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Author: Vugts, Berrie
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Demarcation through Naming
Rethinking Personhood by Way of Anthropomorphism

They called him Klaus, after Lotte’s maternal grandfather, although at some point Lotte thought about calling him Hans, after her brother. But the name doesn’t really matter, thought Lotte, what matters is the person.

(- From 2666, Roberto Bolaño)

1. Introduction: Indian Dolphins

In May 2013, the Indian government announced that dolphins were to be considered nonhuman persons who deserved their own specific rights. This is a passage taken literally from the official legal circular that was issued by the Central Zoo Authority. The text shows some grammatical inconsistencies that may be attributed to the specific juridical jargon in which it is conveyed:

  Whereas cetaceans in general are highly intelligent and sensitive, and various scientists who have researched dolphin behaviour have suggested that the unusually high intelligence; as compared to other animals means that dolphin should be seen as “non-human persons” and as such should have their own specific rights and is morally unacceptable to keep them captive for entertainment purpose,

  Whereas, cetaceans in general do not survive well in captivity. Confinement in captivity can seriously compromise the welfare and survival of all kinds of cetaceans by altering their behaviour and causing extreme distress.  

Various international broadcasters picked up the circulation. Deutsche Welle published an article that was headed: “Dolphins Gain Unprecedented Protection in India.” The Animal Liberation Front (ALF), in an equally celebratory tone,

36 F. No. 20-1/2010-CZA (M). Dated 17.05.2013.
stated: “Dolphins Granted Personhood by Government of India.” In both articles, a representative of the Federation of Indian Animal Protection Organizations (FIAPO), Puja Mitra, was cited: “This opens up a whole new discourse of ethics in the animal protection movement in India.”

Effectively, what the Indian Government had ordered was not for dolphins to be granted legal personhood, but that dolphins, because of their intelligence and sensitivity, should no longer be held in captivity. As a result, the use of dolphins in aquatic theme parks was abolished. The scientific evidence that informed this decision was already there, since a few years before (2010) a group of scientists from different fields of expertise, law, behavioural biology, bioethics, marine biology, under the name of The Helsinki Group, had issued a declaration of rights for all cetaceans. This declaration was based, as their program states, on the principle of equal treatment for all persons.

The widespread confusion in the international press was in all likelihood caused by the text of the circular itself. The statement that dolphins “should” be viewed as nonhuman persons had all too readily been interpreted as if dolphins were granted legal personhood. Of course, one might attribute this confusion to broadcasters being too rash with their commentaries. However, since this “should” – a verb that generally indicates an obligation to do whatever “should” be done – was pronounced by the Indian government, i.e. the lawmaker itself, there is in principle no reason to assume it would not immediately follow up on its own imperative and grant dolphins legal personhood.

And yet none of this happened. The Indian government’s explicit reference to dolphins as nonhuman persons did not warrant dolphins entering the human domain of rights through an expansion of India’s juridical model, nor did the Indian government take steps to ensure this was going to be realized in the near future. International broadcasters had not been too rash with their commentaries but were simply wrong. At the same time, the confusion as to why the Indian government did not follow up on its own imperative was left unresolved and appears to revolve around the notion of “person” as an ambiguous instance of language. This begs the question of what we are to make of the notion of person and whence the disparity between the facts presented by the Indian government and the journalistic reception of the case originates.

The nature of the disparity is clear. Within the journalistic coverage of the case, the Indian government’s attribution of personhood to dolphins is
confounded with the granting of legal personhood, whereas the Indian government’s decision to ban aquatic theme parks is centred on a clear-cut distinction between personhood and legal personhood, even if the text mentions that dolphins should have “their own specific rights.” Hence, within the journalistic coverage of the case, the concept of person is taken out of its immediate context and transferred to the predominantly human plane of rights, which suggests that the concepts person, humanity and legal person are understood as necessarily implying one another. In other words, the language of journalistic coverage does not present the facts of the case, but rather slips into a mode that anthropomorphizes “person” as human and thus as “legal person.” In this respect, the journalistic coverage of the case begs the question as to why there is apparently such a strong urge to make the concepts person, humanity and legal person imply one another in spite of the fact that the Indian dolphins case demonstrates that these concepts must be distinguished from one another in principle.

My basic premise here is that treating something as a person implies more than making a juridical-political, philosophical or moral choice. In other words, what I think the confusion the Indian dolphins case gave rise to illustrates is that treating something as a person is not only a constative matter of voicing our convictions and opinions as a way of asserting our view of the world. Rather, it is always also a performative act embedded within particular rhetorical strategies that revolve around addressing something as a person and speaking about something as a person, etc. Indeed, I propose the animal rights debate to be so ridden with complexity precisely because the rhetorical logic of the key terms within which animal rights are discussed does not always follow its juridical-political, philosophical and moral underpinnings. In the case under discussion, for example, Western reporters immediately started anthropomorphizing the whole case despite there being no conceptual basis to do so at the time the circular was issued.

With respect to this issue, the question of anthropomorphism can be said to run through the Indian dolphins case in two distinct but related ways. First, there is the concept “person” that is anthropomorphized by Western reporters. Second, there is the Indian government’s reliance on a vast body of scientific evidence testifying to the dolphin’s unusual intelligence and sensitivity that informs its decision to view dolphins as persons. This evidence is necessarily anthropocentric and hence, reliant on anthropomorphism, since characteristics that are commonly viewed as predominantly human – intelligence and sensitivity – are attributed to nonhumans. Of course, one might object that the dolphin’s intelligence and sensitivity must be conceived of as wholly different
from human intelligence and sensitivity and hence, that qualifying these characteristics as anthropomorphic attributions amounts to an unwarranted disacknowledgement of the fundamental otherness of dolphins that scientific evidence presents. My answer to this objection would be that I am not disputing the rather obvious “otherness” of dolphins, but the terms in which this otherness is registered. Moreover, let us recall that in their declaration, the Helsinki group (as the original source of the evidence) strived for legal personhood for dolphins because of their profound likeness to human beings.

The more fundamental issue here, however, is that both forms of anthropomorphism apparently have a limit, since they do not warrant the inclusion of dolphins within the moral community under the guise of legal personhood. It is not my aim to explain away this limit by exploring the politics of the specific situation. One could, for example, argue that the Indian government simply used the scientific evidence on dolphins that was already in place to put a stop to the growing number of aquatic theme parks in order to meet the demands of certain pressure groups. However valuable such an analysis might be, it fails, firstly, to address the ambiguous stance of “person” that the case turns upon, the limit it installs and the confusion it breeds. Secondly, it does not allow for a better understanding of the ambiguous stance of personhood and of the role anthropomorphism plays in the personification of the animal.

This is why I wish to zoom in on the confusion the case under discussion gave rise to as a result of the contradictory status of the term person and how it operates as a tool to demarcate entities both within and outside of the juridical sphere. Hence, I will not so much look at the term person as a constative matter – of interpretation or politics – but rather as a problem of how difference is performed through this particular instance of language itself.

2. Person

The etymology of the concept “person” can be traced back to the word phersu, which originally denoted the mask that performers in Etruscan rites wore and which, in the ancient Roman theatre, came to denote persona. In ancient Rome, the word persona took on a legal meaning and if it used to connote the role one played in the theatre it now becomes tied to the role one has to play in life. As
Richard E. Epstein\(^{40}\) has observed, this legal meaning of *persona* was much more complex than it is today:

> Given the divisions amongst human beings, the law of persons was always more complex in ancient legal systems than in modern ones. The Roman rules for men within the power of their fathers and for women and for insane persons all differed from each other in important particulars. Men within the power of their father could become heads of their own families at the death of their father; they had full rights to participate in political life even while consigned to a subordinate position within the family. (149)

What becomes clear from the above passage is that the different degree of complexity between the Roman law of person and the law of person today must be attributed to the fact that modern law does not permit divisions into human beings and surely cannot subscribe the roles individual human beings are to play in life. In the words of the Italian philosopher Roberto Esposito,\(^{41}\) the Roman tradition has been overturned by what he views as a sharp subjectivist turn taken by legal theory:

> This is what happened to the idea of ‘person’ during the epochal transition from the objective formalism of Roman law to the individualistic subjectivism of modern rights. The moments these were awarded – at least since the French revolution, but already by the time of Hobbes – to all humans, who were thus made equal by their common status as subjects, and then as citizens, at the moment the Roman separation between distinct human categories is said to have collapsed, along with the original distance between mask and face: not only because every individual now had its own mask, as it were, but because the mask adhered to the face so intrinsically that it became an integral part of it. (11)

The advent of human rights, then, no matter what exact historical origin one wishes to retrace it to, has had severe implications for the juridical notion of person today. Roughly, the notion of person has come to denote the individual

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\(^{41}\) Ibid, supra note nr. 28.
human being as a subject of law that has certain inalienable rights, at the very least to life, to property, liberty and well-being.

These rights no longer permit divisions between human beings but are considered universal rights that are equal to all persons. According to Esposito, we are still living under a regime of personhood whereas the modern notion of person has largely remained unquestioned:

Nowhere to my knowledge, not even in the midst of the most profound disagreement of what may or should be defined as a person (not to mention the equally problematic distinction between a potential and an actual person), is what we, by habit or choice, call ‘person’ ever questioned – much less its absolute onto-theological primacy. (2)

Having begged the question, Esposito challenges the regime of personhood. He does so through a profound analysis of the person as a legal category. More specifically, he traces back the history of the legal category “person” as a dispositif: as key to a bio-politics that functions as a tool for demarcation by excluding others from the juridical sphere. Hence, what Esposito’s focus on person implicitly acknowledges is that person is a much more complex phenomenon than the characteristic polemic on criteria for personhood within the animal rights debate would suggest. With respect to the Indian dolphins case, it shows, first, that person is not merely an empty form on which certain characteristics or capacities, like intelligence and sensitivity can be inscribed. Second, it suggests that the notion of person is so deeply enshrined within our juridico-political sphere that we cannot simply work our way around it by mending it to suit our changing ideas about the legal status of animals.

