WHAT DOES IT MEAN TO BE A PERSON IN LAW? IDEAS FROM THREE HISTORICAL STAGES IN THE ARGENTINEAN LEGAL SYSTEM

O que significa ser uma pessoa no direito? Ideias desde três etapas históricas do ordenamento jurídico argentino

¿Qué significa ser una persona en el Derecho? Ideas desde tres etapas históricas en el ordenamiento jurídico argentino

Helga Lell
CONICET, Universidad Nacional de La Pampa, Facultad de Ciencias Económicas y Jurídicas, Centro de Investigación en Ciencias Jurídicas, Santa Rosa, Argentina
Orcid: http://orcid.org/0000-0001-7703-6341
E-mail:helgalell@conicet.gov.ar

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ABSTRACT

This paper analyzes the legal concept of person in the Argentinean legal system. The main questions are what does to be a person represents in legal field and which are the images associated to this concept when it comes to recognize certain rights and duties. The paper is structured in three parts: the first one presents the etymology and the metaphor of "person", the second one focuses on three stages of the concept of person in the Argentinean constitutional history and the third one introduces some nowadays challenges to the concept. There is a contraposition between the mere legal concept (in a positivist way) and a wider legal consideration that involves a moral inspiration. The hypothesis that guides this paper is that the concept of person is unclear in the Argentinean legal system and that it can be redefined in several ways according to the historical stage under study and to the legal context in which it is used.

Keywords: Person; Argentina; meaning; legal history, legal concept

RESUMO

Este artigo analisa o conceito jurídico de pessoa no ordenamento jurídico argentino. As principais questões tratadas são o que representa ser pessoa no campo jurídico e quais são as imagens associadas a este conceito no que se refere ao reconhecimento de direitos e deveres. O artigo está estruturado em três partes: a primeira apresenta a etimologia e a metáfora de "pessoa"; a segunda descreve três etapas do conceito de pessoa na história constitucional argentina e a terceira apresenta alguns desafios atuais ao conceito. Há uma contraposição entre o mero conceito jurídico (de tendência positivista) e uma consideração jurídica mais ampla que envolve uma inspiração moral. A hipótese que guia este artigo é a de que o conceito de pessoa não é claro no ordenamento jurídico argentino e pode ser redefinido de várias maneiras de acordo com a fase histórica em estudo e com o contexto jurídico em que é utilizado.

Palavras-chave: Pessoa; Argentina; significado; história legal, conceito legal

RESUMEN

Este artículo analiza el concepto jurídico de persona en el ordenamiento jurídico argentino. Las preguntas principales que se traen a colación son qué representa ser una persona en el ámbito jurídico y cuáles son las imágenes asociadas a este concepto a la hora de reconocer determinados derechos y deberes. El artículo se estructura en tres partes: la primera presenta la etimología y la metáfora de la "persona", la segunda se centra en tres etapas del concepto de persona en la historia constitucional argentina y la tercera presenta algunos desafíos actuales al concepto. Se realiza una contraposición entre el mero concepto jurídico (de perspectiva positivista) y una consideración jurídica más amplia que implica una inspiración moral. La hipótesis que orienta este trabajo es que el concepto de persona es poco claro en el ordenamiento jurídico argentino y que puede redefinirse de diversas formas según la etapa histórica en estudio y el contexto jurídico en el que se utilice.

Palabras clave: Persona; Argentina; semántica; historia jurídica, concepto legal

INTRODUCTION

Paul Veyne (1983), in his book *Les Grecs ont-ils cru à leur mythes?*, explains that the Greeks would have stopped believing in mythology at a very early stage. However, they would have kept telling these stories as a way of signifying the world because of their pedagogical utility and because they allowed teaching and perpetuating a common and cultural symbolic framework from which to understand what surrounded a community.

This paper is inspired by a similar idea. Both, in general theory of law and in many international and national normative texts, the concept of "person" plays an important role. The notion of person comes from a metaphor that relates it to the masks used in Etruscan mortuary rituals and also in ancient Greek and Roman theaters[1]. However, when we use "person" in the legal framework, we do not usually refer to or think about the respective body technology. Perhaps the most immediate image that comes to our mind when hearing this signifier is that of a human being, since, in common language, this is the main meaning[2]. However, if we think that the link between the meaning of the legal concept of person in contemporary legal theory and the theatre scene has been forgotten, we can inquiry why this concept is kept in legal practice. What does the concept of "person" teach us in legal field?

