



# The Deconstruction of Personhood and the Rights-holder/Rights-object Binomial\*

La deconstrucción de la personalidad y el binomio sujeto de derechos/objeto de derechos

A desconstrução da personalidade e do binômio detentor de direitos/direitos-objeto

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## Abstract

A long-lasting tradition of Western thinking has considered that human nature and the individual are non-historical and self-identical; both represent a fixed and immutable reality, either because they are an expression of transcendence (scholastics) or because they are an end on their own (enlightened). This notion of the human person leads to a concept of dignity that is equally self-identical and expressed in the intrinsic value of a reality whose endpoints are perfectly delineated in a dialectical binary opposition concerning non-personal realities. As a counterpart, the thesis that declares a metaphysical closure denounces the end of that trend, as the former would lay the basis to reshape the personality, replacing the logic of the opposites with the logic of supplement, whose properly deconstructive element lies in the denial of the possibility of foundation. This implies a double destructuring movement: (a) to affirm that some nonhuman reality of the corporeal world is also personal, and (b) to deny that human reality is always and, in any case, personal. This paper aims to explain how this reconfiguration of the notions of “person” and “thing” occurs in current thinking.

## Keywords

Subject; deconstruction; non-human persons; posthumans.

## Resumen

Una larga tradición de la filosofía en Occidente estima que la naturaleza y la persona humana son ahistóricas y autoidénticas, que representan una realidad determinada e inmutable en cuanto están abiertas a la trascendencia o se configuran como un fin en sí mismas (según si se trata del pensamiento escolástico o de la Modernidad). De esta concepción de la persona humana proviene un concepto de dignidad también fijo, que se traduce en el valor propio de una naturaleza cuyos límites quedan establecidos, por oposición a las realidades no personales. Como contrapartida, las tesis que declaran la clausura de la metafísica denuncian el fin de esta corriente, en cuanto consideran que sientan las bases para proceder a una reconfiguración de la personalidad, modificando la lógica de los contrarios en dirección hacia una lógica del “suplemento”, cuyo elemento propiamente deconstructivo radica en la negación de la posibilidad del fundamento. Se advierte en este gesto un movimiento doble de descenramiento: (a) por un lado se sostiene que determinadas entidades no humanas son también personales, y (b) la negación de que la realidad humana sea siempre y en todo caso personal. El presente trabajo se orienta a desarrollar el modo en que se produce en la actualidad esta reconfiguración de las nociones de “persona” y “cosa”.

### Palabras clave

Sujeto; deconstrucción; personas no humanas; poshumanos.

## Resumo

Uma longa tradição da filosofia ocidental sustenta que a natureza e a pessoa humana são a-históricas e auto-idênticas; que representam uma realidade determinada e imutável, na medida em que estão abertas à transcendência ou são configuradas como um fim em si mesmas (dependendo se estamos a lidar com o pensamento escolástico ou moderno). Desta concepção da pessoa humana resulta um conceito de dignidade que também é fixo, o que se traduz no valor de uma natureza cujos limites são estabelecidos, por oposição às realidades não-pessoais. Por outro lado, as teses que declaram o encerramento da metafísica denunciam o fim desta corrente, na medida em que consideram que lançam as bases para uma reconfiguração da personalidade, modificando a lógica dos opostos na direção de uma lógica do “suplemento”, cujo próprio elemento desconstrutivo reside na negação da possibilidade de fundação. Um duplo movimento de descentralização pode ser visto neste gesto: (a) por um lado, argumenta-se que certas entidades não humanas são também pessoais, e (b) a negação de que a realidade humana é sempre e em qualquer caso pessoal. Este documento visa desenvolver a forma como esta reconfiguração das noções de “pessoa” e “coisa” está atualmente a ter lugar.

## Palavras-chave

Sujeito; desconstrução; pessoas não-humanas; pós-humanos.

Summary: 1. Introduction. 2. Deconstruction as a reading strategy. 3. Deconstruction of ‘personhood’ and ‘the rights holder.’ 4. Deconstruction of objects (over which the rights and obligations of the holder are vested). 5. Final considerations.

## 1. Introduction

Since the mid-twentieth century, the foundations of the Western conception of the world began to be slowly and systematically questioned amid a process of philosophically and culturally uprooting our intellectual tradition. These foundations have since undergone a replacement process, which extends to practically all fields of knowledge and culture. The new criteria exhibit a growing similarity with some presuppositions of poststructuralist thought, such as fragmentation, the predominance of sensibility, the end of significant projects, destabilisation of the substantial-metaphysic subject, and a particular nihilistic substratum that has been growing during the second decade of the twenty-first century. All these characteristics are destined to be relevant for the cultural analysis that will end up affecting Law and its traditional structures.

In the legal sphere, the general elements of this process were advanced by authors such as Luigi Ferrajoli, among others. According to the Italian jurist, the diagnosis of his time was configured around three variables: (a) a crisis of legality, which amounted to rethinking the binding value of legal norms by those holding power; the (b) structural inadequacy of the Rule of Law forms to the functions of the Welfare State, aggravated by the intensification of the selective and unequal character of the crisis of the Social State. This would have resulted in legislative inflation and the loss of abstraction of laws. Finally, (c) the failure of the Nation-State, resulting in weak sovereignty and a modified system of sources of Law<sup>1</sup>. The concept of Law was increasingly caught up in a dialectic of confrontation between the advocates of an essentialist definition of the legal system—in the traditional way, whether classical or modern—and those of eventual metaphysical closure, i.e., a hermeneutic in constant flux on the relationship of the legal system with the individual and their rights<sup>2</sup>. As a result, there is a gradual reconfiguration of the ideas of legislative power, efficacy, and validity of legal prescriptions, giving rise to many “regional” rationalities within a global rationality<sup>3</sup>.

The traditional law structures are beginning to be challenged, confronted with interpretations alien to their classical or modern meaning. This change in criteria has affected the production of Law, especially those principles linked to

1 Luigi FERRAJOLI, *Derechos y garantías. La ley del más débil*, Madrid, Trotta, 1999, pp. 15 ss.

2 Paolo GROSSI, *El novecientos jurídico. Un siglo postmoderno*, Madrid, Marcial Pons, 2011, pp. 30 ss.

3 Boaventura DE SOUZA SANTOS, *Pela mão de Alice. O Social e o Político na Pos-Modernidade*, Coimbra, Almedina, 2013, p. 91.

the nature of the legal phenomenon and its interaction with the State's power<sup>4</sup>. We are therefore faced with a change in the horizon of the meaning of politics and its role in the normative sphere<sup>5</sup>. These new conceptions give rise to a notion of legal system different not only from the traditional matrix, the doctrine of classical Natural Law, and the Modern School of Natural Law but also from Kantian thought and its contemporary continuators, such as Habermas<sup>6</sup>. A similar fate befell positivist positions, from Kelsenian formalism to Hart's sociology or Scandinavian realism. Due to this significant revisionist attitude, legal systems are becoming receptive to normative responses that would have been unthinkable a short time ago, such as the existence of an International Criminal Court that acts over and above internal rights<sup>7</sup> or the notion of collective rights (the exercise of which may be joined by actors after the action has been filed)<sup>8</sup>. This type of change—transgressive to a certain extent—highlights the variation in the epistemological paradigm that has been gradually experienced over the last few decades.

The alteration in the traditional idea of Law also seems accompanied by a cultural transformation, thanks to the advent of the "information society" and "informational capitalism.". The first notion refers to the nature of a society interconnected using technological advances, which allow information to circulate instantaneously to and from any part of the world. The expression was coined by the American economist Fritz Machlup<sup>9</sup> and later adopted by Japanese sociologist Yoneji Masuda to point to the post-industrial society where

4 An example of particular relevance is Bobbio's definition of "garantism," which he considers the doctrine of the Constitutional State of Law, insofar as it promotes the development of the master principles of the Rule of Law, whose foundations and aim are the protection of the individual's freedoms against the various forms of arbitrary exercise of power. Norberto BOBBIO, *El problema del positivismo jurídico*, Fontamara, Mexico, 1995, p. 13. This implies a significant transformation of the objectives of the Law and the nature of the Common Good. This can also be seen in Art. 2 of the 1949 German Basic Law (*Grundgesetz*) placing the right to life above the right to the free development of each individual's personality.

