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Abstract

Italian theorist Giorgio Agamben is well known for his complex critique of the institution and praxis of thought in the west, and in particular for taking aim at a constellation of ontologico-political structures denoted by the term 'juridical'. Within this endeavour, Agamben provides a critique of the metaphysical subject and of the related notion of the person. Specifically, for Agamben the figure of the human is structured and produced by the dignitas: the image or mask which bridges the juridical, moral or 'natural' person, and the condition of their appearance within law and political life. As he wrote in a recent collection of essays: 'Persona originally means "mask" and it is through the mask that the individual acquires a role and a social identity' (2009c: 71).

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Italian theorist Giorgio Agamben is well known for his complex critique of the institution and praxis of thought in the west, and in particular for taking aim at a constellation of ontologico-political structures denoted by the term 'juridical'. Within this endeavour, Agamben provides a critique of the metaphysical subject and of the related notion of the person. Specifically, for Agamben the figure of the human is structured and produced by the *dignitas*: the image or mask which bridges the juridical, moral or 'natural' person, and the condition of their appearance within law and political life. As he wrote in a recent collection of essays: '*Persona* originally means "mask" and it is through the mask that the individual acquires a role and a social identity' (2009c: 71). The tradition of thinking the person from the direction of the mask and its categories of appearance is a long one, and it is marked by a tightly sedimented correlation between these two senses — metaphysical-moral and politico-juridical — of the 'person'. Within that tradition, the mask or *persona* is a technic — a device, *dispositif* or apparatus — through which a juridical relation to life comes to be engendered.[2] For example, in Roberto Esposito's terms, the generalisation of the metaphysics of the 'person' means nothing less than the 'juridical governability of becoming in its norms and exceptions' (Esposito 1999: 240).[3] Rather than address the many strands and variegations of this rich and complex tradition, and rather

than trace either Agamben's broader stance on government, juridicality and life or its interaction with his specific development of Foucault's term *dispositif*,[4] in this brief article my interest is in identifying and establishing something quite specific about Giorgio Agamben's strategy for thinking the person as a mask.

In order to do this, I argue that in Hobbes — a key referent in Agamben's account of political power's relation to life — the (political) mask, with its antecedent in Cicero's theatrical metaphor, is an essential, indeed indispensable element of an account of political representation: a device which always mediates a rhetorically foregrounded natural life through and against the realm of human (political) artifice. Many authors have attempted to cultivate a non-theatrical or non-representational register of the political in response to this feature of contemporary political discourse.[5] I would suggest that Agamben is among them. But perhaps surprisingly, Agamben — despite famously critiquing Hobbes' representative politics and sovereign power, and the notion of natural life which belongs to and sustains it — cannot be said to negate the politico-legal technic of the mask/*persona* outright. I argue that Agamben instead effects a delicate separation of the juridical relation from the specific, material technics which precede and facilitate it — the same technics which provide it with its 'origin'[6] — ultimately using a transformed or 'perfected' version of that legal technic *against* juridical relations. In this case, I will argue that Agamben refines the tradition of thinking the person as a mask, a species of image, and, resisting its substantialisation in the moral person, deploys it *against* the image/substance caesura of modern politics.

Of Persons, Authors, and Things Personated

In the *Leviathan*, for the first time in his theory of government, Thomas Hobbes introduces a discussion of the nature of the political person. Hitherto framing the political covenant according to a relatively mechanistic operation of exchange — an agreement to subject oneself and to relinquish rights (Skinner 2005: 168) — in *Leviathan*, Hobbes deploys a vocabulary of author and authorisation, representative and

representation, person and personation (Hobbes 1968: 217-22). Hobbes' discussion constitutes a critically significant intertwining of the two major dimensions of the modern political person: on the one hand, the juridical, ethical self capable of covenanting, authoring, authorising, and of holding property (Hobbes 1968: 218); and on the other, that self's 'outward appearance' — the visible, countable entity which is necessary to the formation of 'the Representative' and, more specifically, to the accountancy of affirmative and negative voices by which its will is determined (Hobbes 1968: 221).

For Hobbes, the category 'person' serves as the mediation and relation between these two poles, and his notion of the person is strongly influenced by Cicero's parallel between speaking or acting for another, and the actor's 'bearing' or 'sustaining' a mask or persona which had, by the early Middle Ages, already become a standard sense of the term *repraesentare*. As Hobbes sets out:

The word Person is latine: instead whereof the Greeks have πρόσωπον, which signifies the *Face*, as *Persona* in latine signifies the *disguise*, or *outward appearance* of a man, counterfeited on the Stage; and sometimes more particularly that part of it, which disguiseth the face, as a Mask or Visard: And from the Stage, hath been translated to any Representer of speech and action, as well as in Tribunalls, as Theatres. So that a *Person*, is the same that an *Actor* is, both on the stage and in common Conversation; and to *Personate*, is to *Act,* or *Represent* himselfe, or an other; and he that acteth another, is said to beare his Person, or act in his name; (in which sence *Cicero* useth it … (Hobbes 1968: 217).

Hobbes cultivates his category of the person through the technical device of the mask which, by an application of Cicero's parallel between the theatrical stage and the tribunal, serves as well for portraying someone's appearance as it does for speaking in their name. The mask thus generalises the phenomena of *personation, acting*, and *representation* across the theatrical and legal scenes. In fact, it is the discussion of these processes in Hobbes' chapter, '*Of* PERSONS, AUTHORS, *and things personated*', that grounds the very juridical notion of the authoring/ authorising person, the covenanting individual, and the nature of

ownership in general. What must therefore be grasped in Hobbes' discussion of representation and the person is that it establishes an indissoluble relation between the creation of a fictional representation, to which is attributed a Leviathan's power, and the juridical notions of the person in relation to authorship and authority. The mask or 'persona', as an avowed 'Fiction' of political appearance, is the practical image-technic which comes to emblematise a juridical relation in mediating between an abstract, political metaphor of organisation on the one hand, and a notion of nature and the natural person on the other — thus enabling the former on the basis of the latter.

Hobbes' account of the person, it is sometimes noted, works with a relatively stable and atomistic, and certainly pre-social, notion of the individual. The idea of an individual agent who acts self-interestedly, guided into a social and political covenant by fear and self-preservation, implies in Hobbes an individualist distinction of self from social or political role (Hollis 1985: 226). In order to show that this is entirely consistent with a political self which is understood as inseparable from the technical fiction of the mask, I intend to describe in some detail of the tradition of thinking the mask and the social self together in a *persona*.

