

# The Concept of Person in Roman Law\*

*El concepto de persona en el derecho romano*

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**Abstract:** The concept of person is the basis of the entire legal system. However, in Roman legal sources, the word person is exceptional, and with a sense analogous to that of *caput*. According to some authors, such as Alejandro Guzmán Brito, the concept would come from the Greek *πρόσωπον*. Other authors like Maurice Nédoncelle believe that the source would be the Etruscan term *Phersu*, which would have emerged in a historical period before the existence of the term *πρόσωπον*, and would be related to the name of goddess Persephone, in whose rituals masks were used. In Cicero's texts, the term has a meaning consolidating the theatrical, philosophical, and legal senses of the word. In the future, Christian Roman law would give a more defined meaning to this word, connected with the individual as a rational being.

**Keywords:** person; *caput*; individual; *Phersu*.

**Resumen.** El concepto de persona es el presupuesto de todo el orden jurídico. Sin embargo, en las fuentes jurídicas romanas, el vocablo persona se presenta de manera excepcional, y con un sentido análogo al de *caput*. Según algunos autores, como Alejandro Guzmán Brito, el concepto procedería del vocablo griego *πρόσωπον*. Para otros autores como Maurice Nédoncelle, provendría del vocablo etrusco *Phersu*, el cual habría aparecido en un período histórico anterior al del vocablo *πρόσωπον*, y estaría vinculado al nombre de la diosa Persephone, en cuyos rituales se utilizaban máscaras. En los textos de Cicerón, el vocablo asume un pleno significado en el que se reúnen la acepción teatral, filosófica y jurídica de la palabra. La posteridad del derecho romano cristiano dará a este vocablo un significado más definido, vinculado al individuo como un ser racional.

**Palabras clave.** Persona; *caput*; individuo; *Phersu*.

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## 1. Philological Aspects of the Question in Archaic Roman Law

In archaic Roman law, references to *person* are truly scarce. The most frequently-used word to designate the individual is *caput*. In the Law of the Twelve Tables, we find expressions such as: *Si in ius vocat, ni it, antestamino igitur em capito* (Tab. I), as well as the expression *proletarium capite*, applicable to those who have one offspring when being counted in a census.<sup>1</sup>

As explained by Aulus Gellius, quoting Julius Paulus, a similar denomination was given to the so-called *capite censi*, i.e., the citizens who had no land or fortune but just their offspring, even if it was preferable to use the expression *proletarius*, which was considered more honorable, because they make a contribution to the republic educating and training their children.<sup>2</sup> Likewise, the expressions *capite civis* or *capite poenitur* in the Law of the Twelve Tables always refer to individuality. The word *caput* literally means ‘head,’ but is equally used to designate the individual. It also covers a certain sense of dignity, as we can find in Titus Livius, when he refers to the ruling authorities as *capita rerum*, or the very *Capitolium* mount, which identified with the strength and the temple of *Iuppiter* established by Tarquin the Proud in which there was a representation of *Iovi*, with a human face.

According to Guzmán Brito (1994, p. 272), the word *caput* or *kaput* is usually used in the same sense with which *person* is used in classical law, though with the nuance of referring to the individual and numerical aspect, more than the human aspect, as the same word is usually used for heads of cattle. Ernout and Meillet (2001, p. 98) add that the term undoubtedly comes from Greek, as it is already used by Hesiod as *χαπούτης*, with the sense of head of men or animals, and is related to *capitulum*, *capitalis*, *recapitulatio*.

Many centuries afterwards, in an interesting paragraph, Marcus Terentius Varro uses the term *caput* to refer to the subject of the sentence. The text in question reads: *Quare ut illic fit, si hic item acciderit, in formula ut aut caput...* The text reveals an approximation of the idea of fundamental word in the phrase, which may be translated with the word

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<sup>1</sup> Festo, v. *Proletarium capite*: “It is said in the census by *proletarian head*, those who in this *civitas* are counted by offspring; also *proletanei*.”

