the *desaparecidos* without first recovering their bodies or without having, at least, a confession of the army confirming that they were killed. Because the military forces denied to provide any information on the whereabouts of the disappeared, the situation represented a political dead end. Moreover, for some organizations like the Mothers of Plaza de Mayo (*Madres de Plaza de Mayo*), the refusal to accept death was a political and ethical standpoint to face the government and the rest of the society, a claim that performed a *J'accuse* sustained in an “as if,”—as if the disappeared were not dead, or as if they were still alive—and consequently requested some sort of magic by the state: That the *desaparecidos* “reappear alive” (*aparicion con vida*). An impossible demand that made the accusation even more wrenching, if possible, and that forced the state to perform some sort of “resurrection” to conform.

Even if the immediate legal effects of the “absence for enforced disappearance” were similar to the declaration of “death presumption,” allowing, for example, that testamentary rights be exercised, the main advantage of the former was that it was not necessary to recognize or request the demise of the disappeared by their relatives, as happened with the 1979 law enacted by the dictatorship. Moreover, not even the state should have to declare the death, since the person in question was not inscribed in the official registries as “dead”—also a consequence of the 1979 law—but merely as “enforcedly disappeared.”³³ It could be said

³¹ Law No. 22.068, Sept. 6, 1979, B.O. 16/10/1979 (Arg.). Article 1 states:

It can be declared the presumptive death of the person who disappeared from their home or residence, if there are no news from them, and the disappearance was reported to the authorities between November 6, 1974, the date in which the martial state was declared by decree 1368/74, and the date of promulgation of this law (author translation).

³² See Law No. 24.321, May 11, 1994, B.O. 10/06/1994. In Article 1, the law states: “Can be declared the absence by enforced disappearance of every person that have been involuntarily disappeared until December 10, 1983, of their home or place of residence, if there are no news of their whereabouts.” Article 2 states that “for the purposes of this law, enforced disappearance is when someone has been deprived of their freedom and this was followed by the disappearance of the victim, or if the victim had been kept captive in clandestine detention centers, or deprived, through any other mean, of the right to jurisdiction”, while Article 7 asserts that the effects of the declaration of “absence by enforced disappearance” will be analogous to the ones prescribed for the “presumption of death” (author translations).

³³ The inscription of the disappeared as dead in the registries was politically unacceptable for some relatives because it equated the deaths of the *desaparecidos* with other “normal” deaths, and thus helped to “invisibilize” the very particular circumstances in which the disappeared died, especially when these deaths were the outcome of the dictatorial violence.

that even when the material situation of Argentina's disappeared is similar to what happened in other post-war, post-conflict or post-dictatorial contexts—where it was necessary to determine what to do with “missing” people—the way Argentina sorted out the legal conundrum and the creation of a legal status of “disappeared” is unique in the world. No other country has dared to go so far as to re-envision the usual distinctions between persons/things in the process of dealing with their violent pasts.³⁴

This legal status of “disappeared” is not only novel but also especially interesting since it makes evident the game of fictions in law that makes possible to characterize legal metamorphosis as a magical transmutation. In the *desaparecidos* we can see clearly how even though it was known with some certainty that these people were killed, the law was able to consider them in an intermediate state, a *liminal* realm, a threshold between the living and the dead, that is to say, a not so human *ghostly* existence.³⁵ More importantly, this legal status shows that even a dead person can be considered alive by law, and thus be given legal personhood. Dayan says, in this regard, though for a different but related context, that “law can make one dead in life, and it can also determine when and if one is to be resurrected,”³⁶ and she has every reason in relation to Argentina's disappeared. Law's magic can bring death to the living, it could make you certainly disappear when it withdraws its protection, but it also can bring life to the dead.

It should be said that this unique legal status established in the law 24.321 would have been unthinkable if not for the previous experience of the human rights trials carried out in Argentina since 1985 onwards. These trials, that continue today, judge the crimes of the dictatorship and the cases of enforced disappearances. It can be argued, and I do this in more detail elsewhere, that these trials are rituals where the *desaparecidos* are constantly conjured up, or more precisely, it should be said that these are rituals of “death and resurrection,”³⁷ a special kind of those rituals that are classified as rites of passage by the

³⁴ Under the International Convention for the Protection of All Persons from Enforced Disappearances and the Rome Statute of the International Criminal Court, the enforced disappearance is now an international crime. See International Convention for the Protection of All Persons from Enforced Disappearances, G.A. Res. 61/177, U.N. Doc. A/HRC/RES 2006/1 (Dec. 20, 2006); Rome Statute of the International Criminal Court, 2187 U.N.T.S. 90 (July 17, 1998). Accordingly, during these last years, many countries have incorporated this offense into their domestic laws. Nevertheless, this does not mean that victims are given a legal status or legal personhood as “disappeared” in these international or local settings, as it happens in Argentina.

³⁵ Other scholars have seen in this status of the Argentine disappeared a very particular “ghostly” or “spectral” condition. See AVERY F. GORDON, *GHOSTLY MATTERS: HAUNTING AND THE SOCIOLOGICAL IMAGINATION* (1997); see also María Julia Daroqui, “*Desaparecido*”: *Cuerpo Forastero de la Memoria Cultural Argentina*, in 20/21 ESTUDIOS. REVISTA DE INVESTIGACIONES LITERARIAS Y CULTURALES 35–50 (2003).

³⁶ DAYAN, *supra* note 3, at 49. It is interesting to note that Article 10 of law 24.321 performs this “resurrection” when states that in cases where the “dead presumption” had been already declared (in accordance with law 22.068), the relatives can ask the “reconversion” of this state to the “absence for enforced disappearance.”

³⁷ The rites of death and resurrection are rituals of renewal. Originally they were related to the cultivation of the land and with the cycles of seasons. These rituals are represented in many cultures and myths (for example, in the

anthropological theory,³⁸ and that are very common to many cultures in moments of “transition;” in the Argentine case, a moment of transition from a dictatorial past to a democratic present. The particularity of this ceremony, nevertheless, is that who dies to resurface again is the entire social being and not merely the disappeared. In any case, and for the purposes of this paper, it is interesting to observe that, through these judgments, the law gives new life to the disappeared, a new legal personhood that makes them witnesses and even actors in the prosecution of the crimes of the dictatorship. Somehow, if the enforced disappearance can be characterized as the most radical denial of personhood, these trials may be seen as an attempt to restore that legal personhood ripped from the victims.



