UDK 34.023:340.5
DOI: 10.5937/RKSPP2402083F

ALFREDO FERRANTE

ON THE LEGAL NATURE OF THOUGHT AND THE ESSENCE OF THE PERSON: REFLECTIONS FROM THE PERSPECTIVE OF ARGENTINE AND COMPARATIVE PRIVATE LAW

Taking Argentinean law as a starting point and making some references to current trends in foreign legal systems - with particular attention to French law, Chilean jurisprudence and the proposed reform of the Brazilian Civil Code - this paper reflects on the possible future regulation of the so-called "neuro-rights". In order to do this, it is considered appropriate to identify the legal nature of thought in relation to the essence of the person and a reconstruction of the legal definition of "person" is carried out. It is noted that private and civil law has been influenced by philosophy and theology throughout the different epochs and that there has been a progressive separation between the regulation of the body and the person. It defends the adoption of a legal concept of "person" that takes up the Boethian and Thomistic conception and offers arguments

---

Dr. Alfredo Ferrante, Associate Professor of Comparative Private Law, University of Pavia, Italy, e-mail: *alfredo.ferrante@unipv.it*. The contribution is inteded for writings in honour of Prof. José W. Tobías. With this paper I have tried to make some considerations on the central role of the human person and its ontological dimension, as Tobías has pointed out in one of his writings (For example, José W. Tobías, "Los actos de disposición de parte separadas del cuerpo y el proyecto de código civil y comercial", *Revista de Derecho de Familia y de las Persona,* No. 4, 2013; José W. Tobías, *Tratado de Derecho Civil – Parte General*, Vol. 3, La Ley, Buenos Aires, 2018; José W. Tobías, "Una concepción integral de la persona humana", *Jurisprudencia Argentina, 2019*; José W. Tobías "El consentimiento informado y sus límites", *Revista de Derecho de Familia y de las personas* 2019; José W. Tobías, "Los derechos personalísimos, los avances científicos y las nuevas tecnologías", *Las nuevas Tecnologías y el Derecho*, (Ed. J. W. Tobías), Thomson Reuters - La Ley, Buenos Aires, 2020).

to show that a positivisation of "neuro-rights" would be counterproductive for the very protection of the person and his or her freedom of thought.

Key words: *thought, person, body, "neuro-rights", comparative law, civil law, personal law*

INTRODUCTION

Hence the idea of this paper which, in its essence, consists of some reflections on the person, the body, and consent. More precisely, the aim of this paper is to understand the legal nature of thought in relation to the essence of the person.

It is necessary to build this aspect on the observation that, in some contexts, reference has begun to be made to so-called "neuro-rights",[1] showing that, in the near future, thought-reading practices will spread by means of new and incredible neurotechnological machines and artificial intelligence. It is therefore necessary to ask to what extent a personality or highly personal right ("*derecho de la personalidad*" or "*personalísimo*") to free thought that is not caged in a technological processing device could be configured. The reason for this analysis is not theoretical, but rather has a practical purpose, given that in some countries certain aspects are already taking shape, as will be seen in this sense and throughout this paper, the references made to the Chilean and Brazilian experience.

Taking Argentinean law as a starting point and making some references to current trends in foreign legal systems – with particular attention to French law, Chilean jurisprudence and the proposed reform of the Brazilian Civil Code - this paper reflects on the possible future regulation of the so-called "neuro-rights". So, based mainly on Argentine and Hispanic literature, this paper will begin by describing the progressive separation that occurs between person and body (II) and the trilateral relationship that involves these in relation to the legal concept of thing or good ("*cosa*" or "*bien*") (III). Subsequently – once thought has been associated as an essential element of the person (IV) – the possibility of recognition by the legislator or jurisprudence of the so-called "neuro-rights" will be assessed in order to opt for the opposite position (V). Finally – and before drawing some

---

[1] The American Association for the Advancement of Science, The Dana Foundation, *Neuroscience and the Law, Brain, Mind and The Scales of Justice* (ed. Brent Garland), Dana Press, New York, 2004; Semir Zeki, Oliver Goodenough, *Law and the Brain*, Oxford University Press, Oxford, 2006; Michael Freeman, Oliver R. Goodenough, *Law, Mind and Brain,* Ashgate, Burlington, 2009; Michael Freeman, *Law and Neuroscience*, Oxford, 2010; Amedeo Santosuosso, *Le neuroscienze e il diritto,* Ibis, Pavia, 2009; Martínez Gómez Jesús Armando, Pérez González Edgar, *Bioética, neuroética y neuroderechos. Realidades y perspectivas en el siglo XXI,* Tirant Humanidades, Ciudad del México, 2023.

conclusions (VII), thought will be configured as the essence of the person, but at the same time as a possible externalised *corpus* (VII).

THE *TMESI* BETWEEN PERSON AND BODY

To say person is to say fiction, even more so when it comes to defining it legally. This fiction has its origins in Greek theatre, where the person was reflected in the theatrical mask and in the sound it generated.[2]

Hence, this fiction – which has also passed through the ages through the contrast with "*persona ficta*" and moral person[3] – has come to be embodied in the identification of the modern understanding of a 'person' as an antithetical creation that is contrasted with the legal person. However, it should be noted that while codifications often define the legal person,[4] they do not define the 'other' person, which, as will be seen, in some cases is referred to as 'physical'. In this case, the attempt to identify the person in its symbiosis with the body, with its physique, is observed. This is why the identification of the person, in this sense, from the legal point of view, indirectly resents a Roman influence which identified the attribution of rights in physical-corporeal perfection.

It is therefore curious that although several codifications refer to the physical person in order to delineate this category, which is opposed to the legal one, they do not define it. This is the case of some codification models. It is striking, therefore, that even the Italian recodification of 1942, when delineating the rights of personality – i.e. those associated with the person – refers to the 'physical' person, but does not define it[5] and even, in part, distances itself from it, since it

[2] In fact, it is the etymology of the word "person" that signifies the different sound that the voice came to assume behind it - through ("*per*") the "sound" ("*sona*" from sonar) - and which was embodied by the use of the mask, also encouraging acoustics. Helga María Lell, "Perspectiva histórica da metáfora do conceito jurídico de pessoa. Etimologia e ideias na Antiguidade", *Díkaion Revista de Fundamentación Jurídica,* Vol. 28, No. 2, 310-332; José Miguel Lorenzo Arribas, Persona, personaje y performatividad, *https://cvc.cervantes.es/el_rinconete/anteriores/agosto_06/23082006_01.htm*, 15. 10. 2024.

[3] See Jean Pierre Baud, *Il caso della mano rubata: una storia giuridica del corpo*, Giuffrè, Milano, 2003, 81.

[4] On this reconstruction of the concept of the legal person in Roman law see for example Gianluca Mainino, "Dalla persona alla persona giuridica: La persona in Gaio e il caso delle ´istituzioni´ alimentari nell'esperienza giuridica romana", *Studia et Documenta Historiae et Iuris*, LXX, 481-498.