What Esposito does not address, however, is how the personification of entities from outside of, to within the juridical sphere comes about. Hence, his concern with person hinges on (bio)-political argumentations rather than on an exploration of person as an ambiguous instance of language performed through anthropomorphisms and personifications that are embedded within rhetorical reading strategies. As such, his valuable approach remains blind to the ambiguous stance of the term “person” that we detected within the Indian dolphins case. Since I view this ambiguous status as the most important unresolved issue within the animal rights debate, I choose to follow a more radical logic by focusing on person as a performative instance of language. This is why I wish to explore the role of the personification and its relation to anthropomorphism in what lies ahead.
Before I zoom in on the relation between anthropomorphism and personification, however, it is important to note that within the animal rights debate today anthropomorphism is generally not understood as a rhetorical strategy at all. In this respect, the following comment by Sandra D. Mitchell is particularly telling of the approach to anthropomorphism within today’s animal rights debate:

However, even though anthropomorphic models can be treated as science as usual, unique problems for these models still remain. These problems have to do with the way in which language descriptive of our experience travels back and forth between scientific and social domains. (89)

In this passage, Mitchell addresses the problem of anthropomorphism by treating language as something *descriptive* of our experience within specific and separate domains. This understanding of anthropomorphism corresponds to the way in which anthropomorphism is conventionally defined, namely as the attribution of something human to something nonhuman. It rightfully suggests that anthropomorphism plays a key role in presenting something nonhuman as human, but ignores the role anthropomorphism plays as a rhetorical strategy that performs personification. In order to address this characteristic lack within the animal rights debate, I first wish to provide a framework that allows for a clear-cut distinction between anthropomorphism and the trope of personification. Let us, therefore, turn to a text that seems to present a welcome exception to taking up anthropomorphism in a conventional manner and which therefore will be key to my immediate purpose of resolving the paradoxical stance of the word person within the animal rights debate.

3. Anthropomorphism and Personification

In Barbara Johnson’s valuable essay “Anthropomorphism in Lyric and Law,” Johnson explores the question of anthropomorphism and its relation to the trope of personification by following up on “Anthropomorphism and Trope in the Lyric,” a text by Paul de Man. Roughly, Johnson’s essay reflects the following position of both herself and De Man on the difference between anthropo-

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44 Ibid, supra note 29.
morphism and trope: If De Man maintains it is possible to make an essential distinction between anthropomorphism and trope, Johnson disagrees. She motivates her disagreement with De Man by turning the trope of personification into a primary example of this impossibility, claiming: “on the level of text the mingling of personifications on the same footing as real agents threatens to make the uncertainty about what humanness is come to consciousness […]” In short, Johnson argues it is impossible to distinguish between anthropomorphism and the trope of personification in any given text because we can never be sure what humanness means. Johnson thus follows, but also goes against De Man because she argues that his notion of an essential difference between anthropomorphism and trope can only be thought as an abstract matter, since establishing such a difference would necessarily be reliant on a positive knowledge about what humanness is.

As much as I agree with Johnson on the impossibility of defining humanness, conceiving of the difference between anthropomorphism and trope as an abstract matter only, and leaving it at that, would prove quite useless to my project of resolving the ambiguous stance of person within the Indian dolphins case, in particular, and the paradoxical stance of person within the wider animal rights debate in general. More specifically, it hinders studying the interaction of trope and anthropomorphism within concrete texts, which is a prerequisite for my further exploration of the construction of animal subjectivity within an expansive model. For this reason, I will now zoom in on Johnson’s text to see if we can tease out a practical distinction between anthropomorphism and trope that can inform a different outlook on “person” and its relation to subjectivity.

Johnson begins her investigation into the nature of anthropomorphism by identifying lyric and law as two very different ways of instating what a person is, in order to see how these persons can illuminate one another (550). Johnson’s framework thus revolves around personhood as both a rhetorical and juridical question. In an attempt to address these two questions, she effectively posits the lyrical person on the one hand, and the legal person on the other, through a juxtaposition of texts from the fields of literature and law. First, by discussing de Man’s analysis of two sonnets by Baudelaire; second, by offering us insight into a text, or multiple texts, regarding a Supreme Court opinion from 1993: Rowland v. California Men’s Colony.46 In what follows, I will analyse the way in which Johnson reads into the texts she has selected from both fields. Before I do so, however, it is noteworthy that apart from mentioning lyric and law as two different ways of instating what a person is, Johnson does not start her essay with an explanation of the term person as such. Instead, the only clue Johnson

provides at this point is the dictionary definition of anthropomorphism as a heading for her essay. This is why I will now first analyse this heading to try and come to a better understanding of her notion of person. Here it is:

Anthropomorphism. n. The attribution of human motivation, characteristics, or behavior to inanimate objects, animals, or natural phenomena. (549)

The word person is not mentioned in the definition. I take this to suggest that Johnson reads anthropomorphism as a form of personification as I do, but also that she here chooses to read the concept of person in its conventional sense, as connoting the human person. What is left unaddressed in this approach, then, is precisely the conventionality of the relation between human person and “person.” In other words, if the concept of person is not a constitutive element of the conventional (dictionary) definition of anthropomorphism, this suggests that, outside the strictly juridical sphere, an anthropomorphism does not necessarily concern the attribution of personhood to what is considered an essentially nonhuman entity. It implies that even if person is conventionally understood as human it does not mean that human has to be understood as person. Rather, what is considered human at any given stage could also be something else, like a motivation or certain characteristics. Hence, the word person could – as with any noun that does form a constitutive element of the above definition – be subject to further definition and inspire debates about what it supposedly conveys in terms of meaning.

It is here that my investigation into anthropomorphism begins to diverge from Johnson’s, because it will turn upon an exploration of just such a non-conventional understanding of person. To illustrate my argument let us momentarily read this conventional definition of anthropomorphism in the following more schematic manner to see what it might be about if not necessarily about “person:”

human, motivation, characteristics, behavior attributed to inanimate, objects, animals, natural phenomena

The term anthropomorphism here functions in the same way as the word person and as the words that form the elementary parts of its definition: as a non-specific noun subject to further definition. In fact, understanding what the sentence comprising the above definition of anthropomorphism means would imply agreeing upon every part of it and on the way these words relate and
interact within a certain (fixed) context. It would require a system that contains meaning within strict boundaries, a self-enclosing hermetic unity within a context-less space, resembling the picture of a prison without an outside. Obviously, this impossible figure is not a viable option for reading into the conventional definition of anthropomorphism. The only thing that in my view does become clear from this definition is that there must be an attribution of something human to something nonhuman and that anthropomorphism is undeniably an act, an act of attribution. Yet, the definition does not provide any clue as to what exactly marks the shift in register that it bespeaks (human to nonhuman). At most it says: anthropomorphism is the undoing of the shift from human to nonhuman by attributing to the nonhuman something human. This may seem paradoxical and indeed it is.

For the attribution of something human to something nonhuman to be conceivable, there has to be an imaginary moment, perhaps in a no longer retrievable past, when the human decided to distinguish itself from what it regarded as essentially different from itself, as nonhuman. I do not mean anthropomorphism effectuates some longing for a beginning, wholeness and connection to what is considered essentially lost or other. I only wish to suggest that in the act of anthropomorphism there is a mechanism at work that attributes to the nonhuman something human and that in this act, in this moment of acting, the human seems to exert itself by carrying off the suggestion, a suggestion that was not there before the act, as if this nonhuman has always been human after all. In other words, if this essentially nonhuman entity has now – through an act of anthropomorphism – become somehow human, it must always have been somehow human, since otherwise the human cannot be maintained as an essential category. The nonhuman does not become human, then, in the act of anthropomorphism, but through a corrective measure only now has been (re)cognized and labelled as such.

This state of affairs seems, first, to defer the question of what anthropomorphism is to the question of what it means to be human and second, render the term human meaningless. I will return to this deferral and the concurrent inflation of the term human shortly. Here, I only wish to observe that although “person” is a key concept in law and conventionally connotes the human person, the conventional understanding of anthropomorphism – whether the one I just deducted or the one conveyed in the heading of Johnson’s essay – does not warrant an understanding of the relation between anthropomorphism and person as fixed. In fact, zooming in on the claim that informs Johnson’s juxtaposition of lyric and law and the way in which it relies on the convention of the human person, suggests that there is something contradictory about this
claim itself. I consider it, therefore, worthwhile examining it further. Here it is, in the first sentence of the following passage:

More profoundly, though, *lyric and law might be seen as two very different ways of instating what a ‘person’ is*. There appears to be the greatest possible discrepancy between a lyric ‘person’ – emotive, subjective, individual – and a legal ‘person’ rational, rights-bearing, institutional. In this paper I will try to show, through the question of anthropomorphism, how these two “persons” can illuminate one another. (550, italics mine, BV)

First, here “person” is treated as a self-same and single phenomenon, whereas the very different ways (plural) in which this person is instated (legal or lyric) apparently capacitate its meaning. Second, the claim does not read that lyric and law might be seen as two very different ways of what person is, but rather of what a person is. The specific reference that is made to person by the indefinite article “a” is left unmotivated and registers person as nonspecific. It makes me wonder why it is brought up and why in this way, so surreptitiously, i.e. without fitting this “a” in between quotation marks as well? The self-sameness and singleness of this person is further emphasized when, in the following lines, Johnson states: “In this paper I will try to show, through the question of anthropomorphism, how these two “persons” can illuminate each other.” (550)

We have now shifted from a person to two persons who in terms of their identity – supposedly – remain self-same.

Naturally, I cannot trace the motivations that underlie Johnson’s choice of words. What I can do is examine how those words work. Here, I would argue, the mentioning of this “a” without fitting it in between the quotation marks works – disguised as a manner of speech – to stress the singleness of this person, a singleness once more disclosed by contrasting it with the explicit plurality (the very different ways) of the adjectives that supposedly determine its meaning. One might object that my argument is far-fetched here because asking the question about what person is without mentioning this “a” at all would be grammatically incorrect. Yet, considering this grammatically incorrect not only betrays a conventional approach to person as human person, but also implies conforming to a convention that insists on infecting the word person with singleness as the result of a conventional grammatical rule.

In short, using the figure of contrast as Johnson does here, not only encourages us to conceive of person as a single phenomenon, but also legitimates the conflation or rather, substitution, of singleness with individuality
and thereby works to add a human dimension to the noun person. Compared to animals, plants or objects – although these terms equally remain subject to further definition – individuality is generally regarded, if not as specifically human, then as a paramount human trait, justifying human treatment. Of course, the difference between individuality and singleness is still more complex as we would probably not kill the last chicken, in spite of the fact that we do not generally regard chickens as individuals. The point here, however, is that Johnson’s angle on person as a single phenomenon operating within two juxtaposed but separated domains of lyric and law allows the terms singleness and individuality to be subjected to conflation. This procedure can only be understood if Johnson has – however unwillingly – on this human/nonhuman axis taken the lyrical person to implicitly connote the human (individual) person. This human (individual) person then is made to perform a stand-off with the so-called legal and potentially nonhuman (non-individual) person who, or which, does not strictly need these implicit qualifications in the shape of fixed adjectives.

