Malebolge

Belonging, Things and Time(s). Elements for a Spatio-Temporal Perspective on Law

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Abstract

This article presents two proposals to enable the legal recognition of a not-one, collective, assembled subject: property conceived as belonging and legal time as made up of multiple temporal layers. First, it provides a genealogical reconstruction of how the category of belonging has percolated through modern legal thought since Roman jurists identified it as a much broader and richer relation to things than that denoted by owning. Linked to belonging as a potential model for the relationship between individuals and things is a conception of things as not ontologically pre-given, but rather constructed through legal technique. Secondly, the paper argues that one of the effects of the ongoing ecological and climate crisis on the machine of abstraction of Western modern law is the questioning of legal time as the institution through which a linear, historical and chronological conception of time has been legitimised and reinstated. What is emerging is a set of seemingly contradictory, diverse, non-human temporalities that have been marginalised by modern legal thought and are increasingly demanding legal recognition. The article concludes by stating that property as belonging and legal time as multiple are fundamental elements for a legal technique that aims at instituting the collective.

I. Introduction: Personhood, Property and Legal Time

Among the constitutive tensions at the heart of Western modern law, an important one is that between persons and property. Both of these legal abstractions have been constructed as 'empty slots' into which different kinds of rights can be fitted: in both cases, isolating a central concept at their core is difficult and how to do so is the subject of endless theoretical disputes.[1] Originally, the term *persona* was used to refer to the mask worn by actors in ancient theatre; the legal person works in a similar, fictional way, as it was used in Roman law to define a party in a case and designate what was merely a center of imputation of rights and duties.[2] As for property, a widespread view – first elaborated by legal realism and then readapted in critical legal studies – conceives it as a 'bundle of sticks'. This means thinking of property as devoid of any specific essence but rather as consisting of powers and rights conceived as discrete sticks – for example, one stick might

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[1] M. Davies, 'Persons, Property and Community' 2 *Feminists@law* (2012).

[2] P. Napoli, 'Variazioni sull'adagio: la natura può fare a meno dell'uomo' *Filosofia Politica*, III, 447-464 (2023).

be a right of access and another might be a right to sell or to destroy.[3] The emergence of a specific notion of property as hegemonic in modern legal thought – exclusive, absolute, based on an almost limitless control over the thing – has meant that possessive individualism has been the ideology defining the relation between persons-as-owners and what is not them, deemed available to be appropriated as an object. The rise of the movement for the commons in the post-2008 conjuncture has implied a questioning from the grassroots level of the hegemonic idea of property in favour of one in which the interests of the community are pivotal.

As Ngaire Naffine has argued, the construction of a legal person – that is, the transformation of an entity into one who can legally act – as well as that of a non-person – which cannot legally act and is generally conceived of as property – can be interpreted as the greatest political act of law.[4] The ongoing extension of legal personhood to include entities of the natural world can be read as yet another instance of this process. The 'juridification of nature' is a term used to define the set of legal discourses and mechanisms through which natural entities have been given legal personhood in recent years.[5] After centuries in which nature has been constructed by law primarily as something to be used, controlled and exploited – in one word, as property – we are now witnessing its transformation into a legal subject recognised in constitutional texts, national laws, court rulings and policies.[6] These developments seem to put into effect the proposal famously made by Christopher Stone back in 1972:

> 'I am quite seriously proposing', he wrote then, 'that we give legal rights to forests, oceans, rivers and other so-called "natural objects" in the environment – indeed, to the natural environment as a whole'.[7]

The spread of this rights-based approach orienting the legal protection of the environment has been met with much enthusiasm, but also with some criticism. It has been pointed out, for instance, that the rights of nature discourse could be deployed as another universalising rhetoric that could legitimise the continuation of

[3] D. Cooper, *Everyday Utopias: The Conceptual Life of Promising Spaces* (Durham and London: Duke University Press, 2014), 161.

[4] N. Naffine, 'Who Are Law's Persons? From Cheshire Cats to Responsible Subjects' 66 *The Modern Law Review*, 346-67 (2003).

[5] The expression 'juridification of nature' is taken from the essay by M. Spanò, '« Perché non rendi poi quel che prometti allor?» Tecniche e ideologie della giuridificazione della natura', in Id ed, *L'istituzione della natura* (Macerata: Quodlibet, 2020), 103-124.

[6] Examples of the process of juridification of nature include the enshrinement of the rights of nature in the Ecuadorean Constitution in 2008; the adoption of the Bolivian Law of the Rights of Mother Earth in 2010; the discussion around the recognition of ecocide as an international crime; and the recognition of the Whanganui River in New Zealand as a legal person in 2017 and of the Atrato River in Colombia in 2016.