If we consider the spatial, temporal and cultural distances between Ancient Greece and Rome and nowadays occidental societies (with a continental perspective of law), it seems strange that the metaphor still prevails in their legal systems. However, the review of its dynamic nature regarding its meaning's variability may allow us to think about the semantic controversies that this concept presents. Here it is not intended to carry out an exhaustive historical study but to present some problems that arise from the lack of a clear referential notion regarding who is a person in legal systems. To do so, I will present a short approach to some Argentinean examples. However, the same kind of approach can be done in every society's legal history. The proposal is not only a description on what the semantic problems of "person" are, but also a methodical presentation that can arise many other findings if it is applied in other legal systems.

[1] Ribas Alba (2012) mentions that the masks were also part of pre-literary settings, generally related to funeral and religious rituals.

[2] Corominas (1981) explains that "person" has been used in Spanish at all times as a cultism but that since the end of the 11th century and the beginning of the 12th century it became popular as a simple way of saying "one, the people". The Spanish Royal Academy mentions as the first meaning "individual of the human species" (Real Academia Española, 2014).

The first part of this paper presents the legal concept of "person" as a metaphor and the etymological origin of the term. The second part focuses on three stages of the use of the concept in Argentinean history in order to show variations in the recognition of human beings as subjects of rights. Although this part is applied to one country, it shows a casuistic that can be replied in other States and that can show many Finally, the third part presents some cases that may inquiry who can be considered a person.

1. "PERSON" AS A METAPHOR

Metaphors are rhetorical elements that, in the context of a linguistic expression, add a connotation to denotation. This means that they go beyond the strict literal meaning in order to generate a new sense. This lets a linguistic community to interpret an element that is not very well known through its highlighted similarities with another element that people are more acquainted with (Lakoff & Johnson). To do so, metaphors transfer characteristics from the mentioned phenomenon to another one that is not so well-known. Examples of this are: "to fly like a bird", "to be a shining star", "to be an angel", "America as a melting pot", among others. These literal expressions make no sense, but when they are understood metaphorically, the reality takes on another dimension. Reality does not change, although the way of perceiving it varies.

An issue that must be taken into account is that metaphors refer to something that is not there, they refer to a specific element that is absent but that is invoked by an expression and it is the imagination of those involved at a conversation that must interpret external objects in light of the categories that the metaphor invokes. For example, if the violation of the "chain" of custody of evidence is questioned in the framework of a criminal process, there is no literal reference to a series of metal links, but it is from the image of a chain that we can understand the abstraction of a succession of facts and procedural steps.

The case of "person" in the legal field is similar. The etymological origin of this word refers to three kind of masks that have a symbolic meaning. The first one is related to Etruscan culture and to "Phersu", who would have been a character that intervened in mortuary rituals. It was not this deity that was present but someone who, by wearing the mask, allowed him to appear on the scene. The second and third elements are the masks that were used in the Ancient Roman and Greek theaters: "personare" ("to sound") and "prósopon" ("before the eye"), respectively. The first one of them points

out to the possibility of being heard or of making the voice resonate. The second one emphasizes the image that is projected and that is perceived. According to these three meanings the metaphor of "person" on the legal sphere is someone who is present as a character, who is heard and perceived as such. What an individual does while not playing a role, this is, offstage, is not relevant at all.

It is from the idea of a character played on stage that it is possible to understand the reference to a subject who, depending on the legal relationship in which he is acting, will have certain rights and obligations (but not others). For example, in a rental contract, the landlord has the obligation to allow the tenant to use the flat at the same time that he or she is entitled to collect the price. Its counterpart must pay a sum of money and is entitled to use the flat during the agreed period. The roles that the parts play on legal scene are clear and predetermined by the kind of the legal relationship. The landlord and the tenant play their roles within the framework of a contract and the other statuses that these individuals may have are not relevant. Under a rental contract the right to vote for or be voted as authorities are not important, neither are, family statuses, labor law, criminal judgements, among others.