Thus, instead of addressing the relation between the concept of person and human person that “humanness” conventionally connotes, Johnson uses a framework that can only take this relation as given. This “taking as given” consists of investing the noun person with an intrinsic humanness instead of questioning the conventionality of this procedure. It now becomes clear why Johnson opts for the personification as the most important trope to be examined, since reducing the differences between anthropomorphism and trope to the difference between anthropomorphism and personification both presupposes and reinforces the conventional relation between person and human person. In other words, it betrays a reading of the trope of personification quite literally as a person-ification, whilst considering anthropomorphism to be such a person-making concept as well. Hence, Johnson’s framework here contradicts itself because it relies on reading the trope of personification as an anthropomorphism prior to the exploration of the differences between those terms.

Within such a framework the potential for difference between the two concepts is cancelled out before it can take root; or, as can be gathered from Johnson’s conclusion, can be conceived of as a highly abstract matter only. Johnson’s understanding of person, then, is contaminated by an unwarranted investment with humanness and thus with the implied notion of individuality that humanness connotes; not because Johnson does not appreciate person as not necessarily human, but because the specific way in which she juxtaposes lyric and law is necessarily reliant on this contamination. In fact, each time she tries to loosen the fixity of the relation between person and human person by
uncritically transposing her contaminated person to another plane, it becomes clear how Johnson’s person is always already informed by this human individuality (by this “a” person”). And it is this attempt at loosening that suggests something is sticking. This human individuality, however, does not stick to this person of itself, but is forced into being by treating these very different persons as nouns that rely for their meaning on their accompanying adjectives – as identical containers that can be filled with meaning. It is as if Johnson is asking the question: What if this human person is not human?

This particular conception of person might be considered to stem from a statement Johnson formulates earlier on in her essay, when, after quoting the Keatsian chiasmus “Beauty is Truth, Truth Beauty,” she states that: “a common contemporary way of viewing the relations between law and literature is through the relation between epistemology and rhetoric.” (551). To be sure, Johnson here does not state her own opinion on the matter but points out the conventional way of framing the relation between law and literature. However, neither does she at this point provide an alternative to what seems an all too rigid divide between the interrelated textual fields of literature and law. In fact, Johnson’s reference to the “contemporary commonness” of her statement can not just be read as pointing to a convention, but also as working to gloss over the fact that the claim itself is not motivated. Hence, referring to the “contemporary commonness” of her statement without addressing it critically here comes to function as a rhetoric tool that substitutes the motivation itself. In this respect, the brackets are particularly telling: (“which can stand as a common contemporary way of framing the relations between law and literature”), as they work together with the notion of “contemporary commonness” to construe an aura of factuality, of the matter-of-factness of what is being claimed. A logical thinking through of this rigid framing, however, would result in having to regard (A): beauty, rhetoric and lyric/literature and (B) truth, epistemology and law as part of an elaborate and immensely vague binary which, nevertheless, draws a neat line between epistemology and rhetoric as strictly corresponding to what consequently comes to be considered as the separate(d) domains of lyric and law.

Now, if Johnson’s framework hinders developing a clear-cut distinction between anthropomorphism and trope because it fosters a conventional confusion of persons, I now wish to carve out an alternative framework by letting go of the conventional relation between person and human person altogether. I do so, first, by understanding Johnson’s person as a homonym. I imagine this homonymic person as a word that does not necessarily have any inherent meaning in common with a word that happens to constitute the same
In fact, as a homonym, this person has nothing in common with any interpretation that would allow for treating it either in some aspects or entirely in the same vein in terms of meaning, i.e. as synonymous or as synonyms that have somehow reached perfection and become identical. Admittedly, this is a nonsensical remark: synonyms cannot reach perfection but exist because of the difference they assume. It is, however, the theoretical (logical) outcome of thinking through Johnson’s confusion of persons and thus illustrates the need for another framework. Second, the homonym person does not inhabit a spectrum that allows for gradual scaling. It is a piece of language, a free-floating signifier. Third, my specific understanding of person as a homonym implies that Johnson’s very different ways of instating what a person is (legal and lyric) are not so very different at all. Rather, they are alike, in that they both function and find their meaning exclusively in and through the very (text) system (legal by law and lyric by literature) that happens to proclaim them. Finally, the changed status of person along the lines I propose here must also have consequences for the status of its adjectives. Those adjectives (lyric and legal) no longer determine its meaning. Therefore, I suggest that from now on we treat both lyrical person and legal person as one single phrase, as a name, as a first name accompanying a surname and together, only together, making up an official sort of identity. If the reader is not immediately convinced please consider this aggregation as a heuristic tool that will enable me to provide a workable definition of anthropomorphism in what lies ahead.

So, let us – informed by my homonymic understanding of person – take on the question of anthropomorphism through a discussion of Johnson’s dialogue with De Man. Prior to presenting us with De Man’s definition of anthropomorphism, Johnson follows him in quoting Nietzsche’s famous aphorism on what truth is: “A mobile army of metaphors, metonymies, and anthropomorphisms.” Johnson adds:

De Man claims that metaphor and metonymy are tropes whereas anthropomorphism, while structured similarly, is not the name of a pure rhetorical structure, but the name of a comparison, one of whose terms is treated as a given (as epistemologically resolved). To use an anthropomorphism is to treat as known what the properties of the human are. (551, italics in text)

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From this introductory and clarifying comment on De Man’s exact words it logically follows that Johnson, in following De Man, has fixed the tropes within the lyric-beauty-rhetoric part of the binary that results from the conventional confusion of persons I have just discussed. By the same token, anthropomorphism is placed within the truth-epistemology-law part. At this stage of her essay, Johnson thus not only agrees with De Man’s argument of anthropomorphism and trope as two essentially different concepts, but also chooses to put emphasis on this difference, stressing it and interpreting it in a particular way by appointing these concepts two separate domains.

In this context, the fact that Johnson has italicized the word known, is significant, as it de-emphasizes the treating as known, which would complicate a clear-cut division between anthropomorphism and trope, suggesting mingling or overlapping domains. Johnson then cites De Man’s exact words in order to zoom in on the problem:

“Anthropomorphism” is not just a trope but an identification on the level of substance. It takes one entity for another and thus implies the constitution of specific entities prior to their confusion, the taking of something for something else that can then be assumed to be given. Anthropomorphism freezes the infinite chain of tropological transformations and propositions into one single assertion of essence which, as such, excludes all others. It is no longer a proposition but a proper name. (552, italics in text)

Please note the not so slight but instead significant difference in Johnson and De Man’s respective angles on anthropomorphism. Whereas Johnson focuses on treating terms as known, de Man focuses on the treating as known (the taking of something for something else that can then be assumed to be given). De Man thus explicitly talks about an act, whereas Johnson’s comment relays attention from the active verb “to treat” to the more static “to treat as known” in a matter-of-fact way, emphasizing it by means of italicization. What strikes me as odd in Johnson’s further comment is that after quoting De Man’s definition in full she proceeds to ignore the body of it as she only mentions the beginning (anthropomorphism is not just a trope) and the end (anthropomorphism is a proper name). I will discuss the differences between trope and anthropomorphism in relation to defining anthropomorphism as a “proper name” shortly. First, I will continue to follow Johnson and explore why she might have chosen to leave the entire body of De Man’s definition out; to find out what is meant by
this “not just a trope”; to then work towards a clarification of the relation between person and anthropomorphism from the perspective of the law.

What makes Johnson’s framework so relevant to this purpose is its reliance on a conventional understanding of the word person as human person, because it is precisely such a conventional understanding of person that also seems to inform the bypassing of the question of personhood within an expansive model. In this respect, Johnson’s framework parallels the journalistic coverage of the Indian dolphins case. Both within and outside of the law, however, as also became clear from the Indian dolphins case, personhood is not exclusively attributed to humans, nor is legal personhood, since, for example, corporations are commonly granted the status of legal person. In other words, the attribution of personhood to nonhuman entities at once contradicts the expansive model’s own conventional understanding of person. Hence, the expansive model does not imply: this entity, this animal, is a human. Instead it implies: this entity, this animal, can be attributed personhood and thus becomes a legal person. Once this confusion of person with human person has been effectuated, the entity, whether essentially human or not, becomes a legal person, no longer necessarily essentially human. If such a contradictory confusing of persons can, at most, result in differentiating between anthropomorphism and personification on an abstract level, disentangling this confusion is key to distinguishing between anthropomorphism and trope on a more practical level.

Now, if Johnson investigates what constitutes a legal person whilst relying on a framework centred in a conventional – synonymic – understanding of person, my homonymic understanding of the word person provides me with a framework that reads legal person as an aggregation. Bearing this difference in mind, I will now analyse Johnson’s reading of the court case and try to do justice to its complexity by carefully moving back and forth between these two different stances of person.

4. Anthropomorphism and Law and the Lyric

The court case Johnson discusses is about a group of prisoners that wishes to sue the prison for abolishing a policy that previously secured the entitlement to free

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tobacco for prisoners who lacked sufficient funds. Since the prisoner’s council is not allowed to possess any funds of its own and thus cannot finance a lawsuit, it attempts to lay claim to a provision in the United States law known as in forma pauperis proceedings. This provision allows persons to be exempted from the prepayment of legal fees if they can prove to be indigent. Hence, before the court can even begin to consider whether or not the prisoners can get their cigarettes restored, it first has to decide if the prisoner’s council can be attributed the legal status of person.

The court case thus indisputably seems to be about personhood, about what constitutes a person. Within my homonymic understanding of person, however, it is not, or only to the extent that the case is treated as such. In my view, the case is about what constitutes a legal person. Without wanting to rehearse all the arguments put forward in this particular case to either grant or deny the prisoner’s council the status of legal person, let me rephrase the problem in a somewhat oversimplified but clear way: The issue the court faces turns upon whether a council can be poor and thus be qualified person or be qualified a person and thus be poor. This issue can be outlined schematically as resembling the figure of the following chiasmus: “Poor is Person, Person is Poor.” However, there is something odd about the way in which this chiasmus works. Whereas the chiasmus is the rhetorical figure that both separates and binds, this chiasmus only binds because it treats as given these two words – poor and person – by fixating them through a swapping of attributes in order to turn them into “perfect synonyms.” I am using the nonsensical term “perfect synonyms” here to illustrate how the differences between the word person and poor are blotted out to the point of substitution by cutting off the chiasmus before it can realize its potential.

It is this procedure, this application of what could at best be qualified as a rudimentary chiasmus, which would enable the court to decide in favour of the council: which would ultimately imply naming it a legal person. Indeed, all the court has to do, (but, as we will see, never did) is to attribute the council either one of the terms – poor or person – and then substitute it for the other; that is then taken as given in De Man’s sense. Viewed this way, and more importantly, presented by the court in this way, it seems the court here is acting as an entity that is trying to deal with the question of what it can or cannot name person in a very sensible and responsible way. Yet in fact it did not. And the fact that it did not had everything to do with the confusion into sameness of the terms person and poor that stems from the conventional confusion of persons I have discussed earlier on. But how does this confusion of terms come to structure the court case? The rudimentary chiasmus “Poor is Person, Person is Poor” is read
through the lens of another rudimentary chiasmus, which then comes to motivate it:

“in forma pauperis is legal person, legal person is in forma pauperis.”