Figure 1. Federal Criminal Court of Jujuy Province, 7 November 2014 (Photograph: Télam courtesy).

very well-known stories of the dead and resurrection of gods, like Osiris, Jesus, etc.). Frazer describes with detail a series of these rites all over the world. See FRAZER, *supra* note 11, at 691–701. For a more contemporary study, see MATTINGER TRYGGVE, *THE RIDDLE OF RESURRECTION* (2001).

³⁸ See ARNOLD VAN GENNEP, *LOS RITOS DE PASO* (J. Aranzadi trans., 2008), explaining rites of passage, and among them the rite of death and resurrection.

Consequently, the disappeared are constantly summoned and present in the premises of the trials. This is constantly reminded by a practice that is regularly—or, it could be said, “ritually,”—performed by the relatives of the disappeared during the hearings, that consists in placing pictures of them in the empty seats of the courts (see Figure 1).

To enter and stay in the chamber of a court judging the crimes of the dictatorship can be a very uncanny experience. An indescribable cold travels through your bones when looking at the accused; some warmth is felt in the chest by the greeting of a relative; and above all, the overwhelming ubiquity of the pictures of the disappeared: The sadness, the sacredness, the force of a life gone but still present that invades everything. Before the beginning of the hearings—these trials have several because they usually span over long periods of time, that can last months or even years—the pictures of the disappeared are spread all over the place, in lines, in columns, filling all the seats. An infinity of faces, waiting, with their gazes directed towards the judges, to the accused, to everyone that is there. Some of the pictures stand alone afterwards during the hearing, some others are taken by a familiar or a friend over their lap. But the faces of the disappeared are always there throughout the trial, watching, witnessing, accusing. They surround the living; their absence is undeniably present.³⁹

It is important to point out that all the pictures of the *desaparecidos* are usually entitled with the word “presente” (present). This intends to mean not merely that the disappeared are present on the premises of the court, but also that they are part of this time, and not of a buried past. In other words, this “entitle(ment)” is noteworthy because it points out that the disappeared are at the site, that they were somehow conjured up or called to the premises of the court because they have the right to be there (maybe to testify or to bear witness). This is a claim made by the relatives of the disappeared, of course; but, in the frame of the photography, this is an affirmation of the disappeared themselves, as if they were saying: *I am here, I am present*.

But also, it could be said that the word “present” points out to the existence of a *gift*, an exchange between the disappeared and the people that participate in the ritual.⁴⁰ In some

³⁹ For more images of this practice, in which the pictures of the disappeared are placed in the seats of the courts, see Alejandra Dandan, *Tres filas con las fotos de los desaparecidos*, PÁGINA 12 (Oct. 1, 2010), <https://www.pagina12.com.ar/diario/elpais/1-154125-2010-10-01.html>; *En marzo comenzarán seis juicios por delitos de Lesa Humanidad*, TELAM. AGENCIA NACIONAL DE NOTICIAS (Feb. 28, 2012), http://memoria.telam.com.ar/noticia/comenzaran-seis-juicios-por-delitos-de-lesa-humanidad_n750; *Son 15 los juicios que por delitos de lesa humanidad que se realizan en el país*, DIARIO REGISTRADO (Sept. 27, 2015), http://www.diarioregistrado.com/sociedad-/son-15-los-juicios-por-delitos-de-lesa-humanidad-que-se-realizan-en-el-pais_a56339d3a17bfa0004e87c653.

⁴⁰ In anthropological theory, gift-giving has been understood as a form of exchange that is at the very foundation of human reciprocity and community. It is interesting to note that Mauss defined gift-giving as a “spiritual machinery.” See MARCEL MAUSS, *THE GIFT: THE FORM AND REASON FOR EXCHANGE IN ARCHAIC SOCIETIES* 9, 10–24 (W.D. Halls

aspects, this is a gift of justice, a gift that is materialized when the violence suffered by the disappeared is exposed in the hearings and judgments, when their lives are remembered and mourned in the trials, when it is recalled how they lived, and why they probably died. All this process implies to return personhood to the disappeared, as a rectification and as a small act of justice. The disappeared, despite their absence, are legally present in every respect in the halls of the courts, they are the reason why the trial is conducted, once again.

In general terms, the disappeared are brought back, reincarnated, and embodied in the trials through the evidence gathered—sometimes their mortal *remains*, or in some other cases, their objects and possessions—and through the testimony of survivors and witnesses that recall the events, and that consequently, in that moment, give voice to the disappeared. To judge the dictatorial state for the disappearances is to consider that the lives of the disappeared matter again; to do justice for their deaths is to reinscribe their lives into the political community. In the end, the present exchanged, the gift between the court attendants and the disappeared is the very basis of the community itself, a very *political* gift meant to restore the links and joints of a *polis* torn apart by violence.⁴¹ In some way, then, this is also a gift of time—the only genuine gift according to Derrida⁴²—, a gift of presence in this very present time. It is also a chance to turn back time, to give (more) time to the disappeared, and make them come back to life to rejoin the community, and consequently, to give (more) time, maybe a second chance, at a life together. But all this is impossible, and still, all this happens through, and in spite of, its impossibility.

And this is precisely why this is magic. The pictures of the *desaparecidos*, together with their voices, heard through the many testimonies of witnesses, are the *effigies* of the deceased. Let us recall that, according to Frazer, one of the principles of sympathetic magic is that effigies replace the real. An image can produce the object itself, or part of an object can be considered as the whole. Pictures, drawings, puppets; or alternatively, parts of the body like nails, hair, skin, belongings like cloths, weapons, ornaments, or all these things combined

trans., 1990); see also EMILE BENVENISTE, VOCABULARIO DE LAS INSTITUCIONES INDO-EUROPEAS 63–66 (M. Armiño trans., 1983), showing that this exchangeability is in the very etymology of the term *donum* (gift).

