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POSTHUMANISM: Challenges for Contemporary Legal and Social Theories

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Contents

Volume VII | *ISSN: 2582-1903* | April 2024 - March 2025

Special Article *Page*

1. AI GENERATED EVIDENCE BROUGHT BEFORE EUROPEAN COURTS: Further Activation of Evidence Law, Defence Rights, and Human Oversight Needed
   Paul De Hert & Georgios Bouchagiar 1

Articles

2. 'ONE NATION ONE ELECTION': A Juridical Critique of the Constitution (One Hundred and Twenty-Ninth Amendment) Bill, 2024 41
   Virendra Kumar
3. ELECTORAL HARMONY AND CONSTITUTIONAL BALANCE: A Constitutional and Theoretical Analyses of India's Quest for One Nation One Election 65
   Tamesh Kumar Pandey & Priti Saxena
4. THE ELECTION COMMISSIONERS' APPOINTMENT ACT, 2023: Fulfilment of a Constitutional Expectation or a Device to Maintain the Status Quo? 92
   Monica Chaudhary
5. LAW AS THE ONTOLOGY OF 'ONE' AND 'CONSTITUTIONAL REASON': India's 'One Nation One Election' Plan, Democracy, Federalism, and Electoral Justice 128
   Chanchal Kumar Singh & Mritunjay Kumar
6. EFFICACY OF SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION, AND REDRESSAL) ACT, 2013: A Critical Analysis 213
   Aayush Raj
7. POSTHUMANISM: Challenges for Contemporary Legal and Social Theories 244
   Chanchal Sharma
8. BEYOND THE UNIFORM CIVIL CODE DEBATE: Critiquing Goa's Succession Law 262
   Shukr Usgaokar

9. INDIA'S DECRIMINALISATION POLICY: The Past, Present, and Future of Governance, Risk Management, and Compliance under the Companies Act, 2013
Harpreet Kaur 293

Notes and Comments

10. ARTIFICIAL INTELLIGENCE INVENTIONS AND THEIR PATENTABILITY
Anita Yadav & Rabikant Pandey 312

11. 75 YEARS OF THE PRACTICE OF EXTRADITION LAWS IN INDIA: Evolution, Expectations, and Realities
Namita Vashishtha & Shourie Anand Singh 338

12. *IN RE:* SECTION 6A OF THE CITIZENSHIP AMENDMENT ACT, 1955: A Comment
Muskan & Prachi 370

13. RIGHTS AND ENTITLEMENTS: A Commentary on Chapter II of the RPwD Act, 2016
Ashpinder kaur & Rimjim Kheda 380

14. FISCAL FEDERALISM FROM PYRAMID TO MATRIX: An Analysis of the Supreme Court Judgment in *Mineral Area Development Authority* v. *Steel Authority of India* (2024 S.C.C. OnLine S.C. 1796)
Arya Kumari 394

POSTHUMANISM:
Challenges for Legal and Social Theories

Chanchal Sharma[*]

[Abstract: *Jurisprudence has essentially been anthropocentric i.e. its archetypal subject has always been human. Yet the very idea of human, has been challenged since its inception, and is now facing even more scrutiny owing to the contemporary developments in technology, ecology, and critical theories. This has given rise to 'Posthumanism' which unsettles the foundational categories of Law, notably personhood, truth, reality, law and rights etc. From enhanced humans and intelligent machines to rivers, ecosystems, and non-human animals being declared subjects of rights, and with long-standing critiques emerging from women and other marginalized groups excluded by the 'universal human'- the juridical landscape now hosts entities that defy the classical anthropocentric model. The substance of this paper is an analysis of the tensions between anthropocentric jurisprudence and emerging posthuman legal realities, and an exploration of what may lie ahead for posthumanism.*]

I

Introduction

What does it mean to be a *human*? Who counts as a *person*? What is cognition, recognition and perception? Who is entitled to *rights*, *dignity*, and *legal recognition*, and who is left outside the frame? How do one know what is reality and progress towards truth(s)? These questions, treated by many, as commonsensical or self-evident, have never been unproblematic for social theory. The very boundaries that once defined the "human" are destabilizing. Bodies are fused with machines, consciousness is interacting with code, and legal systems are increasingly confronting entities, existing and new, that would be impossible to fit into the established anthropocentric categories. Today, a "person" may be a river, a corporation, a great ape, a cryopreserved embryo, or even a humanoid robot, and these are not hypotheticals, but legal realities that have unfolded across the (social) sciences.

But did the boundaries that once defined human actually, define human? The long-standing anthropocentric tradition in law-shaped around a rational, able-bodied,

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Western male archetype has constantly been under intense scrutiny. Feminists have accused anthropocentrists of their "universal human" historically excluding women; subaltern and critical race theories have revealed how racialized bodies were denied full personhood; and disability studies have questioned the normativity of the "able" body or the "*ablist fetishism*". And now, technological enhancement pushes these critiques further. Is a person with a prosthetic leg, an AI-enabled pacemaker, or a cognitive microchip (all of which enable him to function more efficiently as compared to a so-called human) still a "human"? As per Nick Bostrom, he would be a posthuman.[1] The case of Oscar Pistorius, celebrated and contested for competing with carbon-fiber blades, illustrates how technological augmentation unsettles our assumptions about human ability and legal identity.

Contemporary society has facilitated the creation of networks of relationships between humans, animals and objects that are denser than ever before.[2] In this era of biological, technological, and moral hybridity, jurisprudence finds itself in a state of profound challenge. Traditional anthropocentrism - with its faith in fixed identities and the human as the unquestioned center of law is increasingly failing to capture the complexity of contemporary legal realities. The posthuman turn, demands that the law confront forms of existence that occupy the blurry spaces between the human and the non-human.

This paper critically examines anthropocentric ways of doing law and legal theory in light of these posthuman challenges, and interrogates shifting notions of personhood, the legal questions posed by technologically enhanced bodies, and the inclusion of non-human entities within the sphere of rights. Finally, it tries to expound on the question whether jurisprudence must move toward a renewed, ethically grounded humanism-one capable of responding to the fluid and hybrid ontologies of the posthuman age.

