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The Distinction Between Persons & Things: An Historical Perspective

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THE DISTINCTION BETWEEN PERSONS & THINGS: AN HISTORICAL PERSPECTIVE

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> *Of all the juridical distinctions, the most important opposes persons and goods. More than a distinction, it is a hierarchy: the person is the grandest of riches, for he has an infinite value. The riches of the world are given to man so that he may be the master of them; sometimes, they become the master of him.*
>
> Philippe Malaurie & Laurent Aynès[1]

If the *summa divisio* of the civil law–the distinction between "persons" and "things"–can be traced back through the pages of history to a single source, then that source may well be the following line of the *Institutes* of the second century Roman jurisconsult Gaius:[2] "Now, all the law that we make use of pertains either to persons or to things or to actions."[3] This is not to say that the concepts "person" and "thing" were unknown to Gaius' predecessors and contemporaries; they were not. But Gaius seems to have been the first to have set these concepts in an apparent binary opposition to each other and almost certainly was the first to have attached great significance to that opposition,[4] making of it

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1. PHILIPPE MALAURIE & LAURENT AYNES, DROIT CIVIL: LES BIENS (2d ed. 2005) (J.-R. Trahan trans., 2008).

2. On Gaius and his INSTITUTES, *see generally* PETER STEIN, ROMAN LAW IN EUROPEAN HISTORY 19-20 (Cambridge Univ. Press 1999); and BARRY NICHOLAS, AN INTRODUCTION TO ROMAN LAW 34-36 (1984).

3. GAI. INST. bk. I, tit. II, n° 8 (J.-R. Trahan trans., 2006).

4. 1 FREDERICK CARL VON SAVIGNY, TRAITÉ DE DROIT ROMAIN § LIX, 389-90 (Charles Guenoux trans., Firmin Didot Frères 1840) ("[I]t has often been claimed, or at least tacitly acknowledged, that among the Romans there had been had a very ancient custom of relating the rules of law to three classes of objects: *persona*, *res*, *actio*, and that the Roman jurisconsults had all, or nearly all, followed these division in their treatises . . . Now, not a single historical fact serves to support it [this claim], and diverse circumstances seem to contradict it.

part of the very organizational backbone of his *Institutes*.[5]

Though Gaius considered "persons" and "things" to be fundamentally different from each other, it is less than entirely clear of what he considered this difference to consist. Absent from his *Institutes*–the only writing of his that has survived–is any definition of either term, any explanation of the supposedly distinctive "nature" or "essence" of one or the other, on the one hand, or "things," on the other, or any account of the criterion(a) that must de used in determining whether a given "something" is one or the other. The basis for the distinction, like the distinction itself, Gaius appears to have taken to be so "self-evident" as to require no explanation.

Despite Gaius' silence regarding the basis for the distinction, it may be possible to get some idea of his understanding of it by looking at the various "somethings" that Gaius and, in addition, his predecessors and contemporaries treated under the rubrics "person" and "thing," respectively. Many Romanists have, in fact, attempted to do precisely that.[6] And they have arrived at something of a consensus. Let us consider, first, the concept "person." The Roman jurisconsults seem to have taken the concept to include, first and most fundamentally, a "human being" or, better yet, *every* human being properly so called,[7] even including "slaves."[8] To this extent, the term "person" was given

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. . . Thus, we have no reasons to regard the division of Gaius as generally accepted; rather, we must regard it as a particular idea of this jurisconsult . . . .")

5. Gaius' *Institutes* are divided into three parts, called "books," which bear the captions of "persons," "things," and "actions," respectively.

6. *See*, e.g., 1 SAVIGNY, *supra* note 4, § LIX, at 391-401; 1 JOHN AUSTIN, LECTURES ON JURISPRUDENCE (OR THE PHILOSOPHY OF POSITIVE LAW) lect. XII, at 348-55, & lect. XIII, at 337 & 360-64 (Robert Campbell ed., 5th ed. 1885); NICHOLAS, *supra* note 2, at 60-61 & 98-99 (8th ed. 1982).

