

# Pathetic fallacies: personification and the unruly subjects of international law

Joseph R Slaughter\*

International law is a creole without native speakers, produced at interfaces among distinct languages (often in colonial contact zones), not reducible to its participating tongues. Its figurations of sovereignty and personhood may not obey ordinary grammatical rules. Unruly personifications in Amos Tutuola's *Palm-wine Drinkard*, colonial charter company treaties, and legal theory, highlight some pitfalls of confusing legal fictions for social facts.

'As these Skulls were chasing me about in the forest, they were rolling on the ground like large stones and also humming with terrible noise, but when I saw that they had nearly caught me or if I continued to run away like that, no doubt, they would catch me sooner, then I changed the lady to a kitten and put her inside my pocket and changed myself to a very small bird which I could describe as a 'sparrow' in English language.'

Amos Tutuola, *The Palm-wine Drinkard* (1952)<sup>1</sup>

'... the word 'foreigner' shall be taken to mean any person or association (other than the Company acting as a Government) entitled to claim to be subject to any Power of Europe or America, or to any State recognized as a civilized State, or entitled to be personally under the protection of any such Power or State, and all other persons shall be described as "natives." Provided that no person shall be deemed entitled to be personally under the protection of Great Britain, or any other Power or State, merely by reason that he is a native or subject of a country or territory over which such Power or State has declared a Protectorate.'

Regulation No. XXVII of the Royal Niger Company (1888)

\* Associate Professor of English and Comparative Literature, Columbia University. Email: [jrs272@columbia.edu](mailto:jrs272@columbia.edu). An earlier version of this article was delivered as the *London Review of International Law* Annual Lecture at LSE on 13 March 2018.

1 A Tutuola, *The Palm-wine Drinkard and My Life in the Bush of Ghosts* (Grove Books, 1984) [1952] 211.

Outside of the Yoruba town of Ilorin, in 1889, Major Claude Macdonald, on mission from Her Majesty's Government, 'descried . . . standing on the edge of the cliffs' what his personal secretary described as 'four extraordinary-looking figures, . . . to all appearances, flapping their wings gently backwards and forwards. They were too solid for birds, and yet they did not seem to be human beings.'<sup>2</sup> 'Being of an inquiring turn of mind', the Major summoned the strange figures for an interview, despite his native guide's warning that they are 'spirits of the dead returned to life'.<sup>3</sup> The anecdote of this fleeting encounter appears in Captain Mockler-Ferryman's account of his travels with Major Macdonald, *Up the Niger*, under the tantalising heading 'Photographing Ghosts'. That intriguing label is, however, ultimately undermined, since the British agents, 'not being very superstitious', conclude 'on close inspection' that 'these imaginary ghosts were ordinary human beings . . . sewn up in cloth from head to foot . . . conceal[ing] every particle of their persons'.<sup>4</sup> The label is also misleading, since the Captain fails to capture the curious creatures on film, catching only the traces of 'the last two figures as they quitted the scene'.<sup>5</sup> These 'spirits', the Major is told later, are 'an institution, maintained by the priesthood to prey on the miserable people. It is their duty to collect food for the priests, and should any native offend, they are employed as the means for the destruction of the unfortunate.'<sup>6</sup> As delegates of another power, the ghosts 'from the other world' are more like Major Macdonald than he can fathom, since both parties ('the dead returned to life' and the imperial men who some natives said 'had come from heaven') are on missions to enforce the laws of their respective distant realms.<sup>7</sup> At this chance meeting of the undead, both parties come in the form of other peoples' persons—persons whose rights, privileges, and duties are, in large part, bound up in their respective curious costumes.

Major Macdonald was dispatched in 1889 by the British Foreign Office to investigate complaints that the Royal Niger Company (RNC), then the premier trading concern in the Niger Territories, was 'exceeding the powers vested in it by its charter'<sup>8</sup> and, further, that 'the Company obtained the [1886] Charter by false Treaties . . . made with the various tribes on the banks of the Niger River,

2 AF Mockler-Ferryman, *Up the Niger: Narrative of Major Claude Macdonald's Mission to the Niger and Benue Rivers, West Africa* (George Philip & Son, 1892) 214.

3 Ibid 215, 214.

4 Ibid 214-15.

5 Ibid 215.

6 Ibid.

7 Ibid 214, 182.

8 Ibid vii.

and which the natives who have signed them, as they say, do not in the least know their contents'.<sup>9</sup> The question of exceeding its vested powers is vexed, since the Royal Charter was expansive in granting the company 'all rights, interests, authorities, and powers for the purposes of government, preservation of public order, protection of the said territories or otherwise, of what nature or kind soever' required to carry on 'the purposes of the Company'.<sup>10</sup> Along with its primary economic purposes, the RNC was also charged with responsibility for 'abolish[ing] by degrees any system of domestic servitude existing among the native inhabitants' and for 'the administration of justice . . . to the peoples of its territories'.<sup>11</sup> Thus, with powers to govern, to dispense justice, to maintain a police force and private army, and to negotiate treaties of cession with the natives, the colonial charter company exercised 'delegated sovereign rights' over its West African territories.<sup>12</sup> Such provisions were in full accordance with European international legal agreements, such as the General Act of the Conference of Berlin (1885), which, in the name of guaranteeing 'free trade' and 'free navigation' on the Congo and the Niger rivers, established the legal terms for the 'effective occupation' of African territories by European states and normalised the humanitarian logic of colonial mercantilism in the scramble for Africa. Indeed, at the end of the 19th century, European colonialism in Africa was imbued with the perverse spirit of a proto-form of corporate social responsibility that made charter companies responsible for 'increasing the moral and material well-being of the indigenous population', 'striv[ing] for the suppression of slavery', and protecting 'all the institutions and enterprises religious, scientific or charitable . . . tending to instruct the natives and to make them understand and appreciate the advantages of civilization', while guaranteeing '[l]iberty of conscience and religious toleration' and the 'free and public exercise of all forms of worship . . . [without] restriction or hindrance'.<sup>13</sup> In other words, at the end of the 19th century, in the emerging 'international law of empire', 'humanitarian and imperial projects were . . . intertwined and mutually constitutive'.<sup>14</sup>

9 C Macdonald, *Report by Major Macdonald of His Visit as Her Majesty's Commissioner to the Niger and Oil Rivers*, Foreign Office 881/5913 (March 1890) 34.

10 Mockler-Ferryman (1892) 294.

11 Ibid 294-95.

12 CH Alexandrowicz, *The European-African Confrontation: A Study in Treaty Making* (Sijthoff, 1973) 41.

13 'General Act of the Conference of Berlin Concerning the Congo' 3 *American Journal of International Law* (1909) 7, 12-13.

14 G Gott, 'Imperial Humanitarianism: History of an Arrested Dialectic', in BE Hernández-Trujol (ed.), *Moral Imperialism: A Critical Anthology* (New York UP, 2002) 19, 30, 20.

Matthew Craven has argued that the rhetorical commitments to free trade enshrined in the General Act of the Conference of Berlin abetted the (other) humanitarian alibis to provide 'legitimizing cover' for economic exploitation and the 'partition and bloody colonial rule that were to follow'.<sup>15</sup> In the legal framework for the scrambling of Africa, the rights of trade and the responsibilities of government were bound together under the rubric of the 'civilizing mission' and were vested in the internationalised legal personhood of colonial charter companies, which carried with it implications of and for sovereignty, including the power to create legal fictions on the ground. Thus, a favoured means for the *prises de possession* of African territory by the European powers was the delegation of sovereign rights and duties to charter companies, who thereby acquired what John Westlake described in his 1894 study, *Chapters on the Principles of International Law*, as 'the character of a mediate territorial sovereignty'.<sup>16</sup> For Westlake, the 'international sovereignty' of colonial charter companies was 'held mediately by the company' on behalf of 'the British crown'.<sup>17</sup> However, through the instrument of native treaties (referred to routinely in Major Macdonald's report as 'sovereign rights' treaties), the charter companies effectively supplemented their indirect sovereignty by appropriating (or alienating) the 'sovereign rights' of natives, typically in exchange for guarantees of the company's protection, for exclusive rights of trade, paltry gifts, and/or small annual subsidies. As was the case with the East India Companies before them, the charter companies in Africa 'acted on delegated sovereign powers obtained from their own governments as well as from [African] Sovereigns'.<sup>18</sup> Thus, through their legal machinations (with both European states and African peoples) to occupy territory and acquire human and natural resources, the charter companies worked at the loose ends of law to claim an international legal personality of their own. As Charles Alexandrowicz has argued, by collecting and combining imperial patents, monopoly grants, and native treaties, colonial charter companies 'became State-like entities', assuming a kind of independent corporate sovereignty that anticipated 'the development of international law which was to follow in the 20th century when States ceased to be the only legal persons of international law'.<sup>19</sup> In other words, operating at the edges, interstices, and interfaces, of multiple legal regimes,

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15 M Craven, 'Between Law and History: The Berlin Conference of 1884-1885 and the Logic of Free Trade' 3 *London Review of International Law* (2015) 42, 49.

16 J Westlake, *Chapters on the Principles of International Law* (Cambridge UP, 1894) 192.

17 Ibid.

18 Alexandrowicz (1973) 43.

19 Ibid 41-42.

‘simultaneously in alliance [and] tension with the [chartering] state’,<sup>20</sup> colonial companies became international legal persons in their own right.

In another essay, ‘However Incompletely, Human’, I have argued that this combination of corporate sovereignty (however vicarious) and international legal personality (however precarious) made colonial charter companies early bearers of international human rights in a double sense. On the one hand, as part of their ‘humanitarian’ mission, they were charged with promoting and protecting some of the most basic rights that we now recognise as human rights (e.g., freedom of conscience and religion, freedom from slavery, private property rights). On the other hand, the companies enjoyed a kind of international legal personality that we now regard as one of the hallmarks of the contemporary human rights regime. ‘In this twofold sense, colonial charter companies were bearing human rights around the world by the late nineteenth century, more than fifty years before the human being as such’<sup>21</sup>—that is, before individual human beings became international legal persons and proper subjects of human rights in their own right. In that regard, in an ironic twist of common-sense, it might be said that, over the course of the 20th century, human beings appropriated some of the international legal human rights of corporations.

## INTERNATIONAL LAW AS AN INTERLANGUAGE

Doctrinal accounts of international law, at the end of the 19th century in Europe, generally maintained that only states (as sovereign legal persons) were true subjects of international law, since even ‘where international law allows a state to have direct relations with a private person not its own subject, it is only by virtue of a rule prevailing between states that this is so’.<sup>22</sup> While such a view may account for the majority of interactions among states and other persons in the context of a modern nation-statist platted Europe, it does not reflect the messy realities and relations that characterise the edges of the international legal order, where European international law had not managed to remake remote legal space in its own image and where its principles and practices were in no way settled—indeed, where many of those principles were being negotiated, at an intimate scale, on the fly. Antony Anghie and others have convincingly argued that international law, like most of our modern academic

20 PJ Stern, ‘The Ideology of the Imperial Corporation: “Informal” Empire Revisited’, in E Erikson (ed.), *Chartering Capitalism: Organizing Markets, States, and Publics* (Emerald, 2015) 15, 33.

21 J Slaughter, ‘However Incompletely, Human’, in C Douzinas & C Gearty (eds), *The Meanings of Rights: The Philosophy and Social Theory of Human Rights* (Cambridge UP, 2014) 272, 295.

22 Westlake (1894) 1.

disciplines (including literary studies), developed to manage colonialism and colonial peoples. '[M]any of the basic doctrines of international law—including, most importantly, sovereignty doctrine', writes Anghie, 'were forged out of an attempt to create a legal system that could account for the relations between the European and non-European worlds'.<sup>23</sup> Indeed, if one examines the rough edges of international legal space, which may be both geographically and historically remote from the institutional centres of international law, where no mutually agreed upon principles for coordinating relations among people(s) and states are in place and where other creatures—such as charter companies that were 'liberated by legal fiction from individual or national identity'<sup>24</sup>—might act like states, then things look decidedly less doctrinaire than Westlake's orthodox view suggests.

In *Imperial Eyes*, the seminal postcolonial study of processes of 'transculturation' in colonial-era travel writing, Mary Louise Pratt called such spaces at the margins of imperial expansion 'the contact zone'.<sup>25</sup> In doing so, Pratt sought to emphasise 'the interactive, improvisational dimensions of colonial encounters', whereby 'subjects are constituted in and by their relations to each other . . . often within radically asymmetrical relations of power'.<sup>26</sup> She took the term 'contact' from the field of 'contact language' linguistics, where it designates the 'improvised language that develops among speakers of different tongues who need to communicate with each other consistently, usually in the context of trade'.<sup>27</sup> Contact languages, as forms of interlanguage, are produced at the interface between two or more distinct languages and, as such, constitute 'a separate linguistic system'<sup>28</sup> that cannot be fully (or responsibly) reduced to any of its participating mother tongues. (In linguistics, 'contact languages' and 'interlanguages' refer to distinct phenomena, although they share many features; here, I am using 'interlanguage' as the more generic of the two terms because of its clear resonance with the 'inter' of international law.)<sup>29</sup>

23 A Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge UP, 2005) 3.

24 Stern (2015) 30.

25 ML Pratt, *Imperial Eyes: Travel Writing and Transculturation* (Routledge, 2008) [1992] 6.

26 Ibid.

27 Ibid.

28 L Selinker, 'Interlanguage' 10 *International Review of Applied Linguistics in Language Teaching* (1972) 214.

29 In linguistics, contact languages evolve from improvised pidgins to become creoles when they have a community of speakers for whom the language is native. Interlanguage, on the other hand, designates the distinctive speech of a second-language learner who, even after years of study and practice, will continue to use some grammatical formations from a mother tongue in the learned one. Interlanguages are, thus, highly provisional, idiosyncratic, and subject to change. See Selinker

Interlanguages are provisional ‘approximative systems’ that are in a state of flux, but they are not grammatically lawless;<sup>30</sup> rather, parts of the grammatical conventions and morphological inflections of the contributing languages persist (generally in altered form) within the syntax of the interlanguage as what Larry Selinker calls ‘fossilizations’.<sup>31</sup> An interlanguage is transactional, relational, and syncretic; as such, it may generate not just unheard-of forms of expression and figures of speech but also, I would argue, new forms and possibilities of thought—or, from an analytical point of view, it may offer new insights on old forms of thought. In other words, arising in contact zones, where two or more languages interact and disrupt each other, an interlanguage may reveal syntactical aspects and metaphysical assumptions (e.g., foundational metaphors, enabling fictions, rhetorical figures, and/or grammatical modes of imagining) that go largely unnoticed and unexamined in the originating languages. An interlanguage may be more or less ad hoc, more or less provisional and improvised, depending upon how long it has been in action and how many speakers share its grammar and vocabulary. As part of a distinct linguistic system, statements made in an interlanguage cannot be wholly translated into the originating languages without losing something important; moreover, the meaningfulness (or ‘correctness’) of such statements cannot be evaluated merely by applying the grammatical rules from one contributing language or another.