[7] C. Stone, 'Should Trees Have Standing? Towards Legal Rights for Natural Objects' 45 *Southern California Law Review*, 450-501, 456 (1972).

extractivist policies and ultimately reproduce the existing structures of domination in a global capitalist system.[8] The rights of nature, the critics argue, could as well be used as a radical tool to rebalance unjust power dynamics, but this can only happen if Western legal scholars make greater efforts in developing legal techniques to this end, which incorporate Indigenous approaches to the use of and relation with the environment.[9] Other critics point to another problematic aspect of the juridification of nature, namely that it is a process involving 'much ideology and little technique'.[10] Rights of nature would reinforce a moralising idea of nature as Other, an object which can – very anthropocentrically – only be the target of either exploitation or protection.[11] What these discourses would fail to understand is that in Western modern law 'nature' does not exist 'out there' as some ontological pre-given that precedes law. If there is an ontological precedence, it is in the opposite sense: what is called nature has been relentlessly constructed as such through legal procedure, as Yan Thomas' genealogical study on the status of things for Roman jurists has shown. According to this radically constructivist approach to law and nature, the latter is 'the event that occurs whenever the law decides to repair it'.[12] In Roman law, nature was the 'sparring partner' of legal forms: not a counterforce to law but rather a material limit to its application. This representation of the natural world was a remnant of a pagan culture still influencing the Roman jurists and from which modern thought is very detached.[13] And yet, the forms that those jurists elaborated have survived until today, entering into modern law through the great work of mediation carried out by the Pandectists in the 19th century. In sum, concepts of nature are a social and legal construction, and an analysis of how societies have historically conceptualised nature shows that there are no immutable characteristics that can be isolated from what in different conjunctures is called 'nature'.[14] Law has the power to produce nature as such through its specific instituting capacity, and thereby to construct the appearance of its immutability.

In this article, I draw on this debate about the limits of the juridification of

[8] M. Tănăsescu, *Understanding the Rights of Nature: A Critical Introduction* (Bielefeld: Transcript Verlag, 2022).

[9] J. Gilbert et al, 'The Rights of Nature as a Legal Response to the Global Environmental Crisis? A Critical Review of International Law's "Greening" Agenda', in D. Dam-de Jong and F. Amtenbrink eds, *Netherlands Yearbook of International Law 2021: A Greener International Law—International Legal Responses to the Global Environmental Crisis* (The Hague: T.M.C. Asser Press, 2023), 47-74; M. RiverOfLife et al, 'Yoongoorrookoo' 30 *Griffith Law Review*, 505-529 (2021).

[10] M. Spanò, '«Perché non rendi poi quel che prometti allor?»' n 5 above, 105.

[11] On this point see, among others, A. Grear, 'Deconstructing Anthropos: A Critical Legal Reflection on "Anthropocentric" Law and Anthropocene "Humanity" '26 *Law and Critique*, 225-249 (2015).

[12] M. Spanò, '«Perché non rendi poi quel che prometti allor?»' n 5 above, 124.

[13] P. Napoli, 'Variazioni', n 2 above, 451.

[14] On the links between social change and changing constructions of nature, as well as on the parallelisms in the social construction of women and nature, see C. Merchant, *The Death of Nature: Women, Ecology, and the Scientific Revolution* (San Francisco: Harper & Row Publishers, 1990).

nature to propose two points that shift the focus of the discussion away from the idea of nature as a subject of rights and point instead to the possibility of legally recognising a subject that is not one, assembled, collective. While recognising natural entities as legal subjects risks reproducing the anthropocentric structure of modern law with moralising and ideological effects, I argue that a rethinking of what we mean by legal subject is possible if we adopt a pragmatic approach to two elements: property rethought as belonging and legal time conceived as multiple. I begin with property and argue for reformulating it according to two intertwined tenets: belonging meant as a broader category than owning (in Part II), and things considered as the outcome of legal procedure (in Part III). Then, I focus on another institution that has played a crucial role in ensuring the functioning of the modern individual subject, namely legal time. In Part IV I reconstruct how modern law has been tightly imbricated with a linear, historical and chronological idea of time, both reproducing it and contributing to its fabrication. Then, in Part V, I highlight how the climate breakdown is posing challenges to law that are also and importantly of a temporal nature, as diverse temporalities reemerge and demand law's recognition. I conclude by stating that rethinking property and legal time along the suggested lines is a precondition for finding legal tools through which the collective is recognised and instituted.

II. Belonging, or, Broader than Property

In the 2nd century, jurist Sextius Pomponius wrote a long comment to the three books of civil law by the jurist Masurius Sabinus. A fragment of this work deals with the topic of belonging and is collected in the Digest, the compendium of legal writings on Roman law compiled four centuries later for the will of the Emperor Justinian I. In the fragment D.50.16.181, included in the book *De significatione verborum* ('On the meaning of words'), Pomponius wrote:

> '*Verbum illud "pertinere" latissime patet: nam et eis rebus petendis aptum est, quae dominii nostri sint, et eis, quas iure aliquo possideamus, quamvis non sint nostri dominii*'.
>
> 'The verb to belong has a very wide range of meanings: it applies to things that are our property, but also to things over which we have certain rights, even if they are not our property.'[15]

In the sense that is conventionally adopted in modern legal thought, belonging works as a synonym for owning. It designates the same appropriative relationship between a subject and a thing, but from the point of view of the latter instead of

[15] A. Watson, *The Digest of Justinian, Vol. 4 [Books 1-40]* (Philadelphia: University of Pennsylvania Press, 1998). Pomponius' fragment is included in Book 50.

the former: a thing belongs to a subject because the subject owns it, in a perfectly circular relation. Pomponius' fragment allows us to take a step back from this reductionism. It opens up the possibility of considering *pertinere* as something decoupled from *possidere* – as detached from property meant as an exclusive mode of ownership based on the owner's control over the thing.

