

The Puzzle of Personhood

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ABSTRACT

In a marketplace society, we believe we confront each other as human beings. The following argument will demonstrate this assumption to be incorrect. To understand why the person and the human are not coextensive terms, we must demonstrate their mutually contradictory relationship in market society and the estrangement of the latter by the former.

What is a person, then, if not a human being? In demonstrating this distinction, we will show how the constitution of the person stands in contradiction to our social and collective nature as human beings. This contradiction is already an expression of there being no essential basis for being human in personhood itself. From the legal standpoint, not all humans are persons and not all persons are human. Only on the basis that being a human is neither necessary nor sufficient for being a person is our market behaviour as persons inessential and contrary to our existence as humans. The exclusion of some humans from personhood, and hence their loss of rights, equality, freedom, and hence dehumanization, is the net result of this contradiction.

Following a definition of the human being, this thesis offers a critique of three social categories of thought and behaviour constitutive of personhood for market society: the legal, the egoistic, and the moral. It will be shown that these categories are reflections of various aspects of market relations alone and not human relations. The argument tackles yet another problem at the core of personhood: the historical appearance of these constitutive moments of personhood, and hence private property ownership, are taken to be the transhistorical essence of the human being. It is in this confusion between appearance and essence that our existence as persons becomes an ideological existence. The novel approach to the problem of the person presented here, is to demonstrate that the person and the human are two social existences that stand in contradiction with one another.

Keywords: person; private property; market relations; law; estrangement; human

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INTRODUCTION

Thesis Statement and Literature Review

Thesis Statement and Outline

This thesis approaches the problem of personhood from the point of view of the distinction of the person and the human being. This is not a technical distinction but a real social distinction that is lived in market society. A necessary part of addressing this distinction attempts to understand why this distinction is not immediately accessible to perception, let alone understanding. The novel approach to the problem of personhood offered in this thesis attempts to understand this distinction between the person and the human as a social contradiction: because we are alienated we become persons and because we are persons in the satisfaction of all our social needs we take personhood to be what it means to be human. In market society, the person and the human form a contradictory unity.

This research investigates the reality behind this contradiction and seeks to understand how market society produces the social form we call the person. This entails historical analyses, evaluation of philosophical characteristics of personhood, and an understanding of the political economic forces that constitute personhood as a social relation. As the social formation in question is market society, this includes commodity production and exchange in both capitalist and pre-capitalist market formations where the category of the person appears. We will demonstrate how the conceptual aspects of the person – legal, egoistic, and moral – are reflections of various levels of development in market society and various logics of the market relation.

The category of the person is researched in many different ways – all of which focus on the category as it pertains to a specific realm of estranged human life in market society. Topical issues surrounding personhood concern racialization, gender, sexuality, age, physical ability, or intellectual ability, to name a few. These areas specifically concern the relationship between personhood and particular groups of humans. This relation between the person and the human is taken up in this thesis in a fundamental way.

Other realms of inquiry that take up the question of personhood with respect to nonhuman beings will not be discussed. This includes the potential personhood for animals, ecosystems, robots, corporations, or divinities. But the fact that personhood may be extended to nonhuman animals makes our distinction between the person and the human immediately tenable. Being a human is neither necessary nor sufficient to be a person. If this is the case, the very basis on which it is possible to grant nonhuman beings personhood is also the basis upon which it is possible to exclude humans from personhood.

The real puzzlement comes when we point out the fact that some humans are excluded from personhood even though we continue to define what it means to be human with the premises of the person. Documents like the *Universal Declaration of Human Rights* speak about the human being as though the premises of the person are the foundation of what it means to be human. But other documents like the *United Nations Convention on the Rights of Persons with Disabilities* are hesitant to recognize the humans in question with the full rights of persons.

The premise of the person we are referring to is the rational substrate of private property. What this means is that we ideologically take the status of private property ownership to be the rational substrate of the human being. But if humans considered intellectually disabled are unable to assert themselves with the full status of private property ownership, are they not considered human beings? If the category of the person is distinct from and in contradiction with the human, as this thesis argues, how is it possible that the exclusion from personhood also means forsaking recognition as human? This is the strange puzzle of personhood.

If we consider the historical and social *form* of the person that belongs to market society, the pieces of the puzzle begin to fall into place. Let us recall what Marx writes about bourgeois political economic categories in *Capital*:

Political economy has indeed analyzed the value and its magnitude, however incompletely, and has uncovered the content concealed within these forms. But it has never once asked the question why this content has assumed that particular form, that is to say, why labour is expressed in value, and why the measurement of labour by its duration is expressed in the magnitude of the

value of the product. These formulas, which bear the stamp of belonging to a social formation in which the process of production has mastery over man, instead of the opposite, appear to political economists' bourgeois consciousness to be as much a self-evident and nature-imposed necessity as productive labour itself.¹

The argument follows from the position that the person is a historical category of thought belonging to a specific social formation. By a socially valid category, furthermore, we are also referring to the person as a social existence that is produced in market society and constitutes the movement of relations of private property.

Chapter One provides a methodological point of view for understanding the distinction and contradiction between the person and the human being. It places the social existence of persons and the human being in the dialectic of appearance and essence, respectively. Initial definitions of the person and the human are offered in manner maintained throughout the thesis' argument. What is presented here in the methodology and the definitions is the basic framework through which the rest of our analyses follows.

Following sections in Chapter One analyze the nature of personification, that is, the transformation of the human into the person. In order to demonstrate that the person's social existence belongs to market society, we demonstrate the way humans transform into personifications of economic relations through their position in commodity production and exchange. As a precursor to Chapter Two, a final section shows how the juridical relation between persons in market society is derived directly from the process of personification. It is quickly shown that the person appears at the point from which the concrete and historical character of the human being is abstracted

Chapter Two addresses four aspects of personhood relevant for market society in general and specifically to capitalist market society. Three of these aspects concern the primary relations between person necessary for the production

¹ Karl Marx, *Capital: A Critique of Political Economy*. trans. Ben Fowkes. (London, UK: Penguin, 1992), 173-5

and exchange of private property. These are the legal, egoistic, and moral relation found in the sphere of personhood. A fourth aspect concerns perspective and seeks to understand how the person is taken as if it were a human being. We argue here that the legal, egoistic, and moral characteristics of personhood is furnished by the immediate perception that takes these premises to be the natural state of the human being.

The subsections in chapter two are as follows. Section 2.1 focuses on the emergence of the legal category of the person in Roman civil law. Here, the person emerges as a category of private property ownership. Section 2.2 investigates the category of the person according to Stoic natural law, which asserts the premises of private ownership to be naturally instantiated in the human being.

Analyses in sections 2.3 and 2.4 investigates the category of the person constituted by egoistic relations and moral relations. We are not concerned with philosophical views inasmuch as we are concerned with the political economic forces that give rise to egoistic and moral social activity, which in turn gives rise to egoistic and moral philosophy as an afterthought.

What is demonstrated in sections 2.1 through 2.4 are various sides of the relations between persons that come together to form the basic foundations of market relations. Neither of these aspects of the person are reducible to one another but together form a contradictory unity reflecting the contradictory social relations in market society. What is also demonstrated throughout these sections is how the constitution of the person through these kinds of market relations always involves a moment of negation of the human being, where the social reality of the human is lost at the moment of legal formalization, moral abstraction, and egoistic atomization. These negative moments constitute the dual reality of market society where the social existence of the person comes into contradiction with the human being who finds him or herself estranged in the process.

Chapter 3 completes the analysis of the estrangement of the human community within market society. Here we link the social existence of the person to the alienation of the human in commodity production and exchange. Only by

demonstrating how the social existence of the person comes into contradiction with the human being as the alienated existence of the human being are we capable of understanding how the person/non-person dichotomy comes to configure the fundamental social parameters of market society. A following section considers how the non-person is also a social existence produced just like the person and that both sides of this relation are necessary aspects of production and exchange in market society. In this section we will discuss the case of racialization as a socially produces existence of the non-person whose pretensions are carried over after the acquisition of personhood.

A concluding chapter considers the far-reaching implications of this analysis of personhood for scholarship. We emphasize here that wherever it is sought to understand the estrangement of humans in general or certain groups in particular the basic problem of a dual and contradictory social existence between persons/non-persons and estranged humans must play a central role in uncovering the reality of market society hidden in plain sight.

Literature Review and Topical Issues

The following literature review covers concepts and issues of personhood that are thematically relevant to the argument of the thesis. Under the headings *Etymology*, *The orthodox view*, and *Legal positivism and natural law theory* are concepts of the person belonging to current scholarship concerning the themes of this thesis. Under the headings *Exclusion from person* some topical issues are addressed.

Etymology

The etymological origins of the category of the person is the Latin *persona*, whose own etymological origin is either Etruscan or Greek. The Etruscan *phersu* was theatrically dedicated, referring to the mask we wear before the publicum that hides our inner most private selves while enabling us to participate in public life.²

² Yasco Horsman and Frans-Willem Korsten. "Introduction: Legal Bodies: Corpus/Persona/Communitas." *Law & Literature: Special Issue: Legal Bodies: Corpus/Persona/Communitas* 28, no. 3 (2016): 277

Another candidate is the Greek word *prosopon* of identical meaning.³ The Romans adopted the equivalent Latin word *persona* into legal genre as an allusion to the mask or a role that is played as the bearer of rights and duties. It was primarily not what a human being is, but a status-role that was ‘held’ or ‘assumed’, hence the term *persona* commonly appearing as the direct object of similar classical Latin verbs.⁴

To extend this metaphor further, the symbolic significance of *persona* as a mask is more than a mere face covering. It has to do with the voice of the human being beneath concealed by the mask. Hannah Arendt remarks, “The distinction between a private individual in Rome and a Roman citizen was that the latter had a *persona*, a legal personality, as we would say it; it was as though the law had affixed to him the part he was expected to play on the public scene, with the provision, however, that his own voice would be able to sound through.”⁵

The orthodox view

The category of the person in Western thought requires a very brief historical overview provided by Visa A.J. Kurki. It is first traced as far back as Roman law. Kurki emphasizes the importance of this origin as the formal basis of the Western legal tradition.⁶ According to Kurki, the oldest extant codified references to the category of the person are found in the *Institutes*, written by the Roman jurist, Gaius, around 160 CE. Concerning persons [*personae*] are also things [*res*] and the actions [*actiones*] of the former upon the latter. Kurki argues that this original codified relationship between persons and things (through actions) constitutes the “deep structure” of law constituting the core of all Western jurisdictions.⁷ But Gaius does not specify the content of that which falls under either of these two

³ Visa A. J. Kurki, *A Theory of Legal Personhood*. (Oxford: Oxford University Press, 2019), 31

⁴ Long, A. A. “Stoic Philosophers on Persons, Property-Ownership, and Community” 335–360, in *From Epicurus to Epictetus: Studies in Hellenistic and Roman Philosophy*. (Oxford University Press.) 2006. 335

⁵ From Arendt’s *On Revolution*, quoted in Jeanne Gaakeer. ““Sua Cuique Persona?” A Note on the Fiction of Legal Personhood and a Reflection on Interdisciplinary Consequences.” *Law & Literature: Special Issue: Legal Bodies: Corpus/Persona/Communitas* 28 no. 3 (2016): 288

⁶ Kurki, *Theory of Legal Personhood*, 31

⁷ *ibid.* 3

categories. What Gaius stipulates only is a formal taxonomy, a *way* of thinking about entities through a legal framework. There are but two entities: persons and things, and the field of rights, duties, and liberties structure the person's possible actions with regards to these things. *Res* may technically refer to mere 'things', but this taxonomy arises with the specific priority in denoting the *private* form of property relations towards things. These two legal entities, persons and things (or property), are jointly exhaustive categories under which any being can be subsumed under law.⁸ Any action or being outside of this dichotomy is unknown to law. The question of whether or not a being falls under 'person' or 'thing' is a matter of content and not matter of the formal taxonomy itself, which is given as an *a priori*.

According to Kurki, the formal features of legal personhood today are derivative of Gaius' taxonomy. This view of the category of the person has become the Orthodox view of the person, according to which legal personhood involves "either the holding of rights and bearing of duties or the 'legal capacity' to hold rights and duties."⁹ How this 'capacity' is determined is as old as Roman law itself. It is this notion of capacity that ultimately determines *de jure* whether or not a human being remains a mere 'natural person', or a full legal person with rights and duties.

According to H. F. Jolowicz, the beginning of 'natural personality' in Rome is acquired as soon as the child is born and must live at least one moment post-partum. Only some human male citizens were candidates for full personhood. An unborn or stillborn child is not a natural person. As the capacity for personhood begins with birth, the human must remain alive, after which their legal personality will cease to exist upon death. But it is ultimately the rational capacity to appreciate right and wrong that determines the full status of legal personhood in Rome.¹⁰

⁸ *ibid.* 4

⁹ *ibid.* 4

¹⁰ H.F. Jolowicz, *Roman Foundations of Modern Law*. (Westport, Conn., Greenwood Press. 1957), 107-13

According to Kurki, the paradigmatic natural person in the West today is derived from Roman law in a similar way. There are four basic qualities to natural personhood today: a natural person must 1) be a human being, 2) have been born, 3) be currently alive, and 4) is sentient. These general criteria are found across all jurisdictions and are often challenged on the basis of those cases involving abortion, *post mortem* rights, anencephalic infants, and humans in a comatose or vegetative state, etc.¹¹ Nevertheless, if all four criteria are sufficiently met, ‘natural personhood’ is a certainty. For the human being, this is necessary to become a paradigmatic ‘legal person’ but not sufficient to be one *fully*. A human who meets these criteria must also have sufficient rationality, or ‘legal capacity’, which is presumed when a human reaches the age of majority. Full legal personhood, therefore, is contingent on a human’s mental ‘abilities’.¹² The fifth criterion is the object of dispute for those advocating for the rights of children, seniors, intellectually disabled, women, and racialized persons who have been or continue to be scrutinized for their ‘mental capacities’. Formally speaking, if a natural person meets only the first four criteria, their status as a person may be considered ‘passive’ and not fully ‘active’ with respect to the fifth criterion.¹³

A critical point must be made about personhood pertaining to this Orthodox view. What is implied here are rights, duties, and capacity relative to private property ownership. This scholarly and legal controversy around ‘capacity’ is where the formal relationship between the person and private property slides into the background and is taken for granted. The focus on ‘rights and duties’ prioritize the content of the being that may be subsumed under the category of the person. The person’s abstract formal constitution through private property [*res*] remains a given. But the fact that this Orthodox view has determined the way we take humans to be is not scrutinized by Kurki.