Πρόσωπον, Persona, Person

Marcel Mauss, commenting that the Schools of Athens and Rhodes had tremendous influence on Latin moral thought, remarks that πρόσωπον did indeed quite precisely translate as *persona* — and that in Latin the term retains the seemingly paradoxical duality which is of interest to us here. This duality consists in its meaning as a 'mask' and, at the same time, as the character each individual 'is and aspires to be'. As he wrote:

> The word πρόσωπον is extended to the individual, with his nature laid bare and every mask torn away, and, nevertheless, there is retained the sense of the artificial: the sense of what is the innermost nature of this 'person' (*personne*), and the sense of what is the 'role-player' (*personnage*) (Mauss 1985: 18).

This fundamental confusion can be seen in greater detail in one of the best-known texts from the classical tradition, Cicero's *De Officiis*. In this case, it takes the form of an inability to articulate a set of ethical requirements or duties without recourse to the notion of a personal *image* of virtue. The problem goes far beyond the fact that the ethicality of character or action is, in Cicero, far from absolute — referable almost entirely to one's role and status. Rather, virtue itself appears to have the very form of an image or the presentation of a 'face'. According to the strict relation in Cicero between *personae* and 'mere images of virtue [*simulacra virtutis*]' (Burchell 1998:114), it appears to be enough for Cicero to 'represent' or 'act' a virtuous part and be seen to be performing it. But it must be noted that this is not tantamount to a cynical politico-theatrical performance by an otherwise coherently separable (im)moral actor because, as Burchell remarks, 'it is far from clear that Cicero would be able to make sense of this kind of distinction' (1998: 116). The very notion of an individual's nature underlying their public acts is defined only through further embedded gradations of the *persona*. Specifically, Cicero remarks that like actors, we must each undertake the difficult tasks of evaluating our natures, impulses and talents and matching them to the most appropriate *persona* in the interests of creating a seemly 'evenness' which serves an ideal of civil *decorum*:

> Cicero's invocation of 'one's own nature' is not so much an observation of 'personality' as an invocation of the ethical notion of 'character' familiar from the Greco-Roman stage, from whence the term *persona* had emerged into wider usage (Burchell 1998: 111-12).

Here, the 'nature' of one's character, lurking beneath the social presentation of a seemly self, is defined only by further reference to a visible, demonstrable and performable self endowed with specific theatrical character-features like 'wit' or 'patience' (Burchell 1998: 112-13).

Despite its service within a different political context, a similar primacy of the representation (and concomitant indistinction between the 'artificial' and the 'natural' person) can be found in Hobbes' *Leviathan*. In fact, the personated entity is presented in Hobbes as the

very principle of a confusion between the natural person and the human capacity for art or artifice. *Leviathan* opens with the proclamation that 'Nature (the Art whereby God hath made and governes the World) is by the *Art* of man, as in many other things, so in this also imitated, that it can make an Artificial Animal' (Hobbes 1968: 81). Offering nature itself as species of art, Hobbes prepares the ground for the feat of politically natural representation he was about to unfold. And when it comes to Hobbes' explicit claims about the mask and the persona, he makes no material distinction between presenting oneself 'Truly', or representing someone else, 'by Fiction' (1986: 217): a point which did not escape the notice of Hannah Pitkin in her classic study (1967: 19). In either of these cases, the theatrical mask, inherited from Cicero, enables Hobbes to make no distinction between '*Natural*' and '*Artificial*' personhood. In fact, in the quotation above, Hobbes installs the primacy of '*disguise*' and '*outward appearance*' into his every notion of the person, whether in artificial or natural conversation — concluding, as he does, that 'a *Person* is the same that an *Actor* is, both on the Stage and in common Conversation'. Further, he affirms that to '*Personate* is to *Act*, or *Represent* himselfe, or an other, and he that acteth another, is said to beare his Person' (1998: 217). To the lack of distinction between conversation and staged speech, we may therefore add an indifference to 'acting' or 'representing' oneself or another: in each case, what is primary is the mask of personhood which must undoubtedly be worn in order to appear and to figure in the political landscape; and it is to this mask that juridical rights accrue (see Pitkin 1967: 19). It is this same precondition, when read with Hobbes' collocated discussion of the principle of author and authority (with its Roman and Christian antecedents), which enables not just the ability, but precisely the *authority* to handle the juridical and covenanting self — whether one's own or that of another. That is, the very juridical and 'substantial' self is expressed as a species of *persona*: mask, image, artifice, representation.

This dependence of the substantial on the technical is less surprising than it might seem. In fact, Hobbes' pre-social atomistic individual owes a great deal, in the first place, to the notion of the 'moral person' fashioned by Christianity — a person posited, as Marcel Mauss said in

a famous essay (relying on Schlossman), as a 'metaphysical entity' and, eventually, a sacred and inalienable core of personhood (Mauss 1985: 19, 22). However, the origins of this entity are to be found in none other than the very notion of the 'mask' which is at issue. As Giorgio Agamben notes, referring to Boethius (who knowingly 'hypostasised' and substantialised the theatrical sense of the persona), the Church Fathers' theologico-metaphysical notion of person rested on the very basis of a 'double semantic heredity of the term "person", which … signifies both "mask" and juridico-moral "personality"' (Agamben 1996: 18).

This originary confusion, which enabled the stabilisation of a metaphysical personhood, can therefore be seen as a co-implication of 'nature' (or the natural) and the 'artificial', to the point where it is impossible to rigorously separate them. This problematic co-implication, present in the Greek notion of πρόσωπον, remains operative not only in the reception of the Greek into the Latin *persona*, but also, I argue, in the subsequently crafted juridical self of modern political theology — and certainly in Hobbes' *Leviathan*. And it is to Agamben's response to this co-implication that I turn presently.