In other words, a thing can belong to me even though I am not its owner. If I am the usufructuary, or a simple user of a thing, then I can claim that it belongs to me, even though the owner is someone else. Belonging and owning reveal themselves as not symmetrical, as they express very different kinds of relationships to things; the former is much broader, richer and accommodating for different political contents than the latter. This point has some subtle implications that go beyond the mere subject-object relation. Belonging alters not only one's relationship with things but also one's whole life as an individual in society. For example, it changes what it means to claim to be a formal citizen and thus to belong to a political community. Belonging will no longer mean being part of a pre-constituted community determined by some essence: rather, the community will be ephemeral, open and mostly determined by the practices through which its members relate to things – by the use they make of them.

The legal category of belonging proves to be more useful than the narrower conception of property to describe a range of grassroots practices that have developed over the past decades in Western societies and through which a collective use and access to spaces and resources has been affirmed. When looking at mobilisations such as the one for the commons in Italy during the 2010s, we may ask what impact these practices have exerted on the forms providing the structure of modern law; we may want to assess, in other terms, the meaning of these political experiences as far as legal abstraction is concerned. With Davina Cooper, we may ask: 'what kind of belonging is this?'.[16] In her work on what she defines as 'everyday utopias' – a diverse set of spaces in which everyday life is organised in radically diverging ways from conventional social and political structures in the Global North – Cooper shows how property is being reimagined and re-practiced through experiences of communal living. In these cases, focusing solely on those property relations that are recognised by the state would mean missing much of what is going on: it would imply, for instance, not noticing how in these places property and governance are intertwined in attempts at self-government and direct democracy; or how it is not just the case that the users create the space through the use they make of it, but it is also vice versa – a community is constituted as such by the relation it maintains to a thing.[17] Cooper

[16] D. Cooper, n 3 above, 161.

[17] On the idea of the community relating to the commons not as a gated group but as 'a quality of relations, a principle of cooperation, and responsibility to each other and to the earth, the forests, the seas, the animals', see S. Federici, 'Feminism and the Politics of the Commons', in Team Colors Collective ed, *Uses of a Whirlwind: Movement, Movements, and Contemporary Radical Currents in the United States* (Oakland: AK Press, 2010), 283-94.

explains how belonging can be deployed as a more suitable legal category than property conventionally intended if we want to explore the layers of relations, between individuals but also between individuals and things, that are at stake in communal experiences. In particular, she points to three variants of belonging that seem useful for illuminating the complexity of such relations: conventional property, constitutive belonging and proper attachment.[18] The first form is the one that in modern legal thought is associated with property. This kind of belonging is the one often explained in legal theory through the metaphor of the bundle of sticks. According to this image, property is not a monolithic entity, but is made up of a set of elements – the sticks – corresponding to various powers and rights held by different actors, who have different property interests towards the thing. This idea of property as a bundle of rights was famously introduced by Hohfeld and then elaborated by the legal realists. One of its implications is a dimension of malleability: sticks can be added, removed and redistributed among individuals, thus changing the distribution of power and resources among them.[19] We may see this as an arithmetical view of property, as it were; a kind of 'level zero' of belonging. It is what we observe at work, for instance, in the case of cultural spaces that were reclaimed as commons in the Italian struggle for *beni comuni*. The spaces in question belonged to an owner, such as the public actor, who held the property title, but for a certain time granted a right of access to the users. This concession was made in a more or less peaceful way, as shown by the eviction attempts made by public authorities in these spaces, which can be read as moments in which the sticks that make up property were being reshuffled and reassigned.

A second, more sophisticated form that belonging can assume, defined by Cooper as 'less obviously agentic' than the one just described, is constitutive belonging. This refers to a kind of relation between persons and things that is not merely instrumental or based on an opportunistic use of the resource, but is instead dynamic and 'mutually formative', in the sense that each part involved 'takes shape in and through the other'.[20] It is the kind of relationship that has bound together occupied cultural spaces and the communities reclaiming them as commons, and which literature has referred to as 'commoning' – implying that the commons are the result of a process by which a thing or space is produced, an activity rather than an object, a verb instead of a noun. Adopting this view means that spaces reclaimed as commons belong more to those who make use of them than to the owners.[21] Property law, from this perspective, ceases to be mainly

[18] See again D. Cooper, n 3 above, 161-163.