II

What is Anthropocentric Jurisprudence

Anthropocentrism is the belief that the human being exists at the center of existence.[3] It is one of the most dominant responses to the ancient question of the human being's role and place in existence, both in terms of the length of its history and the number of sources through which it has found expression.[4] Aristotle, for example,

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1 Nick Bostrom, *Why I Want to Be a Posthuman When I Grow Up* in MEDICAL ENHANCEMENT AND POSTHUMANITY 107 (Bert Gordijn & Ruth Chadwick eds., 2009).

2 Ian Hodder, ENTANGLED: AN ARCHAEOLOGY OF THE RELATIONSHIPS BETWEEN HUMANS AND THINGS (2012). See also: Guillermo Díaz de Liaño & Manuel Fernández-Götz, *Posthumanism, New Humanism and Beyond* 31 CAMB. ARCHAEOL. J. 543 (2021).

3 Gavin Rae, *Anthropocentrism* in ENCYCLOPEDIA OF GLOBAL BIOETHICS (H. ten Have ed., 2014).

4 *Id.*

maintained that "all animals must have been made by nature for the sake of man",[5] thereby securing a privileged place and role for the human in opposition to a downgraded nonhuman world.[6]

The celebrated work, '*The Wisdom of Our Ancestors: Conservative Humanism and the Western Tradition*', call humanism – '*The* Western idea, as the special European concern with the problem of man, his inherent dignity and status as a rational and moral being, has been a continuous focus of western civilization from its birth to present.[7] The book expound on the question of "the meaning of conservatism, as the world is increasingly marked by the growing opposition between liberalism and nationalism, and more and more conservatives are themselves dividing along the line separating these two camps.[8] The authors argue that conservative humanism, when understood in the full light of Western thought, is built on the trinity of religion, family, and education.[9] These institutions are rooted in our relational personhood and should elicit from people a noble and dignified life, one where we live well with our freedom. Conservative humanism recognizes these institutions and guarantees them because they are necessary to civilization itself. Other goods are also of significance, such as establishments, i.e., the need for professions, ceremony, honors, forms of behavior and dress.[10]

Rozi Braidotti in her book, '*The Posthuman'*, says "at the start of it all there is *He*: the classical ideal of 'Man', formulated first by Protagoras as 'the measure of all things', later renewed in the Italian Renaissance as a universal model and represented in Leonardo da Vinci's Vitruvian Man…. Faith in the unique, self-regulating and intrinsically moral powers of human reason forms an integral part of this high-humanistic creed."[11] The author, further observes, that, there are in fact many humanisms and her own itinerary, generationally and geo-politically, struggles essentially with one specific genealogical line: "the romantic and positivistic humanisms through which the European bourgeoisies established their hegemonies over (modernity), the revolutionary humanism that shook the world and the liberal humanism that sought to tame it, the humanism of the Nazis and the humanisms of their victims and opponents, the anti-humanist humanism of Heidegger and the

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5 *See,* Aristotle, POLITICS Book I, Ch.8 (Ernest Baker trans., 2009).

6 *Id.*

7 Graham James McAleer *et. al.,* THE WISDOM OF OUR ANCESTORS: CONSERVATIVE HUMANISM AND THE WESTERN TRADITION (2023).

8 *Id.*

9 *Id.*

10 Richard M. Reinsch II, *On a Conservative Humanism* 34 RELIG. & LIB.NO. 1 (2024).

11 Rosi Braidotti, THE POSTHUMAN 13 (2013). See also Francesca Ferrando, *Posthumanism, transhumanism, antihumanism, metahumanism, and new materialisms: differences and relations* 8(2) EXISTENZ 26 (2013).

humanist anti-humanism of Foucault and Althusser, the secularist humanism of Huxley and Dawkins or the posthumanism of Gibson and Haraway.[12]

Ian Hodder, in his work, '*Entangled: An Archaeology of the Relationships Between Humans and Things',* remarks that, the diverse approaches to things, for the most part, explore what things can do for humans in society… each approach or study takes one aspect of a thing – its symbolism or the labor needed to produce it or its shiny attractiveness or its efficiency in killing an animal or its material links to actor networks'. As social actors we tend to see things in ego-centered ways, in terms of what they can do for us.[13]

Francesca Ferrando holds the views, that, "in the West, the human has been historically posed in a hierarchical scale to the non-human realm.[14] Such a symbolic structure, based on a human exceptionalism well depicted in the Great Chain of Being,[15] has not only sustained the primacy of humans over nonhuman animals, but it has also (in)formed the human realm itself, with sexist, racist, classist, homophobic, and ethnocentric presumptions."[16]

It can be said, therefore, that, an anthropocentric outlook has been a predominant thought in the trajectory of social theory and philosophy. Law, ethics, and political theory have been, all, built around the idea that human beings exist at the center of all existence. We assert our attachment to the species (human) as if it were a matter of fact, 'the given'. So much so that we construct a fundamental notion of rights, in legal philosophy, around this human.[17] Anna Grear rightly says, 'law is essentially anthropocentric: "anthropos is in a very real sense, the quintessential European (and then 'Western') subject, and, accordingly, also law's archetypical subject."[18]

III

Posthumanism and the Post Human

Posthumanism is not a homogenous concept, but rather an 'umbrella' term that encompasses a variety of approaches and schools of thought, which have in

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[12] See: Tony Davies, HUMANISM (1997).

[13] Ian Hodder, ENTANGLED: AN ARCHAEOLOGY OF THE RELATIONSHIPS BETWEEN HUMANS AND THINGS (2012).

[14] Francesca Ferrando, *Posthumanism, transhumanism, antihumanism, metahumanism, and new materialisms: differences and relations* 8(2) EXISTENZ 26 (2013).

[15] *Id*. See also: Arthur O. Lovejoy, THE GREAT CHAIN OF BEING: A STUDY OF THE HISTORY OF AN IDEA (1936).

[16] *Supra* 13.

[17] Rosi Braidotti, THE POSTHUMAN 1 (2013).