Before doing so, it is necessary to make one further note about Hobbes' person in order to make clear the political horizon of this co-implicative structure. It concerns the essentiality of representation, or a 'vicariousness' to that notion of the person, which was invested deeply in both Hobbes' view of the political person and his project for its organisation. Since, in Hobbes, personation itself is acting for or representing 'the self or another', the vicariousness that comes to structure the authority and appearance of identity is permitted to permeate the structure of the political self itself. This representative mechanism is absolutely necessary to Hobbes' treatise, as it is only because of the primariness of the representability of the self (over the substance that is represented) that the Leviathan may have one of its most distinguishing and, at the same time, controversial features: it is a single 'personified' figure and not a parliamentary body corresponding proportionately to a populace (see Skinner 2005: 173;

Schmitt 1996a: 32-4; and Gamboni's (2005) discussion of composite images). Thus the Leviathan's legitimacy, and even possibility, rests for Hobbes on this feature. The 'natural' identity which is pre-supposed by Hobbes' structure, therefore, entertains a difficult relation with its own representation; fundamentally ranked behind 'representativeness' (Skinner 2005: 173), but essential to it in rhetorically guaranteeing its authority.

The political problem of representation has received many and varying treatments — especially within critical twentieth century thought of Modernity[7] — and, within this history, the work of Hobbes in particular (which Esposito has said 'opens the history of radical imminence' (1999: 82)) has left much to be discussed.[8] Even though, as Pitkin's analysis shows, the problem of representation requires the careful itemisation of its various senses and difficulties; and even though any detailed consideration of the nature and problem of representation cannot help but encompass countless other thematics; I wish to take up only a specific aspect of its legacy. It is an aspect that belongs to many traditions of juridical thought, not specifically to Hobbes, and it is more visible than ever in contemporary legal discourses of the person in general. I refer to the fact that just as in Hobbes the natural political personality is modelled on *and pre-supposed by* the artificial devices of its representation, so too does the same structure (a primary positivity or representation supported by a pre-supposed and supposedly pre-existing personal entity) characterise law's person. It is useful to reiterate this apparently trivial point — often made, for example, regarding the nature of the disembodied corporation — because of the radicality of the critique to which, I will now suggest, it is subjected by Giorgio Agamben.[9] I therefore note, briefly, a basic feature of modern thought of the legal person which traces this Hobbesian pattern. While all moderns might agree with Richard Tur's Kelsenian suggestion that '[i]f legal personality is the legal capacity to bear rights and duties, then it is itself an artificial creation of the law' (Tur 1987: 121); with the result that personality is determinative of the exercise of and participation in legal power; it is also the case that such a formal entity presupposes a relation to an independently existing life. This life, however, takes

the form of a consistent juridical entity also called the 'person' which, whether or not recognised as 'moral' as such, is certainly a stable metaphysical entity whose juridicality is again being reaffirmed by its endowment with natural rights (with or without legal recognition). Further, it is frequently supposed that such a personated life is *prior* to its reflection by the formal technics of the law (the opposite, based on our discussion above, is historically the case).[10]

Legal discourse is structured according to a positive and formal mask of personality that nevertheless relies upon the *image of* a 'flesh and blood' natural life (potentially 'without law') which underlies and animates it. No clearer example could be found than this emblematic quotation from John Thomas Noonan's (1976) *Persons and Masks of the Law* which, while acknowledging the absolute prevalence of the fictions of legal personality, fantasises about an underlying natural reality without law:

> In the making of masks lawyers have let their fiction-making capacity run amok ... masks are monsters as dangerous as those issuing from the sleep of rational rule. Masks are a type of 'human self-alienation'. Masks conceal persons. To remove the masks is to distinguish between them and the persons. By the latter I mean particular flesh and blood and consciousness (Noonan 1976: 26).

The great variety of positions on the legal subject may emphasise either the formal features of the legal subject or a natural personal substance (or 'reasonable person') lying under or within it (see, for example, Naffine 2003; Davies and Naffine 2001). But, in fact, both of these positions remain complicit in the tradition of the person which begins with the mask but in doing so posits that the mask is borne by some real-life wearer — precisely the point against which Agamben's analysis strikes.

Imago Sacer

I have noted that Agamben is concerned to critique the juridical person pre-supposed by the tradition I have outlined here. But leaving aside for a moment the critical interventions of his project, it is useful to briefly establish the role of the political mask or *persona* within the descriptive and diagnostic dimension of his writing. I argue that Agamben identifies a primacy of the personal political appearance of Hobbesian heritage (although he does so, as will be seen shortly, in order to overcome the constitutive presupposition of nature which it necessitates). There is perhaps no clearer example of Agamben's account of the importance of the *persona* as a political mask or *imago* than the crucial passage of *Homo Sacer* (1995) in which Agamben discusses Kantorowicz's famous thesis of the 'King's Two Bodies' (Agamben 1995: 91-103). As useful and important as Kantorowicz's work is for our understanding of the dual nature of political personality and the function of the image in political theology generally (see particularly Kantorowicz 1946, 1957), my intention here is not to extol the indispensability to political theology of the person-as-image generally; but rather to identify the specific and unusual approach Agamben takes to it. I therefore read Agamben's discussion, which emphasises a fundamental similarity between the apotheosis of the Roman emperors and Kantorowicz's description of the funeral rites of French kings, as notable for two principal reasons, which I will address in turn.

Firstly, it is striking that in Agamben's analysis it is precisely the *image* of the King or Emperor, theatrically tended and given ritual burial, that is the unifying, politically significant element in both the Roman and French instances of the drama of maintaining perpetual sovereign power. Agamben, insisting that 'what is decisive for understanding the whole ritual is precisely the function and nature of the image' (1995: 95), argues that the:

> … macabre and grotesque rite in which an image was first treated as a living person and then solemnly burned gestured … toward a darker and more uncertain zone … in which the political body of the king seemed to approximate — and even to become indistinguishable from — the

body of *homo sacer*, which can be killed but not sacrificed (1995: 94).

What turns out to constitute the hinge between the central, originary relation at stake in *Homo Sacer* — the fundamental relation between sovereignty and the sacredness of a bare political life conditioning every political subjectivity — is nothing other than the public or political body, which has the form of an image. After considering the funereal mask, Agamben demonstrates the commonality to all political power of this technic or device by showing that is it in fact the *image* of the *devotus* (a citizen or warrior consecrated to the gods) that is the sacrally and politically active ingredient. Initially suggesting that an analogy between the *devotus* and *homo sacer* seems only superficial (consisting in their being both consecrated to death and thus belonging to the gods), Agamben again presses home a closer relation, this time to be found in Livy. And again, it is the image as public and sacred persona which constitutes the parallel:

> If the man who has been consecrated dies, it is deemed that all is well; but if he does not die, then an image [*signum*] of him must be buried seven feet or more under the ground and a victim must be immolated in expiation. And no Roman magistrate may walk over the ground in which the image has been buried. But if he has consecrated himself ... and if he does not die, he cannot perform any rite, either public or private (Livy, in Agamben 1995: 97).

