LAW, CULTURE AND THE HUMANITIES

Article

Law, Culture and the Humanities
1–20

DOI: 10.1177/1743872119857068
journals.sagepub.com/home/lch
SAGE

Human Rights, Legal Personhood and the Impersonality of Embodied Life

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Abstract

Since Locke, the concept of person has been closely linked to the idea of a subjective natural right and, later, to the concept of human rights. In this article we attempt to trouble this connection between humanity and personhood. For personhood is also an apparatus or dispositive of power. In the first half of the article, we identify a fundamental problem in the usual way human rights are connected to legal personhood by making use of insights drawn from Roberto Esposito's discourse on biopolitics and critical race theory. While human rights are intended to offer protection to the "precarious" reality of human embodied life, we hypothesize that the fiction of legal personality generates a dis-embodiment whereby this human life is left exposed and defenseless. In the second half, we propose reconstructing the idea of legal personhood so that it may be more adequate to the required conception of human rights with insights drawn from Helmuth Plessner's political anthropology of embodied life and from the analysis of disembodiment recently articulated by Ta-Nehisi Coates.

Keywords

human rights, personhood, biopolitics, embodiment, Plessner, Coates

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I. Introduction

Since Locke, the concept of person has been closely linked to the idea of a subjective natural right and, later, to the concept of human rights.[1] Human rights, in this view, are grounded in moral-legal notions like the dignity or the autonomy of the human person.[2] In this article we attempt to trouble this connection between humanity and personhood. For legal personhood is also a power dispositive,[3] whose unquestioned adoption prevents human rights from being the kinds of rights possessed by "all human beings simply in virtue of their humanity."[4] In the first half of the article, we identify a fundamental problem in the usual way human rights are connected to the device of legal personhood. While human rights are intended to offer protection to the "precarious" reality of human embodied life,[5] we hypothesize that the fiction of legal personhood generates a disembodiment whereby this human life is left exposed and defenseless. In the second half, we propose reconstructing the idea of legal personhood with insights drawn from the political anthropology of embodied life and from critical race theory, so that it may be more adequate to the required conception of human rights.

The claim that moral-legal construals of personhood do not give due consideration to the dimension of embodiment is not unprecedented. Feminist jurisprudence has historically found the connection between rights and persons understood as owners of their (and not only their) bodies problematic.[6] Ronald Dworkin also argues for a legal standpoint beyond the person when theorizing "life's dominion" in law. In particular, he calls for the recognition of both the claim of intrinsic value of life as *zoe* and the dignity of an autonomous life as *bios*, thereby employing a distinction also found in the discourse on biopolitics.[7] In this

1. A.J. Simmons, *Justification and Legitimacy. Essays on Rights and Obligations* (Cambridge: Cambridge University Press, 2001); J. Coleman, "Pre-Modern Property and Self-Ownership before and after Locke: Or, When Did Common Decency Become a Private Rather Than a Public Virtue?," *European Journal of Political Theory* 4 (2005), 125–45; J. Waldron, *God, Locke, and Equality. Christian Foundations in Locke's Political Thought* (Cambridge: Cambridge University Press, 2002); T.J. Reiss, *Mirages of the Selfe. Patterns of Personhood in Ancient and Early Modern Europe* (Stanford, CA: Stanford University Press, 2003).
2. J. Waldron, *Dignity, Rank, and Rights* (Oxford: Oxford University Press, 2015); M. Rosen, *Dignity: Its History and Meaning* (Cambridge, MA: Harvard University Press, 2012).
3. G. Agamben, *What Is an Apparatus? And Other Essays* (Stanford, CA: Stanford University Press, 2009); R. Esposito, "Dispositif of the Person," *Law, Culture and the Humanities* 8 (2012), 17–30.
4. J. Tasioulas, "On the Nature of Human Rights," in Jan-Christoph Heilinger and Ernst Gerhard (eds), *The Philosophy of Human Rights: Contemporary Controversies* (New York: Walter de Gruyter, 2011), p. 26.
5. J. Butler, *Precarious Life. The Power of Mourning and Violence* (London: Verso, 2006); W. Kymlicka, "Human Rights without Human Supremacism," *Canadian Journal of Philosophy* 48 (2017), 763–92.
6. C. Pateman, *The Sexual Contract* (Stanford, CA: Stanford University Press, 1988); N. Naffine, *Law's Meaning of Life. Philosophy, Religion, Darwin and the Legal Person* (Oxford and Portland, OR: Hart Publishing, 2009).
7. R. Dworkin, *Life's Dominion. An Argument About Abortion, Euthanasia, and Individual Freedom* (New York: Vintage Books, 1994), pp. 82–3, 90–91.

article, we discuss Roberto Esposito's recent biopolitical critique of personalism as it applies to human rights discourse. For Esposito, the device of legal personhood "appears to be an artificial screen that separates human beings from their [human] rights" by reducing their embodied life to a thing without claims to rights.[8]

We then suggest that an alternative bio-political conception of the person need not have the alienating consequences envisaged by Esposito and can be helpful to reconceive an account of human rights beyond legal personhood. To do so, we present the account of human embodiment and personhood that the German philosopher Helmuth Plessner formulated in a critical engagement with the existential *Dasein*-analysis developed by Martin Heidegger during the same years.[9] In this account, personhood does not turn embodied life into a thing to be possessed because it is conceived from an "impersonal" or third person perspective on embodied life as the subject of human rights. In this way, the need for human rights emerges from the embodied character of human personhood.

Plessner developed his political anthropology during the same years that the racially supremacist thanatopolitics of Hitlerism was coming to power. Plessner criticized Heidegger's analysis of *Dasein* on the grounds of its Eurocentrism: this analysis inevitably brought up the "typical traits of life that govern 'our' existence, the existence (*Dasein*) of Europeans."[10] He opposed Heidegger's approach by starting from the principle of the "unknowability of human beings" and what human beings are still capable of becoming. "Only insofar as we take ourselves to be unknowable, can we give up the standpoint of supremacy against other cultures seen as barbarian and simply other, and we can renounce the mission against foreigners as if they come from a not yet redeemed, immature world. Only in so doing can we open up the horizon of our own past and present to a form of history that is broken up by the most heterogeneous perspectives."[11] In this sense, Plessner's political anthropology of embodiment has some unsuspected affinities with the kind of postcolonial philosophical anthropology developed by Sylvia Wynter, for whom "the West, over the last 500 years, has brought the *whole* human species into its *hegemonic*, now purely secular … model of being *human*" and the task is "to replace the ends of the *referent-we* of liberal monohumanist … with the ecumenically human ends of the *referent-we in the horizon of humanity*."[12] The last section of this article proposes