The legal concept of person seems to produce an atomization of the actor who wears the mask. To law, only the role that is played would matter and not the performing individual. There would be no unity behind mere normative interpretation, or rather, this unity would be irrelevant. This is not necessarily so. At this point it is important to remind a relevant distinction that can lead to two very different ontological proposals. The first one, which could be characterized by Kelsen's position (Kelsen, 2005), implies asserting that to law the person is only a set of roles in specific relationships according to the rights and obligations established by legal rules. The person would exist, then, after and because of the law. If this is so, there is nothing intrinsic in the legal notion of person that allows claiming certain treatments for individuals in legal terms beyond what is already established[3]. The second one, on the other hand, claims that the person shows herself/himself through legal relationships, that is, through the roles played, but he/she is something more than them. The person, like the mask, represents the external or the objective in a relationship of alterity. Just as masks require actors, setting, script and audience, the person implies at least one subject who performs actions, another individual against whom he or she performs and some legal rules that give meaning to this relationship. In this case, atomization is epistemological but not ontological. There is no denying of the existence of an

[3] In this sense, it should be remembered that legal positivism can be characterized as conservative since positive law provides reasons to act only because it exists (this is, "legal positivism as an ideology of justice", as Bobbio (2014) calls it.. So, it does not provide internal reasons to promote its transformation (Nino, 1994).

individual prior to legal rules and this individual is the unity behind those various roles, but this person is recognized through its externalization in each legal relationship. If this is so, the claim of certain treatments according to what an individual deserves for being a person makes sense.

According to what has been said, we can see that the metaphor enables more than one way of defining the person in legal context. The following pages show that in the Argentinean history the attribution of rights and obligations to different kind of entities has been and is very uneven. This variety of meanings makes it possible to visualize that, if a purely positivist point of view is claimed, eventually, any entity can be a person (for example, a stone could be a person if a judgement would grant rights to it) and also cease to be so (for example, a human being could cease to be a person if his rights and obligations were removed, that is, if he/she were reduced to the status of an object). However, sometimes, being a person works as a strong argument in order to state that someone deserves certain treatment or protection because of the mere fact of being a person[4]. This idea is not consistent with the positivist view. This meaning, which could be called "moral", points out that there are certain beings who deserve special treatment, a different respect than other beings deserve (Morales Zúñiga, 2015). This implies that "person" has a descriptive component (which answers the question of who are persons) and a prescriptive component (which points to how persons should be treated).

The brief historical review presented in the following pages tries to show that the atomization of the roles exercised in legal relationships is part of the concept of person. However, if to be a person means that certain treatments should be provided, then, the legal use cannot be separated from an ontologically strong substantive moral sense. An analytical approach can show that there are two different uses: one is legal and the other is moral. Although this is true, there seems to be an expectation that law would grant a certain moral treatment towards persons that would make the joint use of both senses of the word indispensable.

A clarification should be made: the discussion that follows is not exhaustive or detailed since this would exceed the range of what is possible in a paper of this length. On the contrary, it only focuses on some facts that are useful as examples in order to think about on the concept of person in Argentina. However, this is just one possible approach: if the atomization can be concluded in the Argentinean

[4] We can see an example of this in different laws that state that for some vulnerable groups one should not forget to mention the word "person" in order to remind this condition despite life circumstances. For example: "person in confinement context", "person with disabilities", "elderly persons", "persons with thrombosis", "pregnant person", "person with spectrum disorder autistic", "persons with reduced mobility", "person with special needs", "persons that are victims of crime", among other cases.

legal system, it might be likely to state the same idea in other normative systems that follow the continental tradition.

2. SOME HISTORICAL FACTS OF THE LEGAL CONCEPT OF PERSON

The history of the legal concept of person in the Argentinean legal system can be divided into at least three major stages. The first of them takes place between 1810 and 1869/1871, that is, in the period that elapses between the May Revolution, and the sanction and subsequent entry into force of the Civil Code. Although the May Revolution did not declare independence, it does constitute a threshold of irreversibility[5] regarding the birth of a nation and the seeking of its sovereignty. The second stage runs between 1869/1871 and 2014/2015, that is, during the period of validity of the Civil Code. Finally, the third stage is that from the enactment and entry into force of the Civil and Commercial Code until nowadays.

2.1. FIRST STAGE

The first stage, which runs between 1810 and the enactment and entry into force of the Civil Code, is characterized by the daily or common use of the term "person". The mentions that appear in different documents make an indiscriminate use of "man", "individual", "citizen", "national", "neighbor", "inhabitant", "person", although they are not synonyms[6]. This might be because there was still no clarity regarding what it meant to be a national of the State that was still developing (Salvatto & Banzato, 2013) and, partially, because some of the declarations of rights and guarantees were inspired by foreign sources and sometimes the terminology that resulted from the translations did not respond to the most frequent use in the Spanish of the Provinces of the Río de La Plata.