According to the guiding principles of Livy's remark, it is the representation, the image or likeness of the body (it does not matter whether living or dead), which is the part of us 'subject' to political power and is, as Agamben says, consecrated to death, separated from the 'living' (1995: 100). Since sacred life is 'isolated in the image' (1995: 101), the 'bare life' to which that image referred or represented is permitted to live on, invisibly to the gods, without the mask that guarantees it a place in political life, sacral efficacy, community, power and genealogy. It is therefore possible to remark that there could be no 'bare life' in Agamben's book without this technic of the mask or the image; in its various historical iterations as the wax figure, the colossus, the 'double', the statue, the funereal image or doll, the larvae or, as I will discuss

shortly, the *dignitas*. It is the generalised logic of these chronologically disparate material political techniques which, for Agamben, 'seems to unite, in one constellation, the body of the sovereign and the body of the devotee' (1995: 97).

The second decisive aspect of this passage is that this discussion occurs in the context of an attempt to correct a perplexing omission in the work of both Kantorowicz and, subsequently, his pupil Gisey, on a matter with direct bearing on the broader question of the relation between theology and politics. Whereas scholars had overtly related the Roman precedent to the French funeral rites, Kantorowicz excludes this possibility for the purpose, Agamben maintains, of preserving his 'thesis concerning "Christian political theology"' (Agamben 1995:94). Of course, it is important to Agamben to establish in *Homo Sacer* the generalisability of the sacred relation inherent in sovereign political power. This is an organising contention which receives important updates in more recent writings, such as the conviction that the secularised world does not escape the theological but bears its mark (Agamben 2009a: 76), and that the sacred relation survives this process and must be 'profaned' rather than simply secularised (see Agamben 2007a). Absolutely critical to grasp in this regard is that, for Agamben, it is none other than the image-mask which coheres this possibility; and in his subsequent revisions of Kantorowicz's thesis, for example in *State of Exception* and *Il Regno e la Gloria*, this aspect is emphasised in different idioms. In the former, Agamben explains that it is only because the King's power was so bound to his *person* or *personality* (as *auctoritas*, distinct from *potestas*), that the need arose to preserve it in a *dignitas* or image that does not die ('*dignitas non moratur*') (Agamben 2005a: 83); even going so far as to declare that *dignitas* is 'simply a synonym for *auctoritas*' (2005a: 83). And in the latter, Agamben revisits Kantorowicz's (1946) claims in order to declare that the glorification of power, achieved through its depiction and liturgical acclamation (this, too, with its origins in a pagan equivalent), has a constitutive and not merely descriptive function in maintaining the life of perpetual and absolute power. Thus, Agamben is able to situate glorification effected through depiction and acclamation as 'more originary — or rather,

more decisive — than the distinction between theology and politics, spiritual or profane power', it being, rather, the praxis and the empty, bodiless clothing 'in which they coincide' (Agamben 2007b: 215).

Therefore, for Agamben, the image-mask is a critical hinge in his description of the symbology of perpetual and absolute sovereign power: it not only coordinates the relation between sovereign and sacred body, but it also constitutes the tie uniting diverse historical epochs which are characterised by otherwise different forms of power. That is, the cipher of the 'mask' bears immanently within it a specific form of political relation which would need to be 'profaned' rather than simply secularised.

Dignitas

A brief mention of Agamben's most frequently deployed determination of the political persona, the *dignitas*, will help us to more overtly connect Agamben's handling of that person to the tradition which, I have suggested, is compressed into Hobbes' *Leviathan*. What is at stake is the certainty that, for Agamben, the notion of the external, visible political self is not merely some technical legal exercise that facilitates formal or procedural relations. For Agamben, who despite striking against juridico-normativity in its most pervasive forms concerns himself so very rarely with any strictly so-called 'legal' phenomena and positivities, it is the very institution and tradition of *thought*, rather than a positively distinct entity 'law', which above all accommodates and organises the sacro-juridical logics he targets.[11] This complex idea has an easily comprehensible consequence for my discussion here.

The mask of personhood carries within it a responsibility that is both moral and juridical (Agamben 2009c: 80). Simply, it is not strictly necessary to address a 'properly legal' account of legal personality in order to find a juridically structured person, since the mask of personhood itself is a device which immanently bears with it a juridical caesura and relation. This can be seen antonomastically in his account of the notion of *dignitas* which, as in the traditions with which the first

part of this paper are concerned, does not permit an easy separation between the natural person and a political artifice of personhood. For example, in *Remnants of Auschwitz*, in the course of his suggestion that existing concepts of ethics (and 'dignity') are fundamentally juridical in nature, Agamben traces *dignitas* through Roman public law's notion of rank and 'external appearance', through its spiritualisation by moral philosophy, to the point where it is made to function coterminously with the juridical person and the very figure of the human (Agamben 2002: 66-9). And, as I mentioned above, Agamben's decisive handling of the distinction between the powers of *auctoritas* and *potestas* characterises the former as coterminous with *dignitas*.

This pervasiveness of the (fleshed) person by the original mask-structure means that what is clearly present within Agamben's account is the continual identification of a theological caesura, rather than a simple *difference*, between the natural and political person. As he writes in *The End of the Poem*, after remarking on the dual sense of 'person' as both 'theatrical mask' and 'moral personality'; 'after the Fall, person and nature remain — tragically or comically — divided and will coincide again on the "last day" of the resurrection of the flesh' (Agamben 1996: 19). But this is no simple division or separation. The subject of Agamben's critique is a *double gesture* which stabilises throughout the Western tradition of theologico-philosophical constructions of the person. This gesture consists on the one hand of creating a parallel between the theatrical and the juridical, and arguing for their conflation; and on the other, in doing so, maintaining a division between the *persona* and the *natura* which is presupposed as the natural substance to which it attaches, a double gesture which founds both the juridical and moral person together (see Agamben, 2009c: 72). The Church Fathers' establishment of the metaphysical person on the notion of the mask was, after all, reliant on reference to a '*natura* that is its *subiecta* and without which it cannot subsist' (Agamben 1999: 19).