In this particular case, the court does not distinguish between person and legal person because its conventional confusion of persons may conveniently result in the confusion of in forma pauperis with poor. The court reasons: Poor is in forma pauperis is person is legal person, whereby it can randomly substitute any of the above terms for the other if only each time it fits this magical word “is” in between. Strictly speaking, however, the prisoner’s council cannot sue in forma pauperis because it is poor or a person, but only as a legal person, which it can only become after being named legal person. The juridical term in forma pauperis, then, is not to be taken as meaning the same as poor in the sense in which I, for example, could claim to be poor for lack of money or imagination. I cannot be in forma pauperis. I can only sue in forma pauperis and only as a legal person. Thus, if in forma pauperis is not to be confused with poor, the confusion of person with legal person must also be unwarranted. In short, the juridical term in forma pauperis only acquires its meaning in the arena of the law as a position a legal person can entertain. The nonhuman/human discussion on the word poor is not the issue here, but merely serves to gloss over the pattern of unwarranted confusions (or rather substitutions into sameness) the court allows itself to fall prey to in order to come away with a responsible appearance. Bearing these dynamics in mind, the question becomes how the court case can be instructive in gaining a better understanding of anthropomorphism and its stake in the attribution of personhood.

To begin with, we can now distinguish between three different definitions of anthropomorphism in play. The first definition resembles the dictionary definition heading Johnson’s essay and ultimately concerns, as I deduced, the attribution of something human to something nonhuman. I will, from now on, refer to this form of anthropomorphism as conventional. The second way of looking at anthropomorphism stems from the body of De Man’s definition, the taking of something for something else that is assumed to be given. I will refer to this form as strict because despite the fact that it is the human that takes something as given, the “what” that is taken as given does not necessarily involve something human, but, strictly speaking, concerns any “taking as given.” The third form of anthropomorphism I would like to distinguish here is De Man’s somewhat mystical description of anthropomorphism as a proper name, which logically follows from the second. Let us now bring these
provisionally distinguished forms of anthropomorphism back to the court case and examine how conceiving of them as such would work out in practical terms.

If the court had decided that, yes, the prisoner’s council is admitted into the system, then it relies on an anthropomorphism in the conventional sense, in that it has somehow – through an ingenious language game – attributed human characteristics, motivations or behaviour, let us say “something human,” to this entity previously considered nonhuman. Whereas the court might feel the need to consider something as human for practical purposes and without considering the entity it takes to be human as essentially human per se, such a decision would, in principle, imply that the law pretends to know what is essentially human.

If the court decides not to admit the prisoner’s council, which it actually did, it means that the anthropomorphism in the conventional sense – if we were still to follow the court and Johnson in confusing persons – is lost; but, not the anthropomorphism in the strict sense, because it is the treating of the case through the frame of the aforementioned rudimentary chiasmus as given that remains anthropomorphic. In short, deciding not to let the council enter does nothing to prevent this strict form of anthropomorphism, but opens up an intrinsic arbitrariness, thereby revealing not a potential, but a fundamental arbitrariness, and by consequence cruelty, at the heart of the court’s operation.

As I will show in my next chapter, my provisional qualification of this dynamic as cruel begs the question of how cruelty and harm relate to the ambiguous stance of person both within and outside of the animal right debate. For now, a look at the Oxford English Dictionary (2003) only underscores the need for such an exploration in what lies ahead. It denotes harm as causing pain or suffering to others, intentionally or not, and cruelty as wilfully causing pain or suffering to others, or, feeling no concern about it. Although these definitions suit my more immediate purpose, they surely do not provide any clue on the way in which these terms might be conceptualized in their specific relation to animals. The point here, however, is that the dynamic I have now provisionally qualified as installing a fundamental cruelty does not stem from not allowing in this entity that is asking for admittance. Rather, it seems that at the heart of this fundamental cruelty lies a systemic lack of curiosity, a legal disposition that prevents opening up to this entity. Indeed, as we have seen, the court has bound itself to a rudimentary chiasmus that it has installed as its mode of operation. If, in this particular case, we are talking about a group of prisoners and not about animals, the principle – from the perspective of my provisional definitions of harm and cruelty – seems to remain the same: not granting either group the
status of *legal person* installs a juridical order that legitimizes the harm they potentially suffer as a result of this decision.

Hence, if we momentarily follow the dictionary definitions mentioned above, the harm the prisoners are potentially exposed to can be said to realize its potential for cruelty once they run out of cigarettes. This cruelty consists of not having to be concerned with the prisoners’ problem, once the decision not to qualify the prisoner’s council as a person has been effectuated. In short, instead of demonstrating sensibility and responsibility, the court’s decision as to whether the prisoners will be allowed to sue *in forma pauperis* clearly has nothing to do with the real life problem of the prisoners who want their cigarettes restored. Rather, the court’s decision relies solely on a formal procedure, a formality, however important that may be, especially in the juridical domain.

If De Man’s definition of anthropomorphism as a “taking as given” here exposes the fundamental cruelty a conventional confusion of persons may result in, it does not mean his definition is perfect. Indeed, adhering to De Man’s definition we would still potentially turn a blind eye if the court had ruled in favour of the council, and equally call it an anthropomorphism, taking/mistaking the conventional form of anthropomorphism as a *taking as given* quite literally, as a form of *naming* something human instead of *attributing* something human to something nonhuman. It is this interpretative pitfall – confusing naming with attributing – that I surmise to be the reason why Johnson has glossed over the body of De Man’s definition and focused on the *known* instead of the *treating* as known. It works to conveniently bypass the question of what it means to be human, whereas the anthropomorphic treating as given always takes place before the decision that only comes after the fact. Thus, the problem with De Man’s definition of anthropomorphism as a *treating as given* is that it potentially encapsulates the conventional anthropomorphic attribution of something human to something nonhuman because it cannot address the underlying confusion of *personhood* (attributing) with *legal personhood* (naming).

In this sense, both definitions (conventional and strict) do not so much bespeak an anthropomorphism but curiously are – precisely by allowing for this confusion – made to work as anthropomorphisms themselves. This is problematic because each time the court says, “yes, you are admitted into the system” on this necessarily arbitrary basis, an entrance fee is paid and a potential other entity is thereby necessarily excluded through an unacknowledged anthropomorphism that Johnson’s conventional definition does not account for and that De Man’s definition fails to make explicit. By implication, a workable definition of anthropomorphism would have to
differentiate sharply between the conventional and strict form of anthropomorphism while simultaneously enabling any underlying confusion regarding persons to be exposed instead of adding to it.

Let me recapitulate. The law can equally use an anthropomorphism to either grant or not grant entities the status of person, although I maintain that within a homonymic understanding of person the law can only grant or not grant the status of legal person. The question of what is to be taken as person always already relies on an anthropomorphism whereby “human person” is treated as something given. The fact, however, that “person” can be understood as a homonym implies that person has nothing to do with human per se, as the law’s operations in the court case paradoxically prove. The noun person, like any other noun, can never be a given of itself, but can only be taken as given. This implies that the law, in the process of deciding what qualifies as person, can never resort to objective criteria to inform its decisions. At most, it can bet on a resemblance with an entity that is fundamentally unknowable, and proclaim itself the expert. This contradiction – to be an expert in the unknowable – is ultimately resolved by resorting to pure power, saying: “I am law and therefore I name this entity legal person.”

In the case of the prisoner’s council the law is anthropomorphic in its compulsive substitution of legal personhood with personhood. It is this same compulsiveness that characterizes its workings within an expansive model, because it is there that its conference of legal personhood to human individuals stretches to any animal to which it attributes something essentially human. In other words, notwithstanding what we established for a fact within the Indian dolphins case, namely that nonhuman animals may be treated as nonhuman persons while being carefully distinguished from entities that are granted legal personhood, the distinction between legal person and person cannot be viewed as merely a political decision to meet practical ends. Rather, this distinction appears to become inevitable when the notion of person is thought through on a more radical rhetorical plane. Hence, the confusion of person with legal person is uncalled for in a fundamental way if the law wants to lay claim to functioning in a non-arbitrary manner.

In this respect, the emergence of the corporation as a legal person from the second half of the nineteenth century onwards can be said to operate on the axis of this distinction between person and legal person.50 The nonhuman

50 For a well documented overview of the exact way in which corporations were granted legal personhood under the United States constitution see: Thom Hartmann, Unequal Protection: The Rise of Corporate Dominance and the Theft of Human Rights (New York: St. Martin’s Press, 2002).
corporation was treated as a person and then attributed legal personhood to meet practical and political ends. This legal operation first confuses the human with the nonhuman only to then clearly separate the so-called human person from the legal person, as the corporation obviously remained nonhuman once the confusion was effectuated. At the same time, the distinction between the nonhuman corporation and the human person was not entirely effaced by this legal manoeuvre: if, for example, nonhuman corporations could not marry, which confirmed their nonhuman status under the law, they were afforded certain constitutional rights that previously had pertained only and typically to human persons, such as the right to property and privacy.

Without wanting to enter the debate on corporate personhood here, which would seriously deflect attention from my more immediate purpose, my exploration of the ambiguous stance of the word person by way of anthropomorphism seems to suggest that, at least for some of the typical human rights for corporations, there appears to be no ground for embedding them within the construct of the legal person. In fact, scrutinizing and renegotiating the typical human rights of corporations that indulge in factory-farming might be a good point of departure for thinking through the way in which factory-farmed animals can be protected from harm, a matter I will explore in detail in the next chapter. Let it suffice here to illustrate this point with a brief contemplation on the right to property and privacy.

As Siobhan O’Sullivan has observed, there is a gross internal inconsistency within the animal rights debate because the vast majority of animals, which are the factory-farmed animals that we eat, are made to suffer beyond comparison with any other group of animals that we generally distinguish within the context of what is commonly referred to as the animal, say pets and wildlife. She attributes this inconsistency to the sheer invisibility of factory-farmed animals and understands this invisibility in two distinct but related ways. On the one hand, the majority of people are no longer used to living with those animals that are typically processed on factory-farms. On the other hand, the general public is never exposed to the way in which factory-farmed animals are processed, except on the rare occasions when illegal footage is smuggled out of a farm or (former) employees break the code of silence. Indeed, if there is any truth in the correlation between the level of visibility and the way in which we tend to treat animals, as O’Sullivan suggests, advocates of animal rights might want to raise the question of property and its specific relation to privacy as an unwarranted human attribute afforded to corporations

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as legal persons. In other words, if the typical human right to privacy for corporations was curbed on the grounds that the corporate legal person is not a human person, the visibility of factory-farmed animals could at least potentially increase, as those who would want to visit such farms would no longer be held back by a legal prohibition of trespassing what is considered private property.