[5] Thus, the first title of the first book of the Codice civile (Arts. 1-10) speaks of "*persone fisiche*", without defining them.

considers birth not as a defining criterion of the person but as the attribution of legal capacity (Art. 1 CCit).[6]

In this way, the person – although influenced by the Greek tradition – under the traditional conception of codification in continental law, receives a Roman influence. This is produced by glossing *a contrario* the corporeal physicality that derives from the concept of the *monstra* in Roman law.

Thus, Paul already affirmed that 'they are not children, those who, outside of what is customary, are procreated in a form contrary to that of the human race, as if a woman had given birth to something monstrous or prodigious. But the childbirth which enlarged the offices of the human limbs, to a certain extent seems perfect; and thus, it will be counted among the children'.[7]

In Roman law the essentiality associated with personality, which today *mutatis mutandis* could be thought of as associated with personality rights, is found in the requirement not only of vitality, but of 'human form'.[8] It is in this sense, it can be observed, that the choice of the Argentine legislator of 2015 is welcome,[9] since – contrary to traditional codes - he prefers to refer to the 'human person' ("*persona humana*"). [10] In this way, now, the reference to man allows transcending the physical form and the body, since it rather assumes a 'literally' earthlier meaning, i.e.,

[6] Tobías develops this aspect by systematising Italian doctrine and noting that the association between person and legal capacity is a stage in the evolution of the concept of person. See José W. Tobías, *Tratado de Derecho Civil – Parte General*, I, La Ley, Buenos Aires, 2018, 335 ff.

For Tobías, this view is wrong because "you have capacity because you are a person and not the other way around". J. W. Tobías (2018), op. cit, 350.

[7] Digesto 1, 5, 14, *Cuatro Senteniarium. "PAULUS libro quarto sententiarum. Non sunt liberi, qui contra formam humani generis converso more procreantur: veluti si mulier monstrosum aliquid aut prodigiosum enixa sit. partus autem, qui membrorum humanorum officia ampliavit, aliquatenus videtur effectus et ideo inter liberos connumerabitur*": se utiliza la traducción de Justiniano.1889. *Cuerpo del derecho civil romano a doble texto, traducido al castellano del latino, Primera parte Instituta-Digesto*, Idelfonso García Del Corral (trad.), I. Barcelona, I: 214-215.

[8] Gian Battista Impallomeni, "In tema di vitalità e forma umana come requisiti essenziali alla personalità", *Iura- Rivista internazionale di diritto romano e antico*, No. 22, 1971, 114; See also Jean Pierre Baud, *Il caso della mano rubata: una storia giuridica del corpo*, Giuffrè, 2003, 77.

[9] Furthermore, for Tobías, the fact that the current Argentine Code - unlike Art. 51 CC Vélez - does not define the person, cannot be considered a mistake, since "it is a notion that comes from nature and is prior to the law". J. W. Tobías (2018), op. cit., 349.

[10] Thus, Book I, Title One of the Argentine Civil and Commercial Code speaks of "*Persona Humana*" as opposed to "*persona juridica*", which is an "entity" to which the legal system confers the capacity to acquire rights and contract obligations for the fulfilment of its object and the purposes of its creation (Art. 141). See J. W. Tobías (2018), op. cit., 329 ff.

being the fruit of the *humus* of the '*pachamama*' and, in this sense, assimilating a corporeal manifestation that, in part, transcends its physicality.

The abandonment of the corporeal features of the person can be seen in the change to the new concept of the human person (Art. 19 Cód. Civ. y Com. y ss.) with respect to the previous one and in the abandonment that the Civil Code of Vélez made of the material and corporeal aspects by referring to 'persons of visible existence' ("*personas de existencia visible*")[11] with 'characteristic signs of humanity' ("*signos característicos de humanidad*")[12]. Thus, nowadays, the human person and his or her rights are predominant[13] according to the approach that characterises public law regulations or constitutional rights, international treaties[14] and which has been embodied in the constitutional principles of several countries.[15]

In a different view and model, the person has been legally conceived not only as 'physical', but also – under scholastic and Grotian influence (which will contribute to the creation and consolidation of personality rights[16] ("*derechos de la personalidad*") and, later, to the *derechos personalísimos* – as 'natural'. However, this has sometimes generated a situation of instability between these two concepts, given the co-existence of both within the same legal text, which, therefore – *nolens o volens* – intermingles them, leading not only to a definitional absence of the person, but also to a conceptual absence of the person.[17] In this sense, sometimes iusnaturalist and

[11] Title II of Chapter II of Book I of the Civil Code of Vélez.

[12] Art. 51 Civil Code of Velez.

[13] Tobías acutely observes that this undergoes two "filtrations", thus, the "physical" person is "filtered" in Art. 1513 of the Argentine Civil and Commercial Code and in the reform of Art. 1 of Law 24.240 operated by Law 26.994. J. W. Tobías (2018), op. cit., 350.

[14] See for example Art. 1 of the Universal Declaration of Human Rights according to which "all human beings are born free".

[15] Thus, for example, Art. 2 of the Italian *Costituzione* speaks of the inviolable rights of mankind.

[16] See for example, Federico De Castro y Bravo, "Los llamados derechos de la personalidad", *Anuario de Derecho Civil*, Vol. 12, No. 4, 1959, 1237-1276. On the conept of *ius in re ipsum,* Baltasar Gómez de Amescua, "Tractatus de potestate in seipsum", *Mediolani, apud Petrum Martyrem Locarnum*, 1609.

[17] This is the example of the Spanish legal system where reference is made to the "physical" person (Arts. 9, 10, 206, 211, 222, 281, 753 CCesp), to then identify them (in Title II, Chapter I of Book I) as "natural persons" (see also arts. 29 and 40) as opposed to the "legal persons" of Chapter II (see Art. 35). The physicality and naturalness of the person is also observed in the current Brazilian codification: in fact, Title I of Book I of the Brazilian Civil Code speaks of "*Das Pessoas Naturais*", affirming that their existence ends with death (Art. 60) and that their life is inviolable (Art. 21), but later refers to natural persons (Arts. 128, 188, 190, 225). It should be noted, however, that when referring to the family and the principles of dignity, reference is made to "*pessoa humana*" (Art. 226 §7), an aspect which is also found in Art. 1 III of the Brazilian Constitution, which emphasises the "human" person (see also Art. 34 let. b).

positivist theories[18] intermingle and the concepts of natural, physical and human interact with each other. Thus, there are models which, although they identify the person as natural, make express reference to the individual of the human species. [19]

What is certain is that, although the concepts of person and body, as can be seen, can coexist today even in the same legal text, their legal symbiosis, that existed in the past, must be abandoned.[20]

Despite this, a deeper analysis leads to the assertion that the dichotomy between person and body was already to be found in some traditional aspects of Roman or continental law. Thus, the person can be born before the body (a concept now found in Art. 19 Cód. Civ. y Com. and before the Roman *infans conceptus*) – or die before the body, as the concept of civil death ("*muerte civil*")[21] already demonstrated. Moreover, the connubium between person and body no longer applies in the modern legal perspective – proof of this is the regulation and progressive expansion of acts of disposition of one's own body, which, although with ethical and bioethical limits, move on a different plane from that of the identification of the body as a good/thing (*infra*); in fact, this has contributed to the separation of body and person.