The history of the metaphor of the mask thus engenders the split in the modern subject, with a specific consequence for the figuration of a natural life said to underlie it. Glossed in *Remnants of Auschwitz*

as the 'simultaneous separation and unity of dignity and its bodily bearer' (Agamben 2002: 67), the 'person' is complicit in producing and maintaining the spectre of a nature, hiding behind the mask of *nomos*, without which the theatre of valid power would be ineffective. As such, what is operative here is the further specification of the problem of bare life: the natural life that is produced by the political relation and bound to it, but separated from it by a caesura (see Agamben 1995).

The Mask and Non-Representational Politics

In order to appreciate the subtlety of the critical move Agamben makes in response to this diagnosis, it is useful to note Hollis' affirmation with regard to the status of the mask as persona in Hobbes. Hollis (1985) remarks that the so-called natural core, the 'actor' themselves behind the mask, if there is one, is utterly inaccessible since the mask comes to stand in for the totality of the social, the system, the public, and everything legitimate. What results for Hollis is a 'Hobbesian core so private and so much at a distance from its public, legitimating masks that the real man is impenetrable, it vanishes from scientific enquiry' (Hollis 1985: 227). And it is this feature to which Agamben directs his now very familiar discussion in *Homo Sacer*: for example, when he says that 'the state of nature is ... not truly external to *nomos* but rather contains its virtuality' (Agamben 1995: 35). This aspect of Agamben's critique of the caesura within juridical thought is extremely important. It relates to another key strand in the introductory passages of *Homo Sacer*, namely, the notion that just as law presupposes 'life' or 'nature', so too 'language presupposes the non-linguistic as that with which it must maintain itself in a virtual relation' (1995: 20); thus giving rise to the negative metaphysics which binds language to death and placemarks the subject's separation from (and within) historical time.

Although structurally delicate, the departure of Agamben's critical project from Hobbes' political one is abrupt. It must be recalled that what was primary for Hobbes was the deployment of the technic device of the mask as the cipher of a split between a person's external, representable political identity, and its *ultimately unrepresentable* natural

centre. And further, that it is precisely this split which enables the political mechanism of the Leviathan to function. The technic of the mask is clearly oriented in Hobbes towards the establishment of a politically perpetual and absolute sovereign power, and for that reason it must constitute a dangerous device for Agamben, whose critical project aims not only to critique that power, but also to articulate the conditions of the *thought*, possibility and politicality of its overcoming. This commitment, like almost all important aspects of Agamben's work, undergoes many iterations across disciplinary terrains — beginning with the critique of language and negative metaphysics in *Language and Death* (1991) and *Infancy and History* (2007c). While this problematic cannot be discussed in any detail here, the argument I offer regarding Agamben's approach to the 'mask' is an example (rather than an explanation) of Agamben's particular non-representational approach. In order to grasp this argument it is worth recalling Agamben's attempt to articulate a conception of politics that does not entail a notion of representation.[12] In *The Coming Community* (1993a) and *Means Without End* (2000) particularly, Agamben affirms that to found a community on the 'representable' predicates of its members (members hitherto split by the caesura seen in Hobbes) only ensures the political community's constitution by a negative and exclusionary semiotic logic of difference and similitude which does not address the originary human *ethos* and capacity for politics. Agamben, therefore, emphasises the need for a non-identitarian political belonging or community and attempts to articulate politics as a question of our ability to 'form a community without claiming an identity', thus affirming that 'human beings co-belong without a representable condition of belonging'.

For these reasons, it is perhaps surprising to read Agamben's account of the legacy of comedy left to Italian culture by Dante in *The End of the Poem* (1996), which was published after *Homo Sacer* and only a couple of years before *Remnants of Auschwitz*'s account of *dignitas*, person, and the theatrical mask. It is there that Agamben outlines the Stoic critique of tragedy and remarks that, for the Stoics, only a truly tragic person would make the error of confusing themselves, their identity, with the mask they have been assigned by fate. As he describes, for Epictetus

'the wise man is instead the one who, accepting without discussion whatever "mask" has been assigned to him by fate, *represents* his part and thereby refuses to identify with it' (Agamben 1999: 17-18). A basis for virtue in Stoic thought thus emerges from the acceptance of one's 'role' and, at the same time, the holding apart of one's natural person (however conceived) from the political person (see Agamben 2009c: 73). But however logical and tempting it might seem, on the basis of Agamben's thoroughgoing critique of the confusion of artifice and nature in Hobbes, it must not be supposed that Agamben endorses this 'holding apart' in an attempt to mirror the Stoics' safe and cynical distance from the technic of the mask. The Stoic position does not neutralise (or 'profane') the technic at issue. On the contrary, it was only because of this distance that something like a moral personality could emerge, a category which Agamben regards as the 'power that furnishes criteria for action and that remains superior to all the possible acts it can produce' (1999: 18). For Agamben, a conscious, cynical, Stoic distance from the mask (dependent as it must be on precisely the institution of thought which is pervaded by a juridical heritage) is only emblematic of the two poles of that moral personhood — a personhood which was always constituted 'through an adhesion, and at the same time, a disjuncture with respect to the social mask' (2009c: 73). In fact, I will now argue that Agamben ought to be regarded as undertaking the gesture precisely opposing that of the Stoics; which is to say, paradoxically *not* negating, nor taking a distance from, the very technic of the mask which enabled the formation of the juridical person to begin with.

