

Profiles of personhood. On multiple arts of representing subjects

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Abstract

The European Parliament recently recommended electronic personhood as a special legal status for robots to directly attribute them liability for caused damage, moving this idea from science fiction to legislative possibility. This 'provocation' will use this proposal to reflect upon the notion of personhood, not to analyse its singular nature, but to study persons as a multiplicity of doubles for individuals according to various modalities: dramatic, legal, political, statistical, digital. We will make 'a profile of personhood' for the different types of persons, to explore the diverse ways this concept has been given conceptual meaning and visual sense. This juxtaposition is not meant to recognize patterns of similarity, but to put them in contrast to 'find' differentiating patterns between salient attributes. These pertain to: the means of composition used, the actors bearing the masks (representatives), what they can do with them (affordances), and the representative relation between person and subject. These contrasts can then be used to judge the entry of the electronic person in the hall of faces as a new type of legal mask.

Keywords: personhood, mask, representation, robot, electronic person

Introduction

The European Parliament recently recommended 'electronic personhood' as a special legal status for robots to directly attribute them liability for caused damage, moving this idea from science fiction to legislative possibility. This 'provocation' will use this proposal to reflect upon the notion of personhood, not to analyse its singular nature, but to study persons as a *multiplicity of doubles* for individuals according to various modalities: dramatic, legal, political, statistical, digital. This turns this text into a gallery of masks, or a 'Hall of Faces' as presented in the TV series *Game of Thrones*. We will draw up several 'profiles of personhood' to explore the diverse ways this concept has been given conceptual meaning and visual sense. This juxtaposition is not meant to recognize patterns of similarity, but to put them in contrast and see how their attributes and functions differ.

Persona: A mask on stage



[W]hat can be so unreal as poetry, the theatre or stage-plays? And yet, ... I myself have often been a spectator when the actor-man's eyes seemed to me to be blazing behind his mask (Cicero 1967, 337).¹

The etymology of the term 'person' goes back to the Latin *persona*. It refers to the mask that actors used to wear in Roman theatrical plays and which visually indicated which roles they were assuming. The mask allows one individual to impersonate another individual, to play their character and to speak and act in their name. This theatrical technique makes it possible to detach the human subject from the person. It was also used as a metaphor for other phenomena. Cicero used *persona* to understand the idea of representation both in a political sense when a magistrate acts in the name of the public community, and in a legal sense when the lawyer speaks for a client (Cicero 1967).

¹ (Roman Masks, Comic and Tragic. Author of Image unknown, Source: Parton, James. Caricature and other Comic Art. New York: Harper. 1877)

Juristic persons. Fictions with effects



The subject is double: ... to the extent that a subject is invested [by the law] with a function he is called 'person' (Thomas 1998, 98).²

The juristic person shares this theatrical meaning as a legal mask. It sets up a double for an individual, distinguishing it from the human being of flesh and blood. These two levels have often been confused by taking this juristic person in a symbolic sense, imbued with essential attributes (will, consciousness, life). In law however, 'personification' is often used to abstract from physical details, or even to introduce presumptions against the natural order (denaturalization). The *persona* has a 'fictive' existence in law. It is a legal artifact that institutes a '*point of imputation*' for legal relations, a foothold within the legal system for attributing certain rights and obligations (Thomas 1998). This pointillist mask, not unlike African or Balinese variants, hereby allows an entity to become an actor in legal processes and perform legal actions. In law, this relation between individual and person is divisible. The same individual can assume *personae* of several people (e.g. as their agent), whereas several different individuals can assume one single *persona* (e.g. for a heritage). This mutual divisibility of the juristic person hinges on the type of legal relations implied, which can vary in kind and intensity. Furthermore, various non-human entities have also been granted this legal status and personhood for robots fits this line. Non-human entities can however not claim rights in their own name. They have to be represented, often by a lawyer.