The field of bioethics powerfully shows the will to regulate the body and its parts in a specific way and to keep it separate from the person. This innovative aspect in some codes[22] – which has led to a dynamic concept of person[23] – has been

---

[18] See J. W. Tobías, op. cit., 331 ff.

[19] This is the model of the Chilean Civil Code, which contrasts legal persons with natural persons (Art. 54), after referring to the concept of the individual of the human species (Arts. 25 and 55). This same model is repeated by transplantation in the Colombian legal system (respectively Arts. 73 t 33 and 74 CC Colombia).

[20] This aspect was legally enshrined in the opinion of the French Council of State - also known as the "Braibant" report - at the end of the 1980s, which affirmed that "the body is the person" (Art. 25). See Conseil d'Étaït, *Sciences de la vie – De l'étique au Droit*, La documentation française, 1988, in particular 9 ff. Baud brilliantly dismantles this aspect in this essential work: J. P. Baud, op. cit. On the separation between person and body see Aurel David, *Structure de la personne humaine: essai sur la distinction des personnes et des choses*, PUF, Paris, 1955.

[21] Very clear in that sense is J. P. Baud, op. cit., 72 ff.

[22] In this sense, see Art. 5 *Codice civile Italiano*. Also, see Umberto Breccia, Alessandro Pizzorusso, *Atti di disposizione del proprio corpo*, Pisa University Press, Pisa, 2007. In more detail, Stefano Rodotà, Paolo Zatti, *Trattato di biodiritto. Il governo del Corpo*, Giuffré, Milano, 2011. As Tobías points out, the current Art. 56 Cód. Civ. y Com. derives from this rule. He notes how the principle has been reshaped in the light of the personalist principle embodied in the Italian Constitution of 1948. J. W. Tobías (2018), op. cit., 115 ff.

[23] The balance between the person, human dignity and the disposition of the body and the balance of technological development is taken as a key issue in the Council of Europe Convention

clearly reflected and consolidated in others. In this sense, the French experience – abandoning its traditional position (*supra*) - has been one of the pioneers in reforming its Civil Code and separating the person[24] and the body[25] into two distinct provisions. In this way, the French legal system has endeavoured to undertake a process of restructuring the person, which has led since the 1990s to the need to regulate in the Civil Code 'respect for the human body' ("*respeto del cuerpo humano*")[26] – which must now be treated with dignity even after death[27] – requiring bioethical safeguards that have led to the almost frenetic remodelling of the provisions introduced.[28] All this has led to the protection of genetic characteristics,[29] including the dissemination of brain tests such as MRI scans,[30] and the system will be remodelled in 2021.[31]

However, the question arises as to whether the same treatment should also be given to other non-corporeal aspects linked to the intellect and thought: is there room to speak of rights linked to this sphere, and is it relevant to speak of and regulate so-called 'neuro-rights'?

---

for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine ("Oviedo Convention") of 4 April 1997.

[24] Art. 16 French Civil Code: "*La loi assure la primauté de la personne, interdit toute atteinte à la dignité de celle-ci et garantit le respect de l'être humain dès le commencement de sa vie*".

[25] Art. 16-A French Civil Code: "*Chaqu'un a droit au respect de son corps. Le corps humain est inviolable. Le corps humain, ses éléments et ses produits ne peuvent faire l'objet d'un droit patrimonial*".

[26] According to Chapter III, Title I, Title I of Book I dedicated to "persons" in the French Civil Code (Arts. 16 to 16-99): the reform starts with the *Loi n. 94-653 du 29 juillet 1994 relative au respect du corps humain, JORF n°175 du 30 juillet 1994.*

[27] Thus, the Loi n. 2008.1350, of 19 December, in addition to modifying and completing Art. 16-2, introduces it in a new provision: Art. 16-1-1 French Civil Code.

[28] Thus, *la Loi n° 2004-800 du 6 août 2004 relative à la bioéthique* perfects, in general, all the reform carried out in 1994 (arts. 16-3, 16-10 a 16-13). Article 16-11 was subsequently amended by *Loi 2011-267, du 14 mars, d'orientation et de programmation pour la performance de la sécurité intérieure.*

[29] Concerning the "*caractéristiques génétiques*" and the "*empreintes génétiques*", see Arts. 16-10 and 16-13 French Civil Code. On the "*tecniques d'imagenerie cérébrale*", Art. 16-4 French Civil Code says: "*Les techniques d'imagerie cérébrale ne peuvent être employées qu'à des fins médicales ou de recherche scientifique ou dans le cadre d'expertises judiciaires, à l'exclusion, dans ce cadre, de l'imagerie cérébrale fonctionnelle. Le consentement exprès de la personne doit être recueilli par écrit préalablement à la réalisation de l'examen, après qu'elle a été dûment informée de sa nature et de sa finalité. Le consentement mentionne la finalité de l'examen. Il est révocable sans forme et à tout moment*".

[30] See Art. 16-14 French Civil Code*: Loi 2011-814,* de 7 julio *relative à la bioéthique, JORF n°0157* of 8th of July 2011.

[31] *Loi n° 2021-1017* of 2nd of August 2021 *relative à la bioéthique, JORF* n°0178 of 3rd of August de 2021. Art. 16-8-1 has been introduced and Art. 16-4, 16-10 and 16-14 of the French Civil Code have been amended.

PERSON, BODY AND THING

For the sake of the free development of the rights of the person and of the personality and, even more so, of the *derechos personalísimos*, a uniqueness between the person and his physicality – and thus corporeality – cannot be accepted, and, therefore, one should move away from the physical concept of the human person and, therefore, distance oneself from its merely corporeal/materialistic conception.

Thus, in this context, a must-read should be a book from the 1990s: 'The Case of the Stolen Hand',[32] which deals with the legal history of the body and its separation from the person, starting with a case that the author himself describes as 'science fiction-jurisprudence', in which he tries to analyse what the legal solution would be for a person who fraudulently steals a hand that another person has accidentally amputated.

The author suggests three possible solutions: one, in which the subject could be convicted of a crime against property (theft); another, through a conviction for mutilation – given that the hand would have been irreversibly detached from the body as the individual could not undergo surgery – or even a third possibility, that is, that of being acquitted. Without revealing the author's interesting arguments here, it is worth noting how the problem of the body, considered as a thing (good) separate from the person, requires a thorough treatment, as well as the need to consider the relationship between person and body. From the legal point of view. From a legal point of view, therefore, the above needs to be intertwined with the legal concept of thing (good), and an attentive reader will note how this may create some legal friction, since 'person' and 'good' have traditionally been legally distinct, as evidenced by the main structures of the civil codes, under the influence of the Gayan differentiation.

In the current view, 'person', 'body' and 'thing' ('good'), in the legal sense and as an object,[33] suffer from a confusion which sometimes seems to create some perplexities[34] and which cannot be properly grasped either by the jurist or the legislator.