International law, of course, is also produced in contact zones, at the interfaces between legal regimes, where two or more legal languages interact, almost always on unequal terms. As the native treaties demonstrate, at empire’s edges, international law is highly improvisational, constituting legal subjects, categories, and principles relationally at the site of interaction. Thus, it entails the creation of an interlanguage that is something other than the individual participating languages and not entirely reducible to their respective linguistic conventions or their particular legal preconceptions. It may be relatively obvious that international law is an interlanguage when we read the text of historical documents such as ‘sovereign rights’ treaties produced at the interface of European imperial and native African languages in the contact zone of the Niger. However, the core canonical texts of international human rights law from the mid-20th century onwards are as much expressions of an interlanguage as are the abundant, and largely forgotten, colonial treaties from the late-19th century. Indeed, contemporary international law is predicated upon a

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(1972); W Nemser, ‘Approximative Systems of Foreign Language Learners’ 9 *International Review of Applied Linguistics in Language Teaching* (1971) 115.

30 Nemser (1971) 115.

31 Selinker (1972) 215.

certain practical linguistic impossibility, because, at least in the context of the contemporary international order, it cannot be reduced to a single unitary and authoritative language. That is, international law is necessarily an interlanguage because, technically and practically speaking, there is no single authoritative text of international law. Indeed, for all practical intents and purposes, international human rights law is expressed in one or more of the six (historically imperial) official languages of the UN, all of which have equal authority, 'are equally authentic', as the English language versions of the documents say.<sup>32</sup>

Given the internationality of the law, the assertion that international law is an interlanguage seems uncontroversial, even commonsensical, but it has far reaching implications, only some of which can I explore here, that are probably underappreciated in the study of international law, because, if the logic holds, then the fundamental principles of that law exist only relationally (or dialogically or intertextually), suspended somewhere in the inaccessible interstitial space between the six languages, whose cultural vocabularies, grammatical formulations, conceptual resources, and idiomatic expressions are not entirely commensurate or compatible. The interlinguistic condition of international human rights law means that we are only ever looking at an incomplete and imperfect translation of an otherwise inarticulable law; in a sense, then, international law, in its platonic interlinguistic form, remains a kind of unwritten natural law, despite (or, rather, because of) being written officially many times in the form of positive law. Thus, wherever it emerges, in small forms (e.g., native treaties 'signed' with an alphabetic 'X') and large ones (e.g., nearly unanimous General Assembly resolutions), international law is an interlanguage. The degree of interlinguistic improvisation, of course, varies greatly between those two poles of international law; that is, the professionalised interlanguage of UN-based law is substantially more stable than that produced between the manager of a business enterprise and a Nigerian village elder on the legal frontier—so too, it would seem, are fundamental categories such as sovereignty and juridical personality that are produced at various sites of interlinguistic contact. Nevertheless, although the grammar of the interlanguage of international law may be more or less stable, more or less normalised, it has never been standardised once and for always. In this sense, the conventional texts of international law are indeterminate, not self-explanatory, depending always for their meaning on comparative, relational readings that refer to other similarly indeterminate texts.

32 For example, Article 53(1) of the International Covenant on Civil and Political Rights (1966) reads: 'The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.'

Common accounts of the notorious indeterminacy of international law include: that the law derives from the principle of state sovereignty, and is, therefore, subject to power and politics; that it derives from legal sources whose consensual nature is subject to question; that it is the documentary record of customary practices that are peculiar to a particular group of international actors. Revisiting this problem of indeterminacy in the new Epilogue to his book, *From Apology to Utopia*, Martti Koskenniemi argues that ‘international law remains indeterminate because it is based on contradictory premises and seeks [or, international lawyers seek] to regulate a future in regard to which even single actors’ preferences remain unsettled’.<sup>33</sup> I want to suggest that some of the indeterminacy of international law also has to do with the fact that it is an interlanguage, created under unequal conditions, at sites of interlinguistic contact where legal principles such as sovereignty and juridical personality are produced provisionally and shot through with the incomplete meanings, partial intentions, and residual grammars of numerous earlier, unequal, and distant (often lost) interlinguistic legal encounters that continue to haunt doctrinal international law today. Indeterminacy is, thus, one form in which we sense the residue of prior grammatical encounters, between metropolitan Majors and native spirits, for example—the ghosts of legal fictions past.

My argument has some affinities with Koskenniemi’s efforts in *From Apology to Utopia* ‘to articulate the *competence* of native language-speakers of international law’, where ‘*competence is the ability to use grammar in order to generate meaning by doing things in argument*’.<sup>34</sup> Starting from the proposition that international law is a language, Koskenniemi sought to compile something like a universal grammar of law, or to describe the grammatical unconscious of ‘native speakers’ of international law. One potential pitfall of the project becomes clear when stated that way: there is, technically speaking, of course, no such thing as a native speaker of international law, no-one for whom international law is a mother tongue.<sup>35</sup> (There are many professional speakers of international law, who acquired it as a second language and who, therefore, if the linguists’ account of interlanguage is correct, import some grammatical patterns of thought and forms of expression from their first languages that

33 M Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Cambridge UP, 2005) [1989] 590.

34 *Ibid* 567, 571.

35 Anne Orford has made a similar observation in her discussion of *From Apology to Utopia* after its republication in 2005: ‘By concentrating on the grammar of international law’, she says, ‘Koskenniemi ignores the capacity of language to mean more or other than its author intended it to mean, to misfire, or to be deflected.’ A Orford, ‘A Journal of the Voyage from Apology to Utopia’ 7 *German Law Journal* 7 (2006) 1005.

inflect, or accent, their understanding and use of international law.) Koskenniemi's inquiry is premised upon a scholarly legal fiction: a native speaker of international law who has mastered its grammar and whose fluency is measured (interestingly enough) precisely by the international lawyer's ability to manipulate international law's indeterminacy. This enabling fiction of the native speaker makes it possible for Koskenniemi to treat international law as a unitary 'natural' language (rather than as an interlinguistic creole<sup>36</sup>) that, although still evolving, has relatively stable grammatical rules and a distinct community of speakers for whom the language may be as good as native.

As an interlanguage, any particular production of international law (from the most idiosyncratic oral negotiations of native interpreters on the Niger to the more standardised official languages of late human rights law) behaves, more or less, like the creolised languages that Édouard Glissant describes in *Poetics of Relation*.<sup>37</sup> Writing from the plurilinguistic perspective of the Caribbean contact zone, Glissant defines 'creole' suggestively as 'a language whose lexicon and syntax belong to two heterogeneous linguistic masses', and 'whose genius', he says, 'consists in always being open, that is, perhaps never becoming fixed according to systems of variables that *we have to imagine* as much as define'.<sup>38</sup> Furthermore, because the interactive and improvisational processes of creolisation are largely unrecoverable, 'the poetics of Relation [that characterises an interlanguage] remains forever conjectural'.<sup>39</sup> If we cannot write an adequate history of an interlanguage (that is, a history that can account for its full heteroglossic complexity, in the terms of Russian literary theorist, Mikhail Bakhtin), we can, nonetheless, get a feel for its poetic texture, for the provisional figurative effects of its unstable grammar. For Bakhtin, all language 'is populated—overpopulated—with the intentions of others',<sup>40</sup> and this sense of semantic congestedness (where language is overpopulated with other people's persons and personified intentions) is even more dramatic in the case of an interlanguage, which is laden with the distorted and deflected incomplete intentions of others that persist in the overloaded vocabulary, unsteady syntax, and dynamic patterns of speech of its users. These partial intentions collide and

36 On the development of creole law in the contact zone of colonial and post-independence Latin America, see L Obregón, 'Completing Civilization: Creole Consciousness and International Law in Nineteenth-Century Latin America', in A Orford (ed.), *International Law and its Others* (Cambridge UP, 2006) 247.

37 E Glissant, *Poetics of Relation*, trans. B Wing (University of Michigan Press, 1997) [1990].

38 Ibid 118, 34 (emphasis added).

39 Ibid 32.

40 MM Bakhtin, *The Dialogic Imagination: Four Essays*, trans. C Emerson & M Holquist (University of Texas Press, 1981) 294.

combine to create (among other things) new grammatical conditions of meaningful possibility and new figures of speech that may exceed or escape the intentions of their creators in the original languages from which they evolved.

In 'On Truth and Lying in an Extra-moral Sense', Friedrich Nietzsche famously defined 'truth' as 'a mobile army of metaphors, metonyms, anthropomorphisms, in short, a sum of human relations which were poetically and rhetorically heightened, transferred, and adorned, and after long use seem solid, canonical, and binding to a nation'.<sup>41</sup> 'Truth', he suggests, consists of aged linguistic 'illusions' that pass for 'truth' when 'it has been forgotten that [these figures of speech] are illusions, worn-out metaphors without sensory impact'.<sup>42</sup> Nietzsche was describing the fundamental figurativity of natural (or national) languages, but an interlanguage often reanimates fossilised metaphors and dead anthropomorphisms from its contributing languages, intermixing them with new syncretic figures of speech, provisional concepts, and improvised subjects that are not known in the natural languages and that take on 'unnatural' lives of their own—in other words, metaphors remain alive, often in other forms. The basic supposition of this essay is that the grammatical conventions and distinct linguistic features of any particular language will, in the context of law, produce its own peculiar legal fictions, figures of speech, foundational categories, doctrines, and principles. And, in the case of a legal interlanguage, where the grammatical conventions are not entirely consistent or coherent, these figures of speech and juridical fictions (the effects, in part, of two languages rubbing together, of incomplete communication, mutual misunderstanding, and sometimes deliberate mistranslation) are likely to behave in ways that deviate from what experience with similar figures (or worn-out metaphors) in our own natural languages might teach us to expect. The furthest implication of my argument, which must, for now at least, remain in the form of a hypothetical proposition, is that the indeterminate interlanguage of contemporary international law is haunted by the residues of messy linguistic encounters in colonial contact zones.

In his study of *Comparative Legal Linguistics*, Heikki Mattila has argued that 'sometimes, less well known languages [of international law] bring out linguistic phenomena more clearly than the major international languages', which he refers to as the multiple '*linguae francae* used by lawyers at the

41 F Nietzsche, 'On Truth and Lying in an Extra-moral Sense', in S Gilman, C Blair & D Parent (eds), *Friedrich Nietzsche on Rhetoric and Language*, trans. S Gilman, C Blair & D Parent (Oxford UP, 1989) 250.

42 Ibid.

international level'.<sup>43</sup> Recognising that international law is not *a* language, or that it cannot be reduced to a single language, Mattila suggests that it is possible to gain insight about the meaning and make-up of the law by looking at it from outside itself, by seeing it through the lenses of 'minor' languages. Along those lines, I suggest that the interlinguistic condition, operation, and principles of international law might be most clearly legible in (or might be usefully illuminated by) legal and non-legal texts that were themselves created at the rough contact edges of the international legal order, at some of those remote colonial interfaces. Thus, in an attempt to grasp something of the peculiarity of the texture of the interlanguage of international human rights law (what Glissant would call its 'poetics of relation'), I will read contrapuntally literary and legal texts that were produced in various contact zones (or that imagine such contact zones), tracking some of the interlinguistic figures of speech and unstable legal fictions that move between these texts in order to explore the grammatical operation and rhetorical dynamics of legal personification and its implications for sovereignty. I will conclude by reading the provisional principles of legal personification and sovereignty alongside and through an interlinguistic ghost story written from the colonial contact zone of Nigeria by Amos Tutuola, *The Palm-wine Drinkard and His Dead Palm-Wine Tapster in the Deads' Town* (1952).

### **A CABINET OF LEGAL CURIOSITIES: CORPORATE SOVEREIGNS, TRIBAL CHIEFS, NATIVES, FOREIGNERS, AND OTHER CREATURES OF CONTACT LAW**

Major Macdonald's 1889 mission was not, of course, to photograph ghosts; it was, instead, to check on the sovereignty and legal personality of the RNC: on the one hand, 'to inquire from the various chiefs whether they had made the treaties they were alleged to have made' (that is, checking on the legitimacy of the company's sovereignty over the natives), and, on the other hand, to ensure that the company was complying with its charter obligations to the Queen (that is, making sure its legal personality was still in check, and so its delegated sovereignty still limited).<sup>44</sup> Macdonald reviewed all of the available treaties and interviewed many of the tribal representatives who, 'having no knowledge of writing' (in the boilerplate language of the treaties), had affixed their 'mark' to a treaty and so 'cede[d], with all sovereign rights . . . the whole of [their]

43 HES Mattila, *Comparative Legal Linguistics: Language of Law, Latin and Modern Lingua Francas*, 2nd ed., trans. C Goddard (Ashgate, 2013) 26.

44 Mockler-Ferryman (1892) 255.

territory' to the company.<sup>45</sup> For this purpose, the RNC, formerly the National African Company (Limited), had at least ten standardised forms that it used for the vast majority of its treaties on the lower Niger. The most concise of those fill-in-the-blank forms was No. 6, which read:

We, the Kings and Chiefs of [BLANK], in Council assembled, do cede to the National African Company (Limited), of London, their heirs and assigns, for ever, all our territory extending from [BLANK to BLANK], with all sovereign rights.

We also agree that no one shall have a right to mine in our country (either foreigner or native) without the sanction of the National African Company, their heirs or assigns.

We also give to the National African Company, their heirs or assigns, the power to exclude all or any foreigners from our country.

The National African Company agree to govern on the basis of the native laws as among the natives themselves, and not to interfere with the rights of private property.

The National African Company agree to pay, as Sovereign, a subsidy of six pieces of cloth per annum to the former Rulers of the country.

Signatories: [BLANK]

...

*Declaration by Interpreter*

I, [BLANK], native of [BLANK], do hereby declare that I am well acquainted with the [BLANK] language, and have interpreted the foregoing to the Kings and Chiefs, and they understand its meaning.

(Signed) [BLANK]<sup>46</sup>

Despite the standard declarations at the end of the treaties, more than one of the RNC's native interpreters later submitted sworn affidavits stating that 'in no case were the Kings and Chiefs made to understand that they were giving up their country to the Company or giving them control over their towns and villages';<sup>47</sup> in the words of one native interpreter, WN Thomas, 'I was not aware that "ceding" meant giving over rights of government, and I dare not have made this suggestion to him, as he would not have listened to it for a minute.'<sup>48</sup>

Nonetheless, Macdonald concluded from his investigation that the majority of treaties were legitimate, and that most of the 'accusations of chicanery,

45 'Form No. 8', in *Treaties Concluded between the Royal Niger Company and Native Chiefs*, Foreign Office 881/6425 (August 1898) 13.

46 *Ibid* 11.

47 Macdonald (1890) 8.

48 *Ibid* 13.

fraud, and other malpractices [in treaty making] are not supported by any reliable evidence'.<sup>49</sup> In the few cases where questions remained about 'the *bona fides* of the Treaties', Macdonald insisted that 'the European agents of the Company cannot be held responsible', since any misunderstanding rests with the native interpreters who affirmed not only that they had 'truly and faithfully' interpreted the treaty text, but that the tribal leaders 'understood its meaning'.<sup>50</sup> Macdonald's conclusions about the native interpreter's responsibility for the clarity and legitimacy of the company's treaties points directly to the problematic condition of interlanguage in the colonial contact zone. In theory, 'a meeting of minds'<sup>51</sup> was achieved through mediators at sites of interlinguistic contact between the natural languages of the participating parties; in other words, mutual agreement was reached in an improvised and interpretive interlanguage that was natural to no-one and in which, strictly speaking, no-one agreed to anything, since each party agreed merely to their respective translation (or interpretation) of the interlinguistic terms of agreement in their own language. Thus, there exists no accurate historical transcript of the oral agreement, because the improvised interlanguage, as such, is inaccessible and irrecoverable (lost both to time and radical linguistic difference); the actual oral interlanguage, in such cases, must remain hypothetical.