<sup>2</sup> Aulus Gellius *Noct. Att.* 16,10,10-13: “Julius Paulus, a poet we consider very learned in our memory: “Those who, among the common Romans, were humble and of limited resources, and who were counted by no more than 1,500 ases, were called *proletarii*, but those who instead had nothing or were counted by a few ases were called *capite censi*, i.e., counted by head. And those of lower fortune than the *capite censi* were those who had 375 ases ... The *proletariats*, however, were a class more honorable than the *capite censi*, and in the event of danger to the republic, due to the lack of young people, they were drafted to the army and were provided with guns paid with public resources. And they were not called *capite censi*, but a better name was used for them, derived from their duty and function, as they were *proletarians* due to the offspring (from the Latin *proles*) they had, and even if they had scarce property, they could help the *civitas* with the birth of an abundant number of children.”

*subject*, even if the relationships we may establish with the word *person* are extremely remote. Maybe the more legal sense of the word *caput* could be found in the *capitis deminutiones*, i.e., in the legal modifications that may be produced in the head of a *homo*. But it must be noted that this expression only appears by the end of the republic and with a very inaccurate meaning. At that time, we could find expressions such as *capite minuti*, which applied to those who had changed a *civitas* for another, as in the case of the *transmigratio latinas colonias*, or the one who has suffered the effects of *deportatio* or the *interdictio aquae et ignis*, though without the wide meaning which will be adopted in the classical era.

*Caput* is the word used to designate the individual, because it is useful to count, at times when the number of individuals was essential to establish votes at the polls or calculate the number of citizens in a census.

## 2. Philological Aspects of πρόσωπον in Greek Literature

In a research article entitled *Prosopon et persona dans l'antiquité classique. Essai de bilan linguistique*, Maurice Nédoncelle (1948) analyzes the origin of the word *person* and claims that, among the Greek, the person is designated by approximation, due to the simple reason that the idea of person had not been born yet. He starts by identifying the πρόσωπον with the part of the body between the head and the neck, i.e., the face, and then claims that in classical Greek the word πρόσωπον could be used to designate the face of the moon, or the front of a ship, and that “current Greeks would not hesitate to use the term for a piece of furniture or a coffee machine” (p. 279).

It was probably in the Dionysian rites where the term started to be used to mean the masks that actors used in the ancient practices related to worship. The use was probably associated with the representation of tragedies or other dramas, with the purpose of impressing the audience. However, the approximation of πρόσωπον to the idea of the individual is incipient, as its meaning is restricted to the role to be played by the actor within the performance and the expression to characterize each character.

## 3. Philological Aspects of the Term *Phersu* in Etruscan Frescoes

At this point, in the Etruscan language we find the term *phersu* (Pittau, 2018). This word has a very complex meaning, so we must interpret it in a way that is relevant to such reality. It happens that in the necropolis of Tarquinia, precisely in the Tomb of the Augurs, frescoes have been found in which a man wearing a mask is depicted, and next to him the word *Phersu* is written. The man in question is wearing ornate clothing, is between the image of two wrestlers and the image of an opponent whom he has entangled with a vine, and at the same time his left leg is being bitten by a dog.

This entire scene, which is very theatrical and in which we find dance, music, fight, and representation, only includes one single written word, which is what calls our attention.

According to Nédoncelle (1948, p. 287), it is extremely difficult to find the true meaning of the word *Phersu*. We could be tempted to search for an answer in the Greek-Etruscan mythology, and that way make a connection with the father of Hecate Persephone: Perses, son of the sun, who slit the throat of Medusa, invisible, thanks to Hades's helmet. The author finds some analogy between the masked images of Perses we may find in Greek amphorae and those in the Tarquinia's frescoes.

However, the same author believes it is prudent to notice that next to the suffix *Phersu* there is the term *Phersipnai*, which is at least to some extent grammatically equivalent to *Phersu*.<sup>3</sup>

Thus, in the so-called Thesmophoria, which were festivals in honor of Demeter and her daughter Persephone, the goddess appeared covered with a mask. The celebration lasted for three days in which Demeter's suffering was remembered as Demeter sought her daughter kidnapped by Hades. The few images we find of these Eleusinian celebrations, such as the Sian cup from Rhodes, dated to the 6th century B.C., depict Persephone in disguise.

In this context, according to Nédoncelle, the word *person* would not be etymologically related to the Greek word *πρόσωπον*, but to the word *Φερσίπναι*, as there is no reason to believe that there is an etymological relationship between *πρόσωπον* and *person* (1948, p. 288).