5 Gilles DELEUZE, *El poder. Curso sobre Foucault*, vol. II, Buenos Aires, Editorial Cactus, 2014, pp. 345 ss.

6 This is also rooted in Husserl. The fundamental problem of a phenomenological philosophy of knowledge is the destruction of an objective concept of the world since reality is only given to me as a subject with consciousness. Once the possibility of its ontological-natural character has disappeared, the reconfiguration of a "constative" experience of the world can only take place in the experience of another self with consciousness or, identically, in the "intersubjectivity" of an exchange of perceptual positions with other alter-egos, which, by its consciousness, has an existence independent of mine and is capable of "constating" the world. On the other hand, Habermas considers that these visions can only be exchanged on the assumption that complete reciprocity between all participating subjects has been previously established and objectified in the perspectives of a common social world. Instead of physical space, we have social space here. That is to say, an "agreement" is still required. Edmund HUSSERL, *Meditaciones cartesianas*, Madrid, Fondo de Cultura Económica, 1985, p. 59; Edmund HUSSERL, *La crisis de las ciencias europeas y la fenomenología trascendental*, Barcelona, Editorial Crítica, 1990, pp. 192 ss; Jürgen HABERMAS, "Lecciones sobre una fundamentación de la sociología en términos de teoría del lenguaje," in *Teoría de la acción comunicativa. Complementos y estudios previos*, Madrid, Cátedra, 1989, p. 56.

7 The Treaty of Rome obliges the State to cede and transfer jurisdictional sovereignty, and even subordinates the jurisdictional power of the State to an International Criminal Court. It proclaims not to recognise or accept neither Italian criminal law nor the essential principles of its internal order to apply its own Statute and the elements of crimes established and modified by a majority of the member States of the treaty at their discretion. Cf. [https://ec.europa.eu/archives/emu\\_history/documents/treaties/rometreaty2.pdf](https://ec.europa.eu/archives/emu_history/documents/treaties/rometreaty2.pdf)

8 Cf. Raúl MADRID, "Derecho e interés. Sobre la (no) necesidad de los derechos colectivos," in *El derecho natural en la realidad social y jurídica* (Eduardo Soto Kloss & Sergio Castaño, eds.), Santiago, Universidad Santo Tomás, 2005, p. 264.

9 Fritz MACHLUP, *The Production and Distribution of Knowledge in the US*, New Jersey, Princeton University Press, 1962.

most jobs are no longer associated with traditional tangible product factories, but with the generation, storage, and processing of all kinds of information<sup>10</sup>, as its commercial value becomes dominant<sup>11</sup>. Law, thus, must deal not only with the revision of its foundations but also with a myriad of problems arising from the circulation of such information, ranging from the iteration of digital messages to the possibility of isolating neural information from its “owner” and turning it into public data that infringes on their privacy and mental integrity<sup>12</sup>.

Thus, a “deconstruction” of the various legal binomials seems to occur. In this paper, we will deal exclusively with the process that affects the structure composed of the terms “rights holder” and “things” (that on which the rights and obligations rest), as it is one of the most relevant structures in the legal field. However, this analysis could be carried out on all the oppositional logic that runs through the legal system and its bases. From a methodological point of view, it seems proper to explain first in what sense it is argued that this process could be configured as a “deconstruction” and not as a simple “destruction” or destabilisation of the binomial. Subsequently, it will be shown how it affects each term (human beings and animals).

## 2. Deconstruction as a reading strategy

According to Jacques Derrida, the universe of Western metaphysics is based on a logic of opposites. This thesis, already present in Greek philosophy, is readily observable. From the most crucial binomial in philosophy—being and nothingness—(in which existence would be privileged over nonexistence), down to the minor details of the physical world, reality would be organised in structures of opposition, whose characteristic is the absolute intransitivity of these opposites and their hierarchical relationship (justice-injustice, beauty-faithfulness, among others). This thesis is also perfectly compatible with dominant Western theology, in which God would be the author par excellence of the great text of the world; his authority would extend to the entire created universe. The causal-metaphysical realm would become the realm of transcendent and unalterable truth, the truth situated outside history and hermeneutics, with privilege over falsehood and error.

The pairs of opposites—says Derrida—order and delimit each other, forming a system associated with the privilege of presence (existence)<sup>13</sup>. Therefore, the

10 Yoneji MASUDA, *La sociedad informatizada como sociedad post-industrial*, Madrid, Tecnos, 1984.

11 Raymond T. NIMMER & Patricia Ann KRAUTHAUS, “Information as a Commodity: New Imperatives of Commercial Law,” in *Law and Contemporary Problems*, 55, n. 3 (1992).

12 Marcelo IENCA, “On Neurorights,” in *Frontiers in Human Neuroscience*, 15 (September 2021), pp. 1-11. See also Pablo LÓPEZ-SILVA & Raúl MADRID, “Sobre la conveniencia de incluir los neuroderechos en la Constitución o la ley,” in *Revista Chilena de Tecnología*, vol. 10, n. 1 (2021), pp. 53-76.

13 “The system of ‘hearing (understanding) oneself speak’ through the phonic substance—which *presents itself* as the nonexterior, nonmundane, therefore nonempirical or noncontingent signifier—necessarily dominated the history of the world during an entire epoch. It even produced the idea of the world, the idea of world-origin,

chain of binomials is structured reassuringly and regularly due to the notion of essence (nature) that permeates Western philosophy<sup>14</sup>. This structure of pure (i.e., unmixed) concepts is challenged by Derrida, who argues that opposites do affect each other through what he calls the “logic of supplement.” Derrida claims that “either writing was never a simple ‘supplement’ to speech, or else it is urgent to construct a new logic of the ‘supplement’<sup>15</sup>.” It is worth mentioning that the French word *supplément* means both addition and replacement and seeks to indicate the fundamental ambiguity of this new logic. The “dangerous” supplement is the term that pretends to be the other, replacing it, the undecidable, the *pharmakon*, the writing, something that inhabits both poles that interrupts the oppositions.

The term “deconstruction” is frequently used in current literature to communicate the idea of destroying some reality, whatever it may be. The popularisation of the concept, however, perverts the original philosophical sense given by Derrida. The notion of deconstruction can be traced back to Husserl and Heidegger, in *Abbau* and *Destruktion*, respectively. Derrida explains that he wanted to translate and adapt these terms, which were still linked to an operation concerning the traditional structure of the metaphysical foundation of ideas. In French, however, the term “destruction” too visibly implied an annihilation, a negative reduction closer to the Nietzschean “demolition” than the Heideggerian interpretation<sup>16</sup>. Therefore, he required a new word to express the liberation of such metaphysical structures.

Husserl uses the word *Abbau* (“dismantle”) in *Erfahrung und Urteil*<sup>17</sup>, where he proposes it as one of the modes of phenomenological reduction. He considers that regression to the original natural world and the pre-predicative experience that characterises it must be effected through a process of dismantling (*Abbau*) the theoretical world, undoing its idealisations. Heidegger, for his part, also uses the term *Destruktion* in paragraph six of the Introduction to *Being and Time* (1927) as a regression not to the pre-predicative experience but rather in the sense of a return to the original metaphysical experience of *Sein*. For this, it is necessary to initiate the destruction (*Destruktion*) of traditional contents of the old ontology until reaching those primordial experiences needed to determine the nature of Being (*Sein*)<sup>18</sup>.

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arising from the difference between worldly and non-worldly, outside and inside, ideality and nonideality, universal and nonuniversal, transcendental and empirical, etc.” *Grammatology*, pp. 7-8.

14 According to Kahn, the word *physis* (nature) can denote the true nature of a thing while maintaining its etymological sense of “the primary source or process” from which the thing has come to be. “Nature” and “origin” are combined in the same idea. Charles KAHN, *Anaximander and the Origins of Greek Cosmology*, Columbia University Press, 1950, p. 202.