Ostensibly, the standardised forms of the RNC limited the terms of negotiation with the native population; in practice, however, they more certainly limited the historical record of the treaty negotiations to a pale and imperfect copy (at best) of the interlanguage of agreement (if such an agreement in fact occurred). Indeed, in the imperial archives, where the English-language versions of the pre-prepared treaties are registered, there is no record of the improvised interlanguage in which the treaty-arrangements were actually negotiated; it leaves little (or no) trace in most of the fill-in-the-blank forms, which cannot serve as adequate or fully accurate records of agreement, since they reflect only the presumptions and intentions of one side of the negotiation. In place of the interlanguage of agreement itself, we find proliferating (and contradictory) attestations about the terms (or linguistic conditions) of the treaty arrangement produced after the fact: the 'X'

49 Ibid 96.

50 The trustworthiness of native interpreters is a constant theme in the colonial literature, and Macdonald impugns the character of those who recanted their translations and others who filed complaints against the company, saying of more than one of them that he 'was expelled from the Niger Company's service for defalcations in his accounts, and alleged slave-dealing'. Ibid 9. 'It would appear that such people are hardly fit persons to sign a Memorial accusing the Company of fraud and chicanery', he concludes, which, of course, begs the question about the faith that should be placed in the interpreted treaties by which the company claimed sovereignty in the first place. Ibid 41.

51 C Alexandrowicz (1973) 50. Alexandrowicz uses this phrase in discussing Lord Lugard's critique of native treaties and his advocacy of alternative methods for making blood-brotherhood bonds.

that stands for the native Chief's assent, the signed declaration of the interpreters, the subsequent testimony of the Chiefs (itself produced through interpreters) recorded in Macdonald's report, and the parallel depositions of company managers. None of these offers access to the actual interlanguage; rather, they attest to its perceived effects.

Because the interlanguage of agreement cannot be approached directly or reduced (easily) to the grammar and vocabulary of any of the participating languages, participants are left to interpret its effects in their own languages. For example, following up on claims that the native signatories to one of the treaties did not understand the implications of granting 'sovereign rights' to the company, Major Macdonald questioned Charles McIntosh, one of the company managers who signed the treaty on its behalf: 'he said that, as the Treaty was made in Houssa, which language he (Mr. McIntosh) understands, he was quite certain that the Emir understood the word "cede"'.<sup>52</sup> Following the scholarship on interlanguage, McIntosh likely carried over something from his understanding of the grammar and meaning of the English word 'cede' from the preprinted language of the standardised treaties into whatever Houssa construction might have been used to try to communicate the concept and consequences of 'cede' to the Emir. And, in any case, he cannot responsibly attest to the Emir's understanding of the word based simply on his own interlinguistic understanding. Nonetheless, the form of McIntosh's response suggests two important things about a legal interlanguage, especially in such primary colonial contact zones: the terms of interlinguistic agreement cannot be evaluated or adjudicated in the inchoate ad hoc interlanguage where the meeting of minds is supposed to have taken place (without some agreed upon principle to adjudicate subsequent differences of interpretation), but neither can it be evaluated or adjudicated fairly in the terms of any one of the originating languages, since to do so ignores the grammatical and other linguistic transformations that have taken place through the interaction of languages.<sup>53</sup>

According to Macdonald's secretary, Captain Mockler-Ferryman, the 'African treaties' had a rather poor reputation at home in England, where they were 'a by-word', he wrote, 'and their value has been described as no more than that of the paper on which they are written'.<sup>54</sup> Indeed, given the conditions of their acquisition, the treaties seem a tenuous basis for the company's claiming of sovereign rights, and it would be a categorical mistake to think that these treaties

52 Macdonald (1890) 13.

53 This logic is related to Jean-François Lyotard's analysis of the *differend*: 'A case of differend between two parties takes place when the "regulation" of the conflict that opposes them is done in the idiom of one of the parties while the wrong suffered by the other is not signified in that idiom.' J-F Lyotard, *The Differend: Phrases in Dispute*, trans. G Van Den Abbeele (Manchester UP, 1988) [1983] 9.

54 Mockler-Ferryman (1892) 254.

alone secured the rights (of sovereignty and the international legal personality) of the company. However, they certainly made it possible for the company to act, in relation to the natives and to other contenders for sovereignty, as if they did. In fact, whatever their other value, the paper value of the treaties was quite extraordinary, bringing to life paper sovereigns who ranged about Africa at the end of the 19th century, swallowing up land, resources, and peoples. However, through the instruments of the 'sovereign rights' treaties, the RNC not only claimed corporate sovereignty, they also authorised the idea that the natives themselves had the legal capacity to alienate their lands, their resources, and their sovereignty (which was a subject of some debate at the end of the 19th century),<sup>55</sup> in that regard, the sovereign international legal personality acquired by the colonial charter companies was not the creation of 'the positive law of nations', as James Lorimer maintained, but was rather the discursive product of African natives, a legal fiction brought to life by so-called 'savages'.<sup>56</sup>

Although in the native treaties they draped themselves in the standardised language of European international law, these paper sovereigns were hybrid legal fictions that emerged from the improvised interlanguage of colonial contact, and their behaviour cannot be wholly accounted for by treating them as typical subjects of the law of nations. Similar things could be said about each of the other legal creatures that came off the pages of the native treaties. Indeed, if the sovereign rights treaties granted a curious form of sovereign international legal personality to the charter company, they also gave life to a myriad of other contact-zone legal fictions, including Kings, Chiefs, tribes, natives, and foreigners. Each of these legal persons was invested with specific rights and duties; for instance, it made all the difference in the world whether one was personified in the RNC's rules as a 'native' or a 'foreigner' (as can be seen in the second epigraph to this essay), because it determined the sovereign prerogative

55 Contradicting many of the delegates at the Berlin Conference in 1884, John Kasson, the American Ambassador, famously argued, from the general principle of self-determination, that African natives had the legal capacity to give 'voluntary consent' (in the form of treaties) to European colonisation. Cited in Alexandrowicz (1973) 47. See also G de Courcel, 'The Berlin Act of 26 February 1885', in S Förster, W J Mommsen & R Robinson (eds), *Bismarck, Europe, and Africa: The Berlin Conference 1884-1885 and the Onset of Partition* (Oxford UP, 1988) 247.

56 J Lorimer, *The Institutes of the Law of Nations: A Treatise on the Jural Relations of Separate Political Communities*, vol. 1 (William Blackwood & Sons, 1883) 102. The ironies here are legion. In *The Institutes of the Law of Nations*, Lorimer asserts that 'humanity, in its present condition, divides itself into three concentric zones': 'civilised', 'barbarous', and 'savage humanity'. Ibid 101. And he argues that 'the positive law of nations [does not apply] to savages, or even to barbarians, as such', who, as 'the residue of mankind', are entitled only to 'natural, or mere human recognition', rather than legal or political recognition. Ibid 102. Thus, looked at through the lens of Lorimer's schema, 'savages', who do not themselves warrant legal recognition, are, nonetheless, capable of giving to the RNC the kind of recognition that the law of nations denies them.

over life and death.<sup>57</sup> Something of the differential legal capacities of these subjects can be gleaned from the English-language texts of the treaties. Thus, at least from the British perspective, Kings and Chiefs were generally understood to have the capacity (*inter alia*) to alienate their own sovereignty (in the name of ‘our people’), to grant mining and other rights, to cede territory, to forbid entry to foreigners, and to abdicate native government. In the treaties, the ‘Kings and Chiefs’ are legal creatures created precisely for the purposes of handing over each of those aforementioned rights to the company. Major Macdonald implicitly acknowledged the fictional nature of these legal personifications (which in no way diminishes their effectiveness) when he mentions at the outset of his report, almost in passing, that ‘it must be especially borne in mind that in the Lower Niger there is, with [one] exception perhaps . . . no paramount Head or Chief of any tribe’.<sup>58</sup> The legal fiction of the corporate sovereign is, then, the mirror image (the uncanny spectral double) of the fiction of the native chief. According to Macdonald’s account, the treaties created ‘Kings and Chiefs’ where there were none natively, in order to personify the legal capacity to cede territory and surrender sovereignty. Indeed, in the fill-in-the-blank treaties, ‘Kings and Chiefs’ are, quite literally, empty (subject) positions in a grammar of rights-granting; they are simply the legal vehicle for the transference of sovereign rights from one party to another.

## A ROSE IS A ROSE IS A ROSE . . . EXCEPT WHEN A ROSE IS A PERSON

Legal fictions are facts of law that have serious implications for the people whom they claim to represent, and it is, indeed, important to bear in mind the fictional nature of such creatures, as Major Macdonald intimated about paramount Chiefs, when we are thinking about the figurative work of international law, at the edges and elsewhere. Even as Macdonald was following the paper trail of the RNC in his effort to establish the legitimacy of the native treaties granting sovereign rights to the charter company, legal debates about the juridical personality of ‘non-natural’ persons, especially that of corporations, raged in the US and the UK at the turn of the 20th century. The primary controversy was whether such legal personality was in some way substantially real or merely artificial, whether it reflected an objective organic fact in the

57 In his recommendations to the Foreign Office, Macdonald advocates reform of the Judicial Administration of the RNC, since too many ‘young and inexperienced’ gentleman have ‘the power of passing sentence of death on a native’, and the application of the laws is inconsistent; some Africans have been variously treated as ‘natives’ in criminal cases but as ‘foreigners’ for commercial purposes. Macdonald (1890) 80.

58 Ibid 2.

world or was simply an intellectual, or legal, fiction. As the progressive American legal theorist Gerard Henderson noted in 1916, the problem of corporate personhood could be framed in a simple syllogism (the ellipsis in what follows is the site of philosophical and political contest): ‘Only persons can be subjects of rights and duties. A corporation is the subject of rights and duties. Therefore, the . . . corporation is a person.’<sup>59</sup> The crux of the debate turned on how one filled in the ellipsis in that syllogism. Henderson, for example, arguing that the syllogism itself sets us immediately on the wrong foot, concluded with a normative assertion: ‘Therefore, the law must set up the fiction that a corporation is a person.’<sup>60</sup> By contrast, a partisan of the organic theory of personhood might conclude that ‘therefore, the law recognises the social fact that a corporation is a person’. However, even if we accept the major premise—‘only persons can be subjects of rights and duties’—the syllogism itself tells us little, if anything, about the nature of legal personhood and nothing about the character of the corporation. Thus, Anglophone political philosophers and legal scholars often turned to other, less contested or compromised, figures than the corporation to explore the nature, ethics, problematics, and poetics of juridical personality. For his part, Henderson illustrates the logic of legal fictions with a rhetorical flourish: ‘There is no reason, except the practical one, why, as some one has suggested, the law should not accord to the last rose of summer a legal right not to be plucked.’<sup>61</sup>

Henderson’s striking example of how far juridical personality rights might be extended to things other than human beings appeared in his prize-winning essay: ‘The Position of Foreign Corporations in American Constitutional Law: A Contribution to the History and Theory of Juristic Persons in Anglo-American Law’. ‘[L]egal personality is entirely a creature of the law’, Henderson insisted, ‘even [that] of human beings’.<sup>62</sup> And rights themselves, like the persons to whom they belong, are also ‘pure creatures of the law’; thus, when we speak of something as ‘the subject of rights, we mean [only] that it has the capacity to enter into legal relations—to make contracts, own property, bring suits’.<sup>63</sup> As categories of legal discourse, rights do not belong to some actually existing creature or entity in the physical world; ‘in the narrow, technical sense, the rights and duties are those of the personified [creature]’.<sup>64</sup> That

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59 G Henderson, *The Position of Foreign Corporations in American Constitutional Law: A Contribution to the History and Theory of Juristic Persons in Anglo-American Law* (Harvard UP, 1918) 165.

60 Ibid.

61 Ibid 166.

62 Ibid 167.

63 Ibid 166.

64 Ibid.

is, both rights and the persons to whom they belong are legal fictions that have no empirical reality outside the context of the law. Thus, the hypothetical right of a last rose of summer not to be plucked is, for Henderson, simply an extension of the principle (or rhetorical effect) of legal personification, by which ‘anything can be made a legal unit, and a subject of rights and duties’<sup>65</sup>—a flower, as much as a human being, a ship, or a business corporation. The heated debate at the turn of the 20th century about the ‘reality’ or ‘artificiality’ of legal personality (especially corporate personhood) has a long history, but, rather than rehearse its terms or take sides in it, I want to consider the imaginative, or intellectual, work that the flower-person does in this legal theory of juridical personality.

The last rose of summer might appear to be just a figure of fun, a garden variety personification, but it took on something of a legal life of its own (as personifications are wont to do) in the transatlantic debates about ‘The Personality of Associations’, as the British political theorist Harold Laski titled his own 1916 argument insisting on the ‘reality beneath’ the legal abstraction.<sup>66</sup> Although a number of legal commentators used the flower image to explore the conceptual limits and legal logic of corporate personification, the uncited source of Henderson’s proposition, the unidentified ‘some one’ who suggested that flowers might have rights, was likely James Lorimer, Professor of Public Law and the Law of Nature and Nations at the University of Edinburgh. A conservative member of the *Institut de Droit International*, Lorimer wrote in his 1872 treatise *The Institutes of Law*: ‘That all men are equal . . . is the first maxim of the science of jurisprudence. . . . Nor does this species of equality stop even with the human race. When the Society for the Suppression of Cruelty to Animals brings a question between a horse and a man before the judge, it is his duty to place the horse and the man on a footing of absolute equality; . . . something analogous takes place when a question arises between the exercise of mere human caprice and the interests even of a plant or a tree. “The last rose of summer” is not without its rights.’<sup>67</sup> In a later edition of the same text, Lorimer revised this paragraph to conclude that ““The last rose of summer” is entitled to “equality before the law”’.<sup>68</sup>

Using ‘the last rose of summer’ to illustrate the principle of ‘analytic justice’—that all persons, of whatever sort, must be treated ‘with the same

65 Ibid.

66 HJ Laski, ‘The Personality of Associations’ 29 *Harvard Law Review* (1916) 405.

67 J Lorimer, *The Institutes of Law: A Treatise of the Principles of Jurisprudence as Determined by Nature* (T & T Clark, 1872) 325–26.

68 J Lorimer, *The Institutes of Law: A Treatise of the Principles of Jurisprudence as Determined by Nature*, 2nd ed. (William Blackwood & Sons, 1880) 406.

impartiality' under the law<sup>69</sup>—Lorimer does not claim that the rose might have the *sui generis* right not to be plucked, as Henderson suggested when he later used the rose to illustrate the principle of legal personification. And it would have been a strange rights claim to make, since Lorimer's own source for 'the last rose of summer' is almost certainly a poem (and later a popular song) by the same name, written by the Irish poet Thomas Moore in 1813, and it would represent a very poor reading of Moore's poem to conclude that the rose has a right not to be plucked. In fact, despite its personification, Moore's rose seems to have no rights in the matter at all. Instead, the poem's speaker claims the right to pluck the flower in its own best interest, a personified interest that the speaker extrapolates from his own existential loneliness and then projects back onto the lone blossom:

'TIS the last rose of summer  
 Left blooming alone;  
 All her lovely companions  
 Are faded and gone;  
 No flower of her kindred,                   5  
 No rosebud is nigh,  
 To reflect back her blushes,  
 Or give sigh for sigh.  
  