Another term may be found in the Etruscan language: *larva*. It means the spirit of the dead that terrorizes the living, and at the same time 'mask,' 'spectrum,' 'ghost.' Ernout and Meillet (2001, p. 342) believe that the word *larva* is related to the word *lares*, i.e., tutelary spirits considered as the souls of the dead, divinities, or infernal spirits. It may derive from the Etruscan word *menrua*, related to the worship of the dead among Etruscans. Epictetus also mentions the connection between masks and death (1993).

Plutarch himself (*De Exilio* 600 D-E) refers to the adversities in life and says, in Caballero's translation (2000), that:

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<sup>3</sup> According to the author, this hypothesis may be reduced saying that the goddess's name could designate a mask, because in Persephone's parties she used a mask (Nédoncelle, 1948, p. 289). On the other hand, it may be questionable that the name of a divinity could be profaned or secularized to designate a material object. However, in Latin we may find similar ambivalences, such as the case of Minerva, whose name represents the spirit of work and wool, or Volcano, which means fire and light.

Those events whose nature does not entail any disgrace and in which pain has only been imagined by a mere opinion have to be faced as follows: like in the case of children who are afraid of masks and we make them habituated not to pay attention by putting the masks close to them and in their hands, showing them both parts of the mask. We should also feel close to such events and submit them to the force of reason so as to discover how sickly, vacuous, and melodramatic they are.

It is a recurring topic that masks are almost always presented as something unreal, empty, illusory, and even superstitious. Masks are the opposite of reality. They express what is not real, even if causing an effect on man.

#### **4. The Issue in Epicurean Literature: Lucretius and the Person in his book *De Rerum Natura***

In paragraph 55 of his book III, Lucretius says: *Quo magis in dubiis hominem spectare periculis convenit, adversisque in rebus noscere qui sit; nam verae voces tum denuo pectore ab imo eliciuntur, et eripitur persona, manet res.*

This paragraph is crucial. First, because the book was written in the I century B.C. Second, because in successive hexameters, Lucretius uses the words *homo* and *person*. Third, because he proposes a poetical opposition between *person* and *res*.

The translation could be: “It is in the dangers and in tests where one should know the man. It is adversity which reveals what he is. Then, when the true voice flows from the bottom of the heart, the mask is torn off and reality persists.” The sense of both words, *homo* and *person*, is evident. So much so that the word *person* has to be translated as *mask* to preserve the sense of the phrase. Therefore, the word *person* retains here all of the sense of mask and appearance.

But Lucretius himself in IV, 1094, uses the word *homo* with a sense similar to that of *mask*: *Ex hominis, vero facie pulchroque colore nil datur in corpus praeter simulacra fruendum...*, with a clear reference to man as a human being, to the face and the body, in which the *corpus* expresses the materiality of the senses perceiving the colors as a vain simulation, soon gone with the wind: *quae vento spes raptast* (Lucretius, 1968, p. 43).

In Lucretius, the *corpus* represents what is tangible, *quae tangi possunt*, unlike the intangible, which is represented by life, which can only be grasped by means of reason. That is why *corpus* represents the materiality, in this case, of the human being. Seneca mentions a distinction between *corporalia et incorporalia*, stating that things are incorporeal

when they cannot be grasped by the senses: *quod et nec visu, nec tactu, nec nullo sensu comprehenditur: cogitabile est.*<sup>4</sup>

The word *person*, in Lucretius, is particularly connected with the senses, and with the appearance of all that is mutable in the changes of nature, without major implications for a conception of man as a person.

## 5. The Concept of Person in Cicero

In Cicero's texts one can find an analogous meaning of the word *person*. The thing is that Cicero uses the term in a wide sense and with multiple meanings. Thus, we find in *de oratore* 14,45: *non ille vulgaris sed hic excellens, a propriis personis et temporibus semper, si potest, avocam controversiam* (Cicero, 1964, p. 17), explaining that the perfect and not vulgar orator must always elevate the debate beyond the particular circumstances of persons or time. And likewise: *Haec igitur quaestio a propriis personis et temporibus ad universi generis orationem traducta appellatur* θέσις, expressing that, beyond those circumstances, we call thesis the development of general and universal order. We may find a similar expression in *de orat.* 22,74: *... decere quasi aptum esse consentaneumque tempori et personae*, with the sense of consistency with the circumstances of times and persons (p. 26). So far, the word *person* may be easily translated as 'actor,' because the word does not entail any philosophical connotation, just location at a given time and place.