[18] Anna Grear, '*Anthropocene, Capitalocene, Chthulucene': Re-encountering Environmental Law and Its 'Subject' with Haraway and New Materialism* in ENVIRONMENTAL LAW AND GOVERNANCE FOR THE ANTHROPOCENE 86 (Louis Kotzé ed., 2017).

common the rejection of, hitherto, dominant humanism.[19] It started as an attempt to chart the ways in which the human/machine division inherent to Cartesian thinking simply misunderstood the entwined nature of the human/nonhuman and subsequently extended its focus to challenge the logic of binary oppositions upon which anthropocentrism rests.[20]

By the end of the 1990s posthumanism developed into a more philosophically focused inquiry (now referred to as philosophical posthumanism), in a comprehensive attempt to re-access each field of philosophical investigation through a newly gained awareness of the limits of previous anthropocentric and humanistic assumptions.[21] Posthumanism is often defined as a posthumanism and a post-anthropocentrism:[22] it is "post" to the concept of the human and to the historical occurrence of humanism, both based, as we have previously seen, on hierarchical social constructs and humancentric conventional suppositions.[23]

Gavin Rae identifies four distinct historical sources of Posthumanism:

a) the death of man thesis which posits that the human, understood in anthropocentric terms, is a consequence of a particular epistemological formation that is now coming to an end,
b) the recognition that humans are not distinct from the environment but are entwined with a world that is increasingly technological,
c) the recognition that the human environment is not singular but is composed of many others (animals and technology being the main two), and
d) the conclusion that the rational, individuated human of anthropocentrism must be thought in terms of its embedded, entwined relationship to a range of others. The unifying force that brings coherence to posthumanist theory is the perception that anthropocentrism is based on unwarranted and unjustifiable binary oppositions between a "pure" human and "impure" others.[24]

Posthumanism can be understood in two senses. f*irstly*, it can be understood in terms of the key technological developments such as AI, robotics, biotechnology, cyborgs, digital consciousness, genetic engineering, brain-computer interfaces which have posed definite legal challenges such as personhood, agency, liability, rights of AI. *Secondly*, posthumanism can be understood in the terms of ideologies associated with it, including (philosophical, cultural, and critical) posthumanism,

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[19] Guillermo Díaz de Liaño & Manuel Fernández-Götz, *Posthumanism, New Humanism and Beyond* 31 CAMB. ARCHAEOL. J. 543 (2021). See also: Rosi Braidotti, THE POSTHUMAN (2013).

[20] Gavin Rae, *Anthropocentrism* in ENCYCLOPEDIA OF GLOBAL BIOETHICS (H. ten Have ed., 2014).

[21] Francesca Ferrando, *Posthumanism, transhumanism, antihumanism, metahumanism, and new materialisms: differences and relations* 8(2) EXISTENZ 26 (2013).

[22] See Rosi Braidotti, THE POSTHUMAN (2013).

[23] *Supra* 20.

[24] Gavin Rae, *Anthropocentrism* in ENCYCLOPEDIA OF GLOBAL BIOETHICS (H. ten Have ed., 2014).

transhumanism (in its variants as *extropianism*, liberal and democratic transhumanism, among other currents), new materialisms (a specific feminist development within the posthumanist frame), and the heterogeneous landscapes of anti-humanism, posthumanities, and metahumanities.[25]

Within archaeology, posthumanist approaches include, but are not limited to, new materialism, symmetrical approaches and the ontological turn.[26] Most of them have rejected conventional Western metaphysics[27] and their hierarchical ontologies, proposing instead the use of flat ones with no aprioristic assumptions; among the alternatives, those following object-oriented ontologies[28] and actor-network theory-inspired models[29] enjoy a prominent place. New materialisms portray a world which is understood as in motion, full of inherent vibrancy, inspired by concepts such as 'vital materiality' or 'vibrant matter and energy flows.'[30]

Ferrando defines posthumanism 'as a philosophy which provides a suitable way of departure to think in relational and multi-layered ways, expanding the focus to the non-human realm in postdualistic, post-hierarchical modes, thus allowing one to envision posthuman futures which will radically stretch the boundaries of human imagination'.[31] Posthumanism does not turn technology into its main focus, which would reduce its own theoretical attempt to a form of essentialism and techno-reductionism.[32] Technology arrives at the posthumanist debate through the mediation of feminism, in particular, through Donna Haraway's cyborg and her dismantling of strict dualisms and boundaries.[33]

Haraway's posthumanism, most famously articulated in her "Cyborg Manifesto," challenges traditional notions of human identity and the human-nature divide.[34] She argues that humans are not isolated, autonomous subjects, but rather complex, hybridized beings formed in a constant process of interaction with technology, other

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[25] Francesca Ferrando, *Posthumanism, transhumanism, antihumanism, metahumanism, and new materialisms: differences and relations* 8(2) EXISTENZ 26 (2013).

[26] Guillermo Díaz de Liaño & Manuel Fernández-Götz, *Posthumanism, New Humanism and Beyond* 31 CAMB. ARCHAEOL. J. 543 (2021).

[27] See: Bjørnar Olsen, Michael Shanks, Timothy Webmoor & Christopher Witmore, ARCHAEOLOGY: THE DISCIPLINE OF THINGS (2012).

[28] Graham Harman, OBJECT-ORIENTED ONTOLOGY: A NEW THEORY OF EVERYTHING (2018).

[29] Bruno Latour, REASSEMBLING THE SOCIAL: AN INTRODUCTION TO ACTOR-NETWORK-THEORY (2005).

[30] See Artur Ribeiro, *Against Object Agency: A Counterreaction to Sørensen's 'Hammers and Nails'* 23(2) ARCHAEOL. DIALOGUES 229 (2016). See also: Felipe Criado-Boado, *Tangled Between Paradigms in the Neo-Baroque Era* 23(2) ARCHAEOL. DIALOGUES 152 (2016)

[31] Francesca Ferrando, *Posthumanism, transhumanism, antihumanism, metahumanism, and new materialisms: differences and relations* 8(2) EXISTENZ 26 (2013).

[32] *Id.*

[33] See Arnold Gehlen, MAN IN THE AGE OF TECHNOLOGY (Patricia Lipscomb, *trans.* 1957).