¹¹ Kurki, *Theory of Legal Personhood*, 7

¹² *ibid.* 9

¹³ *ibid.* 9

Legal positivism and natural law theory

Two historic traditions of legal theory in the modern period are legal positivism and natural law theory. These positions are worth mentioning here as they comprise the signification, philosophical, theoretical, methodological, and judicial exercise of law in the Western world. The person according to each theory is distinguished by its place in relation to the law and relationship to the material world. The following is a basic summary of their mutually oppositional positions.

The person of natural law theory is traced as far back as the Roman Stoa, who were influential in Roman legal thought. The person of the modern form of natural law theory stems directly from the scholastics, notably St. Thomas of Aquinas, and has since enjoyed a secular rendition in the 1948 Universal Declaration of Human Rights, which states “all human beings are born free and equal in dignity and rights.”¹⁴ The basic idea has not changed since 535 CE, when Justinian wrote “for by the law of nature, all men from the beginning were born free.”¹⁵ Generally speaking, natural law theory claims to offer a ‘human-centred’ approach to law, which tends to treat the person and the human as synonymous. Since Roman natural law, humans are taken to be the proper point - or the ‘final cause’ - of law and not mere ‘subjects’ of law. Law, writes John Finnis, “fit to take a directive place in practical reasoning towards morally sound judgement, is for the sake of human persons.”¹⁶ Finnis goes on to claim that the purpose of natural law is “to affirm the juridical significance of the status of persons—substances of a rational nature—as inherently the bearers (*subjects*) of rights of a kind different and more respect-worthy and *end*-like than the rights which are often, as a matter of technical *means*, attributed by law to animals, idols, ships or other *objects* of legal proceedings.”¹⁷ Natural law theory, for instance, is the conceptual basis upon which the personhood of a fetus is asserted.

¹⁴ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III)

¹⁵ Justinian. *The Institutes of Justinian*, 2009. Retrieved July 2020, from <https://www.gutenberg.org/files/5983/5983-h/5983-h.htm>

¹⁶ John Finnis, "Natural Law Theories", *The Stanford Encyclopedia of Philosophy*. edited by Edward N. Zalta. 2020. §2

¹⁷ *ibid.* §2

Personhood according to legal positivism belongs to the legal thought of industrialized society, the first full elaboration of which is found in Jeremy Bentham who sought to ‘demystify’ the law. What this means with regard to personhood is best represented by cornerstone legal positivist Hans Kelsen, who argued that “the juristic person who ‘has’ obligations and rights as their holder, *is* this obligations and rights - a complex of legal obligations and rights whose totality is expressed figuratively in the concept of “person”. “Person” is merely a personification of this totality”.¹⁸ Insofar as the person *is* a right that refers to other rights, claims Kelsen, it is a meaningless and empty tautology. It follows from this point of view that the person is an abstract dematerialization, what positivist H.L.A. Hart would call a historically contingent social construction of a given legal custom. What is banished from personhood in the positivist view is a ‘final cause’.

An important aspect of personhood according to legal positivism is also the methodologically descriptive role it plays in judicial reasoning. Finnis argues that Kelsen’s refusal to properly substantialize the person within the latter’s legal theory is what theoretically permits the judicial decision in *Roe vs. Wade*.¹⁹ In other words, the person is a question of ‘policy’ for legal positivism. Unlike natural law theory, which locates the human person as the final cause of law, there is no human being for positivism.

Contemporary cases of humans excluded from personhood

The following addresses issues on the personhood of intellectually disabled persons and children. The purpose in presenting these controversies is to highlight the mainstream emphasis on the notion of ‘legal capacity’ and its relationship to the principle of private property ownership. What is revealed about personhood in the cases of those without full rights is precisely this overarching principle of capitalist society. The significance of such a principle often goes unnoticed or is

¹⁸ Kelsen, H. *Pure Theory of law*. (Clark, NJ: Lawbook Exchange. 2009), 173

¹⁹ Finnis, John. 2013. “The Priority of Persons Revisited” in *The American Journal of Jurisprudence* 58 no. 1 (2013): 46

taken for granted when the status of a person is not in question. Thus, a crisis in humans' personhood goes a long way to reveal the truth about the true meaning of personhood. The system reveals itself in who it rejects by how it rejects.

Persons with disabilities, and especially intellectual disabilities, are rejected from the full rights of legal personhood by virtue of their lacking "legal capacity".²⁰ This limitation often accompanies stigma, discrimination, and inhumane treatment in the forms of physical and psychological abuse. In the case of persons with intellectual disabilities, advocates argue that these realities faced by such humans are a direct result of their not being officially recognized as having legal capacity to assert rights as full persons.

Persons with intellectual disabilities and their advocates claim that current models for determining legal capacity are rooted in atomized medical and psychological models of 'testing' mental ability and rationality. What is suggested as an alternative are holistic and social approaches towards recognizing the rational capacity that persons with intellectual disabilities do in fact have. The United Nations Convention on the Rights of Persons with Disabilities²¹ (CRPD) was adopted in 2006 with the intention of recalibrating the framework by which these humans were recognized as persons, which has since seen a slow but sure shift in the concept of legal capacity. Different models determining legal capacity revolve around the ability to give and appreciate consent. The traditional 'substitute decision-making' model does not require consent from the ward but only from a guardian. The intellectually disabled person is here assumed to be without decision making capacity because certain cognitive abilities do not pass standardized cognitive tests inherent with the bias that such disabilities are to be 'cured'. Advocates of the newer 'supportive decision-making model' argue to the contrary, asserting that we must attempt "to discern the person's intentions in various ways. Close family members, for example, can often communicate with an individual in a way that others cannot due to their alertness to more subtle cues

²⁰ Nicholas Caivano, "Conceptualizing Capacity: Interpreting Canada's Qualified Ratification of Article 12 of the UN Disability Rights Convention." 4:1 online: UWO J Leg Stud. 3 (2014)

²¹ UN General Assembly, *Convention on the Rights of Persons with Disabilities : resolution / adopted by the General Assembly*, 24 January 2007, A/RES/61/106

and their experience with that person. If communications are indeterminate, the system requires following the person's previously expressed wishes, abiding values and experience in similar situations."²²

Reinterpreting the meaning of legal capacity for persons with intellectual disability makes an interesting point about the meaning of legal capacity for all legal persons in general. But the ultimate constitution of personhood does not change in this newer model. Article 3 of the CRPD affirms the views of these advocates by relocating the constitution of legal capacity to the outside world and not the atomized mind of the human: "States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity." But an important dimension to this is the relationship to private property outlined in Article 15: "States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property... and shall ensure that persons with disabilities are not arbitrarily deprived of their property."²³

We are reminded of the child's exclusion from the universality of personhood because the universality of human rights do not extend to the child. As Gary Teeple argues,

All human rights extend only to those who are defined as "persons" in law in a capitalist society; and a "person" is defined as someone over the age of majority, as a rational, autonomous possessor of private property rights, if only over one's own labour power. Children are not persons in this sense; their principle legal status consists of being possessions of their parents or guardians or wards of the state until the age of majority.²⁴

Worthiness for personhood, with respect to the child, is predicated on what the child is meant to become – not as an adult, but as an autonomous and self-sufficient owner of private property.

The adulthood that constitutes personhood is principally determined by the capacity to possess private property. Until then, how a child is treated and legally

²² Caivano, "Conceptualizing Capacity", 5

²³ UN General Assembly, Convention on the Rights of Persons with Disabilities : resolution / adopted by the General Assembly, 24 January 2007

²⁴ Gary Teeple. *The Riddle of Human Rights*. (London: Merlin, 2005), 59-60

recognized by society becomes an issue. Determining the meaning of children's rights is caught in a contradiction from the very beginning, argues Lucinda Ferguson.²⁵ Though Ferguson refers not to the principle of private property, we can read between the lines in light of Teeple's critique. This contradiction, she claims, ends and begins with the social construction of childhood and its relation to adulthood. Modern conceptions take children to be distinctly set apart from adults by virtue of the former's dependency and vulnerability. But this understanding is always from point of view of adulthood itself, whereby guardians' decisions for their children involve an anticipation of the children becoming adults. The assumption here is that the child is unable to appreciate the meaning of consent and incapable of conforming to the standard conception of rational legal capacity of a full adult person. The very way in which we take children to be children is not child-centered, claims Ferguson. It is centered, rather, on "adulthood" qua relations of private property.

Some advocates for the rights of children make the case that being recognized as a full person goes a long way to being treated with respect as a person. This is to say that children without this real recognition as persons are thereby prone to abuse as a consequence. The argument suggests that, as a general starting point, officially giving rights to children is important for their welfare because it causes adults to view them persons and not objectified wards of guardianship.²⁶ Steps towards this are varied since the adoption of the United Nations Convention on the Rights of the Child (UN CRC) in 1989.²⁷ Some nations have modified their framework of personhood recognizing the rights of 'mature minors' and their ability to provide consent, offering legitimacy to their being recognized as persons with legal capacity. These solutions, though, are piecemeal and are usually limited to matters of principle with nominal practical

²⁵ Lucinda Ferguson, "Not Merely Rights for Children but Children's Rights: The Theory Gap and the Assumption of the Importance of Children's Rights." *The International Journal of Children's Rights* 21 no. 2 (2013): 179

²⁶ *ibid.* 185

²⁷ Dalpé, Gratien, Thorogood, Adrian, and Knoppers, Bartha Maria. 2019. "A Tale of Two Capacities: Including Children and Decisionally Vulnerable Adults in Biomedical Research." *Frontiers in Genetics* 10: 289. (2019), 5

effect. The central problem with the vision of the UNCRC is that it envisions no social institution other than the nuclear family as a means to raise children, which only relates to the child as a form of private possession.

The child is not yet an embodiment of its own private property and hence 'selfhood' as far as personhood is concerned. That children do not meet these criteria relegates them to the status their guardian's possession. Naturally, children depend on the parents or parent as wage earners. The specific character of possessing children in this way, however, is customarily informed by universalized relations of private property ownership, even though the child as living being is not legal private property. We can infer this from what Teeple has pointed out about the UNCRC. The basic premises of the rights of children is that they are born into nuclear families and that parents have the right to determine the child's life course. The ideal expression of this is a household of good treatment, material abundance, and the inheritance of private property. But because of the natural character ascribed to the institution of the family, it does not occur to the UNCRC that the structure of the family is a prism that refracts internally what has been imposed on it from the outside. It is an abstraction from concrete social and historical circumstances fraught with class struggle, sexism, racism, market forces, etc. The real antagonistic social character of private property relations is also not considered. But the principle of private property remains the basic presumptive form of the family itself. And children are 'possessed' in this way.

A final note

What we can gather from a cursory overview of various treatments of personhood is the theoretically unstable nature of the status. It is contested on a variety of grounds for a variety of different purposes. The following argument approaches the person from the point of view of market society. What we want to demonstrate is that the various ways in which the question of personhood is tackled from the aforementioned points of view are so many expressions of the irreconcilability of the fundamental contradiction between the person and the human.

CHAPTER 1

Personification

The following chapter presents the definitions and methodological application of key concepts for the argument. These definitions and methodology establish a way of thinking about the person in relation to the human being that is applied in the following chapters. The methodology and terms of the argument presented here are Hegelian and Marxist in orientation.

1.1 Methodology: appearance and essence

When we confront one another, we believe we do so as human beings. In a market society, however, we only do so as persons. Here, three questions follow: why are the person and the human not the same? If they are not the same, why do we conflate these two terms? And what does this say about a human community that takes itself to be something that it is not – a market society of persons?

To answer these questions, we begin by methodologically articulating the relationship between the person and the human as a dialectic between appearance and essence, respectively. The definitions of essence and appearance are determined through their distinction as follows.²⁸ Essence constitutes the immutable and unchanging substratum of being. Being's appearance, on the other hand, is mutable and has a fluctuating existence. This realm of being's appearance is inessential because it is *not* the immutable essence of being. Thus, to take what is inessential to be essential would be a category mistake. With respect to the relationship between the person and the human, this category mistake is ideological and has large social ramifications.

This is the conception of ideology for the following argument: the point of view that takes appearance – or existence – to be essence. This is not to say that

²⁸ W.T. Stace, *The Philosophy of Hegel*. (New York: Dover Publications. 1955), 180

appearances are mere illusions with no basis in reality. Mentioned above, appearance is the realm of mutable existence. Persons do exist, but to take this existence to be the essence of the human is to incorrectly take what is mutable to be what is immutable.

Why is the person only an appearance and not the essence of the human? When we apply this dialectic of appearance and essence to social relations amongst human, the historical and contingent social formations of human beings belong to the realm of appearances. Because market society has a historical existence, the social relations between persons in market society belong to the realm of appearance. What a human is in essence, however, transcends the bounds of market society and any other social formation.

We can now articulate with specificity the main problem of this thesis. The universalization of market relations has the consequence of concealing the fact that relations between persons are of a historical existence. Here, the ideological perspective arises when the social existence of persons is taken by immediate perception to be the essence of the human being. This means that, within market society, humans take themselves to be something that they are not. To confuse the essence of the human with the historical existence of the human being entails an estranged human community not conscious of what it is *as* a human community. This allows us make sense of the estrangement of human beings in market society.

1.2 Definitions: the human and the person

We must now distinguish the difference between the person and the human so as to grasp why a human community that takes its existence as persons to be the essence of the human entails the estrangement of this human community. We must therefore define what we mean by the person with respect to the social formation in which persons exist: market society.

There are therefore two realities in marketplace society. There is the reality of the person and the reality of the human being. The person is the being whose social activity constitutes market relations. This includes buying, selling, producing, owning property, etc. These activities all constitute various aspects of

the commodity production and exchange. The prevailing social relation that constitute the social form of persons is the private property relation. It is in this respect that our definition of the person is limited. By analyzing the key characteristics that constitute the social character of the person, the following chapters will demonstrate that the person belongs to market society alone; and that the usage of this category for humans in non-market social formations is either an incorrect usage or risks attributing the premises of market society to non-market social formations. To maintain this distinction, it is necessary from the outset that we also provide a definition of the human being.