It should be noted that, at this stage, despite the apparent equivalence that would seem to be between the human being and the person in common language, this relationship is not reproduced at

[5] The idea of the "irreversibility threshold" in the configuration of a Nation State is taken from Balibar (1991).
[6] Examples of this are the Organic Regulations of October 22, 1811 , the provisional Statute of the Superior Government of the United Provinces of the Río de La Plata in the name of Mr. D. Fernando VII, followed by the Individual Security and Freedom of Press Decrees (the decrees are dated October 26 and November 23, 1811, respectively), the Decree of Convocation to the Assembly dated October 24, 1812, the Provisional Statute of 1815, the Provisional Regulation of 1817, or the constitutions of 1819 and 1826.

the legal level. A paradigmatic and clear situation is that of slaves who, although their humanity was not denied, were not considered persons. Their legal status was that of objects subject to a relationship of dominance. If someone had killed them, this fact would not have been considered a crime against the person but a patrimonial damage committed against the owner. Slavery was definitively extinguished in Argentina when the National Constitution of 1853 was enacted. Previously, in 1813, the Assembly of the XIII year had tried to take this measure, although it could not do so due to pressure from Brazil. Despite this, it declared the freedom of womb[7].

A case that is usually presented as similar to that of slavery, but which has a substantive difference, was that of the indigenous people subjected to different work and care regimes (mita, encomienda, yanaconzgo, etc.). They were indeed considered persons, that is to say, individuals with rights and obligations, although they were put in the same level with the incapacitated or minors. In addition to being under the guardianship and servitude of those to whom their care was attributed, they had other burdens such as taxing[8]. Their situation, although in some cases it might resemble that of slaves, was certainly different since they were not objects but subjects of law[9]. In previous centuries and in the Spanish colonies, the nature of the Indians was widely discussed[10].

A third case points out to the distribution of rights and obligations, that is, there is a subject of rights and obligations and, therefore, a person, but law establishes different possibilities and impossibilities according to certain criteria. The example that might be interesting to bring up here has to do with the idea of how citizenship is built and the role that the legal system has had in it.

Since 1810, the expectation of creating a national identity and the goal of achieving the declaration and international recognition of the sovereignty of the then United Provinces of the Rio de La Plata, was grounded in the classification of free inhabitants and their involvement in public sphere. Regardless the distinction between men and women, we can see how nationality and adherence to the independence cause constituted criteria to be able to exercise public jobs, to be able to vote and to be able to be representatives. As a result of these criteria, Spaniards not adhering to the cause of

[7] On the presence of the Afro-descendant population in Argentina, see Yao (2002) and Gomez, 1970.
[8] This obligation was abolished by the Assembly of year XIII.
[9] It should be noted that, although the treatment to the Indians was as persons, those who were considered enemies (for example, because they lived in non-conquered territories and invaded cities and fields stealing food and committing other crimes) were reduced to the status of things to be eliminated.
[10] A classic reference to the debates on how the Spanish Crown should treat Native Americans is the debate between Ginés de Sepúlveda and Bartolomé de las Casas (Junta de Valladolid, on the controversy of the natives) in the 16th century. In this regard, to expand, see Dumont (2011).

government had fewer rights than foreigners from other nations. For example, in December 1810, by means of a Circular of the Provisional Governmental Board, citizenship of the United Provinces of the Río de la Plata was required to hold positions in the public administration. There was a special exemption for foreigners who would adhere to the government and for those who came from States which were not at war with the provinces (basically, every foreigner that did not have Spanish nationality). A similar measure was carried out by the Assembly of the year XIII on February 3, 1813, while highlighting the praiseworthy of making this decision by decree and not by mere force and violence[11]. Other cases can be found in the Provisional Statute of 1815 and in the Provisional Regulation of 1817, documents that allowed foreigners to vote as long as they met certain requirements of permanence in the territory, educational level and patrimonial status. The non - adherent to the cause Spaniards enjoyed this right[12]. In 1825, after a treaty of friendship and free trade was concluded between the governments of Great Britain and the United Provinces, British nationals obtained special rights that no other inhabitant had: to test and practice their worship publicly, although it may be different from the Catholic one. However, when the French government, in 1838, demanded equal rights for its citizens as those of the Americans and Englishmen regarding the exclusion of the duty to be recruited for war in the Confederation militias, the government of the United Provinces answered with a negative since France had not recognized the independence of the new nation[13]. A Spaniard and a Frenchman, a national of the later Argentinean State were considered persons, but each of them had different legal statuses. The distinction was based on a State goal and, regarding it, persons were only means.