[19] A. di Robilant, 'Property: A Bundle of Sticks or a Tree?' 66 *Vanderbilt Law Review*, 869-932 (2013).

[20] D. Cooper, n 3 above, 162.

[21] On the idea of commoning see, among others, P. Linebaugh, *The Magna Carta Manifesto: Liberty and Commons for All* (Berkeley: University of California Press, 2008); P. Bresnihan and M. Byrne, 'Escape into the City: Everyday Practices of Commoning and the Production of Urban Space in Dublin' 47 *Antipode*, 36-54 (2015); D. Bollier, *Commoning as a Transformative Social*

about owners and holders of rights and is about the property interests of the have-nots whose lives are shaped by others' property holdings.[22]

A third and final variant of belonging identified by Cooper is proper attachment, which is related to, but not identical with, constitutive belonging. This consists of a bond of connection and proximity between individuals and things that can also be made counter-hegemonically, that is, through political projects in which new forms of belonging are forged.[23] This third layer brings us close to a crucial moment: that of instituting, in which the relations between individuals and things get formalised by means of legal technique. In the case of the Italian movement for the commons, this third form of belonging was particularly relevant. Because activists deployed legal tactics to make the use prevail over the property title and to experiment with direct democracy and self-government, scholars have argued that the movement for *beni comuni* acted as a constituent power – as a collective subject engaged in a bottom-up process of institution-making.[24] For instance, the occupants of the Valle Theatre in Rome resorted to a private legal form, the foundation, as a tactical mechanism allowing them to formalise their use of the space – to provide this use with temporal continuity. It can be said that this was a professional use: the thing reclaimed as commons – the theatre – was one in which a community of occupants, made of artists, actors and cultural workers, could carry out their work. The recourse to the private legal form was thus a way of securing and protecting this direct relationship between the community and the thing – the theatre – also in the future, and to provide a long-term legal and political significance to the occupation conducted until then.

The identification of this third level of belonging adds a crucial third dimension to the previous two: it is through this stage that property as a bundle of sticks and property as a constitutive relationship can 'stand' and endure in space and time. It is in this third moment that the political dimension of law, and of private law in particular, is revealed. Private legal rules play out as the infrastructure of social life and different configurations of rules imply different distributive effects.[25] In instances such as the one of the commons, property can take up a legally pluralist shape that reflects the existence of a web of relations, not all of which are recognised by the state, between individuals and things.[26]

Paradigm (London: Routledge, 2020).

[22] A. J. van der Walt, *Property in the Margins* (Oxford, Portland: Hart Publishing, 2009).

[23] D. Cooper, n 3 above, 163.

[24] S. Bailey and U. Mattei, 'Social Movements As Constituent Power: The Italian Struggle for The Commons' 20 *Indiana Journal of Global Legal Studies*, 965-1013 (2013).

[25] For a critical and genealogical exploration of the relationship between private law and the collective, see M. Spanò, *Fare il molteplice: il diritto privato alla prova del comune* (Turin: Rosenberg & Sellier, 2022).

[26] On this point see J. Griffiths, 'What Is Legal Pluralism?' 24 *Legal Pluralism and Unofficial Law*, 1-56 (1986).

III. The Legal Construction of Things: Beyond Ontological Objectivism

In his essay *La Valeur des choses*, published in 2002, Yan Thomas attempted to dismantle one of the main traits of modern legal thought: the metaphysics of the subject-owner, to whom the total availability of the world belongs. He did so by reversing the perspective and placing himself at the level of things: to downsize the infinite power of the subject owner over the world, Thomas meticulously reconstructed the status of things in Roman law. This quest may be partly reminiscent of Heidegger's work in the 1930s, namely an analysis of things and of the conditions that make it possible for a thing to be such a thing. However, that was a metaphysical kind of inquiry, concerned with the being 'thing' of the thing.[27] Yan Thomas carried out a similar operation, except that he used the legal categories in order to figure out what makes a thing a thing. The distance between Heidegger and Thomas is staggering, but we can imagine how the arguments of philosophical ontology can be tested by the tools of legal technique. If one wants to know how to find things in Rome, this essay by Yan Thomas provides some important answers.[28] It is a philosophical treatise developed with the tools of the jurist, without yielding to metaphysical temptations.