It would certainly be useful to have a classification of the parts of the body according to whether they are reproducible or non-reproducible, but the aim here is not to carry out a detailed study on the possible unavailability/availability of parts of the body (donation of eggs, sperm, prostitution, blood, etc.), but rather to observe,

[32] J. P. Baud, *L'affaire de la main volée: Une histoire juridique du corps,* Seuil, Paris, 1992. The Italian translation made in 2003 is used here.

[33] Cfr. Srts. 17 & 56 57 Argentinian Cod. Civ. Com.

[34] Here it is appropriate to refer to the interesting reflections made in Miguel Federico De Lorenzo "El cuerpo humano que se vuelve cosa, cosas que se vuelven cuerpo humano", *Revista Jurídica Argentina*, *La Ley*, Buenos Aires, 2010.

as has already been brilliantly,[35] emphasised, the importance of identifying the legal nature of living matter separate from the body and to note that 'the body is a thing, but it is not just any thing'.[36]

In this specific case, therefore, the reasoning here is not about the parts of the body, but about the thought and to assess whether it can be a 'thing' or rather a 'person'... or should it perhaps be understood that it is neither a 'thing' nor a 'person', as has been affirmed[37] in dealing with the question of the embryo?

Thought as an indispensable element of the person: thought is a person in law

The concept of person is not exclusively a legal concept, but has necessarily been nourished from the philosophical, theological and metaphysical spheres; legal concepts or definitions created *ad hoc*, such as that of 'citizen', which, moreover, has at some point served for the attribution of civil rights,[38] are another matter. Thus, the concept of the person is born from philosophical and theological perspectives, to later develop in legal and ethical spheres.

Therefore, in order to understand the relationship between the person and thought, it is necessarily appropriate to go back - even though other philosophical and theological visions can be considered - and make our own the Boethian vision according to which '*persona est rationalis natura individua substantia*',[39] later taken up by St. Thomas. So St. Thomas, wishing to qualify the difference between the individual and the person, noted that if the former is indistinct, the latter is not, thus associating the person with man.[40] In this way, a kind of evolution of the Boethian

[35] The origin was the problematic issue of the sacredness of the blood of Christ, claiming that it did not change its nature once it had been shed. See Benedict XIV, *De Servorum dei beatificatione et beatorum canonizatione*, Prati, Vol. II, Cap. XXX, 1839; J. P. Baud (2003), op. cit., 159 ff.

[36] Baud notes that this aspect would be the trait d'union of canonist and civilist doctrine, although they would diverge in other respects. See J. P. Baud (2003), op. cit., 83-85 ff.

[37] Thus, the embryo would be neither a human body nor a biological material. Reflections on the issue of in vitro fertilisation and embryonic stem cells can be found at Bernard Edelman, *Ni chose, ni personne. Le corps humain en question*, Hermann, Paris, 2009.

[38] This was the model, for example, of Art. 1 *Codice civile* of 1865, which established that, in contrast to the foreigner (and partly taking up the contrast with ius gentium) "*ogni cittadino gode dei diritti civili, purché non ne sia decaduto per condanna penale*".

[39] Boezio, *De persona et duabus naturis contra Eutychem et nestorium*, III, 3 (PL, 64, 1343).

[40] Thus, it states that "persona igitur in quacumque natura significat id quod est distinctum in natura illa; sicut in humana natura significat has carnes, haec ossa, et hanc animam, quae sunt principia individuantia hominem". See Tommaso D'Aquino, *Summa Theologiae*, I:29-4.

'individual substance' took place, which in turn had taken inspiration and genesis from the substance and essence that have some of their philosophical roots[41] in Porphyry,[42] Aristotle and Plato and which also found vigour from the theological point of view with St Augustine. [43]

Thus, in St. Thomas, the association between rational individual and person is consolidated,[44] and therefore 'person' is not only substance and individualism, but also has a rational nature[45] and this nature is expressed through thought.

In this sense, 'thought' becomes interpenetrated with the person and his essence and becomes an indispensable element of the person, so that 'thought' is juridically a 'person'.

Right to free thought as a personality right ("derecho de la personalidad"), or a highly personal right ("derecho personalísimo")?

Once the idea that thought is person (or at least intrinsically belongs to it) has been clarified, the question of whether it can be configured as a personality right ("*derecho de la personalidad*") or a highly personal right ("*derecho personalísimo*") linked to thought must be assessed and addressed. In this sense, the first logical step is to ask whether it is appropriate to recognise and regulate it, thus

On St. Thomas' interpretation of Boethius' definition of person in the commentary on the four books of Peter Lombard's Sentences. See Francisco Rego, "El concepto de persona en el Scriptum super Sententiis Petri Lombardi de Santo Tomás", *Scripta Medievalia*, 2009, 131 ff.

[41] More broadly see Enrique Goméz Arboleya, "Más sobre la concepción de persona", *Revista de estudios políticos*, No. 49, 1950, 107-124.

[42] Porfirio, *Isagoge*, Rusconi, Milano, 1995 Latin version of Severinus Boethius (Giuseppe Girgenti: preface, introduction, translation and apparatus).

[43] See María del Carmen Dolby Múgica, "El Ser personal en San Agustín", *Revista española de Filosofia Medieval*, No. 13.

[44] The association between rational individual and person ("*omne individuum rationalis naturae dicitur persona*") can also be seen in the *Summa Theologiae*, I, q. 29, a. 3 ad. 2). Technically these ideas are embodied - as Rego shows very well - in *De Genesi ad litteram* (III, 20, 30, where it is stated that the relationship with rationality: "*in eo factum hominem ad imaginem Dei, in quo irrationalibus animantibus antecellit. Id autem est ipsa ratio, uel mens, uel intelligentia, uel si quo alio vocabulo commodius apellatur*") and in the *De Trinanitate*, where the idea of the person as something individual and singular (VII, 6, 11) and its substance related to man (XV, 7, 11: "*Singulus quisque homo una persona est*") is reflected. F. Rego, op. cit., 134.

[45] See for example Fabrizio Amerini, "Tommaso d'Aquino, il concetto di persona e la bioética", *La persona come categoria bioetica. Prospettive umanistiche* (ed. Maria Zanichelli), FrancoAngeli, Milano, 2019, 95-111.

configuring it as a new 'neuro-right'. This aspect will therefore be addressed below, before noting that in some countries, case law - in Chile (V.1), or the legislator himself, in Brazil (V.2) - seeks to recognise 'neuro-rights' by linking them to the cerebral sphere.[46] Finally, some reasons are given for preferring to avoid such regulation (V.3).

The jurisprudential recognition of the right to the protection of the privacy of brain information

It should be noted that Chilean jurisprudence[47] has been one of the pioneers in civil laws countries in recognizing 'neuro-rights', but it has done so in a peculiar way: a) indirectly, that is, by means of an appeal for protection relating to the violation of rights concerning personal data, b) to justify the elimination of previously stored data, given that the purchaser of a device that collects information on the electrical activity of the brain and obtains data on gestures, movements, preferences, reaction times and cognitive activity of the user had unsubscribed from the services of the device.[48] The case is very curious because the plaintiff was the former senator Guido Girardi, who was the one who presented a bill on 'neuro-rights' to Parliament.[49] Here it should be noted that Chile has pushed for its regulation, not only through this initiative, but also through the attempt to introduce this right at

[46] It should be recalled that, with regard to the processing of brain images, the French legislator has introduced Art. 16-14 in its Civil Code, according to which they "may only be used for medical or scientific research purposes or in the framework of forensic examinations, with the exception of functional brain imaging. The patient's express consent must be obtained in writing before the examination is carried out, after the patient has been duly informed of its nature and purpose. The consent must specify the purpose of the examination. It may be revoked without formalities at any time".