If being a human is neither necessary nor sufficient for being a person, it is critical that we begin with a distinct definition of the human in a way that will allow us to see how the relationship between the person and the human is contradictory. We will use a definition of the human offered by Marx, who says that the human is

the species-activity and the species-spirit whose real, conscious and authentic existence consists in *social* activity and *social* enjoyment. Since the essence of *man* is the *true community* of man, men, by activating their own essence, produce, create this human community, this social being which is no abstract, universal power standing over against the solitary individual, but is the essence of every individual, his own activity, his own life, his own spirit, his own wealth.²⁹

For Marx, the true human community is not a mere product of thought but arises out of the needs and the collective activity of individuals who belong to a community. The existence of a community does not depend on one individual alone. For no human exists as an atomized individual, but always through other individuals within a social community through the common social act of labour:

I would have acted for you as the *mediator* between you and the species, thus I would be acknowledged by you as the complement of your own being, as an essential part of yourself. I would thus know myself to be confirmed in both your thoughts and your love.³⁰

²⁹ Karl Marx, "Excerpts from James Mill's Elements of Political Economy", in *Early Writings*, trans. Rodney Livingstone, 259-278. (Harmondsworth: Penguin in Association with New Left Review, 1992), 265

³⁰ *ibid.* 277

This relationship, for Marx, is mutual. What applies for one human applies for the other: “my labour would be the *free expression* and hence the *enjoyment of life*.”³¹ In this respect, then, when the essence of the human community becomes an estranged essence – when a community takes its essence to be something other than what it is – this relationships between estranged humans would also be mutual: “in the framework of private property it is the *alienation of life* since I work *in order to live*, in order to procure for myself the *means* of life. My labour is *not* life... my individuality has been alienated to the point where I loathe this activity, it is torture for me.”³²

We have here opposing terms. First, the social being of the person is distinct from the social being of the human: when exclusive, antisocial relations between persons qua private property owners are not practiced, by definition there are social relations between human beings, which include, for instance, relations of solidarity between family members, friends, or lovers – if the human is lucky. A private, atomized person is *not* a social, communal human.

But our analysis is not limited to definitions. Because we are investigating existing social relations, we are also investigating social contradictions between personhood and humans and hence an existing contradictory unity of market relations and human relations. True human relationships are not immune from the external pressures of market relations of persons. Market relations of persons are neither immune from the human spirit that may resist the prosaic existence of private property relations. Nevertheless, because relations of private property are the dominant prevailing social relation of market society, human relationships, therefore, only possess a limited independence from the sphere of the market.

From the point of view of market society, market relations are incorrectly taken to be the essence of human relations, rather than only the historical appearance of relations between persons. Hence, if humans do not recognize

³¹ *ibid.* 278

³² *ibid.* 278

themselves *as* humans, but as something other than what they are in their essence, this human community becomes an estranged human community:

To say therefore that *man* is estranged from himself is identical with the statement that the *society* of this estranged man is the caricature of a *true community*, of his true species-existence, that therefore his activity is a torment to him, his own creation confronts him as an alien power, his wealth appears as poverty, the essential bond joining him to other men appears inessential, in fact separation from other men appear to be his true existence...³³

The appearance of exclusive relations of private property, which separate the unity of humans into a lifeless multiplicity of persons, is taken as human beings' true essence. Furthermore, personhood is this objectified caricature of the true human community that is now an abstract universal power imposed onto this community. Personhood conceives this community of social mutuality in terms of private relations of exchange and trade. What is here meant by 'society', therefore, is this caricature. Society refers to *market* society, where persons are bound by the private property relation.³⁴

It follows from the estrangement of the genuine human community that the contradiction between the human and the person is understood as the contradiction between the human community and the market society of persons, respectively. Because we have identified the relationship between the person and the human not only as a contradiction in terms, but as an existing contradictory unity between two social realities, it remains to be explained how the human being, through a historical and social process, comes to embody the social form of the being of persons.

1.3 Personification

The category of the person is a reflection of the economic relations of market society; and these relations are but historical appearances taken to be the natural, immutable essence of the human being. How are these market relations

³³ *ibid.* 265-6

³⁴ *ibid.* 266

naturalized to appear as the essence of human relations? Investigating the nature of society always begins with the investigation of relationships, and we must consider the social processes through which humans become persons.

We previously presented the methodological distinction between appearance and essence, and for the purposes of this argument we identified the relations between persons as an historical appearance while the species activity of the true human community that produces itself as a social community is an essence. Depending on the historical and material circumstances of these human relations, however, the essence of these human relations become an *estranged* essence. We must identify, then, the social process of human relations that become estranged human relations qua relations between persons. In other words, we want to understand the process through which the human being becomes estranged through his or her transformation into a person, what is called *personification*.

Personification refers to a real, living role that these human beings are playing as owners of commodities, if at least only one's labour-power. Take, for example, the relationship between the activity of a judge and that of a lawyer, which in turn constitutes their personified social roles as judge and lawyer. Here, the relationship between judge and lawyer "do not appear as direct social relations between persons in their work, but rather as material [*dinglich*] relations between persons and social relations between objects,"³⁵ writes Marx. This is no longer a direct relationship between two humans, but a relationship between humans mediated by commodities (in this case labour-power). Hence, in marketplace society, human relations *appear* as something they are *not*, which are relations between "an immense collection of commodities".³⁶

By invoking the term 'personification', Marx is stipulating the active role a human embodies in relation to commodities, which are actions and behaviours that really appear before human beings but are taken as the essential state of

³⁵ Marx, *Capital*, 166

³⁶ *ibid.* 125

affairs of humanity.³⁷ What is the relationship between the commodity and its personified owner that determines this market behaviour? Marx writes that

commodities cannot themselves go to market and person exchange in their own right. We must, therefore, have recourse to their guardians, who are the possessors of commodities. Commodities are things, and therefore lack the power to resist man. If they are unwilling, he can use force; in other words, he can take possession of them. In order that these objects may enter into relation with each other as commodities, their guardians must place themselves in relation to one another as persons whose will resides in those objects...³⁸

The 'will' that resides in these commodities refers to the fact that these commodities must find movement through social relations of exchange. We must therefore explain the social character of this exchange relation determined by the commodity form. This is the force that socially binds us all as personifications of economic relations.

Suppose the value of a table is equal to the total value of two dresses. But a table is a table and a dress is a dress. By looking at the use-values of these commodities alone we cannot determine their values in relation to one another. For we must find a common element that both products of labour share such that they can be equal and exchangeable as commodities. First, this common element is that both commodities are products of labour, but this only means that these are two entirely different kinds of labour each with their own respective social character. There is no concrete equality between a carpenter and a dress maker in skill or function of their product. We have an existing contradiction, therefore, between the two different kinds of useful labour whose differentiated use-values synthetically produce a common element by way of *abstraction*. In order to find a common element, we must abstract from the incommensurable concrete social qualities of their labours and their products. Both products then bear a value measured by the magnitude of a given amount of socially necessary labour time. In the *time* it takes to make one table, two dresses are made. Both commodities then emerge as a relation to each other in the form of an equivalence of value

³⁷ Ibid. 179

³⁸ Ibid. 178

because they all share an identical social substance that produces value, which is labour. The common value is ‘labour in the abstract’, whose substance is entirely social and real. This is the objective, yet abstract character of the value-relation, which is a *pure* social relation because “not an atom of matter enters into the objectivity of commodities as values; it is the direct opposite of the coarsely sensuous objectivity of commodities as physical bodies.”³⁹

With the intervention of a given quantity of money, their values are both related to one another through a universal equivalent. Through a unique commodity, money, whose only use-value is *exchange*, all commodities equal one another. This is because money embodies a given magnitude of socially necessary labour time that functions as a universal equivalent to the value of all commodities, placing them in relation to one another. All socially distinct kinds of labour are now bound by this abstraction and can enter into exchange.

Because all these commodities have a common element, which is value, they may all come into relation with each other and thereby be exchanged. Value here now appears as exchange-value. As Marx writes, these commodities “must all change hands. But this changing hands constitutes their exchange, and their exchange puts them in relation with each other as values and realizes them as values.”⁴⁰ This is a real social relation that admits the social form of being in commodity producing society. It follows that only through this abstraction, what is called the value-relation, that producers find movement in the market as they come into a relation of equivalence with each other as well, since their labour-power is also their own commodity.

It must be noted that this abstraction does not originate in mind. It is a real, socially synthetic product of the material contradiction between two incommensurate use-values that have a common social substance. Only in this manner can it be a common, universalized social force that binds market beings together as one massive abstract social relation of production and exchange. The carpenter and the dress maker do not know that this abstract and objective value-

³⁹ *ibid.* 138

⁴⁰ *Ibid.* 179

relation is how they are socially bound together. All they see before them are their idiosyncratic desires and the material shells of their own commodities – including their concrete human shells of their own commodity of labour power. This is how commodities stand between us all. This is what is meant by object relations between humans.

As personifications of commodities, writes Marx, we “exist for one another merely as representatives and hence owners, of commodities. As we proceed to develop our investigation, we shall find, in general, that the characters who appear on the economic stage are merely personifications of economic relations; it is as bearers of these economic relations that they come into contact with each other.”⁴¹ Because commodities cannot get up on their own accord to exchange themselves, owners must bring them to market so that they may be realized as values. This is the value-relation that constitutes the movement between persons as personifications of their commodities.

The value relation is a social activity that ‘transcends sensuousness’, is ‘supra-sensible’, or is ‘super-natural’, to invoke some of Marx’s terms. First, it is supra-sensible because ‘not an atom of matter enters into the objectivity of commodities as values’ and since, as values, we are referring to a real common social substance that brings us into a common social relation of exchange, this abstraction is *real*. This has been given the terminological distinction of ‘real abstraction’ by Alfred Sohn-Rethel.⁴² Alberto Toscano distinguished this from an intellectual notion of abstraction, describing it as a “vision of abstraction that, rather than depicting it as a structure of illusion, recognizes it as a social, historical, and trans-individual phenomenon.”⁴³ The value relation is therefore an abstract but real social force that engenders market society with a universal character where the category of the person becomes a modality of social existence with a universal significance:

⁴¹ *ibid.* 179

⁴² Alfred Sohn-Rethel. *Intellectual and Manual Labour: A Critique of Epistemology*. (Atlantic Highlands, NJ: Humanities Press, 1978)

⁴³ Alberto Toscano. “The Open Secret of Real Abstraction.” *Rethinking Marxism* 20 no. 2 (2008): 275

Since it transfers private property into the very being of man, it can no longer be conditioned by local or national *features of private property as something existing outside it*. It (political economy) develops a *cosmopolitan*, universal energy which breaks through every limitation and bond and sets itself up as the *only* policy, the *only* universality, the *only* limitation and the *only* bond.⁴⁴

1.4 The juridical person

We must consider the relationship between personifications of commodities and the category of the person itself. A note must be made here about Marx's terminology. The way Marx uses the term 'personification' [*Personifikation*] is related to another term. The other term used here is 'bearer', translated from the German *Träger*. Marx's use of *Träger* is appropriate as this is the German word used to describe the legal person [*Rechtssubjekt/Rechtsperson*] as the 'bearer' of rights and duties. In the German language, *tragen* is also the appropriate verb in the sense of 'wearing' a mask. This linguistic connection is lost to English as it is not common parlance to say that one can also 'wear' rights and duties; but it is possible to say that one 'bears a mask'.

The terms *Personifikation* and *Träger* mirror one another. For Marx, the *Träger* is the 'bearer' of the commodity who compensates for the commodity's lack of the five or more senses of the human being without which the commodity would not make it to market.⁴⁵ Owners must bear [*tragen*] these commodities so that they may be traded on the market; hence their 'personification' is this 'bearing' of these commodities. The human being becomes a person bearing [*tragen*] rights and duties by wearing [*tragen*] the commodity form as a mask. The will – or the 'voice' – that sounds through this mask resides in the commodity itself and not the human being. The senses of the human come under the necessity of the commodity as it takes on a life of its own.

This point allows us to understand the relationship between personification and the concept of the person. According to Marx, the juridical relation between

⁴⁴ Karl Marx, "Economic and Philosophical Manuscripts." In *Early Writings*, trans. Rodney Livingstone, 279-400. (Harmondsworth: Penguin in Association with New Left Review, 1992). 342

⁴⁵ Marx, *Capital*. 179

‘legal persons’ within a commodity producing society, specifically a capitalist one, finds determination through the process of commodity exchange.⁴⁶ The will of the juridical person is not the will of the human being, but a juridical reflection of the personified will that resides in the commodity. Legally denoting a private relation to our social needs and the means of life, each person must behave in such a way that does not arbitrarily appropriate the commodity of other persons.

Appropriation and alienation of property is only possible through the mode of consent or contract, which takes up a juridical character in market society whereby both private owners of commodities recognize one another as capable of exchanging as legal persons.

The legal person is a historical reflection of the personification of economic relations. On this basis alone it does not refer to the essence of the human being, not to mention that some humans have been and continue to be excluded from this category. But the universalization of market relations and suffrage go a long way to make it appear as though our social existence as persons is our essence as humans. This is the logic of commodity fetishism at work in the way we come to understand ourselves as humans transformed into persons.

Variations of the concept of the person are fetishized as “autonomous figures endowed with a life of their own, which enter into relations both with each other and with the human race.”⁴⁷ The person thus becomes one of the most important “categories of bourgeois economics [consisting] precisely of forms of this kind. They are forms of thought which are socially valid, and therefore objective, for the relations of production belonging to this historically determined mode of social production.”⁴⁸ Only the personified activity of society can put the category of the person at its center, and thus turn it into a specific socially valid category for social regulation.

As a socially valid category, we must provide an historical analysis of the category of the person in order to situate its logical relation to private property and

⁴⁶ *ibid.* 178

⁴⁷ *ibid.* 165

⁴⁸ *ibid.* 169

essential differentiation from the human being. This begins with Roman civil law. “In reality,” writes Pashukanis, “the hardest core of legal haziness...is to be found precisely in the sphere of civil law. It is here above all that the legal subject, the *‘persona’* finds entirely adequate embodiment in the real person of the subject operating egotistically, the owner, the bearer of private interests.”⁴⁹ Thereafter it will be possible to derive the modern significance of the category of the person and its contradictory relationship with the human being.

⁴⁹ *ibid.* 80

CHAPTER 2

Four Moments of the Person

We approach the category of the person not only as a concept but also a social relation imbedded in market society. In this way, we approach the category according to four key relational moments of such a society. By moments we are referring to essential but partial aspects of the person's constitution as a whole. They can be thought of as levels that accord to a particular logic, although 'moment' is not taken here to be temporal.