8. R. Esposito, *The Third Person* (London: Polity, 2012), p. 83.
9. Plessner's two major works in political anthropology, *Grenzen der Gemeinschaft* and *Macht und menschliche Natur* are translated into English in, respectively, H. Plessner, *The Limits of Community. A Critique of Social Radicalism* (Amherst, MA: Humanity Books, 1999) and H. Plessner, *Political Anthropology* (Evanston, IL: Northwestern University Press, 2018). There is no current translation of his main work in philosophical anthropology, *Die Stufen des Organischen und der Mensch. Einleitung in die philosophische Anthropologie* (2003) in English. A translation is under preparation with Fordham University Press. We shall employ the Suhrkamp edition of Plessner's complete works. All translations from the German are ours.
10. H. Plessner, *Macht und Menschliche Natur. Gesammelte Schriften V* (Frankfurt: Suhrkamp, 2015), p. 157.
11. Op. cit., p. 161.
12. S. Wynter, *On Being Human as Praxis* (Durham, NC: Duke University Press, 2015), pp. 21, 24.

a reading of Ta-Nehisi Coates's account of racialized disembodiment in *Between the World and Me* in light of Plessner's political anthropology and its "horizon of humanity." We seek to test the hypothesis that a discourse on human rights can be reconstructed by giving a new anthropological basis to legal personhood such that it corresponds better to the desideratum of critical race theory that we stop "seeing race biologically, and as part of a natural hierarchy" in order to "reconceptualise it so it refers to one's structural location in a racialized social system."[13]

II. The Fiction of Legal Personhood and the Paradox of Human Rights

John Dewey begins his famous essay on legal personality as follows: "The survey which is undertaken in this paper points to the conclusion that for the purposes of law the conception of 'person' is a legal conception; put roughly, 'person' signifies what law makes it signify."[14] Personhood in law is a legal construction. This is a tautology, but one rife with implications. As a construction, legal personhood is certainly fictional and allowing for either natural personhood (i.e., a human being) or artificial personhood, as in the case of a corporation.[15] Yet the fiction of legal personhood becomes indisputably real within the legal system. We pose the question of whether the price paid for the reality of the legal fiction is a self-referential insulation of the legal person from embodiment and biological life; if so, this form of personhood is problematic from the perspective of human rights.

In the current debate on legal personhood, two distinct schools of thought regarding how legal personhood connects with the lived reality of individuals have emerged. For some theorists, the value and utility of legal personhood is given precisely by its "plasticity" as a legal technique, which constantly calls into question the distinction between natural and artificial legal person.[16] These theorists argue that the more "plastic" legal personhood becomes, the more it can extend its protections to prevent harms caused by naturalized identities, as in the area of Sexual Orientation and Gender Identity rights, or animal and environmental rights.[17] For others, the legal person also stands in need of being constantly re-naturalized insofar as the point of attributing legal personhood, say, to corporations or to rivers is precisely to grant them the kind of protections that natural

13. C. Mills, Black *Rights/White Wrongs: The Critique of Racial Liberalism* (New York: Oxford University Press, 2017), p. 4.
14. J. Dewey, "The Historic Background of Corporate Legal Personality," *Yale Law Journal* 35 (1926), 655.
15. W.J. Brown, "The Personality of the Corporation and the State (1905)," *Journal of Institutional Economics* 4 (2008), 255–73.
16. A. Grear, "Law's Entities: Complexity, Plasticity, Justice," *Jurisprudence* 4 (2013), 76–101.
17. But for counterarguments that show the problems when legal personhood of corporations becomes a vehicle to assign them human rights, see T. Isiksel, "The Rights of Man and the Rights of the Man-Made: Corporations and Human Rights," *Human Rights Quarterly* 38 (2016), 294–349; C. Lafont, "Should We Take the 'Human' Out of Human Rights? Human Dignity in a Corporate World," *Ethics & International Affairs* 30 (2016), 1–20.

legal persons receive by virtue of their claims to moral personhood.[18] Referring to this on-going debate in legal theory and history, Britta van Beers points out that legal personhood has always been caught up in what she calls the dialectic between the naturality and the artificiality of the legal person.[19] Van Beers suggests that neither school of thought has developed "a legal concept of the person which can bring to expression what is, ultimately, at stake in the coming era of human enhancement technologies: our embodied, human nature."[20] Embodiment is side-stepped both if one links natural legal personhood too directly to a moral or psychological personality, and if legal personhood is granted to Artificial Intelligence or synthetic biological creations through the artificiality of legal personhood. This situation calls out for a re-consideration of the relation between embodiment and legal personhood, and why this matters for our conception of human rights in the age of biopolitics.

In her celebrated chapter "The Decline of the Nation-State and the End of the Rights of Man," Hannah Arendt argues that political society is based on the artifice or fiction of legal equality, which is tied to inclusion in a sovereign political-legal order that has proven incapable of providing legal protection to all human beings.[21] On her view, human rights ought to express a fundamental "right to belong to humanity" understood as "a right to have rights (and that means to live in a framework where one is judged by one's actions and opinions) and a right to belong to some organized community."[22] Their purpose is precisely to shield human beings from what Arendt identifies as the resentment against "our unchangeable and unique nature, [which] breaks into the political scene as the alien which in its all too obvious difference reminds us of the limitations of human activity."[23] Whereas civil and political rights attach to the qualified life one lives in virtue of wearing the protective shield of legal personhood – the kind of qualified life referred to by the Greek term *bios* – human rights attach to what Agamben calls "bare life," the *zoe* which is targeted by structural racializing and sexualizing practices that inscribe a distinction between "normal" and "abnormal" within its understanding of "human being" at the level of "skins" and "bodies."[24] The need to bridge the gap between

18. A. Dyschkant, "Legal Personhood: How Are We Getting It Wrong," *Illinois Law Review* (2015), 2077.
19. B. van Beers, "The Changing Nature of Law's Natural Person: The Impact of Emerging Technologies on the Legal Concept of the Person," *German Law Journal* 18 (2017), 563, 574–6.
20. Op. cit., p. 593.
21. H. Arendt, *The Origins of Totalitarianism* (New York: Harcourt, Brace & Company, 1973), pp. 267–302.
22. Op. cit., p. 279. For a recent critical discussion of this idea of rights, see S. DeGooyer, A. Hunt, L. Maxwell and S. Moyn, *The Right to Have Rights* (London: Verso, 2018).
23. Arendt, *Totalitarianism*, p. 301.
24. I.M. Young, "Structural Injustice and the Politics of Difference," in G. Craig, T. Burchardt and D. Gordon (eds), *Social Justice and Public Policy: Seeking Fairness in Diverse Societies* (Brighton: Policy Press, 2008), pp. 77–104. Hamacher also believes that "bare life" or what he calls "mere existence" should be "the only source of law for the right to have rights" but he thinks that such an embodied source of law "could not be a legal one or a world of rights." See W. Hamacher, "The Right to Have Rights (Four-and-a-Half Remarks)," *South*

the legal fiction of equality and the bare life characterized by what Arendt calls the traits of natality and plurality thus becomes imperative for any philosophical account of human rights.