'Be only your face'

First of all, it is instructive to look at the fate which Agamben allocates to *dignitas* in the 'camp'. Since, as is well-known, the camp is for Agamben the paradigmatic example of the coextensivity of the juridical norm with modern political space, the fate of *dignitas* in the camp is significant for Agamben's approach to it generally. Whereas *dignitas*, as we have seen, borrows the foundational metaphor of a mask concealing

a separate natural person and incorporates it as a spectral faultline in modern ethical subjectivity, Agamben argues that this binds the moral notion of human dignity to an external political appearance and a concomitantly structured (and presupposed) 'humanness'. So, according to Agamben, everything resembling 'human dignity' as a 'humane' and 'dignified' treatment and experience of the person is precisely what is lost (and yet 'witnessed') in Auschwitz. As he remarks, in a manner which clearly poses a bond between the thought of ethical standards and the thought and positivity of normative juridical structures, 'Auschwitz marks the end and the ruin of every ethics of dignity and conformity to a norm' (2002: 69). As such, for Agamben, any 'good' that the camp's survivors are able to 'save from the camp' is 'therefore not dignity'. It must not be thought, however, that the loss of the image of dignity means that there is revealed a true kernel of natural life underneath. Such a life is only the bare life that *dignity* creates, which is structured and implicated, as we have seen, juridically. What is at stake is actually the disappearance of both this figure of bare life and dignity together:

> … in extreme situations ... it is not possible to maintain even the slightest distance between real person and model, between life and norm. And this is not because *life or the norm*, the *internal or the external*, in turn takes the upper hand. It is rather because they are *inseparable at every point* (Agamben 2002: 69, italics added).

The fusion of juridico-normal and personal life — and of everything *internal* (unrepresentable) and *external* (predicable), at the moment of its terrible and perfect fusion — consumes the image-*dignitas* which created the poles of its caesura and is converted into a 'form-of-life'. For this reason, as well as being a destruction of all notions structuring ethical life as hitherto thought, it is also a kind of new and uncertain possible ground for an ethical life conceived apart from *dignitas*, which Agamben suggests would be the precondition of a more originary human *ethos* and political existence (Agamben 2002: 69). While Agamben's account of the possibility of this non-juridical ethical life is well known, my particular concern is to demonstrate that it consists precisely in the possibility of this fusion (not separation) of appearance

and person; politico-legal mask and natural being. I therefore turn to key moments within his work where such a fusion is attempted.

Chief among these is found in *Means Without End* (2000), in which Agamben's essay on 'the face' (which was originally published in the same year as *Homo Sacer*) presents, I argue, an attempt to disable the juridical (and Hobbesian) 'personal' split between the internal and external;[13] a communicable, representable, social and external image-identity on the one hand, and an unsayable, unrepresentable, private, natural and internal self on the other (Agamben 2000: 91-100). In arguing that the face is actually only the cipher of the appropriation of the living being by means of (juridical) language, Agamben casts the face as at once a kind of extreme 'zero-point' of the capture and presupposition of the natural being by the linguistic structures of signification and, at the same time, a potentially transformative *exposure* of that process. Thus, the face, the appearance of the person, functions as an ambivalent location for two paradigms of politics. And for Agamben, this exposure to language and to politics is capable of engendering a political life more originary than one premised on any *representable* predicate within our identities — a basis critiqued also in *The Coming Community* (see Agamben 1993a: 1). As he remarks, 'that which in single individuals opens up to the political is the tragicomedy of truth' (2000: 91).

This reference to the tragic and comic masks is not trivial. It was always the mask that coordinated the external-internal caesura between *persona* and *natura* which marks representable-unrepresentable personated life; and the face (since every identity is for Agamben a mask) is also the threshold between these two poles. This very threshold is the point of collapse between personated and natural life; the point at which one's internal qualities or 'predicates' interface with the world; the 'threshold of de-propriation and of de-identification of all manners and of all qualities — a threshold in which only the latter become purely communicable' (Agamben 2000: 100). This is why he exhorts us to dwell, somehow, where nothing in us can be predicated: 'Be only your face,' he writes, 'Go to the threshold. Do not remain the subjects of

your properties or faculties, do not stay beneath them: rather, go with them, in them, beyond them' (Agamben 2000: 100).

Agamben therefore begins from the point, which we identified in Hobbes, of a primary confusion between nature and art, between the *guise* and the *disguise*; between the genuine person and the artificial or represented one. But whereas Hobbes, pursuing a politics of representation, could at no cost follow through on the potential erasure of the object of representation — the 'natural self' or 'natural life' which is necessary to make sense of and validate the economy of representations — Agamben undertakes precisely this move. Whereas the modern positivist conception of the subject, however formal, repeats the gesture of a separation between mask and wearer, image and natural referent, Agamben – passing *through* that conception – attempts their dissolution. The problem with the instituted juridical metaphor of the mask, Agamben seems to suggest, is precisely that it is only metaphorical, thus concealing the fact that the mask, the appearance, is the only self.

What I wish to suggest is that Agamben's strategy — rather than insisting on the sanctity of a space away from representability — is to 'appropriate this appropriation' and situate life within it, thus engendering a genuine inseparability of person and appearance, inside and outside, in which a person is *only* their face, only their mask, only their image.

Ruin: Perfection / Collapse

If the mask has served as the cipher of a subject split between an external, social and political self and a presupposed internal, natural substance (bare life), and if that split becomes a practically invisible caesura guaranteeing a politicality premised on representation and representability, then I suggest that Agamben's strategy is to work towards the *perfection* of the mask technic, so that any underlying natural substance may no longer be separated from the mask or political *imago*. And if Hobbes had proposed an indistinction between the artifice and

naturalness of the human which guaranteed the primacy of political representation, then Agamben emphasises that indistinction to its 'zero degree', to the point of the wholesale preclusion of the 'natural' which inheres in the duality of that distinction. This of course would amount to the overcoming of the very possibility of a public and private sphere, which is the aim of Agamben's notion of a 'form-of-life' as a 'being that is only its own bare existence and ... being only its form, remains inseparable from it' (Agamben 1995: 188). This undoubtedly means, for Agamben, that a thoroughgoing critique of political representation is one in which natural life and its 'representation' are inseparable, collapsed into a 'form'. What begins to 'disappear' in Hollis' Hobbes are not the techniques and modes of appearance, but the 'natural substance' which Agamben argues is actually already invisible, intangible, 'pre-supposed' and, in fact, *produced* by normative and juridical processes. Agamben pursues this disappearance, actively arguing for the de-substantialisation of the person and its transformation into, precisely, a species of image (see 'Special Being' in *Profanations* (2007a)), as the legal subject is, *imperfectly*, already.

This de-substantialisation reaches an apotheosis in the new technics of the person as biometric image. Agamben's recent discussion of biometrics proposes that such new technologies radically alter the basis on which we are known socially: no longer through a function of the *persona*, but rather on the basis of an image of something purely biological (which corresponds to the making of bare life itself into the political subject) (2009c: 77). Pursuing the evolution of the political person along an inarrestibly governmental trajectory of political power, Agamben suggests that the latest biometric technics of identity produce an 'identity without person' (2009c: 79).