These examples show that the attribution of rights and obligations has not always been linked to the human essence. Furthermore, some rights and obligations were recognized based on the convenience of state purposes. Two issues can be highlighted from this stage. The first is that there is no technical concept of person. Common language, which would provide a descriptive criterion to recognize who is or is not a subject of rights, shows that in the social imaginary not every human being was a person and, even those who were, did not have the same legal treatment compared to each other. Which legal role they personified was decisive in determining their rights and obligations.

The second issue is that, since there is no clear descriptive criterion to determine *a priori* who a person is (in the sense in which the general theory of law would understand it), it is not feasible to

[11] See Lambré (2010)
[12] On the removal of Spaniards from public positions and jobs, see Cantera (2016).
[13] The letters between the French consulate and Arana, in his capacity as Minister of Foreign Affairs, can be consulted in France. Consulat, 1838.

establish clearly which legal treatment he or she deserves. Simply, rights and obligations are attributed according to the stipulations of positive law. Now then, if it is possible to recognize a critical dimension that may allow to judge the results of the current regulations (such as, for example, the injustice of the institution of slavery or the treatment given to indigenous people or the differences that harmed the Spaniards or who benefited the Englishmen from other foreigners), then it is necessary to recognize that there is a substantive ontology of what it means to be a person. This notion about what a person is does not ensure that positive law is fair, but their justice or injustice can be assessed. On the contrary, if someone is a person according to what legal system establishes and as long as it imputes rights and obligations, then, at the legal level, there is nothing to argue about normative results.

2.2. SECOND STAGE

The second stage, which covers the period of the validity of the first Civil Code, is characterized by a technical definition of the legal concept of person. The Civil Code drafted by Vélez Sarsfield was sanctioned by the National Congress in 1869 and came into force in 1871. The First Book is called “On Persons”, the First Section “On Persons in General” and the Title I “Of legal persons”. The author of the project explains in a note that the concept “legal person” is used to contrast it with “natural person”, “moral person” or the individual since these realities are external to the law and that, if they are relevant to it, it is only for legal purposes. He mentions a number of sources and concludes that he follows Freitas at this point, who in turn follows Savigny.

Freitas, in the *Esboço*, in the General Part, First Book "On the Elements of Rights", Section I "On Persons", Title I "On Persons in General", states that "all the entities capable of acquiring rights are persons” (§16 *Esboço*). In the footnote, he explains that he does not want to make ontological discussions about what an entity is or what the existence of persons consists of. He mentions that it can be seen that men in their visible appearance are the only individuals who acquire rights and obligations. In a second instance, one may notice that sometimes an individual does not act only for him or herself but on behalf of entities. Thus, the idea of representation appears. Finally, the author distinguishes between the visible and the ideal world (which will lead to the classification of the persons he presents in §17 *Esboço*). Regarding the recognition of rights, Freitas says that freedom regulated by law is equal to persons (so, he means that persons are intrinsically free). Civil liberty is the one that allows individuals to acquire rights and obligations in legal relationships. Persons are the permanent elements

of all relationships while the variable ones are the rights that result from them. So far, it seems that Freitas had human beings in mind as a source of action and as the focal meaning of persons. Even though he recognizes persons of ideal existence, they are an extension of human actions (Freitas, 1952).

§30, included in Title I "On Legal Persons", states "Persons are all entities that can acquire rights or obligations"[14]. As can be seen, he has been inspired by the *Esboço* of Freitas as a direct source, so Vélez Sarsfield would not have had something different in mind than the Brazilian jurist and, therefore, the reference would have been to human beings, acting for themselves or on behalf of other ideal entities. Likewise, persons are classified into those of visible or ideal existence. The latter are defined in a negative way: they are those who do not have a visible existence (§31 and §32 CC).

In order to elucidate the concrete image that a person represented in the social imaginary of that time, two political essays should be mentioned. The first of them is *Facundo. Civilization and barbarism*, published in 1874 and authored by Domingo Faustino Sarmiento, who was also president when the respective Code was drafted, sanctioned and entered into force. In this work the Argentinean society is portrayed, the vastness of the national territory is negatively described since, added to the sparse population, it gave rise to the 'gauchos', with barbarous customs and little work tendencies. This situation is contrasted by Sarmiento to the civilization whose model was the European (Sarmiento, 1982). The second of the essays is *Bases and Starting Points for the Political Organization of the Argentinean Republic*, published in 1852 and authored by Juan Bautista Alberdi (1998). This work served as input for the National Constitution of 1853. It defended European immigration, mainly from the north since that is where citizens cultivated in good customs.