Three moments of the person to which we refer are the legal, egoistic, and moral. The moments of the concept of the person are reflections of various moments in existing social relations between persons. A fourth moment addresses the person taken as if a human. This moment is unique as it entails the naturalization of other three moments of personhood, taken as if the legal, egoistic, and moral relation constituted what it means to be a human. Methodologically, when we refer, for example, to the 'egoistic person', we are analyzing the person in this isolated moment reflecting a particular dimension of market relations. The relationship between the legal person and the moral person, therefore, denotes a relationship between these two moments stipulated within personhood in general.

With this in mind, none of these moments are reducible to one another but are related to one another in a dialectic movement. If political economy and social relations develop unevenly over history, this is also true for the category of the person in market society.

The reason why we take these three moments of the person to be irreducible to one another is due to the nature of private property itself. Brenna Bhandar points out that to posit property as a general category is an abstraction from the historical development of property relations. To define bourgeois private property, for example, would be to only to define the relations that persist within bourgeois society. Thus, to define private property as an independent category detached from its historical appearance, as bourgeois society so often does, is little

more than a jurisprudential illusion.⁵⁰ This is where, as Pashukanis notes, the “concept of property loses any living meaning and renounces its pre-judicial history.”⁵¹ We must be careful, then, not to speak about the legal person as the single most powerful reflection of the commodity form. Insofar as we define the person in terms of property ownership, we approach the problem of personhood through the relations in which personhood as a property relation is expressed in other moments of market society.

Approaching the problem of personhood from the point of view of legal, egoistic, and moral relations is cued by Marx, who asserts these aspects of the market relation to be fundamental. This argument brings this reading into conversation with the concept of the person:

Finally, man as he is a member of civil society is taken to be *real* man, *man* as distinct from *citizen*, since he is man in his sensuous, individual and *immediate* existence, whereas *political* man is simply abstract, artificial man, man as an *allegorical*, *moral* person. Actual man is acknowledged only in the form of the *egoistic* individual and *true* man only in the form of the *abstract citizen*.⁵²

Writing on the juridical reflection of the commodity form, Pashukanis writes that

Man as a moral subject, that is as a personality of equal worth, is indeed no more than a necessary condition, for exchange according to the law of value. Man as a legal subject, or as a property owner, is a further necessary condition. Finally, these two stipulations are extremely closely connected with a third, in which man figures as a subject operating egoistically.⁵³

The moral, egoistic, and legal subject express various moments of the totality of the market relation but they do so only in contradiction with one another. The unfettered egoistic person sticks to his or her naked economic calculation and is concerned solely for his or herself and pays other persons no mind. Rugged competition is the character of the egoistic person. The atomized

⁵⁰ Brenna Bhandar, *Colonial Lives of Property: Law, Land, and Racial Regimes of Ownership*. (Durham: Duke University Press, 2018), 97

⁵¹ Evgenii Pashukanis, *The General Theory of Law & Marxism*. (New Brunswick, NJ: Transaction Publishers, 2009), 122

⁵² Karl Marx, "On the Jewish Question", in *Early Writings*, 234

⁵³ Pashukanis, *The General Theory of Law & Marxism*, 151

legal person armed with rights confirms this position of egoism. On the other hand, however, the legal dimension of personhood also protects other persons such that the actions of the egoistic person are restricted insofar as the exchange process is respected, that no property is alienated without mutual consent between private persons. But because egoistic persons owe nothing to the universal (law), they must willingly forsake their self-interested pretensions insofar as the act of mutual and equal exchange is possible at all. Hence, there is also a moral dimension whereby persons oblige themselves ‘freely’ to the law, without which the law would appear to be strictly coercive force compromising a person’s individuality. Moral persons, hence, recognize each other *as if* they were equal.

It is important to qualify Pashukanis’ emphasis on the moral relation as a reflection of equivalence in market exchange, which is somewhat reductive. For Marx, the moral relation is much more than this. The moral relation is an abstraction of the whole of market society. In this respect, the moral relation is that moment of negation where the egoistic persons must act *as if* it has stakes within a transcendent social whole beyond its own private interests.

Section 2.1 analyzes the historical context of the legal person as an owner of private property in Roman civil law. Here we can identify the historical condition in which the category of *persona* becomes a legal codification of private property ownership.

Section 2.2 looks at the historic origins of the philosophical conflation of the person and the human being. We observe how the material conditions of market society affect Stoic thought in such a way that they postulate the social existence of the person to be the essence of the human. The person taken as human is important to the argument as it is an ideological naturalization of market relations into the human being as such. When relations of private property become increasingly universalized, the Stoic theory of natural law postulates that all humans are naturally instantiated as private owners of themselves.

Sections 2.3 and 2.4 address the egoistic and moral moments of the personhood, respectively. These conceptual and behavioral qualities of personhood correspond to a more intensified commodity producing society of the

early modern period. This discussion on the category of the person is not an historical survey as much as it is designed to show that certain historical concepts we take for granted today are reflections of historical market relation rather than natural givens.

Sections 2.1 through 2.4 also demonstrate what these moments of the person mean for the human being. This is shown in each case as a contradictory relation from which the human being, when embodying the social existence of the person, becomes abstracted and estranged from his or her existence in a fundamental way.

Investigating these core moments of personhood help us understand how persons constitute the movement of market relations and how our social bond through the value relation leaves the human bond estranged. Through these various conceptions of the persons we will be able to see how, in each case, not only do they constitute the internal contradiction of market relations themselves, and hence personhood, but also the external contradiction with the human being.

A final point must be made. The following moments of personhood are all unified in contradiction with one another. These contradictions internal to personhood are but various outward expressions of the contradiction within private property itself. Gillian Rose writes,

Private property is a contradiction, because an individual's private or particular possession can only be guaranteed by the whole society, the universal. The universal is the community. This guarantee makes possession into property. Property means the right to exclude others, and the exclusion of other individuals (particular) is made possible by the communal will (universal). But, if everyone has an equal right to possess, to exclude others, then no-one can have any guaranteed possession, or, anyone's possession belongs equally to everyone else.⁵⁴

Understanding how personhood reflects this social contradiction within the form of private property itself, we will derive the estrangement of humans from their social existence as persons as a way to explain why some humans are

⁵⁴ Gillian Rose, *Hegel Contra Sociology*, (London: Verso, 2009), 78

excluded from personhood. For only human beings who can transform into personifications of their commodities can become persons. This entails a socially fragmented human community that is at odds with itself, internally divided by an abstract dichotomy between person and non-person, entailed in the relation between the person and private property.

2.1 The Legal Person

The contemporary legal person has historic origins in the political economic development of market forces in ancient Rome. While relations of private property and forms of law did precede this epoch, the expansion and intensity of private property relations and legal relations in the Roman Republic and the Empire acquired a novel regulatory and systematized quality hitherto unknown. The category of the person emerges here as a codified legal category denoting the *de jure* owner of private property. As Marx writes,

The chief preoccupation of the Romans was to develop and determine the *abstract relations* pertaining to private property. The actual foundation of private property, *ownership*, was a *fact*, an *inexplicable fact with no basis in law*. It only assumed the character of rightful ownership, of *private property*, by virtue of the legal determination which society bestowed upon the mere fact of possession.⁵⁵

Historically, the legal form emerges out of informal contract relations in small-scale commodity production; and when commodity exchange relations take on a pervasive social character, the formal regulations acquire a comprehensive and codified legal system. This development of the legal form is coterminous with a system of production oriented towards exchange and not production alone.

Two comprehensive codified legal systems of the sort appear in Western history: in ancient Rome and the early modern period. The following chapter considers the former. To the Romans we credit the basic foundations of thinking law in general: codified law, systematic jurisprudence, legal capacity, legal abstraction, absolute private property, and the category of the person [*persona*].

⁵⁵ Karl Marx, "Critique of Hegel's Doctrine of the State" in *Early Writings*, 179

Kurki points out that the formal taxonomy of the *persona-res* distinction passed down from the Romans remains the ‘deep structure’ of law today, although he is unable to explain why this is the case. Pashukanis, on the other hand, makes sense of this, writing that “the fundamental trains of thought of Roman jurists have retained their significance up to the present day and have remained the *ratio scripta* of every commodity-producing society.”⁵⁶ It is therefore worth our efforts to investigate not merely a history of Roman jurisprudence, but the specific appearance of the legal form of personhood as general abstraction reflecting the value relation of the exchange process. “Private property is the child of *Roman* reason...,”⁵⁷ writes Marx, and every time we refer to each other as ‘persons’ in the West we bear this mark of the Roman reason and private property.

We must point out that not all Western legal systems are modeled after Roman civil law. Hegel, Marx, and Pashukanis are writing within Napoleonic and Germanic traditions heavily influenced by Roman civil law. The purpose of explicating the legal development of the category of the person in ancient Rome is to demonstrate the important political economic foundation of the legal form and the category of the person in general, and that certain degrees of market abstractions play a fundamental role in shaping the concept of the person in general.

2.1.1 Historical context

The legal category of the person arose against the background of an intensifying Roman imperial expansion of commodity producing society. During expansion Romans confronted non-Romans with whom they would exchange, and the law had to account for the status of these non-Romans. Here followed a principled development in Roman law was the conceptual legal division between *ius gentium* and *ius civile*.⁵⁸ In his *Institutes*, Gaius defines Civil Law [*ius civile*] as the particular laws of the Roman state concerning Roman citizens alone. He defines

⁵⁶ Pashukanis, *The General Theory of Law & Marxism*. 82

⁵⁷ Marx, “Critique of Hegel’s Doctrine of the State” in *Early Writings*, 179

⁵⁸ Gaius, *The Institutes of Gaius*.

Natural Law [*ius gentium*] as the natural law of reason established and observed by all peoples in and outside the Empire. *Ius gentium* was neither a legal code nor a body of statute law, but a customary law of rational conformity which was in great measure intellectually authored by dominant Stoic philosophy of the time.

The development of Roman legal categories of persons and property in civil law initially had more to do with eastward expansion. Unlike Latin colonization of an un-civilized Western Europe, conquest of the Near East was diplomatically discrete. Greek colonial expansion had already proliferated a network of Hellenized urban foundations and market economies with a long prior history of developed civilization.⁵⁹ Rome's initial intervention in the Near East was a careful appropriation of existing structures as client states rather than conquered provinces in the West. The significant innovation of Roman rule in the East was in the Greek city states where property qualifications were imposed for municipal offices in order to align them with the oligarchical norms of the Eternal City. This gave juridical codification to their well-established *de facto* rule.

These political economic forces brought about a qualitative change in social regulation within the expansive market economy. What was once *de facto* power is now *de jure* power. Gradually developing from 300 BCE, a civil law system emerged as a comprehensive unity that was ushered in and fundamentally oriented by economic transactions: purchase, sale, hire, lease, inheritance, and security. The bulk of Republican jurisprudence was concerned with governing suits between disputing parties over property. Around this, legal theory emerged as the activity not of state functionaries or lawyers but of aristocratic jurists guiding decisions of the judiciary based on abstract principles rather than matters of fact. Social relations, it follows, were no longer strict matters of fact but principled *de jure* relations. The cumulative result of abstract contractual figures that could be applied to particular commercial activities and social interactions was, for the first time in history, reflected in an organized body of jurisprudence.⁶⁰ By the time of the later Republic, imperial expansion of commodity exchange

⁵⁹ Anderson, Perry. *Passages from Antiquity to Feudalism*, (New York: Verso, 2013), 63

⁶⁰ *ibid.* 66

relations based on slavery found a juridical reflection whereby all such relations would be regulated through codified law and facilitated through abstract legal principles.

The emergence of a codified legal system in Rome was a superstructural reflection of the exchange relation between commodity owners who ‘appear on the economic stage’ in an increasingly formalized manner. When informal (*de facto*) relations of exchange are codified, the social act of exchange adopts formal *de jure* expression between owners. Furthermore, like the property qualification of political authority, the *de facto* relation of the domination of slaves now becomes *de jure* through codification. And that some humans are dominated *de jure* necessarily implies that others are *de jure* non-dominated; with the former as owned and the latter owner. Domination and inequality thus become ‘legal-ized’, out of which a formal world of ‘equality’ for some arises for some against a backdrop of real ‘inequality’ for others.

This legally formalized concept of private property ownership distinguished Rome from previous Mediterranean societies. This legal abstraction was not present in previous market economies and legal systems. Whereas Greece, Persia, or Egypt may have had some form of private or individuated property, the character of ownership was always a ‘relative’ matter of fact of qualified and conditional possession. Roman jurisprudence, on the other hand, liberated the concept of private property from extrinsic qualifications by abstracting a distinction between ‘possession’ and ‘property’. The former was a mere relationship of factual control of goods while the latter was the full, unconditional, and unqualified abstract relation to goods, or a *title*.⁶¹

Roman levels of commodity production and exchange entailed more abstract forms of social regulation in market society. If legal codification now entailed a substrate of abstract principles, it is because these principles reflect the real abstraction of an expanded value-relation. Domination of private property, therefore, becomes an abstract domination with a perfectly real basis in social life. For the Romans, ownership was *dominium*, referring not only to crude objects but

⁶¹ *ibid.* 66

also human beings objectified as slaves and hence a real social domination. For this reason, the fact that private property *is* a category of a type of social relation of domination is found in the Roman legal term itself. But this is concealed to us moderns by the translation ‘absolute property’. The Latin name of this Roman achievement was *dominium ex jure Quiritium*.

2.1.2 Absolute property

The phrasing of *dominium ex jure Quiritium* roughly refers to the legal domination (of property) for the Roman citizen. Quirinus was the name of an early Roman god of the state. Lore has it that Romulus had mysteriously disappeared for some time after founding Rome, only to return and proclaim himself to be this very god, Quirinus, thereafter becoming a legendary deified king. Afterwards, Roman citizens in their peacetime functions were called “Quirites”. *Ius Quiritium* in Roman law referred to full Roman citizenship and hence the full right as a Quiritarian owner of private property. Quiritarian ownership, in effect, denotes Quiritarian personhood.

The essential feature of Quiritarian ownership distinguished between absolute property and mere factual possession. It is probable that this conceptual development was related to the fact that certain objects of private property could not be conveniently brought to court or exchanged between literal hands and a degree of abstraction was required in order to exchange private property. Nevertheless, this form of private ownership would come to encompass the main concept of private property.

The abstraction of absolute property from the empirical world of factual possession can be shown as follows. I can gift a flock of sheep to my neighbour by physically bringing the flock to his land, after which he would assume full ownership of the flock. This would be a ‘relative’ form of private property through factual possession. But Quiritarian property cannot be transferred in such a way. If I were to deliver my neighbour a slave, he would be in possession of the slave, but the slave would remain mine *ex iure Quiritium*. In other words, I would have to transfer to my neighbour a legal title to the slave by abstraction.