Human rights are different from legal rights not only in virtue of their subject (i.e., embodied life and not the abstract legal person) but also because of their paradoxical form, apparent in Arendt's now ubiquitous definition of human rights as a "right to have rights," or, a "general" right to have "particular" rights, to employ Hart's terminology.[25] As a species of claim-rights, human rights presuppose "the *legal authority* to impose a duty upon all others."[26] Yet, as rights that are claimable by all individuals "in virtue of their humanity," and demanding universal respect, they are meant to be *pre-legal* rights. Human rights seem to require that individuals already exist in a public space in virtue of their embodiment prior to their inclusion in artificial political constructions by attribution of legal personhood.[27]

Arendt's hypothesis of a right to have rights thus brings to light a double requirement for human rights. On the one hand, as rights belonging to human beings in virtue of their embodied condition, human rights should protect what in individuals exceed the artificial contours of legal and moral personhood. We call this feature the "impersonality" of human rights. On the other hand, as pre-legal and pre-political, human rights should disclose a "place in the world" outside the artificial borders of established states and communities, authorizing any individual to impose a legal duty on others, over and above the positive rights granted to members of states and communities. We call this feature the "co-immunity" of human rights. The discussion on legal personhood has yet to register the significance of these two requirements of human rights.

III. Personhood as Power Dispositive and Human Rights

Esposito argues that the problem with current human rights discourse is precisely the tendency to think of them as subjective rights belonging to "the enclosed space of the person."[28] The origins of the western idea of personhood in Roman law are especially crucial in his critique of the dispositive of the person. On his account, in Roman law "no human being was a person by nature … since human beings arrived into life from the world of things, they could always be thrust back into it."[29] In Roman law the distinction

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Atlantic Quarterly 103 (2004), 354–5. For similar critiques, see G. Teubner, "Fragmented Foundations: Societal Constitutionalism beyond the Nation State," in P. Dobner and M. Loughlin (eds), *The Twilight of Constitutionalism?* (Oxford: Oxford University Press, 2010), pp. 327–42 and C. Menke, "The 'Aporias of Human Rights' and the 'One Human Right'," *Constellations* 74 (2007), 739–62.

25. H.L.A. Hart, "Are There Any Natural Rights?" in J. Waldron (ed.), *Theories of Rights* (Oxford: Oxford University Press, 1984), p. 88.
26. O. Höffe, "Kant's Innate Right as a Rational Criterion for Human Rights," in L. Denis (ed.), *Kant's Metaphysics of Morals: A Critical Guide* (Cambridge: Cambridge University Press, 2010), p. 78. Emphasis ours.
27. F.I. Michelman, "Parsing a 'Right to Have Rights'," *Constellations* 3 (2006), 200–08.
28. Esposito, *Third Person*, p. 3.
29. Op. cit., p. 79.

between natural individual (*homo*) and legal subject (*persona*) separates the individual from their embodied life, making it possible for the latter to become a "thing" under the ownership or *dominium* of the legal person.[30]

Esposito's discussion of the dialectical relation between the status of slavery and legal personhood overlaps with Orlando Patterson's theory of slavery as social death.[31] For Patterson, the character of the individual *homo* deprived of their legal *persona* is not as such that of a thing because one cannot derive the condition of slavery as an attribute of the legal person, but conversely this attribute must be developed from out of the condition of slavery.[32] For Patterson this means that the slave is not someone who is treated as a person's property, but someone who has been structurally treated as a non-person, in a system of domination. The non-person is the natally alienated and dishonored human individual; in other words, someone who is included in a society as its radical foreigner. For Patterson, it is because the individual *homo* has no rights on the person of others, because they have been cut off so radically from all human community that they can become the property of a legal person.

In their recent discussion of the Roman legal conception of *persona*, Edward Mussawir and Connal Parsley refer to the same separation of person from embodied life thematized by Esposito: "the concept of *persona* … is necessary in law in order to separate the identity of a real living being from that of a purely artificial, fabricated role that is reserved and instituted at the level of juridical existence."[33] However, Mussawir and Parsley do not recognize how this splitting away of the *persona* as a legally-positive estate or status from "a real living being" constitutes a problem for human rights, that is, for the putative rights of the individual *homo* against being handed over to the condition of social death. Precisely because in Roman law "the person is fashioned from an idea that is originally indifferent to the confirmation of the boundaries of a naturalistic self,"[34] the very distinction between *homo* and *persona* can be employed to deny legal status to embodied human life as such. The *bios* or individual form of life made possible by a certain estate or status requires rendering *zoe* or common life entirely estate-less by the artifice of the *persona*. Rights fall on the side of the legal *persona*, a legal artifice designed to leave the impersonal dimension of embodied life designated by *homo* in a right-less condition. This is

30. R. Esposito, *Two. The Machine of Political Theology and the Place of Thought* (New York: Fordham University Press, 2015).
31. For a recent critique of Esposito from the perspective influenced by the Afro-Pessimism of Jared Sexton and Frank B. Wilderson III, see J. McMahon, "The 'Enigma of Biopolitics': Antiblackness, Modernity, and Roberto Esposito's Biopolitics," *Political Theory* 46 (2018), 749–71. While we agree with the author that "if there are emancipatory trajectories of the flesh, they can only ever be actualized from a biopolitical framework that takes black studies and antiblackness seriously" (764), in this article we attempt to provide a more constructive account of human rights and legal personality from out of this desired framework.
32. O. Patterson, "Revisiting Slavery, Property, and Social Death in On Human Bondage. After "Slavery and Social Death," J. Bodel and W. Scheidel (eds) (Malden, MA: Wiley-Blackwell, 2017), pp. 265–96.
33. E. Mussawir and C. Parsley, "The Law of Persons Today: At the Margins of Jurisprudence," *Law and Humanities* 11 (2017), 47.
34. Op. cit., 52.

analogous to the problem Arendt identified with the Rights of Man and the creation of "stateless" human beings.[35]

In order to reconstruct a bridge between embodied life and the artificiality of law, as required by a conception of human rights that assigns claim rights to *homo* rather than to *persona*, the dualism between body and person established in the Roman legal tradition and (possibly) in the early modern conception of natural rights needs to be overcome. In his critique of the person, Esposito gestures toward a way out of these dilemmas by introducing the idea of "flesh" as a correlate of an "impersonal" life, or life lived in the "third person."[36] In Esposito's usage, flesh corresponds to Arendt's "dark background of mere givenness, the background formed by our unchangeable and unique nature."[37] As Alexander Weheliye has discussed, the distinction between flesh and body is fundamental to black feminist theories, particularly in Hortense Spillers' thought, and provides a crucial juncture between the discourses of African American criticism and biopolitics.[38] Contrary to Arendt's rhetoric of passivity, the idea of flesh permits to recover a dimension of agency and resistance found in our embodiment against racializing and sexualizing practices and discourses that determines the "othering" treatment of what is perceived as alien in a given political community.[39] Unlike the concept of body, this idea of flesh cannot be owned by the dispositive of the person, as happens when embodied life is reduced to the body and its self-enclosure.[40] Our hypothesis is that, in principle, it is possible to reconceive human rights from the perspective of the "impersonal" (rather than of the artificial "person") and the "flesh" (rather than of the "body"). Such a re-description better addresses the challenges posed by the conception of human rights described in the first section of this article.