Public persons. Unifying a multitude



A multitude of men, are made *one* person, when they are by one man, or one person, represented; so that it be done with the consent of every one (Hobbes 1998, 109).³

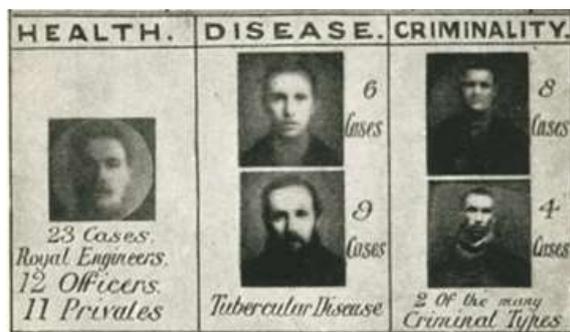
Personification also became applied to publics, most famously in Hobbes' *Leviathan*. The public does not pre-exist as a coherent community. The multitude of people is only *unified* into one person through the mechanism of the social contract. The sovereign bears this public person and is authorized to speak in the name of the people and become their representative. This personification of the state is also clearly represented in the famous frontispiece to Hobbes' *Leviathan*. This is a *composite picture* depicting a multitude of single individuals that become unified in the main

² Erboire African Man. Image by YellowMonster, Source: <https://pixabay.com>; adaptation by Victor Bornia.

³ Frontispiece to *Leviathan*. Image by Abraham Bosse, Source: (Hobbes 1998).

character, carrying the sword of supreme power. It depicts the unification of the composite body politic in a single sovereign person.

Average persons. Statistical realities



One may ask if there exists, in a people, *un homme type*, a man who represents this people by height, and in relation to which all the other men of the same nation must be considered as offering a deviation (Quetelet 1845, 258).⁴

In the 18th century, there is an evolution away from a governmental regime focused on Hobbesian legal sovereignty. Through the rise of statistics in State administration, the *population* appeared as 'a new subject', with its own regularities and problems (Foucault 1994). The application of statistics to citizen behavior spurred a quest for 'social laws' governing people. Quetelet observed that large quantities of data about human attributes had certain distributions that allowed calculating a 'mean' and its deviation. He here introduced the term 'average man' not as the quality of a real person, but as the real quality of a certain population. Galton strengthened this development by observing that many of these human traits were mutually correlated. This work was closely linked to his anthropometrical studies to identify certain types of humans from outer appearance. He invented the technique of *composite photography*, superimposing successive images of different individuals on the same photographic plate to generate a single portrait. When these images were taken from a certain 'class' of people, they formed a certain 'type' of person, e.g. a criminal and healthy type, and showed its common physical traits. This provided a visual instantiation of average persons as statistical realities of populational classes. The goal of this new statistical expertise was not only to obtain knowledge, but to devise policies to improve populational development towards desirable types and away from undesirable ones (Galton 1907).

Digital persons. *Dividual* data portraits



The 20th century saw the rise of artificial intelligence, machine learning and data mining, which share methodology with statistics. Self-learning algorithms can reiteratively search for patterns in data sets until arriving at optimal 'clusters' with their own mean or 'centroid'. When applied to people, the resulting correlations between data can be used to represent a human subject as a member of an existing *community*, or of a new *virtual grouping* of people. One field of application is image recognition, where Google researchers built an algorithm that learnt the pattern of the average human face (Le et al. 2012). This ghostly facial archetype shows a remarkable resemblance to Galton's

⁴ Specimens of Composite Portraiture [fragment]. Image by Francis Galton, Source: (Galton 1907).

'composite portraits'. Such algorithmically inferred profiles form one kind of digital representation of an individual. Combined with data representations from other sources they constitute someone's 'digital *persona*', which renders a real-world subject identifiable. This digital portrait provides a fragmented representation of an individual based on distributed, partial data sets. Information technologies endlessly *divide* people in different data representations and reshuffle them to create 'recombinant identities'. Recombinations can happen in several ways based on criteria set by 'data controllers', often large ICT organizations. The digital person is here 'intended for use as a *proxy* for the individual' (Clarke 1996). This digital 'mask' allows the individual to be acted upon in the digital world, for specific purposes such as service provision.

