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## REFERENCES

Yan Thomas, Jacques Chiffolleau, *L'istituzione della natura*, translated and edited by Michele Spanò, Quodlibet, Macerata, 2020, p.128. ISBN 9788822904843, € 15,00.

- 1 At the beginning of Woody Allen's *Love and Death*, just before being executed, the protagonist remembers his boyhood at the summer house where, among many other characters, were "Old Gregor and his son Young Gregor. Oddly enough, Young Gregor was older than Old Gregor. Nobody could figure out how that happened". Such an inversion, which belongs in the first place to the sphere of logic and its paradoxes, represents, if transferred in the context of the history of law and of its use of the concept of nature, a most subversive statement. In fact, the impossibility for a father to be younger than his own son is the clearest example, as well as the main refrain running throughout the legal history of the concept, asserting the normative and institutional power of nature, and therefore setting the boundaries to the artifices of law since the age of the Roman *leges* and *ius* and throughout the medieval configuration of the *ius naturale*: "Minorem natu majorem non posse adoptare placet. Adoptio enim naturam imitatur: et pro monstro est, ut major sit filius, quam pater" (*Institutiones*, 1, 11, 4).
- 2 However, beneath the continuity of this formula—as of many others—the study of its conceptual modifications and, even more, of its technical applications makes it possible to glimpse the shifts of the legal formulations and uses of 'nature'. The critical inquiry into such shifts is the focus and the *fil rouge* of the essays collected in *L'istituzione della natura*, which analyse, at different points in history, the mechanisms of its institutionalization, while following at the same time its progressive and concurrent 'naturalization'. The book is in fact an assemblage of three texts: Yan Thomas's "*Imago naturae. Nota sull'istituzionalità della natura a Roma*", on the fictional legal status of Roman nature (it is the translation of Thomas 1991); Jacques Chiffolleau's "*Contra natura. Per un approccio casuistico e procedurale alla natura medievale*", on the links between the medieval Christianised *natura*, God's *voluntas* and the theory of majesty (originally published as Chiffolleau 1996); and Spanò's afterword "«Perché non rendi poi quel che prometti allor?». Tecniche e ideologie della giuridificazione della natura", on the limits of the modern process of subjectivation as applied to nature in the context of environmental legal actions. The collection, while discussing the notion of nature and, moreover, its practical applications within the framework of case-law history, draws a diachronic line of critical investigation that challenges both the legal historical and philosophical assumptions on nature, and its contemporary understanding and uses. What results from this collective archaeological inquiry is a peculiar image of nature emerging from the analysis of the subtle deviations of its legal formulations and purposes.

Quodlibet  
Yan Thomas  
Jacques Chiffolleau  
L'istituzione della natura

- 3 Thomas's inquiry allows for the identification of the metaphysical and moral status of Roman nature as the 'by-product' of the (linguistic and rhetorical) artifices and devices through which the law grasps and shapes the 'things' of the world. In the context of Roman law, reconstructed in its historical complexity through a meticulous case analysis, nature exists as "an image of the institutions" (35), which produce it as something existing outside of their domain in order to strengthen their institutional hold on facts and reality. That is to say, to return to the previous example, the nature forbidding the son to be older than the father, which the law imitates, is created as such by that same law that claims to be shaped according to its example. Roman law, in fact, summons nature so as to set its own boundaries, which ensure its legal effectiveness and, in so doing, 'artificially' produces the figure of *natura* as an entirely "institutionalised and legal" one (44).
- 4 Chiffolleau's critical analysis, in turn, makes it possible to spot the peculiar dialectic among nature's metaphysical normativity (which results from the Christian interlacing of the ancient philosophical concept with its Roman legal form), its role in the shaping of the medieval concept of *majestas* (78-79), and the modern configuration of power (98-101). The acts *contra naturam* discussed by Chiffolleau are indeed defined against the background of a nature which is identified with God's Will, whose order shapes the phenomenal world, and at the same time work as the instruments measuring the extent of the "institutional" effects of the equivalence among nature, *divina omnipotentia*, and majesty. Thus, the impossibility for a son to be older than the father is now prescribed by a law of nature which precedes human law, rather than descending from the latter—as in the case of Roman law. At the same time, the *acta contra naturam* are defined as such (that is, they come to be into the language despite their "unspeakable" nature) by prosecuting institutions, which in turn establish their power by virtue of that same defining ability.
- 5 Finally, Spanò's inquiry into the contemporary notion of nature, carried out in light of its inextricable connection to the ecological question, aims at a radical critique of subjective law. In fact, once again, the analysis of legal techniques and practices makes it possible, by virtue of the dialogue with Thomas's and Chiffolleau's essays, both to recognise the metaphysical normative tradition working behind the contemporary use of the concept of nature, and the inherent limits, resulting from this concealed premise, of the dichotomy between subjects and things which informs contemporary legal environmental struggles. The attempts at personifying nature in order to defend its 'rights' end up reproducing a radical ontological separation between things and individuals, which rests upon the idea of a reality (metaphysically and morally) pre-existing to the artificial world of law, thus somehow orienting its actions. Within this framework, the only weapon of subjective law seems to be its ability to allow for the transition from one ontological plane to the other: a lake, a tree, a forest are transferred from the realm of things to that of subjects (119). Such a transition, however, not only reaffirms the same metaphysical dichotomy that structures the anthropocentrism deeply linked to the environmental crisis, in so far as it assumes that rights belong only to persons and subjects—and that consequently language is a matter of persons and subjects rather than things; it also automatically implies a vicarious subject able to speak for the 'personified' and yet silent things of nature (117).
- 6 However, the circle between the ontological difference of objects and subjects, which is implied and affirmed by subjective law, and the inefficacy of the legal personification of