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35. A. Gündogdu, *Rightlessness in an Age of Rights* (New York: Oxford University Press, 2015).
36. The category of flesh has received sustained attention recently in the discourse on "new materialism," see D. Coole, "The Inertia of Matter and the Generativity of Flesh," in D. Coole and S. Frost (eds), *New Materialisms. Ontology, Agency, and Politics* (Durham, NC: Duke University Press, 2010), pp. 92–115; and in political theology, see E. Santner, *The Weight of All Flesh: On the Subject-Matter of Political Economy* (New York: Oxford University Press, 2015). For a discussion of flesh in relation to biopower in Aristotle, Spinoza and Heidegger, see M. Vatter, "Eternal Life and Biopower," *CR: The New Centennial Review* 10 (2011), 217–50.
37. Arendt, *Totalitarianism*, p. 301.
38. See H. Spillers, *Black, White, and in Color* (Chicago, IL: University of Chicago Press, 2003); A. Weheliye, *Habeas Viscus. Racializing Assemblages, Biopolitics, and Black Feminist Thought* (Durham, NC: Duke University Press, 2014); and for its application to the debate between Afro-Pessimism and "black optimism," see C.L. Warren, "Black Mysticism: Fred Moten's Phenomenology of (Black) Spirit," *Zeitschrift für Anglistik und Amerikanistik* 65 (2017), 219–29.
39. See the suggestive remarks by Annie Menzel on "Spiller's explicit incitement to claim the power of Black maternal flesh to generate a different order of things, and her implicit assertion that ungendering violence is at the center of both Native genocide and anti-Blackness." L.R. Gordon, A. Menzel, G. Shulman and J. Syedullah, "Critical Exchange: Afro pessimism," *Contemporary Political Theory* 17 (2017), 115.
40. For a similar critique, see J. Nedelsky, "Law, Boundaries, and the Bounded Self," *Representations* 30 (1990), 162–89.

This re-description may also be useful in meeting halfway the critique that Fred Moten levels against both Patterson and Arendt. For Moten, it is problematic to understand slavery as the paradoxical conferral of "stateless status of the merely, barely living; it delineates the inhuman as unaccommodated *bios*."[41] For him, social death is not undone by acquiring a *bios* because "*it is the field of the political*, from which blackness is relegated to the supposedly undifferentiated mass or blob or the social, which is, in any case, where and what blackness chooses to stay."[42] While Moten shares with Afropessimism its conception of the limits of political intersubjectivity, he also insists that "black social life … is all there can be": "what if blackness is the name that has been given to the social field and social life of an illicit capacity to desire?"[43] However, rather than turning to an affirmative reading of Heidegger's conception of animal life as "poor in world," as Moten does, in this article we turn to Plessner's conception of embodied life as perhaps better suited to formulate an idea of a social *zoe* that is pre-legal and para-political but also the source for rethinking the right to humanity.

The possibility of a social *zoe* is thematized by Esposito when he argues that the liberal notion of personal rights are an immunitary apparatus designed to mitigate the costs of living in an unbounded and unrestricted community with others.[44] Whether personal rights enthrone the individual as a "small scale sovereign" over their private domain, as will-based accounts have it, or whether they authorize individuals to raise claims against others for the protection or advancement of their essential interests, as the interest-based account of rights has it, both give the "discretion over the duty of another" to an individual in isolation from others.[45] The problem does not lie in the fact that rights protect or advance the interested pursuits of individuals, but that the right to claim such a protection or advancement is itself left up to the interest of the self to the exclusion of the interest of humanity.

Against these liberal construals of subjective rights, Esposito suggests that the immunity of individuals should be premised on the recognition of an anterior com-munity, that is, on a common right of humanity. Esposito derives his idea of com-munity from the notion of *munus*, an archaic term referring to an unlimited obligation to give of oneself to others to establish com-munity with them. This *munus* is a generalized obligation imposed on the individual to share a common space with others prior to any distinction between friend and enemy, native and foreigner, but also prior to any legal division of what is mine and what is thine. The basic intuition is that an excess of immunities against this generalized obligation isolates individuals from others such that they are neither capable of exercising free choice nor of pursuing their essential interests.

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41. F. Moten, "Blackness and Nothingness (Mysticism in the Flesh)," *The South Atlantic Quarterly* 112 (2013), 740.
42. Op. cit., 740.
43. Op. cit., 777–8.
44. R. Esposito, *Communitas. The Origin and Destiny of Community* (Stanford, CA: Stanford University Press, 2010); R. Esposito, *Immunitas. The Protection and Negation of Life* (Cambridge: Polity Press, 2011); R. Esposito, *Bios: Biopolitics and Philosophy* (Minneapolis, MN: University of Minnesota Press, 2008).
45. L. Wenar, "The Nature of Rights," *Philosophy and Public Affairs* 33 (2005), 238–41.

Our hypothesis is that Esposito's conception of com-munity refers to the sphere of human rights themselves, as the sphere of a right to have rights or the right of humanity. Human rights, on this hypothesis, are peculiar immunitary devices that are, so to speak, turned against the immunity of personal rights; by limiting the limitations of personal rights they make possible a public space that is logically prior to the (racial, sexual) contractual constructions of the basic structure of factual societies.[46] To borrow a term introduced by Vanessa Lemm, the com-munity that is prior to any immunitary device is better understood as an instance of "co-immunity."[47] We are now in a position to turn to Helmuth Plessner's political anthropology to explain the philosophical bases for such a "co-immunitary" conception of the public space and a right to have rights not rooted in the artificial idea of legal personhood, but in the human experience of embodied life.

IV. The Embodied Human and the Primacy of the Public Space

In the 1920s and 1930s Plessner developed an anti-essentialist and non-foundational theory of the human form of life based on the hypothesis of a basic dis-location and non-identity of the self with respect to its spatio-temporally located body. This distance or alterity with respect to its body is constitutive of the lived experience of embodiment (of being a body rather than having one). The human form of life experiences embodiment as a dislocation that needs to be compensated by producing a meaningful place in the world. Having always already lost the "unreachable naturalness of other living beings,"[48] the human form of life requires "a kind of not-natural, not-innate complement. For this reason, it is by nature … artificial. As excentric being lacking balance, placeless, timeless, standing out into nothingness, constitutively homeless, the human being must 'become something' and make for itself the balance."[49] In this sense, an embodied life is always already a "second nature" or culture. For Plessner, this second nature stands before every individual as something unfamiliar or unknown because human culture is not the expression of a given human essence but precisely the index of its radical absence. That is why for Plessner second nature is radically historical (viz. made out of the interpretative encounter with the historical products of the human past) and political (viz. constituted as a public space that lies beyond the horizon of what is familiar to each individual).[50]

Despite Jürgen Habermas's recent employment of Plessner's philosophical anthropology in *The Future of Human Nature*, Plessner remains an understudied figure in contemporary