Drawing contrasts

The potential entry of electronic persons in the Hall of faces sparked an exploration of various profiles of personhood. These profiles have been juxtaposed and can be put into contrast to 'find' differentiating patterns between salient attributes. First, whereas the public person and the average person both share their composite nature, they contrast in their *means of composition*. The public person of the Leviathan is composed through unification of a multitude through consent of each person in a social contract, by which the sovereign represents this assembled public community. The average person of statistics to the contrary, becomes assembled based on statistical grouping of entire populations, or certain communities and classes. Such communities 'were united by fate, not choice' (Gamboni 2005, 182), when ordered along a mean. The visualizations make this apparent. In Leviathan's composite image all the people composing the body of the public person remain individualized, their wills juxtaposed. In the composite portraits by Galton and Google, the separate individuals become superimposed and lose their individuality, only to merge in the new reality of an average human type. The digital person moves back to the level of the individual and is premised on division and recombination of data representations from multiple data sources. Divisibility hinges on criteria of someone's identifiability for service provision. This contrasts with the juristic person whose divisibility hinges on a legal entity or relation regarding a set of rights and obligations.

Secondly, there are significant differences regarding the actors bearing the masks (*representers*), and what they can do with these representations (*affordances*). In the production of average human types, statistical knowledge could be used to set out normative coordinates for new 'public goods' ('healthy' type) and 'public bads' ('criminal' type). This can form the basis for governmental policies aimed at controlling and improving the population and its relevant classes of people. In profiled human types, the clustering of people is even more virtualized, not necessarily given by pre-established criteria. The data controller can utilize resulting 'interested', 'interesting' and 'risky' types, for decisions on whether to grant a service. This digital mask is mainly operated by the data controller, not primarily on the (data) subject's behalf, but based rather on their organizational, often market-based interests. The juristic mask to the contrary, is worn during a legal process by a lawyer with the duty to legally represent the subject and act in their interest, with the goal of letting certain rights be imputed to them.

Lastly, we can focus on the *representative relation*. Quetelet and Galton conceived of the 'average man' and 'correlations' between human traits as statistical realities, i.e. real socio-biological qualities of populations that could be acted upon in policy-making. This contrasts with the juristic person as a double for the individual, to which social or biological qualities of humans should not be attributed. The juristic person can only produce its effects as denaturalizing device when human nature is kept at bay, and a fictive point is set up in legal space for attributing rights and duties. It is an empty legal form, the most anonymous of masks, which can be distributed to everyone in the multitude (or even to this multitude itself) precisely because it abstracts from traits that make each specific.

When we judge the entry of the electronic person in the hall of faces as a new type of legal mask, one should not to get carried away by symbolic discourses on artificial agency, fuelled by science fiction, speculative AI philosophy and overambitious promises by roboticists. Keeping symbolic and legal levels apart allows us to study the problem constellations around robotics and their economic and political dimensions, and conceive of juristic personhood as one possible technical solution among others. Attention should not be diverted from how a new type of person can upset relations between already existing persons, especially when it affects imputations of fundamental rights to people, or the equilibration of power relations in society.

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References

- Cicero, Marcus Tullius. 1967. *De Oratore*. Translated by E.W. Sutton. Cambridge, MA: Harvard University Press.
- Clarke, Roger. 1996. "The digital persona and its application to data surveillance." *Information Society* 10(2): 77-92.
- Foucault, Michel. 1994. *Dits et Écrits 1954-1988*. Paris: Gallimard.
- Galton, Francis. 1907. *Inquiries into Human Faculty and its Developments*. 2nd edition. J. M. Dent & Co.
- Gamboni, Dario. 2005. "Composing the Body Politic" In *Making Things Public: Atmospheres of Democracy*, edited by Bruno Latour and Peter Weibel, 162-96. Cambridge, MA: MIT Press.
- Hobbes, Thomas, and John Charles Addison Gaskin. 1998. *Leviathan*. Oxford: Oxford University Press.
- Le, Quoc V., Marc'Aurelio Ranzato, Rajat Monga, Matthieu Devin, Kai Chen, Greg S. Corrado, Jeff Dean, and Andrew Y. Ng. 2012. "Building high-level features using large scale unsupervised learning." *Proceedings of ICML*: 81–88.
- Quetelet, Adolphe. 1845. "Sur l'appréciation des documents statistiques, et en particulier sur l'application des moyennes.", *Bulletin de la Commission Centrale de la Statistique (of Belgium)* 2 1845: 258.
- Thomas, Yann. 1998. "Le sujet de droit, la personne et la nature." *Le débat*, 100: 85-107.