Hence, if the right to property is essential to nonhuman corporations within the model of liberal democracy, the right to privacy within the construct “private property” could be up for renegotiation. Of course, this line of thought contradicts what I established earlier, and by which I still stand, namely that the notion of person is so deeply enshrined within our juridical-political context that any effort at mending it to suit our changing views on the legal status of animals would be a hard battle to fight. Indeed, it would invoke the haunting perspective of a return to a situation whereby the law of person would distinguish between legal persons and, in that sense, resemble the differential status of persons under Roman law, rather than the principle of equality of all persons that has marked the sharp subjective turn of legal theory since the advent of human rights. This is why in the next chapter I wish to develop a more modest approach to the question of factory-farming by addressing the incomparable suffering of factory-farmed animals through an exploration of the way in which the terms harm and cruelty operate the differential status of factory-farmed animals on both a juridical and rhetorical plane.

Whenever the law subjects itself to an unwarranted confusion of persons it claims “expertise in the unknowable” and, as a result, the nonhuman entity under discussion can be named a legal person. The way the law goes about attributing human essentiality to an entity previously considered nonhuman relies on a fundamental arbitrariness, as my analysis of the court case and the example of the essentially nonhuman corporation paradoxically reveals. First, because there is nothing essentially human about person. Second, because a typical human right, for example, the right to privacy, cannot be claimed to stem from some essentially human characteristic or capacity once it has been granted to corporations. The point here, then, is that the court, instead of asking, fruitlessly: what is a person? should ask the only question it can answer, namely: what is a legal person, as that concept of which I-law, and only I-law, am in the business of naming? But strangely, the law can neither answer, nor frame this question in any conclusive way as long as it regards itself in an anthropomorphic way; that is, as centred in the so-called human person.

Hence, it seems the law, because it is centred in legal personhood, has to call into being the anthropomorphic fiction of personhood. It cannot, if confronted with digressive entities, understand those entities on their own terms.
Instead, it adopts a strategy that consists of taking a given person as human person. By implication, the law cannot proactively conceptualize wholly other categories. This leads to a remarkable paradox as it implies that the law can only operate autonomously, while it cannot at the same time. In other words, the law is not so much acting but reacting when it looks at what entities might qualify to shelter under its umbrella of legal personhood, which it confuses with a presupposed (human) personhood in a non-legal sense. It is this process of confusing that is anthropomorphic in both the conventional and the strict sense, which installs a limit to the law’s imagination of the nonhuman other. In short, the law cannot look itself in the face; it needs a mirror and that is where the lyric/literature comes in, and that is why, although for different reasons, I finally do find Johnson’s framework so relevant. The fundamental arbitrariness, which is the result of this lack of capacity of the law, can only be “resolved” or “silenced” by resorting to power, i.e. resorting to itself, saying I am law, freezing the infinite chain and closing the gap.

As Alain Pottage has observed, Pierre Legendre traces this dynamic back to the Western representations of law as logos, which installs a myth of origin that symbolizes and legitimatizes a fiction of absolute power; what Legendre has coined the Reference. 52 For Legendre this fictional founding supposition operates much like the point zero in mathematics, as a point of demarcation because of the combined quality of absence and presence that is necessary to its function. I agree with Legendre, but for my current purposes I choose not to emerge myself in the big question of legitimation. Rather, I would argue that it is precisely the distinction between legal person and person that the law, in its confusion of persons, at once performs and does not perform. I read this as operating the presence-absence of person within the concept of legal personhood and establishing and guaranteeing its function as a practical tool of demarcation. Hence, in my analysis, Legendre’s fictional foundation of law as logos is performed by the fictional (rhetorical) confusion of persons implied within a non-homonymic conception of legal personhood. At the same time, this confusion of persons unmasks the idea of law as logos because any demarcation through the notion of person cannot lay claim to an objective non-arbitrariness, but rather must be performed by an anthropomorphism.

Thus, anthropomorphism ultimately is not simply a form of attributing to an entity something human or sufficiently humanlike (conventional), in law it also involves misreading such an anthropomorphic attribution through another

anthropomorphic move (strict) that regards the word person in personhood as in some way synonymous to person in what must be understood as the aggregation *legal personhood*. For this reason, the conventional form of anthropomorphism is always encapsulated by the strict form of anthropomorphism, whereas the strict form of anthropomorphism is not necessarily concerned with something human.

Let us now take into account not just the body of De Man’s definition but also his emphasis on anthropomorphism as a proper name. The statement that this or that entity is a person, i.e. that it fits under the umbrella of personhood, must, in the final instant, be qualified as a proposition, for one can still argue that it is true or false. It would therefore qualify as an anthropomorphism in the strict sense, which encapsulates a conventional form of anthropomorphism. However, – and this is essential to my reading – the statement that this entity or person is a *legal person* can only be made by a singular act and by a singular entity: the law (however personified). It is, therefore, as De Man would have it, beyond proposition. This leads me to suspect that the aggregation *legal person* functions as a proper name in De Man’s sense. The *legal person* is named by the law and the law here has the first, last and only word. The “being subject” to further definition is both created and instantly halted by the law when coining an entity a *legal person*, naming it and, with that act, fitting it into its system. Hence, an anthropomorphism in the strict sense would be performed when the law states: “I take this entity, let’s say a dolphin, to be a legal person,” whereas the statement: “you are a legal person” concerns an act of naming.

In other words, each time the law names an entity a *legal person* it is as if the law is giving birth to an entity, a nonhuman life that did not exist for the law before this act of naming. Only in and by the law, then, does the *legal person* thrive, in a sphere literally without space for further definition because only the law is in the business of naming and naming is its only business. The problem of cruelty resulting from this procedure structures the court case in the same way as it structures an expansive model, because it provides only one logical and chronological route for an essentially nonhuman entity to become a *legal person*. This route can be sketched as follows: An entity would have to be named: 1. entity. 2. person. 3. legal person. But, what if an entity cannot get from step one to step number two? There must be another way, then, of getting from number one to number three. Let us return to Johnson’s essay and see if exploring anthropomorphism in the lyric can be instructive in imagining this other way.

In her essay, Johnson contrasts the lyrical person with the legal person by mentioning the seemingly opposite labels conventionally attached to them. The
former is qualified as being subjective, emotive and individual, the latter as objective, rational and rights bearing (550). I will not presuppose these categories. In fact, for reasons already mentioned, I object to distinguishing between two persons on the basis of their accompanying adjectives, as I understand these persons as homonymic rather than synonymic. Instead, I repeat my earlier suggestion, here, to read legal person as one phrase, as a name, and to conceive of lyrical person as a name of equal weight in that it belongs to its own system, which gives it its name. Let us now contemplate the differences between the legal person and the lyrical person.

On the one hand, the legal person can be regarded as single but not unique. In my view, because of this combination of singleness and the incapacity to be unique, the legal person is not (necessarily) human. It only exists as a name or, to put it in a better way and avoid the unanswerable question of what it is to be human: it is less likely to be treated as essentially human. Granted the legal person is not unique, the law, conferring one entity the status of legal person (say, the prisoner’s council discussed in the previous paragraph) must mutatis mutandis consider every prisoner’s council as a legal person. On the other hand, the lyrical person is not the poet and, thus, is just as essentially nonhuman as the legal person is. Rather than operating as a name, however, it functions as a voice, single, autonomous and, although not unique either, it seems to have a nonhuman sort of life in the sense that it does something. Effectively, it each time builds and breaks its own context and – unlike the legal person – instead of being pointed to, it has the ability to point to something other than itself.

Thus, where literature has the power to pierce, rupture, (treat as other), the law has to be epistemological (compare: treat as known or, for that matter, treat as unknown). In this respect, it is not surprising that the lyrical person is coming to the surface when we explore the question of anthropomorphism. Not because, as Johnson would have it, the lyric is the most rule bound (550), but because it operates at the furthest remove from the epistemological. That is to say, in its poetical aspect it does not primarily refer to an extra literary reality, or to what would correspond with, say, a realistic prose, feeding into a referential view on language. Instead, each time it is calling its own world or system into being by saying “I.” In this sense, it is compulsory creative rather than compulsory repetitive. The lyric, therefore, is not so much the so-called opposite of law as the elaborate binary Johnson put in place would suggest, but resembles the law in exercising an almost tyrannical power to proclaim itself. The law shares this faculty with poetry in its procedures in that it desperately tries to contain and
control the slipperiness of language by forever trying and forever failing to set up a self-referential (hermetic) system.

Bearing these contemplations on the relation between law and literature in mind, I will now scrutinize Johnson’s reading of Baudelaire’s poem “Correspondances,” in which she again enters into dialogue with De Man.

5. Anthropomorphism or Trope in the Lyric: Baudelaire’s “Correspondences.”

The aim of this close reading is to illustrate how both Johnson’s and De Man’s reading of “Correspondences” ignore other interpretations in ways that work to reinforce their respective arguments on the nature of anthropomorphism and its relation to trope in a decisive manner. For this reason, I will begin by providing an alternative reading of “Correspondences.” This alternative reading will allow me, first, to put my findings on anthropomorphism to the test and to clarify Johnson’s and de Man’s respective positions on anthropomorphism and its relation to trope. Second, it will enable me to determine my own position on the distinction between trope and anthropomorphism in relation to the Human-Animal opposition. Here is the original French followed by Johnson’s own English translation:

*Correspondances*

La Nature est un temple où de vivants piliers  
Laissent parfois sortir de confuses paroles;  
L'homme y passe à travers des forêts de symboles  
Qui l'observent avec des regards familiers.  
Comme de longs échos qui de loin se confondent  
Dans une ténébreuse et profonde unité,  
Vaste comme la nuit et comme la clarté,  
Les parfums, les couleurs et les sons se répondent.  
Il est des parfums frais comme des chairs d'enfants,  
Doux comme les hautbois, verts comme les prairies,  
— Et d'autres, corrompus, riches et triomphants,
Ayant l'expansion des choses infinies,
Comme l'ambre, le musc, le benjoin et l'encens,
Qui chantent les transports de l'esprit et des sens.53

Correspondences

Nature is a temple, where the living pillars
Sometimes utter indistinguishable words
Man passes through these forests of symbols
Which regard him with familiar looks
Like long echoes that blend in the distance
Into a unity obscure and profound,
Vast as the night and as the light,
The perfumes, colors and sounds correspond.
There are some perfumes fresh as baby’s skin,
Mellow as oboes, verdant as prairies,
—And others, corrupt, rich, and triumphant,
With all the expansiveness of infinite things,
Like ambergris, musk, benjamin, incense,
That sing the transports of spirit and sense

Johnson explains how “Correspondences” “sets up a series of analogies between nature, man, symbols, and metaphysical unity, and among manifestations of the different physical senses, all through the word ‘comme’ (‘like’).” (555) Johnson agrees with de Man that the problem with this harmonious picture is that it only lasts until the penultimate line of the poem. At that point, instead of proposing analogies, the poem breaks into a stutter, by replacing the “like” that informs the analogies with a different “like” that makes the poem erupt into sheer enumeration, which ultimately undoes the metaphysical unity it supposedly embodies. Both Johnson and de Man, then, use this “stutter argument” to read “Correspondences” as a poem that breathes a comfortable harmony or metaphysical unity; not the entire poem, that is, but up to the point the stutter sets in and because it sets up a series of analogies.