46. C. Pateman and C. Mills, *Contract and Domination* (Cambridge: Polity Press, 2007).
47. See V. Lemm, "Nietzsche, Einverleibung and the Politics of Immunity," *International Journal of Philosophical Studies* 1 (2013), 3–19, on the idea of co-immunity. For critiques of Esposito's affirmative biopolitics along feminist lines, see now C. Mills, *Biopolitics* (London: Routledge, 2017); and P. Deutscher, *Foucault's Futures* (New York: Columbia University Press, 2017).
48. H. Plessner, *Die Stufen des Organischen und der Mensch. Einleitung in die Philosophische Anthropologie. Gesammelte Schriften IV* (Frankfurt: Suhrkamp, 2003), p. 384.
49. Op. cit., p. 385.
50. Plessner, *Macht und Menschliche Natur*, pp. 160–65, 191–9.

political and legal theory.[51] Esposito is an exception in that he makes extensive use of Plessner's intuitions. However, Esposito does not employ Plessner's political anthropology to work out the conditions for an alternative idea of human rights that takes on board the two requirements previously highlighted. The tasks, it will be recalled, were two: first, the need to think of human rights as innate to individual embodied life, to the bare life or *zoe* that characterizes every individual *homo* rather than to the *bios* that characterizes the legal *persona*. Second, the need to provide a topology of human rights that grants each individual *homo* a meaningful place outside of the artificial equality of the *persona* required by legal-political life in bounded communities. This meaningful place is not simply the physical space occupied by the body of a person, whose mutual exclusion of other bodies grounds the negative conception of liberty as subjective right.[52] Instead, it is better understood as a place that can be exchanged with any other self in order to constitute a public space.

Like other animals, humans are "centered" within the cast of their bodies. But in his 1928 groundbreaking work, *Die Stufen des Organischen und der Mensch. Einleitung in die philosophische Anthropologie* [The Stages of Organic Being and the Human. Introduction to Philosophical Anthropology], Plessner argues that humans are animals capable of assuming a de-centered experience of corporeality which he calls "ex-centric positionality." Plessner does not exclude the possibility that other species, apart from the biological species of *homo sapiens*, can have the same capability. On this view, personhood is wholly defined by a "douple aspectivity" (*Doppelaspektivität*) characterized by the experience of *having* a body (*Körper*) and by the experience of *being* body – life as impersonal flesh (*Leib*).[53] Humans live (as bodies), experience life (as flesh), and experience the experience of life (as persons).[54] While the body allows us to look at ourselves from the outside, as a thing among things, the embodied life allows us to experience ourselves from the inside of the living process, as flesh. Embodied life is most clearly visible in an affected state when, for example, we laugh or cry uncontrollably and the living body takes over from the person directing its body.[55]

Plessner rejects Locke's conception of the person as based on ownership of a body. On the contrary, personhood is the experience of a fundamental self-dispossession

51. See J. Habermas, *The Future of Human Nature* (Cambridge: Polity Press, 2003). For some previous attempts, see R. Kramme, H. Plessner and C. Schmitt, *Eine historische Fallstudie zum Verhältnis von Anthropologie un Politik in der deutschen Philosophie der zwanziger Jahre* (Berlin: Duncker & Humblot, 1989); and, most recently, the essays collected in J. de Mul (ed.), *Plessner's Philosophical Anthropology: Perspectives and Prospects* (Amsterdam: Amsterdam University Press, 2014).
52. A. Ripstein, *Force and Freedom. Kant's Legal and Political Philosophy* (Cambridge, MA: Harvard University Press, 2009), pp. 358, 368.
53. Plessner, *Stufen des Organischen*, p. 367; M. Schlossberger, "Habermas's New Turn Towards Plessner's Philosophical Anthropology," in J. de Mul (ed.), *Plessner's Philosophical Anthropology* (Amsterdam: Amsterdam University Press, 2014), pp. 301–16.
54. Plessner, *Stufen des Organischen*, p. 365.
55. H-P. Krüger, "Persons and Their Bodies: The Körper/Leib Distinction and Helmuth Plessner's Theories of Ex-Centric Positionality and Homo Absconditus," *Journal of Speculative Philosophy* 24 (2010), 260.

because "I am, but I do not have myself" [*Ich bin, aber ich habe mich nicht*].[56] Plessner's conception of the person is an impersonal one: the "person" of embodied life lives itself in the third person. Neither a materialist reduction of life to matter, nor an idealist elevation of life to spirit can capture this impersonality of human embodied life. Because embodied life (*Leib*) can never be completely possessed by the human, it is manifest as impersonal life; because the human never completely coincides with the body (*Körper*), the human requires personification.[57] Human life is an animal life that necessarily personates itself in order to be lived. In this way, originary embodiment and personification are two sides of the same experience of leading a human life: "person" is what *masks* the impossibility of coinciding with our bodies.[58] This account of person in Plessner disallows any attempt to employ physical or biological traits (the color of the skin, the presence or absence of anatomical parts, etc.) in order to parse out who is "self" and who is "other." Only in being *other* to itself, can embodied life experience itself as self, and, furthermore, this self is always already masked. In this sense, for Plessner no self is authentic just like no self can be othered in the sense of reduced to the limits of its body.

This radical dis-possession of the person (qua putative owner of a body) by embodied life is central to Plessner's transition from a bio-anthropology of organic life to a political anthropology of social life. In the *Limits of Community* (1924) Plessner criticizes the absolutization of communities [*Gemeinschaft*] that are based either on ethnic ties of "blood" or on rational "ideals" [*Blut und Sache*].[59] He proposes a conception of the social [*Gesellschaft*] where the norm is the interaction in a public space or *Öffentlichkeit* between individuals that share nothing substantive (whether materially or ideologically) between them.[60] In public space, diplomacy, role-playing, tact and power are the ultimate determinants of human conduct,[61] and all this in the name of preserving what Plessner does not hesitate to name human dignity.[62]

Human life can only be sustained in relation to others. But for Plessner this relation to others is always split between the other who is "like us," who is familiar, who belongs to "our" community, and the "foreign" other, who stands beyond the community's borders and with whom it is necessary to establish a relation based on the distance and artificiality made possible by the person as mask. This necessity is what makes anthropology political at its core according to Plessner. But what kind of politics of difference is envisaged by

56. H. Plessner, *Conditio Humana. Gesammelte Schriften VIII* (Frankfurt: Suhrkamp, 2015), p. 190. For other statements to this effect, see H. Plessner, *Lachen und Weinen* (Bern: Francke Verlag, 1961), p. 161; Plessner, *Conditio Humana*, pp. 205–09; Plessner, *Stufen des Organischen*, pp. 360–65.
57. Plessner, *Conditio Humana*, pp. 209–14.
58. On originary role-playing and masking, see Plessner, *Conditio Humana*; B. Hengstmengel, "Helmuth Plessner as a Social Theorist. Role Playing in Legal Discourse," in J. de Mul (ed.), *Plessner's Philosophical Anthropology*, pp. 289–300.
59. H. Plessner, *Grenzen der Gemeinschaft. Eine Kritik Des Sozialen Radikalismus* (Frankfurt: Suhrkamp, 2016), pp. 44, 50, 113.
60. Op. cit., p. 102.
61. Op. cit., pp. 107–08.
62. Op. cit., pp. 75–103.