The subtitle of Thomas's text is 'Roman law outside religion' (*le droit romain hors la religion*). The French legal historian adopted a materialist and structuralist approach to examine how Roman jurists constructed things. He showed that if we take the perspective of the latter, then we find on their side an element of permanence – a duration built normatively. Such a construction of things sets aside not only the metaphysical explanations of things, but also those of cultural anthropology, in which there can be a subjectivist twist on the things themselves. Except that in Thomas's reconstruction, things do not exist in themselves: they are established by legal artifice – normatively made. If there is an ontology of things at work, it is not given but constructed. Things are the objects resulting from a technical construction that takes place through procedure. This, in turn, is a decision qualified by an authority and derived from legal dispute.[29]

Thomas's approach is materialist in the sense that the level of abstraction it reaches is not based on pre-constituted concepts but on the study of legal cases, which in his analysis are the equivalent of fieldwork for the social sciences. This approach opens up significant possibilities for dialogue between legal theory and the social sciences: for example, the debate on the mobilisations for the commons

[27] See M. Heidegger, *Die Frage nach dem Ding: Zu Kants Lehre von den transzendentalen Grundsätzen* (Tübingen: De Gruyter, 1962); Id, *Kant und das Problem der Metaphysik* (Frankfurt am Main: Klostermann, 1973); Id, *Phänomenologische Interpretation von Kants Kritik Der Reinen Vernunft* (Frankfurt am Main: Klostermann, 1977).

[28] I owe much of this reflection on the status of things in Roman law, and on the analysis of them conducted by Yan Thomas, to the seminar 'L'inappropriable' given by Paolo Napoli at the École des Hautes Études en Sciences Sociales in 2022/2023.

[29] On the legal status of things in Roman law, see Y. Thomas, 'La valeur des choses. Le droit romain hors la religion' 6 *Annales. Histoire, Sciences Sociales*, 1431-1462 (2002).

becomes one also, and significantly, concerned with the right to property and its limits. But Thomas's approach is also a structuralist one. Subjects do not exist as a pre-constituted essence but are delocalisations, reflections, secondary effects of a way of thinking like the one informing Roman law, which gives immediate normative power to the non-human world – to things. We are not talking here about the animal or vegetal world, because the important opposition for Roman jurists was that between things and persons. The subject, then, does not exist in itself: it emerges in relation to things and does not pre-exist them. Contrary to sociological approaches arguing that norms spontaneously emerge from the level of actors, in Thomas's reconstruction the relations between subjects and things are entirely caught up in a web of institutional relations. The result is no longer a praise of the sovereign individual over the world, but an invitation to find on the side of things an element of permanence and duration that is normatively constructed (Thomas 2002).[30] This is what can be called a legal ontology of things – an ontology that is not natural but institutionally constructed. All things, even those that seem most pre-given, such as nature itself, are produced by the concrete acts of institutions. Even if the latter were to limit themselves to acknowledging the existence of a thing, by this gesture they would have already transformed its supposed naturalness.[31]

On this materialist and structuralist basis, Thomas developed his own theory of institutions. To institute is first of all to give things a name, which has great consequences for the social order. It is to carry out an operation after which the world will no longer be the same. This operation is verbal and practical at the same time, as the specific capacity of law is artificial and consists of mixing words and gestures. Law is not only knowledge, it is also a technique that creates social reality through the invention of forms – this is what instituting means. Instituting does not mean creating from scratch: rather, as Paolo Napoli explains, it means

> 'to isolate the sequence of frames that make up the shape of reality in such a way that, once the process is complete, it is no longer possible to go back because, in the eyes of the jurist, the recodification of people, things, actions and functions that follows that shaping has produced a concrete abstraction that instantly supplants the empirical datum.'[32]

The outcome of this process is the production of the institute – a noun disciplining a relationship while qualifying it. Indeed, as Yan Thomas insisted, law is the only discourse that produces the world it designates.[33] It is in this

[30] See Y. Thomas, n 29 above.

[31] See Id, 'Imago naturae. Note sur l'institutionnalité de la nature à Rome' 147 *Publications de l'École Française de Rome*, 201-27 (1991).

[32] P. Napoli, 'Variazioni' n 2 above, 450. Author's translation.

[33] Y. Thomas, 'Le droit entre les mots et les choses. Rhétorique et jurisprudence à Rome' 23 *Archives de Philosophie du Droit*, 94 (1978).

abstract and formal quality of the institutes that lies the origin of their longevity and adaptability right up to modernity.[34]

IV. Law Fabricating Time

Of all the institutions of Western modern law, one has played a crucial role in providing the conditions for the smooth functioning of its forms: time, or rather legal time. The relationship between law and time has been a very close one in the shaping of modern societies. The peculiar concept of time of modernity has not only been recognised but also constructed by law: in other words, law has instituted time.

It is first worth clarifying what we mean when we talk about the modern idea of time. Commonly represented through the image of a linear arrow indefinitely pointing forward – in the direction of what is alternatively labelled as progress, development or growth – the time of the moderns *passes*, meaning that it abolishes all the past behind it.[35] It is this peculiarity of modern time – the fact that it literally consumes all the events it passes through – that led E.P. Thompson, in his study of the dissemination of clocks in industrial England, to observe that 'time is now currency: it is not passed but spent'.[36]

It would not be enough to say that in modern societies time has a linear shape. Modern time is also historical, namely tied to the deeds of concretely acting individuals and institutions; and it is chronological, that is, constructed as a succession of events like discrete points making up a unitary flow.[37] The dominance of this idea of time has implied a marginalisation of other temporal conceptions informing human and social practices, such as cyclical ones, which nevertheless did not disappear. These persisting and counter-hegemonic ideas of time in modernity have been identified by Carol Greenhouse as instances of resistance to historical time:

> 'if linear time dominates our public lives it is because its primary efficacy is in the construction and management of dominant social institutions, not

[34] In Roman law, the *res incorporales* were legally recognised entities deprived of substance, 'things without body', at once concepts and instruments. On this point see M. Spanò, 'Cose senza corpo. Forma e materia degli istituti giuridici', in A. Montebugnoli ed, *Sulla soglia delle forme. Genealogia, estetica e politica della materia* (Milan: Meltemi, 2022), 149-163.