[47] Supreme Court of Chile, Third Chamber, 9 August 2023, *Girardi v. Emotiv*, Case No. 105.065-2023.

[48] This was the non-invasive, non-therapeutic, mobile electroencephalogram-type neurotechnology device designed for self-quantification, field research, not for sale as a medical device, called Insig. See Emotiv, *https://www.emotiv.com/products/insight*, 15.10.2024.

[49] *Proyecto de Ley* initiated by motion of Senators Girardi, Goic and Chahuán, Coloma and De Urresti, on the protection of "neuro-rights" and mental integrity, and the development of research and neurotechnologies. Bulletin N° 13.828-19. Art. 2 of the draft defined "neuro-rights" as "New human rights that protect the privacy and mental and psychic integrity, both conscious and unconscious, of individuals from the abusive use of neurotechnologies" and "neural data" as "information obtained, directly or indirectly, through the activity patterns of neurons, accessed by advanced neurotechnology, including both invasive and non-invasive brain recording systems". These data contain a representation of psychic activity, both conscious and subconscious, and correspond to the most intimate aspect of human privacy.

a constitutional level within the new constituent process.[50] This constituent process, although it has failed for the moment, has nevertheless opened the door constitutionalizing of this right.[51]

The regulation of "neuro-rights"

The current draft of the Brazilian Civil Code not only aims to introduce a new book on 'digital rights', but also provides for the express regulation '*da pessoa no ambiente digital*', including a series of provisions regulating 'neuro-rights'.[52] Without wishing to dwell on this subject here, and without intending to deal with it exhaustively, it should be noted that the regulation provides[53] for some relevant aspects in its articles, introducing part of the regulation in the Civil Code and another in the General Law on the Protection of Personal Data.[54]

With regard to the regulation that should be introduced in the Civil Code, it is established that 'neuro-rights' are expressly related to human dignity 'in its physical, moral and intellectual dimension',[55] considering that these are an inseparable part of the personality and 'may not be transmitted, renounced or limited'.

It states that 'Neuro-rights are those protections aimed at preserving the mental privacy, personal identity, free will, fair access to brain enhancement, mental integrity and protection against bias, of natural persons through the use of neurotechnologies' with a list of these including:

'a) the right to cognitive freedom: the use of neurotechnologies in a coercive manner or without consent is prohibited;

---

[50] On this point see for example María Isabel Cornejo Plaza, "Consagración constitucional del neuroderecho a la aumentación o neuromejora cognitiva en Chile: implicancias y desafíos", *Bioética, neuroética y neuroderechos. Realidades y perspectivas en el siglo XXI* (eds. Jesús Armando Martínez Gómez, Edgar Pérez González), Tirant Humanidades, Ciudad del México, 2023, 281-296.

[51] Pablo López-Silva, Raúl Madrid, "Sobre la conveniencia de incluir los neuroderechos en la Constitución o en la ley", *Revista Chilena de Derecho y Tecnología*, Vol. 10, No. 1, 2021, 53-76.

[52] See Parecer nº 1 – *Subcomissão de Direito Digital da cjcodcivil, integrante da Comissão de Juristas responsável pela revisão e atualização do Código Civil (CJCODCIVIL), criada pelo Ato do Presidente do Senado* (ATS) *nº 11, de diciembre de 2023. Membro da subcomissão: Laura Contrera Porto (Subrelator), Laura Schertel Mendes e Ricardo Resende Campos.*

[53] At this stage, the proposal does not indicate the number of the provisions of the Civil Code, marking each with "Art. X".

[54] *Lei n° 13.709, de 14 de agosto de 2018 (Lei Geral de Proteção de Dados Pessoais).*

[55] "The protection of personality rights is ensured as an instrument aimed at safeguarding human dignity and neuro-rights, comprehensively encompassing individuality in its physical, moral and intellectual dimensions."

b) the right to free will: the right to make free and competent decisions in the use of brain-machine interfaces, without manipulation of thoughts, feelings or mental states;

c) the right to mental privacy: the right to protection against unauthorised or unwanted access to brain data, without commercial sale or transfer;

d) the right to mental integrity: the right not to have one's mental activity manipulated by neurotechnologies, and not to have control over one's behaviour altered or removed without consent;

e) right to continuity of personal identity and mental life: protection against alterations to personal identity or behavioural coherence, prohibiting unauthorised alterations to the brain or brain activity;

f) right to fair access: the right to fair and equitable access to cognitive enhancement or augmentation technologies, which should be guided by the principles of justice and equity;

g) the right to protection against bias: discriminatory or biased practices based on brain data are prohibited'.

However, after having identified these rights, it is clarified that their use and access is allowed by specific provisions.[56]

The legislator also wants to complement the regulations of the Civil Code with some amendments to the General Personal Data Protection Act by underlining a new protection of mental privacy, cognitive freedom, free will and mental integrity (Art. 2. VIII) and introducing the regulation of the so-called 'neural data' (*datos neuronales*), which are data collected directly from the neural system of a natural person,[57] and regulating, in addition, the processing of 'brain data' which may be processed with or without informed consent, *mutatis mutandis*, as often as necessary, e.g. – among others – in cases of protection of the life or physical integrity of the data subject or of a third party, and for the protection of health.[58]

---

[56] Thus, it is stated that in relation to the rights just listed: "Neuro-rights and the use of or access to brain data may be regulated by specific rules, provided that the protections and guarantees afforded to personality rights are preserved".

[57] In this sense, the following provision is foreseen: "Art. 5 For the purposes of this Law, the following are considered: XX - neural data: first-order data collected directly from the neural systems of a natural person (including both brain and nervous systems) and second-order inferences based directly on these data."

[58] In Chapter II of Law 13.709, a section IV would be introduced, which would provide that "Art. X - The processing of personal brain data may only occur in the following cases: I - when the data subject or his legal representative consents, specifically and separately, for specific purposes; II - without the need for consent of the data subject, in cases where it is indispensable for: a) the protection

It can therefore be observed that the regulation of 'neuro-rights', although they are considered personality rights and cannot be transmitted, renounced or limited, can be 'processed' and stored. In short, the possibility of absorbing brain information by means of neurotechnology (whose maximum emblem is thought) would be allowed, even without consent, for the sake of protecting the life or physical integrity of the person concerned or of a third party and of protecting health; in other words, by enhancing the rights of the individual, it would paradoxically be possible to limit his or her own rights.