In *de orat.* 21,71, Cicero makes a distinction between the persons who participate in a discourse: *Quod et in re, de qua agitur, positum est, et in personis et eorum qui dicunt et eorum qui audiunt* (p. 25), in the sense that in the matter in question, this is established both for the persons who speak as well as those who hear. Here the sense of position or location in a stage is kept clear and evident.

However, the sense of the word *person* has analogous meanings in Cicero. In another text, *de orat.* 22, he asserts that: *Hi genere toto, at persona alii peccant aut sua aut iudicium, aut etiam adversariorum...* (p. 27). Here the reference to the person is related to genres and errors which are made. And Cicero clarifies that others are incorrect about the discourse genre, as to the location they have, as to judgments, and even as to adversaries.

In a particularly interesting paragraph, Cicero uses the words *homo* and *persona*. This paragraph reads:

*Illud admonemus tamen, ridiculo sic usurum oratorem, ut nec nimis frequenti, ne scurrile sit, nec sub obsceno, ne mimicum, nec petulanti, ne improbum, nec in*

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<sup>4</sup>Seneca, *Moral Epistles* 58,6,6,11.

*calamitatem. Ne inhumanum, nec in facinus, ne odii locum risus occupent, neque aut sua persona, aut iudicum aut tempore alienum.* (p. 31)

This text could be translated as follows:

Therefore, we recommend that the orator does not resort to the ridicule very often, not to look like a clown, unpleasant, insolent, or inhuman when faced with crime, so that laughter does not represent evil or hate, or the very person of the orator, or the judges at the moment.

It is evident that *homo* and *person* do not have the same meaning here. While the inhuman would seem to express that what is opposed to *humanitas*, i.e., to human nature, the word *person* refers in particular to the place of the orator on stage. The expression *sua persona*... may be translated here as 'his place,' 'his position,' 'his role,' lacking in all dignity other than that which corresponds to the orator as the center of attention.

But in *De natura deorum* we can find some approximation to the idea of personal dignity. There, Cicero wonders about the existence of reason. And he says:

In fact, reason has not been given to man as a benefit from the gods just like property is transferred as inheritance. Because what thing could have been given to men if the intention were to harm them? And what germs could there be of injustice, immoderation, shyness, if under those vices there would not be reason? We recently remembered heroic characters who, in a premeditated manner, planned sinful crimes. (Cicero, 1986, p. 89)

The expression used by Cicero is interesting, because it is used in a context in which the relationship between man and gods is described: *Non enim ut patrimonium relinquatur sic ratio est homini beneficio deorum data*. Because it is not like a patrimony that reason is given to man out of the gods' favor. Because reason is presented in man in a dual manner, because while any opinion is reason, and it is good provided that it is true, but it is bad if it is false, which leads Cicero to claim with some irony: *O praeclarum munus deorum!*, i.e., "Oh, glorious gift from the gods!"

But there is more: the expression *heroicae personae*, which we could translate as 'heroic persons or characters,' is described in a context in which those very same heroes have committed the most ungodly sins and, thus, we cannot assert that with these words some kind of ontological dignity was intended to be described as associated with personal identity, but it is just an adjective next to the word *person*, which does not shake the intrinsic meaning of character in the stage. The truth is that, in the texts analyzed, we cannot still find a developed concept of personal dignity. The idea of mask is evident, just like the sense of position or location in a context determined by time and place. Cicero



uses in many of his books the word *dignitas*, to which he assigns a determined meaning, generally related to the *ars rethorica* and the art of persuading, with special incidence in the exercise of the *ars litigandi*.

Cicero also uses the word *dignitas* for good citizens, the *optimates* as *omnibus sanis, bonis et beatis, cum dignitate otium*, even if such adjective does not apply to all of mankind, but only to those who make a contribution to the republic with their books and derive dignity therefrom. Such concept is not consistent with Christian sources, for which dignity is inherent in every human being, as having been created in the image and likeness of God.