7. 1 AUSTIN, *supra* note 6, lect. XII, at 346, 350, 352; NICHOLAS, *supra* note 2, at 60-61.

8. 1 AUSTIN, *supra* note 6, lect. XII, at 348-49; NICHOLAS, *supra* note 2, at 60-61.

The temporal span of this "human being" stretched from the moment of "live birth" (or, for certain limited purposes, such as successions, from the moment of conception) until the moment of natural death. JUST. DIG. bk. 1, tit.5, n° 7 & bk. 50,tit. 16, n° 231 "Live birth" required, among other things, that the child be born with "human form" (as opposed to that of a "monster"). TWELVE TABLES tab. IV, law III.

its common sense. But for the Roman jurisconsults the concept did not stop there. To the contrary, it was also extended, at least for some purposes, to certain groups or collectivities of human beings (e.g. the *collegia*)[9] and, in at least one case, to an aggregate of rights and duties, namely, those of an hereditary estate (*haereitas jacens*).[10] As applied to such "somethings," the term "person" was used in an analogical or fictitious sense.[11] Next, let us consider the concept of "thing." For the Roman jurisconsults, this concept encompassed, first and foremost, physical objects external to the human body that can be detected by means of the senses (*res corporales*).[12] The term "thing," to this extent, had its common sense. But the Roman jurisconsults went further, extending the concept to cover (1) what we moderns would call "rights" and "duties" (so called *res incorporales*)[13] and (2) even, in one instance and for limited purposes, a certain class of "person," namely, the slave to the extent that he (or should one now say "it"?) might constitute the object of a revindicatory action brought by his master.[14] Evaluated according to the standards of modern legal science, this schema, obviously enough, leaves much to be desired.[15]

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9. 1 AUSTIN, *supra* note 6, lect. XII, at 354.

10. *Id.* at lect. XII, at 354 & 355.

11. There is yet another wrinkle in the fabric of the Romans' understanding of "person" that complicates any attempt at explicating that understanding. This wrinkle is the Romans' failure to differentiate sharply between–indeed, even to confuse–"personality," on the one hand, and "status," on the other. *See,* e.g., G.W.F. HEGEL, PHILOSOPHY OF RIGHT n° 40, at 39 (T.M. Knox trans., 1962); 1 AUSTIN, *supra* note 6, lect. XII, at 352-53, & lect. XIII, at 363-64; NICHOLAS, *supra* note 2, at 61; *see also* 1 SAVIGNY, *supra* note 4, § LIX, at 391-95; *see generally* Jeanne Louise Carriere, *From Status to Persons in Book I, Title 1 of the Civil Code*, 73 TUL. L. REV. 1263, 1268-69 (1999).

12. 1 AUSTIN, *supra* note 6, lect. XIII, at 360.

13. *Id.* at lect. XIII, at 360 & 361.

14. *Id.* at lect. XIII, at 361 & 362-63.

15. HEGEL, *supra* note 11, n° 40, at 39 (decrying the "perversity and lack of speculative thought" in the schema); NICHOLAS, *supra* note 2, at 60-61 (characterizing the schema as "rough and ready" and as lacking a "coherent theory"); *see also* 1 AUSTIN, *supra* note 6, lect. XIII, at 361 (complaining that the inclusion of "incorporeals" in the category of things creates "perplexing ambiguity") & 2 AUSTIN, *supra* note 6, lect. XLVI, at 777 (denouncing the Roman distinction between corporeal and incorporeal things as "utterly useless"); 2 Charles Aubry & Charles Rau, *Droit Civil Français* § 162 (Paul Esmein rev., 7th ed. 1961), *in* 2 CIVIL LAW TRANSLATIONS 6 (La. St. L. Inst.