 I'll not leave thee, thou lone one,  
 To pine on the stem;                       10  
 Since the lovely are sleeping,  
 Go, sleep thou with them.  
 Thus kindly I scatter  
 Thy leaves o'er the bed,  
 Where thy mates of the garden           15  
 Lie scentless and dead.  
  
 So soon may *I* follow,  
 When friendships decay,  
 And from Love's shining circle  
 The gems drop away!                       20  
 When true hearts lie wither'd  
 And fond ones are flown,  
 Oh! who would inhabit  
 This bleak world alone?<sup>70</sup>

69 Ibid 405.

70 T Moore, *Irish Melodies* (Longman, Brown, Green, & Longmans, 1856) 75-76.

If Moore's poem makes any rights claims through the poetic practice of personification, it seems to affirm what Foucault described as the '[old] right of sovereignty . . . to take life or let live'.<sup>71</sup> Indeed, the personified figure of the poet-gardener exercises 'sovereignty's old right'<sup>72</sup> when he disfigures the rose, scatters its petals in the flower bed, and construes this as an act of humanitarian (or floritarian) mercy. If the flower is imagined to have any rights of her own in Moore's poem, it is a very dark freedom of association: a right to join her sisters in death, a right to partake of a group personality and to share the perennial fate of her mates, a right not to (be made to) live alone as the last of her kind. For the gardener-poet, the rose represents a vicarious figure for contemplating his own loss of companionship and deflecting his own suicidal pining for death; as such, the rose is personified as a figure for the metaphysical problem of personhood itself, for the sometimes bleak existential unease that comes from having been personified in the first place or of having outlived one's associates as a side effect of the act of personification. I will return to these questions of mortality, because (like sovereignty) death consistently haunts the category of juridical personality and the poetic operation of both legal and literary personification.

No matter how we might close-read Moore's poem in relation to questions of sovereignty and personification, it illustrates the tendency of personified figures (legal as much as literary) to exceed the human qualities initially attributed to them through the figurative act of anthropomorphic personification. The personified last rose of summer not only outlives the rest of her species; she has been immortalised in Moore's poetry (and further in Lorimer's legal prose) in ways that betray what the poet and the legal scholar both suppose she wants: to be treated equally by law and life. Indeed, the immortalising act of personification itself denies to the rose precisely the desire to end life that the gardener-poet claims to have recognised in her imagined loneliness, making her live, so to speak, in the worlds of literature and law. In Lorimer's and Henderson's arguments, Moore's last rose was plucked, without her sisters, from its garden verse and transplanted to the pages of legal prose, where it continues to serve as a kind of rhetorical question mark to test the validity of various theories of juridical personality.<sup>73</sup> But, the last rose of summer is a curious figure for probing the

71 M Foucault, *Society Must Be Defended: Lectures at the Collège de France, 1975-6*, ed. M Bertani & A Fontana, trans. D Macey (Picador, 2003) 241.

72 Ibid.

73 Lorimer's version of the rose seems to have experienced a revival in recent scholarship on juridical personality. See, e.g., GA Mark, 'The Personification of the Business Corporation in American Law' 54 *University of Chicago Law Review* (1987) 1441; J Friedlander, 'Corporation and Kulturkampf: Time Culture as Illegal Fiction' 29 *Connecticut Law Review* (1996) 31; SK Ripken, 'Corporate First Amendment Rights after Citizens United: An Analysis of the Popular Movement to End the

limits of legal reasoning, especially for the case of corporate personhood. For one thing, someone who denies the empirical—that is, the thorny corporeal—existence of an actual rose does so at the risk of getting pricked; and, therefore, the rose remains a metaphor, a flowery veil for the corporation, which seems not to have a body beneath it in the obvious way that a rose issues from a physical bud and a stem below it or, for that matter, in the way that, in the colonial contact zone, a native ghost might be discovered to have a human being hidden beneath its covering cloth. Indeed, as it stands in for the corporation and other bodiless bodies in the law, the last rose of summer is a metaphor for a(nother) metaphor, a metaphor on stilts (to recall Jeremy Bentham’s famous dismissal of natural rights). However, the very fact that a rose might serve as a viable substitute for a corporation in an argument about legal personality tells us something not just about the analogical aptitude of the legal mind, but also about the poetic nature of the legal category of personhood and the general nature of what Harold Laski called ‘the world of legal metaphysics’.<sup>74</sup>

Moore’s poem is never openly cited as a source for legal theory, but the appearance of the transplanted rose in legal scholarship nonetheless retains traces of its literary origins and attests to the long-running, shuttling traffic between the disciplines and texts of literature and law. In *The Concept of International Legal Personality*, legal scholar Janne Nijman argues for the value of looking at ‘works of art . . . for shedding light on the broader context’ in which legal concepts, logics, and doctrines take shape.<sup>75</sup> In her groundbreaking essay, ‘Anthropomorphism in Lyric and Law’, literary scholar Barbara Johnson argues for a deeper connection between ‘the laws of genre and the laws of the state’. ‘By juxtaposing lyric and law’, specifically focusing on ‘the question of anthropomorphism’, Johnson suggests that the poetic and juridical persons from the two fields ‘can illuminate each other’.<sup>76</sup> I would argue that the role of the last rose of summer in the pages of legal theory attests to an even more integral and intimate interdisciplinary liaison between literature and law, between lyric poetry and legal prose, than one in which art serves merely to supply cultural context for the emergence of legal concepts or, more powerfully, to shed literary light on juridical subjects (and vice versa).

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Constitutional Personhood of Corporations’ 14 *University of Pennsylvania Journal of Business Law* (2011) 209; JS Kerr et al., ‘A Slave by Any Other Name Is Still a Slave: The *Tilikum* Case and Application of the Thirteenth Amendment to Nonhuman Animals’ 19 *Animal Law* (2013) 221.

74 Laski (1916) 424.

75 JE Nijman, *The Concept of International Legal Personality: An Inquiry into the History and Theory of International Law* (TMC Asser Press, 2004) 24.

76 B Johnson, ‘Anthropomorphism in Lyric and Law’ 10 *Yale Journal of Law and the Humanities* (1998) 550, 556, 550.

In the figurative operation of personification, law and literature—with both their respective and overlapping logics—are deeply intertwined; the one bleeds into the other, in ways that may be more commonly intuited than apparent. Indeed, given the centrality of the figure of the ‘person’ to law and literature (and to the humanistic and social sciences more generally), the question of personification is intrinsically an interdisciplinary problem and an especially rich vein to mine for evidence of the interdependence of legal and literary thinking. The category of the ‘person’ is unstable, in part because of its fundamental significance for multiple disciplinary discourses (because, that is, it has been personified variably by those disciplines), and yet, as we shall see, that very instability was indispensable in the drafting of the Universal Declaration of Human Rights (UDHR), where ‘person’ served as an abstract, or empty, point of convergence for various philosophical, religious, legal, and anthropological accounts of the human and its dignity. In such contexts, in both theory and practice, the logics of literary and legal personification so routinely collapse into each other that it can be difficult, if not practically impossible, to disentangle one from the other, to go back and distil a pure theory of personhood that can be said to belong properly to one discipline and not to the other. This interdisciplinary kind of conceptual collapse is similar to the linguistic effects produced by an interlanguage that retains the partial grammar of one tongue entangled with another, but it also, I believe, speaks to a particular quality that typifies the grammatical category of the person itself: its pronominal condition.

### **PRONOMINALITY: ON THE CONDITION OF BEING A PERSON**

Whether the last rose of summer is imagined as having a right not to be plucked, or as entitled to equality before the law, or as the orphaned sibling of predeceased sisters, or as a figure for the problem of personification itself, she is serially personified as something other than herself in both the pages of legal theory and the field of poetry. As a figure of excess in the historic debates about legal personality, the last little rose stands in not just for the corporation but for an infinite catalogue of innumerable other candidates and concepts that might be treated as persons; that is, she represents the apparently unlimited potential of anything to be personified as the bearer of rights and duties in the law. In that capacity, the personified flower displays the qualities of a pronoun. Indeed, in Henderson’s and both of Lorimer’s formulations, the last rose of summer functions as a pronominal subject in a very particular legal grammar of rights that can only imagine rights as direct objects of possession, as *belonging* to the subject of a rights-claiming sentence. Thus, the rose is personified as the

inevitable effect of a possessive individualist legal grammar in which the subject must necessarily be the kind of person who can accept the rights that are attached to it through the predicate of a plain English sentence or that are attributed to it by possessive pronouns. The personalist legal grammar that attributes rights to the last rose of summer has obvious parallels with ordinary English grammar, but this is in part because a possessive individualist (Lockean) philosophy of the subject as ‘the proprietor of his own person or capacities’ underpins both common English speech and the anglophonic legal thought behind Lorimer and Henderson.<sup>77</sup> Simply because one grammar shares features with another does not mean that they are the same all the way down. As the French linguist Émile Benveniste has observed, in ‘The Nature of Pronouns’, the ‘universality of [pronominal] forms’ suggests that ‘the problem of pronouns is both a problem of language in general and a problem of individual languages’.<sup>78</sup>

Perhaps because of the long entanglement of literary and legal personification, it is a common analytical mistake to confuse ordinary linguistic grammar for the technical legal grammar of personification and rights-claiming. Indeed, Laski cited the evidence of common speech to support his argument that corporate personality is real, that running through ‘bodies corporate’ is ‘the red blood of a living personality’; ‘we are compelled to personalize these associations’, he claimed: ‘They demand their possessive pronouns. . . . They govern a singular verb.’<sup>79</sup> (Contrary to Laski’s claim, Major Macdonald uses plural verbs and plural possessive pronouns to describe the charter company throughout his report, demonstrating that the rules even of English grammar are not entirely consistent: e.g., ‘the Company *have* not carried out *their* obligations with regard to these people’.)<sup>80</sup> In an insightful study of the kinds of ‘verbs and verbal expression’ commonly ‘used in talking about corporations and other types of associations’, linguist Sanford Schane concludes that ‘it is normal linguistic usage to talk about institutions . . . as if they are persons’ and, further, that ‘[t]he law has cleverly managed to exploit this important aspect of language.’<sup>81</sup> (Curiously, Schane personifies the law itself (rather than the corporation) as an autonomous institutional creature intent on exploiting human

77 CB Macpherson, *The Political Theory of Possessive Individualism: Hobbes to Locke* (Clarendon Press, 1962) 3.

78 E Benveniste, *Problems of General Linguistics* (University of Miami Press, 1971) [1966] 217.

79 Laski (1916) 405, 404.

80 Macdonald (1890) 11 (emphases added).

81 SA Schane, ‘The Corporation Is a Person: The Language of a Legal Fiction’ 61 *Tulane Law Review* (1986) 563, 596, 595, 565.

speech for its own advantage.) Schane is writing primarily about American law, and, although he speaks of language in general, he is analysing grammatical constructions in English. It is doubtful that the legal grammar of any particular principle derives directly or primarily from ordinary linguistic grammar (as Schane suggests), but the traffic (the bilateral interplay and interference) between the two certainly conditions the figurative and social work of law. In mistaking common English speech for empirical evidence of legal thought, Laski stumbles into one of the primary anthropomorphic pitfalls of personification (legal, literary, or otherwise): the ‘almost inevitable conceptual convergence between the notion of the person and the notion of the human being’, as Anna Grear describes it in *Redirecting Human Rights*.<sup>82</sup> This conceptual confusion is one form of the mistake that I will discuss later as the pathetic legal fallacy, which entails confusing legal fictions for social facts, and it is here exacerbated by a failure to recognise that there are multiple ‘languages’, with somewhat different grammatical regimes, at play in the personification of the corporation in ordinary conversation and legal codes—even in the English language that Laski cites.

In the case of the last rose of summer, we seem to be within the realm of a single language that presumably operates according to the rules of a single prescriptive grammar. And, indeed, in order to substantiate his claim, Laski must argue as if the English language is singular and its grammatical rules are stable, which he does by animating another legal and analytical fiction, ‘the man in the street’, whose pedestrian speech presumably reveals general juridical truths; ‘if “it” is no legal entity at all, why do we use collective nouns with possessive pronouns and singular verbs’, he asks.<sup>83</sup> Laski’s argument is unconvincing, in part because he applies a grammar from the English streets to a rights claim that abides by somewhat different grammatical rules. Moreover, even within the linguistic world of ‘standard English’ the grammar of the pronoun is not governed by a single set of syntactical rules, except in the most pedantic sense. And, in any case, it is simply dangerous to generalise a universal (legal or moral) principle based solely upon the grammatical conventions and conceptual resources of a single language, perhaps especially in the case of international law, where the grammar has neither a single linguistic (or philosophical) source nor a necessarily consistent set of rules. That said, ‘English’, as the proper name of a language, hides its plurality within itself. ‘English’ is not just one language; it can, of course, always be bifurcated, subdivided,

82 A Grear, *Redirecting Human Rights: Facing the Challenge of Corporate Legal Humanity* (Palgrave, 2010) 49.

83 Laski (1916) 423, 421.

pluralised.<sup>84</sup> For instance, in the transatlantic travels of ‘the little rose of summer’, it is easy to identify American and British Englishes at work, and we can distinguish the technical languages of law courts, legal theorists, and men in government service from the casual speech of ‘the man in the street’. We could make still finer distinctions among varieties of English, but what I want to suggest is that even in the Anglo-American context, the particular legal grammar of rights-claiming and personification that we have seen is already the manifestation of an interlanguage (both interdisciplinary and interlinguistic) and, therefore, neither entirely consistent nor obedient to the standardised academic grammar of a natural language. In some sense, the historical debates about corporate personality at the beginning of the 20th century could be understood not only as a clash of theories and politics about sovereignty and state power, but also as a confusion of grammars—the transposition of grammatical rules and expectations for meaning-making from one language onto another.

If our conceptual capacities are largely determined by the native grammar of mother tongues (‘natural’ or otherwise), then to apprehend the legal grammar of personhood in an interlanguage that is, strictly speaking, native to no-one—the founding texts of international human rights law as much as the improvised charter company treaties—would require being able to see past or see through the grammatical frameworks of our respective native languages. That is, it would require a kind of (interlinguistic and interdisciplinary) double, or spherical, vision—something like the ‘border thinking’ that Walter Dignolo has advocated, the ability ‘to think from both traditions and, at the same time, from neither of them’<sup>85</sup>—in order to apprehend fully the syncretic figures and provisional structures of the ‘deviant linguistic system’ of an interlanguage.<sup>86</sup> (My own efforts in this article should be understood as, at best, provisional.) Perhaps it is no accident, then, that two of the most suggestive accounts of the legal grammar of personification come from two thinkers writing in second languages: a Hungarian international legal scholar, Alexander Nékám, and a Portuguese literary theorist, Miguel Tamen. Published in 1938, Nékám’s *The*

84 Glissant makes a similar point about French: ‘there are several French languages today, and languages allow us to conceive of their unicity according to a new mode, in which French can no longer be monolingual’. Glissant (1997) 119.