15 Derrida, *On Grammatology*, p. 13.

16 Jacques DERRIDA, *Carta a un amigo japonés*, published in *Le Promeneur*, XLII (1985), included in *Psyché. Inventiones de l'autre*, Galilée, Paris, 1987. We use here the Spanish version in *El tiempo de una tesis. Deconstrucción e implicaciones conceptuales*, Ediciones Proyecto a, Barcelona, 1997, p. 25.

17 Edmund HUSSERL, *Erfahrung und Urteil*, Felix Meiner Verlag, Leipzig, 1999. There is a Spanish version (Jas Reuter trad.): *Experiencia y juicio*, Universidad Nacional Autónoma de México, 1980.

18 Martin HEIDEGGER, *Sein und Zeit*, paragraph 6, pp. 43 ss.



Simply put, “deconstruction” seems to be a strategy for reading a text or set of symbols, assuming the implicit meanings of such text coexist on an equal footing, without any hierarchy among them (for which the destabilisation of hierarchical opposites, mentioned above, is necessary). As the traditional position has always attributed a primordial meaning to each text (whatever it might be), deconstruction must first carry out a kind of “upside down” procedure of the terms within the binomial to produce the encounter of the “reader” with the non-hierarchical set of meanings. Derrida affirms that to forget this inverting phase is to ignore the conflictual and subordinating structure of the opposed terms. It means passing too quickly, without dwelling on the previous opposition, to a neutralisation that would deprive itself of any means of intervening effectively<sup>19</sup>. The term’s widespread use is linked to this idea of conversion of reality into its opposite. Thus, “deconstructed” acquires the sense of “disarmed.”

Deconstruction, as a technical-philosophical concept, is very different from simple “destruction.” It represents the mode of reading whose condition of possibility is the closure of metaphysical thought, that is, of genuine and superior meaning, the essential foundation of any interpretation. To discontinue this vertical and hierarchical dimension of meaning, Derrida declares it necessary to proceed to a de-sedimentation because the rationality that directs expanded and radicalised writing no longer arises from a *lógos* and inaugurates destruction, not demolition of all the significations that have their source in this *lógos*, especially the meaning of truth<sup>20</sup>. This “de-sedimentation” does not mean transgression, for this would be an equally metaphysical move. It means the closure of foundations of any type. It is a dislocation of the very concept of hierarchy since a new position of value is affirmed. The novelty does not consist of renewing the hierarchy content or the substance of values but transforming the value of the hierarchy. This is achieved neither by suppressing all hierarchies nor by changing or inverting the terms of a given hierarchy but by altering the very structure of the hierarchy<sup>21</sup>.

Alongside this dimension of deconstruction, there is another stage that could be called the “reinscription of meaning.” If the movement of de-sedimentation was aimed at dislocating the hierarchical order, passing what was in the second plane to the first, and vice versa, reinscription affects the incommunicability of opposites. Halfway between the secondary and the primary, opposites meet and reinscribe themselves, reconstruct each other, forming the “undecidable” genre of notions: terms that cannot be “thought” by the philosophical tradition, still subject to the validity of the essential concept and the principle

19 Jacques DERRIDA, “Posiciones,” Interview with Jean-Louis Houdebine and Guy Scarpetta, in Derrida, J., *Posiciones*. We use here the Spanish version, Valencia Pre-Textos, 1977, p. 4.

20 DERRIDA, *On Grammatology*, pp. 16-17.

21 Jacques DERRIDA, *Éperons (Les styles de Nietzsche)*, Paris, Flammarion, 1978. We use here the Spanish version *Espolones. Los estilos de Nietzsche* (M. Arranz Lázaro, trad.), Valencia Pre-textos, 1981, p. 53.

of non-contradiction. Reinscription prevents deconstruction from becoming just a metaphysical argument of the opposite sign. Therefore, if the relation of traditional opposites could be called “symmetrical” between the two extremes, the link that emerges after deconstruction is “asymmetrical”: they are not situated on the same plane as the condition of possibility. Therefore, such notions cannot account for themselves in a metaphysical sense; they do not refer to themselves in a way that produces the understanding of identity, as was the case of writing in the history of Western thought.

From such a perspective, deconstruction means discursively producing the other from itself. This production has a sense of invention since it comes only once—for the last time. In deconstruction, therefore, there can be neither recognition nor reception of the other, but rather this invention of what is radically different from the signifier that makes it happen<sup>22</sup>.

### 3. Deconstruction of ‘personhood’ and ‘the rights holder’

Until the middle of the twentieth century, there was a consensus that human beings were the only holders of rights and obligations—not collectives, universalities, animals, plant life, inert beings, fictitious entities, or entities of reason. Thus, when legal operativity is attributed (for example, to any institution), it is done with a practical purpose, in which the personhood of the real-individual human subject is projected on them, with strictly functional objectives. In modern times, this is clear from Binder’s work on the legal subject<sup>23</sup>. Moral dignity is thus an attribute recognised exclusively to members of the human species by certain powers and conditions specific to them that are not found in the rest of the entities of the corporeal world<sup>24</sup>. Thus, a human being would be the only moral person in the physical world in a position to decide on their actions based on a process of discernment, choosing among various alternatives or not opting for any of them.

This qualitative exceptionality of human beings was presented until a few decades ago as an indisputable truth endorsed by dominant religions, science, and philosophy. Until then, the limits or boundaries of humanity had not yet been explicitly reconsidered, as would happen years later due to radical theoretical formulations or the advance of biotechnologies self-conceived as

22 DERRIDA, *Posiciones*, p. 27.

23 JULIUS BINDER, *Das Problem der Juristischen Persönlichkeit*, A. Deichert, Leipzig, 1907. Available at <https://socialsciences.mcmaster.ca/~econ/ugcm/3ll3/binder/ProblemJuristischenPersonlichkeit.pdf> See also JANE KOTZMANN & CASSANDRA SEERY, “Dignity in international human rights law: potential applicability in relation to international recognition of animal rights,” in *Michigan State International Law Review*, vol. 26.1 (2017), pp. 16-7.

24 *Magna dignitatis est in ratione naturae subsistere*. Cf. AQUINAS, *Summa Theologiae*, I, q. 29, a.3. We use here the Spanish version (R. Suárez O.P.), Biblioteca de Autores Cristianos, vol. II, p. 137 ss.

capable of altering the bases of corporeal and concrete human beings, implying a significant variation in Western culture's anthropological model.

There is an aspect of personhood related to man as *imago Dei*<sup>25</sup>. Theological and metaphysical reasons set human personality as participation in divine attributes, which would be analogically given to men and women. According to Aquinas, this participation was inherent to human hypostasis<sup>26</sup>. Thus, he explains that human beings, with rational natures, have as their natural end the vision of God; the soul possesses the image of God because it can be brought to God<sup>27</sup>. From the sixteenth century onwards, the idea that the person had two purposes, natural and supernatural, gradually took hold. This thesis was consistent with the progressive abstraction of the idea of nature resulting from rationalism and, therefore, the growing "uselessness" of the divine bond. Curiously, the root of this opinion can nevertheless be found in Cajetan, whose aim was not to contradict but to interpret Aquinas<sup>28</sup>.

The best-known definition of personhood is that of Boethius: a person is an individual substance of rational nature (*natural rationalis individua substantialis*)<sup>29</sup>. It is a specific type of hypostasis with a particular character: the rational nature implying the set of faculties that operate in the human being independently of matter. These powers, formally independent of each other, perform functionally in a unitary manner. Aquinas calls this unity "mind" or "spirit." Thus, the person is made "in the image of God"; that is, he bears a certain resemblance to Him, in such a way that he constitutes an expression of what he resembles. This happens not in a perfect way but according to a certain proportion<sup>30</sup>. The human spirit does not remain situated in the same genus as God but imitates his nature in a way that somehow reflects his species. According to this analogy, personhood incarnated in an individual of the species is conceived as a reality that such an individual possesses as a characteristic feature but also a reference to the cause of the participated. Therefore, the essence of personality resides in this tension between what is proper to concrete human beings (the personal individual) and what is common to all (i.e., 'nature')<sup>31</sup>.