Based on what has been said and adding the economic situation (the need of developing the agro-exporting model) and the international social one (agrarian crisis in Europe), it is possible to understand the establishing of policies that aimed promoting immigration. In particular, we should remind the Desert Campaign, carried out during the years 1878-1885 (approximately) that had the goal of gaining territory to be incorporated into the productive model. Also this should displace the border against the Indians. Precisely, this military mission involved the massive slaughter of indigenous populations. In this case, the representation of the Indians varied because instead of being considered

[14] My own translation.

persons as in the first stage, they became enemies to be legitimately exterminated for economic and political reasons, within the framework of a government plan.[15]

Regarding the migratory factor, in the first two decades of the respective migratory flood, different social problems arose. In first place, the people that arrived was not the desired illustrated ones, but rather, people who had crossed the ocean in order to "make the America" but who, in general terms, did not have high educational levels or a good economic position. The concentration of the population in some urban centers generated overcrowding and healthy problems. This, added to bad working conditions, led to social conflicts (among the most notorious ones are strikes and protests that led to deaths). As a consequence, the social representation of immigrants varied: now the image of the European as a factor of civilization coexisted with the one of the foreigner as a factor of social problems and bearer of anarchist and socialist ideas[16].

If we ask ourselves what is the image that is behind the term "person" in the first years of this period, we can think that the model was a man with European features, ideology of a liberal tendency, at least of middle class, who had crossed some level of schooling and who could be considered a rational being. This idea is translated, for example, in contractual matters. The contracting part is an individual capable of calculating the costs and benefits of the relationship that he may enter into in an autonomous agreement of wills. This conception, over time, required rethinking if indeed the subjects are always on an equal position. Two examples of legislative changes that occurred in light of this need for adaptation were workers and consumers' rights, both concentrated on vulnerable groups. Although the legislative changes occurred in specific political and social contexts that made them possible, the contrast between the different moments allows us to see the change in the image of the "person". Special statuses appear to atomize the generic concept of person, but also to correct practical problems that may arise.

[15] It should be remembered that, as previously clarified, in the first stage both representations coexisted: that of the subjugated indigenous peoples and that of those who had to be eliminated as a threat. In this period something similar happens only that, by virtue of the Desert Campaign, the image of the Indian as an object to be eradicated gains notoriety.

[16] Examples are the law 4144, residence and expatriation of Foreigners, which stated that the executive branch could order the expulsion of foreigners whose conduct compromised national security or disturb public order and law 7029, of Social Defense, which forbade entry to the country of foreigners who had been convicted of certain crimes, as may be sympathetic to anarchists or acts of violence against public officials or institutions.

2.3. THIRD STAGE

The third stage began in 2014 with the sanction of the Civil and Commercial Code of the Nation through Law 26994. In 2011, President Cristina Fernandez de Kirchner had designated by decree 191/11 a committee to prepare a project that could replace the previous Civil Code and Commercial Code. This committee carried out its task which, after being debated in Congress, was passed and promulgated. It's coming into force date was initially stipulated for January 1, 2016. However, later, by law 27077, of December 2014, it was decided to anticipate it for August 1, 2015.

In Book I "General Part", Title I is reserved for human persons and Title II, for legal persons. Human persons begin existing from the moment of conception (§19 CCC) and are characterized by their dignity and inviolability (§51 CCC). Unlike the former Civil Code, the criterion of visibility is not used to categorize persons. Furthermore, there is no definition of "human person" although there is one for legal persons: "entities to which the legal system gives them the ability to acquire rights and contract obligations for the fulfillment of its purpose and the purposes of its creation" (§141 CCC). The contrast between one and the other situation shows that humanity is not a legal phenomenon but external to the law and self-evident.

As can be seen, at this stage, the concept of person has the human being as the main image. No definition is provided about it, which would imply that any entity that has experienced being a human can understand the meaning.