[34] Donna J. Haraway, *A Cyborg Manifesto: Science, Technology, and Socialist-Feminism in the Late Twentieth Century* in SIMIANS, CYBORGS, AND WOMEN: THE REINVENTION OF NATURE 149 (1991).

species, and the environment.[35] Her work encourages a re-evaluation of what it means to be human, emphasizing the interconnectedness of all living things and the importance of "species meeting".[36]

One significant idea that posthumanism entails is object-oriented ontology (OOO), which is a model of thinking that locates truth in our reality, unlike other philosophical thinking, which locates truth in an unseen particle or in something that cannot be seen.[37] Some of the basic principles of OOO briefly are:

a) all objects have equal attention regardless of whether they are human or nonhuman, natural, cultural, real, or fictional.
b) objects have different properties, and a strong relationship, in particular, with those properties that are responsible for changes in the world.
c) there are real and sensual objects. Sensual objects only exist in relation to some real object.
d) Real objects cannot relate to one another indirectly by means of a sensual object.
e) the properties of objects are real and sensual.
f) two kinds of properties and two kinds of objects are the four basic permutations that OOO treats as the root of time and space.
g) OOO sees philosophy closer to aesthetics than to mathematics and the natural sciences.

In, 'Our Posthuman Future', Francis Fukuyama, looks into the crystal ball of biotechnology and describes something new: the ability to manipulate human nature by means of improved medical knowledge, behavior-altering drugs, and, eventually, genetic engineering.[38] The question is, will this ability bring with it fundamental changes in the way we live our lives, and if so, should we care? Do we have anything to lose by embracing technologies that will enable us to live longer, become smarter, and feel better?[39]

Haraway declares, that, "by the late twentieth century, our time, a mythic time, we are all chimeras, theorized and fabricated hybrids of machine and organism; in short, we are cyborgs…The cyborg is our ontology…The cyborg is a creature in a post-gender world; it has no truck with bisexuality, pre-oedipal symbiosis, unalienated labour, or other seductions to organic wholeness through a final appropriation of all the powers of the parts into a higher unity."[40]

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[35] *Id.*
[36] *Id.*
[37] Graham Harman, OBJECT-ORIENTED ONTOLOGY: A NEW THEORY OF EVERYTHING (2018)
[38] Francis Fukuyama, OUR POSTHUMAN FUTURE: CONSEQUENCES OF THE BIOTECHNOLOGY REVOLUTION (2002).
[39] *Id.*
[40] Donna J. Haraway, *A Cyborg Manifesto: Science, Technology, and Socialist-Feminism in the Late Twentieth Century* in SIMIANS, CYBORGS, AND WOMEN: THE REINVENTION OF NATURE 149 (1991).

In contemporary academic debate, "posthuman" has become a key term to cope with an urgency for the integral redefinition of the notion of the human, following the onto-epistemological as well as scientific and bio-technological developments of the twentieth and twenty-first centuries.[41]

Learned author Rozi Braidotti says "The posthuman subject is not postmodern, because it does not rely on any anti-foundationalist premises. Nor is it poststructuralist, because it does not function within the linguistic turn or other forms of deconstruction. Not being framed by the ineluctable powers of signification, it is consequently not condemned to seek adequate representation of its existence within a system that is constitutionally incapable of granting due recognition.[42]

The posthuman nomadic subject is materialist and vitalist, embodied and embedded , it is firmly located somewhere, according to the radical immanence of the 'politics of location'. It is a multifaceted and relational subject, conceptualized within a monistic ontology, through the lenses of Spinoza, Deleuze and Guattari, added to it the feminist and post-colonial theories. It is a subject actualized by the relational vitality and elemental complexity that mark posthuman thought itself.[43]

Nick Bostrom defines the posthuman 'as a being that has at least one posthuman capacity *i.e.* a general central capacity greatly exceeding the maximum attainable by any current human being without recourse to new technological means.[44] He uses general central capacity to refer to 'healthspan' (the capacity to remain fully healthy, active, and productive, both mentally and physically), 'cognition' (general intellectual capacities, such as memory, deductive and analogical reasoning, and attention, as well as special faculties such as the capacity to understand and appreciate music, humor, eroticism, narration, spirituality, mathematics, etc.), and 'emotion' (the capacity to enjoy life and to respond with appropriate affect to life situations and other people).[45] He says extreme human enhancement could result in "posthuman" modes of being which would be very worthwhile & it could be very good for human beings to become posthuman.[46]

Lastly, the notion of 'posthumanities' has been welcomed in academia to emphasize an internal shift (from the humanities to the posthumanities), extending the study

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41 Francesca Ferrando, *Posthumanism, transhumanism, antihumanism, metahumanism, and new materialisms: differences and relations*, 8(2) EXISTENZ 26 (2013).

42 Rosi Braidotti, THE POSTHUMAN (2013). See also: Francesca Ferrando, *Posthumanism, transhumanism, antihumanism, metahumanism, and new materialisms: differences and relations* 8(2) EXISTENZ 26 (2013).

43 *Id.*

44 Nick Bostrom, *Why I Want to Be a Posthuman When I Grow Up* in MEDICAL ENHANCEMENT AND POSTHUMANITY 107 (Bert Gordijn & Ruth Chadwick eds., 2009).

45 *Id.*

46 *Id.*

of the human condition to the posthuman. Furthermore, it may also refer to future generations of beings evolutionarily related to the human species.[47]

IV

Anthropocentrists' Criticism of Post-Humanism

Posthumanist approaches have contributed to challenging the numerous dichotomies pervading Western conceptualizations such as human/non-human, nature/culture, subject/object, or mind/body. These divides have been accused of allowing the development of political strategies with lethal consequences for those on the 'wrong' side of the demarcation.[48]

Zipporah Weisberg says that the trouble with posthumanism is that bacteria are people too.[49] She cites Castricano, where he explained "Posthumanist theory takes seriously the possibility that, "a hundred years from now, we will look back on our current mechanized and systematized practices of factory farming, product testing, and much else that undeniably involves animal exploitation and suffering…, with much the same horror and disbelief with which we now regard slavery or the genocide of the second World War"[50] Hird views humanism has led Animal Rights to focus solely on animals who resemble us in size.[51] Zipporah says, overall, Hird's micro-ontology amounts to a form of intellectual "pornography" inasmuch as it is ethically obscene.[52]

Thomas Osborne and Nikolas Rose argue that despite recent changes in styles of thought that question the uniqueness of 'the human', and despite novel technological developments for augmenting human bodies, we remain, fundamentally, persons.[53] Humans, as persons, are constitutively embedded in and scaffolded by the material, social, semantic and cultural niches they have constructed for themselves.[54]

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47 Francesca Ferrando, *Posthumanism, transhumanism, antihumanism, metahumanism, and new materialisms: differences and relations* 8(2) EXISTENZ 26 (2013).