⁴¹ It is interesting that Roberto Esposito finds in the etymology of *communitas* the word *munus* (co-*munus*), which points out to the *donum* (the gift, the exchange) at the core of the social. According to the Italian thinker, this gift is particular because it constitutes a duty (*onus*) and arises from a “lack,” a “fault,” a crime. See ROBERTO ESPOSITO, COMMUNITAS: THE ORIGIN AND DESTINY OF COMMUNITY 3–4, 8 (T. Campbell trans., 2010). Moreover, Benveniste finds that *munus* could be linked to a group of words meaning “inheritance” (a family gift) through the suffix “nus” or “nes.” See BENVENISTE, *supra* note 40, at 63. Here we are close to associating *munus* with *Manes*, the spirits of ancestors that Romans worshiped (gift-given) in the domestic cult. It is important to note that when Romans founded a new town (a new community), a round hole was excavated and a stone called *lapis manalis* (“stone of the Manes”) was placed in the foundations, representing the gates to the underworld. It could be argued that the *Manes* were closely related to the *munus* at the foundations of the community. The connection of all these ancient practices with the behavior of the relatives of the *desaparecidos* during the trials is, to say the least, uncanny.

⁴² See JACQUES DERRIDA, GIVEN-TIME: I. COUNTERFEIT MONEY 41 (P. Kamuf trans., 1992).

together in particular assemblages, are what they represent. In the context of the trials, the pictures on the seats, a skull found in an unmarked grave, fresh or blurred memories of a witness are the disappeared themselves; to act over these objects is to act, like in voodoo rituals, directly over them. The *desaparecidos* in the trials are *legal effigies*, representations of those who were disappeared—montages of images, voices, and memories—phantasmagorias that replace an absent body with a legal existence.⁴³ Paradoxically, or not, the disappeared gain new personhood through these objects. They are these objects, and these things are their personification. And believe it or not, these kind of substitutions, duplications, and replacements are not uncommon in other societies. This is what worshiping (gift-giving) a statue of an ancestor or a totem is, or what was meant in ancient funerary rites in Greece and Rome by using the figure of a *kolossoi* or any other *simulacra*, when there was no body to bury or to incinerate—that is, when the body was disappeared.⁴⁴

Deep in the bottom of these juridical performances in Argentina, then, we can see at work a—very ancient—magical thinking through which the disappeared comes again to life and recover their legal personhood. After all, an effigy is a *fetish*, and fetishes have the power to turn things around, from *head to toe*, as it is said, that is, from person to thing, but also the other way around.⁴⁵ We will see this same magic working again in the next case.

⁴³ Let us not forget that etymologically *phantasmata* means “image” or “representation” of an object. Moreover, from Plato onwards, there is a very long tradition that associates *simulacra* and *semblance* with *phantasms* (images). I cannot help but keep relating the image of the many faces of the *desaparecidos* at the seats of courts with the issue that in Spanish the word “semblance” (*semblanza*) is closely linked to “face” (*semblante*). On another note, it should be said that Derrida associates the nature of gift-giving with the operation of a *simulacra* (a counterfeit). For him, given the impossibility of a genuine gift-giving, a gift only can “appear” as a phantom. See DERRIDA, *supra* note 42, at 14, 31. It could be said that not by chance the *exchangeability* (the gift) is the very condition of ghostliness. As Derrida has pointed out: “Spectrality has to do with the fact that a body is never present for itself, for what it is. It appears by disappearing or by making disappear what it represents: One for the other.” DERRIDA, *supra* note 20, at 276. But, we can wonder: Are not *simulacra* and counterfeit also the main features usually assigned to magic? Is this not a characteristic that derives from its impossible-possibility?

⁴⁴ See JEAN-PIERRE VERNANT, *MYTH AND THOUGHT AMONG THE GREEKS* 321–33 (J. Lloyd and J. Fort trans., 2006), explaining that in ancient Greece—and also in Rome—when the body of a deceased person was missing, the funerary rites were still performed using an effigy (a *kolossoi* or *kolossos*) that substituted the absent corpse. The main reason of this is that they believed that if funerary rites were not performed correctly—for example, burying the body—the ghost of the dead person would be compelled to wander endlessly between the world of the living and that of the dead. The *kolossoi* was not merely an “image” of the missing, but her “double.” Vernant’s words, easily recall us the paradoxical existence of the disappeared at court: “Through the Kolossos, the dead man returns to the light of day and manifest his presence in the sight of the living. It is a particular and ambiguous presence that is also the sign of an absence.” *Id.* at 323.

⁴⁵ Of course, I cannot help but think here of Karl Marx’s “commodity fetishism,” a term used to describe the process in which capitalism puts the world “upside down,” making commodity acquire animated life (we could say personhood) while people are objectified (“reified”) by the forces of the market. See KARL MARX, *1 CAPITAL. A CRITIQUE OF POLITICAL ECONOMY*, 81–96 (F. Engels ed., 1986). It is well accepted that Marx took the term from Charles de Brosses, who used it in a work of 1760 to describe the worshiping of certain talismans and amulets in West Africa. It seems that the word derives from the Portuguese word *feitiço* (charm, sorcery), which comes from the Latin *factitious* (made, artificial, made by art). According to the OXFORD ENGLISH DICTIONARY, a fetish is “an inanimate object worshiped for its supposed magical powers or because it is considered to be inhabited by a spirit.” In

E. Non-Human Personhood: Persons in the Forest or Orangutans in the Zoo

The second case is related to a series of very recent judgments in Argentina that granted personhood to non-human animals. The first of these is a 2014 judgment of the Federal Criminal Court of Cassation of Argentina—the highest court in criminal matters in the country—that granted to an Orangutan named “Sandra” the status of “non-human person” with basic legal rights, clearing the way for her to be released from the Buenos Aires Zoo after spending her entire life in captivity. The ruling came after animal rights campaigners filed a *habeas corpus* petition—as I mentioned before, a legal instrument frequently used to challenge a person’s unlawful detention—on behalf of Sandra. According to the newspapers, this is the first time worldwide that a court granted personhood to an orangutan.⁴⁶ They do not know, of course, the long history of metamorphosis that exists in the realm of law. But, let us concede that, probably for modern law, this could be the first time that non-human animals are given legal personhood,⁴⁷ and that is why the case has had worldwide impact.⁴⁸

The discussion in the case turned around the two different positions of the parties. The questions were whether Sandra should be considered a “person”—the position defended by the *Association of Officials and Lawyers for Animal Rights* (AFADA)—or as a “thing,” which was the position defended by the Zoo and consecrated in Argentine legislation. The former

anthropological terms, nevertheless, a fetish is a non-living object (it could be a material thing, but also an idea) towards which we project life and agency (personhood). See MICHAEL TAUSSIG, *FIELDWORK NOTEBOOKS 5* (2011). Beyond this characterization, it is important to highlight the force of the fetish to *personify* objects. In this regard, in this plane of doublings and replacements, it can be said that the life projected to the fetish is projected in turn by the fetish to what it represents (a dead person, a spirit, an animal, etc.).