My position is different, because I argue there is no “harmony” to be found in “Correspondences” in the first place. In my view, it is precisely due to

the way in which Johnson and de Man use their stutter argument that the idea of a given harmony is reinforced. In short, the stutter argument fixes the reading of the lines leading up to the stutter (the entire poem except for the last two lines) as breathing a singular metaphysical unity. Consequently, the (pre)supposed unity no longer solely feeds off the correspondences/analogies, but now has become the very condition for the stutter and vice versa. This procedure takes on the quality of yet another rudimentary chiasmus, not to be encountered in the text but fixing the attitude the reader is meant to bring to the text through a specific interpretation of the stutter in the poem: “metaphysical unity is stutter, stutter is metaphysical unity.” In short: if this stutter argument is turned topsy-turvy in order to read the poem “Correspondences” as breathing a metaphysical unity, the idea that setting up analogies constructs a picture of Man in comfortable metaphysical unity with his surroundings per se is taken as given and thus left unquestioned.

Whereas Johnson explicitly follows de Man’s analyses, I do not see why the setting up of analogies has to imply metaphysical unity or harmony. One might, for example, choose to read the “temple” in the first line of the poem as a secluded space that not just anybody can enter; as profoundly disquieting because its pillars appear to be living and are continuously moving away or closing in on Man whilst remaining forever beyond his grasp. Besides, Man (humanity personified, but also a synecdochical *toton pro parte*) passes through “forests of symbols,” but somehow it is not Man that glances at the (forests of) symbols but the (forests of) symbols that do the glancing. Man, looking back, is confronted or surrounded with long echoes, blending and obscure. In short, not a very clear and comforting picture at all and one in which the synesthetic device “long echoes” works in a particularly unsettling way. Man is lost, in the dark, nearly blinded.

I choose to read “Correspondences,” then, as a poem reflecting Man in a state of anxiety and fear, precisely because he cannot get beyond correspondences. It seems that blinded Man must force correspondences into being, in a desperate attempt to come to terms with the otherness of his surroundings. Taking this view, even humanity personified becomes uncanny in a meaningful way, since it literally enacts what could be qualified as Man’s utter desolation. The point here, of course, is that it is of vital importance to my reading that the analogies in the poem are only proposed and not established, because humanity personified as a singular being has no self as other to turn to, to check and assure himself. It is precisely the word “like” that keeps the text open, serving to resist the fixation of the supposed analogies into comparisons. It is the fantastic quality of the familiarity of the (forests of) symbols’ looks that
strikes Man as disquieting, because Man cannot get beyond faint correspondences. The fact that the looks are familiar might, or, I would suggest, can only be read as man looking back at himself. The (forests of) symbols function like mirrors, and man sees himself, lost, in the dark. The correspondences bespeak the realization of Man’s own stake in the conventionality (familiarity) that the surrounding symbols convey. There is, in other words, the possibility that “in reality” there are no correspondences at all. The enumeration at the end of the poem adds to this awareness and – here I agree with De Man – makes it take on desperate forms.

In my alternative reading “Correspondences” works as an Italian sonnet in which after the second stanza, precisely when we are made aware that man can hardly see anything, the poem breaks into sensations of smell/odour. The intensifying of the role of scent for this blinded Man here adds to the uncanny element of fear that collapses into enumeration in the penultimate line of the poem. In panic and fear our faculty of smell intensifies, but we can also become aware of smells (analogies) that are not actually there (compare the sensation of smelling something is burning that is not uncommon for people in an agitated state and which seems to enact a subconscious or archetypal fear the brain acts out to keep alert). The fear and desolation is subdued by proposing analogies that represent the extreme other side of a spectrum that ranges from fear to joy, analogies that are comforting, soothing and pleasant.

If Johnson agrees with De Man on what “Correspondences” is about; say, about “Man in harmony with his surroundings,” she has more trouble – as she readily admits – digesting De Man’s other and apparently more debatable suggestion, which will be the focus of my analysis and therefore worth quoting in full. This is her comment:

There is another, more debatable suggestion in de Man’s reading that attempts to disrupt the anthropomorphism of the forest of symbols. De Man suggests that the trees are a mere metaphor for a city crowd in the first stanza. If the living pillars with their familiar glances are metaphorically a city crowd then the anthropomorphism of nature is lost. Man is surrounded by tree-like man not man-like trees. It is not “man” whose attributes are taken on by all of nature, but merely a crowd of men being compared to trees and pillars. De Man notes that everyone resists this reading – as do I – but the intensity with which it is rejected does make visible the seduction of the system that puts nature, god, into perfect unity through the symbol, which is what has made the poem so important for literary history. (555, italics mine, BV)
In the last sentence of the above passage Johnson conveys the importance of “Correspondences” for literary history in terms of its power to seduce readers to put nature and god into perfect unity through the symbol. However, as Jonathan Culler has observed, the reasons why “Correspondences” has been so important for literary history are arguably more comprehensive than Johnson suggests. Roughly, Culler distinguishes three main reasons for this importance. First, the fact that “Correspondences” registers our encounter with the world as a passage through a forest of symbols has been aesthetically productive since it portrays the world as a forest of signs accessible to poets and visionaries alike. Second, the poem echoes numerous statements of Baudelaire’s prose writings and thereby confirmed the possibility of a correspondence between poems and prose accounts of aesthetic principles. Third, “Correspondences,” because of its unique qualities, allowed critics to situate Baudelaire in the story of modern poetry. 

In this respect, Johnson’s somewhat reductive focus on the poem as putting nature and god in perfect unity through the symbol can be read as a strategic choice, as a frame that enables her to deliver a specific argument. Effectively, it allows Johnson to underscore the unity “Correspondences” conveys as she follows de Man in resisting his optional reading of the living pillars as a city crowd, because it does not square with the picture of Man in harmony with his surroundings. Both Johnson and de Man, then, seem to consider this reading option only as a heuristic tool to illustrate the “seduction of the system that puts nature, god, into perfect unity through the symbol.” My alternative reading radically upsets this idea of perfect unity, changing the perspective on what Johnson and de Man have considered a given anthropomorphism in the poem. Hence, my alternative reading demonstrates that an anthropomorphism, whether conventional or strict, cannot be encountered in a text, but is constructed by a reader and depends on how a reader chooses to read a text.

Johnson’s reading of “Correspondences,” condensed in her comment, constructs her understanding of anthropomorphism in a decisive manner as, on three occasions, it reveals that she substitutes one term with the other. First, following De Man, Johnson substitutes living pillars with trees, whereas the poem never even mentions trees. This substitution seems to be motivated metonymically, by the contiguity between trees and forests. Second, Johnson claims the forest of symbols to be an anthropomorphism. Significantly, the

poem, does not mention forest (singular) but only forests (plural). The third substitution occurs when Johnson suddenly talks about “living pillars with their familiar glances,” whereas in the poem it is (the forests of) symbols that do the glancing or, to be precise, the looking, whilst the pillars at most utter indistinguishable words (sometimes). Moreover, Johnson’s translation of the original French “laissent parfois sortir” provides her with a helpful registering of this phrase as a personification, for it literally connotes something like “let at times depart” disorganized words rather than “uttering” indistinguishable words.

This latter substitution might, of course, be motivated by considering the word “these” in the third line of the poem to refer back to “the living pillars” in the first line of the poem. However, this is not compatible with Johnson’s reading because it would contradict substituting the plural forests of symbols with the single forest. Taking into account these three amendments (substitutions) – but still following Johnson – we can now look into her claim that the forest(s) of symbols is an anthropomorphism, which would be lost if we followed de Man’s suggestion that the living pillars with their familiar glances are metaphorically a city crowd and the “man-like trees” would become “tree-like man.” Before considering whether this anthropomorphism would indeed be lost as a result of this reversal, it might be wise to investigate if this forest(s) of symbols is an anthropomorphism in the first place, and, if not, how it comes to be conceived as such.

As discussed above, in her comment Johnson has substituted both the forest(s) of symbols with the living pillars and the living pillars with trees, making up the forest(s) in order to point to the anthropomorphism of the forest(s) of symbols she claims to encounter in the text. The problem with this reading is that the forest(s) of symbols is – in the poem – not (yet) an anthropomorphism, but a trope, a personification, in that it is only personified as being able to regard Man with familiar looks. It is only when the substitution with trees is effectuated by Johnson – not in the poem but in her comment – that this forest(s) of symbols comes to be taken as given; given, that is, a specific, set meaning. Besides, say we momentarily follow De Man’s suggestion and consider these forest(s) of symbols a city crowd and thus as tree-like man, again, only the anthropomorphism in the conventional sense is lost. What would still remain active is the anthropomorphism in the strict sense, for which it does not matter whether we choose the perspective of “man-like tree or tree-like man” as long as the metaphorical relation is not in play but the taking as given. Thus, it is not the poem, but Johnson’s reading of it that has forced this rudimentary chiasmus upon the text by way of an uncritical and unwarranted pattern of substitutions. This pattern of substitutions take as given, trees as living pillars,
and living pillars (trees) as forest(s) of symbols that make up the forest(s) of symbols by which, strangely, forest(s) of symbols would come to mean: trees of trees. Ultimately, such a reading rests on reading these forest(s) of symbols literally as a forest of trees, which would beg the question why does Baudelaire refer to these “trees” as symbols in the first place.

If the second amendment Johnson has made – substituting forests (plural) with forest (singular) – is key to her reading of “Correspondences” as it constructs her exploration of anthropomorphism, this substitution is not to be considered as an isolated given. Rather, it is both the result and the condition of the other substitutions (amendments), which constitute a threefold interactive pattern that is carefully kept together and made to correspond with the presupposed interpretation of “Correspondences” as a poem about man in metaphysical unity with its surroundings. To put the fragility of this hypothesis to the test we would only have to close read in a very elementary way and stick to the plural “forests,” which would immediately open up to different (discursive) spaces and break, quite literally, the (pre)supposed singular unity the poem conveys. In other words, reading “Correspondences” as breathing a singular metaphysical unity relies heavily not on an inherent, but on an interpretative and strict – rather than on a conventional – form of anthropomorphism. This strict form of anthropomorphism activates an unwarranted pattern of substitutions that results in a reading of the poem as a permanent enumeration: Trees of trees of trees, etc. I consider this to be a strong indication for reading the poem in another way.