48 *See generally,* A.L. Tsing *et.al.*, ARTS OF LIVING ON A DAMAGED PLANET: GHOSTS AND MONSTERS OF THE ANTHROPOCENE (2017).

49 Zipporah Weisberg, *The Trouble with Posthumanism* in THINKING THE UNTHINKABLE: NEW READINGS IN CRITICAL ANIMAL STUDIES 93 (John Sorenson ed., 2014).

50 Jodey Castricano, *Introduction* in ANIMAL SUBJECTS: AN ETHICAL READER IN A POSTHUMAN WORLD 1 (Jodey Castricano ed., 2008).

51 *Id.*

52 Zipporah Weisberg, *The Trouble with Posthumanism* in THINKING THE UNTHINKABLE: NEW READINGS IN CRITICAL ANIMAL STUDIES 93 (John Sorenson ed., 2014).

53 Thomas Osborne & Nikolas Rose, *Against Posthumanism: Notes towards an Ethopolitics of Personhood* 41 THEORY CULT. SOC. 1 (2023).

54 *Id.*

According to Guillermo Díaz de Liaño & Manuel Fernández-Götz, Anthropocentrits argue that objects do not have intentionality & without intentionality, it seems impossible to distinguish between effects and acts.[55] Intentionality does not preclude unintended consequences, but it carries with it responsibility.[56] Ribeiro points out, this implies the agent's capacity to act (or not), and thus it is not only about producing an impact, but also about being able to understand that there might be consequences.[57] Humans have the agency of 'why' with intentional acts and effects, while things have the agency of 'how', as they provide channeled means for people to act through.[58] Without intentionality, it seems impossible to distinguish between effects and acts. Anthropocentrists, further, argue that, the shortcomings of this and similar object-agency focused approaches become evident when analyzing the military-led expansion of the Roman state, which was frequently associated with episodes of mass violence, enslavement and sometimes even genocide.[59]

Another Argument that Guillermo Díaz de Liaño & Manuel Fernández-Götz present is that among the main claims of symmetrical approaches (and of some authors within New Materialism) is that archaeology needs to go back to 'things-in-themselves' [60] The argument that things have not received enough attention or that archaeology has been too anthropocentric is also highly disputable. In fact, we would claim the opposite: for most of its history as a discipline, archaeology has not focused enough on humans, while objects and their analysis have consistently received more consideration.[61] This is exemplified within the culture-historical paradigm and in some processual approaches.[62]

Object-oriented ontologies might lead to a new type of object fetishism or 'antiquarianism.'[63] The overemphasis on 'things' (or non-human beings in general) can be potentially dangerous, as it limits archaeology's scope for social analysis and

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55 Guillermo Díaz de Liaño & Manuel Fernández-Götz, *Posthumanism, New Humanism and Beyond* 31 CAMB. ARCHAEOL. J. 543 (2021).

56 Artur Ribeiro, *Against Object Agency: A Counterreaction to Sørensen's 'Hammers and Nails'* 23(2) ARCHAEOL. DIALOGUES 229 (2016).

57 *Id.*

58 John Robb, *What do things want? Object design as a middle range theory of material culture* 26 ARCHAEOL. PAP. AM. ANTHROPOL. ASSOC. 166 (2015)

59 Fernández-Götz, M., D. Maschek, & N. Roymans, *The dark side of the empire: Roman expansionism between object agency and predatory regime* 94(378) ANTIQUITY 1630 (2020).

60 Olsen, B. & C. Witmore, *Archaeology, Symmetry and the Ontology of Things: A Response to Critics* 22(2) ARCHAEOL. DIALOGUES 187 (2015).

61 Guillermo Díaz de Liaño & Manuel Fernández-Götz, *Posthumanism, New Humanism and Beyond* 31 CAMB. ARCHAEOL. J. 543 (2021).

62 *Id.*

63 John C. Barrett, *The new antiquarianism?* 90 ANTIQUITY 1681 (2016).

critique at a time where it is more needed than ever before in light of growing inequalities and reactionary populism[64]

Anthropocentrists often present the slippery slope argument against posthumanism, emphasize on human dignity, anthropocentrism, ethical boundaries, and warn against the moral decay that these post-human developments may lead to. They argue that once the boundary of "the human" is loosened, the law risks sliding into normative chaos. Let alone corporations, rivers, great apes, robots, or AI systems, posthumanism can entail the idea of even bacteria being people too, shattering the traditional moral hierarchy that places human beings at the center becomes destabilized.

Posthumanism undermines human exceptionalism, a concept deeply rooted in classical philosophy, from Aristotle's *rational animal*[65] to Kant's insistence that humans possess unique moral agency and dignity.[66] Extending personhood to robots, animals, or ecosystems dilutes the normative basis for human rights by treating entities without consciousness, responsibility, or moral intention as legal equals and erases the foundational distinction between *subjects* and *objects*.[67]

V

Tensions between Anthropocentric Jurisprudence & Posthuman Legal Realities

There persist a considerable tensions between anthropocentric thinking and social thory and posthuman legal realities, such as, ontological concerns about who/what qualifies as a legal person? The problem of epistemological rigidity *i.e.*, can originalism accommodate AI rights or digital personhood and concerns about gene editing, AI judges, predictive policing or the challenge to natural law by transhumanist ethics etc.

Global challenges such as violence and discrimination against women and sexual, gender and other minorities, opacity of artificial intelligence (AI) agency and automated decision-making processes, socio-spatial structural inequalities in an increasingly 'datafied', digitalized and urbanized society, to name a few, are

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64 González-Ruibal, A., P.A. González & F. Criado-Boado, *Against reactionary populism: towards a new public archaeology* 92 ANTIQUITY 507 (2018).