Plessner? The answer to this question is contested. On Esposito's interpretation of Plessner, the condition of possibility of establishing com-munity is the obligation of *munus*, of giving of oneself to the other. Given this obligation, com-munity always appears as making excessive demands on individuals. In turn, this *munus* causes each individual to build for itself an im-munity against the communal demand. The individual achieves this immunity "by splitting themselves into the polarity between inner and outer, private and public, invisible and visible, and by arranging for each pole to safeguard the other."[63] Thus, for Esposito, Plessner critiques political forms like communism and fascism as anti-liberal because they attack individual immunitary structures and dissolve ontological multiplicity and political plurality reducing individuals to communities characterized by forms of absolute belonging (for example, nationalism) and absolute exclusion (for example, racism). On his reading, Plessner's plea for social distancing or diplomatic tact remains a liberal answer to the rise of a totalitarian idea of community.[64]

However, an alternative interpretation of Plessner's defense of tact and social distance, and the differentiation between our public and private personas, is possible. For Plessner, these social masks and the practices they give rise to are not merely artificial barriers or fences individuals place between themselves to limit the communitarian pressure of primary obligations to others, and, in the last instance, in order to protect private property from claims of the common good. Personhood in Plessner is not an instrumental legal artifice like the Roman law conception of *persona*. Instead, personhood is best understood as an artifice of embodiment or a "natural artificiality."[65] Plessner's political anthropology based on the embodied artifice of personality promises a theoretical framework from which to understand the peculiarity of human rights as rights of the subject of bare life to be protected from social death, as discussed below.[66] But it also promises a different approach to the problematic relation between racism and legal personality that may lead beyond Fanon's dualism between "black skins" and "white masks," as we suggest in the following section. By understanding the seeming coincidence of opposites in Plessner's formula, we contend that it is possible to develop a "co-immunitary" conception of human rights at odds with Esposito's ultimate claim that subjective rights produce an auto-immunitary reaction in the social body in which enhancing individual protections reaches the point of destroying all unbounded human community.

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63. Esposito, *Immunitas*, p. 97.
64. Plessner's ideas on tact as non-violent basis of social relations were taken up by Walter Benjamin in his essay "Critique of Violence" as discussed by B. Menke, "Zur Kritik der Gewalt. Techniken der Übereinkunft, Diplomatie, Lüge," in H. Blumenrath (ed.), *Techniken der Übereinkunft. Zur Medialität des Politischen* (Berlin: Kulturvelag Kadmos, 2009), pp. 37–56.
65. Plessner, *Stufen des Organischen*, pp. 384–5; Plessner, *Macht und menschliche Natur*, pp. 198–9.
66. Another attempt to employ Plessner's idea of personhood as "a model for the legal subject as an abstract bearer of rights and duties" is found in Hengstmengel, "Helmuth Plessner as a Social Theorist." However, Hengstmengel emphasizes more the dimension of artificiality (rather than of embodied life) of the legal subject; in this sense, Plessner is not employed to address the paradox of human rights per se.

In his works on political anthropology, Plessner associates the distance or alterity between embodied life and the physical body (which he perceives as part of our organic structure) with fundamental categories of sociality and politicity. Thus, in *Limits of Community* the excentric positionality of the human calls forth a distinction between community and public sphere; and in *Power and Human Nature* the excentric maps onto the distinction between what is friend and what is foreign.[67] Ultimately, these correlates give rise to a distinction between the public and private person. But this correlation is rather different than that found in the liberal understanding of individual rights. The most important difference is that for Plessner our *personas* are artifices of a shared world (*Mitwelt*) that constitutes our experience of both outer and inner worlds. In other words, embodied life is always already intersubjectively constituted. That is why Plessner insists that the foreigner is never radically exterior to us, but is something *Unheimlich* in the Freudian sense: unfamiliar, yet always already part of our common world or public space.[68] Plessner's conception of the foreigner as a quasi-transcendental category of the public space, of what is humanly com-mon beyond the restricted sense of a political community, denotes precisely the space of human rights as belonging to the bare life of human being, which is always foreign to the narrow and artificial world established by legal and political structures; and yet at the same time is most intimate or innate for each singular human living being.

To the extent that our flesh or *Leib* dis-places us from of our bodies, it always already places us in a shared world with others, where our embodied life matters to others for non-instrumental reasons (and the repository of these reasons is culture) and we cannot help being touched by the embodied life of others. In this sense, through our flesh, we are already in the place of another and for that reason our inner life is not something that is radically private.[69] This nakedness or radical exposure (Plessner calls it *Exponiertheit*) opens up the fundamental risk of ridicule (*Lächerlichkeit*) to which humans respond by seeking to become empowered, that is, by investing themselves in an office or role, by seeking honor and respect from others in the public domain, while simultaneously closing off a private world from others. This is why for Plessner becoming human is co-extensive with a universal struggle for power and self-affirmation; becoming human is not, as in Agamben, a question of one group depriving another group of the right to struggle for power, that is, the right to lead a political life.

Likewise, for Plessner it is in order not to overwhelm others with this radically exposed inner life that we constitute a public person or mask that allows our "inner life" to be taken outside of ourselves, in the shared world of others. The "public" person recognized through social practices of diplomacy and tact is therefore a co-immunitary artifice: it offers a protection that makes possible the community of embodied lives. More precisely, the public person makes possible the formal exchange of views (of places) with others, and thus ultimately the mutual recognition of each other as persons, that is, as individuals capable of viewing ourselves through the eyes of others. This possibility forms the basis for demands for equal respect mobilized by human rights claims.

67. Plessner, *Macht und menschliche Natur*, pp. 192–3.
68. Op. cit., p. 19.
69. Plessner, *Conditio Humana*, p. 371.

Conversely, because our bodies (*Körper*) place us always already as a thing amidst things, outside of ourselves, and thus expose us to being instrumentalized by others, we constitute a "private" person or mask that places the external world (our physical bodies) in an interior that is beyond the capacity to be manipulated by others. This conception of the "private" person is the basis of the idea of "human dignity" and conforms to a second co-immunitary device. Like power, dignity is a protection that makes possible community with others, for this possibility would otherwise not emerge if others were in a position to manipulate or take our bodies at will. The interior domain is just as much a product of a shared world (*Mitwelt*) as the public one.

Both public and private persons designate the bearers of human rights in a way that avoids the problem faced when human rights are borne only by artificial legal personhood. For example, from Plessner's co-immunitary perspective, we have a right to express our opinions about and to others because other lives matter to us at the most constitutive level of who we are. By contrast, the classical liberal construal of the same right to free expression understands it as an immunitary protection from being affected by what others think, i.e., as a right to say what we think no matter what others might think or without the others' views mattering to us. Likewise, our private right to property or to the indemnity of our bodies, on this Plessnerian view, are not efforts to separate the place occupied by our body and its extensions from the common world, making it an area in which we are exclusively sovereign, but rather these rights help maintain our place amidst others, such that the outside world can open itself up as a common world, as a shared world.