⁴⁶ See Tom Bawden, *Orangutan Inside Argentina Zoo Granted ‘Non-Human Person Rights’ in Landmark Ruling*, THE INDEPENDENT (Dec. 22, 2014), <http://www.independent.co.uk/news/world/americas/sandra-the-orangutan-inside-argentina-zoo-granted-human-rights-in-landmark-ruling-9940202.html>; *Court in Argentina Grants Basic Rights to Orangutan*, BBC NEWS (Dec. 21, 2014), <http://www.bbc.co.uk/news/world-latin-america-30571577>; Helen Regan, *In Argentina, a Court Grants Sandra the Orangutan Basic Rights*, TIME (Dec. 22, 2014), <http://time.com/3643541/argentina-sandra-orangutan-basic-rights/>, among others.

⁴⁷ It is interesting to add here that in 2012, before Sandra’s case, legal personhood was granted to a non-animal-non-human being, a New Zealand river called Whanganui. See Kate Shuttleworth, *Agreement Entitled Whanganui River to Legal Identity*, NEW ZEALAND HERALD (Aug. 30, 2012), http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10830586. More recently, after Sandra’s case, legal personhood was granted to the Ganges and Yamuna Rivers in India, and to the Atrato River in Colombia. See Michael Safi, *Ganges and Yamuna Rivers Granted Same Legal Rights as Human Beings*, THE GUARDIAN (Mar. 21, 2017), <https://www.theguardian.com/world/2017/mar/21/ganges-and-yamuna-rivers-granted-same-legal-rights-as-human-beings>; Juan David Laverde Palma, *Un salvavidas para el Atrato*, EL ESPECTADOR (Apr. 29, 2017), <http://www.elespectador.com/noticias/nacional/un-salvavidas-para-el-atrato-articulo-691575>.

⁴⁸ The case was reported in newspapers all over the world, as can be confirmed with a quick Google search. Moreover, news following the subsequent events of the case has been reported all throughout 2015 and 2016 in different world newspapers and magazines. Even complete special stories have been dedicated to the case, as can be seen in the recent note by George Johnson. See George Johnson, *The Battle for the Great Apes*, 9 PACIFIC STANDARD 56–63 (2016).

argued that Sandra should not be treated as an object because of her intelligence and biological characteristics—orangutans share 97% of human DNA—and consequently contended that she was suffering and under depression due to the captivity. The Zoo, in contrast, sustained that it was a mistake to “humanize” the animal, and affirmed that to grant Sandra the same feelings as human beings showed a misconception of the actual biology of the orangutan.

As I said, the court finally decided that Sandra deserved the basic rights of a “non-human person.” The judgment is really short, two pages long, but it is surprising to find that the implicit argument used to justify the decision was the alleged *similarities* of orangutans with human beings.⁴⁹ A subsequent judge, Elena Liberatori, who took over the case after the Court of Cassation’s decision, was even more explicit in this matter: “[N]othing impedes that the rights to life and dignity, proper of living beings, and that are consecrated to human persons in the legal system, be extended *analogically* to Sandra, who is a sentient being.”⁵⁰ I would say, going back to Frazer, that the judges performed an act of magic here, a transmutation of the orangutan from a thing, as the Argentine law established, to a legal person, by using the principle of sympathy or mimesis, as in the case of the effigies of the disappeared in the human rights trials.

For the judges, the process of incantation starts with the “discovery” or “recognition” of human characteristics in orangutans. The biology and behavior of the animal are scrutinized to find out human or proto-human characteristics. Once these are found and established, the process of sympathy or mimesis is set in motion, and the next step is to reconsider our relationship with the orangutan. If the orangutan is similar to human persons, it should be considered as a non-human person. Or, to say it differently, once we assign to the orangutan the characteristics of humans, we make a person of the orangutan. It is interesting to observe that all the process turns around an implicit *ergo*: Orangutans have human traits, *ergo* they should be treated as humans. Some human characteristics, then, are isolated, abstracted, universalized as persons’ features that can be present or absent in other forms of being. The transmutation starts when the judges *project*, like in a fetish, these human traits onto the orangutan—referring to biology, behavior, or simply the capacity to “feel”—establishing thus the likeness between humans and orangutans. And this process finishes, subsequently, when the law fixes this metamorphosis in the words of a judgment that grants legal protection.

⁴⁹ See Cámara Federal de Casación Penal, Sala II [Federal Criminal Court of Cassation, 2nd Chamber], 68831/2014/CFCP, “Orangutana Sandra s/recurso de casación s/habeas corpus,” (2014) (Arg.).

⁵⁰ Juzgado N°2 en lo Contencioso Administrativo y Tributario de la CABA [Administrative and Tax Disputes Court N°2 of Buenos Aires City], A2174-2015/0, “Asociación de funcionarios y abogados por los derechos de los animales y otros contra GCBA s/amparo,” (Oct. 21, 2015) (Arg.) (author translation) (emphasis added).

I have to highlight that Sandra's case was just one in a series of attempts by campaigners all over the world to give the non-human members of the great ape family a status of a person in law. It is interesting to notice that only one month before the Argentine Court of Cassation ruled in this case, a court in New York decided, in contrast, that apes are "mere property." This was a case of a privately owned retired entertainment chimp living in a cage, and in contrast to the Argentine case, the judges here based the decision on the *differences* between apes and humans, and indirectly thus, on the ape's likeness to objects. In the ruling, the judges wrote: "Needless to say, *unlike* human beings, chimpanzees cannot bear any legal duties, submit to societal responsibilities or be held accountable for their actions."⁵¹ Thus, they concluded, chimps cannot be considered persons, as human beings are. In short, the magic of law can make you a possession, locking you up in a cage—as the chimp in the U.S. case—or can make you a possessor of rights, freeing you from that same cage—as in the Argentine case.