65 Aristotle, NICOMACHEAN ETHICS (Terence Irwin, *trans.,* 2019).

66 Immanuel Kant, GROUNDWORK OF THE METAPHYSICS OF MORALS (Mary Gregor & Jens Timmermann eds., *trans.,* 2012).

67 HUMAN ENHANCEMENT (Julian Savulescu & Nick Bostrom eds., 2009).

challenges that raise questions about the sufficiency and adequacy of the current knowledge and methodologies advocated by the anthropocentrists.[68]

The ability to recognize and experience the materiality of and interactions between human and non-human phenomena, law is ultimately made of, is increasingly needed for legal scholars and professionals, to more readily face present and future global socio-spatial challenges.[69] Existing contemporary theoretical trends, such as new materialism, actor-network theory (ANT), posthumanism and decolonial approaches already go in the direction of analyzing *socio-spatio-legal* phenomena, as intra-connected, in this way encouraging interdisciplinary and relational analysis, as well as, valuing experiential and situated knowledge.[70]

This is explained as the the tensions between anthropocentric jurisprudence and posthuman legal realities under the following heads:

a) Postmodern & Posthuman challenges to law,
b) Challenging the legal truth,
c) Law & the Urban.[71]

Postmodern and Posthuman Challenges to Law

There are three globally relevant intra-related "matters" *i.e.*, human bodies, non-human bodies, space that law is co-constituted with.[72] There are frictions between law and human bodies, *e.g.*, how, when and with what material consequences, for bodies, legal discourses seem to be blind towards those who have not participated in their definition, like in the case of violence against women, reproductive rights of women, and trans people, or the legal truth as established in courts has problems in recognizing the harms, discrimination, and marginalization's it reproduces[73] in specific socio-spatial contexts.

There are certain hierarchies expressed as binaries/dichotomies that law accepts as taken-for-granted "truths": public/private, nature/culture, male/female as the most central ones embedded in legal texts which have reproduced hidden power imbalances and structures.[74] Then posthumanism emerges from resistance toward

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[68] Sanmartin, A.V. & J. Niemi, *Virtual Reality in Legal Education: Challenges and Possibilities to Transform Normative Knowledge* in THE EUROPEAN DIGITAL ECONOMY: DRIVERS OF DIGITAL TRANSITION AND ECONOMIC RECOVERY (J. Lubacha, *et.al.*, eds., 2024).

[69] Miriam Tedeschi, Juho Aalto & Amalia Verdu Sanmartin, *Pedagogical Experiences Reconnecting Law to Matter* 58 THE LAW TEACHER 294 (2024).

[70] *Id.*

[71] *Id.*

[72] *Id.*

[73] Jasmin Hannonen & Tatu Hyttinen, *Kiihottaminen kansanryhmää vastaan alioikeuskäytännössä (Agitation against a population group in the courts of first instance praxis)*, DEFENSOR LEGIS 307 (2023).

[74] Torill Christine Lindstrøm *Agency 'in itself'. A discussion of inanimate, animal and human agency* 22(2) ARCHAEOL. DIALOGUES 207 (2015). See also: Olsen, B. & C. Witmore, *Archaeology, Symmetry and the Ontology of Things: A Response to Critics* 22(2) ARCHAEOL. DIALOGUES 187 (2015).

modernism's grand narratives, and critically discusses language as power, a resistance further advanced by Legal feminist,[75] intersectional,[76] postcolonial,[77] and queer[78] approaches, which exposed how humanism's so-called "universal subject" was, in fact, modeled on the Western male archetype.[79]

In the case of Anna Stubblefield, a woman was convicted for sexually assaulting a man with cerebral palsy whom she claimed could communicate through 'facilitated communication.' It is one of the cases that exposes how ableist fetishism, paternalistic assumptions about capacity, and the law's fixation on an able-bodied human norm, create tensions within anthropocentric jurisprudence, particularly in determining autonomy, consent, and personhood for disabled bodies.[80]

Critical race theory reminds us that law itself has historically encoded racial hierarchy *e.g.*, the U.S. Constitution's three-fifths clause, which counted enslaved Africans as only three-fifths of a person for representation;[81] and institutionalized political marginalization and structural subordination of indigenous humanity.

Challenging the Legal Truth

Non-human bodies' agency (*e.g.*, linked with technological advancements and AI) and other elements than the logical and formal ones characterizing law's language are forcing us to rethink the very foundations of normative knowledge (*e.g.*, who the "legal subject" is?).[82] Law has had a central role in producing its subjects and objects from modernism to postmodernism.[83] The most prominent of the newly posed question are, Who is the "person" in law?[84] Is the non-human part of the law?[85] Does the law have a body? Is the law prepared for the current and future

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[75] See: Donna J. Haraway, *A Cyborg Manifesto: Science, Technology, and Socialist-Feminism in the Late Twentieth Century* in SIMIANS, CYBORGS, AND WOMEN: THE REINVENTION OF NATURE 149 (1991).

[76] See Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color* 43 STANFORD L. REV. 1241 (1991).

[77] See Julian Awwad, *The Postcolonial Predicament of Gay Rights in the Queen Boat Affair* 7 COMMUN. CRIT. CULT. STUD. 318 (2010).

[78] See: QUEERING INTERNATIONAL LAW: POSSIBILITIES, ALLIANCES, COMPLICITIES, RISKS (Dianne Otto, ed. 2018).

[79] Henry A. Giroux, *Postmodernism and the Discourse of Educational Criticism* 170 J. EDUC. 5 (1988).

[80] *State* v. *Stubblefield*, 450 N.J. Super. 337, 162 A.3d 1074 (N.J. Super. Ct. App. Div. 2017) (U.S.).

[81] U.S. Const. art. I, § 2, cl. 3.

[82] Torill Christine Lindstrøm *Agency 'in itself'. A discussion of inanimate, animal and human agency* 22(2) ARCHAEOL. DIALOGUES 207 (2015). See also: Olsen, B. & C. Witmore, *Archaeology, Symmetry and the Ontology of Things: A Response to Critics* 22(2) ARCHAEOL. DIALOGUES 187 (2015).

[83] *Id.*

[84] Peter Goodrich, *Law: A Map of Misreading. Toward a Postmodern Conception of Law* 14 J. L. & SOC'Y 279 (1987).