Against regulation

In the current state of affairs, if it were assumed that the (supposed) right to free thought (or any other right to cerebral information assimilable to this) were not only a right, but also a highly personal one, Art. 55 Cód. Civ. y Com. should apply, and, therefore, consent could, in addition to other aspects,[59] be freely revocable. Now, although it could potentially be revocable, *de facto* – given its intrinsic typology and characteristics – it will hardly be so. Even more so in a system in which the use of neurotechnology – together with artificial intelligence - will be able to extract and collect data and manage it through algorithms. The automatic processing of perceived brain information and its eventual disclosure – even to third parties – could be completely uncontrolled and the subject would therefore not be protected. This means that private law will be confronted with ethical values that are sometimes difficult to regulate or impose.[60] Pathological situations have already been addressed in relation to artificial intelligence in the use of algorithms which, in some cases, would be detrimental to the rights of the individual[61]

---

of the life or physical integrity of the data subject or a third party; and b) the protection of health, exclusively in procedure carried out by health professionals, health services or health authorities."

[59] As not to be presumed and admitted only if not contrary to law, morals or decency.

[60] In fact, Pope Francis, referring to artificial intelligence, notes that: "Artificial intelligence, then, ought to be understood as a galaxy of different realities. We cannot presume a priori that its development will make a beneficial contribution to the future of humanity and to peace among peoples" and "Nor is it sufficient simply to presume a commitment on the part of those who design algorithms and digital technologies to act ethically and responsibly". See Pope Francis, Artificial Intelligence and Peace, message of His Holiness for the 57th World Day of Peace, *https://www.vatican.va/content/francesco/en/messages/peace/documents/20231208-messaggio-57giornatamondiale-pace2024.html, 15.10.2024.*

[61] Thus, in the United States, it is noted that menstruation tracking apps record, along with sexual cycles, mood swings and other potentially sensitive data that could in some cases violate users' privacy and informed consent. See Tahsin Ahmed, "LEAK! The Legal Consequences of Data Misuse in Menstruation-Tracking Apps", *California Law Review*, Vol. 111, No. 6, 2023, 1979-2000.

or even lead to racial discrimination.[62] Therefore, any handling of data must be carefully controlled or excluded.

It is clear, therefore, that in the context dealt with here there would be little point in the indemnity protection that could be justified under a broad definition of damage to the intrusion into the life of others in the sense of Art. 1770 of the Argentinian Cod. Civ. Com. Once the data has been inserted into the 'big data', there would be no going back, no matter how much the judgements order the re-establishment of the *status quo ante* or the deletion of the data or information. There would be a high risk that such information would be processed automatically and, in certain cases, even without the consent of the subject. Since there are no concrete guarantees of the restoration of the status quo ante due to technological patterns and their continuous evolution, the subject would be left unprotected, *a fortiori*, and could be identified as a weak, consumer or hypervulnerable subject.

Therefore, to recognise the right to free thought as a right would be to decree its own hanging. Recognising the 'neuro-right' would make it possible to regulate it and, therefore, to authorise data trafficking in this sense, thus causing irreparable damage to the inviolability of the person (as required by Art. 51 of the Argentinian Cod. Civ. Com.) that even the highest financial compensation cannot compensate. However, this aspect would become even more complex if it were admitted that the application of Art. 1770 Argentinian Cod. Civ. Com. would not find application in the interests of a historical-systematic interpretation of Art. 51, since the revocability of the rights would not entail[63] damages as the right of the injured party to claim the damages caused by the revocation (unless otherwise provided by law) was deliberately omitted, as was foreseen in the antecedents from which the provision derives.[64] Thought as an essential part of the person, volitional manifestation and externalised *corpus*.

Given that it has been stated that it would be advisable not to regulate or recognise the rights associated with the treatment of thought, we will now examine some of these aspects in greater depth, configuring the true nature of thought in accordance with what has been set out here.

---

[62] It is noted that Property technologies (PropTech), which contributes to the use of innovations that automate real estate transactions, generates automatic tenant selection associated with machine learning algorithms that process data such as credit scores, eviction records and criminal records. The automation of these markets could even lead to racial discrimination and segregation in housing. See Nadiyah Humber, "A Home for Digital Equity: Algorithmic Redlining and Property Technology", *California Law Review,* Vol. 111, No. 5, 2023, 1421-1484.

[63] In this sense, Tobías speaks of "*omisión deliberada*", J. W. Tobías (2018), op. cit., 49.

[64] These are Art. 115 of the Executive's Draft and Art. 108 of the 1998 draft reform of the Argentine Civil Code; J. W. Tobías (2018), op. cit., 47 & 49.

Thought is free to be externalised in manifestations of various kinds: corporeal manifestations, movements, inertia, literary and artistic creations, etc. However, it cannot be encapsulated beforehand, since it is part of the person himself, being one of his characterising fundamentals.

Thought becomes legally relevant at the moment of its external manifestation, thus becoming an externalised *corpus* under two aspects: a) the manifestation of volition (which can legally shape the will to negotiate or to bind oneself) b) externalisation in what we already know as *corpus mysticum* - as opposed to *corpus mechanicum* - and which has entered the world of private law through intellectual property or copyright. What is certain is that in the latter case there is a clear separation between *corpus mechanicum* and *corpus mysticum*[65] and the proof is that, although third parties can acquire ownership of the former, they can in no case acquire ownership of the latter, which always remains in capo of the subject as a kind of 'spiritual property'.[66] Therefore, it is the will of externalisation – and not a previously informed consent authorising a prior cerebral reading – that is the only way to separate it from the person and give it a new form that allows it to enter the sphere of negotiation to give form to an obligation (even natural) to contractual consent or to be embodied in material goods or works that could be the object of contracts.

In relation to the manifestation of the negotiating will, the legal problem may eventually be that of assessing or choosing which theory of manifestation of will to adopt, for example, whether the moment of emission or reception, but what is certain is that the processing of thought cannot be referred to a mere consent, albeit informed, – which intends, prior to emission and externalisation – to manage, store or process the subject's thought or brain information by means of neurotechnology. Thought, in this sense, cannot be a contractual or negotiable object until it is manifested externally by the express will - and not the consent – of the subject.

In this way, to recognise, to positivise 'neuro-rights' would mean legally unprotecting the person and undermining his or her inviolability. In this sense, the freedom to be a person is also the freedom to produce thought, which can only be freely decided if it is eventually embodied in a juridical act, and which, however, will not – on its own – be the object of this act, where it is still part of the

---

[65] See M. Are, "Beni immateriali (diritto privato)", *Enciclopedia del Diritto*, V, Giuffré, Milano, 1959, 244 ff; Paolo Greco, "Beni immateriali", *Novissimo Digesto Italiano*, II, Utet, Torino, 1958, 356-366; Giovanni Pugliese, "Dalle 'res incorporales' del diritto romano ai beni immateriali di alcuni sistemi giuridici odierni", *Rivista trimestrale di diritto e procedura civile*, XXXVI, 1982, 1136 ff.