V. Coates's *Between the World and Me* and Legal Disembodiment

Since at least W.E.B. DuBois's notion of double-consciousness and Frantz Fanon's conception of "white masks," the relation between racism, embodiment and the dispositive of personhood is a well-established area of research within critical race theory and black studies in general.[70] However, as mentioned above, Esposito's critique of personhood has only recently been addressed in this context, and, as far as we can tell, Plessner's political anthropology has not yet been used in this and related literature. Ta-Nehisi Coates's controversial work of African-American political thought, *Between the World and Me*, offers a novel contribution to the phenomenology and anthropology of racial domination that turns on a notion of "disembodiment." "Disembodiment is a kind of terrorism, and the threat of it alters the orbit of all our lives and, like terrorism, this distortion is intentional."[71] So far, though, the critical reception of Coates's work has not

70. Apart from the literature already cited, see also R. Gooding-Williams, *In the Shadow of Du Bois: Afro-American Political Thought in America* (Cambridge, MA: Harvard University Press, 2009); T. Lauretis, "Difference Embodied: Reflections on 'Black Skin, White Masks'," *Parallax* 8 (2002), 54–68; D.A. Millan, "Wit's End: Frantz Fanon, Transnationalism, and the Politics of Black Laughter," *South Atlantic Review* 82 (2017), 9–30.

71. T.-N. Coates, *Between the World and Me* (New York: Spiegel & Grau, 2015), p. 114.

centered on his conception of disembodiment.[72] In this last section, we discuss Coates's deployment of disembodiment and its importance for reconceptualizing human rights beyond legal personhood following the above discussion of Esposito and Plessner.

Coates employs the form of an autobiographical letter to his son in order to reflect on the wave of police shootings of unarmed black men and children in the United States, as well as the longstanding practices of racial profiling brought to light by the Black Lives Matter protest movement.[73] By thematizing the "disembodiment" central to racial ideology and institutions, Coates identifies how the person/thing distinction which structures legal conceptions of personhood is racialized and becomes a device through which violence is deployed within the law.[74] For Coates, "Americans believe in the reality of 'race' as a defined, indubitable feature of the natural world … The belief in the preeminence of hue and hair, the notion that these factors can correctly organize a society and that they signify deeper attributes which are indelible – this is the new idea at the heart of these people who have been brought up hopelessly, tragically, deceitfully, to believe that they are white."[75] The last expression echoes James Baldwin: "the people who think of themselves as White have the choice of becoming human or irrelevant."[76] Coates follows Baldwin (and Fanon and Wynter) in framing the problem of race in terms of those "who think of themselves as White" excluding non-White people from human status, and thus from human rights. "The black man insists, by whatever means he finds at his disposal, that the white man cease to regard him as an exotic rarity and recognize him as a human being."[77]

Coates describes racism as a system that perverts the play of masks which, on Plessner's account, characterizes public space and the relation between self and other, the familiar and the foreign. It is not simply that those "who think of themselves as White" often appeal to a community of blood that destroys the very idea of public space. For Coates, to think that one is White offers a mask or form of personhood under which some individuals and groups are allowed to disregard the significance of the flesh of others, and in this sense the white mask enacts the dis-embodiment of black people. "White America is a syndicate arrayed to protect its exclusive power to dominate and control our bodies … the power of domination and exclusion is central to the belief in being white, and without it, 'white people' would cease to exist for want of reasons."[78] In Plessner's

72. See D. Smith, "Ceding the Future," *African American Review* 49 (2016), 183–91 and the other essays dedicated to Coates collected in this journal issue as well as the contributions found in http://dailynous.com/2015/08/18/philosophers-on-coates-between-world-me/.
73. Coates, *World and Me*, p. 77; K-Y. Taylor, *From #Blacklivesmatter to Black Liberation* (Chicago, IL: Haymarket Books, 2016).
74. For other attempts at employing a phenomenology of embodiment in order to understand legal domination and violence, see L. Guenther, "Political action at the end of the world: Hannah Arendt and the California prison hunger strikes," *The Canadian Journal of Human Rights* 4 (2014), 32–56; L.W. Moore, "The Legal Alchemy of White Domination: Embedding White Logic in Equal Protection Law," *Humanity & Society* 38 (2014), 7–24.
75. Coates, *World and Me*, p. 7.
76. J. Baldwin, *Notes of a Native Son* (Boston, MA: Beacon Press, 1984), p. xv.
77. Op. cit., p. 166.
78. Coates, *World and Me*, p. 42.

terms, the "white" mask keeps the lives (the flesh) of those who are not "white" from mattering to them, in so doing depriving of human dignity anyone that lies beyond the community of those who think themselves as being "white." That an enlarged horizon of human society is at stake in Coates's critique of white supremacy is evident from his interpretation of Bellow's infamous question: "who is the Tolstoy of the Zulus?" "Tolstoy was 'white' and so Tolstoy 'mattered,' like everything else that was white 'mattered'."[79] Coates's response is to cite critic Ralph Wiley's reply to Bellow: "'Tolstoy is the Tolstoy of the Zulus,' wrote Wiley, 'unless you find a profit in fencing off *universal properties of mankind* into exclusive tribal ownership'."[80]

From a Plessnerian perspective, the choice of the name "Black Lives Matter" is already laden with a deep politico-anthropological significance. In a white supremacist legal order, police are allowed to treat the "lives" of black individuals as if they were mere bodies (*Körper*), and not as embodied life or flesh (*Leib*) that "matter" to others beyond the narrow horizons of communities based on "blood" or "ideology." The force of law is brought to bear on human beings that have been dis-embodied (that is, their flesh is deprived of significance, does not "matter") by a construction of race (and arguably one could also add sex and other biopolitical categories) that relies on the artificial separation of person and body, such that only "whoever thinks they are White" (but also "whoever thinks they are male") corresponds to the person whose body is owed equal legal protection. In such a racially (and sexually) supremacist society, the primary function of race and sex would be that of selecting which human beings are "persons" and which human beings can be "reduced" to their bodies, stripped of their human status, and thus deprived of their human rights.

Disembodiment in Coates is thus an overdetermined notion. It means, first, that the division of person/body along white/black lines erases what Plessner, Esposito and Weheliye refer to as the flesh or life of black individuals. Disembodiment here denotes the oblivion of the difference between body and flesh for some individuals. Once this difference is erased, then "black" bodies are merely physical bodies that can be taken at will. This is the second meaning of disembodiment: "The missing thing was related to plunder of our bodies, the fact that any claim to ourselves, to the hands that secured us, the spine that braced us, and the head that directed us, was contestable."[81] For Coates this "plunder" characterizes the history of North American slavery and legalized segregation, and it includes also so-called "black-on-black" violence: "Fail in the streets and the crews would catch you slipping and take your body. Fail in the schools and you would be suspended and sent back to those same streets where they would take your body."[82] The similarity with life under conditions of total domination theorized by Arendt is not coincidental, and justifies Coates speaking about "the sheer *terror* of disembodiment."[83]

For Coates, race is not a feature of flesh or embodied life: "black people embody all physical varieties and whose life stories mirror this physical range … I saw that we were,