In this view, and as I hope my reading demonstrates, an anthropomorphism in the strict sense cannot be encountered in a text for this would ultimately imply there is only one possible interpretation, whereas anthropomorphism is never about a known but always about a treating as known, and encountering a treating as known is – especially in lyric poetry – difficult if not impossible to prove. It would require reading a text as an allegory, which, I argue, is precisely what Johnson has done. Johnson has read “Correspondences” as an allegory of “man in metaphysical unity with its surroundings.” If allegorical reading thus seems bound up with anthropomorphism in the strict sense – an issue I will explore in detail in the second chapter – my analysis of “Correspondences” suggests that it requires a text to seduce us into activating an anthropomorphism in the strict sense to be able to point to an anthropomorphism in the conventional sense, and it seems that the identification of this dynamic might serve as a tool to distinguish between an anthropomorphism in the conventional sense and a trope.
Relevant to my alternative reading of “Correspondences” here has been the notion that De Man, when suggesting that the living pillars are metaphorically a city crowd, has not *substituted* living pillars with a city crowd, but only proposed to read the living pillars metaphorically so as to see what happens to the poem. This is an interesting exercise, not just because it forces into being the chiasmus “tree-like man and man-like trees,” but also because it ultimately reveals de Man’s own uncritical substitution of the forest(s) of symbols with living pillars, which implies de Man has also made an anthropomorphic (taken as given) move. The substitution of forest(s) of symbols with living pillars, I argue, bespeaks an anthropomorphism in the conventional sense, in that it is apparently much more likely for “living pillars” to do any looking than it is for forests of symbols. Unless they – these forests of symbols – *are* (no longer metaphorically) the living pillars. Here, precisely at this point, the metaphor is lost and becomes an anthropomorphism. It no longer builds up creative potential through a model of likeness that brings the differences between two entities to life, but instead turns upon a complete substitution as it is “motivated” by sameness.

Both De Man and Johnson seem to have overlooked this problem and I suspect this has something to do with the powerful seduction of the conventional form of anthropomorphism de Man’s suggestion rests upon. It is not just a strict anthropomorphism at work here, not just a taking as given that is motivated metaphorically (by forcing likeness into sameness), but an anthropomorphism built on the attribution of (supposed) human essentiality. The strict form of anthropomorphism here encapsulates the conventional form as the “living pillars” share two “traits” that are commonly regarded as touching the essence of the human – as can be derived from the definition of anthropomorphism in the conventional sense heading Johnson’s essay – and work to contrast especially with its objects or animals, namely “living” and “erect.” One might argue that I have now tried to motivate part of my reading by referring to what is “commonly regarded as” in an effort to gloss over the fact that the question of what it means to be human cannot be answered, just as Johnson did when she chose to leave out the body of De Man’s definition. This would imply, however, that an anthropomorphism in the conventional sense can never be established in an absolute way. I agree. Yet in this case, the “what is commonly regarded as” is not to be understood as an argument in itself, but functions as what Michael Riffaterre called a hypogram, which must always be motivated and, as such, is never present in the text.\footnote{Michael Riffaterre, *Semiotics of Poetry* (Bloomington: Indiana University Press, 1978).}
The comparison De Man instigates with his metaphor of the city crowd initially seems to undo the anthropomorphism in the conventional sense, but has revealed that in order to suggest it, De Man has to introduce another anthropomorphism in the conventional sense somewhere else in the system; an anthropomorphism that is motivated metaphorically, but then is characterized by an ontological shift that led Johnson into a repetitive pattern of substitutions into sameness. The anthropomorphism in the conventional sense (attributing living pillars something human) is not given, but had to be motivated through my reading, whereas the personification of either living pillars or forests of symbols is just there, explicit and unmotivated. Thus, personifications can be encountered (and counted) in the text whereas anthropomorphisms, whether conventional or strict, cannot. This is, in my view, a decisive difference that allows for distinguishing between anthropomorphism and trope. Let me clarify what this might mean for reading into the expansive model by providing a concrete example.

The expansive model is centred on the idea that there is no absolute difference between the human and the animal. As a result, the question as to what is human cannot be answered, but becomes a matter of attribution. Now, “the wind cries” is a personification. It is not automatically an anthropomorphism. One also says a wolf cries, which theoretically would leave open the suggestion that the expression “the wind cries” does not need to be qualified as an anthropomorphism but could also be qualified otherwise, namely as a form of “morphism” that does not prioritize the *anthrōpos*. Indeed, “the wind cries” is only an anthropomorphism if we state or hold, that crying is something essentially human, which is what we do when we state that “the wind cries” is an anthropomorphism. Only then, we take, (in the sense of De Man’s taking as given) crying as “essentially human.” But, I ask, what is crying? The sound a human, a wolf, the wind produces? Or, more precisely: the verb used for these different sounds (or can one cry in silence too?) in different languages. (I can imagine languages in which the wind cannot cry). And so on. Let us now bring my notion of this decisive difference between anthropomorphism and trope back to Johnson’s reading in order to wrap up my argument on “Correspondences.”

Johnson, in her quest to investigate De Man’s claim that anthropomorphism and trope are different concepts, concentrates on the personification, the trope that, being a particular type of metaphor (motivated by similarity), seems hardest to distinguish from anthropomorphism. In fact, at the end of her essay, Johnson still struggles with the difference between anthropomorphism and personification, as becomes clear from the following two interdependent quotes:
Anthropomorphism, unlike personification, depends on the givenness of the essence of the human; the mingling of personifications on the same footing as “real” agents threatens to make the uncertainty about what humanness is come to consciousness. (573)

But the very rhetorical slight of hand that would instate such unacknowledgement is indistinguishable from the rhetorical structure that would empty it. (574)

Johnson here sticks to what I have defined as a conventional form of anthropomorphism, involving “the essence of the human.” As I have just established, however, the anthropomorphism in the strict sense potentially encapsulates an anthropomorphism in the conventional sense because it works by a taken as given that forces a rudimentary chiasmus upon a text, which substitutes similarity with sameness and produces an ontological shift. I would infer that a text is most likely to seduce us into strict forms of anthropomorphism when the metaphor potentially motivating it resembles “something human.” The personification is the metaphor that does exactly that since both the personification and the anthropomorphism in the conventional sense seemingly attribute something human. The poem “Correspondences,” has appeared to be exhausted with personifications, the living pillars “talk,” the forests of symbols “look,” the scents “sing.” Its combination of personifications with its prose-like presentation carries such a profound suggestive power that even de Man falls prey to the unwarranted substitution of living pillars with forests of symbols. The fact that the poem is presented as a micro narrative, comprising three sentences about (a) man wandering through a forest of symbols facilitates a referential/realistic reading whereby the text is read as one continuous metaphor; to be specific: as an allegory. This allegorical reading, which both Johnson and de Man have performed in their own particular ways, is further encouraged as the typical typographic particularities of the sonnet form are missing. In fact, there is not one suggestion in Johnson’s text that would induce us to read this poem as a poem in terms of rhyme, rhythm, sound, formal aspects or the experience of bodily sensations. The introduction of smell/odour at the beginning of the second stanza might stand as one example of something potentially meaningful that is thereby neglected.

I have now established the differences between a conventional and a strict form of anthropomorphism and between personification and anthropomorphism by exploring a text from the domain of the lyric through an alternative reading
of Baudelaire’s “Correspondences.” I will now take my findings to the domain of the law and zoom in on the prisoner’s council court case that Johnson discusses to explore the relation between personification and yet another, so far only vaguely distinguished, notion of anthropomorphism; namely, de Man’s understanding of anthropomorphism as a proper name.

6. Anthropomorphism or Trope in the Law: The Proper Name

Johnson’s comment on the judge’s interpretative strategy in the court case will function as my point of departure for investigating the nature of the proper name. Here it is:

Souter’s text, in fact, is most anthropomorphic at those points where the infinite regress of language is most threatening. Congress is endowed with “natural” intentionality in order to sweep away the abyss of reference. Souter’s dismissal of the prisoner’s association as an “amorphous legal creature” is the counterpart to the need to reinforce the anthropomorphizability of the artificial legal creature Congress. Congress, then, is perhaps an example of de Man’s “proper name.” (561)

If Johnson in the first sentence of the above citation claims that Souter’s text is most anthropomorphic at certain points, we can establish that there must also be a point at which the text becomes less anthropomorphic. In other words, anthropomorphism is reflected upon here in terms of gradual scaling, which simultaneously seems to inform Johnson’s inability to clearly distinguish between anthropomorphism and trope in practical terms. At the same time, the causal relation suggested between, on the one hand, Souter’s dismissal of the amorphous legal creature (the prisoner’s council) and, on the other, the anthropomorphizability of the artificial legal creature (Congress) is not motivated and it is hard to see what is causal about it. If we look at how this comment works, however, it becomes clear that it serves to motivate what Johnson understands by De Man’s “proper name,” because it allows her to take the term “proper name” as literally as possible, as beyond proposition.

After conceding that anthropomorphism comes down to naming, Johnson wonders which names can be defined as proper and suggests Congress might be a suitable candidate. Contrary to Johnson, however, I have now come to understand anthropomorphism as an act that must be performed. By implication, I choose not to read De Man’s definition of anthropomorphism as installing a
proper name literally, but instead as a useful metaphor to illustrate what an anthropomorphism does rather than what it is. In fact, not reading de Man’s proper name as a metaphor would result in any proper name (say, Barbara Johnson) qualifying as an anthropomorphism. Although in a theoretical sense this might not even be untrue, and although it would indeed help to distinguish anthropomorphism from personification, it would not do so in a constructive and conclusive manner, since we would still be left with anthropomorphisms that do not necessarily install proper names. This is why, at this point, I prefer to explore De Man’s proper name as a metaphor by returning to the very beginning of his definition of anthropomorphism. De Man here states that anthropomorphism “is not just a trope.” This statement provides us with the first important clue on how to read De Man’s definition: An anthropomorphism, as the word literally encapsulates the word (h)rope, is not just a trope, but more than a trope. In short, it has the potential to outgrow the status of trope and become something else. Bearing this dynamic in mind, let us now return to the court case.

Souter, who apparently has an interest (probably a policy interest) in not admitting the prisoner’s council into the system of legal personhood, looks for an opening in the legal text, in this case the Dictionary Act, which can help to motivate his intention to not let the prisoner’s council enter the legal sphere as an entity that can sue in forma pauperis. The problem for Souter is that the Dictionary Act clearly states that the term person includes artificial entities unless the context indicates otherwise. Souter, focusing on “unless the context indicates otherwise,” then starts to look for definitions of the word context. He comes up with the following two definitions:

1. The context then, is the surrounding words of the act.

2. “associated surroundings, whether material or mental” – a reference not to the surrounding text but to the broader reality or intentionality.