Just as it did in Auschwitz, for Agamben modern politics ushers in the destruction of the person and, along with it, 'the space of ethics of which we were used to conceiving', which now 'loses its sense and must be re-thought from the very beginning' (2009c: 79-80). But importantly, for Agamben this destruction is also a 'liberation from the weight of the person' (80) and the juridico-morality of its brand

of ethics. As such, this destruction offers a kind of escape from law's juridicality towards an uncertain and inexorable future which is, for now, governmental in nature. It is through this future, not in its resistance, that the liberation from 'personal' ethics lies. Consistently with Agamben's well-known political stance on the politics of the spectacle and expropriation (see Agamben 2000), he suggests that since these governmental technics offer no means of return from this condition, 'we must prepare ourselves without hope nor recrimination for the search beyond both personal identity and identity without *persona*' (82). As such, it is my argument that Agamben's approach is distinct from both contemporary moral philosophical discourses which attempt to revive an ethical possibility by 'deepening the self',[14] and critical legal approaches which would attempt to resist the artificiality of the legal person — or reinvest its responsibility — by thinking it from the direction of the flesh.[15]

It is difficult to disagree with the idea that Agamben's political project (which aims to critique the very 'power for action' as riddled with juridicality) disables, displaces, or even critiques the kind of concrete political 'action for change' that typically passes for political engagement. Certainly his work is deliberately without something like a positive political program. But by foregrounding the question of Agamben's orientation to the specific material technics of thought that are at stake in rethinking the political, it is possible to understand something like a strategy which he puts into play. Specifically, if I am correct that Agamben's work paradoxically *perfects* the representation of the person effected by the mask-metaphor, thus becoming syncretic with the natural person and disabling the possibility of the 'separation', presupposition, representation of that naturalness, then what we must be prepared to identify in Agamben is actually the delicate achievement of a new separation. Not, this time, of the person's externalities from its presupposed internal life; but, rather, of the juridical relation from the specific legal technics which engendered it in the first place — a separation that enables the pitting of the latter against the former.

The *perfection* of the legal technic of the political image-person

against its tradition is also, actually, an attempt to 'hollow out' the juridical thought-institution that supports it, thus effecting its collapse. Perfection and collapse, perfection and ruin: the ruin of law's traditions is for Agamben something that comes into view only in the very moment of their zenith, the era of the *nomos* of the earth in which the most imperfect formalisation of the person is in effect.

It would therefore be distinctly possible to view Agamben's separation of juridical thought from law, in his treatment of the juridical technic of the mask, as a concrete example of the enigmatic notion of 'neutralizing the partitions of the law' which he finds in St Paul (Agamben 2005b: 48). Here on the fundamental ground of the political category of the person, I argue that Agamben attempts the perfection and collapse of that juridical person by means of a *new use* of its very own technic of the mask, as refined and pushed to an extreme by modern law. Agamben's further, extreme development of this structure bequeathed by law attempts to effect the conditions for a fulfilment of the legal tradition. Which is to say, he attempts both to fulfil law *and set it aside*, and thus *ruin* it, rendering it inoperative.

Notes

1   The author would like to thank Marett Leiboff for her voice, flexibility, patience and encouragement, Shaun McVeigh for forcing upon me the weight of tradition, Timothy Campbell for useful reference suggestions on an earlier version, two anonymous referees for their helpful remarks, Peter Rush, and Annee Lawrence. Of course, all errors, strategic miscalculations, and many omissions, remain mine.

2   Perhaps the most urgent reference for such a reading would be Roberto Esposito's (2007) *Terza Persona: Politica della vita e filosofia dell'impersonale*, which poses the 'person' as a *dispositif* which organises and limits life, but also the much earlier *Categorie dell'Impolitico* (1999), as Timothy Campbell's explanatory essay suggests. Campbell's (2008) essay also highlights the significance to Esposito of the contemporary philosophy of technics, through interpretations of Heidegger (most notably by Bernard Stiegler, in *Technics and Time*, through Rousseau rather than Hobbes, both

of whom are united in *Categorie dell'Impolitico*). It is in this sense that I use the word 'technic'.

3   A similar orientation can be found in Agamben's investigation of Foucault's term *dispositif* (see Agamben 2009b) especially taken in conjunction with the extended analysis of the *oikonomia* of government in *Il Regno e la Gloria*.

4   As does Nicholas Heron in his essay 'The Ungovernable' (forthcoming 2011)

5   This is a guiding aim of Esposito's *Categorie dell'Impolitico*; but see also Carlo Galli's discussion of Jean-Luc Nancy in *Spazi Politici* (163-4).

6   See Campbell 2008: 3

7   For an indication of the depth, breadth and significance of these, see Esposito's *Categorie dell'Impolitico* (1999) which handles in detail many of the twentieth century's most important considerations of the political problem of representation, with particular reference to the German Catholic tradition.

8   For discussions and considerations of Hobbes' political philosophy of representation, see Skinner (2005), Schmitt (1996a) and to a less direct but equally thematically powerful extent (1996b), Pitkin (1967), and on Schmitt's theory of representation, taking in his reading of Hobbes, Kelly (2004), as well as Esposito (1999).

9   While I address this question here only in terms of Agamben's strategy for approaching the 'person', the general problem of overcoming the presuppositional structure of language and politics is an old and germane question in Agamben's work. See the essays on language in Agamben (1999) and Daniel Heller-Roazen's introduction to that volume.

10 For a very different (liberal humanist) approach which nevertheless traces law's function in cohering the human person through biological and symbolic dimensions, see Supiot (2007).

11 The title of the Italian volume of essays roughly equivalent to *Potentialities* emblematises this point: *La Potenza del Pensiero* (The Power of Thought). While this idea is taken up and developed in many ways within Agamben's work, a useful summary of its application here may be borrowed from Alex Murray and Thanos Zartaloudis' introduction, itself titled 'The Power of Thought', to a recent edition of *Law and Critique*: 'One of the key problems in legal theories of late modernity … is the juridification of thought as such. In such juridification the model of thought becomes judgment and

a legal understanding of responsibility' (2009: 208). One of Agamben's concerns is to demonstrate the capture of thought within a negatively grounded metaphysical structure and corresponding condition of language of which, we could say, 'law' is perhaps best conceived as a symptom.