79. Op. cit., p. 43.
80. Op. cit., p. 56. Our emphasis.
81. Op. cit., p. 37.
82. Op. cit., p. 33.
83. Op. cit., p. 12.

in our own segregated body politic, cosmopolitans. The black diaspora was not just our own world but, in so many ways, the Western world itself."[84] Race is a feature of a disembodied "body" without flesh, whose other pole is abstract legal personhood attached to the mask of whiteness. Race serves as a force of "disembodiment" in that it partitions bodies into those belonging to legal persons (who thus can raise claims to the "integrity" of their bodies) and those that do not belong to legal persons (and thus whose bodies can be disposed by others at will). This feature of racialization is strikingly represented by Coates's recounting of an incident when he took his son to an "uptown" cinema:

> As we came off [a set of escalators], you were moving at the dawdling speed of a small child. A white woman pushed you and said "Come on!" … I was only aware that *someone had invoked their right over the body* of my son. I turned and spoke to this woman, and my words were hot with all of the moment and all of my history. She shrunk back shocked. A white man standing nearby spoke up in her defense … The man came closer. He grew louder. I pushed him away. He said, "I could have you arrested!"[85]

One push (of the black boy by the white woman) counts as merely displacing an "inert" body from one point of space to another; the other push (of the "white" man by the "black" man) counts as a potential attack on the integrity of the person who is protected by law.

Coates's depiction of the scene illustrates that it is the mutual and equal sharing of a public space, in Plessner's terms, that is denied to black embodied life. In such a racialized system, "those who think they are White" turn legal personality into a substance that is their exclusive possession, and expect the force of law, the police, to "serve and protect" this substance. In so doing, whiteness destroys all possibility of distance and protection for black bodies, all diplomacy and tact in interactions with what appears as foreign and threatening (because it has been denied in oneself). Since black bodies are disembodied, in the sense that they no longer "matter" as flesh, and thus are deprived of personhood in Plessner's sense of the term, they are left entirely exposed to the perverse dynamics of law enforcement which literally keeps a group of human beings pinned down, and at the limit reduces their world to the physical space occupied by their bodies. Black lives do not signify the subject of human rights. Their *human* right disappears in the gap between the abstract legal person (of the individual with the "white mask") and the disembodied body (of the individual with "black skin"). For this reason Coates asserts that "nakedness is the correct and intended result of policy … the law did not protect us."[86]

Coates's *Between the World and Me* can thus be read as confirming the existence of an internal relation between racism and personalism. Consequently, Coates does not call for the recognition of the "personality" of black people by "those who think they are White." If legal personality presupposes a racial disembodiment from the start, if there is no legal "person" without an underlying process of racialization because race is the

84. Op. cit., p. 43.
85. Op. cit., p. 94. Our emphasis.
86. Op. cit., p. 17.

function of disembodying the body from its flesh, from its life, then such "struggle for recognition" is doomed to failure. Perhaps for this reason, Coates's rhetoric is materialist and atheistic, and his text has affinities with the discourse of Afro-pessimism for which political life in a racist society is not distinguishable from social death.[87] Coates does not seem to believe in the existence of a "spiritual" form of personhood or "soul." He also seems to be skeptical of the idea that the relation between racism and legal personalism can be undone by appeal to a "spiritualist" discourse found in the Civil Rights Movement.[88] If there is a solution to the paradox that the human rights of black people are still not recognized in the United States after the 14th Amendment and the Civil Rights Act, it will not be found through the category of "spirit" in any of its variants.

If *Between the World and Me* contains an affirmative vision, then it is one centered on recovering embodiment beyond racialization. Neither the body nor spirit is beyond race and sex, only the flesh might be. The flesh is not in possession of a person, because it is radically oriented toward that impersonal play of private and public personae that for Plessner defines public space beyond the limits of exclusive, bounded communities. Coates's text conjures such a public space, made possible by the adoption of masks and their correlative powers and immunities, for the sake of an expansive co-immunity:

> The girl with the long dreads lived in a house with a man, a Howard professor, who was married to a white woman. The Howard professor slept with men. His wife slept with women. And the two of them slept with each other. They had a little boy who must be off to college by now … I saw these people often because they were family to someone whom I loved. Their ordinary moments … assaulted me and expanded my notion of the human spectrum.[89]

If human rights are to have a real future, their form and content needs to be rethought, among other things, from the experience of just such an embodied life.

VI. Conclusion

The paradox of human rights is that to give a legal form to the human status it is necessary to move beyond legal personhood as currently understood, namely, as based on a distinction between person and thing that confines embodied life or flesh to a zone of anomie or social death. The analyses of social death and "disembodiment" in current African American criticism, coalescing around social movements like "Black Lives Matter," generate skepticism about the traditional idea of *Justitia* as blind and judging "each and everyone" as equal because no one is above the law and each human could be in the place of any other human. In law the fundamental notions of impartiality and "equality before the law" are based on the impersonal "third." Some interpreters suggest that recognition of the radical artificiality and plasticity of legal personhood offers the

87. Apart from already mentioned literature, see now the special issue on Afro-pessimism and Black feminism in *Theory & Event* (2018), vol. 21, no.1.
88. Coates, *World and Me*, p. 32. See also his claim that "'the meek shall inherit the earth' meant nothing to me," Op. cit., p. 28.
89. Op. cit., p. 60.

best solution to the paradox of human rights and the realization of justice because these features of legal personhood supposedly make possible its application beyond the limits of a naturalized (racialized, sexualized) conception of the human person. In this article we proposed taking an inverse path to thematize the legal relation between justice and impersonality by drawing from the conception of "embodied" artificiality found in Plessner's philosophical anthropology. On this model, personhood does not stand in abstract opposition to the body as its exclusive possession. Rather, embodied life is possible only on condition of sharing a common or public space: embodied life, or flesh, is always already ex-centric with respect to the body as occupying a given place in space and time. Personhood, in turn, is radically impersonal because it consists in the adoption of a series of masks that allows for a lowering of immunity or protection in relation to what is foreign and threatening in order to constitute a truly public space beyond restricted communities based on "blood" ties or shared "ideals" and "causes," that is, on processes of racialization and sexualization. Whereas positive legal rights are traditionally understood to function as protection for the possessions of separate persons ("mine" and "thine"), under conditions of bounded common life, the specificity of human rights consists precisely in building an immunity against such protections that permits the establishment of an unrestricted space of publicity where human dignity is realized by allowing everyone to occupy the place of another. Human rights ought to empower the self to take the standpoint of any other, and in this way make possible the experience of embodied life that can only be lived in common.

Authors' Note

Earlier versions of this article were presented and discussed at the annual conference of the Australasian Society of Legal Philosophy (2015) at the University of Sydney, the "Legal Personality Workshop: Quasi-Persons, Conditioned Subjects & Encumbered Sovereigns" at the school of law at the University of New South Wales (Sydney); at ICON-S: The International Society of Public Law in Berlin (2016), and at the UNSW Law Seminar Series (2018).

Acknowledgements

We would like to thank Ngaire Naffine, Fleur Johns, Alex Lefebvre, Simone Bignall, Jessica Whyte, James Martel and Neil Roberts for their comments and suggestions in the different stages of development of these ideas, as well as the feedback of the anonymous reviewers.