[35] On the image of the irreversible and linear passing of time as a modern technique separating nature (whose forces are temporally built as ahistorical) from society (whose human actors are constructed as acting in history), see B. Latour, *We Have Never Been Modern* (Cambridge: Harvard University Press, 1993).

[36] E.P. Thompson, 'Time, Work-Discipline, and Industrial Capitalism' 38 *Past & Present*, 56-97 (1967).

[37] On the historical character of time in modernity, see R. Koselleck, *Futures Past: On the Semantics of Historical Time* (Cambridge, MIT Press, 1985); on the concept of chronological time, see S. Kracauer, 'Time and History' 6 *History and Theory*, 65-78 (1966).

because it is the only 'kind' of time that is culturally available.'[38]

The social sciences have guarded and reproduced the hegemony of the modern concept of time, whether considering it as a collective representation of social experiences or as a progression of changing social forms – as respectively in Durkheimian and Marxist theory.[39] Law does more than this: because its peculiar force is that of instituting – of naming and disciplining social reality in one gesture – not only has it contributed to strengthening the naturalisation of the modern idea of time, it has also produced it. Among the techniques that have contributed to the shaping of modern societies, law is the one specifically devoted to solving the incongruencies arising from the coexistence of multiple forms of time. Time is massively manipulated by legal technique, which institutes it by relentlessly stretching its arrow forwards and backwards.[40]

Two examples can illustrate this quality of law, its special ability to manipulate time through its operations. The first one is the statute of limitations (*termine di prescrizione*), which consists in the extinction of a right if the holder does not exercise it within the time limit set by law. In criminal law, the extinction affects the right to punish before a final conviction or the right to apply a certain punishment to a person as a result of the passage of time. Here, law constructs a time line within which a certain conduct is qualified as an offence, fixing its beginning and end and excluding what comes before and after from the possibility of being qualified as such. The technical construction of the time arrow is in this case an almost literal process. A second example is less immediate and is brought up by Mariana Valverde in her important work on the temporal analysis of law. Valverde's thesis is that different legal facts are shaped and given meaning by specific space-time configurations.[41] For example, local police regulations, especially in common law systems, consist of 'time- and space-specific rules' regulating a whole range of activities, such as parking or littering. Sleeping in parks is made illegal, but only at night; and the park space is divided internally according to the different activities that can be carried out there. The operation of differentiating space is also a core logic of land use law, which however builds a fiction of atemporality by proceeding through the spatial tool of the map.[42]

Far from being abstract, then, the manipulation of time through legal technique is a very material process.[43] People, things, technologies, laws: all these elements,

[38] On the social and cultural making of time in modernity, and law's role in instantiating it, see C.J. Greenhouse, 'Just in Time: Temporality and the Cultural Legitimation of Law' 98 *The Yale Law Journal*, 1637 (1989).

[39] Id, *A Moment's Notice: Time Politics Across Cultures* (Ithaca: Cornell University Press, 1996).

[40] See again C. Greenhouse, 'Just in Time' n 38 above, 1642.

[41] M. Valverde, *Chronotopes of Law: Jurisdiction, Scale and Governance* (London: Routledge, 2020).

[42] ibid 12.

[43] A genealogical study of modern legal forms brings to light the roots of law's ability to craft

and the interaction among them, contribute to the creation of legal temporalities as devices constructed to govern ideas of time. Recent critical studies on the relationship between time and things from a legal perspective have shown that objects and legal artifacts are crucial in the making of legal temporalities, dismissing the reductionist view of time as simply imposing itself on law.[44]

This tight bond between legal facts and time implies that modern law itself has a temporal character, one that makes its functioning closer to myth than to other modern cultural formations. Because law advances by building time, it acquires a timeless quality. This mythical aspect of law is confirmed by another element, especially visible in common law systems: the relation of reversibility that binds together past and present decisions – with the former influencing the latter, and the latter being able to reverse the former.[45] Through its techniques, law fabricates the discontinuities that separate past, present and future and instantiates them as such.[46]

Crucial to this timeless quality of modern law, and to the fact that from a temporal viewpoint it functions like myth, is the character of 'eternal objects', as Peter Fitzpatrick called them, that modern legal forms bear. Their function is also the one of mediating between the general and the particular, of providing models of what the social reality is and also should be. As Fitzpatrick wrote,