25 Silvana FILIPPI, "Persona y naturaleza: de Pedro Lombardo a Heidegger," in *Scripta Medievalea*, 2 (1) (2009), p. 52.

26 "Hypostasis" has the sense of substrate, support, and supposition. This voice, of Greek origin, arises in the context of the discussion on the Trinity, whose central problem was the debate on the relationship between the nature and person of Christ.

27 AQUINAS, *Sum. Theol.*, I, q. 93. Biblioteca de Autores Cristianos, p. 88.

28 Sergio COBO, "La imagen de Dios en el hombre en la teología de Henri de Lubac," in *Teología y Vida*, vol. 59, n. 2 (2018), p. 174 (171-190).

29 BOECIO: *Liber de persona et duabus naturis contra Eutychem et Nestorium*: ML, LXIV, 1343. [http://www.documentacatholicaomnia.eu/02m/04800524\\_Boethius\\_Severinus\\_Liber\\_De\\_Persona\\_Et\\_Duabus\\_Naturis\\_Contra\\_Eutychem\\_Et\\_Nestorium\\_MLT.pdf](http://www.documentacatholicaomnia.eu/02m/04800524_Boethius_Severinus_Liber_De_Persona_Et_Duabus_Naturis_Contra_Eutychem_Et_Nestorium_MLT.pdf) See also Cf. AQUINAS: *Sum. Theol.*, I, q. 29, a. 1.

30 AQUINAS, *Super Sent.*, lib. 1, d. 34, q. 3, a. 1, ad 2. *Corpus Thomisticum*: <https://www.corpusthomicum.org/snp1033.html>

31 Kristina MITALAITÉ, "Entre Persona et Natura: La notion de personne durant le Haut Moyen Âge," in *Revue des sciences philosophiques et théologiques*, 89, n. 3 (2005), p. 460.

Beginning with the works of St. Augustine and Boethius, the question is focused on the mystery of Christ. The dogmatic value of the subject was dealt with at the Council of Nicaea (325), where the divine and human nature of Christ were discussed, concluding that he possesses both characters but is one person, unique and indivisible. The personality thus symbolises coherent unity between divinity and humanity. In this way, the notion of “person” acquired a unitive sense between the two categories. Moreover, it can be said that the notion of person represents the theological mode of harmonisation of empirical-transcendental difference, which constitutes a capital problem in philosophy.

From here, the traditional attributes of personhood are derived, such as unity, singularity, incommunicability, dignity, substantiality, and rationality. They were formulated by St. Anselm, Alexander of Hales, St. Albert the Great, and St. Bonaventure, among others. Aquinas notes its ineffability and incommunicability, ultimately sustained in the matter-spirit duality and the transcendent filiation of the latter<sup>32</sup>. Individuality is not transmissible because it does not belong to generic human nature. Similarly, it does not belong to those accidents by which the same nature is predisposed and transmitted with them from parents to children<sup>33</sup>. Aquinas, talking about sins, argues that what is strictly personal is not passed down. A man can more easily transmit that which he has of himself, provided it be transmissible. But the actual sins of our nearer ancestors are not transmissible, because they are purely personal, as stated above<sup>34</sup>.

Within this scope, personhood is *capax Dei*<sup>35</sup>; in some way, persons can know and love God and participate in his intimate life<sup>36</sup>. This implies that human beings are God’s image insofar as they can know higher realities, not purely temporal ones. Knowledge is produced through those powers whose immediate subject is the soul and not due to the compound of soul and body:

It is clear, then, that in us mind designates the highest power of our soul. And since the image of God is in us according to that which is highest in us, that image will belong to the essence of the soul only in so far as mind is its highest power. Thus, mind, as containing the image of God, designates a power of the soul and not its essence. Or, if we take mind to mean essence, it means it only inasmuch as such a power flows from the essence<sup>37</sup>.

32 AQUINAS, *Super Sent.*, lib. 1 d. 25 q. 1 a. 1 ad 6, *Corpus Thomisticum*: <https://www.corpusthomicum.org/snp1022.html>

33 Eudaldo FORMENT, “Persona y conciencia en Santo Tomás de Aquino,” in *Revista Española de Filosofía Medieval*, 10 (2005), p. 276.

34 AQUINAS, *Sum. Theol.*, I-II, q.81, a.2, ad 2 and 3in c. English online version in [https://www.documentacatholicaomnia.eu/03d/1225-1274,\\_Thomas\\_Aquinas,\\_Summa\\_Theologiae\\_%5B1%5D,\\_EN.pdf](https://www.documentacatholicaomnia.eu/03d/1225-1274,_Thomas_Aquinas,_Summa_Theologiae_%5B1%5D,_EN.pdf)

35 *Ibid.*, I-II, q. 113, a. 10.

36 Réginald GARRIGOU-LAGRANGE, *Las tres edades de la vida espiritual*, Ediciones Palabra, Madrid, 2003, vol. I, p. 39.

37 AQUINAS, *De Veritate*, q. 10, a.1. <https://isidore.co/aquinas/QDdeVer10.htm>

Richard of Saint-Víctor proposed an ontological-existential dimension of the person<sup>38</sup>, consisting of “an existent by itself, with a certain singular mode of rational existence<sup>39</sup>.” Attention is drawn here to the fact that the definition of personhood must be too generic since it unavoidably requires that which is unique and identifiable by a proper name<sup>40</sup>. Consequently, personal identity is incommunicable and ineffable in a way much more intense and profound than “mere individuality,” which will be attributed by Scotus later<sup>41</sup>. Coinciding with this idea, Aquinas does not usually use the term “individual” to refer to a subject of the human species, i.e., a person<sup>42</sup>.

Over time, the idea of the human person began to be detached from its original transcendent dimension. This was influenced by the breakdown of the link between man and God, reached by various paths. One such path is the metaphysical fracture arising from the rejection of the analogy of being, mainly due to the nominalist approach, serving as a precedent for Grotius through various authors of the fourteenth- and fifteenth-century decadent Scholasticism<sup>43</sup>. Central to Thomistic theory was the concept of analogy, whereby the being of God participated in the lower analogues. Applied to the theory of Law, Natural Law was conceived as a participation of the rational creature in divine wisdom in such a way that the eternal Law was the principal analogue of all other moral and juridical norms of a lower character. According to Grotius’ hypothesis (*Etiam si daremus non esse Deum aut non curari ab eo negotia humana*), Natural Law would still be in the hearts of men if God did not exist<sup>44</sup>, which was commonplace in earlier Scholasticism. What was novel in Grotius—and relevant for the argument we present here—is that the hypothesis does not establish a relation of causal exemplarity—analogy and participation—between divine nature and human nature, between the reason of God and the reason of man, thus depriving the notion of a person of its transcendence<sup>45</sup>. This type of formulation, as well as the negation of universal essences proposed by Ockham, had not only broken scholastic unity concerning the Law<sup>46</sup>, but also gave way to philosophical Modernity by making the unity of empirical-transcendental difference methodologically inconducive.

38 Ricardo de SAN VÍCTOR, *De Trinitate*, p. 523. We use here the French version, G. Salet, Richard de Saint-Victor, *La Trinité* (Sources Chrétiennes, 63), Du Cerf, Paris, 1959.

39 *Ibid.*, p. 294.

40 Alfredo CULLETON, “Tres aportes al concepto de persona: Boecio (substancia), Ricardo de San Víctor (existencia) y Escoto (incomunicabilidad),” in *Revista Española de Filosofía Medieval*, 17 (2010), p. 59-72.

41 Duns SCOTO, *Ordinatio*, Lib. I, dist. 2, pars 2, q.1, in *Opera Omnia*. Studio et cura Commissionis Socotisticae ad fidem, typis Polyglottis Vaticanis, Vatican City, 1950.