Another important feature of Quiritarian ownership marking the difference between factual possession and absolute property is the assertion of *vindicatio*. If absolute ownership is the unrestricted right of control over a physical thing, the owner may claim this title no matter who possesses it, be it stolen or appropriated by accident. If my neighbour possesses a slave that I own by Quiritarian right, all that I must do is prove my title to the slave and my neighbour must give it up. It is not necessary for me to allege that my neighbour has done anything wrong in coming to possess the slave. On the other hand, all that my neighbour has to do is wait for me to prove my right to the slave, until which time my neighbour remains its possessor.⁶²

Because absolute private property cannot be transferred by empirical fact of possession, the exchange relation itself is legally reflected in an abstract manner. For instance, two methods of transferring Quiritarian ownership are *mancipatio* and the ritual claim of *in iure cessio*. *Mancipatio* is a sale pocked with what on the surface appears to be ‘symbolic elements’. Two parties of the transaction are present (the transferor and transferee), at least five witnesses who were Roman citizens above the age of puberty, a pair of scales held by another citizen of full age, and a piece of copper. The transferee would hold onto the commodity, say a slave, and say “I assert that this man is mine according to Quiritarian right, and he bought to me with this piece of copper and these copper scales,” often including the words “at the price of...”⁶³ The transferee would then strike the scales with the piece of copper and give it to the transferor, representing real money. The inversion of this is *in iure cessio*. Parties stand before a magistrate of the people and the transferee grasps onto the slave and says, “I assert that this man is mine by Quiritarian right,” and the magistrate then asks if the transferor would assert the same right. The transferor either remains silent or says “no”, in which case the magistrate adjudicates the slave to the transferee⁶⁴.

⁶² Ibid. 142

⁶³ Ibid. 145

⁶⁴ Ibid. 150

We can detect here the money fetish at work in the exchange relation that gives rise to the legal ‘status’ of the person. As Marx writes, “the fact that money can, in certain functions, be replaced by mere symbols of itself, gave rise to another mistaken notion, that it is itself a mere symbol”⁶⁵ as a purely instrumental function of exchange. Taken merely as a symbol, the real social character that gives value to money is concealed behind the sensuous appearance of the money form.

As the legal concept of the person is constituted through what is taken to be a ‘symbolic’ act of exchange, the concrete social character of the human being remains concealed as the personification of the will of commodities takes its place in the legal relation. This allows us to distinguish between the personification of commodities and the conceptual legal ‘status’ of the person. The ‘status’ of the person also appears as a ‘symbol’ in the sense of being a conceptual legal category for the mere functional purpose of regulating exchange relations. Like the money fetish, what it concealed behind this conceptual ‘status’ is that personification in the exchange process is the real abstract objectification of value as a social relation. The status of the person *appears* to function instrumentally like the sensuous appearance of the money form. All persons are formally rendered equal, concealing the fact that humans’ position in the value relation is what actually determines their status as persons.

2.1.3 Absolute person

Ownership of absolute private property necessarily entails a category of the kind of being that can own property in a likewise absolute manner. Moreover, because private property stipulates a relation to a material object, it likewise stipulates another person’s relation to that same object and its owner. The unconditional, abstract character of this relation determines the social form of being that personhood is. We will discuss how this determines the social form of the person in two ways – an external way and an internal way. This will show, too, how the relations between persons entails the estrangement of relations between humans.

⁶⁵ Marx, *Capital*, 185

First, there is the social form of the person that is atomized in the external sense. It is through the market that the relations between persons as private social entities are constituted and nothing more. As Hegel writes, “for Personality constitutes the fundamental condition of legal Right: it appears chiefly in the category of Property, but it is indifferent to the concrete characteristic of the living Spirit with which individuality is concerned.”⁶⁶ Hegel is here saying that the person stands in contradiction with the concrete existence of the human being as a member of the genuine human community. Because absolute private property abstracts the property relation from a ‘relative’ or factual existence in the world, so too is the social form of the person that owns this kind form of property abstracted from the concrete social characteristics of the human. This abstraction is the basis upon which persons are legally bound. In other words, persons are legally bound in the basis of standing in contradiction to the human being.

The binding force between legal persons reflects the binding force of the value relation. Marx says that “equality in the full sense between different kinds of labour can be arrived at only if we abstract from their real inequality, if we reduce them to the characteristic they all have in common,” that of human labour in the abstract. Because the end goal of commodity production is exchange, the personified human also has his or her own special commodity – labour power. But the value of labour power stems from the fact that labour creates value. What follows is that labour power is the capacity to create value that can be exchanged. It is the value relation inscribed by labour power that brings different labours in relation to one another forming a bond between persons.⁶⁷ The value relation produces this social existence of the person as an embodiment of value to be exchanged on the market. The juridical status of persons as owners of private property is the conceptual reflection of a mutual recognition between two equivalent capacities to produce value for the market.

This external relation between persons also entails an inner reality of the juridical person. A person’s external capacity to produce value is internally

⁶⁶ G.W.F. Hegel, *Philosophy of History*, (Prometheus Books,U.S. 1991), 279

⁶⁷ Marx, *Capital*. 166

reflected in the juridical concept of legal capacity. This is the second way in which the transformation into a person is an abstraction from the human. Legal capacity refers to a mental measure of the legal person. Here, the notion of a private owner entails epistemological postulates. It stipulates the kind of rational ability that a person must be capable of demonstrating in order to participate in market exchange relations and is therefore directly related to personification. “We mean by labour-power, or labour-capacity,” writes Marx, “the aggregate of those mental and physical capabilities existing in the physical form, the living personality, of a human being, capabilities which he sets in motion whenever he produces a use-value of any kind.”⁶⁸ Because the owner of labour power has become this embodiment of value production, the legal person also becomes a juridical-psychological abstraction.

Legal capacity also plays a role in determining who is accepted and rejected from personhood on this basis. Going as far back as Rome, some human beings held personhood status in full, some partially, and some not at all on the basis of capacity. By definition, the full person of *ius civile*, possesses full capacity and thereby is an owner of private property in the absolute sense. This person is a Roman-born male citizen, is alive, is sentient, and has rationality. Yet there are the conditions that also stipulate *partial* or *whole* incapacity for personhood. In Rome, men and women reached some form of higher personhood upon puberty and acquired the higher status of ‘minor’ until a later age of full personhood. The transition into adulthood and therefore full personhood depended on the ability to know the meaning of right and wrong with respect to the moral framework of private property relations. Infants were, etymologically, those without language (*fari*) and were thus not rationally capable of legal acts, delictual liability. This exemption from delictual liability remained until the child was old enough to understand the meaning of right and wrong. Those deemed mentally ill, weak-minded, or dangerous, were classified under *furosi* and were wholly incapable of personhood and thus required the appointment of a *curator*, though

⁶⁸ *ibid.* 270

the law did recognize these humans as capable persons within intervals of lucid sanity.⁶⁹

As a psychological postulate, legal capacity is imposed on the legal subject such that the individual self-consciously identifies with the category of the person as a being who can enter into contract. The human mind is contradicted insofar as the legal capacity of the person is an abstraction from the concrete nature of the human. If legal capacity is an objectification and abstraction of the mind, there is nothing particularly human that necessitates personhood. On this basis it is possible to then exclude persons based on certain mental characteristics.

The legal capacity in this sense refers only to the capacity to affirm the validity of commodity transactions, with private property as its rational, but alien substrate. The social substance of humans is barred from the abstract universe of the legal personhood because the very terms of personhood is an individual's capacity to produce value and thereby become a personification of market relations. It is the moment that the personified human being "has become the tense essence of private property."⁷⁰ So where personifications mirror one another on the market through the equivalence of value, persons of equal status mirror each other as so many atomized capacities for rights and duties on the market.

Because the legal person refers to this tense essence of private property alone and not the human being, "legal personality," writes Hegel, "thus learns rather that it is without any substance, since the alien content makes itself authoritative in it, and does so because that content is the reality of such personality."⁷¹ The loss of this social substance is felt by a civil society in which some humans carry the status of persons while other humans carry that of private property, i.e. slaves. This distinction and contradiction is identifiable in a market society that has yet to acquire a universalized social significance. In the following section, we will investigate the synthetic result of this contradiction between the human being and person of positive law. The attempt to reconcile this

⁶⁹ Ibid. 113-25

⁷⁰ Marx, Karl. "Economic and Philosophical Manuscripts" in *Early Writings*. 342

⁷¹ Hegel, Georg Wilhelm Friedrich. *Hegel's Phenomenology of Spirit* (New York: Oxford University Press, 1994.) §482

contradiction appears in the form of natural law, which instantiates all human beings as inherently persons, or owners of private property.

2.2 The Person taken as if Human

We have demonstrated that the original meaning of the person strictly entailed an owner of private property and was not conflated with the human being. After all, some humans, such as slaves, women, or children, were property and could therefore not be persons. Legally codified market relations on a smaller scale would have rendered this distinction between persons and human explicit. But when Roman expansion and commodity exchange relations would eventually become a universalized social form that also included foreigners, it would naturally appear as though persons were also always human such that certain Roman thinkers would begin to assert that all humans are constituted by the inherent dignity of personhood. The following section investigates the historical shift in the concept of legal personhood that would philosophically naturalize the appearance of the person as the essence of the human being in a way that both terms to this day are often used interchangeably.

This section approaches this conflation of the person and the human from the Roman Stoic perspective. The Stoics take the category of the person to be the essence of the human by asserting that all humans are humans because they own at least one thing – the ‘self’.

This analysis of the conflation of the human and the person opens the way for sections 2.3 and 2.4. Once personifications of commodities are reflected in the concepts of the legal person and asserts the synonymy of the human and the person, the door is left open in the early modern period to postulate the egoistic person and the moral person as essential characteristics of the ‘human’.

2.2.1 Taking the person as if it were a human

An expanding marketplace society determined the content of prevailing philosophies in Rome. This is evident in the tenets of Stoicism that bear the mark of the principles of marketplace society. In their account of what it means to be a

human [*anthropos*], the premises of personhood are inscribed. The Stoic notion of *anthropos* is asserted as a normative category on the basis that personhood is not a status solely ascribed by positive law of human creation but is the inherently dignified and divine constitution of the human being alone. According to the Stoics, the human being is a natural private owner of the self and therefore possesses a natural basis for the assertion of moral rights and equality. The Stoics' systematic contribution to Roman jurisprudence with respect to the inherent personhood of all human beings marked the first developed theory of natural law.

The assertion of natural personhood of the human being must be considered against the backdrop of Roman conquest. This conquest was first and foremost a conquest of marketplace society over ancient communal formations in Europe that consisted of inclusive human to human relationships not based on private property. Marketplace society tears these communal relations apart and introduces relations of private property yielding class inequalities. This destruction of the human community is reflected in Stoic philosophy that often emphasizes the loss of humanity that therefore must be rediscovered through reason and natural law. For the Stoics, to be detached from one's own humanity is to omit one's self-knowledge as a human who is a part of a community⁷² Only in a marketplace society where many humans are excluded from prevailing market relations does the need to rediscover an inherent human dignity arise.

The person taken as human in this tradition bears similarities to modern usages of 'human' – even though we really mean 'person' - when we speak of what is incumbent on or due to other 'humans'. It is an inclusive view that all humans are unconditionally worthy of the rights of personhood. As a result, the Stoic *anthropos* takes personifications of market relations to be the essence of the human.

The Stoic conflation of the person and the human was observed by Marcel Mauss. "I think that this effort," writes Mauss, "this step forward, came about

⁷² A. A. Long "Stoic Philosophers on Persons, Property-Ownership, and Community" 335–360, in *From Epicurus to Epictetus: Studies in Hellenistic and Roman Philosophy*. (Oxford University Press. 2006). 337

above all with the help from the Stoics, whose voluntarist and personal ethics were able to enrich the Roman notion of the ‘person’ (*personne*), and was even enriched itself whilst enriching the law.”⁷³ With respect to Mauss observation, classicist A.A. Long confirms that the Stoics were the first to attribute self-consciousness as *the* attribute par excellence of a person as a moral and legal entity. In a way that resembles Locke, writes Long, the Stoic view held that “first, every human individual is the natural and rightful owner of at least one thing – himself or herself; second, that human nature inclines individual human beings to acquire private property and to interact with one another as property owners.”⁷⁴

The principles of an inherent self-ownership and inclination to acquire private property take on a universalized ethical form with the expansion of market society. “The idea,” writes Pashukanis, “that all people are equal, possessing the same ‘soul’, that they all have the capacity to be legal subjects, and so forth - was forced on the Romans by the practice of trade with foreigners...”⁷⁵ What is hereafter lost upon the universalization of this ethical norm is the original distinction between the person as a technical category of private property ownership and the human being. On the premise that reason - the rational capacity of personhood - is common to all humans, Cicero could affirm that “however one defines man, the same definition applies to us all.”⁷⁶ We can observe this conflation of the person with the human in writing, when a thinker like Cicero linguistically refers to the human (or ‘man’) but instead has personification and relations of private property in mind:

It is the function of a wise man, while doing nothing contrary to conventions, laws, and institutions, to be concerned about his private affairs. For we want to be wealthy not for ourselves, but also for our children, relatives, friends, and above all, for our country. For the resources and supplies of individuals are the wealth of the state.⁷⁷

⁷³ Marcel Mauss. "A Category of the Human Mind: The Notion of Persons; the Notion of Self." Translated by W. D. Halls. In *The Category of the Person: Anthropology, Philosophy, History*, edited by Michael Carrithers, Steven Collins, and Steven Lukes. (Cambridge: Cambridge University Press, 2004), 18

⁷⁴ Long, “Stoic Philosophers on Persons, Property-Ownership, and Community”, 338

⁷⁵ Pashukanis, *The General Theory of Law & Marxism*, 156

⁷⁶ Cicero, M. Tullius. *The Republic and the Laws*. Translated by Niall Rudd. Oxford: Oxford. 107

⁷⁷ Cicero. *De officiis*, 3.63. Quoted in Long, “Stoic Philosophers on Persons, Property-Ownership,

One historical consequence of taking the appearance of the person to be the essence of the human is attested by Henry Maine, writing that “it is exactly the Roman jurisprudence which, transformed by the theory of Natural Law, has bequeathed to the moderns the impression that individual ownership is the normal state of proprietary right, and that ownership in common by groups of men is only the exception to a general rule.”⁷⁸

The person of natural law is but the universalized commodification of all humans. For its own conceptual logic accords with “the natural laws of the commodity” that “have manifested themselves in the natural instinct of the owners of commodities.”⁷⁹ ‘Natural laws’ here takes on a double meaning. It is a real and objective phenomenon with respect to the natural activity of commodity exchange. But it also appears as a natural given and transcendent condition of ‘human’ life that has been present at all moments in human history such that all humans appear to have always been persons.