> 'Let us take property as an instance. As the 'external', reified object, it is suffused with the palpable and the specific. Yet it is also elevated in terms no less extensive than those attributed to the transcendence of myth. It is, to summarise various formulations of Enlightenment, the foundation of civilisation, the very motor-force of the origin and development of society, the provocation to self-consciousness and the modality of appropriating nature.'[47]

Property works as the quintessential eternal object of modern law. Its absolute, individualistic, exclusive conception, which is hegemonic in modern legal systems, has a temporal nature: it mirrors in its structure a transcendent myth, that of an appropriative relationship between the individual and the natural world.

fictional devices manipulating time. Yan Thomas examined the case of a monastery emptied of all its monks, to which jurists in the 12th and 13th century managed to grant personhood to prevent the monks' goods from being taken over even after the death of the last of them. See Y. Thomas, 'L'extrème et l'ordinaire. Remarques sur le cas médiéval de la communauté disparue', in J.C. Passeron and J. Revel eds, *Penser par cas* (Paris: École des Hautes Études en Sciences Sociales, 2005), 45-73.

44 E. Grabham, *Brewing Legal Times: Things, Form, and the Enactment of Law* (Toronto, Buffalo, London: University of Toronto Press, 2016).

45 See again C. Greenhouse, 'Just in Time' n 38 above, 1642-1643.

46 On how racial designations are also temporal divisions in colonial contexts, see R. Mawani, 'Law As Temporality: Colonial Politics and Indian Settlers' 4 *UC Irvine Law Review*, 65-96 (2015).

47 See P. Fitzpatrick, *The Mythology of Modern Law* (London: Routledge, 1992), 50.

V. The Resurgence of Marginalised Temporalities

Over the past years, the complex relationship between law and time has increasingly become the object of critical inquiry in socio-legal studies. After decades dominated by what has been called a 'spatial turn' in the study of legal phenomena – that is, an emphasis on the co-constitutive relation between law and space –, critical legal scholarship has been turning to law's temporal aspects.[48] This has meant the refusal to limit the analysis to the exploration of the spatial dimension of legal facts, while restricting the temporal one to a simplistic vision of time as history.[49] Drawing on critical approaches to time developed in feminist, queer and postcolonial studies, the spatial perspective on law has been integrated with a temporal one, thereby exploring legal phenomena through a spatio-temporal lens.[50] In this way, each legal form – for example, property – is studied in its power to shape and reproduce a specific space-time configuration, and the co-production of legal and temporal norms is at the centre of the inquiry.[51]

The issue of time and temporality is at the heart of one of the most pressing debates in legal studies, namely the one on how to conceive legal tools to deal with ecological and climate breakdown. The dilemmas that have confronted legal scholars and practitioners in recent years are often of a temporal character: they range from how to hold industrialised states accountable for past harm caused by ongoing greenhouse gas emissions,[52] to how to secure the future generations' fundamental rights and thus to enforce a principle of intergenerational equity in

[48] For the spatial turn in legal theory see, among others: Y. Blank and R. Zvi, 'The spatial turn in legal theory' 10 *HAGAR Studies in Culture, Polity and Identities*, 27-60 (2010); E. Soja, *Postmodern Geographies: The Reassertion of Space in Critical Social Theory* (London: Verso, 1989); N. Blomley, *Law, Space, and the Geographies of Power* (New York, London: Guilford Press, 1994).

[49] For an introduction to the temporal turn in socio-legal studies, see, among others: M. Valverde, *Chronotopes of Law* n 41 above, 11; Id, ' "Time Thickens, Takes on Flesh": Spatiotemporal Dynamics in Law', in I. Braverman et al eds, *The Expanding Spaces of Law* (Redwood City: Stanford University Press, 2020), 53-76; D. Massey, *For Space* (London: Sage, 2005).

[50] For a postcolonial perspective on modern time as not-one, see, among others: D. Chakrabarty. *Provincializing Europe: Postcolonial Thought and Historical Difference* (Princeton, NJ: Princeton University Press, 2000); S. Hall, 'When Was "The Post-Colonial"? Thinking at the Limit', in I. Chambers and L. Curti eds, *The Post-Colonial Question: Common Skies, Divided Horizons* (London and New York: Routledge, 1996), 242-273. For perspectives on future and utopia in feminist and queer theory, see L. Edelman, *No Future: Queer Theory and the Death Drive* (Durham: Duke University Press, 2004); J. Halberstam, *In a Queer Time and Place: Transgender Bodies, Subcultural Lives / Sexual Cutlures* (New York: New York University Press, 2005); E. Grabham, 'Legal Form and Temporal Rationalities in UK Work-Life Balance Law' 29 *Australian Feminist Studies*, 67-84 (2014).

[51] For empirical studies of the co-production of legal and temporal norms, see, among others: E. Grabham and S. M. Beynon-Jones, 'Introduction', in Ead eds, *Law and Time* (London: Routledge, 2018), 1-28; M. Travis, 'Justice, Temporality and Science Fiction' 2 *Law and Literature*, 241-261 (2022).