42 Miguel GARCÍA-VALDECASAS, *El sujeto en Tomás de Aquino. La perspectiva clásica sobre un problema moderno*, EUNSA, Pamplona, 2003, p. 17.

43 Javier HERVADA, “Lo nuevo y lo viejo en la hipótesis ‘Etiam si daremus’ de Grocio,” p. 361. Available at <http://www.rehj.cl/index.php/rehj/article/viewFile/99/97>

44 Hugo GROCIO, *De iure belli ac pacis: libri tres, in quibus ius naturae et gentium, item juris publici praecipua explicantur*, The Lawbook Exchange Ltd., New Jersey, 2005.

45 HERVADA, p. 366.

46 AQUINAS, *Sum. Theol.*, I-II, q. 93.

Alternatively, thanks to Humanism, the idea of subjective conscience acquired a novel space in the sphere of discernment and freedom since Humanism turned its gaze to individual sensibility<sup>47</sup>. This spirit was nourished by the feeling of threat to one's existence, resulting in the appearance of subjectivity as a literary and abstract motif. The most prominent example is Boccaccio's *Decameron*<sup>48</sup>. Along with Dante and Petrarch, Boccaccio constitutes the literary transition from the Middle Ages to the Renaissance. A human being is presented here as the artificer of his destiny and not as a debtor of divine grace. The famous triumph of Boccaccio's tales was that they imposed the daily, historical, individual, and concrete experiences over the transcendent and impersonal perspective of the Middle Ages<sup>49</sup>. This attitude was consistent with the spirit of a community that no longer considered that its history on earth was about to end.

From Descartes onwards, the idea of "person" begins to identify with the "self"<sup>50</sup>, the core of his self-consciousness, insofar as it is the foundation of subjective identity, what Kant would name in due time the "unity of pure apperception"<sup>51</sup>. The human being thus recovers its condition of *homo mensura*<sup>52</sup>, whose modern icon is the Vitruvian Man. Personality comes to be configured as the status by which man is released from the laws of nature. An anthropocentric view of growing self-mastery replaces the medieval meaning of transcendence. A conception of the human designed through a series of bodily and spiritual values supposedly common to all is popularised. These automated and moral values, together with the human capacity to seek perfection, determine an immanent turn in the production of meaning about the condition of the human being. Personhood now primarily meant a nucleus of rationality and freedom to acquire a space in the world for oneself, without reference to an ulterior universal-transcendent end, in such a way that a human being becomes an end in themselves<sup>53</sup>. This line of thought is also found in Heidegger, for whom the human being is something that is [*etwas Seiendes*]. As such, he belongs, like stones, trees, or eagles, to the totality of being. The distinctiveness of human beings lies—he argues—in that having a thinking nature open to being, the person is placed before being. In this way, the idea

47 Ernesto GRASSI, *La filosofía del humanismo. Preeminencia de la palabra*, Barcelona, Anthropos, 1993, pp. 89-90.

48 The work (circa 1351) is composed of one hundred tales, some of them true short novels. Thematically, it revolves around three motifs: love, human intelligence, and fortune. The setting is the plague that affected Florence in 1348. A group of seven women and three men, fleeing from the plague, take refuge in a villa on the outskirts of Florence, where they supposedly narrate the stories that make up the book.

49 Nicolás VALDÉS, "El camino narrativo de Boccaccio," in *Philologia Hispalensis*, 7 (1992), p. 286 (285-297).

50 Daniel HOLBROOK, "Descartes on Persons," in *The Personalist Forum, Supplement: Studies in Personalist Philosophy. Proceedings of the Conference on Persons*, 8(1), 1992, p. 11.

51 Immanuel KANT, *Analytic of Concepts*, chapter II, sec. 2, Transcendental Deduction of the Pure Concepts of the Understanding, section 15.

52 ARISTOTLE, *Metaphysics X*, 1, 1053a35; XI 6, 1062b13. Oxford University Press, 1924.

53 Immanuel KANT, "Handle so, daß du die Menschheit sowohl in deiner Person, als in der Person eines jeden andern jederzeit zugleich als Zweck, niemals bloß als Mittel brauchest," in *Grundlegung zur Metaphysik der Sitten*, Meiner Philosophische Bibliothek, 2016, p. 75.

of the human being, although they have lost their reference to God, is conceived as belonging themselves to being and being able to notice and say that “there is being,” since therein lies hidden the initial mystery [*das Anfängliche Geheimnis*] for all thinking<sup>54</sup>. In both historical and intellectual moments, as we can see, the person appears as a self-identical reality<sup>55</sup>. Both conceptions appeal to the unique, solid, and stable foundation of personality, although the justification to which they resort is of a different sign. While one emphasises the transcendent character of the origin, the other makes it immanent through the valuation of the reason-freedom nucleus. In Aristotelian language, the difference between one canon and the other is not formal (it does not alter the gesture of appeal to the foundation) but simply material (they offer a foundation of the opposite sign), and therefore they would be affected by a fundamental unity and similarity, which would convert their differences into merely accidental matters. This ontological identification of classical thought with Modernity leads Derrida to affirm that the binary logic that divides the world between the world and consciousness of the world exists even in the thought of Heidegger himself, which would remain inscribed in the sphere of a metaphysical conception<sup>56</sup>.

Where, however, may one speak of the deconstruction of personhood and, therefore, of the rights holder? The reversal of Western values (the opposition between medieval and modern thought) is not the result of deconstruction but the “destruction” of a starting point and its replacement by another. Deconstruction, on the contrary, occurs when the question (about the foundation) is directed to another question (about the foundation) in an infinite iteration that does not allow finding a material answer that can be identified as the research end. The moment of deconstruction is, consequently, the moment in which the radical origin is declared impossible. Applied to a human being, we propose that deconstruction begins when personhood is conceived exclusively as the result of a process of self-configuration, outside all causality and all nature, without antecedents or limits that can be transgressed.

It could be objected at this point that the foundation of the human subject and action in subjectivity already satisfies this effect since the individual could even-

54 Martin HEIDEGGER, “Brief über den ‘Humanismus’,” in *Platons Lehre von der Wahrheit. Mit einem Brief über den ‘Humanismus’*. Bern: Francke, 1954, p. 80.

55 It must be kept in mind that the word “person” does not have the same meaning as the term “human being,” although they are used interchangeably in current language. The idea of person expresses individuality in a spiritual sense, and therefore every man is a person, but not every person is a man. The name person, as far as it expresses such individuality, has a logical and grammatical formulation distinct from the concept of man, which points to the logical genus.

56 DERRIDA, *On Grammatology*, p. 4 “The history of (the only) metaphysics, which has, in spite of all differences, not only from Plato to Hegel (even including Leibniz) but also, beyond these apparent limits, from the pre-Socratics to Heidegger, always assigned the origin of truth in general to the logos: the history of truth, of the truth of truth, has always been—except for a metaphysical diversion that we shall have to explain—the debasement of writing, and its repression outside ‘full’ speech.”

tually act arbitrarily. It is true that, from an external, factual point of view, the result of both positions could be similar—at least for a time—but the horizon of meaning of both proposals is very different. In the case of subjectivity as a replacement for a universal ontological or moral Law, it is subjectivity that behaves as a foundation. However, it cannot be universally predicted. Deconstruction as a reading strategy, on the contrary, supposes the disqualification or closure of the foundation in general in a methodological sense so that the hermeneutic act (comprehension) never takes place. This hermeneutic act is replaced by a set of redirections configured in a way that is always mutable:

A text is not a text unless it hides from the first comer, from the first glance, the law of its composition and the rules of its game. [...] The dissimulation of the woven texture can in any case take centuries to undo its web: a web that envelops a wen, undoing the web for centuries; reconstituting it too as an organism, indefinitely regenerating its own tissue behind the cutting trace the decision of each reading.<sup>57</sup>

In issuing personality as a synthetic and permanent reality in history, several coordinates intervene, the main one being that living matter is capable of self-organisation without requiring a formal spiritual principle to reach higher forms of life. This is coherent with the conception that the matter of biological entities is *autopoietic*, not metaphysically, but strictly organic (the *autopoietic* unit is self-referent as a biological reality and nothing else), in relational tension with the environment<sup>58</sup>. *Autopoiesis*, understood as the fundamental logic of living beings, would produce a continuum between nature and culture. Although this theory is essentially biological, the theoretical principle with which it approaches the explanation of the reproduction of life has nevertheless assumed certain notoriety in some fields of the human sciences or ‘sciences of the spirit’ so that it could be compared to those meta-theoretical designs that serve as worldviews. Such a fact is probably a consequence of Luhmann calling *autopoiesis* ‘explosive material,’ thus indicating its open theoretical possibilities in the field of culture and not only of ‘nature’<sup>59</sup>.