nature can be broken by the peculiar *imago naturae* emerging from Thomas's and Chiffolleau's analyses. In fact, as Spanò argues, "the legal existence of a 'nature' uncompromised by metaphysical arguments is one of the most extraordinary formal intuitions of Roman civil law" (109). At the same time, its medieval multiple uses in different fields and for various functions enlighten the 'plasticity' of the concept, that is, its willingness to be shaped over and over again, and to serve different purposes at the same time. From this double perspective – that of its institutionalised existence and of its plasticity – nature becomes the main expression of the artificial and linguistic power of the law to 'manipulate' the distribution among objects, facts, and subjects that the metaphysical viewpoint made appear absolutely fixed. Thus, a whole new kind of 'things' emerge: assemblages and collectives constituted by heterogeneous elements that do not result in a new unity (subject to personification or reification) but that, on the contrary, put in motion a multiplicity of singularities outlining new figures and opening up new legal possibilities. In light of this, the legal environmental debate should not be about nature and natural objects but, rather, about "ecosystems, that is, a certain kind of relations among beings localised in spaces of various extension; put another way, vital environments, whatever their nature may be" (119).

- 7 The point therefore is not simply to put aside the concept of nature. In fact, what emerges from the reading of this collection is how its normative and metaphysical implications are structured by its artificial character. That is, nature itself, and therefore the ontological paradigm it establishes, are the product of the intrinsic fictional quality of law. They result from the *fictio legis* which represents the inner mechanism through which the *ius* uses language in order to both affirm its indifference toward any ontological truth, and to shape the very same order of reality and facts (Thomas 2016).
- 8 Interestingly enough, the same ambivalence of nature can be observed also from other disciplinary perspectives. More precisely, it can be observed in all those cases where the intersection between the manipulative power of language and technique over reality and facts is more evident. Particularly relevant in this regard is the case of the history of art, in so far as it allows for the recognition of practises and techniques which are similar to the artifices of law, and which, moreover, interact with them in unexpected ways. I shall limit myself to a few examples. The fictional character that Roman art inherited from the Hellenistic tradition is well known, as well as its radical indifference toward any mimetic effort to reproduce natural truth (see Guastini 2003). Among the many instances of Roman artistic illusions, the case of the *asarotos oikos* or "unswept room", an artistic device first employed at Pergamon during the 2<sup>nd</sup> century B.C. and which became popular among roman élites, is particularly revealing. It consisted of floor mosaics reproducing food scraps that served the purpose to hide, by virtue of the technique of the *trompe l'œil*, the food waste thrown on the ground during the banquets (Dunbabin 1999, 26-27). Such an artistic 'trick' well illustrates the same indifference toward the ontological issue of truth and falseness which informs the principle of *fictio legis*. It is in fact precisely on the basis of the "certainty of the falseness"<sup>1</sup>, which lays beneath the institutionalised nature emerging from Thomas's essay, that this fiction can bring together different ontological planes without any care for the distinction (so fundamental for the Greek philosophical tradition) between the 'scraps' of nature and their illusionistic reproductions. The illusions of the *asarotos oikos* work particularly well as an example of the metaphysical Roman laicity, in so far as it

presupposes the confusion and the “contact” between ontologically heterogenous ‘things’ which the surface, rather than separate, articulates.