It must be pointed out that in Accursio's Gloss, the word *jus* is understood, within the context of the citations of Cicero and Plato, as a *meritum*: *Sed Tullius sic definit: Iustitia est habitus animi cui utilitate servata, suam cuique tribuens dignitatem; Iustitia est congrua dispositio in singulis rebus recte diudicans; verba aut, ius suum, expone ut dixit, vel dic, hominis meritum...*

Ultimately, the conception of dignity is even more in crisis, as Cicero's dignity depends on acting, while Christian dignity is based on being.

## **6. The Question of the Person in Classical Roman Law. The Word Person in Gaius. Gaius's *Summa Divisio*. The Actiones in Rem et in Personam**

Gaius starts his *Instituta* (1,1) saying:

All the peoples governed by laws and morals in part by theirs and in part in common with everybody use the law of men: it is not that each people has their law established, which is theirs, and is called civil law, so to speak, the law particular of the State. (Gaius, 1987, p. 28)

Expressions such as *Omnes populi* and *omnium hominum iure utuntur* are eloquent by themselves. Be it noted that Gaius does not use the word *person*; instead he uses the nouns *populus* and *homo*.

We have already noted, in Cicero's texts, the existence of certain division between things and persons *ut rerum ut personarum dignitates ferunt* (Cicero, 2013, p. 91), while the meaning that the word *res* has in Latin is way wider than the word *thing* in the English language. This way, the word *res* covers any matter relating to man, as masterfully explained by Martin Heidegger in his speech *Das Ding*. In the sense to be analyzed below, Gaius presents in his *Instituta* a *summa divisio* of all the law. He states: "All the *ius* we use is connected with persons, with things, or with actions." He literally says, *Omne ius quo utimur, vel ad personam pertinet, vel ad res, vel ad actiones* (Gai. 1,8).



It is important to note that, in the hierarchical stoic world, persons occupy the first place in the structured discourse of law presented by Gaius.

As stated, Roman law became aware of the word *person* as opposed to the word *res*. This opposition is clearly noticeable in matters of procedure, especially in the division of *Legis actio sacramento*, which included a procedure *in rem* and a procedure *in personam*.

We find the explanation for this division in Gaius, who, in his *Instituta*, states: “*Actio in personam* is that whereby we file an action against somebody who is under an obligation to us whether by virtue of a contract or of a crime, i.e., when we claim that something be given, done, or delivered.”

In the definition of *Instituta* (4,6,1) (12), it is stated that the *actiones in personam* are defined by this statement: they are performed against *qui obligatus est*, while the second are defined by a negation: *qui nullo iure obligatus est*, so reading the paragraph carefully we find that while *actiones in personam* are ultimately an *obligatio*, *actiones in rem* are something different.

In fact, what happens is that the technique of Roman jurists is based on principles other than those of modern law. In the *actio in personam*, the purpose is that in the formula's *intentio* a determined person must give or do something in favor of the plaintiff. Thus, *Quidquid paret N. Negidium A. Agerio dare facere oportere* (Gai 4,41), while for the *intentio* of the formula *in rem*, the purpose is to recognize the birth of a legal situation: *Si paret hominem ex iure Quiritium A. Agerii esse* (Gai. 4,41). The difference has to do basically with the technique to construct the formula.

Savigny (1858, p. 24) alleges that this circumstance is not crucial to distinguish the actions and that no undue importance must be attributed to it, as there are some personal actions which are aimed against an undetermined adversary, but he cites the case of the *actio quod metus causa* and the *actio ad exhibendum*, the first of them *in rem* as it is *in rem scriptae*, and the second, also *in rem* as it is one of the *praeiudiciales*. However, he recognizes that these cases, together with others, would be exceptional cases beyond which “the general rule established is accurate, to wit: that the action is exercised against determined or undetermined adversaries, depending on whether it is *in personam* or *in rem*” (p. 24). It is seen with more clarity that the consistency between both classes of actions and the traditional bipartition of patrimonial rights is more of a supposed overlapping than a result of the Roman method itself. Finally, it results from a modern reading which is not consistent with classical sources.