The social activity of commodity exchange is antecedent to the thought that takes such an activity to be its own origin - which is true - but this origin appears in a distorted conceptual way as a natural law of ‘human relations’ as such, which is not true. The immediacy of the empirical point of view of this social activity conceals the social and historical origin of the commodity form. Instead, the natural logic of the commodity form morally and juridically re-appears as *a priori* ‘natural laws’ between persons for the sake of the exchange of commodities. But these ‘natural laws’ of persons are in fact the historical expansion of market relations.

2.2.2 *Estrangement of the human community*

We have pointed out that the expansion of market society is commensurate with the expansion and strengthening of codified law, through which the status of the

and Community”, 343

⁷⁸ Henry Maine, *Ancient Law*, (J.M. Dent & Sons, Ltd.; E.P. Dutton & Co. 1917), 153

⁷⁹ Marx, *Capital*, 180

legal person becomes increasingly ubiquitous. As this expansion is commensurate with the destruction and loss of direct human to human relationships, humans are increasingly transformed into atomized personifications of economic relations. The human community is subsequently estranged by the internal conflict of class inequalities and is hence lost as a true community.

The person taken as human in the natural law theory of Stoicism is an attempt to reconcile the precepts of legal personhood of positive law with an inherent moral dignity found within all human beings. Natural law, therefore, attempts to re-invent the lost human community by universalizing the precepts of legal personhood across this estranged human community. The result, however, is not the return to a concrete and true human community, but an abstract and personified society of estranged humans who are taken to be equal insofar as they are all *theoretically* taken as persons.

Personhood under natural law entails a universality that is only abstract. This remains abstract because the membership of this community is composed of atomized owners of private property that are bound together solely through relations of exchange. Hegel describes this as “the universal being thus split up into a mere multiplicity of individuals, the lifeless Spirit is an equality, in which all count as the same, i.e. as *persons*.”⁸⁰ This formal universality of legal personhood is not a substantial social whole of the human community but a formal collection of alienated humans that “exist, as persons, on their own account, and exclude any continuity with others from the rigid unyieldingness of their atomicity.”⁸¹ What counts for being absolute and ‘essential’ in the sphere of personal independence is the isolated consciousness that asserts its ‘*mine-ness*’ of an abstract, immaterial self that eschews concrete human relationships. “Consciousness of right,” writes Hegel, “in the very fact of being recognized as having validity, experiences rather the loss of its reality and its complete inessentiality; and to describe an individual as a ‘person’ is an expression of

⁸⁰ G.W.F. Hegel. *Phenomenology of Spirit*. Translated by A. V. Miller. (New York: Oxford University Press, 1994) §477

⁸¹ *ibid.* §482

contempt.”⁸² This ‘loss of reality’ is the ideological point of view: the human estranged from his or her own species-being when he or she along with other members of this estranged community take themselves to be something other than human, that is, objectified owners of private property.

This estranged human consciousness must be understood from the point of view of social forces of production. In the *Economic and Philosophical Manuscripts*, Marx writes that “the entire *history of alienation*... is therefore nothing more than the *history of production* of abstract, i.e. absolute, thought, of logical, speculative thought.”⁸³ Stoic natural law is an expression of real suffering as well as it is the protest against this real suffering. The human is abstracted into a dignified person in an attempt to liberate human beings from their sufferable material conditions brought about by real forces of history. Only after the achievement of absolute property alongside the universalization of market relations would an estranged human community take the form of one large abstract social activity of market society, conceived in thought it were an integral whole, albeit abstracted from the world.

The legal concept of the Roman person and the philosophical intervention of Stoicism offers us insight into the historical origins of how we conflate the person with the human today. This intellectual achievement of the Stoics has a twofold character: here begins a comprehensive principle of an inherent human dignity, albeit abstract; but this is at the expense of reifying the estranged human into an isolated personification of private property ownership, followed by a social fragmentation that appears to be anything but social. What this means for us today is that precisely when we confront one another as persons we are the most distant from our true human community.

2.3 The Egoistic Person

Section 2.1 demonstrated that in the ancient world commodity production and exchange reached a threshold such that social regulation took up a codified legal

⁸² Ibid. §480

⁸³ Marx, “Economic and Philosophical Manuscripts” in *Early Writings*, 384

character. *De facto* relations of private ownership therefore became *de jure* and acquired the codified category of the legal person. Section 2.2 demonstrated that the universalization of these market relations presented the appearance of private ownership to be a natural feature of the human essence. Section 2.3 follows from this conclusion of Stoic natural law and will demonstrate how the egoistic form of market relations is the basis upon which private ownership is ideologically taken to be the essence of the human.

Behind every juridical deliberation stands the premises of the egoistic form of personhood that logically precedes the legal form. As Pashukanis writes, “it is above all in private law that the *a priori* principles and premises of juridical thought become clothed in the flesh and blood of two litigating parties who, *vindicta* in hand, claim ‘their right’.”⁸⁴ For analytical reasons, we must consider egoistic relations on their own, distinguished from the legal form. The legal form does guarantee and safeguard egoistic relations of market activity, but the legal form does not create these egoistic relations itself. For this reason, it was not necessary that Roman concept of absolute property logically preceded the egoistic relation to property, as is the case in common law.

We will first consider the bond between egoistic persons and how this bond is determined with regard to producing and acquiring social needs within the division of labour. Second, we will demonstrate how this egoistic relation becomes the basis for a worldview of market society and taken to be the essence of the human, which in turn becomes the social and philosophical premise of legal personhood. In developing this notion of the egoistic person, we will also demonstrate how these egoistic relationships entail the estrangement of true human relationships.

2.3.1 The manifestation of egoistic persons

The egoistic person, Marx writes, “looks only to his own advantage. The only force bringing them together, and putting them into relation with each other, is the selfishness, the gain and the private interest of each. Each plays heed to himself

⁸⁴ Pashukanis, *The General Theory of Law & Marxism*, 80

only, and no one worries about the others.”⁸⁵ The egoistic person takes the world as it is only for him or herself and appropriates it as private property, that is to say, “he takes the world as his conception of the world, and the world as his conception of his imagined property. . .”⁸⁶

The nature of the egoistic person is only understood in relation to another egoistic person. This bond is constituted through the nature of the object constituted by the relation of private property. First, this object is a social need. But as private property, the satisfaction of this social need is alien to a person and therefore compels this person towards this object with necessity. For this reason, the sole activity of a person’s existence is the acquisition of the social needs from which he or she is separated. Labour’s capacity to create value, therefore, is a means towards these social needs as ends.⁸⁷ It follows from this, then, that labour must be objectified and hence alienated such that it can be sold on the market in exchange for social needs. The egoistic relation is determined by the alienation of the producer’s labour.

There are two aspects to these social needs within the division of labour in marketplace society. These social needs are alien to the person because they are the external, objectified private property of another. For this reason, a second aspect is entailed, which is the inner relation to the object: the feeling of a need for something is to take that thing to be a part of one’s own essence, “that its being is for me and that its *property* is the property, the particular quality peculiar to my essence.”⁸⁸ Together, this external relation and inner relation compels the person to forsake his or her own private property in exchange, if at least the sale of his or her labour power, so that the social need may be acquired. A second person on the other end of this exchange in the same position with regard to acquiring social needs is necessary. Through transaction each person alienates a portion of their

⁸⁵ Marx, *Capital*. 280

⁸⁶ Karl Marx and Friedrich Engels. “The German Ideology”, in *The Marx-Engels Reader*. edited by R. C. Tucker, 146-199. (New York: Norton. 1978), 138

⁸⁷ Marx, “Excerpts from James Mill’s Elements of Political Economy” in *Early Writings*, 269

⁸⁸ *ibid.* 267

private property for the essential benefit of the other. The transaction confirms the bond of both persons as egoistic owners of private property.

The egoistic bond between persons in marketplace society confirms the estrangement of the human community for the reason that labour is no longer social and for others, but atomized for one's self because it is the means by which social needs are acquired, needs which are no longer social and held in common but privately possessed.

This estrangement is further intensified with the presence of the equivalent form of money, whereby the person no longer exchanges his or her own product directly with an object he or she needs, but for money alone as a mediator of exchange. Money here represents a total indifference to the particular qualities of social needs and hence the living human being. Money, therefore, represents human's estrangement as such, as the "unfettered dominion of the estranged thing over man."⁸⁹ Moreover, "*money* is the sensuous, corporeal existence of that *alienation*," writes Marx⁹⁰. And "the more developed and important is the power of society within private property, the more man is *egoistic*, un-social and estranged from his own essence."⁹¹

The social bond is alienated through the alienation of labour, which is objectified as labour-power. Labour-power as value creation becomes the means by which the person may participate in the value relation by exchanging his or her own commodity for money. Predicated on the alienation of labour, the social bond between persons in the market is therefore an estranged human bond:

For our products are not united for each other by the bond of *human nature*. Exchange can only set in *motion*, it can do no more than confirm the *character* each of us bears in relation to his or her own product and hence to the product of the other. Each of us sees in his product only his *own* objectified self-interest, hence in the product of others the objectification of a *different*, alien self-interest, independent of oneself.⁹²

⁸⁹ *ibid.* 270

⁹⁰ *ibid.* 270

⁹¹ *ibid.* 269

⁹² *ibid.* 275

The essence of human relationships is estranged because humans do have the inner relation to each other's products that is socially necessary but these products are externally separated by the division of labour and are objectified by private property relations. A true human relation to social needs, on its own, admits no power or rights of possession over these needs.

We must consider, then, how the bond between egoistic persons appears to be a bond of mutuality when in fact, for human relations, it is nothing of the sort:

Thus the social relation I bear to you, the labour I perform to satisfy your need, is likewise merely an *appearance* and our mutual supplementing of each other is equally but an *appearance*, based on our mutual plundering of each other. The intention to *plunder*, to *deceive*, inevitably lurks in the background, for, since our exchange is self-interested on your side as well as on mine, and since every self-interested person seeks to outdo the other, we must necessarily strive to deceive each other.⁹³

The bond appears as a mutually beneficial agreement because the mutual respect for personhood must be acknowledged by both parties through a moral equivalence as a moment of fairness and equality. But this mutual recognition of mutual power through the exchange relation is only the struggle towards victory and greater power on the market. Egoistic persons recognize one another's needs *only* insofar as this exchange renders their own needs attainable. Thus, equality through exchange is necessary but it is only a means towards self-interested ends. The recognition of another person on the market is only an instrumental '*as if*'.

The mutual recognition of equality on the market is instrumentally necessary egoistic relations, without which another individual is no longer a person but "merely a human being and your demand is no more than an ungratified desire on your part, a non-existent idea as far as I am concerned."⁹⁴ As human beings, we therefore have no direct relations to one another in the abstract because we have no common direct relation to human property. It is only as personifications that we are capable of attaining these social needs as private

⁹³ *ibid.* 275

⁹⁴ *ibid.* 176

property. As estranged humans, we exclude ourselves from true human property because our private property as persons excludes humans.

2.3.2 *The egoistic worldview and the legal form*

Through the egoistic relation, “a person’s *particular* activity and situation in life [sinks] to the level of a purely individual significance,” writes Marx, and “they no longer constituted the relationship of the individual to the state as a whole.”⁹⁵

Civil society is thus constituted by the self-concerned individual that “inevitably appears as *unpolitical* man, as *natural* man. The rights of man appear as natural rights, for *self-consciousness activity* is concentrated upon the *political act*.

Egoistic man is the *passive* and merely *given* result of the society which has been dissolved, an object of *immediate certainty*, and for that reason a *natural* object.”⁹⁶

The atomized form of the modern legal person logically follows from this premise of naturalized egoism, reflecting this abstraction from the social and historical circumstances of the human community.

Because the egoistic person takes the world only as it is for him or herself, the historical and social determinations of the human being are eschewed from consciousness. The egoistic contradictions of market forces, though real social activity, are not taken as historically determined, but natural, and hence the social struggles between human beings take the appearance of atomized struggles between owners of private property. The egoistic person, therefore, can be described as the personalization of economic struggle.

A cornerstone moment in the philosophical contemplation of the egoistic person is found in the writings of Locke, reflecting the real processes of depoliticization and atomization of persons in the early modern period. The category of the person from the empiricist views of Locke posits the ontological priority of the individual self as an owner of private property. This private property begins as one’s own body and labour and must be preserved as such. In order to preserve one’s private property, the individual must appropriate natural

⁹⁵ Karl Marx. "On the Jewish Question" in *Early Writings*, 233

⁹⁶ *ibid.* 233

resources by conquering the commons. Through the sensuous activity of labour an individual mixes their private property with the commons so as to turn this new product of their labour into private property: for “every Man has a *Property* in his own *Person*. This no Body has any Right to but himself. The *Labour* of his Body, and the *Work* of his Hands, we may say, are properly his,”⁹⁷ upon which the person “by his Labour does, as it were, inclose it from the Common”⁹⁸. This egoistic abstraction arises by negating the commons into private property. It is by this appropriative act that this social human transforms into the anti-social character – through negation of the commons, depoliticized person come into competition with each other.

Personal struggle through the preservation of private property by accumulation becomes a rallying point in a person’s existence in capitalist society. As C.B. Macpherson comments with respect to Locke, “if it is labour, a man’s absolute property, which justifies appropriation and creates value, the individual right of appropriation overrides any moral claim of society.”⁹⁹ The net result of an estranged human society that takes itself to be so many egoistic persons is defined by Friedrich Engels, writing that “each is in the way of the other, and each seeks to crowd out all who are in his way, and to put himself in their place, the workers are in constant competition among themselves as are the members of the bourgeoisie among themselves.”¹⁰⁰ Social struggle personified then becomes so many individualized struggles appearing as rugged, egoistic competition between individuals.

The empiricist point of view of the egoistic person reflects an inability to ask why some people ‘inherently’ want to accumulate wealth and why some people are exploited. This rendering invisible of the historical conditions that produce egoistic relations is a product of market abstraction itself and the increasingly abstract character of private property.