For over a millennium after Gaius, the development of a more scientific understanding of the distinction between persons and things remained elusive. In his *Institutes*, Justinian simply reproduced Gaius' statement of the distinction[16] word for word and without change. So things remained when, several centuries later, first the Glossators[17] and then the Commentators[18] set to work explicating the then recently "rediscovered" works of Justinian. For example, Bracton's *Of the Legislation and the Customs of the English*, a work apparently influenced by the Glossator Azo of Bologna,[19] we find yet another reproduction, without further elaboration, of Gaius'original statement on persons, things, and actions.[20] Then there are the *Las Siete Partidas*, a 13th century Spanish law compilation that drew on the works of the Glossators and early Commentators.[21] Though this work speaks of "persons"and of "things," it never defines either term and–this is what is really surprising–it never sets the two over in opposition to each other.

Not until the emergence of the new school of "natural law" theory in the 16th century, of whom the earliest representative is the Dutch Romanist Hugo Grotius, did anyone do much to improve on the old Roman schema. Regarding "persons," Grotius added little to the stock of existing ideas, but what little he did add proved to be important: "persons," he wrote, are those who "have rights to things."[22] Though Grotius himself did not say as much, this attribute of persons clearly implies–indeed, presupposes–another, namely, that persons "can" have such rights, in other words, have the "capacity" to receive of acquire them. (Re-) conceptualizing

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trans. 1966) (characterizing the Roman distinction between corporeals and incorporeal things as "arbitrary").

16. JUST. INST. bk. I, tit. III (J.-R. Trahan trans., 2006).

17. On the Glossators, *see generally* STEIN, *supra* note 2, at 45-49; NICHOLAS, *supra* note 2, at 46-47.

18. On the Commentators, *see generally* STEIN, *supra* note 2, at 71-74; NICHOLAS, *supra* note 2, at 46-47.

19. *See* FREDERIC MAITLAND, BRACTON AND AZO (1895); CARL GUTERBOCK, BRACTON (Brinton Coxe trans., 1866); STEIN, *supra* note 2, at 64.

20. *See* HENRICI DE BRACTON, DE LEGIBUS ET CONSEUTUDINIBUS ANGLIÆ bk. I, ch. VI, at 29 (Travers Twiss ed., 1878).

21 . *See* STEIN, *supra* note 2, at 65-66.

22. 1 HUGO GROTIUS, THE JURISPRUDENCE OF HOLLAND bk. I, ch. II, n° 28, at 15 (R.W. Lee trans., 1926).

"persons" in this way, Grotius effectively made it possible to uncouple "personality" from "humanity," a development that was to have lasting significance. So (re-) understood, the category of person could easily embrace collectivities of human beings, though Grotius himself seems not to drawn this inference. Regarding "things," Grotius broke new ground by providing a definition: "that which is external to man and in any way useful to man."[23] For Grotius, "man" evidently meant "mind" or "spirit," for Grotius included among that which is "external to man" not only natural objects (such as trees) and man-made objects (such as houses), but also the human body, human life itself (understood as physical existence), and even certain attributes of human life, such as "honor" and "reputation."[24] Perhaps recognizing the potentially dangerous implications of this reification of the body, life, honor, and reputation, and the like, Grotius introduced a new subcategorization of things, the point of which seems to have been to foreclose those very implications. According to Grotius, things can be subdivided into "alienable" and "inalienable," and things such as the body, life, honor, and reputation fall into the latter subcategory.[25]

To find still further innovations in thinking about the distinction between persons and things, one must "fast forward" the tape of history to the early 19th century.[26] At that time a

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23. *Id.* at bk. II, ch. I, n° 3, at 65.