Thus, Savigny says: “If the division is to exhaust all legal matters, actions *in rem* are to protect the relations resulting from the law of things, the law of succession, and family law” (p. 26).<sup>5</sup>

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<sup>5</sup> Sistema, IV, 18.

However, this is not always the case, as the *actio in rem* is not always consistent with what we know today as a real right.

From the analysis of prejudicial actions, as is the case with *quaestiones statu*, which in modern terminology would be strictly personal actions, in Roman law they are not, however, actions *in rem* due to their formulaic technique (p. 27),<sup>6</sup> and the same is true of *actiones in rem scriptae*, which are personal by their very nature.

The same is true of the *actio quod metus causa* or with the *actio ad exhibendum*. Instead, the *actio furtiva*, which in a way protects the reinstatement of the real relationship that the dispossessed had over the *res furtiva* is not *in rem* but *in personam*, insofar as it is aimed at a determined person: the *fur* (Schulz, 1961, pp. 32-34).

Also, if we analyze the interdicts, we should never forget that *interdicta quoque actionis verbo continentur*. We see how in their capacity as extraordinary remedies they are useful to secure possession, as well as the exercise of certain rights which would be personal in nature as is the case mentioned in the Digest of *interdictum de libero homine exhibendo*<sup>7</sup> with the purpose of protecting a man *libertatis causa* or the *interdictum de liberto exhibendo*, so that a freedman appears before his master to request works (Gai. 4,62). But also, to highlight the false consistency with modern notions, the nature of all interdicts is personal (Albertario, 1946, p. 219).

In D. 2,14,7,8, the same standard is established as to agreements: *in rem: quotiens generaliter paeiscor, ne petam; in personam, quotiens ne a persona petam*, i.e., they are *in rem* when in general one says 'I will not request;' however, they are *in personam* when 'I will not request from a person.' However, Savigny<sup>8</sup> claims that "this circumstance is not crucial to distinguish the actions, and that no undue importance must be attributed to it, as there are some personal actions which are aimed against an undetermined adversary" (1858, p. 32), even if he cites the case of the *actio quod metus causa* and the *actio ad exhibendum*, the first of them *in rem* as it is *in rem scriptae* and the second also *in rem* as it is one of the *praeiudiciales*<sup>9</sup> (pp. 32-33). However, he recognizes that these cases, together with others, would be exceptional cases beyond which "the general rule established is accurate, to wit: that the action is exercised against determined or undetermined adversaries, depending on whether it is *in personam* or *in rem*" (p. 34).

Also, Gai. 4,16 reads:

*the actio in rem is that whereby we claim that a thing is ours or that we have a specific ius, such as the usus, the ususfructus, the eundi agendi, the de aquam ducendi, the de altius tollendi, or the de vista.*

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<sup>6</sup> Sistema, IV, 19.

<sup>7</sup> XLIII, 29.

<sup>8</sup> Sistema, IV, 208.

<sup>9</sup> Sistema, IV, 209.

With a modern mentality, we could easily deduce that this is a division between personal and real actions, but such deduction is evidently erroneous, and is not consistent with classical sources. Savigny (1858) considers it a “phraseology generally adopted which restricts the denomination of the actions resulting from the law of things, because then the division between *in persona* and *in rem* would not be a general division covering all actions” (p. 34). He also qualifies it as a vicious phraseology favored by the equivocal concordance of certain technical expressions, partly created, arbitrarily, and without affecting the language of the sources of the law.

Pugliese, however, remarks that he finds this position excessive in highlighting: “la contrapposizione della *actio in rem* all’*actio in personam* non era di natura meramente processuale, ma rispecchiava una contrapposizione attinente al fondamento, all’oggetto e allo scopo dell’*actio*,” and then adds:

non è certo che la situazione sottostante all’*actio in rem* fosse esattamente e interamente quella, che poi si qualificò come *ius in re* o diritto reale, così come può discutersi se o fino a che punto la sua corrispondesse all’antitesi tra diritti reali e diritti di credito... In realtà, questi concetti non erano stati ancora formulati o, tutt’al più, si trovavano a uno stadio embrionale e inconsapevole. (Pugliese, 1964, p. 125)

It also happens that the use of the word *person* in Gaius’s texts requires a particular analysis, as in Roman law all persons are men, but not all men are persons. In Rome, the person covers a varied gamut of possibilities, depending on the different status, i.e., legal situations which will vary and decrease successively until reaching the borderline case of the slave, who is simply a “man” and lacks any features of personality.