[66] An interesting reconstruction of the *Geistiges Eigentum* (spiritual property) with a particular focus on literary works and copyright can be found in Guido Alimena, "Dalla materia del libro alla forma dell'opera. La genesi illuministica della geistiges Eigentum", *Teca*, No. 5, March 2014, 55 ff.

person himself. The thought is part of the person, it is a person, it is only when it is separated from it that it becomes an available corpus and possibly a marketable object, but with different and special characteristics compared to a normal type of thing. However, as long as it is 'inside' the volitional sphere, it is not appropriate for the legal world.

Thinking, moreover, includes acts that are not strictly associated with negotiability *strictu senso*, so that 'reading thoughts' by means of neurotechnology could lead to predictive patterns, even of all other types of thoughts, and even to a future remodelling of the theory of error and the relationship between vice error and obstacle error. Thus, all kinds of brain information of that thought belong to the person and are part of him and only of him. Indeed, it is only through thinking and brain processing that complex results can be arrived at through the transformation of ideas.

This is consistent and does not conflict with any of the theories of wills (receptive, non-receptive, etc.) that serve to consolidate the creation or the binding nature of a legal act or obligation. During the act of thinking, the will is still *in nuce*: to read it beforehand would mean to break the person himself and his freedom. Moreover, it would mean controlling his or her thought patterns by means of future algorithms that could help to influence the subject to (or in) subsequent acts, even with the intervention of artificial intelligence-induced control.

The person, in this sense, will be inviolable[67] and his thought will be inviolable as long as he is in it. The thought, therefore, will be a 'person', and once outside, by means of a consolidated will and not by means of a simple act of consent, it will be *corpus*, and as *corpus* it can enter the legal sphere, whether this takes the form of a more or less receptive manifestation of will or is embodied in the *corpus mysticum* that can be related, for example, to intellectual property or copyright. In this sense, there must not only be a principle of inviolability of certain parts of the human body,[68] but also of the person himself and his essence, an essence of which thought is an inseparable part. It is in this context that one of the maximum expressions of Art. 19 of the Argentinean National Constitution assumes and must assume relevance, and which must therefore dialogue with the sources of private law and with the – appropriate – concept of person, in this way, as has been claimed,[69] the primacy of the person in the constitutional norms can be adequately fulfilled.

[67] Art. 51 Argentinian Cod. Civ. Com. Tobías has emphasised that the inviolability of the person is also a value for the Supreme Court of the Nation (fallo 323:3229); J. W. Tobías (2019), op. cit., 42.

[68] Expressly set out in French law in Art. 16-A French Civil Code.

[69] J. W. Tobías (2019), op. cit., 1142-1164.

CONCLUSIONS

It is appropriate to understand the legal constraints that have given rise to a concept of person[70] that is in total connubiality with the bodily aspects. This does not mean denying the principle of the inviolability of the body, but enhancing it to constitute the essence of the person, the highest manifestation of which is thought. This means going back to the Boethian conception and that of St. Thomas, both of which emphasise the importance of thought and intellect in identifying the person and transplanting it into the legal sphere. This is not entirely unreasonable if one considers that the *corpus mysticum*, in its juridical sense, which the Thomist[71] perspective takes up from Ecclesiology, abandoning its metaphysical and theological approach, is subsequently rooted in the juridical sphere and consecrated to Private Law. And the 'ingenuity', which justifies the juridical coverage of the *corpus mysticum*, is nothing other than thought.

What has just been stated is confirmed by the fact that it was already clear – from the conception of one of the first laws in this sense – that "a true production (...) is a means by which thought becomes a fact"[72] and this was stated by the pen of an illustrious jurist who at that time also acted as a codifying jurist.

To configure a personality or highly personal right (*derecho de la personalidad* or *personalísimo*) relating to thought or to the management of brain information would lead to the opposite effect to the one that justifies it, and would not achieve its protection. This will be compatible with the protection of other rights that

---

[70] The conception of personhood related to reasoning, although the latter begins to develop at the synaptic level after a few weeks, would not be incompatible with Art. 19 Argentinian Civil Code (which takes conception as the point of reference for the existence of the human person), since rights and obligations, although retroactive, are acquired - according to Art. 21 - from birth, i.e. only on condition that the synaptic and neuronal process is complete and effective.

[71] See Miguel Ponce Cuellar, *La naturaleza de la Iglesia según Santo Tomás*, Eunsa, Pamplona 1980.

[72] "*Una vera produzione (…) è un mezzo per lo quale il pensiero diventa un fatto*". Relation to the draft law (also known as the "Scialoja relation" since he drafted it) with which the first Italian law was approved. "*Sui diritti spettanti agli autori delle opere dell'ingegno*" (Law No. 2337 of 25 June 1865). See, Michelangelo Castelli, Giovanni De Foresta, Giovanni Arrivabene, Carlo Matteucci, Antonio Scialoja, "Relazione dell'Ufficio Centrale al Progetto di legge relativo alla proprietà letteraria ed artistica (24 ottobre 1864)", *Leggi, Regolamento e disposizioni sui diritti spettanti agli autori delle opere dell'ingegno*, Tipografia Tofani, Firenze 1867, 10. Scialoja had already dealt with the subject in an earlier paper: Antonio Scialoja, *Su la proprietà de' prodotti d'ingegno e sua pegnorazione*, Napoli, 1845. On this point, see Laura Moscati, "Tra le carte di Antonio Scialoja avvocato e legislatore dei diritti sulle opere dell'ingegno", *Rassegna Forense,* No. 3-4, 2014, 1031-1046. A systematisation of the subject in pre-Unitarian Italy can also be found here.

complement and, at the same time, differ from this one. Thus, freedom of expression, the processing of personal data or the right to privacy are rights that must be protected and, nevertheless, remain separate, although related to thought and its protection once it has been externalised.

Dr ALFREDO FERRANTE
Vanredni profesor, Univerzitet u Paviji

O PRAVNOJ PRIRODI MISLI I SUŠTINI LIČNOSTI: RAZMATRANJA IZ PERSPEKTIVE ARGENTINSKOG I UPOREDNOG PRIVATNOG PRAVA

Rezime

Polazeći od argentinskog prava i uz osvrt na trendove u stranim pravnim sistemima – sa posebnim osvrtom na francusko pravo, čileansku sudsku praksu i predloženu reformu brazilskog Građanskog zakonika – autor u ovom radu razmatra moguće regulisanje takozvanih "neuro-prava" u budućnosti. Autor smatra da je, u tom cilju, potrebno identifikovati pravnu prirodu misli u odnosu na suštinu ličnosti uz rekonstrukciju njene pravne definicije. Takođe, ističe se da je građansko pravo kroz različite epohe bilo pod uticajem filozofije i teologije, te da je došlo i do postepenog razdvajanja regulative tela i ličnosti. U radu se zastupa ideja o usvajanju pravnog koncepta "ličnosti" koji se oslanja na Boetijevu i Tomističku koncepciju i ističu se argumenti koji ukazuju na to da bi pozitivizacija "neuro-prava" bila kontraproduktivna za samu zaštitu ličnosti, kao i slobodu misli.

Ključne reči: misao, ličnost, telo, "neuro prava", uporedno pravo, građansko pravo, lična prava

Bibliography

Ahmed T., "LEAK! The Legal Consequences of Data Misuse in Menstruation-Tracking Apps", *California Law Rev*iew, No. 6, Vol. 111, 2023.