85 W Dignolo, *Local Histories / Global Designs: Coloniality, Subaltern Knowledges, and Border Thinking* (Princeton UP, 2000) 67. Although he describes it variously, Dignolo’s ‘border thinking’ remains too binocular, too binary to capture exactly what I am after, especially when he explains ‘the key configuration of border thinking: *thinking from dichotomous concepts rather than ordering the world in dichotomies*’. Ibid 85.

86 Nemser (1971) 2.

*Personality Conception of the Legal Entity* approached the topic from a sociological point of view; Nékám concluded that anything ‘that is looked upon by the community as a unit having interests which need and deserve special protection’ can ‘become a subject—a potential center—of rights, whether a plant or an animal, a human being or an imagined spirit’.<sup>87</sup> In his account, ‘[e]very right created needs somebody to dispose of it’, and, therefore, the ‘person’ is merely ‘a foundation for legal predicates’, the effective subject of a sentence to whom rights and duties are attached by the action of a verb.<sup>88</sup> Similarly, Tamen, in his evocative study, *Friends of Interpretable Objects*, describes the fictional, representational capacity of the ‘person’ as ‘a structural possibility rather than a substance’.<sup>89</sup> Commenting on Savigny, Tamen suggests that “Juridical person” is not so much a trope for “individual man” as it is a trope for a position in certain contexts. It refers to a place that is presupposed by certain activities<sup>90</sup>—the place of the abstract subject, that is, the place of the pronoun. The pronominal subject, by Tamen’s account, is ‘the *terminus* of certain activities, rather than . . . the ground or reason for those activities’.<sup>91</sup> Thus, the last rose of summer is personified by the attribution to ‘her’ of a right not to be plucked; otherwise, a rose remains just a rose.

Following Nékám and Tamen, we could say that the juridical person is simply the subject of legal predicates, and personification is the juridico-grammatical means for disposing of a right by attaching it to a pronominal subject. Thus, person is categorically a pronoun still to be specified, a ‘vehicle’ whose ‘tenor’ is yet to be determined (in the literary technical terms of IA Richards from 1936), ‘a “holder” of rights and obligations’ (in the legal theoretical terms of Hans Kelsen in 1934).<sup>92</sup> Person is the creature given life to in legal discourse by the predicated attribution of rights (and duties), but such predication itself depends upon (is predicated upon) the idea that there is a person to ‘dispose’ of those rights. In other words, ‘person’ is both the product and necessary premise of legal predicates. A particular person and a particular right come into being

87 A Nékám, *The Personality Conception of the Legal Entity* (Harvard UP, 1938) 26.

88 *Ibid* 27, 53.

89 M Tamen, *Friends of Interpretable Objects* (Harvard UP, 2001) 114.

90 *Ibid*.

91 *Ibid*.

92 Richards dissected the rhetorical figure of metaphor (of which personification is a type) into two constituent parts, vehicle and tenor, where the vehicle is the image whose characteristics are being projected onto the tenor. IA Richards, *The Philosophy of Rhetoric* (Oxford UP, 1936) 132-33; H Kelsen, *Pure Theory of Law*, trans. M Knight (The Lawbook Exchange, 2005) [1934] 172.

simultaneously and consubstantially;<sup>93</sup> neither predates or postdates the other. Moreover, ‘person’ has no necessary relation to the human being since it simply holds the place of something that can bear the capacity to act as *a person before the law*, which means, therefore, that human beings must necessarily be personified in order to enjoy rights. Although Nékám and Tamen were analysing positivist European and American law, given the drafting history of the core texts of international human rights law, especially that of the UDHR,<sup>94</sup> much of this figurative logic of personification carries over from the Anglo-American tradition. Thus, in the founding texts of international human rights law, ‘person’ is the pronominal figure through which the law personifies the human being as a creature capable of bearing its birth rights.

Given the power of the anthropomorphic pitfall of personification (the quick assumption that the figure of the ‘person’ is modelled on the fundamental characteristics of the human), it is easy to miss the fact that the human being is the muted subject of international human rights law, even in the UDHR. Despite first appearances, the pronominal category of the person is the mechanism for the delivery of rights to human beings. In the beginning, ‘All human beings’ are said to be ‘born free and equal in dignity and rights’ (Article 1), but, in order to be ‘enjoyed’, that birth-right dignity must be supplemented by other rights in later articles: rights of personhood—that is, the right to bear rights (to paraphrase Hannah Arendt’s famous formulation of the enabling condition of citizenship). Indeed, ‘person’ is a holder of rights and duties that anticipates the human, awaiting activation in the citizen. So, the UDHR declares: ‘Everyone has the right to recognition everywhere as a person before the law’ (Article 6). Because of this slide from ‘human’ to ‘person’ in the text of international law, ‘human rights’ is something of a misnomer; the UDHR opens with the ‘human being’ as the eponymous *subject* of human rights, but it (and more especially the two International Covenants that follow) quickly shifts focus to the figure of the ‘person’ as the *bearer* of human rights—a juridical pronoun whose antecedent we usually take to be the human. This subtle displacement of the ‘human being’ by ‘the person’ all but eliminated ‘the human’ as such (that is, as a proper noun) from the corpus of human rights law—a fact that is perhaps more readily legible in Spanish and French than in English. In the official Spanish version of the UDHR, ‘human beings’ disappear completely after Article 6 (*‘Todo ser humano tiene derecho, en todas partes, al reconocimiento de su personalidad jurídica’*),

93 Nékám (1938) 37.

94 John Humphrey, who compiled the first draft of the Universal Declaration, claims that among the many legal documents he consulted to produce the draft, all but ‘two came from English-speaking sources and all of them from the democratic West’. J Humphrey, *Human Rights and the United Nations: A Great Adventure* (Transnational Press, 1984) 32.

replaced consistently thereafter by *'toda persona'*, and, in French, *'les êtres humains'* disappear behind *'toute personne'* directly after the early announcement of their birth in Article 1. Textually, the 'human being' fades into the background of law at precisely the moment when its rights are articulated, disappearing behind ambiguous unrestricted pronouns, passive constructions, and other mysterious personifications.<sup>95</sup>

A decade before the UDHR, in a famous 1938 lecture to the Royal Anthropological Institute, French sociologist Marcel Mauss traced the historical 'idea of "person"', which he described as 'one of the categories of the human mind'.<sup>96</sup> According to Mauss's transcultural account, some form of the 'person' appears to appear everywhere: from what he called 'the primitive societies' of the North-American Indians and the Australian Aborigines to the French Declaration of the Rights of Man and of the Citizen and in the legal traditions of modern democracies.<sup>97</sup> Thus, in Mauss's account, a variety of ideas are bundled into the single word 'person'. Just as the last rose of summer could stand in for various examples of other personified creatures (and for the problem of personification itself) in the pages of legal theory, the term 'person' has historically functioned as a pronoun in more than just ordinary speech and the grammar of law. A container without specific content, the term 'person' has long served a pronominal function in contentious debates about the ultimate grounding of human rights, standing in for a multitude of theories, philosophies, psychologies, and politics of the subject. Indeed, there are numerous (perhaps innumerable) possible accounts of the category of 'person', whose fundamental assumptions and implications are 'not easily reducible to a single order of meaning'.<sup>98</sup> In a Eurocentric context alone, we can track 'person' back through a long theatrical tradition to classical Greek Drama and the mask (*prosopon*) worn by an actor (as many humanities scholars do), or to Roman Imperial law via Kant and Leibniz (as many legal theorists do), or to the Catholic doctrine of the tripartite personality of god, and therefore of 'man' in whose image 'he' is created, or to more recent Protestant notions of

95 This paragraph is adapted from my essay 'However Incompletely, Human'. Slaughter (2014) 274.

96 M Mauss, 'A Category of the Human Mind: the Notion of the Person; the Notion of the Self', in M Carrithers, S Collins & S Lukes (eds), *The Category of the Person: Anthropology, Philosophy, History*, trans. WD Halls (Cambridge UP, 1985) 1, 2.

97 Ibid 1-25. Mauss himself subscribed to an old evolutionary theory that prized, as the most sophisticated form of the 'person', its manifestation as a moral and legal agent in contemporary Europe—a transcendent idea of the person that, in 1938, he urged his audience to defend against an unnamed threat.

98 R Esposito, *The Third Person: Politics of Life and Philosophy of the Impersonal*, trans. Z Hanafi (Polity, 2012) [2007] 5.

personalism popular in the mid-20th century, or to the masquerades of Mauss's 'primitive cultures', or to Marxist economic explanations of bourgeois individualism, or to any number of psycho-social developmentalist accounts of individual subjectivity. Traces of each of those traditions arguably inflect the interlanguage of contemporary human rights law. And, therefore, because of this pronominal quality—because both the category of person and theories of the person resist pinning down—no single genealogy of the 'person' in international law could be definitive.

Although that plurality is often acknowledged, one of the problems with recent authoritative accounts of the 'person' (and its entanglement with the category of the 'human') by Giorgio Agamben, Roberto Esposito, and others is their tendency to generalise from a single and sometimes false genealogy, from a single philosophical tradition or linguistic system. For example, Esposito reads Jacques Maritain's particular Catholic model of personhood back into the UDHR, not only making the clear historical mistake of asserting that Maritain 'was actively engaged in drafting the Universal Declaration'<sup>99</sup> (he wasn't) but also missing entirely the sense one gleans from reading the *travaux préparatoires* of the UN drafting committee from the mid-1940s: namely, that each of the delegates understood the idea of 'person' differently, that each heard a different word, bearing the historical weight of distinct and often incompatible philosophical, moral, cultural, and religious traditions—in short, that each of them had some other person in mind. As a basis of general consensus, 'person' made it possible for the drafters to avoid (or to minimise) the controversial subject of philosophy—that is, precisely, philosophies of the subject. As a bare pronoun holding the place of the human being, 'person' reprised its classical dramatic role in the UDHR as a 'shield or mask'<sup>100</sup> for the human, a rhetorical feint for not naming the human itself as a question—or, as a problem.

In the early anthropological literature on Mauss's 'primitive peoples', such an attitude towards the invocatory powers of language was called 'superstition' by European writers. Indeed, the dance of words undertaken to avoid summoning a potentially unwanted or unmanageable creature necessitates the creation of ambiguous pronouns and other euphemistic circumlocutions. From this perspective, the international human rights regime might be regarded as a superstitious body of personifying law that is haunted by ghosts—the historical dead of World War II and the Holocaust (to be sure), but also the spirits of other (forgotten) persons from the colonial contact zones. It is further haunted metaphysically by the moral and legal fiction of a prospective ghost: the

99 Ibid 12.

100 Nijman (2004) 3.

‘*potentially* autonomous, developed, capable, sane, rational, civilized’ human being who is, therefore, ‘*potentially* entitled to, and capable of enjoying, human rights’.<sup>101</sup> Human rights law imagines this fully-developed, self-same rights-bearing human in the phantasmal image of the person, a proleptic pronominal figure that awaits the return or arrival of its (human) ancestor, its antecedent, or its antedecedent.

## IMAGES THAT RESEMBLE US TOO MUCH AND OTHER TROUBLE WITH PERSONAL PRONOUNS

In order to think further about the mythopoetics and grammar of the interlanguage of international human rights law, I turn to the improbable text of a Nigerian ghost story that both pre-dates the UDHR by centuries and post-dates it by just a few years. Amos Tutuola’s *The Palm-Wine Drinkard and His Dead Palm-Wine Tapster in the Deads’ Town* (1952) is an epic tale of the contact zone, a perilous world populated by the dead and the undead, by nouns and pronouns that switch places constantly, which the eponymous hero must navigate to survive the danger of deceptive ‘beings and things that pass for what they are not’<sup>102</sup>—of persons who appear and disappear everywhere. Tutuola’s deadly literary universe is a world bent out of shape by the colonial encounter, distended and distorted at the interface between an old native language that no longer quite suffices to apprehend the reality of lived experience and a new language of colonialism, law, and international commerce that has not yet completely transformed nor taken hold of the mental and material landscape. Entering Tutuola’s ‘bush of ghosts’ is an adventure in grammar; its fictional world obeys neither the laws of physics nor the ordinary rules of language. Criss-crossed by multiple languages, whose conceptual resources and grammatical rules never fully resolve or stabilise, interacting with and disrupting each other at every turn, the text is filled with unprecedented creatures who are peculiar products of Tutuola’s imagination and curious figures of his interlanguage.

Drawing on the conceptual and grammatical resources of both English and Yoruba, Tutuola wrote from within a contact zone, pre-independence Nigeria, and in an idiosyncratic interlanguage that, as the authors of the seminal study of postcolonial literature, *The Empire Writes Back*, declared in 1989, ‘may be seen

101 A Çubukçu, ‘Thinking Against Humanity’ 5 *London Review of International Law* (2017) 256.

102 A Mbembe, ‘Life, Sovereignty, and Terror in the Fiction of Amos Tutuola’ 34 *Research in African Literatures* (2003) 5.

as paradigmatic of all cross-cultural writing'.<sup>103</sup> Perhaps, then, Tutuola's novel can serve as a sort of fun-house mirror in which we can see, in its distorted forms and exaggerated figures, something like the effects of the interlinguistic grammar of personification in international law. Indeed, the novel is filled with fantastical and terrifying creatures akin to those set afoot by the native treaties that were concluded at the edges of international law. Thus, I would argue that, at the very least, the novel vivifies the fundamental strangeness and conceptual incongruity that characterises the law's figurative operations when they are viewed through the refracting lenses of contact-zone literature that was produced under similar conditions as the law—when they are viewed, as it were, from the other side. In some sense, Tutuola's novel turns Major Macdonald's world on its head; here ghosts manage to photograph humans: 'there were many images', recalls the palm-wine drinkard, after an unexpected encounter with a portrait of himself hung in a unique gallery, 'and our own too were in the centre of the hall. But our own images that we saw there resembled us too much and were also white in colour, . . . perhaps somebody who was focusing us as a photographer . . . had made them, we could not say'.<sup>104</sup>

The *Palm-wine Drinkard* tells the story of a professional drinker who 'had no other work more than to drink palm-wine in my life'.<sup>105</sup> His daily routine is disrupted one Sunday when his 'expert palm-wine tapster' 'fell down unexpectedly and died at the foot of the palm-tree as a result of injuries'.<sup>106</sup> Because no one else 'could tap palm-wine to my requirement', the drinkard is compelled to undertake a sobering quest through the bush of ghosts to retrieve his former supplier from 'The Deads' Town'.<sup>107</sup>

The drinkard's adventures begin literally at Death's door. Promised information about his tapster's whereabouts by an 'old man' (who, in the narrator's words, 'was not a really man, he was a god'<sup>108</sup>) if he can 'bring "Death" from his house', the palm-wine drinkard goes in search of 'Death':

When I reached his (Death's) house, he was not at home by that time, he was in his yam garden which was very close to his house, and I met a small rolling drum in his verandah, then I beat it to Death as a sign of salutation. But when he (Death) heard the sound of the drum, he said

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103 B Ashcroft, G Griffiths & H Tiffin, *The Empire Writes Back: Theory and Practice in Post-Colonial Literatures* (Routledge, 1989) 67.