Just like we have examined the case of the *status libertatis*, we could do the same with the *status civitatis*, in which the completeness of the law is represented by the situation of the Roman citizen, but we would be facing again different legal situations, as “the difference is not limited to the situation of citizens and foreigners, because between both extremes we find the Latin, who are different depending on their status as ‘veteres,’ ‘coloniaris,’ or ‘iunians’” (Di Pietro, 2013, p. 60).

This gives us an idea of how complex this topic is in Roman law. As explained by O. Spengler (1966, pp. 75-76), there is an extensive hierarchization in all of the Roman world, at the basis of which is the *servus* and at the top of which is the hero, who becomes a deity worthy of worship, as was true of Romulus, elevated to a deity as Quirinus. Moreover, the multiple intermediate categories resulting from the effects of a *capitis deminutio* are properly Roman and alien to current mentality.

What happens is that, as I am explaining, in Roman law the concept of person goes through a wide gamut of possibilities, determined by the variety of legal situations which

will change and successively decrease up to reaching the case of the slave who is simply a man and lacks any feature of personality, as in Heineccius's words: *servi sunt homines, non personae* (Heineccius, 1747, p. 51).

This was clearly taught by Aulus Gellius (*noctes Atticae* 4,7): *Quoniam igitur indumentum illud oris clarescere et resonare vocem facit, ob causam "persona" dicta est o littera propter vocabuli formam productiore*: i.e., "Because then that face artifact renders the voice clear and resounding, that is why it is called person. That word is the one which expresses the concept more clearly" (p. 348).

## 7. A Philosophical Perspective of the Problem: The Hypostases in Plotinus

Plotinus, the famous Greek philosopher of the Neoplatonic school, was born by the end of the III century B.C. We know his biography thanks to a text by his disciple Porphyry, who wrote a book on his life.

In that text, Porphyry transcribes stories of his life. Porphyry comments that he had the aspect of somebody who "is ashamed of being inside a body," and that, at a certain time, when somebody proposed doing a portrait of him, he answered: "Is it not enough with bearing the image that nature has trapped us in that you now are pretending that I myself accept to legate a more lasting image as if it were a work worthy of contemplation?" (Porfirio, 2001, p. 76). This piece of information is relevant to see up to what point the philosopher was worried about recognizing the true being of man.

In 4,4 of his *The Enneads*, Plotinus wonders:

Who are we? Are we by chance the reality from there or what approximates it and is born with time? In fact, before this birth took place, we already existed there, being diverse men, some even gods, pure souls and intelligence tied to the reality as a whole, parts of the intelligible not separated or cut, but pertaining to the whole. (Plotinus, 2007, p. 239)

And he adds: "What could they be if they were not one, given that, deprived of what is said of one of them, those beings are no longer?" Actually, Plotinus says,

there is no army if it is not one, and there will also not be a choir or herd if they are not ones. But there is also no house or ship if they are not one, because the house is one, such as the ship is one and if the unity is removed from them, the house shall no longer be a house, and the ship shall no longer be a ship.

So far, it would seem that we are departing from the topic being studied. But it happens that Plotinus will use in his philosophical language a word which has a particular meaning in terms of the conception of the person. The word in question is *hypostasis*.

The word ὑπόστασις, which we translate as *hypostasis*, according to Ferrater Mora (2009, p. 1645) means “being in a true manner” or “being in an eminent manner.” The idea of *hypostasis* has to do with a true reality or ουσία, i.e., *ousia*, and an individualization of substance at the same time. Plotinus uses the word *hypostasis* to designate the three intelligible substances: the one, the intelligence, and the soul of the world.

This is important as to the sense of the word *person*, as the word *ousia* was translated into Latin as *substantia*. According to Ferrater Mora (2009, p. 3397), when *ousia* was used as an equivalent of community, the same word *substantia* could not be preserved to designate the substantial individuality, so then the word *person* started to be used.