What is the reason for this different outlook between U.S. and Argentine judges? While this is hypothetical, I think that what enabled non-humans to be considered persons in Argentine law is in some way related with how it dealt with the disappeared during the last 32 years. It is necessary to highlight that modern forms of violence tend to be closely intertwined in our societies. As different studies have shown well, political violence responds, in the majority of cases, to the same logics of the violence projected towards animals.⁵² It is not by chance that, in the history of the West, to "animalize" (to consider less than human) was usually a first discursive step to justify violence, slavery, or different forms of mistreatments to other peoples. In this regard, it is easy to see that the victims of the dictatorship were treated as non-humans, beings without rights, mere objects of dispossession and violence. And, conversely, is also easy to appreciate that animals, on the other side of the spectrum, are constantly and usually left out of the pale of the juridical protection, which amounts to and resembles a kind of "disappearance." If this is the case, if the magic of dispossession at work was and is the same, the legal rituals and performances that give personhood back or for the first time, should be necessarily connected.

It is not just mere coincidence, in this regard, that the same legal instrument, the *habeas corpus*, that has been used during the dictatorship to demand in courts all over the country the "appearance" of the disappeared, is now used to request the recognition of the legal personhood of non-humans and their release from zoo's cages. As in the case of the *desaparecidos*, the *habeas corpus* functions here as the instrument to claim the "appearance" of the legal subjectivity of the entity in question, in the past the legal personhood of the illegally kidnapped, and now of the (il)legally captive non-human

⁵¹ People ex rel. Nonhuman Rights Project, Inc. v. Lavery, 124 A.D.3d 148, 152 (N.Y. App. Div. 2014) (emphasis added).

⁵² See DAYAN, *supra*, note 3.

beings.⁵³ Overall, both cases are in some way similar since sympathetic or mimetic magic is at work and law acts remaking the personhood of these entities. In one case personhood is re-given to human beings that were previously denied as bearers of rights, and in the other to a non-human animal that was treated as mere property. In both scenarios, dispossessed lives are readmitted in the field of the possessors of rights.

It could be said that Sandra's case not only blew up her cage—the almost 140-year-old Buenos Aires Zoo is now allegedly in the process of being converted into an “Eco-Park” that will not hold animals anymore—but also, since then, the binary opposition between humans and non-humans (persons/things) has been deeply undermined in Argentine law. In this regard, after Sandra's landmark judgment there have been other cases in which personhood was granted to non-human animals by different Argentine courts. In May 2016, for example, a chimp called “Cecilia,” captive in Mendoza Province's Zoo, has been declared a “non-human subject of rights” and thus her release and transfer to a reservation was set in motion. The interesting thing about this case is that it triggered the implicit recognition by the Provincial State of similar rights to other animals in that zoo—toucans, llamas, and guanacos—that will also be moved to reservations.⁵⁴ Subsequently, in November 2016, three elephants caged in the Zoo of Buenos Aires have been recognized by the newly created Special Prosecution Office for Environmental Issues (*Unidad Fiscal Especializada en Materia Ambiental*) as legal persons that need representation like “legally incapable people,” granting powers thus to an NGO to fulfill this task.⁵⁵

To conclude, we have to recognize that it is curious, to say the least, that fate wanted that the first case in the world in which personhood has been granted to a non-human animal was regarding one whose name is “orangutan,” a word that comes from a late Seventeenth

⁵³ The literal classic English translation of *habeas corpus* is: “You should have the person” or “you shall have the body.” *Habeas* is translated as “to have, to hold,” and *corpus* (literally “body”) is translated as “person” in this context. See OXFORD ENGLISH DICTIONARY. It is interesting that according to the CAMBRIDGE ENGLISH DICTIONARY the *habeas corpus* is: “A legal order that states that a *person* in prison must *appear* . . . before a court of law” (emphasis added). Furthermore, it is curious to notice that the form used in some Fourteenth Century English-French documents and writs is *habeas corpus ad subjiciendum*, which means, “to *produce* or have the *person* to be subjected to examination”. See BLACK'S LAW DICTIONARY 837 (rev. 4th ed. 1968) (emphasis added). We can see that the issues of “appearance,” “production,” “examination,” and “personhood” are in some way intrinsically related to the history of this legal instrument. I am confident that a genealogy of the *habeas corpus*, which probably can be traced back to the Roman *Interdictio de Homine Libero Exhibendo* and maybe even further in time, may shed light on how law historically framed and shaped persons/things, and on the all too magical nature of this process.

⁵⁴ See Roxana Badaloni, *Mendoza: la justicia consideró a una mona “sujeto de derechos y autorizó su traslado*, CLARÍN (Nov. 5, 2016), http://www.clarin.com/sociedad/mendoza-justicia-considero-derechos-traslado_0_HyyTwU5eg.html.

⁵⁵ See *Tres elefantes del Zoo porteño ya tienen abogados y hacen juicio*, CLARÍN (Nov. 24, 2016), http://www.clarin.com/ciudades/elefantas-zoo-porteno-abogados-juicio_0_HygIMmmGe.html.

Century Malayan expression (*orang-utan*) that means “person of the forest.”⁵⁶ It is less curious, maybe, but not less ominous, that personhood has been granted in this case to a form of being that is currently in grave danger of extinction, at risk of vanishing of the earth, that is, at the edge of *disappearance*.⁵⁷

F. Shamanism and Personification: Towards an Alternative (to) Law?

As I mentioned in the beginning, in this last Section I would like to take some steps towards an inquiry that could show that different ways of conceiving persons and things are possible. In other words, I would like to start thinking in alternative forms of conceptualizing the relationship between them and to assess some ideas that might have the potential to subvert what we now understand by persons and things. Even if the legal cases exposed above are a good anticipation to these alternatives, it is important to highlight that these forms are beyond our current legality—and its “magic”—and challenge our general understanding of the world and the ways by which we relate to it.