104 Tutuola (1984) 248.

105 Ibid 191.

106 Ibid 192.

107 Ibid 193.

108 Ibid 194.

thus—‘Is that man still alive or dead?’ Then I replied ‘I am still alive and I am not a dead man.’<sup>109</sup>

Outwitting Death’s many attempts to kill him, the palm-wine drinkard catches Death in a net and returns to the old man’s house bearing this frightful load on his head.

But immediately he heard from me that I had brought Death and when he saw him on my head, he was greatly terrified and raised alarm that he thought nobody could go and bring Death from his house, then he told me to carry him (Death) back to his house at once, and he (old man) hastily went back to his room and started to close all his doors and windows, but before he could close two or three of his windows, I threw down Death before his door and at the same time that I threw him down, the net cut into pieces and Death found his way out. . . . So since the day that I had brought Death out from his house, he has no permanent place to dwell or stay, and we are hearing his name about in the world.<sup>110</sup>

The palm-wine drinkard’s account of Death’s slipping the net provides an etiological explanation for ‘his’ appearance everywhere in the world, for the brute fact that death is the end of us all. However, his escape also unleashes a kind of grammatical terror that makes pronouns especially dangerous, since any unclarified pronoun might provide ready cover for death.

At every bend in the road and every obscure corner of the bush, the drinkard confronts Death in one form or another; death lurks behind everything, behind everyone, and behind every turn of phrase. In a sense, Death becomes the palm-wine drinkard’s primary and eternal antagonist, although, as we learn in an almost incidental aside half way through the tale, the drinkard and his wife are themselves immune to Death, because they ‘had “sold our death” to somebody . . . for the sum of £70: 18: 6d and “lent our fear” to somebody . . . as well on interest of £3: 10: 0d per month, so we did not care about death and we did not fear again’.<sup>111</sup> But if the palm-wine drinkard does not personally ‘care about death’—because he has successfully commodified and marketed his own—he is, nonetheless, forced to deal forever with the effects of having released Death’s figurative and disfigurative powers into the world. This episode of the drinkard’s first encounter with Death exemplifies all three of the textual features I want to consider in relation to the interlinguistic logic of

109 Ibid 196.

110 Ibid 199.

111 Ibid 247.

international human rights law and its poetics of the person: the literalisation of metaphor (beating a drum to death); personification (beating a drum to Death); and the parenthetical specification of ambiguous pronouns (beating a drum to him (Death)). All three of these figurative operations express aspects of the condition of pronominality; they are textual manifestations of a certain pronominal anxiety that arises in the face of death. However, the implications of this last feature (the parenthetical clarification of pronouns), which is a peculiar characteristic of Tutuola's particular interlanguage and idiosyncratic style, are especially interesting for thinking about the figurative and disfigurative work of legal personification, and the ways in which its grammar supports (or undoes) principles of sovereignty.

At first glance, the use of a parenthetical interruption to clarify an unclear pronoun seems simply redundant: 'I beat it to Death as a sign of salutation. . . . he (Death) heard the sound of the drum.' If we accept the personification of (small 'd') death in (capital 'D') Death, then the antecedent of the pronominal subject 'he' is clear from the context; indeed, the pronoun itself seems to be beside the point if 'he' is, in the end, simply going to be 'Death'. That something more troubling is afoot becomes apparent when Tutuola includes two third-person figures in a single sentence: 'he told me to carry him (Death) back to his house at once, and he (old man) hastily went back to his room'. The parenthetical specifications do not actually clear up all the ambiguities of the matter in these death sentences. The antecedents remain incompletely determined, since 'he' no longer simply holds the place of 'Death'; 'he' now also holds the place of the 'old man', who is (grammatically) protected from his own death (or from having Death visit his room) only by the slim and unstable difference concealed within the ambiguous third-person pronoun.

Pronouns in Tutuola's novel tend to be wayward and unreliable, requiring vigilance, lest they change their ways before the reader's eyes and start referring to inappropriate things—things the drinkard never intended or contemplated. It is not only the ordinary third-person pronouns—'he', 'she', 'it', etc.—that exhibit this errant behavior. General (and even some proper) nouns that we ordinarily think of as naming or indicating very specific things come to function as pronouns:

The use of the charm was this: . . . it would turn me into a great fire and smoke, so that the harmful creatures would be unable to reach the fire. . . . all of them were coming to us (fire) and when they reached the fire (us) the whole of them surrounded it . . . , although they could not do anything to that fire (us).<sup>112</sup>

112 Ibid 224.

The narrator's pronominal anxiety, and the textual manifestation of a fear of unruly pronouns, may be a linguistic symptom of the 'period of transitional confusion' from which Tutuola wrote, the contact zone of late-colonial Nigeria.<sup>113</sup> As Michael Thelwell has written, *The Palm-wine Drinkard* is 'a cultural hybrid, the child of [a] clash of cultures', and some of the textual curiosities of the novel are certainly the effects of Tutuola's idiosyncratic interlanguage: 'an English whose vocabulary is bent and twisted into the service of a different language's nuances, syntax, and interior logic'.<sup>114</sup> Pronominal instability in the text can be attributed partly to the process of translating into English the conceptual resources and grammatical structures of Yoruba, which 'lacks any morphological inflections and [has] only one form of the third person singular pronoun'.<sup>115</sup> However, the linguistic symptoms of pronominal instability are more than simply an effect of a clash of cultures, or, better, a clash of grammars (which encode culture in the rules of good meaning-making); they are the interlinguistic expression of the chaos of the Tutuolan universe, where, as Achille Mbembe has written of the novel, there is 'no sovereignty of the subject or life as such, where everything and everyone is a 'wandering subject', an ever-morphing manifestation of a pronominal quality'.<sup>116</sup> For Mbembe, Tutuola's novel offers terms for critique of Euro-Enlightenment notions of sovereignty and identity, which are predicated, he observes, on 'the stability and permanence of the being'.<sup>117</sup> In the novel, things and people change form constantly; any noun may drop its substantive aspect to reveal a pronoun, disappearing behind a ghostly grammatical veil, and anything might emerge from behind a pronoun. Thus, the definite parenthetical clarification of the indefinite pronoun may be a necessary form of grammatical adaptation in a world where any given 'he' could be an old man, or god, or Death, or something else that remains to be determined.

Personal pronouns, wrote Benveniste, constitute 'an ensemble of "empty" signs that are nonreferential with respect to "reality"'; they refer solely to the 'reality of [the] discourse' in which they appear.<sup>118</sup> Because they are meaningful only by 'compulsory reference to the given message' and, therefore, have no

113 M Thelwell, 'Introduction', in Tutuola (1984) 177, 181.

114 Ibid 187-88.

115 A Afolayan, 'Language and Sources of Amos Tutuola', in B Lindfors (ed.), *Critical Perspectives on Amos Tutuola* (Three Continents Press, 1975) 193, 197.

116 Mbembe (2003) 23, 1.

117 Ibid 2.

118 Benveniste (1971) 219, 218.

constant concrete content, such pronouns are also called ‘shifters’.<sup>119</sup> The shifter of the third-person pronoun differs from its first- and second-person counterparts, because ‘it completely evades the dialogical regime of interlocution’, where the pronouns ‘you’ and ‘I’ are exchanged between speakers in the ordinary scene of conversation.<sup>120</sup> Whereas, in the context of dialogue, ‘you’ and ‘I’ necessarily refer to real human beings (speaking subjects), the third person pronoun may refer to anyone or anything, or even to no-one at all. In that sense, ‘the “third person” is literally a “non-person”’, that, nonetheless, conjures the idea of a person.<sup>121</sup> Through the attribution of the pronoun, this third person is personified in the image of the speaking subject and is, thereby, vested with capacities that may, as we have seen, exceed those of the personifying human being (on whose model it is ostensibly based). The overloaded void of the third person pronoun is precisely the source of this fiction-making capacity of the law, the infinite resource from which it draws life to give to legal persons.

Ordinarily, in the context of a single language, the pronominal third person abides by certain grammatical rules that govern its operations and set some technical and conceptual limits on its figurative possibilities. However, in the context of an interlanguage, where two or more grammars interplay, the grammatical containment strategies of each language may have been compromised. The palm-wine drinkard’s terrifying adventures with pronominal subjects give a sense of the mad proliferation of meaning and monsters that can arise in the contact zone, where an improvised interlanguage has not yet established or stabilised its grammar—where, for example, a charter company can be simultaneously subject and sovereign and a ‘native’ can be ruled (as) a ‘foreigner’. Both thematically and grammatically, Tutuola’s novel explores the potentially terrifying gap between pronouns and their referents—the ellipsis in language that opens when no empirical reality is certain, when the connection between *this* and *that* keeps dropping, when the governing rules of grammar are destabilised, when the subject cannot be fixed once and for all. In this metamorphic world, pronouns are as suspicious as ghosts. Their abstract, open forms are susceptible to all sorts of haunting—to spirit possession or corporate occupation. And the parenthetical clarifications that are meant to prevent (or to exorcise) the improper possession of pronouns ultimately reconfirm their

119 R Jakobson, ‘Shifters, Verbal Categories, and the Russian Verb’, in *Selected Writings*, vol. 2 (Mouton, 1971) 130, 132.

120 Esposito (2012) 15. In this sense, dialogue could be understood as the scene of pronominal exchange of subjectivity itself, where the first person pronoun ‘I’ is handed off.

121 Benveniste (1971) 221.

teeming plenitude and raise the spectre of their radical instability—their propensity to change, suddenly, in mid-sentence, without notice.

It is the nature of pronouns (even their special virtue) to be nonspecific and adaptable, but in Tutuola's text pronouns are more than just empty grammatical vessels that absorb by association whatever nominal content stands closest to them. Rather, the pronominal condition is itself a mode of being—a mode of existence that follows a logic of transformation and transfiguration, of partial presence, incomplete possession, and contingent personification. As Mbembe has written, '[i]n Tutuola's universe, the self appears not as an entity, created once and for all, but as a subject *au travail*, in the making'; '[t]hat is why there is no subject but a wandering one' and 'no sovereignty of the subject'.<sup>122</sup> Indeed, there can be no sovereign subject, according to the logic of Euro-enlightenment thought, where a creature cannot be personified permanently (or at least with an eye toward permanence). In order to survive the pronominal perversity of the Tutuolan universe, the drinkard must be alive to the subtlest morphological inflections of language, thought, and being:

As these Skulls were chasing me about in the forest, they were rolling on the ground like large stones and also humming with terrible noise, but when I saw that they had nearly caught me or if I continued to run away *like that*, no doubt, they would catch me sooner, then I changed the lady [his future wife] to a kitten and put her inside my pocket and changed myself to a very small bird which I *could describe* as a 'sparrow' in English language.<sup>123</sup>

Suspended between colonial English and an unnamed native language (presumably Yoruba), words capture only approximately the reality to which they refer indirectly, detoured through improper names, incomplete translations, and shape-shifting pronouns. To evade the ever-changing threats of pronominal imposters and other impersonators, the drinkard draws on his 'juju' of linguistic manoeuvres and escape clauses, not only to slip away from personified death but to slip the net of language. Indeed, through a double deferral (changing himself into a bird that cannot be named in English), the drinkard disappears from language itself.

The terrifying gap between the personal pronoun and its referent—between the self and self-sameness, between the empty sign and stable identity—in Tutuola's world is similar to the dispiriting legal split between the human and the person that Karl Marx (and Hannah Arendt, Étienne Balibar, and many others) saw instituted with the revolutions of the 18th century and legislated in the very title of the French *Déclaration des Droits de l'Homme et du Citoyen*. The

122 Mbembe (2003) 16, 17, 23.

123 Tutuola (1984) 211 (emphases added).

modern bourgeois rights regime, Marx argued, bifurcated and ‘reduc[ed] man, on the one hand, to a member of civil society, to an egoistic, independent individual, and, on the other hand, to a citizen, a juridical person’.<sup>124</sup> In the wake of that split, the ultimate aspiration of international human rights law would be ‘to fill in the chasm between man and citizen left gaping since 1789’,<sup>125</sup> to rectify the prior rupture between the human and its wayward juridical pronoun—between the so-called ‘natural person’ and the ‘artificial’ (or pronominal) person. Such a task is figurative; more precisely, it is dis-figurative. It amounts to killing the foundational metaphor between man and citizen that sits at the bottom of human rights law, the enabling personifying analogy of human rights that nonetheless divides the human being from the juridical pronoun that holds its place in law.

If we trace the category of *persona ficta* from its early uses in protecting the rights of religious and academic institutions to animating business corporations and granting colonial charter companies sovereign rights over indigenous peoples, it becomes clear that historically, in the European context, the legal category of the ‘person’ precedes the ‘human’ of human rights. Juridically speaking, the personal pronoun carries certain rights and duties that precede any particular individual, that await activation in—or occupation by—the human. Human beings may demand human rights, but, in international law, persons alone are capable of carrying them. The ‘person’ of international human rights law (not a ‘really man’, in Tutuola’s terms) holds the place of a human to come—a human who will come (it is told in the preamble to the UDHR) to inhabit its pronominal figure. Such a project entails the disfigurement of the person itself, the unmaking of ‘our own images that . . . resembled us too much’, in the words of the palm-wine drinkard, who is unsettled by seeing a photo-negative image of himself mounted on the wall of a friendly ‘ghostess’ *in anticipation* of his arrival.<sup>126</sup>

## RAISING THE DEAD IN LANGUAGES THAT ARE FOREIGN TO ANYBODY

In *The Palm-wine Drinkard*’s most famous episode, the ellipsis between pronoun and referent is filled in by a meticulous narrative account of a complex process of personification that literalises a fossilised figure of speech. Tutuola

124 K Marx, ‘On the Jewish Question’ [1853], in *Collected Works*, vol. 3, trans. C Dutt (Lawrence & Wishart, 1975) 167.

125 Esposito (2012) 74.

126 Tutuola (1984) 248.

resuscitates the dead English metaphor of the ‘complete gentleman’, a ‘curious creature’ that in the novel is composed of rented body parts and comes from the land of the Skulls to the ‘famous market’ of an unnamed town to seduce the village belle.<sup>127</sup> Tutuola’s ‘beautiful’ and ‘terrible creature’ appears in the marketplace ‘dressed with the finest and most costly clothes, [and] all the parts of his body were completed’.<sup>128</sup> The daughter of ‘the head of that town’ becomes fascinated by this ‘unknown man’s’ full-bodied beauty.<sup>129</sup> Having fallen under the spell of his perfect figure and heedless of the fancy man’s repeated warnings not to follow, she tracks him into the bush, where she witnesses his disfigurement: ‘the complete gentleman in the market . . . began to return the hired parts of his body to the owners and he was paying them the rentage money. When he reached where he hired the left foot, he pulled it out, he gave it to the owner and paid him.’<sup>130</sup> Horrified, but entranced, by this scene of bodily disarticulation, the beautiful lady follows him beyond one of those absolute borders of no return, where ‘this complete gentleman was reduced to head and when they reached where he hired the skin and flesh which covered the head, he returned them, and paid to the owner, now the complete gentleman in the market reduced to a “SKULL” and this lady remained with only “SKULL”’.<sup>131</sup> Once enchanted, the lady is now permanently transfixed, with a price on her head: ‘he [SKULL] tied a single cowrie on the neck of this lady with a kind of rope, . . . [then] he gave her a large frog on which she sat as a stool, . . . [and] she became dumb at the same moment’.<sup>132</sup> With the aid of his ‘native juju’, the narrator-hero will miraculously liberate her from the terrible creature and her dehumanised state of suspended animation—frozen speechless on a toadstool.