24. This definition of "thing" anticipates that of Hegel two hundred years later. *See* HEGEL, *supra* note 11, n° 42, at 40 ("What is immediately different from free mind is that which, both for mind and in itself, is the external pure and simple, a thing, something not free, not personal, without rights . . . [W]hen 'thing' is contrasted with 'person' . . . it means the opposite of what is substantive, i.e. that whose determinate character lies in its pure externality. From the point of view of free mind . . . the external is external absolutely, and it is for this reason that the determinate character assigned to nature by the concept is inherent externality.").

25. In drawing this new distinction, Grotius at the very least anticipated, if he did not in fact lay the groundwork for, the development years later of the distinction between "patrimonial" and "extra-patrimonial" rights. On this distinction, *see generally* FRANÇOIS TERRÉ & PHILIPPE SIMLER, DROIT CIVIL: LES BIENS n°18, at24-25, & nos 23-26, at 29-32 (7th ed. 2006); JEAN CARBONNIER, DROIT CIVIL: INTRODUCTION n° 166, at 321; Aubry & Rau, *supra* note 15, § 162, at 5-6.

26. One familiar with the history of the civil law tradition will recognize that, in passing from the 16th century to the 18th century, I have skipped over a number of "big names" within that tradition, including Jean Domat and Robert

number of scholars, most of them in Germany,[27] provided something of a new "take" on "persons," "things," or both and, in so doing, developed what many now call the "modern" understanding of persons and things.[28]

Regarding "persons," the modern theory breaks new ground at two points. First, the modern theory (re-) defines "person" as the "*subject* of rights and duties," in the sense of that which is "capable" of being "subjected" to duties and/or of being "invested" with rights.[29] The following passage from the work of the German Romanist Anton Thibaut is fairly typical:

Pothier. This is not an oversight. Though both of these great civilists recognized the distinction between persons and things, neither of them did much to clarify either concept or to fix with greater precision the boundaries between the two. Their theoretical interests clearly lay elsewhere.

27. Austin attributes this development to "modern civilians." 1 AUSTIN, *supra* note 6, lect. XII, at 348, 350, & 351. Given Austin's background, the scholars he had in mind were probably the early German Pandectists, such as Hugo, Thibaut, Puchta, and Savigny.

28. *See* NICHOLAS, *supra* note 2, at 60; *see also* 1 AUSTIN, *supra* note 6, lect. XII, at 348, 350, & 351.

29. *See* ANTON THIBAUT, AN INTRODUCTION TO THE STUDY OF JURISPRUDENCE § 101, at 88 (Nathaniel Lindley trans., 1855); G.F. Puchta, *Outlines of Jurisprudence as the Science of Right* § 28, *in* WILLIAM HASTIE, OUTLINES OF THE SCIENCE OF JURISPRUDENCE 100 (1887); 2 SAVIGNY, *supra* note 4, § LX, at 1; *also* 1 AUSTIN, *supra* note 6, lect. XII, at 348, 350-51, 352, 353 & lect. XIII, at 358. Austin considered the (re-) conceptualization of "person" in terms of "subject of rights and duties" to be the result of an error. 1 AUSTIN, *supra* note 6, lect. XII, at 348, 350-54. Is it not possible, however, that it is, on the contrary, the result of an attempt to "re-think" the traditional Roman distinction between person and thing so as to put it on a sounder scientific footing? *See* 1 SAVIGNY, *supra* note 4, § at 400 ("[N]o reason obliges us to imitate servilely what are acknowledged defects, and we can, without being presumptuous and without being prideful, try to put the historical materials of the Roman law into operation in a rational manner and to present them under another form than that adopted by Gaius.").

This new notion of the "subject" of rights and duties formed one of the conceptual cornerstones of the distinction, elaborated sometime later, between the two senses of "law" or "right," namely, "subjective" law or right (in French, *droit subjectif*) and "objective" law or right (in French *droit objectif*). On this distinction, *see generally* MALAURIE & AYNES, *supra* note 1, n° 41, at 40; CARBONNIER, *supra* note 25, n° 104, at 191; n° 105, at 193; & n° 163, at 315 (26th ed. 1999); Aubry & Rau, *supra* note 15, § 162, at 1; HANS KELSEN, PURE THEORY OF LAW 169-70 (Max Knight trans., 2d ed. 1978); JEAN DABIN, LE DROIT SUBJECTIF (1952).