Souter at once dismisses the second definition of “context,” arguing that this was surely not what Congress had meant (intended), because then it would have been natural to use a more spacious phrase. This is Johnson’s comment:

The word “natural” which is precisely at issue here – since the Court is, after all, trying to find out whether the statute applies only to natural
persons – is here applied to an artificial person, Congress, which is personified as having natural intentionality. (560)

Johnson here describes a rhetorical trick that Souter uses to make his argument, but at the same time sticks to the natural/artificial binary and, in that sense, follows Souter who accords Congress natural intentionality. More than that, in her attempt to clarify what exactly is at stake for Souter, Johnson reads Congress as an artificial person. But, I ask, in what sense is Congress a person in the legal sense (legal person) or a person at all? The personification of Congress may indeed endow it with intentionality, but it is Johnson’s own treating of intentionality (following Souter in this respect) as known, as a strictly or primarily human trait, which keeps the binary natural/artificial person in place. Besides, if Congress qualified as a proper name, as Johnson suggests, and thereby as the name of a comparison, as De Man’s definition would have it, with what, then, is it being compared? In other words, reading into Johnson’s suggestion of Congress as a proper name raises too many questions that cannot be answered in a convincing manner. Certainly, the name Congress is not so easily subjected to further definition, as with any historically shaped institutional body. But its position is not that of a proper name, because it is not beyond proposition. It might assume a strong analogy with the proper name, but it is not at one with it and therefore cannot qualify as an anthropomorphism in de Man’s sense. Instead, it is an entity personified, yes, and thus a metaphor motivated by similarity – which in this case is “intentionality” – but this “intentionality” is treated (both by Johnson and Souter) as given and as essentially human.

Admittedly, Congress’ position is rather odd. Strictly speaking, for Congress to be qualified as an anthropomorphism (and not as merely a personification) it would have to be named a legal person. Only then would it be beyond proposition and no longer subject to further definition. In the comment provided by Souter, however, “Congress” is personified, but not named. Instead, it is an entity with the power to name. Souter is not naming, but only mentioning Congress. Congress cannot sue in forma pauperis on the grounds of being a person. Neither can it sue itself. The personification endows Congress with intentionality, which is a word treated as a proper name, in that it is not subject to further definition because it is – according to Johnson following Souter – taken as given, as essentially human, as natural opposed to artificial.

Thinking through the odd logic of the above line of argument would lead to the conclusion that when something is considered essentially human, say, “intentionality,” it can no longer be defined, which reveals or rather covers up the more fundamental problem, namely, that it is the essentially human which
can never be defined. Hence, although words such as “intentionality,” “natural” and “artificial,” can be attributed to an entity, they cannot be considered to be anthropomorphic in the strict sense (taken as given). Unlike the proper name, those terms maintain within themselves the possibility of further definition and can at most be treated as given, which implies they could also not be treated as given. In this respect, not reading De Man’s proper name as a metaphor amounts to suggesting that a proper name is something that cannot be treated as given, while it is imagined as something that is always already given and beyond any treating, beyond proposition. In fact, radicals thinking through my renewed understanding of anthropomorphism as an act, I suggest that a talking pig in a fable like Animal Farm is just a personification, a metaphor and not necessarily an anthropomorphism: for in what sense is it nonhuman if the question as to what is human cannot be answered. In other words, although attributing human characteristics, for example, speaking, to essentially nonhuman entities might conventionally be defined as an anthropomorphism, such an attribution will always have to be informed by a treating as given what being human is: “speaking,” in this case, is essentially human.

With respect to this issue, I conclude that it is precisely the qualification of something as an anthropomorphism that betrays an anthropomorphism, for anthropomorphism is metaphorically speaking – and here I agree with De Man – a proper name. The rest is trope. Hence, if, contrary to Johnson, we have now read the proper name as a useful metaphor, rather than the name of a name, the proper name cannot be qualified as an anthropomorphism. Rather, anthropomorphism concerns the act of naming something as proper, as entirely fitting, fitting like a lid on a can, which at the same time closes off openings into other potential discursive spaces through a sequence of unwarranted substitutions that are fostered through a compulsory treating as known. But, of course, if there is no context, if the context is necessarily eliminated within a treating as known, then what is there to be known? The answer is: the only thing really worth knowing, namely, the fundamentally unknowable. This is the case, not because there is some metaphysically deeper or higher meaning hidden under the unbreakable shell of the proper name, but because the secret is that there is nothing. The act of anthropomorphism relies on the very mystification of this nothing. For Legendre this “nothing” operates as the number zero in mathematics that informs a foundational fiction of law as logos, while for me this nothing has appeared to destroy law as logos only to re-inscribe it as fiction through the notion of person.

With respect to this issue, the act of anthropomorphism might be considered a defensive move that prevents the opening up to what Johnson
refers to as the infinite regress of language, the abyss. In contrast to Johnson, I think we should start to conceive of this abyss not as something dangerous and negative, but as positively as possible. Indeed, I would like to think of it as an infinite space we can enter and in which it is impossible to have any objective point of reference at all. As we have seen, this disposition would pose a serious problem for the law because it is its claim to an objective non-arbitrariness implied within its expertise in the unknowable that informs its foundational authority. In other words, if the act of anthropomorphism functions, while precisely meaning nothing in itself, as a mystification that protects language from an arbitrariness that would reduce it to no more than a silly game devoid of any “real” meaning, then the law is in trouble. Of course, the law can never admit this, for its task is to make meaning. It has to motivate its decisions by anchoring its language somewhere, at some point, but ultimately in texts (written or oral) endowed with – that it itself endows with – a higher authority than other texts in metaphysical unity with the idea of god.

7. Conclusion

I have now explored anthropomorphism as conventional, as strict and as a proper name. This has led me to move away from this tripartite distinction towards a dual distinction whereby I defined two interrelated forms of anthropomorphism: conventional, which involves an act of attributing; and strict, which pertains to the sphere of naming. The conventional form of anthropomorphism does not work like a metaphor, because it is not playing with the dynamics of difference and sameness. It concerns the categorization into domains by way of substitution. Within an expansive model this substitution concerns the attribution of something conventionally conceived of as human to the nonperson. This “attribute” then comes to substitute the nonperson and turns it into a person for the law. The strict form of anthropomorphism is about taking something for something else and treating it as given. Unlike common consensus would have it, neither form of anthropomorphism can be encountered in a text. Pointing to a conventional form of anthropomorphism would involve a poetic reading strategy in that it can at most be motivated by a hypogram. Pointing to a strict form of anthropomorphism (a treating as given) requires an allegorical reading strategy to be forced upon a text, a reading that potentially encapsulates diverse conventional forms of anthropomorphism. The so-called essentially human, then, has appeared not to be essential to our definitions of anthropomorphism. Rather, the conventional form of anthropomorphism
attributes something *that is treated as* essentially human to an entity and, therefore, always involves a strict form of anthropomorphism, a treating as given. The strict form of itself, the treating as given as such, does not necessarily rely on human essentiality.

Anthropomorphism – whether conventional or strict – is characterized by an ontological shift whereby the metaphorical power of language is temporarily ignored. The law is anthropomorphic as its task of making decisions implies that it, at some point, has to treat as given. The law uses the device of the chiasmus (repetition in reverse order) in a rudimentary manner whenever it substitutes person with legal person, thereby ignoring the poetic potentialities of the chiasmus that would be implied within a homonymic understanding of person.

The difference between trope and anthropomorphism has now become clear. Whereas the trope can be encountered in a text (and counted), an anthropomorphism will always have to be motivated. I have identified anthropomorphism as an act and conclude that the failure or unwillingness to recognize those acts as such – as acts – is what triggers the confusion of personhood with legal personhood that could be detected in the journalistic coverage of the Indian dolphin’s case. Now, my close reading of the prisoner’s council court case leads me to conclude that the law allows itself to fall prey to this same confusion within an expansive model. Consequently, the expansive model causes a demarcation problem as it opens up to a discrimination of anything the law considers essentially nonhuman. It thereby legitimizes, as a consequence, that those entities that are not included can be treated in what I have provisionally qualified as a cruel and ignorant manner. This demarcation problem and its implied cruelty are caused by a conventional confusing of person with human person, whereby the homonymic person is understood in synonymic vein and attributed a minimum of shared identity with the legal person. It would seem that the implication of such identity politics for the criteria to be developed in order to decide on animal rights in a non-arbitrary manner – which is our aim if we really wish to avoid cruelty and ignorance – is that those criteria can no longer lean on a conventional confusion of persons or on an essentialist (shared or separate) concept of identity defining the relation between the human and the nonhuman animal.

However, before starting too eagerly with an exploration of such a different outlook on the relation between the so-called human and the so-called animal, it is important to realize that to conclude that the laws’ fundamental arbitrariness when granting or withholding entities the status of legal person results in a potentially cruel and ignorant treating of those very entities is one thing. Trying to avoid cruelty and ignorance by asking the law to function in a
non-arbitrary manner is a wholly different enterprise. At this moment, it is not
certain whether (a) the law can function in a non-arbitrary manner at all; and (b)
if the best way to go about avoiding cruelty and ignorance is striving towards
such an ideal. I will return to this in chapter two. What I can establish here, is
that the notion of a shared identity, a common ground, either implicit or explicit
– which is more often than not a key element in all the different arguments put
forward both by proponents and opponents of animal rights – has an underlying
assumption that serves to keep the current expansive model in place. And as
long as this underlying assumption, feeding into a discriminatory identity
politics, is in place, it will continue to muddle the animal rights debate via the
route that involves the bypassing of the question of personhood, namely by
confusing person and human person and subsequently conflating person and
legal person. This procedure does not even provide the beginning of a ground
for breaking away from an expansive model and the fundamental arbitrariness
on which it is centred.

It will be of utmost importance for the animal rights debate, therefore, to
undermine both this confusion and this conflation, to disentangle the legal
person from person and to replace the question of what a person is with another
question: who or what might be the subject of rights and what are the different
routes towards imagining such subjectivity and acquiring that position? It will
require a different view on the law and its procedures, especially on the way in
which those procedures and the concurrent conventional confusion of persons,
both within and outside of the juridical sphere, are informed by allegorical
reading strategies. One thing that can be established in relation to this different
view is that – as we can gather from our close reading of the court case – the law
is not so much an authority that facilitates the arena in which its proceedings
take place, but rather is itself an actor in a play in which it claims a leading role.
However, this reading/leading role is just part of the play it plays out. It consists
of pretending (playing) to know the unknowable and to act in a responsible way.