Tutuola was not the first person to put this story into writing. There are numerous prior oral versions, some of which were translated and compiled in collections of West African folklore by European ethnologists and missionaries in the late-19th century.<sup>133</sup> In those variants, the beautiful ‘man’ is consistently a foreigner (an alien in the guise of a fellow citizen), who entices the village beauty to leave her people and to live in degrading circumstances among his

127 Ibid 201.

128 Ibid 204, 201-02.

129 Ibid 201.

130 Ibid 203.

131 Ibid 204.

132 Ibid 205-06.

133 For a rich, but certainly incomplete, bibliography of earlier versions, see B Lindfors, ‘Amos Tutuola: Debts and Assets’, in Lindfors (ed.) (1975) 275, 286-88.

own. In those recorded versions, the open-ended nature of the allegory is foreclosed by the Victorian moralists who religiously transcribed them, published them at home, and appended a clear didactic message to the end of the tale.<sup>134</sup> That moral lesson is generally directed at daughters who might be inclined to disobey their fathers and to marry men for impractical personal reasons—in other words, at impetuous daughters tempted to break the law of their fathers. Such clear messages seem to confirm the common colonial view of ‘primitive’ mythology: that such tales are the pre-scientific expression of a human need to give ordinary explanations to phenomenal effects, serving to transmit and justify the customary laws of man and the physical laws of nature that govern the ways of the world. However, such a view tends to slip very easily into old colonialist binaries of ethno-cultural difference (between civilized states and barbarous peoples, or Majors and ghosts) like those found in the introduction to one anthology, *Folk Stories from Southern Nigeria, West Africa* (1910). ‘In the fables of the world’, wrote Scottish historian and folklorist Andrew Lang, ‘speaking animals, human in all but outward aspect, are the characters. The fashion is universal among savages; . . . There could be no such fashion if fables had originated among civilized human beings.’<sup>135</sup> In the ‘civilized’ world, governed by the law of nations and scientific rationalism, only ‘natural’ persons, it seems, are supposed to have the capacity (or freedom) of speech.

We find this crude colonial attitude also repeated in the earliest reviews of Tutuola’s drunken narrative, in which the infantile, irrational fantasies of the author are said to ‘perplex’ the ‘literal minds’ of ‘sophisticated reader[s]’.<sup>136</sup> Wanting to preserve what Seldon Rodman described as the novel’s ‘naïve and barbaric’<sup>137</sup> texture, Faber and Faber published *The Palm-wine Drinkard* in London in 1952 with minimal editorial intervention. In their warm appraisal of the novel, many reviewers repeated the social evolutionary tropes that underpinned the civilizing mission in the late 19th century. For example, British novelist Anthony West expressed his appreciation for Tutuola’s ‘freakish’ writing in *The New Yorker*, claiming that it gave the reader access to the ‘primitive mind’ and ‘a glimpse of the very beginning of literature, that moment when writing at last seizes and pins down the myths and legends of an alphabetic culture’; Tutuola, he said, had the ‘good luck in being castaway on a little island

134 According to Tutuola’s recollection, it was an advertisement for a book of Yoruba tales in a colonial magazine that inspired him to write *The Palm-wine Drinkard*. Tutuola (1984) 185.

135 E Dayrell, *Folk Stories from Southern Nigeria, West Africa* (Longmans, Green, and Co, 1910) viii.

136 S Rodman, ‘From *The New York Times Book Review*’, in Lindfors (ed.) (1975) 15, 15.

137 Ibid.

in time where he can be archaic without being anachronistic'.<sup>138</sup> Some saw the novel as a spur to regenerate the stylistics of a literary European modernism that seemed exhausted—the textual equivalent of the Fang masks at the *Musée d'Ethnographie du Trocadéro* that had apparently both disgusted and inspired Picasso to paint *Les Desmoiselles D'Avignon*, changing the course of modern European art. Such literary luminaries as Dylan Thomas, VS Pritchett, and Kingsley Amis were generally enthusiastic about Tutuola's story and style. Thomas famously hailed it as a 'bewitching story [...] written in young English by a West African'.<sup>139</sup> Tutuola's story was greeted in many circles as an explosion of an intemperate, childish worldview (the uncanny return of civilization's primitive repressed) within the sober collective European consciousness that had been deadened by war, advanced seriousness, and studied maturity. Amos Tutuola 'is a true primitive', wrote Rodman in the *New York Times Book Review*; 'only a dullard who has buried his childhood under several mountains of best-selling prose could fail to respond to Tutuola's naïve poetry'.<sup>140</sup>

If this curious novel seemed surprisingly beautiful in the Western literary marketplace, it was regarded by many readers 'at home' as an abomination. Few West African readers showed any initial enthusiasm, either for Tutuola's writing or for its patronising welcome in Europe and America. In a letter to the editor of *West Africa* magazine, Babasola Johnson, for instance, disparaged both Tutuola's English fluency and his literary skill and artistic originality. 'The language in which it is written', he insisted, 'is foreign to West Africans and English people, or anybody for that matter', and he alleged that the author simply 'translat[ed] Yoruba ideas into English in almost the same sequence as they occur to his mind' and often with 'incorrect and too literal translations'.<sup>141</sup> Such critics objected that Tutuola's writing was an example not of 'young English' but of embarrassing semi-literacy; accordingly, he was said to be fluent in neither the Queen's English of the Nigerian elite nor the 'Yoruba ethos' of traditional culture.<sup>142</sup> Western readers, some critics suggested, failed to see Tutuola's writing for what it is: the peculiar product of an 'imperfectly acquired second language' (as VS Naipaul wrote in a later review of Tutuola's *The Brave African Huntress*), an interlanguage in the strictest sense, that resulted from the incomplete education that British colonialism provided to train a

138 A West, 'From the *New Yorker*', in Lindfors (ed.) (1975) 17, 17.

139 D Thomas, 'From *The Observer*', in Lindfors (ed.) (1975) 7, 7.

140 Rodman (1975) 15.

141 B Johnson, 'From *West Africa*', in Lindfors (ed.) (1975) 31, 31.

142 O Owomoyela, *Amos Tutuola Revisited* (Twayne Publishers, 1999) ch. 4.

nation of low-level civil servants and imperial subjects—not a class of citizens or modern legal persons or even colonial subjects of human rights.<sup>143</sup>

Tutuola does indeed write in a language that is (to use Johnson's apt phrase) 'foreign . . . to anybody'. He writes from a place of imperfect fluency—a half-bilingual, half-bicultural space where the ordinary rules of language are suspended, where idiomatic figures of speech that once must have struck their first speakers as quite extraordinary become unusual once again: drums that are beaten to death; complete gentlemen who complete themselves with parts of other people's bodies. International human rights law also emerges from a similar no-man's land between languages and traditions—an interlinguistic and intercultural space that is, we could say, 'foreign . . . to anybody', where everyone is a half-literate, polyglot speaker of international law. In such interlinguistic spaces of multiple overlapping half-literacies, euphemisms lose their euphemistic character as they move from one language to another and literal language appears metaphorical: the material world vanishes into figures of speech, while dead metaphors are brought to life in a second language, haunting even their native speakers. The essential figurativity of language, 'the original intuitive metaphors'<sup>144</sup> that ordinarily remain buried beneath the banal accretions of habitual usage, erupts to become visible once again.

### **KILLING THE METAPHOR, CHEATING DEATH: THE 'PRIMITIVE' POETRY OF LAW**

Tutuola's 'complete gentleman', who comes from an unknown man's land, is a curious blend of a traditional Yoruba folk villain and a polite figure of speech that parades about in English conversation (and the pages of good etiquette manuals<sup>145</sup>) as if he were himself a real human being. The beautiful gentleman is a hybrid personification that is animated by interlinguistic interactions in the contact zone. Tutuola gives new life to the fossilised English metaphor of the 'complete gentleman', literalising and materialising the figurative process of its anthropomorphic personification in his account of the assembly of the 'full-bodied gentleman' along a Fordist production line. The 'complete gentleman in the market' is communally constructed and maintained by 'the whole people of that town', who are not only the lenders of body parts but joint-stock holders (as Roland Barthes might have said<sup>146</sup>) in the market fiction of the complete

143 VS Naipaul, 'From *New Statesman*', in Lindfors (ed.) (1975) 87, 87.

144 Nietzsche (1989) 252.

145 See, e.g., Henry Peacham's very popular treatise, *The Compleat Gentleman* (Francis Constable, 1622) that was republished in a facsimile edition in 1906.

gentleman. The ‘complete gentleman’ enters the social and economic world of human beings only by donning the artificial mask of human body parts, only by stitching together an image of human perfection.

The process and effects of Skull’s personification reveal something about the peculiar pronominal aspects of the poetic figure of the legal ‘person’ in modern law generally, and in international law particularly: the tendency of a personified creature to burst the confines of its personal container. Indeed, the pronominal person never seems to stay in bounds; as Laski observed, ‘[c]orporations will have a curious habit of attempting perpetually to escape from the rigid bonds in which they have been encased.’<sup>147</sup> However, it seems that this drive may have more to do with the condition of pronominality and the personalist grammar of rights-claiming than with the corporation as such, since the poetic effects of anthropomorphic personification never seem to respect the prosaic limits of the human that appears to be its model. In the case of the complete gentleman, the excellence of his anthropomorphic perfection (what the ‘whole people’ in the town call ‘beauty’) endows him with qualities and capacities that far exceed the merely human. In fact, the gentleman’s perfect figure is so striking that, in contrast to the earlier recorded versions of the story (which condemn the lady’s indiscretions), the palm-wine drinkard empathises with her predicament and enchantment. Although he doesn’t fall for the anthropomorphic deception, he nonetheless recognises the dangerous power of its appeal:

if I were a lady, no doubt I would follow him to wherever he would go, and still as I was a man I would jealous him more than that, because if this gentleman went to the battle field, surely, enemy would not kill him or capture him and if bombers saw him in a town which was to be bombed, they would not throw bombs on his presence, and if they did throw it, the bomb itself would not explode until this gentleman would leave that town, because of his beauty.<sup>148</sup>

The ‘full-bodied’ gentleman’s figural perfection gives him competitive advantages in the marriage and commodity markets, but it also affords him special immunity from human violence and death; in other words, his personification provides him both humanitarian protection and a form of immortality.

Literary critic J Hillis Miller, in his lengthy study of personification (*prosopopoeia*) in literature, *Versions of Pygmalion*, gives a resonant definition of the

<sup>146</sup> Barthes characterised the bourgeoisie as a ‘joint-stock company’ that relied on modern ‘myths’ to maintain its power. R Barthes, *Mythologies* (Hill & Wang, 2012) [1957] 249.

<sup>147</sup> Laski (1916) 407.

<sup>148</sup> Tutuola (1984) 207.

trope: ‘prosopopoeia ascribes a name, a face, or a voice to the absent, the inanimate, or the dead’.<sup>149</sup> Further, he suggests that personification ‘is an attempt, necessarily destined to fail, to make up for the ultimate loss of death’.<sup>150</sup> Thus, as ‘a cover-up of death or of absence’, the figurative powers of personification are enlisted not merely to give life to inhuman creatures; they are ‘needed’ even in everyday social ‘relation[s] to my living companions’.<sup>151</sup> In his famous *Commentaries on the Laws of England*, William Blackstone similarly explained the intellectual impetus for legal personification, in a chapter on ‘Corporations’, as a creative response to death—as a figurative solution for sidestepping the otherwise unavoidable fatal threat of death wandering the human world. In a lyrical passage of legal prose, Blackstone—himself a man of ‘parts and elegant tastes’ (according to the short biography prefixed to his *Commentaries*<sup>152</sup>)—observed that ‘all personal rights die with the person’.<sup>153</sup> Therefore, he concluded, ‘it has been found necessary, when it is for the advantage of the public to have any particular rights kept on foot and continued, to constitute artificial persons, who may maintain a perpetual succession, and enjoy a kind of legal immortality’.<sup>154</sup> In other words, corporate personhood offered a legal way to cheat death, perhaps even a way to fulfil the palm-wine drinkard’s own death-wish: to commodify and sell one’s own death. In Blackstone’s account, trans-individual rights enter the world on the prosthetic feet of artificial persons. Thus, the pronominal person is a legal vehicle for keeping afoot certain rights that we think should not vanish from the world, rights that would otherwise disappear with the inevitable deaths of individual human beings—in other words, human rights. From this perspective, the human is merely one personification of rights, one curious creature (among other possibilities) who might claim to occupy the pronominal position in relation to legal predicates designed to outlive their individual human subjects.

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149 J Hillis Miller, *Versions of Pygmalion* (Harvard UP, 1990) 47.

150 *Ibid.* 48.

151 *Ibid.* 4.

152 ‘Life of the Author’, in W Blackstone, *Commentaries on the Laws of England* (Harper & Brothers, 1852) xi, xii. According to his biographer, after receiving the ‘gold prize medal of Milton, for verses on that poet’ at Pembroke College, Blackstone ‘found it necessary to quit the more amusing pursuits of his youth for severer studies and began seriously reading law’ in 1741. Blackstone himself depicts his shift to law as a kind of expulsion from the garden of literature, in a poem titled ‘The Lawyer’s Farewell to his Muse’ that is filled with personifications of legal principles: ‘As by some tyrant’s stern command, / A wretch forsakes his native land, / In foreign climes condemn’d to roam, / An endless exile from his home’. *Ibid.* xii.

153 Blackstone (1852) 467.

154 *Ibid.*

In terms of international human rights law, then, the human being is a person who walks rights around in the world.

Blackstone's poetic image of the person as a creature who walks right(s) off the page parallels almost too neatly Tutuola's image of the complete gentleman who struts, fully personified, into the marketplace determined to seize the personal rights of others. And like Blackstone's corporate persons, the complete gentleman acquires capacities that exceed those of human beings through, paradoxically perhaps, the act of anthropomorphic personification itself. Indeed, Tutuola's complete gentleman has in super-abundance all the graces of the human being without its vulnerabilities; that is, he has the social, economic, and aesthetic advantages of the human without the disadvantages of its temporal, physical incarnate form—human licence, we might say, with limited liability. In fact, this artificial person appears human in the marketplace, but he acts like a proto-corporation. Assuming the complete and beautiful image of the human enables Skull to participate in the commodity economy from beyond the grave—to engage in human business and pleasure after death. Indeed, it is masquerading in the *figure* of the human being (rather than being human as such) that gives the beautiful man such seductive powers and makes him such a threat to the social order. His personification not only provides rhetorical cover from bombers and bombs, it makes him super-natural, super-human.