> We have next to consider the *subjects* of rights and duties, that is to say, the persons to whom something is possible or necessary. In the first place we must examine who or what, either from its very nature or by the precepts of positive law, can be considered as capable of rights and duties. By *Person* is meant whatever in any respect is regarded as the subject of a right: by *Thing*, on the other hand, is denoted whatever is opposed to person.[30]

This manner of (re-) defining person marks an important shift–indeed, a reversal–in thinking about "personality." Whereas in earlier times "being a person" was thought to be logically prior to and to be the cause of "having legal capacity," hereafter "having legal capacity" will be thought to be logically prior to and to be the cause of "being a person."[31] Second, the modern theory establishes a new "umbrella" category into which the various non-natural persons (*collegia*, corporations, etc.) can be conveniently placed, namely, "moral" (in the sense of "psychological") or "juridical" person.[32] This passage from the work of the German Romanist Savigny is representative:

> [Up to this point] I have dealt with the capacity of law as something that corresponds to the idea of the individual; here, I will envision it as something that is extended artificially to fictitious beings. One calls them "juridical persons," that is to say, persons who exist only for juridical ends, and these persons appear to us alongside the individual, as subjects of relations of law.[33]

Attempts at specifiying the "true nature" of such "juridical persons," though often made, have usually ended in failure or, at the very least, confusion.[34]

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30. THIBAUT, *supra* note 29, § 101, at 88.

31. *See* Carriere, *supra* note 11, at 1266-67 (1999) (". . . Aubry and Rau in the late nineteenth century, and Planiol and Ripert in the early twentieth, regarded juridical capacity as definitional of personality, rather than as a consequence of it: Persons are '[t]hose beings capable of having rights and obligations.' Nicholas characterizes this view as that of 'the modern lawyer'.").

32. *See* THIBAUT, *supra* note 29, § 113, at 93; 2 SAVIGNY, *supra* note 4, § LX, at 1.

33. 2 SAVIGNY, *supra* note 4, § LXXXV, at 234.

34. *See generally* Puchta, *supra* note 29, § 28, at 101-02; 2 SAVIGNY, *supra* note 4, § LXXXV, at 237-39; KELSEN, *supra* note 29, at 172; HANS KELSEN,

Regarding "things," the thinking of the modern theorists seems to have headed off in two rather different, if not opposing, directions. On the one hand, at least some theorists provided an even more expansive definition of "thing" than did Grotius, namely, "all that which is not a 'subject'." To this non-subject, these theorists gave the new term "object." As Thibaut put it, "By thing (*res*) is meant whatever neither is nor can be the *subject* of a legal relation, but yet may be the *object* of a legal transaction and so mediately the object of a right . . ."[35] Other theorists, however, provided a restrictive definition of "thing," one that limited that category to what the Romans called *res corporales* that is, natural and man-made objects that exist in time and in space and that can be sensed.[36] A good example of this restrictive definition is provided by the German Romanist Puchta:

> The jural relationships in which man stands as an individual relate to the external goods which he needs for his existence. These goods–the earth, with what it produces and that man makes thereof–are primariy destined for the supply of the wants which he has . . .
> The principle of right does not deal with these external goods in all their natural multiplicity, but it brings into prominence their univeral character as destined for man and his wants. This common characteristic is expressed by the word "thing". . . [37]

The true point of restricting the category of "things" in this way was to expel from that category a class of "somethings" that, in the minds of these theorists, had never properly belonged there, namely, so-called "incorporeal" things. For these theorists, that class of "somethings," scientifically understood, belonged in a different category altogether, namely, that of "rights" or "obligations."[38] The effect of this reclassification, obviously

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GENERAL THEORY OF LAW AND THE STATE 97-98 (Anders Wedberg trans., 1945).