As I said before, Colin Dayan shows that legal metamorphoses are sustained in a hierarchical relationship composed by persons with rights and things without rights. Law, thus, is a magic of dispossession, because it creates on one side of the spectrum totally disabled beings. Notwithstanding the precision of this characterization, I wonder if Dayan’s comparison between law and some other forms of “archaic” magic is entirely accurate. In particular, I wonder whether this account should not be rethought in order to make space to take into consideration some important anthropological studies that recently shed light in the area of shamanism, and that have shown that some of the characteristics and effects of this latter might be considerably different from the ones of legal magic described above.

It is clear that the metamorphoses that law produces are part and parcel of practices carried out in all the so-called “primitive” societies, as Dayan seems to suggest. This could be exemplified very well with the shamanic beliefs in the possibility that, through certain rituals, humans could become animals, objects or spirits, or that the latter could become humans under certain conditions. So far, the similarity between the archaic and legal magic is that both are meant to produce these metamorphoses. There is, nevertheless, an important aspect that Dayan overlooks that distinguishes legal metamorphoses from the ones produced by archaic magic, an aspect that could have even the potential to open up a door to new forms of law or to alternatives to the law.

⁵⁶ *Orangutan*, OXFORD ENGLISH DICTIONARY (2d ed. 1987).

⁵⁷ See generally Alejandro Estrada et al., *Impending Extinction Crisis of the World’s Primates: Why Primates Matters*, 3 SCI. ADV. 1 (2017).

Recent anthropological works belonging to the so-called “ontological turn” in this discipline—such as Eduardo Viveiros de Castro’s studies on the Tupinambá;⁵⁸ Roy Wagner’s on the Melanesians⁵⁹ or Albert’s “translation” of the teachings of the shaman Kopenawa about the Yanomami,⁶⁰ among others⁶¹—, suggest that shamanic metamorphoses were and are a manifestation of a cosmology that claims the *ontological indivisibility* of the world and the *continuum* between different entities (humans, animals, things, spirits). In contrast, according to Dayan’s description, the metamorphosis that law performs seeks to support distinctions and borders set out in modern thought. In this regard, I would be inclined to think that even if the magic of law has a similar structure to shamanism, as Dayan seems to suggest, and both are imbued with the same principles, mimesis and sympathy, they perform different functions. While the law is meant to sustain the barriers that place humans as distinct entities, the forms of shamanism described by these anthropologists are meant to allow humans to cross the boundaries to other forms of being in the world.⁶²

This raises an array of interesting questions that one could be tempted to ask: What are the possibilities of turning, switching, or maybe simply contaminating practices of law with the logic of shamanism? In other words, considering the sameness in the structure of law and shamanism, both based on mimesis and sympathy, can we change the function of the former to throw down the barriers that currently isolate humans from the world they inhabit? What would remain, in this case, of the divide between persons/things?

Even when there is no straightforward answer to these questions, what is necessary to point out here is that persons and things do not exist in a natural state; persons and things exist only in a mutual relationship that in our Western world is codified by law. In this legal domain, objectification makes personification possible, and personification makes objectification a reality. In other words, “personhood” and “objecthood,” and their current characteristics, are mutually dependent in modern law.

⁵⁸ See EDUARDO VIVEIROS DE CASTRO, *CANNIBAL METAPHYSICS* (P. Skafish trans., 2009).

⁵⁹ See ROY WAGNER, *THE INVENTION OF CULTURE* (1981).

⁶⁰ See DAVI KOPENAWA & BRUCE ALBERT, *THE FALLING SKY: WORDS OF A YANOMAMI SHAMAN* (2013).

⁶¹ The term “shamanism” has been used over the years to describe many different practices around the world. Even when all these practices usually have some traits in common, also may have big “cosmological” differences. That is why I must emphasize that in this Paper I am referring only to the forms of shamanism described in the works quoted above.

⁶² In a similar vein, Taussig has noted that mimesis has a complex relation with alterity: The former can close the doors to the latter—like in law’s case—or can be a passage to other forms of being—like in shamanism. After all, mimesis is always a mean to relate to otherness. In Taussig’s terms, we can think in “mimesis as an art of becoming something else, of becoming other.” See TAUSSIG *supra* note 16, at 36.

In his *Mythologiques*, Claude Lévi-Strauss illustrates very well a similar issue with the basic dichotomy of “the raw and the cooked”⁶³: According to his structural analysis, the “raw,” which represents the “natural” state of the thing, could be conceived only and through the “cooked,” which represents the emergence of “culture.” Inversely, the cooked can only be conceived if a previous natural state prior to cooking is imagined. Nature/raw and Culture/cooked are mutually dependent. And the same applies to persons and objects; the one without the other is totally unthinkable. We have, although, different ways of conceptualizing this relationship between persons/things; in other words, we have different ways of codifying the raw and the cooked, or the relationship between objects and persons. Some of these forms even put in tension the dichotomy as such and invite us to envision different states of “personhood” or “objecthood.” Interestingly, Lévi-Strauss also tells us a story that can help us to think that these other forms of conceiving the relationship between persons/things are possible.

In *Race and History*, and later on also in *Tristes Tropiques*,⁶⁴ the French anthropologist tells us an anecdote from the times of the Spanish Conquest, that says that a few years after the “discovery” of America the Spaniards sent out investigative commissions to the Antilles to determine whether the Indians had souls or not. As it is well known, this was a main worry to the Catholic Kings, Ferdinand and Isabella, and several legal scholars and theologians of the time occupied their minds trying to determine the “nature” of the Indians.⁶⁵ Interestingly, at the same moment, Lévi-Strauss tell us, it seems that the Indians were conducting an experiment of their own which consisted in immersing Spanish prisoners in rivers during prolonged periods of time to verify if their corpses were subject to putrefaction.

⁶³ CLAUDE LÉVI-STRAUSS, *THE RAW AND THE COOKED: MYTHOLOGQUES*, VOLUME 1 (J. Weightman & D. Weightman trans. 1983).