From the point of view of consciousness, the idea of autopoiesis is like the deconstructive model since consciousness appears to be not a cognitive or moral content but a process of self-configuration that does not require internal coherence. According to these reflections and their internal logic, the contradiction between the two ‘traditional’ constitutive principles of the human person—matter and spirit—would end up being subjected to a process of deconstruction, in which it would turn out that the qualities of one are in

57 Jacques DERRIDA, *La dissemination*, translated by Barbara Johnson, The University of Chicago Press, 1981, p. 63.

58 FRANCISCO VARELA, “Autopoiesis and a Biology of intentionality,” in B. McMullin & N. Murphy (Eds.), *Autopoiesis & Perception. Proceedings of a workshop held in Dublin City University, August 25<sup>th</sup> & 26<sup>th</sup> 1992* (pp. 1-14). Dublin: School of Electronic Engineering Technical Report, 1994, p. 3.

59 NICHOLAS LUHMANN, *Sistemas sociales: lineamientos para una Teoría General*. Mexico: Alianza Editorial / Universidad Iberoamericana, 1991, p. 480.



the other so that they cannot be distinguished. This assertion contradicts the conclusion that nothing of spirit is produced in the matter, and nothing of matter inhabits the spirit.

The instability of human beings' grounds deduced from this thesis has various consequences in all spheres of reflection and activity. The most important of them points to the human condition, which has lost its substantial and somehow subjective character since subjectivism is a doctrine that identifies subjectivity as the determining element of human substance but without denying the ontological imprint of the "subject." Without a sound metaphysical foundation, a human being remains "decentred," lacking in basic terms a cause or point of departure and a finality or point of arrival. Their activity is associated with attributing meaning but not with a predetermined meaning<sup>60</sup>. This new status of meaning lacks fixity and cannot, in any case, be proposed as universal. Therefore, the various deconstructive readings by the same subject could be "contradictory" to each other and still both be valid, insofar as for one statement to be contradictory to another, there must be something like an original attribution of meaning.

As we have seen, when the privilege of transcendence (image and likeness of God) disappears, humans can only wield their rationality to claim superiority over the rest of the physical world. When it is affirmed that rationality comes from no other source than a qualitative evolution of matter and is located simply in the brain as if it were its cause<sup>61</sup>, the total immanence of a human being is declared. Thus, superior capacities would be nothing but an extension of matter, and consciousness would exist due to its highly organised state. According to this conception, consciousness and thought would develop from higher level matter organisation. If human beings are constituted by matter that obeys the same laws of physics that operate outside us, then it should be possible to learn to manipulate human nature in the same way we manipulate external objects<sup>62</sup>.

From a legal point of view, this interchangeability is the formulation of the following principle: not all humans, and therefore rights holders, necessarily continue or can continue to be considered as such. There is a destabilisation of rights-bearers' status at the beginning and end of life. In the case of the

60 This points to a discussion with Gadamer. His idea of the "philosophy of the understanding of meaning" was ordered to the conception of language and reason as interpretation (understanding) of that language, which is considered in a universal sense. Gadamer develops a phenomenological reflection on the character of understanding as the historical and existential condition of the subject. This turn or twist to the usual way of understanding human action with its word—language—and to the usual way of reception of the historical flow—meaning—points to a universal-ontological structure, to the fundamental constitution of everything towards which understanding can turn. This is precisely the opposite of what Derrida would go on to argue. Hans Georg GADAMER, *Verdad y método*, I. Salamanca, Sígueme, 2005, p. 567.

61 E. g. Michael GAZZINAGA, *The Consciousness Instinct. Unraveling the Mystery of How the Brain Makes the Mind*, New York, Farrar, Straus & Giroux, 2018.

62 Nick BOSTROM, "A History of Transhumanist Thought," in *Journal of Evolution and Technology*, 14 (April 2005), p. 3.

abortion debate and the quality of the foetus, the argument for its free disposition has shifted from the attempt to demonstrate that the embryo is not a person to declaring that the mother's right to eliminate it if she so wishes takes precedence over it, even if the foetus *is* a person. In this interpretation, it is of little relevance what the unborn is in its proper substance. The foetus must yield to the horizon of meaning proposed by the mother, the ultimate argument being the "dignity" of the woman who makes the decision<sup>63</sup>. This idea of dignity is more related to the self-configuration of the self through non-hierarchical meanings than to the recognition of an essential status in the medieval or modern sense.

Human happiness is thus confined to well-being, which gives more importance to the quality of life than life itself. Therefore, people affected by irremediable situations begin to be authorised to end their lives, arguing that their suffering would be "inhuman" or that their "dignity" would be diminished by suffering," the discomfort and inconvenience of diseases. In addition, some have already suggested that these terminally ill persons constitute an unnecessary expense of funds and time for the healthcare system<sup>64</sup>. In the Netherlands — a country that approved euthanasia in 2001 — there is a well-known case of a seventy-four-year-old woman who had signed a written declaration requesting euthanasia, but only when she was ready for it. Simultaneously, she had also expressed on other occasions that she did not want to die by euthanasia. Despite this assertion, the doctor on duty put a sedative in the woman's coffee without telling her. The patient woke up when the doctor tried to give her a lethal injection, so her relatives restrained her from completing the euthanasia<sup>65</sup>.

A third case in which we can observe a deconstruction of the anthropological foundation, and therefore a reconfiguration of the rights holder, is the posthumanist project and its consequences. The basic argument is that it cannot be argued that we have always been human or that we have always been nothing but human throughout time<sup>66</sup>, and even less that we will continue to be so in the future. The defenders of this thesis affirm that the attachment to the species as if it were a given, a presupposition, to the point of constructing the idea of culture around what is human, is a chimera (because the idea of a fixed nature as the humanity foundation has been suppressed). This conclusion is supported by evolutionary theories, formulated since Darwin's original statement of a scientific-systematic explanation of biological complexity, proposed outside the idea of a creator and intelligent God<sup>67</sup>. A human being,

63 This is, for example, the argument in the message of the three-cause abortion bill sent to the Chamber of Deputies by the former President of the Republic of Chile, Michelle Bachelet, on January 31, 2015.

64 [https://www.lainformacion.com/mundo/segun-un-estudio-los-medicamentos-que-reciben-los-enfermos-terminales-de-cancer-son-un-gasto-innecesario\\_1zmj8j0g9oi1xvjp1ygy3/](https://www.lainformacion.com/mundo/segun-un-estudio-los-medicamentos-que-reciben-los-enfermos-terminales-de-cancer-son-un-gasto-innecesario_1zmj8j0g9oi1xvjp1ygy3/)

65 BBC News, January 31<sup>st</sup>, 2019. <https://www.bbc.com/mundo/noticias-47062242>

66 Rossi BRAIDOTTI, *Lo posthumano*, Barcelona, Gedisa, 2013, p. 1.

67 Michael CHABEREK, *Catholicism & Evolution. A History from Darwin to Pope Francis*. Kettering, OH, Angelico Press, 2015.

therefore, would constitute a kind of flux<sup>68</sup> since, in the matter, nothing is lost, and everything is transformed.