Tutuola's novel is filled with personifications of natural phenomena and abstract principles that take on unnatural lives of their own in anthropomorphic form—or, rather, they borrow their 'artificial' life forms by way of analogy to the human being. Like Tutuola's interlinguistic 'complete gentleman', the corporation, in Blackstone's account, is personified on the model of the 'natural' person (the human being, or the 'really man', in Tutuola's words) that figures the company as an assemblage of organic body parts and drives, of human interests and intentions. But that enabling figure of speech has since become a 'dead metaphor' in both the law and common speech,<sup>155</sup> since the corporation is now regarded nearly everywhere as having a natural life of its own. Similarly, the death of the foundational metaphor at the bottom of human rights triggers the anthropomorphic trap of confusing the human being with the pronominal person that represents it in international law. By tracking the revived fossilised metaphor of the 'complete gentleman' through the tangled interlanguage of Tutuola's text and back to the land of the dead, where we see his disfiguration, I hope to have re-illuminated something about the founding metaphorical operations of international law: the provisional personifications

155 Schane (1986) 605.

(that, nonetheless, have a propensity to become permanent) of non-state creatures as subjects of international rights at the interlinguistic edges of international law.

## ANTHROPOMORPHIC PITFALLS AND PATHETIC LEGAL FALLACIES

Drums beaten to Death, complete gentlemen who assemble themselves from other men of parts, rights that walk on borrowed feet, roses that pine—these are the sorts of poetic personification that the Victorian social commentator and art critic John Ruskin famously derided as the ‘pathetic fallacy’: the failure to distinguish, he says, ‘the ordinary, proper, and true appearances of things’ from ‘the extraordinary, or false appearances’.<sup>156</sup> For Ruskin, the pathetic fallacy is a trait of second-rate poetry, ‘caused by an excited state of feelings’ and the morbid poetic sensibilities of a man for ‘whom the primrose is anything else than a primrose’.<sup>157</sup> Thus, Ruskin chides poets whose minds are ‘too weak to deal fully with what is before them or upon them’ and who propagate ‘false appearances’ that are ‘entirely unconnected with any real power or character in the object, and only imputed to it by us’.<sup>158</sup> Early ethnologists studying the ‘myths of savage tribes’, such as Edward Tylor, saw the ‘poet of our own day’ similarly, as a modern medium for ‘the minds of uncultured tribes in the mythologic stage of thought’;<sup>159</sup> ‘Poetry’, Tylor says, particularly in its use of personification, ‘has so far kept alive in our minds the old animative theory of nature’.<sup>160</sup> However, given the heavy interchange between literature and law, we might also number among the poets and ‘primitives’ of the world, the legislator and the lawyer, fellow traffickers of persons. Indeed, if Tutuola’s novel can be said to be thinking about the pronominal problem of legal personhood in its own idiosyncratic interlanguage, then the analytical texts of legal theorists can be said to be thinking about the legal problems of poetry.

In 1916, Henderson cautioned about the dangers of juridical personification: ‘to attribute to the corporate “personality” any sort of reality seems to me the most misleading of anthropomorphisms’.<sup>161</sup> A few years later, Kelsen

156 J Ruskin, ‘Of the Pathetic Fallacy’, in *Modern Painters: Of Many Things* (Wiley & Halstead, 1859) 156, 158.

157 *Ibid* 159, 162.

158 *Ibid* 162.

159 E Tylor, *Primitive Culture*, vol. 1 (John Murray, 1920) 284, 315.

160 *Ibid* 292.

161 Henderson (1918) 167.

asserted, in ‘On the Theory of Juridic Fictions’, that the ‘concept of legal person can be employed with benefit as long as it is understood in accordance with its own logical structure . . . . However, this concept has not been able to avoid the danger that comes with any personification: its hypostatisation into an actual object of nature’<sup>162</sup>—that is, killing the metaphor. In 1926, John Dewey called for a temporary moratorium on the ‘idea of personality’; because person may mean ‘whatever the law makes it mean’, he argued, we should eliminate it until ‘the concrete facts and relations involved have been faced and stated on their own account’.<sup>163</sup> These are all versions of the general warning about ‘masked words’ that John Hobson had issued in 1902 in his massive study *Imperialism*; Hobson reviled the ‘masked words’ that provided ‘the verbal armoury of Imperialism’ and facilitated, among other things, the ‘handing over of large regions of Africa to the virtually unchecked government of Chartered Companies’.<sup>164</sup> There are innumerable other legal scholars and historians who could be cited saying similar things, and, indeed, for every legislative act that adds another person to the roll call, and for every jurist or legal theorist who insists that juridical personality reflects something organic or real about non-human legal persons, there follows a Ruskin-esque charge of having committed what might be called the pathetic legal fallacy of confusing juridical fictions for social facts.

Although Ruskin’s complaint is principally about poetry that attributes human qualities to non-human things, his essay contains at least one (anticipatory) trace of the long-running relay between literature and law. Not surprisingly, Ruskin’s first example of the pathetic fallacy involves a personified flower:

The spendthrift crocus, bursting through the mould  
Naked and shivering, with his cup of gold.<sup>165</sup>

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162 H Kelsen, ‘On the Theory of Juridic Fictions: With Special Consideration of Vaihinger’s Philosophy of the As-If’, trans. C Kletzer, in M Del Mar & W Twining (eds), *Legal Fictions in Theory and Practice* (Springer, 2015) 3, 8.

163 J Dewey, ‘The Historic Background of Corporate Legal Personality’ 35 *Yale Law Review* (1926) 656, 673.

164 JA Hobson, *Imperialism: A Study* (James Nisbet & Co, 1902) 219, 243. Hobson adopted the term ‘masked words’ from Ruskin’s book *Sesame and Lilies* in which he warned that ‘There are masked words droning and skulking about in Europe just now.’ J Ruskin, *Sesame and Lilies* (Scott, Foresman & Co., 1906) 56. Most of the ‘masked words’ that Hobson mentions are legal fictions that are crucial to the history of charter company colonialism and the institutionalisation of international law: e.g., ‘effective occupation’, ‘paramount power’, ‘hinterland’, ‘sphere of power’, and ‘annexation’. Hobson (1902) 219.

165 Ruskin (1906) 159.

‘This is very beautiful’, Ruskin says, ‘and yet very untrue’.<sup>166</sup> He does not identify the author of these offending lines, but the poem, titled simply ‘Spring’, was penned by the Harvard medical professor and Fireside poet Oliver Wendell Holmes, Sr. In that poem, the spendthrift crocus, along with the patient snowdrop, the gazing violet, and a whole parade of other personified things, herald the return of another New England spring. Holmes, then, has the ignominious distinction of being Ruskin’s prime illustration of the ‘fallacy of willful fancy’,<sup>167</sup> and it is surely no more than a curious coincidence that his son, the lawyer and judge Oliver Wendell Holmes, Jr., echoes Ruskin in his own critique of the pathetic legal fallacy. As a Justice of the US Supreme Court, Holmes, Jr. insisted on the sovereign right of the state to make (and destroy) legal fictions, and he challenged his friend, Laski, after the recent publication of his theory on ‘real corporate personality’, in which he concluded (as if in response to Ruskin himself) that ‘[h]ere are no mere abstractions of an over-exuberant imagination’,<sup>168</sup> ‘you and Figgis’, Holmes, Jr. wrote in a personal letter to Laski, ‘are working the personality business a little hard, and drawing doubtful conclusions from it’.<sup>169</sup>

From the last rose of summer to the first flower of spring, the mutual entanglements of literature and law, as they work the personality business from both ends, leave their intertextual traces across the pages of literary criticism and legal theory. It would seem, of course, that the potential consequences of confusing the personality of corporations with the natural rights of human beings are more serious than those of imagining a late rose with pining loneliness or even of mistaking a complete gentlemen from the otherworld for an ordinary lover. However, if we follow Ruskin’s logic, the pathetic fallacy of poetry, which ‘mak[es] us, for the time, more or less irrational’, may be at work behind all such anthropomorphic personification—that of the lawyer and lawmaker, no less than that of the naïve poet or the ‘savage’ fabulist. The pathetic human rights fallacy involves confusing the person of law for the living human being—or, more abstractly, confusing the pronominal position with the proper name of its current occupant. However, more than just mistaking the (legal) container for its contents, the pathetic legal fallacy also entails a begging of the question of the human itself. As Barbara Johnson understood, ‘[t]o use an anthropomorphism is to treat as *known* what the properties of the human

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166 Ibid.

167 Ibid.

168 Laski (1916) 405.

169 MD Howe (ed.), *Holmes-Laski Letters* (Harvard UP, 1953) 6.

are.<sup>170</sup> And, thus, by borrowing the vehicle that conveyed life to the juristic fiction of the corporation in order to personify the human of human rights law—that is, suturing human rights onto the pre-existing rights of the person—international law itself falls into the trap of anthropomorphic personification, conflating the rights of persons with the rights of humans. As Johnson concluded provocatively, ‘[w]hat the personification of the corporation ends up revealing, paradoxically enough, is that there is nothing ‘natural’ about the natural person often taken as its model.’<sup>171</sup>

Whether the corporate legal form is modelled on the human being or whether the human being, through the figure of the person, has, at the international level at least, finally appropriated some of the rights that have long belonged to corporations, debates about the pathetic legal fallacy reveal something important about the relationship between sovereignty and personification in international law. Repeatedly, among all my examples, the power to personify is treated as the prerogative of the sovereign. While the personalist grammar of international law requires that a creature be personified in order to enjoy rights and responsibilities (the state, as ‘a corporation consisting of individuals’,<sup>172</sup> like anyone else), the power of personification itself is a mark of sovereignty. We need only look at the legal adventures of the RNC (in light of the escapades of the palm-wine drinkard) to see how the ‘sovereign right’ of personification may push the legal imagination beyond a point that is (in Ruskin’s words) ‘inhuman and monstrous’, where ‘all feverish and wild fancy becomes just and true’.<sup>173</sup> Through the personifying native treaties, the RNC claimed the sovereign power to personify (that is, to legislate) and to police the pronominality of its created persons (that is, to administer justice). For example, in Regulation No. XXVII (1888), which serves as an epigraph to this article, the RNC exercised its ultimate authority to personify itself as a government (sovereign) and as a foreign enterprise (subject) simultaneously: ‘the word “foreigner” shall be taken to mean any person or association (other than the Company acting as a Government). . . .’ If we recognise the social work that legal fictions do, then this is the figurative correlative to Foucault’s idea of biopower: ‘the *power to “make” live and “let” die*’.<sup>174</sup> Indeed, ‘sovereignty’s old right—to take life or let live’—and this ‘new right’ are abetted (even preceded)

170 Johnson (1998) 551.

171 Ibid 573.

172 R Portmann, *Legal Personality in International Law* (Cambridge UP, 2010) 133.

173 Ruskin (1906) 168.

174 Foucault (2003) 241.

by the sovereign power to make some legal fictions live and to let others die.<sup>175</sup> In other words, one component of sovereignty is precisely the power to set the anthropomorphic trap.

## CONCLUSION: FALLING FOR THE WRONG PERSON

As a ‘juju-man’ who knows ‘all the kinds of people in the market’,<sup>176</sup> the palm-wine drinkard immediately recognises the fraudulent ‘full-bodied’ person among the crowd of ordinary market-goers, but, without the advantage of his magical insight, the ‘whole people of that town’ fall for the anthropomorphic deception. Advocates and scholars of human rights also tend to fall for the pathetic appeal of personification, mistaking the person of international law for some other creature: the citizen, the subject, the self, the individual, the human. Such conceptual confusion is caused not merely by a ‘tendency to *conflate* legal subjectivity with humanity’;<sup>177</sup> that tendency itself is amplified by the creolised character of the interlanguage of international law and the effects of its grammar of personification—the fact that personified creatures tend to escape their pronominal containment. If ‘person’ is the pronominal means for ‘disposing’ of a right, for animating it in the world, then the proper name of a particular person is the means for limiting that right, for keeping it from wandering away. ‘The last rose of summer’ is the proper name that is supposed to prevent the right not to be plucked from being generalisable to other creatures, that is intended to arrest the proliferation and peripatetic tendencies of any personal right. Likewise, in principle, the ‘human’ in human rights law is the name of the limit for rights that might otherwise walk elsewhere.

Magical insight into the poetic mysteries of personification is clearly an adaptive advantage in a world suspended between languages and cultures; it is a special kind of literacy that the palm-wine drinkard practises: the ability to read and respond to the unsteady grammatical rules that govern the peculiar interlanguage of Tutuola’s fantastic contact zone. The drinkard’s special ability, sharpened by urgency and survivalist necessity, to navigate the pronominal terror is unique among all the creatures of the bush of ghosts; it cannot be emulated, either by those creatures or by a scholar trying to sort out the mechanics of Tutuola’s world and the dynamic peculiarities of his interlanguage. If

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175 Ibid. As we have seen in Macdonald’s Report, the RNC’s sovereign power to take life depends precisely on its power to make the legal fictions of ‘native’ and ‘foreigner’ live in its Regulations.

176 Tutuola (1984) 206.

177 Gear (2010) 45.

we take seriously the radical and inherent interlinguistic instability of international law, then reading law looks something like the challenge of following the grammatical twists and turns of Tutuola's storylines. To achieve anything approximating the insight of the palm-wine drinkard would require an interdisciplinary approach to international law that can adapt similarly when things unremembered and creatures thought dead become active once again. Indeed, in the absence of a full theory (and standardised grammar) of the interlanguage of international law, we can do no better than to follow Glissant's recommendation for approaching a creole language: 'let poetics take its course, that is, follow intuition about both the history of the language and its development in the margins'.<sup>178</sup>

As I have suggested, *The Palm-wine Drinkard* cannot give us magical insight into (or make fully sensible) the interlanguage of international human rights law. Nonetheless, reading the novel contrapuntally against the law may give us an approximate feel for the kinds of curious creatures that are produced by the unruly interlinguistic grammar of international law, and for the kinds of figurative transformations and deformations entailed in the uncertain processes of translation by which human rights principles are distributed among the various languages (and courts) of the world. At a minimum, reading Tutuola's novel at the interface of legal and literary studies confirms a basic interdisciplinary insight: that it is far easier to recognise metaphorical thinking in the language (or discipline or field) of others than it is to recognise it in our own. In other words, the euphemistic, metaphorical character of all language perhaps becomes most apparent when tropes wander—when, like the 'complete gentleman', long-settled figures of speech (figures that no longer appear figurative at home) begin to cross into other languages, cultural realms, territories of knowledge, or academic disciplines. From a comparative or interdisciplinary perspective, nothing could be more literal-minded than Tutuola's version of the complete gentleman's making and unmaking, and nothing could be more fantastical than the figurative ways in which certain rights and duties generally associated with human beings are attached to non-humans through the pronominal figure of the legal person.

At one level, Tutuola's novel explores the pronominal problem of wandering rights and the erratic effects of personification through its narration of the perverse (maybe even primordial) birth, at the site of interlinguistic contact, of the colonial corporate person, which not only secured sovereign rights over the territory in which Tutuola was later born but which also continues today to use the vehicle of the person to cheat death, to participate in the social world of

178 Glissant (1997) 97.

human affairs, and to out-compete human beings for their human rights and natural resources. At another level, the tale of the complete gentleman is simply a warning about the risks of the pathetic fallacy—about the threat posed by personification when its figurative effects are taken literally and about the slippage of sentiment when the person is mistaken for the human. Ruskin faults the maker of fictions for having a ‘weak’ mind and passionate temperament, writing poetry ‘*under the influence of emotion, or contemplative fancy*’,<sup>179</sup> but *The Palm-wine Drinkard* might offer the parallel warning to passionate advocates for international human rights law about the dangers of having drunken feelings for creatures of human rights.

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179 Ruskin (1906) 158 (emphasis added).