[85] Gunther Teubner, *Rights of Non-Humans? Electronic Agents and Animals as New Actors in Politics and Law* 33 J. L. & SOC'Y 497 (2006).

socio-spatial challenges (bias, discrimination, equality, migration, labour rights, environment), and how are tech and AI making them emerge?[86]

Many Indigenous cosmologies have long rejected the human-nature divide, viewing forests, mountains, and rivers as living ancestors, an ethos now being reshaped as courts begin recognizing nature as a rights-bearing subjects.[87] Nonhuman entities are increasingly entering the legal domain as rights-bearing subjects. The orangutan Sandra was recognized as a "non-human person" in Argentina; the Whanganui River in New Zealand was granted full legal personhood[88]; by Constitutional Court of Colombia Atrato River was declared to be a "subject of rights", possessing rights to protection, conservation, maintenance, and restoration;[89] Vilcabamba River was held to be a rights-bearing entity in Ecuador;[90] corporations enjoy constitutional protections;[91] and in 2017, the robot Sophia received Saudi Arabian citizenship, sparking global debates about AI rights and legal personhood. In *Salim* v. *State of Uttarakhand*[92] and *Miglani* v. *State of Uttarakhand*[93], the Uttarakhand High Court recognised the Ganga and Yamuna rivers, their tributaries, glaciers, and catchments as 'juristic/legal persons/living entities' with rights. However, the Supreme Court stayed these 2017 orders, noting concerns of practicality, and has not upheld such rights itself. On 16 February 2017, the European Parliament recommended legal personhood for "sophisticated robots, bots, androids and other manifestations of artificial intelligence".[94]

Enhanced human capabilities complicate the legal notion of the "archetypal" human subject, as seen in debates around Oscar Pistorius's carbon-fiber prosthetics and Stephen Hawking's technologically-mediated embodiment, both of which challenge the boundary between human, and posthuman.[95] Meanwhile, disputes around

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[86] Torill Christine Lindstrøm *Agency 'in itself'. A discussion of inanimate, animal and human agency* 22(2) ARCHAEOL. DIALOGUES 207 (2015). See also: Olsen, B. & C. Witmore, *Archaeology, Symmetry and the Ontology of Things: A Response to Critics* 22(2) ARCHAEOL. DIALOGUES 187 (2015).

[87] See: Corte Constitucional del Ecuador, SENTENCIA NO. 1149-19-JP/21 (Dec. 1, 2021).

[88] Te Awa Tupua (Whanganui River Claims Settlement) Act, 2017.

[89] *Tierra Digna & Others* v. *Presidencia de la República, Sentencia T-622/16*, Corte Constitucional, Expediente T-5.016.242 (Nov. 10, 2016).

[90] *Wheeler & Huddle* v. *Gobierno Provincial de Loja, Acción de Protección* No. 11121-2011-0010 (Provincial Court of Loja, Ecuador, 30 Mar. 2011).

[91] Upendra Baxi, HUMAN RIGHTS IN A POSTHUMAN WORLD: CRITICAL ESSAYS (2009).

[92] *Salim* v. *State of Uttarakhand*, Writ Petition (PIL) No. 126 of 2014 (Uttarakhand HC, 20 Mar. 2017).

[93] *Miglani* v. *State of Uttarakhand,* Writ Petition (PIL) No. 140 of 2015 (Uttarakhand HC, 30 Mar. 2017).

[94] European Parliament, *European Parliament Resolution of 16 February 2017 with Recommendations to the Commission on Civil Law Rules on Robotics* (2015/2103(INL)), available online at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017IP0051&from=IT (last visited Nov. 9, 2025).

[95] See: Nick Bostrom, *Why I Want to Be a Posthuman When I Grow Up*, in MEDICAL ENHANCEMENT AND POSTHUMANITY 107 (Bert Gordijn & Ruth Chadwick eds., 2009). See also: Donna J. Haraway,

Contd…

embryos, foeticide, and abortion continue to expose contradictions within anthropocentric moral frameworks: when does life begin, and who has the authority to define it?

Law & the Urban

There are tensions between law and (urban) spaces, *i.e.*, the spatial injustice that occurs in micro-legal spatial practices,[96] as well as, the urban design and current and future smart/digital city projects that may become exclusive and segregating.[97] Law can be experienced in first person as a fully spatial and material element in cities. Here, space is intended as blended, thus, physical-digital, from the outset, whereby there is no spatial setting (including natural and rural) that is devoid of technological/digital, thus, non-human elements.[98]

VI

Critiques of Anthropocentric Jurisprudence in a Post Humanist Context

In the posthuman context, anthropocentrism is found ill-equipped to respond to the unprecedented challenges and demands posed by emerging non-anthropocentric entities. Anthropocentric legal thought often struggles to accommodate entities and 'rights claims' that fall outside the archetypal human subject. This inadequacy is compounded by a form of "future shock," where the pace of technological advancement far outstrips the ability of traditional legal frameworks to adapt meaningfully.

To its detractors, anthropocentrism is based on a mistaken understanding of the human and the human being's relationship to the world that has led to environmental degradation, waste, and violence against the nonhuman.[99] Not every human being has been considered as such: women, African-American descendents, gays and lesbians, differently-abled people, among others, have represented the margins to what would be considered human.[100]

Anthropocentric jurists look at metaphysical account of individuals who possess a nature, a "pattern," and "like attributes." The world over it is the same: a home, with

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A Cyborg Manifesto: Science, Technology, and Socialist-Feminism in the Late Twentieth Century in SIMIANS, CYBORGS, AND WOMEN: THE REINVENTION OF NATURE 149 (1991).

96 Päivi Kymäläinen, *Legal Geography I: Everyday Law* 48 PROG. HUM. GEOGR. 352 (2024).

97 Torill Christine Lindstrøm *Agency 'in itself'. A discussion of inanimate, animal and human agency* 22(2) ARCHAEOL. DIALOGUES 207 (2015).