35. THIBAUT, *supra* note 29, § 146, at 116. This seems to be the definition Nicholas has in mind when he states that, for a modern lawyer, "things" refers to "rights and duties themselves." NICHOLAS, *supra* note 2, at 60.

36. Puchta, *supra* note 29, § 23, at 69-70.

37. *Id.*

38. *See, e.g.*, 1 AUSTIN, *supra* note 6, lect. XIII, at 361-62, & 2 AUSTIN,

enough, is a re-"materialization" of the concept of "thing."

During the 20th century a number of thinkers within the civil law tradition took yet another look at one or another of the aspects of the distinction between persons and things. Perhaps the most famous of these thinkers was the German civilist and positivist legal philosopher Kelsen. As was his wont, when he came to the traditional concept of "person," he set about attempting to demythologize[39] it. Because his point of view is so distinctive and because it became so influential, at least in some quarters, his remarks merit being reproduced at length:

> The concept of the legal person–who, by definition, is the subject of legal duties and legal rights–answers the need of imagining a bearer of rights and duties. Juristic thinking is not satisfied with the insight that a certain human action or omission forms the contents of a duty or a right. There must exist something that "has" the duty or the right. In this idea a general trend of human thought is manifested. Empirically observable qualities, too, are interpreted as qualities of an object or a substance, and grammatically they are represented as predicates of a subject. This substance is not an additional entity. The grammatical subject denoting it is only a symbol of the fact that the qualities form a unity. . .[40]
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> . . . What, now, does the statement of traditional theory mean that the legal order invests the human being, or a group of human beings, with the quality of legal personality–with the qualify of being a "person"? It means that the legal order imposes obligations upon, or confers rights to, human beings, that is, that the legal order makes human behavior to content of obligations and rights. "To be a person" or "to have a legal personality" is identical with having legal obligations and subjective

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supra note 6, lect. XLVI, at 777; *see generally* NICHOLAS, *supra* note 2, at 98-99. The German Civil Code (*Bürgerliches Gesetzbuch*) reflects this sharp distinction between "things," on the one hand, and "rights," on the other, together with this restrictive definition of the former. *See* BGB § 90 ("Only corporeal objects are things as defined by law").

39. *See* KELSEN, *supra* note 34, at 93.

40. *Id.*

> rights. The person as a holder of obligations and rights is not something that is different from the obligations and rights, as whose holder the person is presented–just as a tree which is said to have a trunk, branches, and blossoms, is not a substance different from trunk, branches, and blossoms, but merely the totality of these elements. The physical or juristic person who "has" obligations and rights as their holder, *is* these obligations and rights–a complex of legal obligations and rights whose totality is expressed figuratively in the concept of "person." "Person" is merely the personification of this totality.[41]
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> . . . The statement that a person has duties and rights . . . is meaningless or an empty tautology. It means that a set of duties and rights, the unity of which is personified, "has" duties and rights. . . . But it is nonsense to say that law imposes duties and rights upon persons such a statements means that law imposes duties upon duties and confers rights upon rights . . .[42]

So (re-) conceived, the "person" dematerializes completely; he ceases to be even the disembodied "mind" of Grotius. The person is not something that, existing somehow apart from legal rules, constitutes rights and duties on the basis of those rules; rather, he is created by those rules and is constituted by those rights and duties! In this way the person becomes a mere "ghost in the machine" of the legal order.[43]

Influential though it may have been, Kelsen's reconceptualization of legal personhood failed to gain the allegiance of everyone. Take, for example, the Belgian civilist and natural law philosopher Jean Dabin. In his view, talk of a subject of rights presupposes some "being" that exists prior to its becoming a subject of rights.[44] The argument runs as follows:

> But if subjective right is, in fact, in a certain manner a

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41. KELSEN, *supra* note 29, at 172-73.