⁶⁴ Claude Lévi-Strauss, *Race and History*, in 2 *STRUCTURAL ANTHROPOLOGY* 329 (M. Layton trans. 1978); CLAUDE LÉVI-STRAUSS, *TRISTES TROPIQUES* 76 (J. Weightman & D. Weightman trans., 1992).

⁶⁵ Some of the most important Spanish legal scholars and theologians of the time, such as Matías de Paz, Francisco de Vitoria, Domingo de Soto, Bartolomé de Las Casas, Juan Ginés de Sepúlveda, among others, wrote about this issue and participated in heated debates that attempted to determine the “nature” of the Indians. It should be noted that Aristotelian Thomism was the ideological frame of these discussions about the human or non-human (animal) condition of the inhabitants of the New World. The hierarchical categories that this tradition of thought established between beings—beginning with the justification of “natural slavery” by Aristotle himself—allowed to situate Indians, in the better case, in the lower step of an ontological ladder that had Europeans on the top. See LEWIS HANKE, *ARISTOTLE AND THE AMERICAN INDIANS: A STUDY IN RACE PREJUDICE IN THE MODERN WORLD* 12–28 (1959). Of course, behind these debates about Indian personhood, we can find the magic of a very material *dispossession*: The appropriation of Indians’ lands and labor force in the process of colonization. Probably, the most remembered of these discussions about Indians “souls” were the ones that took place in Valladolid in 1550–1551, between Las Casas and Sepúlveda. It is interesting to notice that these politico-theological debates have been considered as the inception of international law. See e.g., Oscar Guardiola-Rivera, *Absolute Contingency and the Prescriptive Force of International Law, Chiapas-Valladolid, ca. 1550*, in *EVENTS: THE FORCE OF INTERNATIONAL LAW* 29 (F. Johns et al. eds., 2011); Martti Koskenniemi, *Colonization of the ‘Indies’—The Origin of International Law*, in *XXI LA IDEA DE AMÉRICA EN EL PENSAMIENTO IUS INTERNACIONALISTA DEL SIGLO 43–44* (2010); see also ANTONY ANGHIE, *IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW* 13–28 (2004).



Figure 2. Engraving of Indians experimenting by drowning Spaniards, Theodor de Bry, Frankfurt, 1578.

In other words, they attempted to determine whether Spaniards possessed a body or not. It could be said that, as it was happening on the other side of the Atlantic with Spanish scholars and theologians, that Indians' thoughts were occupied here trying to establish the "nature" of Europeans.

Eduardo Viveiros de Castro, a Brazilian anthropologist, has used this peculiar anecdote to show the contrasts between the two cosmologies; differences that led to alternative ways of codifying the relationship between persons and things. It could be said that in the Western tradition, the body—that is to say, the "objecthood"—is what is shared by all beings, humans and non-humans alike. Spaniards were certain that Indians have a body—after all, animals have them too—but doubted whether they had a soul—an exclusive feature of human beings. From the Indians' perspective, in contrast, the soul—that is, the personhood—was what all beings shared regardless of whether they were humans or non-humans.⁶⁶ In other

⁶⁶ According to Viveiros de Castro, this cosmology was shared by Amerindian societies from Alaska to Tierra del Fuego; and puts upside down the Western distinction between subject and object, soul-body, form-substance, or culture-nature. See EDUARDO VIVEIROS DE CASTRO, *LA MIRADA DEL JAGUAR* 270 (L. Tennina trans., 2013).

words, the Indians doubted that Spaniards had a human body—they could be ghosts, spirits or gods—but not that they had a soul, an intrinsic feature of all beings.

We can say that for the Indians everything was a person, this was somehow the underlying state common to all beings. In contrast, Spaniards believed the opposite—like we usually do now, according to our Western cosmology—that because “substance,” “matter,” “objecthood,” is our common being, we are all objects with only the potential to be persons. Personhood, in this case, is a supplement, an addition to an underlying objective state. In this latter case, personhood should be proved, while in the former, it is something given. Here we can see the difference between law’s magic and shamanic magic, the first tends to *objectify*, while the second tends to *personify*.

After this description, it is not difficult to see that one of the main functions of legal magic is to make what we call “the human”: To make a difference and to differentiate the human from the rest of beings that populate the world. In other terms, the law is a technology, an “anthropotechnology,” to use Fabian Ludueña’s expression, that has made possible, for example, to conceive human beings as distinct from animals or plants.⁶⁷ In contrast, the magic of shamanism is a technology meant to blur this difference: It equates the human with the animal (animalizes the human and humanizes the animal).⁶⁸ Nevertheless, the paradox is that while law, mainly interested in distinguishing the human, creates a vast world of objects (that sadly includes a wide range of humans), shamanism, that, in contrast, is interested in undistinguishing the human, creates an unlimited world of persons. If law is an

⁶⁷ In very general terms, following Michael Foucault’s famous classification, I understand for “technology” the skills, methods, and processes used by men in the production of *signs, power, things*, but also of *persons*. See TECHNOLOGIES OF THE SELF: A SEMINAR WITH MICHEL FOUCAULT (L. H. Martin et al. eds., 1988); see also FABIAN LUDUEÑA, LA COMUNIDAD DE LOS ESPECTROS 11–14 (2010), following Foucault and Sloterdijk in defining “anthropotechnology” as the technique through which the *homo sapiens* acts over their own animal nature in order to produce what is usually called the “human”.

⁶⁸ I want to counter here some “inattentive” but possible critique that this characterization of law or magic as technologies could get. I would like to say that if we leave behind the traditional dichotomy between “enchantment/disenchantment,” as I asked to do before, there is no restraint to conceive magic as a form of “technology.” The only thing that could stop us from considering law, magic, religion and many other manifestations as technologies within the same horizon of inquiry is the modern division between “rational” (sciences, techniques, etc.) and “irrational” (magic, religion, etc.) practices. To throw down the barriers that the “enchantment/disenchantment” dichotomy erects means also to build bridges between different traditions of thought that nowadays seems—but only *seems*—to go in alternative directions. I mean, can we think in a perspective or horizon of inquiry that merges *shamans* and *cyborgs*? Can we think of current “devices” and “gadgets” as talismans or amulets of power? Can we think of algorithms as spells or rituals? Are not the robots, effigies and puppets of ourselves? In the very technological but also mystical era in which we live, these seem a fruitful epistemological strategy to adopt. This epistemological path, that shows a magical world resurfacing in a hyper-technological one, can be seen in an emerging trend that could be generally called “techno-animism” or “techno-shamanism.” See Casper Jensen & Anders Block, *Techno-animism in Japan: Shinto Cosmograms, Actor-Network Theory, and the Enabling Powers of Non-Human Agencies*, 30 THEORY CULTURE & SOC. 84–115 (2013). In any case, I have the impression that, taken together, the collection of essays of which this paper forms part also goes in this very interesting direction.

anthropotechnique of *containment*, a centripetal force that essentializes and enthrones human beings cutting them from their surrounding world; shamanism is an anthropotechnique of *expansion*, a centrifugal force that spans the human, merging it, and thus, in strict terms, losing it, in the totality of the existence.