⁹⁷ John Locke, *Second Treaties of Government*, Book II, § 27

⁹⁸ *ibid.* Book II, § 32

⁹⁹ C. B. Macpherson, *The Political Theory of Possessive Individualism: Hobbes to Locke*. (Oxford: Oxford Univ. Press, 1997), 221

¹⁰⁰ Engels, F. (n.d.). Retrieved August 02, 2020, from <https://www.marxists.org/archive/marx/works/1845/condition-working-class/ch05.htm>

Even though English property law is not rooted in the tradition of absolute property of Roman civil law, we can detect a semblance of such a concept of property already appearing for Bentham. For the shift towards capitalist forms of private property instigated novel notions of private property that necessarily reflected novel market forces. Bhandar points out that Bentham was already attempting to describe private property in an absolute sense based on a '*feeling of expectation*' that property could belong to an owner without being directly before one's eyes. But because of the empiricist atmosphere in which Bentham was writing, he could not describe this beyond a kind of 'affective' relation.¹⁰¹ This expresses an intimate quality of the egoistic relation to private property in a way that conceals the historicity of the relation behind a 'feeling'.

From this perspective, the complexity of history and social relations are not immediate before one's eyes and are thus not the object of one's personal introspection. The inability to seriously ask this question is from the point of view that benefits from not doing so, and rests at falsely assuming that what we see before us as a *historical* fact of habit is an established fact of an immutable human nature. The historical appearance of competition becomes universally pervasive as a primary social relation in market society such that egoism would appear to be the essence of the human spirit rather than collectivity and solidarity. This false assumption of the egoistic person, now, serves as a logical basis for the legal person within the realm of 'subjective law' with notable ideological force in the adversarial system of common law.

The aspect of 'subjective law' that belongs to the legal form of personhood, "is born in a society of isolated bearers of private egoistic interests,"¹⁰² writes Pashukanis. This aspect of subjective right that informs the legal person stands in contrast to 'objective law', which is the legal expression of market society as a whole. The division between subjective law and objective law is a reflection of the division between a civil society of depoliticized self-

¹⁰¹ Brenna Bhandar, "Property, Law, and Race: Modes of Abstraction", *U.C. Irvine L. Rev.* (2014): 209

¹⁰² Pashukanis, *The General Theory of Law & Marxism*, 103

interested persons and the abstract universal interest of the political whole represented by the state.

Because the egoistic person is a naturalized, pre-legal and unconditional given, the idea of personal responsibility and private interests that complement the legal form of subjective law follow from this. The atomized psychological character of the egoistic person matches the psychologism of legal capacity. Whereas legal capacity is a formal concept that measures the ability to carry out legal actions and contract relations, the psychological ego informs the subjective nature of personal responsibility and private interests with respect to these actions. This depoliticized psychological notion of the ego aligns with the abstraction of the legal person that obfuscates historical and social determination of the human being.

Because subjective law affirms only the private interests of the egoistic person, personal responsibility, in the case of criminal law, for example, is only considered as an isolated abstraction detached from social and historical significance. Social and historical determinations of real class relations are not considered to be the real basis for which certain crimes may be committed. The alliance between the psychological school of jurisprudence and the psychological school of political economy bring together the legal person and the egoistic person under one rubric of a subjective realm of an atomized consciousness where personal compulsions are taken to begin with the autonomous individual alone.

If the courts were truly concerned with the living conditions of the accused or the social basis for certain crimes with the view of improving society, the abstract character of personal responsibility and hence the meaning of an equivalent 'punishment' would be lost in criminal proceeding. The law, therefore, administers class struggle by reducing subjects to depoliticized, private, and anonymous competitive persons in two aspects:

The materialization of this exchange relation in criminal law is one aspect of the constitutional state as the embodiment of the ideal legal form of transaction between independent and equal producers meeting in the market. However, since social relations are not confined to the abstract relations between abstract

commodity owners, so too the criminal court is not only an embodiment of abstract legal form, but also a weapon in the immediate class struggle.¹⁰³

The egoistic person informs the basic character of legal relations. The state, however, also administers class relations by imposing such egoistic market relations onto subjects in an objective way. “Modern criminal law,” writes Pashukanis, “starts out, not at all from the damage suffered by the injured party, but from the violation of the norm established by the state.”¹⁰⁴ The law’s imposition of the market relation as a norm is also the systematic estrangement of human relations by transforming or ‘rehabilitating’ these estranged humans as personifications. The law asserts itself here where the morality of market relations is lacking in the individual.

2.4 The Moral Person

The following section discusses the moral relation of the person with respect to the egoistic relation and the legal relation. What we find here is the highest expression of bourgeois ethics founded on the apriorism of private property. Morality in the market comes to express the social existence of persons as a whole, albeit an abstract whole removed from concrete historical conditions. The core argument here is that bourgeois morality conceals the compulsions of our personifications of commodities, having the individual believe that their obligations towards the institution of private property are entirely free, contractual, and of a human nature.

2.4.1 The moral whole

The moral relation of personhood is defined in terms of its attempt to resolve real social contradictions at the core of market society. On the one hand, owners of commodities are egoistic bearers of untethered freedom in the marketplace, compelled towards their social needs in competition against others. On the other hand, the law must be socially binding such that the egoistic person must respect

¹⁰³ *ibid.* 176

¹⁰⁴ *Ibid.* 176-7

the autonomy of other persons. Morality, therefore, is a dimension of market relations that functions to raise the person above the idiosyncratic proclivities of particular self-interests to the abstract universal whole of market society.

The moral relation is the negation of both the particularism of the egoistic person and negation of the coercive externality of the law. The moral moment of the person reconciles this contradiction through the moral law within, reflecting the socially binding value relation. The social activity that expresses this free and willing relation to the whole is found in the activity that binds market person together: exchange. In this respect, morality in market society, writes Pashukanis, “comes down to the fact that man does ‘freely’, that is out of inner conviction, that which he would be compelled to do in the sphere of law”.¹⁰⁵ Without this, the egoistic person and the law would be irreconcilably antagonistic.

The moral law reconciles these contradictions through a supra-sensible moral individuality. Moral constitution of the person is de-personalized, bereft of fear, tastes, sympathy, or feelings of social solidarity.¹⁰⁶ It stands above human motives as a kind of artificial intelligence out of science fiction. The assumption is that when real emotional or social intuition is involved, the consciousness of the intelligent moral machine cannot operate. If I relate to the world for what it is - social, concrete, and particular - then I am already in the realm of bias and therefore not fit to participate in moral decision making. This ‘bias’ is the particular point of view of the human with respect to his or her concrete social needs, and so must thereby be excluded from the moral constitution of personhood. The moral relation of personhood, therefore, must exclude the human by definition.

The moral relation that excludes the concrete character of the human is a real social force in the market. This is shown by the principle that moral persons must treat one another as ends rather than means. But because the moral concept of the person excludes anything truly human, it is not the case that the human is treated as an end. Pashukanis points out that the maxim “treat your fellow man as

¹⁰⁵ Pashukanis, *The General Theory of Law & Marxism*, 155

¹⁰⁶ *Ibid.* 154

an end in himself” remains meaningful in situations when humans are, in fact, treated as mere means. This is because means are bound up with the concrete social world – the human world – from which the moral law has been abstracted. “Moral fervour is inextricably bound up with and feeds on the morality of social practice. Ethical doctrines claim to change and improve the world whereas, in reality, they are merely a distorted reflection of one aspect of this real world – the aspect which shows social relations to be subject to the law of value.”¹⁰⁷ The real end here is the absolute integrity of the private property relation itself. If some human beings are estranged as a consequence, then this estrangement is the means that justifies the pursuit of the moral ends of property-owning persons.

In the case of egoistic persons that recognize one another as equals in the exchange relation, we demonstrated that this recognition is merely a means for egoistic self-interest to acquire social needs. Moral personhood presents this social recognition as a principled relation of fairness and equality, which stipulates that owners of private property must be treated as ends. From the point of view of the moral whole, the true end is mutual recognition in the exchange relation itself. But from the point of view of the atomized egoistic person, it is a means. For this reason, moral equivalence conceals the fact that egoistic persons may treat one another as means towards market power. Large capitalists, for instance, can destroy small capitalists in good faith because they have all ‘agreed to the rules’. The working class is also morally ‘equal’ in principle to the capitalist. But the working class, estranged from their labour, remains instrumental in the production of value for the capitalist. A basic minimum condition for sufficient commodity exchange, Pashukanis writes, is that commodity owners must act *as if* they acknowledge one another as equals.¹⁰⁸

2.4.2 Morality and Market Freedom

We have demonstrated that the moral relation is a social function in the market that resolves a contradiction between the law of the state and the egoistic atoms of

¹⁰⁷ Pashukanis, *The General Theory of Law & Marxism*. 157

¹⁰⁸ *ibid.* 162

civil society. From the juridical perspective, it makes no difference if a debt is repaid because one will be forced to repay it anyway. And the depoliticized, atomized egoistic person, in and of itself, owes nothing to the state. The moral law, thus, comes from ‘within’ and compels the debtor to pay ‘freely’.

The person’s moral commitment to the exchange relation fits the form of the fulfillment of a legal claim. For Pashukanis, if we take this idea to its most consistent conclusion, the result is that legal obligation is not the same thing as a duty. The law does not commit the legal person to anything. Legal ‘obligation’ exists only as a liability. The free will of the moral law must step in because “if legal obligation has nothing in common with ‘inner’ moral duty, then there is no way of differentiating between subjection to law and subjection to authority as such.”¹⁰⁹

The categorical imperative reconciles the egoism and the law by imploring us to “act only on that maxim whereby thou canst at the same time will that it should become a universal law”.¹¹⁰ Stated in another way as egoistic persons, our allegiance to private property is our personal freedom, which is only possible, however, if we as moral persons follow that law of private property which we would also will such that it becomes universally binding law.

2.4.3 Morality as a binding force for the market

How is the moral bond a reflection of market relation? Here we provide an answer to how contract relations are socially binding. In section 2.3 we discussed the egoistic social form of the person with respect to the alienation of social needs in the division of labour. But because these social needs vary depending on the disposition of the particular person, our egoistic, self-interested relations alone do not suffice to bind persons together. What remains, then, is to understand the way in which the supersensible moral relation devoid of human disposition is also a reflection of value relation in which ‘not a single atom of matter enters’.

¹⁰⁹ *ibid.* 163

¹¹⁰ Immanuel Kant, "Fundamental Principles of the Metaphysics of Morals." In *Basic Writings of Kant*, edited by Allen W. Wood, 143-121, (New York: Modern Library, 2001), 178

In Chapter One we discussed how the value relation is a ‘pure’ social relation of commodity production and exchange, also termed ‘real abstraction’. We mentioned that we must consider abstraction to be something whose source is in real social activity, and that the mind which produces thought-abstractions (concepts) is but a reflection of this kind of activity. The value relation constitutes a universal binding relation within a commodity producing society. Labour produces value for the purpose of exchange, an exchange that is possible only through the abstract labour measured by the magnitude of socially necessary labour time.

The increasing division of labour, improvements in communications, and resulting development of exchange, made value an economic category, that is to say, the embodiment of supra-individual social relations of production... At this stage of development, value ceases to be casual appraisal, loses the quality of a phenomenon of the individual psyche, and acquires objective economic significance.¹¹¹

Because we appear as so many self-interested egos, it is natural to wonder how it is that the content of law is morally binding at all. The answer is in two steps. First, we are separate from our social needs through private possession and so our personal activity aims towards these social needs through the act of exchange. We must therefore confront this other by offering up our own property as exchange. We have therefore produced a value in order to exchange for another. Second, the equivalence of value is expressed through the social act of exchange which renders two owners of private property mutually recognizable. The moment where exchange value appears as the negation of the use value is the moment where the value relation is reflected in a moral equivalence and, by extension, the social whole.

If the supra-sensible value relation is reflected in the supra-sensible moral relation, the real material and historical conditions of the moral relation as a force of market society is concealed to consciousness. The historical context of market

¹¹¹ Pashukanis, *The General Theory of Law & Marxism*, 115

society is concealed as the determination in what is right and wrong. Moral apriorism is this vanishing point.

In the moral constitution of personhood, the *a priori* postulate is the point at which the historical character of market society as a social whole is abstracted from and is negated such that the appearance of an abstract, homogeneous/s moral relation is taken to be an ahistorical given. This is how market relations appear to originate from the ‘free’ from the vacuum of an autonomous will.

When we take the moral relation between persons to represent the social whole of market society, the ‘givenness’ of apriorism disallows us from the ability to comprehend the historical and the social binding force of the value relation. One conclusion to this ideological thinking in the market is the belief that economic inequalities are solely the result of poor choices of isolated individuals themselves, rather than a necessary feature of the social division of labour. It is difficult for moral consciousness of market persons to contemplate their own social existence as a historical relation since they take this relational form to be the objective nature of human relationships in general. It follows from this that arguments deriving class inequalities and the general debasement of human beings from capitalist relations of production are difficult for people to accept, let alone comprehend, as the force of these relations are postulated *a priori* givens, taken as if they were human. This is why thinking alternative forms of social relations not based on private property relations usually fall on deaf ears or worse – they are considered a moral threat to social whole.

2.4.4 Conclusion of Chapter Two: a contradictory unity

The person is not reducible to either one of these moments discussed in this Chapter. When attempting to develop a legitimized notion of the person in market society, the postulates of egoism, morality, and legality are all necessary and compensate for what each other lack on their own, forming dialectical unity. But in the attempt to develop such a notion of the person, if these postulates ever come into contradiction with one another, it is because they are reflections of different moments of existing market relations. As Pashukanis writes,

As always, the contradiction in the system here too reflects the contradictions in real life, that is in the social environment which produced the form of morality and law as they exist... The contradiction is embodied in the actual interrelation of people who cannot regard their private endeavours as social aspirations except in the absurd and justified form of the value of commodities.¹¹²

No definition of personhood, therefore, is tenable without taking into account that it is an idea that is internally contradictory because it reflects different aspects of contradictory market relations. It is these internal contradictions within the social existence of personhood that are externally expressed as the contradiction between the person and the human, the effect of which is the estrangement of the human community.

¹¹² Pashukanis, *The General Theory of Law & Marxism*, 165

CHAPTER 3

Dehumanization

Each of the four aspects of personhood presented in chapter two were analyzed in two primary ways. First, we demonstrated that the legal, egoistic, and moral relations between persons represented various moments of market relations. We also showed that taking the person to be human further naturalizes these market relations. We argued that neither one of these aspects of personhood is reducible to the other, but that they, together, form a contradictory unity reflecting the contradictory character of social relations in market society. Second, such a demonstration relied on distinguishing the person from the human and pointing out that relations between persons, as the social activity of personified economic relations, bring about the estrangement of human beings. The following chapter brings the analysis of this estrangement to a close.