42. KELSEN, *supra* note 34, at 95.

43. Law brings us back to the etymological meaning. The Latin word *persona* first meant "theatrical mask." The word was borrowed to the Etruscan *phersu*, designating a mask, before moving to the Greek and the Latin: DICTIONNAIRE HISTORIQUE DE LA LANGUE FRANÇAISE (Alain Rey ed., Robert, 2006), v. *Personne*.

44. DABIN, *supra* note 29, at 107.

> relation, insofar as it is opposable to another . . . every relation presupposes, by definition, that there be *beings* in relation. Now, one of the beings in relation is precisely the legal subject, the others being the persons who are obliged to respect the right of the subject . . .[45]

This is not to say that Dabin advocates a return to some earlier conception of "person," such as that of the German Pandectists or Grotius. He does not. In fact, Dabin raises the question whether it might not be better to dispense with the notion of "person" altogether, retaining, in its stead, that of "subject."[46] According to Dabin, the concepts "person" and "subject" are not, as has so often been assumed, equivalent. In contrast to the relatively more malleable and contentless concept of "subject," that of "person," he contends,

> is introduced into scientific and philosophical language in order to signify a notion that, though it no doubt is related to the notion of legal subjects, nevertheless is different: that of a being endowed with a reasonable nature and, as such, having an end (purpose) of its own . . .[47]

As Dabin sees it, this concept, though apt for describing human beings, fails as a description of collectivities of human beings.[48] "Human beings is a reasonable 'substance,' but groups are only 'accidents:' is not reasonable substance a necessary condition for personality?" he asks rhetorically.[49] The answer, of course, is "yes."

Between the time of Kelsen and Dabin and the present time, the distinction between persons and things seems to have fallen off the research agendas of most civilian legal scholars.[50] But that may soon be changing. The impetus for this change comes not from within but from without the academy, specifically, from the

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45. *Id.*
46. *Id.* at 107-09.
47. *Id.* at 108.
48. *Id.* at 108-09.
49. *Id.* at 109.
50. There is one notable exception. Between the end of the 1970s and the end of the 1980s, Michel Villey and the others associated with the "Archives of the Philosophy of Law," published two sets of essays on the distinction: *Les biens et les choses*, 24 ARCHIVES DE PHILOSOPHIE DU DROIT (1979), and *Le sujet de droit*, 34 ARCHIVES DE PHILOSOPHIE DU DROIT (1989).

society at large. Thanks to recent social and technological changes, our society now faces a number of new social problems, problems as to which the distinction between persons and things is highly pertinent. One such problem is the characterization of the human fetus. As long as abortion was criminalized, the ancient question of whether a fetus was merely a part of the mother's body (and, therefore, a "thing") or an independent human being (and, therefore, a "person") was no great practical significance. But when, thanks to the women's rights movement and the so-called "sexual revolution," restrictions on abortion began to fall, this question came to the forefront of public attention. Another such problem is the characterization of animals. The rise of the environmental movement has precipitated a reexamination, on the philosophical plane, of the place of human beings within the larger natural world. The traditional view–that the natural order was created for man and that he, as master of it, is free to do with it more or less as he pleases–has been increasingly challenged. As a result, proposals made, but rejected, in times past to establish for animals some kind of status intermediate between that of "things" and "persons" are once again attracting attention. Finally, there is the problem–perhaps one should say problems–that have arisen as a result of the development of new artificial reproductive technologies. Faced with the novel and, in some cases, utterly fantastic products of these technologies–not only "supernumerary embryos," but also "clones" and "chimeras"–, our society grapples with what to make of them (are they persons or things?) and what to do with them (should they be given rights and, if so, what rights?). If the law is to respond to these problems, it will require, among other things, an adequate theory of the distinction between persons and things. Revisiting that distinction, then, could not be more timely.