12 A specific gesture in response to the notion of representation can be said to stabilise throughout Agamben's work, and the argument I offer in this paper is an example rather than an explanation of it. An important iteration of it comes from the introduction to *Stanzas* (1993b), where Agamben construes the implicit Platonic split between poetry and philosophy as meaning that 'poetry possesses its object without knowing while philosophy knows its object without possessing it'. Posing Benjaminian 'criticism' against these options, Agamben says that the critic 'neither represents nor knows, but knows the representation' (xvii). This culminates in *Stanzas* in a critique and displacement of signification, which demarcates an important but far from unique or isolated *topos* of Agamben's reconfiguration of the question of representation (a current which runs through all of Agamben's works without exception).

13 It is a striking feature of even — or especially — the most sophisticated accounts of legal subjectivity from more or less within the legal academy, that what is continually at issue is the possibility, and specific manner, of accounting for or mediating the relation between the 'inside' and 'outside' of the subject as a species of mask. See, for example, Goodrich (1991).

14 See Haines (1998)

15 For an interesting and erudite approach in this vein, and a different use of Agamben, see Mohr (2007) and Mohr (2008).

References

Adamson J et al 1998 *Renegotiating Ethics in Literature, Philosophy and Theory* Cambridge University Press Cambridge

Agamben G 1991 *Language and Death: The Place of Negativity* Trans Karen E Pinkus with Michael Hardt University of Minnesota Press Minneapolis

— 1993a *The Coming Community* Trans Michael Hardt Regents of the University of Minnesota Minneapolis

— 1993b *Stanzas: Word and Phantasm in Western Culture* Trans Ronald L Martinez University of Minnesota Press Minneapolis

— 1995 *Homo Sacer* Trans Daniel Heller-Roazen Standford University Press Standford

— 1996 *The End of the Poem: Studies in Poetics* Trans Daniel Heller-Roazen Stanford University Press Stanford

— 1999 *Potentialities* Ed and Trans Daniel Heller-Roazen Stanford University Press Stanford

— 2000 *Means Without End* Trans Vincezo Binetti and Cesare Casarino University of Minnesota Press Minneapolis

— 2002 *Remnants of Auschwitz* Trans Daniel Heller-Roazen Zone Books New York

— 2005a *State of Exception* Trans Kevin Attell University of Chicago Press Chicago

— 2005b *The Time That Remains* Stanford University Press Stanford

— 2007a *Profanations* Trans Jeff Fort Zone Books New York

— 2007b *Il Regno e la Gloria* Neri Pozza Milan

— 2007c *Infancy and History* Verso London

— 2009a *The Signature of All Things: On Method* Trans Luca D'Isanto with Kevin Attell Zone Books New York

— 2009b *What is an Apparatus* Trans Luca David Kishik and Stefan Pedatella Stanford University Press Stanford

— 2009c *Nudità* Nottetempo Roma

Burchell D 1998 'Civic Personae: MacIntyre, Cicero and Moral Personality' *History of Political Thought* XIX/1: 101-18

Campbell T 2008 'Foucault Was Not a Person: Idolatry and the Impersonal in Roberto Esposito's *Third Person*' available online at http://www.biopolitica. cl/docs/Campbell_idolatry_and_the_impersonal.pdf as at September 2010

Carrithers M et al eds 1985 *The Category of the Person* Cambridge University Press Cambridge

Davies M and Naffine N 2001 *Are Persons Property? Legal Debates about Property and Personality* Ashgate Publishing Company Burlington

Esposito R 1999 *Categorie dell'Impolitico* Il Mulino Bologna

— 2007 *Terza persona: Politica della vita e filosofia dell'impersonale* Einaudi Torino

Gamboni D 2005 'Composing the Body Politic' in Latour and Weibel 2005: 162-95

Galli C 2001 *Spazi Politici* Il Mulino Bologna

Goodrich P 1991 'Eating Law: Commons, Common Land, Common Law' *Journal of Legal History* 12: 246

Haines S 1998 'Deepening the Self' in Adamson et al 1998: 21-38

Heron N (forthcoming 2011) *Angelaki*

Hobbes T 1968 *Leviathan* Penguin London

Hollis M 1985 'Of Masks and Men' in Carrithers et al 1985: 217-33

Kantorowicz E 1946 *Laudes Regiae: A Study in Liturgical Acclamations and Medieval Ruler Worship* University of California Press Berkeley

— 1957 *The King's Two Bodies* Princeton University Press Princeton

Kelly D 2004 'Carl Schmitt's Political Theory of Representation' *Journal of the History of Ideas* 65/1: 113-34

Latour B and Weibel P 2005 *Making Things Public: Atmospheres of Democracy* MIT Press Cambridge

Mauss M 1985 'A Category of the Human Mind: The Notion of Person; The Notion of Self' in Carrithers et al 1985:1-25

Mohr R 2007 'Identity Crisis: Judgment and the Hollow Legal Subject' *Law Text Culture* 11: 106-28

— 2008 'Flesh and the Person' *Australian Feminist Law Review* 29: 31-52

Murray A and Zartaloudis T 2009 'The Power of Thought' *Law and Critique* 20: 207-10

Naffine N 2003 'Who Are Law's Persons? From Cheshire Cats to Responsible Subjects' *The Modern Law Review* 66/3: 346-67

Noonan J 1976 *Persons and Masks of the Law* McGraw-Hill Ryerson Toronto

Peacocke A and Gillett G 1987 *Persons and Personality* Basil Blackwell New York

Pitkin H 1967 *The Concept of Representation* University of California Press Berkeley

Schmitt C 1996a *The Leviathan in the State Theory of Thomas Hobbes: The Meaning and Failure of a Political Symbol* Trans George Schwab and Erna Hilfstein University of Chicago Press Chicago

— 1996b *Roman Catholicism and Political Form* Trans G L Ulmen Greenwood Press Westport

Skinner Q 2005 'Hobbes on Representation' *European Journal of Philosophy* 13/2: 155-84

Stiegler B 1994 *Technics and Time, 1: The Fault of Epimetheus* Stanford University Press Stanford

Supiot A 2007 *Homo Juridicus: On the Anthropological Function of the Law* Trans Saskia Brown Verso London

Tur R 1987 'The "Person" In Law' in Peacock and Gillett 1987: 116-29