While the magic of law orders through division and differentiation, shamanism works through assimilation and homogenization. If law objectifies the world because it is *appropriative*—it performs a *dispossession*—shamanism personifies the world because it is *expropriative*—it performs a *personification* and a *re-possession of the world*. Shamanism ex-propriates men, it leads them out of their selves, makes them transcend their immanence. By this way, shamanism dissolves men's ontological difference with the world, and, accordingly, populate this later with infinite subjectivities. On the contrary, law makes the world an immanence of the human, it performs an appropriation of the world by men, and thus objectifies the non-human. In law, the world spins around the human, in shamanism the human spins around the world.

Now, these different aspects of the two phenomena should not make us think of shamanism as an opposite to law, and vice versa. This is not a new dichotomy that should replace the old binary between persons/things. Law and shamanism have differences but also, as I pointed out before, several similitudes. In this regard, it is important to highlight that law and shamanism function under the same magical principles (*mimesis* and *sympathy*), and thus, infinite movements, exchanges, and contaminations could happen between them. It is as if the law would be at constant risk of falling into shamanic practices, and that this latter would be in permanent danger of becoming law. While there is a cleft that separates law and shamanism, there is also a bridge that connects them and that produces the usually imperceptible transfers, passages, exchanges from one to the other, as Marcel Mauss seems to warn us when encouraging us to make an effort to analytically distinguish law from magical performances.⁶⁹ It is the case that law may become shamanic magic at any time and that this later can be institutionalized in law with the same impetus. In a sense, this is precisely the magic of law or the law of magic.

G. Conclusion

I said before that some archaic magic, such as the forms of shamanism that I have described above, might represent a departure from our traditional way of thinking of persons/things. I also mentioned that this could disarticulate the binary oppositions through which we are used to conceptualizing the relationship between them, and furthermore, that this could be an opportunity to envision a different legality or an alternative to law.

⁶⁹ See Mauss, *supra* note 19.

If we think carefully, it can be said that in a cosmology where every-body/thing is a person, personhood becomes something totally different.⁷⁰ But, in this case, also things become something else. The shamanic cosmologies tend to see personhood, not as an essence or a quality but as a relative position, a point of view, a *perspective*, that can be occupied by anyone/thing at different moments or situations. In general, it can be said that we see ourselves as persons in our world, but that animals and spirits also do the same in theirs. This implies a radical displacement of the concept of personhood: If we all are persons, if we all are projected over an immanent plane of personhood, then *we* the persons, stop being so special and unique. Thus, between the legal magic and the shamanic magic, there is certainly a different cosmology and another way of relating to the world and the beings that inhabit it.

Law considers all of us objects, at least until we can prove that we have the *human* conditions to be persons. In other words, until we prove the contrary, we are mere objects of appropriation. Shamanism believes that we all are already *humans*—we all have already a “soul”—and thus personhood is something given. Thus, from the “anthropocentrism” of modern law to the “anthropomorphism” of shamanism, we can find another way of codifying the relationship between persons/things, a codification that actually implodes the modern binary demarcations between them. The gates for a different law, or for an alternative to the law are already partially opened.

It is hard to envision how this law, or this alternative to it, would look on a global scale and how it would affect our current *very* human forms of existence. In a world where every/body-thing is a person, can we even think of private property or forms of ownership? If animals and other things like rivers are persons, does this mean that they *act* as humans do? In this case, are they responsible for their wrongdoing? In which cases can we consider them liable for their deeds? Further, should we start thinking in liability schemes for the ones who may harm these beings? In these cases, what would be exactly a harm? If everything is a person, does this mean that new forms of kinship and relationships would be possible and acceptable? Of course, these and other questions of the kind easily come to our minds when we think for a moment in a world replete of persons. None of them have, however, answers that at the end do not seem aporetic or paradoxical. But, turning things around, we could also ask: Is it really necessary to ask these questions? Is it even possible to find an answer beforehand? Is it not the case that these questions arise when we try to think about this different cosmological frame in our current cosmological terms? All the more, do we not stumble around with these problems due to our current cosmology? It might be said that we want it or not, with or without shamanism, many of these interrogations are already with us. And they have been triggered in the last years increasingly by the technological advances that pose now and will raise in the future very tough questions. Shamanism could

⁷⁰ See Eduardo Viveiros de Castro, *Perspectival Anthropology and the Method of Controlled Equivocation*, TIPITÍ: J. SOC. ANTHROPOLOGY LOWLAND S. AM. 16 (2004).

be, in this regard, not as much a form to look for particular answers to these interrogations, but a way to a new cosmology in which these questions do not even arise. That is a higher bet.

In this regard, in this Paper, I tried to analyze two cases in which the gates to a different legality or an alternative to it are halfway open. Two cases in which personhood is remade after objectification. The examples of Argentina that I exposed here in its particularities, seem to me a key and good cases to understand how law's magic could be opened to work, such as shamanic magic, towards personification, remaking personalities who were previously radically denied as such.

Let us end as we started, with a question: Is this still law or something else? Both in the case of the disappeared and in the case of the non-humans, law switched inadvertently to shamanic magic and the binary division between persons/things lost its relevance, causing the emergence of new entities that brought more persons to the world. In some way, then, this is something beyond our current legality, but at the same time, it is something already happening in our law. This is, of course, something really impossible, an impossible possibility, such as magic is. But, have I ever said otherwise?