3. CHALLENGES TO THE LEGAL CONCEPT OF PERSON

These three stages allow us to distinguish three conceptions of the legal concept of person: the common language, but without reflection on whether or not there is a technical definition; the language of legal discipline; and the language of legal discipline that combines common language. In them we can notice how individuals are characters in the legal scene and from it they have rights and obligations. However, apart from these abstract and pedagogical categories, casuistry continues to show the drawbacks of legal definitions. Now the question is transferred from what it implies to wear a mask to who can wear it. An example of this is animal rights. In Argentina, in December 2014 (that is, in the period between the sanction and the validity of the Civil and Commercial Code) the case of the orangutan Sandra was widely known. Sandra's apparent sadness in captivity in the Buenos Aires zoo

motivated filing a habeas corpus. Sandra was considered a subject of non-human rights, which implies recognizing her status (Cámara Federal de Casación Penal, 2014). This case defies the existing definitions since, in light of the Civil Code then in force, it is not a person of ideal existence. Although it is of visible existence, it was not a human being, something that apparently Vélez Sarsfield would have had in mind as a requirement. In light of the new legislation, it is not a human person. The question is whether it could be characterized as a different legal person than those listed among those of a public or private nature, or if there may be other types of persons that are not human or legal. Within this framework, in Colombia, two rivers have obtained the status of ecocentric subjects of law (the Atrato river in 2016 and the Cauca river in 2019) (Corte Constitucional, 2016 and Superior Tribunal de Medellín, 2019). In Argentina there are no examples of this kind yet.

Another case that has been problematic and that currently seems to leave no doubt is that of the legal status of the bodies. In the year 1881, after the theft of the corpse of Mrs. Dorrego from the Recoleta cemetery (Buenos Aires) and the request for a sum from the relatives, the question was raised as to whether the criminals' action was an extortive kidnapping or not since the alleged victim was no longer a living person. The question is whether dead persons exist. Criminally, after the reform of the Code, a case like this is a crime against property and, therefore, today a corpse is a thing. However, it should be noted that there have been different debates at a theoretical level[17].

Although the status of legal entities is not questioned, there are different drawbacks when determining the scope of their actions and, therefore, their rights and obligations. On the one hand, their aptitude to be holders of fundamental rights is discussed. For example, in the Inter-American system this ownership is denied, with the exception of indigenous communities and, in some exceptional cases, workers' unions, which can claim on behalf of their constituents (Corte IDH, 2016). On the other hand, the discussion has focused on the possibility that legal entities commit criminal offenses or not. Until 2017, this was not possible. On the matter, Zaffaroni's dissenting vote in the "Fly Machine" case was known (Corte Suprema de la Nación Argentina, 2016) that defends that crimes only require human conduct as a minimum requirement. However, since December 2017, after the enactment of Law 27401, legal entities can have criminal liability for corruption crimes against public administration.

[17] A review of the different positions and current treatment in Argentinean legislation can be found in Guzmán Lozano (2018).

In another order of ideas, the concern for the regulation of artificial intelligence gradually grows. In Japan, the Michihito Matsuda case has staged the link between technology and possible legal status. This robot could not run for election because it was not a human person (which is one of the legal requirements to be a candidate). However, a human individual formally ran for mayor, but his campaign was based on leaving the government in the hands of the robot. The poster images were of the robot. This proposal obtained third place in number of votes. At the European Union level, the European Parliament resolution of February 16, 2017, with recommendations to the Commission on civil law rules on robotics, recommends creating a personality for robots that may have some autonomy in decision-making. In Argentina, there are still no experiences of this type[18].

Last but not least, questions about the legal concept of person in Argentina have been in the center of legislative debates over the decriminalization and legalization of abortion. After the rejection in the Senate of the Nation of the bill (which had a half sanction in the Chamber of Deputies) in 2018[19], in 2019 a bill has been presented again and passed in 2021[20]. Related to this topic, a project has also been recently presented to regulate, in the framework of the use of assisted human reproduction techniques, the use of non-implanted embryos[21]. This last topic involves discussing what is the moment of conception and also whether these embryos are mere things or have a special status and, in any case, what the latter consists of. The definition of what a person is and what the law can regulate is the basis for taking a position in these debates.

[18] An analysis regarding the consideration or not of artificial intelligence as a person can be seen in Muñiz, 2018 (july). The author makes a comparison between legal entities and animals.

[19] Cámara de Diputados, Congreso de la Nación Argentina. Expte. 230-D-2018. "Interrupción Voluntaria del Embarazo. Régimen". March 5, 2018.