98 *Id.*

99 Gavin Rae, *Anthropocentrism*, in ENCYCLOPEDIA OF GLOBAL BIOETHICS (H. ten Have ed., 2014).

100 Francesca Ferrando, *Posthumanism, transhumanism, antihumanism, metahumanism, and new materialisms: differences and relations* 8(2) EXISTENZ 26 (2013).

family fed, healthy, and competent, and friendship among the generations. There is also belonging in various forms of membership and the "identity" that comes from that membership.[101]

Conservative humanism must thread 'its way between angelism and vitalism.[102] Vitalism expresses the view that there is no human nature because there is no overall nature of order and reason. One of the most consequential proponents of this view is Martin Heidegger, who returned to Greek philosophy and Homeric literature and found not reason and natural right, as Leo Strauss did, but violence and exaltation of victors.[103]

The West, Heidegger famously argued, had erred by following Plato and Aristotle. There was no truth of nature, but there was the mastery by individuals of competitive situations. Being is not a participation in Essence, as argued by Aquinas, but is locked in a constant appearing-that is, we must fight against a backdrop of chaos to appear in glory. This means that human existence is defined by struggle and risk. Heidegger's enthrallment with a metaphysics of glory through victory means that "I show myself, I appear, I step into the light. … Glory is the repute in which one stands."[104]

Advancing normative knowledge by acknowledging and experiencing the co-constitution of law and different "matters" (i.e. human and non-human bodies, spaces) has become increasingly relevant to tackle global socio-spatial issues: "lawyers need to learn about their worlds (from which they are never apart, and which they cannot master) and to relate and regulate differently in order to adapt laws to its material conditions".[105]

Miriam Tedeschi, Juho Aalto and Amalia Verdu Sanmartin say that developing such ability to experience law "otherwise", as other matters, in law, is grounded in three co-implicated theoretical assumptions:

1. First, the potential for transforming normative knowledge to effectively address complex socio-spatial challenges resides in the (essentially posthuman) onto-epistemological move of recognising (and actively taking responsibility for) the inherent entanglement[106] of law with other realms from the outset.[107]

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[101] Richard M. Reinsch II, *On a Conservative Humanism* 34(1) RELIG. & LIBERT. (2024).
[102] *Id.*
[103] *Id.*
[104] *Id.*
[105] Kate Galloway, *Posthumanist Legal Education: Learning to Entangle Human Law with Its More-Than-Human World* in BIOPOLITICS AND RESISTANCE IN LEGAL EDUCATION 187 (Thomas Giddens & Luca Siliquini-Cinelli, eds.,2023).
[106] Karen Barad, MEETING THE UNIVERSE HALFWAY (2007).
[107] Miriam Tedeschi, Juho Aalto & Amalia Verdu Sanmartin, *Pedagogical Experiences Reconnecting Law to Matter* 58 THE LAW TEACHER 294 (2024).

2. Secondly, such a shift entails not only that law is being recognised as entangled with the more-than-human realm, thus, as made of non-human entities as well (e.g. technologies),[108] but also that such entanglement is fruitfully employed to rethink law's own foundational concepts.[109]
3. Thirdly, the "how to" of studying law is adjusted and modified accordingly, in that the co-implication and relationality of law and other matters have to be explored through alternative methods valuing e.g. experiential and situated knowledge as well as its affective and emotional dimensions.[110]

VII

Beyond the Human, Before the Unknown

Foucault, in the last pages of his 'The Order of Things' says, "as the archeology of our thought easily shows, man is an invention of recent date. And, one perhaps nearing its end... Man would be erased, like a face drawn in sand at the edge of the sea."[111] Foucault's insight compels us to confront the fragility and historical contingency of the category of 'man' itself and anti-humanism fully acknowledges the consequences of this "Death of Man" thesis.[112]

However, anthropocentrism cannot be rejected completely. The posthuman overcoming of human primacy, is not to be replaced with other types of primacies (such as the one of the machines).[113] Posthumanism is a post-centralizing, in the sense that it recognizes not one but many specific centers of interest; it dismisses the centrality of the center in its singular form, both in its hegemonic as in its resistant modes.[114]

Didier Fassin says that, 'perhaps a post-post-humanism will develop in the near future, which would not be a mere return to the varieties of humanism that we have known, with their historical flaws and ethical ambiguities, but would affirm the categorical imperative of a critical approach to human worlds in a time when they are faced with multiple menaces that affect both humans and nonhumans, capitalism's victims and destroyed environments, war casualties and ruined cities,

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[108] Jannice Käll, POSTHUMAN PROPERTY AND LAW: COMMODIFICATION AND CONTROL THROUGH INFORMATION, SMART SPACES AND ARTIFICIAL INTELLIGENCE (2022).
[109] Miriam Tedeschi, Juho Aalto & Amalia Verdu Sanmartin, *Pedagogical Experiences Reconnecting Law to Matter* 58 THE LAW TEACHER 294 (2024).
[110] *Id.*
[111] Michel Foucault, THE ORDER OF THINGS: AN ARCHEOLOGY OF THE HUMAN SCIENCES (1966).
[112] *Id.* See also: Francesca Ferrando, *Towards a Posthumanist Methodology: A Statement* 25 FRAME: J. LIT. STUD. 9 (2012).
[113] Francesca Ferrando, *Posthumanism, transhumanism, antihumanism, metahumanism, and new materialisms: differences and relations* 8(2) EXISTENZ 26 (2013).
[114] *Id.*

displaced populations and threatened species, refugees and the planet…This post-post-humanism would remind us that much of what happens to human beings and to the world that they inhabit is the result of human actions and therefore involves human responsibility- notwithstanding the ambiguities of the word human.[115]

Anthropocentrism cannot be discarded in its entirety it carries ethical commitments, specifically: dignity, responsibility and accountability. These remain indispensable in this era of accelerating techno-biological transformation and in this world that is increasingly facing dehumanization. However, the exclusions and violence that humanism entails must be decisively abandoned and the law must learn to accommodate beings or entities that do not resemble the archetypal human. As posthuman realities unfold, the very notion of "the human" will require continuous re-articulation. Perhaps there would emerge a New-humanism or a Post-post-humanism that would not abandon humanism altogether, but facilitate a legal order capricious enough to accommodate what lies beyond the human, before the unknown.

[115] Didier Fassin, *Humanism. A Critical Reappraisal* 2 CRIT. TIMES 29 (2019).