3.1 The person as the appearance of the alienated human

The human being transformed into a personification is estranged from his or her own species-being. This estrangement begins with the product of his or her own labour. When labour is objectified as a commodity, it becomes a product that stands in alien opposition to the producer, objectified as a value for exchange: “the realization of labour is its objectification. In the sphere of political economy this realization of labour appears as a *loss of reality* for the worker, objectification as *loss of and bondage to the object*, and appropriation as *estrangement*, as *alienation*.”¹¹³

If the realization of labour as a commodity entails an individual’s personification, the legal status of the person that is conferred on this individual reifies this loss of reality for the producer. The producer does not confirm him or herself while he or she works but only confirms his or her labour power as the private property of another owner for a socially necessary period of time. “Hence the worker feels himself only when he is not working; when he is working he does not feel himself. He is at home when he is not working, and not at home when he

¹¹³ Marx, “Economic and Philosophical Manuscripts” in *Early Writings*, 324

is working. His labour is therefore not voluntary but forced, it is *forced labour*. It is therefore not the satisfaction of a need but a mere *means* to satisfy needs outside itself.”¹¹⁴

The individual’s life at any given moment is subordinate to his or her commodity that must be preserved in an atomized, self-interested way. “It turns his *species-life* into a means for his individual life,” writes Marx, “firstly it estranges species-life and individual life, and secondly it turns the latter, in its abstract form, into the purpose of the former, also in its abstract and estranged form.”¹¹⁵ This is the moment where “life itself appears only as a *means of life*.”¹¹⁶

As a person who sells his or her commodity, life and the means to sustain this life take the alien form of private property and has thus become the estranged human’s own ‘tense essence’ to which he or she is bound. This relation to production admits a social existence of personhood contrary to the social existence of the human being: “Just as *private property* is only the sensuous expression of the fact that man becomes *objective* for himself and at the same time becomes an alien and human object for himself.”¹¹⁷ The human’s expression of his or her own life as a person is this alienation of life and a realization of the loss of human reality.

The dual social existence of the person and the estranged human can be considered in the following way: “just as he is depressed, therefore, both intellectually and physically to the level of machine, and from being a man becomes an abstract activity and a stomach”. This *abstract activity* and *stomach* constitute the dual ontology of market society. On one hand we have the estranged human stomach and on the other hand we have the abstract activity of personified economic relations:

the fundamental character of capitalism... revealed in the tendency to make abstract categories live as though they were concrete. Categories become subjects, or rather, even persons, though we must speak here of *person* in the

¹¹⁴ *ibid.* 326

¹¹⁵ *ibid.* 328

¹¹⁶ *ibid.* 328

¹¹⁷ *ibid.* 351

Latin sense, that is, of masks... ‘Capitalist’ means a man transformed into a mask, into the *person* of capital: in him acts capital producing capital... The abstract, in capitalist society, *functions concretely*.¹¹⁸

The contradictory unity of this dual ontology is precisely in that this abstract activity estranges the human being from his or her species being *but* cannot go any further than reducing the human being to a stomach, without which production and exchange, at the end of the day, would not be possible.

The secret to understanding the existence of persons requires we acknowledge that the concept of the person denotes *only* the personifications of market relations and not the human being. And insofar as humans can transform into persons, this transformation is predicated on the estrangement of their humanity.

Here we can identify a broad view of an estranged human community: within market society, the human community is divided between persons and non-persons, whereby the latter experience dehumanization as a result. An estranged human community is not a true whole, but an estranged whole divided within itself, whereby humans are incapable of recognizing other humans *as* human – but only as persons or non-persons. This tells us something important about the relationship between personhood and dehumanization.

From initial appearances, it seems as though the dehumanization that follows from the exclusion from personhood means that to be a person is to be ‘human-ized’. This would be incorrect, however, as this is the ideological point of view that takes the existence of the person to be the essence of the human. As we have pointed out, what the person takes itself to be as ‘human’ is not genuinely human, but only the personification of market relations. Because the estranged human misidentifies his or her essence to be his or her existence as a person, what it means to be genuinely human is eschewed from the individual’s consciousness and from the consciousness of market society as a whole. From this perspective, if market society reduces some humans to persons, then it also reduces non-persons

¹¹⁸ Alberto Toscano, “Materialism Without Matter: Abstraction, Absence and Social Form.” *Textual Practice* 28 no. 7 (2014): 273-4

to non-humans. If, as persons, we do not recognize one another as human, neither do we recognize non-persons as human.

3.2 Questions for future research

This research pertains closely to matters beyond the scope that has been presented here. We set out to understand the conditions through which relations between persons are constituted and their various ideological moments embedded in these relations. We sought to understand how the exclusion of some humans from personhood is predicated on a dual and contradictory social reality between persons and humans. It is therefore not as simple as arguing that the exclusion from personhood is dehumanizing because personhood itself is already the alienated existence of the human being not only by definition but in its social existence.

Follow up research could approach the problem of humans excluded from personhood from this revelation, although the social existence of the non-person does not have the same homogeneous social existence as the person. At various moments in the history of market societies, the exclusion of various groups of humans from personhood occurs on different bases and therefore must be treated on a case by case basis. The consistent element across these analyses, however, would be the non-person's place within the division of labour and the value relation in order to identify the particular nature of their social existence as a non-person. It is worth looking at a couple examples of what we mean.

In the literature review we discussed the exclusion of children and intellectual disabled people. In light of what we have discussed, these types of exclusions are 'justified' through the abstraction of legal capacity imposed on humans as a criterion that reflects the capacity to produce value and hence sell labour-power on the market. What this means in these two cases is that personhood is contingent upon the capacity to be exploited in the marketplace. Though this abstraction of legal capacity has historically been used to 'officially' deny the personhood for women and racialized minorities, it is not because labour

was not exploitable. The exclusion from personhood for these two ‘groups’ thus entails a different social determination within the value relation.

We have pointed out that the value relation is the social activity of marketplace society and is the force that socially binds persons together. The juridical category of the person reflects the participants of this value relation by abstracting individuals from their concrete differentiations and rendering them ‘equals’. It is not the case, however, that only juridical persons participate in the value relation while non-persons are outside of this relation. This entails a different kind of social existence for non-persons who still participate in the value relation.

We will offer here brief analysis of how the current research relates to racialization through the value relation from the point of view of slavery. We can build upon a critique offered by Bhandar and Toscano who, following Ruth Wilson Gilmore, argue that the articulation of categories of racial differences are ‘modalities’ of “the high level *logic* of abstraction intrinsic to value as a social form of capitalism.”¹¹⁹ Their term ‘modality’ refers to the social existence (as opposed to essence) that is produced through the value relation. The person is a modality of the value relation in the way we have explained it.

The relation between being and having marks the basic relationship between the ontology of persons in relation to their property. The private property relation in market society produces the social modality of the person as a private owner. But what happens to the social modality when the dialectic of persons and property collapses in on itself? Bhandar argues that the distinction between these two moments collapses in the advent of slavery with the synthetic result of racialization. The social being of a slave at one and the same time an objectified piece of private property as well as a legal subject capable of criminal liability. According to Bhandar, this calls our attention to the manner in which the legal

¹¹⁹ Brenna Bhandar and Alberto Toscano. “Race, real estate and real abstraction”, (Radical Philosophy. 2015), <https://www.radicalphilosophy.com/article/race-real-estate-and-real-abstraction>

dialectic of personhood and property produced a novel social ontology of ‘race’ as a socially objective hybrid of human and object.¹²⁰

We can identify here the point at which the person-property relation stratifies the human being into various levels of ‘human-ness’. Gilmore argues that “racism is a practice of abstraction, a death-dealing displacement of difference into hierarchies that organize relations within and between the planet’s sovereign political territories.”¹²¹ With respect to the person/non-person distinction, we can see how the value relation that abstracts persons from concrete differentiation, in fact, does the inverse in the case of non-persons. The fetishism of the commodity form does not neutralize but reifies these differentiations through abstraction and places them into relation with one another through a hierarchy. This fetishization of concrete but contingent differentiations is distributed amongst group of humans into abstract racialized categories like ‘black’ and ‘white’ and naturalizes these categories into a social hierarchy of being in market society. Through this value relation and property law, a category like ‘whiteness’ comes to represent the person of full rights. The process of abstraction that signifies racism, writes Gilmore, “produces effects at the most intimately “sovereign” scale, insofar as particular kinds of bodies, one by one, are materially (if not always visibly) configured by racism into a hierarchy of human and inhuman persons that in sum form the category “human being”,¹²² where ‘race’ is taken to be essence. The ‘propertizing’ of human life in the history of colonial regimes forms the historical basis for the metaphysics of identity with respect to ‘whiteness’ or ‘blackness’ that continue on long after abolition as the basis for further exploitation in wage labour.

This kind of approach to understanding the racialization rooted in the value relation and juridical regimes reflects what has been presented in this thesis. The person is not a mere abstraction of the mind or a legal status, but a social existence (or modality) in its own right that stands in contradiction with the

¹²⁰ Brenna Bhandar, “Property, Law, and Race: Modes of Abstraction” *U.C. Irvine L. Rev.* 203 (2014). 205

¹²¹ Ruth Wilson Gilmore. “Fatal Couplings of Power and Difference: Notes on Racism and Geography.” *The Professional Geographer* 54 no. 1 (2002): 16

¹²² *ibid.* 16

human being. Can it be articulated, then, that the social contradictions between racialized modalities within market society are various reifications of this general contradiction between market society and the estranged human community?

The implications of this question reach as far as our methodological approach towards social reality. As Bhandar remarks, there is a sizable body of literature that undertakes the deconstruction of Eurocentrism and cultural bias in the content of the law. But she argues such literature often stops at descriptive and discursive critiques of prevailing ideas and ideology. Research must also analyze “how racial subjects are produced by these modes of legal recognition” and must “consider the constitutive relationship between property law and racial subjectivity.”¹²³ It has been the task of this thesis to demonstrate how this kind of approach may be possible; to demonstrate how what we take the person to be is a material artifact of the production process itself and is not a mere idea in the minds of humans, but an actual social existence that stands in contradiction to the human being.

¹²³ Bhandar, *Colonial Lives of Property*, 21

CONCLUSION

This subject matter of this argument begins and ends with human relations. To put this simply, as Marx says, the human “is governed by the products of his own hand.”¹²⁴ The market society in question that brings about the estrangement of human relations is not an impersonal, detached system that looms in the background shaping us as persons and estranged humans. Estrangement of the human community begins with the immediate social activity of humans acting in a way that is contrary to their essence.

Alongside the analysis of estranged human relations in market society, this research also presents a methodology for understanding the nature and origins of this this estrangement and a way to identify false assumptions and ideological premises in those works that take themselves to be speaking about the ‘human’. This begins with distinguishing existence itself from essence, and recognizing the historicity of humans’ existence as distinct from what humans essentially *are* as species-being.

If the argument presented here has merit, what is to be said about the subject matter of the social sciences and the humanities? If it is true that, in market society, we embody a dual social existence as persons (or non-persons) and as (estranged) humans, is this duality not at the centre of the most important issues concerning the social sciences and humanities? If this is the case, then scholarship that takes its subject matter to be the ‘human’ without noting this distinction is ideologically inhibited by its own presumptions. It follows that the subject matter of the social sciences and the humanities is something other than the human, but rather the prosaic existence of persons.

What is the consequence of scholarship taking the existence of person to be the essence of the human? In an effort to tackle the variety of ways the human being finds him or herself estranged in daily life, the point of view that cannot demonstrate the contradictory duality of social life in market society risks ideologically re-affirming the category of the person. For we have demonstrated

¹²⁴ Marx, Karl. *Capital*. 773

that notions of legal right, egoistic personhood, and morality are deeply suspect as they are ideological reflections of market society. If this is true, it would be mistaken to think we could continue to speak of the meaning of rights, personal autonomy, or morality without taking into account the rational and social substrate of private property relations that underscore the estrangement of the human community in market society.

The estrangement of the genuine human community through market society has come a long way to conflate the categories of the person and the human. A notable example of this appears in Human Rights discourse: given what has been argued in this thesis, what are we to make of the preamble to the *Universal Declaration of Human Rights* that postulates “the dignity and worth of the human person”? or in Article 3 that states “Everyone has the right to life, liberty, and security of person”? And yet it is clear in Article 17 that what is presumed in the so-called ‘human person’ is an owner of private property, and that this document does not envision forms of property relations outside of this status quo. We can observe here the abstraction of the human being from his or her historical context, which in turn obscures the premises of a market-based social formations concealed in such a document.

A necessary aspect of the ideological conflation of the person and the human is the inability to re-imagine social relations and our abilities to relate to our social needs and labours in a way that does not entail private ownership or private rights as individuals. So long as we take our existence as persons to be our essence as humans, our self-recognition as humans remains alienated. The enigmatic and self-contradictory character of personhood is reflected in the fact that what it means to be a human is also enigmatic due to our estrangement. Our inability to articulate the terms of our estrangement in market society is precisely an expression of this enigma.

How, then, are we to study the human being and the human community, let alone confront one another as such in a daily manner? This involves a clarity in the subject matter of research and the need to distinguish the historical existence of estranged relations amongst humans from the transhistorical essence of the

genuine human community. This involves scrutinizing ubiquitous human behaviour as historical behaviour and situating these social relations within the context of the market and relations of private property. Here it is possible to derive an understanding of the basic forces of alienation from given historical circumstances. Taking the genuine human being and community as the subject matter of research is to properly locate the source of estrangement expressed through the movement of social relations determined by a given mode of production. Moreover, it is necessary that our taken-for-granted perspectives in morality, egoistic autonomy, and legal relations do not necessarily stipulate the human being as its subject matter no matter how definitive the use of the word 'human' may be.

Such an analyses always confront what is hidden in plain sight. The person – the product of humans' own hands – is a social existence carried before our eyes, but whose social existence is hidden, as it were, behind the veneer that takes such a social existence to be essence. In this way, the historical character of the person, and hence the estrangement of the human, is concealed before our very eyes. Unveiling this to reveal a dual social existence that is contradictory must become the task of the social sciences and humanities. Without this this motivation, there is no way to know if what we refer to as human is genuinely human.

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