[52] S. Mason-Case and J. Dehm, 'Redressing Historical Responsibility for the Unjust Precarities of Climate Change in the Present', in B. Mayer and A. Zahar eds, *Debating Climate Law* (Cambridge: Cambridge University Press, 2021), 170-189.

the distribution of the adverse effects of climate change.[53] In all these cases, a number of temporalities other than the one enshrined in and reproduced by legal time demand recognition before the law. One of the ways in which to read the current is to interpret it as a moment in which the misalignment between the modern concept of time and the timescales of the Earth is dramatically revealed.[54] Law itself exacerbates such a misalignment whenever it overlooks the environmental harms that are temporally dispersed in the past or the future.[55]

Temporalities transcending modern time have appeared in the transformation that has affected a fundamental institution of private law such as property. This brings us back to the example of the commons, namely a counter-hegemonic idea of property that has re-emerged in Western legal thought and practice after the 2008 economic crisis. The commons have implied a resizing of the subject owner's power and a reshaping of the property form in two directions: on the one hand, the dominium – the owner's right to dispose of the thing fully – has been reduced; on the other hand, what has become central is the thing, and the resulting legal regime is one in which it is the thing itself that dictates its own legal status.[56] By recognising the eccentric articulation of individuals, rights and things that has been labelled as commons, law has registered the relation that constitutes them, the link of co-production that binds the resource or space to the community taking care of it. What is thus recognised is a temporal layer that extends beyond the present in which the subject owner is conventionally squeezed and embraces the existence of both future generations – to whom access to the thing must be guaranteed – and of the things, the resources, the ecosystems whose common character is being reclaimed.

VI. Concluding Thoughts

The relationship of law – and private law in particular – to the collective, the more than one, has often been described in terms of impossibility.[57] An individualistic model of the relationship between persons and things has prevailed, which not

[53] L. Collins, 'Judging the Anthropocene: Transformative Adjudication in the Anthropocene Epoch', in L.J. Kotzé ed, *Environmental Law and Governance for the Anthropocene* (Oxford and Portland: Hart Publishing, 2017), 309-27.

[54] For the text that first introduced the term, see P. Crutzen and E. Stoermer,' The Anthropocene' 41 *Global Change Newsletter*, 17-18 (2000).

[55] B.J. Richardson, 'Doing Time-The Temporalities of Environmental Law', in L.J. Kotzé ed, *Environmental Law* n 53 above, 55-74.

[56] For an overview of the commons as a legal concept, see M. Marella,'The Commons as a Legal Concept' 28 *Law and Critique*, 61-86 (2017); P. Napoli, 'Indisponibilité, service public, usage. Trois concepts fondamentaux pour le «commun» et les «biens communs»' 27 *Tracés. Revue de Sciences humaines*, 211-233 (2014); S. Foster and C. Iaione, 'The City as a Commons' 34 *Yale Law & Policy Review*, 281-349 (2015); C. Crea, ' "Spigolando" tra *biens communaux*, usi civici e beni comuni urbani' 3 *Politica del diritto*, 448-464 (2020).

[57] See again M. Spanò, *Fare il molteplice* n 25 above, 9.

only describes how these two legal abstractions are bound together but also strictly demarcates the private from the public sphere and dictates the organisation of society as a whole.[58]

This article departed from the ongoing discussion about the limits of the juridification of nature to advance a twofold proposal that could make this relationship less possible. Property as belonging and legal time as multiple are the potential tenets for a legal theory and technique that can recognise a not-one, hybrid subject. What private law technique has recently developed are tools for accommodating property as belonging and multiple temporalities within the great machine of abstraction of social reality that is Western modern law. As a result, the 'here-and-now' proprietary logic underpinning a conventional use of its forms has been radically challenged. Jurists have been learning to work with a relational and social conception of property and have been doing so within the framework of not one but at least two temporalities: the present, namely the shared historical moment in its political, economic and social contingencies; and an intergenerational time, which concerns the life of a society in a given space over different generations. Perhaps a third step is needed to complete the transformation of the legal subject and to institute the collective: the recognition of another temporal framework which, after having been used in the Earth sciences, is making its way into the social sciences through the mediation of postcolonial studies. Alternatively called 'deep time' or 'planetary time', it denotes the temporality of a river, a forest, and the Earth's timescales more broadly.[59] For modern law, capturing this more-than-human temporality would entail making room in its forms for the collective, the hybrid, the mutable; it would amount to taking the conflict over forms – the rethinking of the concepts through which jurists do the work of abstracting reality – to its most radical consequences. It would mean reaffirming the pragmatic vocation of private law, its capacity to mediate everything we do and to lend its forms to political projects that institute use and social cooperation.

[58] See again M. Davies, 'Persons, Property and Community' n 1 above.

[59] D. Chakrabarty, *The Climate of History in a Planetary Age* (Chicago: University of Chicago Press, 2021).