This idea will be developed in general by Neoplatonic philosophers. Especially, in his *Enneads*, Plotinus claims that “our soul is also something divine and of a different nature, similar to the nature of the universal soul.” He also says that the body is not alien to us, but it is ours:

That is why we take care of it. That is why we are also concerned when the body enjoys and also when it suffers, and the weaker we are, the less we separate from it and we consider it our most valuable part, the man, and so to speak, we submerge in it (Plotinus, 2017, p. 240).

In Plotinus’s thought, according to García Bazán (2011, p. 156), there are three levels of subsistence for hypostasis. Of those dimensions, the most complex one is the *psique*, in which reality is conceived by Plotinus in three levels of depth which subsist by themselves and which reveal simplicity.

Such philosophical ideas will make a contribution to the definition of the individual based on the conception as an individual substance of rational nature, according to the psychophysical union of body and soul, and clearly separated from any other individuality.

The idea of hypostasis will prove to be key for the philosophical conception of the person, even if the legal conception is not yet developed. However, we owe to philosophy the question of the true being of man, which in the future will translate into a discussion on the legal nature of the human person and his dignity. But that discussion will come up afterwards.

## 8. Conclusions

In archaic law texts, it is not possible to find the word *person*. The most frequently used word for man is the word *caput*, which literally means ‘head.’ This term is not intended to mean the nature of man, but his individuality. All living beings are counted by head, as happens with men or cattle. That is true of the *capite censi*, *capite civis*, or *capite poenitur*.

At the time of the law of the Twelve Tables, men were individualized by means of the words referring to their qualities, such as the *adsiduus*, the *proletarius*, the *nexi*, or the *vades* and *subvades*, with no other connotation other than the literal meaning of the terms.

The Greek word *πρόσωπον* literally means ‘mask.’ Some authors believe that the word *person* derives from this Greek word, but actually, as per the studies made by Maurice Nédoncelle (1948), the word *person* derives from the proper name *Persephone* or an archaic adjective related to the Etruscan word *Phersu*, and there is no common etymological root between the word *πρόσωπον* and *person*. The word *person* already appears in literary texts of the I century B.C., especially in Lucretius, with the sense of mask or artifact with which actors covered themselves in paint or covered their faces to impersonate the character and amplify their voices. However, as to meaning, the word expresses the fiction typical of theatrical activity, as opposed to the true reality. This is so represented by Lucretius: “The mask falls and reality persists.”

In Cicero, the word *person* represents a wide gamut of situations and meanings. Basically, Cicero conceives the person in connection with rhetoric and oratory. The person is somebody situated in a context of time and place, who interacts with others. We curiously find in Cicero an approximation to the relationship between person and dignity, although it does not derive from human condition, but from the merit worthy of *optimates*, who contribute their efforts to the Republic. Gaius mentions the word *person* in two aspects. First, he uses the term in his *summa divisio* of the entire law, stating that there is a law of persons, a law of things, and finally a law of actions. Moreover, he refers to persons when discussing the topic of judicial actions and makes a distinction between *actiones in rem* and *actiones in personam*. Here it can be seen that the concept of person covers a varied gamut of possibilities, depending on the different status, i.e., legal situations which will vary and decrease successively until reaching the borderline case of the slave, who is simply a man, and lacks any features of personality. The word *person*, in Gaius, is synonym with *caput*, head, and the expressions *in rem* and *in personam* are nothing more than technical words that classical jurists used to create judicial formulae.

The first philosophical question as to the person is in the texts of Plotinus, who incorporates the word *hypostasis* into philosophical idiom, which may be translated as ‘being in a true mode,’ ‘being in an eminent manner.’ Plotinus uses the word *hypostasis* to explain the three intelligible substances: the one, the intelligence, and the soul of the world. Based on Plotinus’s texts there appears the notion of person as a substance supporting the features of rational individuality.

Ultimately, in Roman law texts we find varied vocabulary to designate the individual, and the word *caput* is key. We owe to the Etruscan-Latin tradition the origin of the word *person*, which in Greek was translated as *πρόσωπον*, though with a meaning limited to the mere appearance. The true meaning of the word *person* we do not owe to law, but to the philosophical thinking of Plotinus and Boethius (1918), who find in it the substance of the individual being defined as essence, even if the legal science has assimilated such conception afterwards to develop a theory of the person.



## About the article

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