- 9 If this Roman case works mostly as an analogy between art and law, that is, between the fictional legal language and the artifices of artistic techniques, the link between law, nature, language and artistic fiction becomes cogent in the case of Bernard of Clairvaux’s critique of Romanesque art. In the context of the monastic diatribe which characterised the first half of 12<sup>th</sup> century, Bernard’s *Apologia* outlines, through his argument against the deformed and monstrous creatures adorning monastic cloisters, a principle of equivalence between the law of God, the rhetorical rules laying underneath monastic reading (Carruthers 1998, 81-87), and the division among the realms of nature:

In the cloisters, before the eyes of the brothers while they read [*coram legentibus fratribus*]—what is that ridiculous monstrosity doing, an amazing kind of deformed beauty and yet a beautiful deformity? [...]. You may see many bodies under one head, and conversely many heads on one body [...]. In short, everywhere so plentiful and astonishing a variety of contradictory forms is seen that one would rather read in the marble than in books [*magis legere libeat in marmoribus, quam in codicibus*], and spend the whole day wondering at every single one of them than in meditating on the law of God [*in lege Dei meditando*] (Bernard, *Apologia*, 12.29, 283).

- 10 In the eyes of Bernard, the main fault of Romanesque grotesques is that their monstrous images, in so far as they transit from one form to the other and create hybrids figures, alter, along the line of the fictional power of language and art, the order of nature (Rudolph 1990, 119-124). Its law is presented here, as in the 12<sup>th</sup> century sources analysed by Chiffolleau, as one and the same with that of God, which is studied by the monks during their readings in the cloisters, and which should be mirrored, in its ontological order, by any visual reproduction. In this context, nature is therefore at once the phenomenal representation of the metaphysical partition ordered by the law of God, and the *imago* of its subversive (“*contra*”) rearrangement resulting from the artifices and fictions of rhetoric and art.
- 11 As for modernity, at the point of transition from the Renaissance world, shaped by the newly discovered philosophical and literary Greek tradition, to the cultural hodgepodge—from which the modern subject of subjective law will emerge—stands, as an example of the ambiguity of the modern image of nature, the art of Arcimboldo. In his *Composed Heads* representing the seasons, he plays with the boundaries between the order of natural continuity and contiguity, the rhetorical compositional implications of art’s fiction, and its metaphysical subversiveness. As Roland Barthes wrote:
- If you look at the image close up, you see only fruits and vegetables; if you step back, you no longer see anything but a man with a terrible eye, a ribbed doublet, a bristling ruff (*Summer*): distance and proximity are promoters of meaning. Is this not the great secret of every vital semantics? Everything proceeds from a spacing out or staggering of articulations. [...] What has been combined forms aggregates which can combine again among themselves a second, a third time. I imagine that an ingenious artist could take all of Arcimboldo’s composite heads, combine them with a view to a new effect of meaning, and form their arrangement procedure, for instance, a landscape, a city, a forest (Barthes 1991, 141-142).
- 12 An ingenious artist, that is to say, would be able to use the instruments of rhetorical and artistic fiction in order to form ‘ecosystems’ which result from the recombination of the ‘things’ of nature—things that, by virtue of this “mobile painting” (Barthes 1991, 142), are no longer things but assemblages of singular parts, along the line of linguistic

and artistic artifices. The “odd mathematics” outlined by the composition of these parts (Barthes 1991, 141) brings us back to the legal “*tertium*” of the assemblages of singularities that do not add up in a new unity of things or individuals (122). These realities, deriving from the composition of ‘pieces’ of reality, which reshapes the ontological order of nature, hint at something as a mobile mereology that, along with the fictions of language, art, rhetorics, etc., seems to allow for a radical rethinking of the same metaphysical immobility which has informed such an important part of the history of the concept of nature.

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## NOTES

1. This formula can be found at the beginning of another essay by Thomas (2016).