Consequently, the idea of a human being as a superior, spiritual being would end. Further, there will no longer be a precise idea of what it is to be human since human beings would become subject to permanent improvement and enhancement in the corporeal-biological sense. Thus, technology becomes an instrument capable of opening humanity towards supposedly superior, trans-specific, pan-human destinations. This enhancement project includes physical, intellectual, emotional, and moral aspects.

The key to unveiling this new universe is biotechnology: non-therapeutic biotechnological improvements, operating on the basis that the human being lacks a stable and universal foundation, could lead to a race of individuals modified from the same condition as embryos<sup>69</sup>, altered to such an extent that their range of life experience is no longer human, but posthuman<sup>70</sup>. In this logic, the world would be divided between *mere persons* and *post persons*, each of these groups considered as distinct legal subjects and rights bearers, given their diverse and hierarchical capacities, which would generate severe legal problems, especially regarding equality<sup>71</sup>.

#### 4. Deconstruction of objects (that over which the rights and obligations of the holder are vested)

The disfiguring of the edges or borders of the non-rational world depends directly on the deconstruction of the human rights holder. Today it is possible to identify initiatives aimed at reconfiguring the “nonhuman” or “non-personal” reality. The instability of the human rights bearer leads us to maintain that the realm of personality would not only be composed of individuals of the human species but also animals, or specific groups of animals, or even, according to some rather extreme but increasingly frequent positions, inanimate objects such as the earth as a whole<sup>72</sup>. The principle would be that nonhuman beings should be considered “persons.” We will deal here exclusively with the example of nonhuman animals (henceforth animals).

The traditional thesis did not deny that animals possess knowledge but ruled out that such knowledge was rational. The absence of abstract thought in these

68 “The subject is a product of the machine of representation, and disappears with it,” Albrecht WELLMER, “La dialéctica de modernidad y postmodernidad,” in J. Picó (ed.), *Modernidad y Postmodernidad*, Madrid, Alianza Editorial, 1988, p. 107.

69 Jonathan ANOMALY, *Creating Future People. The Ethics of Genetic Enhancement*, New York, Routledge, 2020, p. 89.

70 Nicholas AGAR, *Truly Human Enhancement. A Philosophical Defense of Limits*, MIT Press, London, 2014, p. 3.

71 Thomas DOUGLAS, “Human enhancement and supra-personal moral status,” *Philosophical Studies: An International Journal for Philosophy in the Analytic Tradition*, Vol. 162, No. 3 (February 2013), pp. 487 ss.

72 Pablo SOLÓN, “The Rights of Mother Earth,” in *The Climate Crisis: South African a Global Democratic Eco-Socialist Alternatives* (Vishwas Satgar, ed), Wits University Press, 2018, pp. 107-130.

types of beings led to the conclusion that their natures were not spiritual but exclusively material. The knowledge of animals was located only in the sensible, corporeal sphere since the operation of the animal does not produce abstractions to conclude their cognitive independence concerning the matter<sup>73</sup>. Thus, from a legal point of view, animals are situated on the level of *objects of Law*, over which the attributes of dominion can be exercised<sup>74</sup>. Although this thesis defined the human being as *zoon logon echon* or *animal rationale*, that is, an animal endowed with reason, this tradition operates on the radical opposition of the human person to all the rest of the animal genus, defining the latter as a reality devoid of what is considered proper and specific to man.

In the 1960s, criticism of “strong anthropocentrism” became the norm. The complete exteriority of the animal concerning the realm of rational cognitive consciousness is now being questioned. For example, it is argued that many aspects of animal life would have been disdained by “the most powerful philosophical tradition in which we live.” This philosophical dismissiveness would have ignored the suffering of the so-called “non-rational” beings through speciesism or unjustified discrimination against those who do not belong to a particular species<sup>75</sup>. The question that should be asked is not, it is argued, whether animals can reason or speak but rather whether they can suffer, as Bentham stated when he affirmed that the capacity to experience suffering is a determining factor in the delimitation of the moral sphere<sup>76</sup>. Bentham is the first Western philosopher to argue that nonhuman animals deserve equal moral consideration. In our time, the banner of animal suffering and sentient consciousness, along the lines of Bentham, has been raised by several authors, including Peter Singer and his disciples<sup>77</sup>. To justify the attribution of full moral status to nonhuman sentient beings, Singer refers to a utilitarian moral theory.

73 “What is consequent upon all being is a property of being, as such. Such a property must be found in its perfection in the first and greatest of beings. Now it is the property of all being to seek their own perfection and the preservation of their own existence. Every being does this in its own way: intelligent beings, by their will: animals, by their sensitive appetite: unconscious nature, by a certain physical natus,” AQUINAS, *Summa contra Gentiles*, II, chap. LXXII, 3).

74 In fact, the Civil Code of the Republic of Chile considers them “movable goods.” Art. No. 567: Movable are those that can be transported from one place to another, either by moving themselves, such as animals (which are therefore called movable), or that are only moved by an external force, such as inanimate things. All things that are or can be subject to ownership are considered movable or immovable property.

75 Oscar HORTA, *Un paso adelante en defensa de los animales*, Madrid, Plaza y Valdés, 2017, p. 22.

76 Jeremy BENTHAM, *An Introduction to the Principles of Morals and Legislation*, ed. J. H. Burns and H. L. A. Hart. London, The Athlone Press, 1970, pp. 282-3.

77 “We tried to explain that we were interested in the prevention of suffering and misery; that we were opposed to arbitrary discrimination; that we thought it wrong to inflict needless suffering on another being, even if that being were not a member of our own species; and that we believed animals were ruthlessly and cruelly exploited by humans, and we wanted this changed. Otherwise, we said, we were not especially “interested in” animals. Neither of us had ever been inordinately fond of dogs, cats, or horses in the way that many people are. We didn’t “love” animals. We simply wanted them treated as independent sentient beings that they are, and not as a means to human ends—as the pig whose flesh was now in our hostess’s sandwiches had been treated.” Peter SINGER, *Animal Liberation*, New York, Ecco (Harper & Collins), 2002, p. xxi.

Nevertheless, other authors, such as Tom Regan, develop an opposite approach instead, basing moral consideration towards other animals on deontological grounds and using the rights language<sup>78</sup>.

As Derrida recalled during his lecture, the question of “the animal” is present in many texts. The insistence on this motif throughout his work derives from at least two sources. The first is undoubtedly a unique and keen sensitivity, a particular aptitude for sentiments of “sympathy” with the aspects of animal life that philosophy has forgotten chiefly or scorned. Hence, he gives great importance to the question Bentham asks concerning animals: “Can they suffer?” This seemingly simple question was a profound one for Jacques Derrida. He comes back to it several times. The suffering of animals never leaves him indifferent.

For Derrida, the question of suffering acquires theoretical relevance by converging it with the need to lay siege to the texts of the history of philosophy, which would obstinately oppose human beings to the rest of the animal genus as an undifferentiated whole, scorned by philosophy: “the Animal”<sup>79</sup>. This is a question that Derrida has been interested in since *The Ends of Man*<sup>80</sup>. The objection to the (lack) of rationality seems to be approached by Derrida in the same way as metaphysics; that is, as an insurmountable aporia, concomitant with the human condition. The aporia should be fossilised, surrounded, and closed to give way to the logic of the supplement<sup>81</sup> in such a way that rationality (or lack of rationality) is not significant in deciding the question of personhood, despite the central place it occupies in the tradition. Through procedures of literary analysis, other marginal senses are identified that reconstruct the global meaning of the term “person” from its periphery precisely by assuming that the distinction between “centre” and “periphery” can no longer be formulated.

One can turn to the notion of *parergon* in Derrida’s deconstruction of Kant. The latter calls “ornamental” (*parerga*) those elements in a masterpiece that are accessories, such as the clothing or textile on a statue, the colonnades of a temple, or the frame of a painting. Derrida wonders what the place of this *parergon* is, where it begins and ends, what its internal and external limits are, what the surface between both limits is, and whether the passage of the *Critique* defines it also as a *parergon*<sup>82</sup>. Derrida questions the thesis of the universal value of beauty—and the value of any universal affirmation—through

78 Tom Regan, *The Case for Animal Rights*, The University of California Press, Berkeley, 1983, p. 144.

79 Jacques DERRIDA, *L’animal que donc je suis*, Paris, Éditions Galilée, 2006. We quote here from the English version: *The Animal that therefore I am*, Fordham University Press, 2008, p. xi

80 Jacques DERRIDA, “Los fines del hombre,” in *Marges de la philosophie*, Les Éditions de Minuit, Paris, 1972. We quote here from the English version: *Margins of Philosophy*, The Harvester Press, Chicago, 1982, pp. 109-136.

