« Personne » en droit civil français ("Person" in French Civil Law) : 1804-1914

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This study focuses on the signification(s) that the word *"personne"* had in the French civil law. The objective is to explain how a term without importance neither in the *Code civil*, nor among the legal scholars, let alone the court practices, became a serious issue in the second half of the 19th century. The study contains an introduction and two parts which deal respectively with the period 1804-1857 and 1857-1914. The main claim is that the word used to be, for the most cases, part of an idiom and meant "to be taken as a third party" when it followed a be-verb as in "X *est une personne*". The modern usage which dates back to the middle of the 19th century, however, singles it out from the old idiom and gives it a substance by assuming that only human beings are persons.

In the first part, the study starts by criticizing H. Coing's allegation that the modern "person" problematic dates back to Hugues Doneau, jurist of the 16th century. It discusses then three different usages induced from instances before 1804: (1) *"personnes"* in the first book of the Code civil; (2) *personne civile* or *morale* in the sense of the modern Natural Law literature; and (3) *personne physique* and *personne morale* in the minutes of code drafting discussions in *Conseil d'Etat*. It argues that none of the three is what we mean today by the word "*personne*", that the legal term *personne* corresponds to *"caput"* (head) in Latin instead of "*persona*". This discussion is followed by a series of court decisions relating to taxation cases rendered between 1803 and 1806. In these decisions, the main issue was whether or not the curator for a vacant succession should be personally punished for not paying the real property transfer tax ("*droit d'enregistrement*") to which a would-be successor is subject. There, the *Cour de cassation* invoked the Roman law concept of *hereditas iacens*, and considered the vacant succession as a personified moral being (*être moral*) which received the heritage from the dead owner. The case analysis tries to show that the Latin word "*persona*" was then part of the idiom "*personam sustinere*", that it cannot be interpreted literally, and that there will be a syntax error if the idiom is not specified with a noun in genitive, such as *defuncti* or *heredi* in our cases. The first part ends at a case of 1857 which described the moral being as "not yet personified in a given successor". This additional remark overturned a long tradition by classing successions, not as "persons" in plural, but as estates. This study argues that the new definition resulted from the debates on the – politically incorrect – feudal origin of the transfer tax, and, more generally, the whole French civil law. The chief justice (*premier président*) of the French supreme court, Troplong, who sat in the trial of 1957, has also taken part in those debates.

The second part of the study continues the feudality issue of the first one, and puts it into a larger context, namely the German and French historical schools of law. The key man here is F. C. Savigny, whose general definition of "*Person*" in 1840 still stands today. The background of Savigny's new definition is the historiography concerning the archaic Germanic law of inheritance, and specifically the famous French proverb "*le mort saisit le vif*" (the dead seizes the living). The estate transmission principle embodied in this proverb excludes the possibility of *hereditas iacens* in Roman law. Savigny called the latter a "fictitious person".

Other so-called *Germanisten* described the former as a consequence of the ancient Germanic belief that only he who could defends his possession is worth his property. The adversarial Roman law and the German common law schools agreed to a certain extent that the heritage that "carried the person of the deceased", *personam defuncti sustinet*, should not exist. Despite objections in respective scholar circles, both theories found their disciples in France since the 1830's and contributed largely to the 1857 decision. The second part finishes with the French reception of Otto von Gierke's association theory (*Genossenschaftslehre*) by Raymond Saleilles, and argues that the whole "legal personality" issue was a public law issue in civil law disguise. The question at stake was whether or not the state authorization was necessary for religious congregations and other sensitive social groups like trade unions. The association act of 1901 and the separation of Church and State act of 1905 were the main targets of people like Saleilles and Léon Michoud, whose treatise of legal persons remains a standard reference and is arguably the last French book addressing this topic.