Amerini F., "Tommaso d'Aquino, il concetto di persona e la bioética", *La persona come categoria bioetica. Prospettive umanistiche* (ed. Maria Zanichelli), FrancoAngeli, Milano, 2019.

Are M., "Beni immateriali (diritto privato)", *Enciclopedia del Diritto*, V, Giuffré, Milano, 1959.

Arribas J. M. L., Persona, personaje y performatividad, *https://cvc.cervantes.es/el_rinconete/anteriores/agosto_06/23082006_01.htm*.

Baud J. P., *L'affaire de la main volée: Une histoire juridique du corps,* Seuil, Paris, 1992.

Baud J. P., *Il caso della mano rubata: una storia giuridica del corpo*, Giuffrè, Milano, 2003.

Benedict XIV, *De Servorum dei beatificatione et beatorum canonizatione*, Prati, Vol. II, Cap. XXX, 1839.

Boezio, *De persona et duabus naturis contra Eutychem et nestorium*, III, 3 (PL, 64, 1343).

Castelli M., De Foresta G., Arrivabene G., Matteucci C., Scialoja A. "Relazione dell'Ufficio Centrale al Progetto di legge relativo alla proprietà letteraria ed artistica (24 ottobre 1864)", *Leggi, Regolamento e disposizioni sui diritti spettanti agli autori delle opere dell'ingegno*, Tipografia Tofani, Firenze 1867.

Cornejo Plaza, M. Consagración constitucional del neuroderecho a la aumentación o neuromejora cognitiva en Chile: implicancias y desafíos", in *Bioética, neuroética y neuroderechos. Realidades y perspectivas en el siglo XXI* (eds. Jesús Armando Martínez Gómez, Edgar Pérez González), Ciudad del México: Tirant Humanidades, 2023.

D'Aquino T., *Summa Theologiae*, I :29-4.

David, A., S*tructure de la personne humaine: essai sur la distinction des personnes et des choses*, PUF, Paris, 1955.

De Castro y Bravo, F., "Los llamados derechos de la personalidad", *Anuario de Derecho Civil*, No. 4, Vol. 12, 1959.

De Lorenzo M. F., "El cuerpo humano que se vuelve cosa, cosas que se vuelven cuerpo humano", *Revista Jurídica Argentina*, *La Ley*, Buenos Aires, 2010.

Dolby Múgica M., "El Ser personal en San Agustín", *Revista española de Filosofia Medieval*, No. 13, UCOPress, 2006.

Edelman B., *Ni chose, ni personne. Le corps humain en question*, Hermann, Paris, 2009.

Freeman M., Goodenough O. R., *Law, Mind and Brain,* Ashgate, Burlington, 2009.

Goméz Arboleya E., "Más sobre la concepción de persona", *Revista de estudios políticos*, No. 49, 1950.

Gómez de Amescua B., „Tractatus de potestate in seipsum", *Mediolani, apud Petrum Martyrem Locarnum*, 1609.

Greco P., "Beni immateriali", *Novissimo Digesto Italiano*, II, Utet, Torino, 1958.

Humber N., „A Home for Digital Equity: Algorithmic Redlining and Property Technology", *California Law Review*, No. 1, Vol. 111, 2023.

Impallomen G. B., "In tema di vitalità e forma umana come requisiti essenziali alla personalità", *Iura - Rivista internazionale di diritto romano e antico*, No. 22, 1971.

Justinian, "Institutes", *Digest*, 1889, (translated by Idelfonso García Del Corral).

Lell H. M., "Perspectiva histórica da metáfora do conceito jurídico de pessoa. Etimologia e ideias na Antiguidade", *Díkaion Revista de Fundamentación Jurídica,* No. 2, Vol. 28, 2019.

López-Silva P., Madrid R., "Sobre la conveniencia de incluir los neuroderechos en la Constitución o en la ley", *Revista Chilena de Derecho y Tecnología*, No. 1, Vol. 10, 2021.

Mainino G., "Dalla persona alla persona giuridica: La persona in Gaio e il caso delle ´istituzioni´ alimentari nell'esperienza giuridica romana", *Studia et Documenta Historiae et Iuris*, LXX, 2004.

Moscati L. "Tra le carte di Antonio Scialoja avvocato e legislatore dei diritti sulle opere dell'ingegno", *Rassegna Forense,* No. 3-4, 2014.

Pizzorusso A., Breccia U., *Atti di disposizione del proprio corpo*, PLUS-Pisa University Press, Pisa, 2007.

Pope Francis, Artificial Intelligence and Peace, message of His Holiness for the 57th World Day of Peace, *https://www.vatican.va/content/francesco/en/messages/peace/documents/20231208-messaggio-57giornatamondiale-pace2024.html.*

Porfirio, *Isagoge*, Rusconi, Milano, 1995 Latin version of Severinus Boethius (Giuseppe Girgenti: preface, introduction, translation and apparatus).

Pugliese G., “Dalle ‘res incorporales’ del diritto romano ai beni immateriali di alcuni sistemi giuridici odierni”, *Rivista trimestrale di diritto e procedura civile*, XXXVI, 1982.

Rego F.,“El concepto de persona en el Scriptum super Sententiis Petri Lombardi de Santo Tomás”, *Scripta Medievalia*, No. 1, Vol. 2, 2009.

Rodotà S., Zatti P., *Trattato di biodiritto. Il governo del Corpo*, Giuffré, Milano, 2011.

Santosuosso A., *Le neuroscienze e il diritto,* Ibis, Pavia, 2009.

Scialoja A., *Su la proprietà de’ prodotti d’ingegno e sua pegnorazione*, Napoli, 1845.

The American Association for the Advancement of Science, The Dana Foundation, *Neuroscience and the Law, Brain, Mind and The Scales of Justice* (ed. Brent Garland), Dana Press, New York, 2004.

Tobías J. W., “Los actos de disposición de parte separadas del cuerpo y el proyecto de código civil y comercial”, *Revista de Derecho de Familia y de las Persona,* No. 4, 2013.

Tobías J. W., *Tratado de Derecho Civil – Parte General*, 3 Volumes, La Ley, Buenos Aires, 2018.

Tobías J. W., “Una concepción integral de la persona humana”, *Jurisprudencia Argentina*, 2019.

Tobías J. W., “El consentimiento informado y sus límites”, *Revista de Derecho de Familia y de las personas*, 2020.

Tobías J. W., “Los derechos personalísimos, los avances científicos y las nuevas tecnologías”, *Las nuevas Tecnologías y el Derecho* (ed. J. W. Tobías), Thomson Reuters - La Ley, Buenos Aires, 2020

World Day of Peace, h*ttps://www.vatican.va/content/francesco/en/messages/peace/documents/20231208-messaggio-57giornatamondiale-pace2024.html.*

Zeki S., Goodenough O. R., *Law and the Brain*, Oxford University Press, Oxford, 2006.

Article history
Received: 20.09.2024.
Accepted: 28.10.2024.

ORIGINAL SCIENTIFIC PAPER