[20] Cámara de Diputados, Congreso de la Nación Argentina. Expte. 2810-D-2019. "Interrupción Voluntaria del Embarazo. Régimen". May 31, 2019. Also, on this topic during 2019 the following bills have been proposed: Cámara de Diputados, Congreso de la Nación Argentina. Expte. 1699-D-2019. "Inclusión del Misoprostol en el plan médico obligatorio para garantizar la interrupción legal del embarazo". April 10, 2019; Cámara de Diputados, Congreso de la Nación Argentina. Expte. 1698-D-2019. "Fabricación pública del Misoprostol". April 10, 2019; and Senado de la Nación, Congreso de la Nación Argentina. Expte. 0412-D-2019. "Interrupción Voluntaria del Embarazo, Modificación al Código Penal, Creación de la Comisión Bicameral de seguimiento sobre la Normativa sobre salud reproductiva y educación sexual". March 7, 2019.

[21] Cámara de Diputados, Congreso de la Nación Argentina, Proyecto de ley "Protección de embriones no implantados. Régimen". Expte 1541-D-2019. April 5, 2019.

4. CONCLUSIONS

The initial question of this paper was what the metaphor of the mask teaches in the field of law in the Argentinean legal system. The mention of "person" implies the exercise of social roles that have legal consequences. The metaphor allows us to understand something by transferring characteristics of another phenomenon. In this case, the metaphor of "person" emphasizes the perception of an individual and how this is made present in the legal scene, through which image the law receives it. The problem is that two interpretations are feasible. On the one hand, someone is a person as soon as rights and obligations are imputed to him. Therefore, there is no substantive ontology that pays attention to a being behind the norms. Only the regulatory allocation center matters. On the other hand, the mask metaphor can also teach that the actor exists and that the right is fixed on him in relation to the roles he performs. This may occur in order to provide better protections, as it is often the case, for example, with the rights of consumers, the rights of employees, the female quota in the political sphere, the regulation of childhood and adolescence, etc. It is about distinguishing, concentrating on only one aspect, an appearance in order to protect more effectively, but this does not imply denying an essence behind these roles. Rather, it may require the opposite.

In the framework of the most effective protection, attention should be paid to how the term "person" is used, since it is customary to use it in order not only to describe who has rights and obligations but to prescribe respect for rights. In Argentinean history, use has been variable. In the course of the three stages discussed, we can note that, initially, it was not a relevant concept in legal practice, although there were clearly subjects of law. The second and third stages have a presence of the legal concept of person, but differ from the concept. While one presents a technical vocabulary focused on normative creation, the other combines with common language and emphasizes human essence.

The diachronic perspective of the concept in the Argentinean legal system shows that if there is no strong substantive reference to the human essence that provides a criterion to attribute rights and obligations, any result is possible: slavery, the submission of indigenous people just for being such, the denial of rights based on international relations between States, etc. On the contrary, if the definition involves the human being, status distinctions are still possible, but they should not operate to the detriment of individuals, but rather in order to optimize the realization of rights. If by recognizing that

someone or something is a person, special treatment is expected, a content that positive law cannot distort, then the use of the term is not only legal but also moral.

In another order of ideas, the question about the pedagogical dimension of the metaphor opens a problematic path to follow when pointing out who can and how far they can use this mask to appear on the legal scene. The casuistry shows that the question is complex and difficult to solve. In general, the claims to recognize the status of non-human animals or natural resources have had a moral foundation. This explains that the concept of person cannot be defined only by what positive law already recognizes, but that there is at least a link with moral expectations.

As can be seen, definitively account of what is involved metaphor person in the Argentinean system is a task perhaps impossible. However, trying to answer this question provides reflections that show that the law can hardly withdraw on itself without resorting to the moral sphere when thinking about legal practice.

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Sobre a autora:

Helga Lell
Doctora en Derecho (Universidad Austral), Magíster y Especialista en Estudios Sociales y Culturales (Universidad Nacional de La Pampa), Magíster en Filosofía (Universidad Nacional de Quilmes), Diploma Superior en Construcción de Proyectos y Metodología de las Ciencias Sociales (Universidad Nacional de La Plata / Conicet), Diploma en Humanidades Digitales y Abogada (UNLPam). Investigadora Adjunta en Conicet y Coordinadora de Investigación y Posgrado (FCEyJ, UNLPam). Docente de Filosofía del Derecho.
CONICET, Universidad Nacional de La Pampa, Facultad de Ciencias Económicas y Jurídicas, Centro de Investigación en Ciencias Jurídicas, Santa Rosa, Argentina
Orcid: http://orcid.org/0000-0001-7703-6341
E-mail:helgalell@conicet.gov.ar