81 DERRIDA, *On Grammatology*, p. 9.

82 Jacques DERRIDA, *The Parergon* (C. Owens, trad.). October, 9, p. 26.

the idea of *parergon* as something that is produced against the completed work; it is something added to the *ergon*, which collaborates with it not simply from within, but not simply from outside either. Therefore, the *parergon* is a non-central element of a text. Because of the disappearance of the difference between substantial and accessory, this peripheral element can now be proposed as a reinterpreting code of the general sense of that text.

Focused on the debate on who has the attribute of personality, the *parergon* of the argument is found in the sensitivity and displacement of rationality, the capacity to suffer, and the need to empathise with the animal aspects not considered relevant. The above prevents the animal from being configured negatively, that is, by which it lacks in comparison to human beings. Derrida seeks to avoid animals being subjected to the binary logic of mutually exclusive opposites, ignoring the “true” meaning of its response to the man<sup>83</sup>. Since the *logos* appears to be the instrument that isolates animals—and everything nonhuman that inhabits the planet—the eradication of this difference should begin with the eradication of the *logos*, destabilising its centrality through the logic of the *parergon*, precisely when the man who thinks he knows himself meets the gaze of the animal. Derrida affirms:

In the first place, there are texts signed by people who have no doubt seen, observed, analyzed, reflected on the animal, but who have never been *seen seen* by the animal. Their gaze has never intersected with that of an animal directed at them (forget about their being naked). If, indeed, they did happen to be seen seen furtively by the animal one day, they took no (thematic, theoretical, or philosophical) account of it. They neither wanted nor had the capacity to draw any systematic consequence from the fact that an animal could, facing them, look at them, clothed or naked, and in a word, without a word, *address them*. They have taken no account of the fact that what they call “animal” could *look at* them, and *address* them from down there, from a wholly other origin. That category of discourse, texts, and signatories (those who have never been seen by an animal that addressed them) is by far the one that occurs most abundantly. It is probably what brings together *all* philosophers and all theoreticians *as such*<sup>84</sup>.

From a normative point of view, the hegemony of this perspective would lead to taking ownership of the animal, to its anthropoid-theomorphic transformation<sup>85</sup>, which obliges it to receive the name and thus condemns it to silence. The word “animal” becomes a name that humanity has instituted, a name that they have given themselves the right and the authority to give to another living being<sup>86</sup>. In other words, the word animal would be nothing more than the institutionalisation of metaphysical violence:

83 Cary WOLFE, *What is Posthumanism?*, Minneapolis, The University of Minnesota Press, 2010, p. 39.

84 DERRIDA, *The Animal Therefore I am*, p. 13.

85 *Ibid*, p. 18.

86 *Ibid*, p. 19.

Such a subjection, whose history we are attempting to interpret, can be called violence in the most morally neutral sense of the term and even includes the interventionist violence that is practiced, as in some very minor and in no way dominant cases, let us never forget, in the service of or for the protection of the animal, but most often the human animal. Neither can one seriously deny the disavowal that this involves. No one can deny seriously anymore, or for very long, that men do all they can in order to dissimulate this cruelty or to hide it from themselves; in order to organize on a global scale the forgetting or misunderstanding of this violence, which some would compare to the worst cases of genocide<sup>87</sup>.

This argument provides the basis for configuring the typification of the animal as a name, designating the absence of personality in a labile way. The human person can no longer be said to be *another* (in a Levinasian sense) as a reality situated in the total exteriority of the animal. Thus, it is intended to remove the obstacle that rationality represents to the consecration of the personality of animals by recourse to the gaze of the one who suffers. According to this discourse, the alienness of the human species is disarticulated by “the immense question of pathos.” The problem of suffering and compassion, and especially the place to be given to interpreting this compassion, opens the door to a different reflection on dignity, Law, ethics, and politics. From now on—these authors argue—such notions must necessarily be linked to this experience of compassion<sup>88</sup>.

This capacity for suffering as the basis for deconstructing the idea of personality centred on reason would be the origin of the “right not to suffer” and could therefore break juridical humanism<sup>89</sup>, that is, the notion that legal systems should only be functional to the interests of human beings because only they would be the bearers of moral dignity.

## 5. Final considerations

The core of the thesis proposed in this paper is that the traditional distinction between humans as holders of rights and obligations and “animals” as those over which rights and obligations are exercised has been deconstructed, along with the very idea of “personhood,” which now happens to expand its field through the incorporation of nonhuman realities, and the diminution of the extent of the “old” realities considered “human.” It is not a mere inversion of the terms “human being/animal,” as could be interpreted in the opposition of the various foundations offered in the history of thought. The liberation of signifiers implied by deconstruction poses the problem on a much more radical stratum: the impossibility of establishing a compelling difference between the

87 *Ibid*, p. 23.

88 *Ibid*, p. 24.

89 Tomasz PIETRZYKOWSKI, “Towards modest naturalization of personhood in law,” in *Journal for Constitutional Theory and Philosophy of Law* (2017), pp. 60-1.

binomial terms. This means that the full exteriority of these binomial components has been suppressed through various methodological mechanisms, so that explicit or reassuring margins could no longer be proposed at its edges. These margins would allow us to recognise their difference and grant them a philosophical or legal status of clear justification and separation<sup>90</sup>.

On the contrary, what is observed in the new non-binary model is the existence of signs that iterate indefinitely as transcendental structures without representing self-identical realities that give rise to subjects *per se* or things (animals) *per se*, with their respective ahistorical rights. Thus, the deconstruction of the relationship between human beings and nonhuman living objects is also, in a certain sense, the deconstruction of the right/interest binomial. The “right” no longer rests on a title or antecedent of justification that provides a material content but becomes the expression of a desire, *hic et nunc*, of the subjective consciousness that performs the act of reading and that can do nothing other than manifest that desire.

This opens a new philosophy of the person, which has significant consequences for the juridical and political realms. Legally speaking, animals and humans are then seen as a continuum to which other beings of the world of inert realities could be added in the future. The main difficulty in this scenario seems to be coordinating the Law’s demand for universality with the singularity of the deconstructive act. The deconstructive reading of a text is individual in a nominalist sense. It responds to the flow of consciousness and claims that the Law protects this state of affairs. Legal systems, on the other hand, as instruments of social ordering, require more than mere consciousness to achieve universality and certainty of Law.

In the case of the subject/object opposites, the weakening of boundaries between both terms is linked to the explicitness, delimitation, and implementation of “fundamental” rights, which, by their very condition of “deconstructive” rights, could change over time, without having a legal system at their disposal and the appropriate elements to normalise this situation in the medium term without affecting requirements such as certainty, trust, or concord. In other words, it seems reasonable to think that the conditions of possibility to apply these criteria or horizons of meaning on personality—as positive norms in force and practical—require prior responsible and exhaustive analysis, which the doctrine and science of Law must undoubtedly carry out.

90 In 2014, the Second Criminal Cassation Chamber of Buenos Aires (Argentina) considered an orangutan as a “non-human person,” stating that “based on a dynamic and not static legal interpretation, it is necessary to recognize the animal as a subject of rights, since non-human subjects (animals) are holders of rights, which is why their protection is required within the corresponding jurisdiction” (Orangutana Sandra s/ recurso de casación, 2014). Recently, academics in the University of Cambridge have opened Europe’s first centre for the study of animal rights law (*Cambridge Centre for Animal Rights Law*) in the wake for the push for animals to be treated as “non-human persons.” *The Sunday Telegraph*, January 3, 2022.



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