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The fictive persons of a serious poem:

on Vico’s anthropology of "literature"

Stefania Sini

Reading the history of humanity as told in the New Science, from the dark forest to the age of the developed reason, any literature scholar — or, better, any specialist in that field of knowledge we today call literature — cannot but look in amazement at the Neapolitan philosopher’s brilliant insights into the sensorial, pre-categorial origin of poetry and rhetoric. Vico’s notion of figural activity as the offspring of corporeal and perceptual roots — far from being the «discovery» («ritrovamento») of sophisticated and well-read intellectuals, it actually represents the first language used by humankind to express itself — lead us in a single leap through «the long course of centuries» to contemporary theories on the embodied nature of metaphor. The same we could argue to account for Vico’s conception of the narration of fables.

With a risky recourse to epoqé, which forces him to sink deep inside the «crude minds» of the first inhabitants of the Earth, the Neapolitan thinker shows that poetic logic is the wellspring of human culture from out of nowhere. Its expressions — its own "vocabulary" — pertain to the sacred

The indivisible co-existence of religion, law, and poetry in New Science defines, in fact, the age of the gods, beginning from the "archetypal scene" of a thundering sky. Here, amidst the stupor of giants «frightened» and «sent underground» («attirriti» e «atterrati») by thunder, sets off Vico's history of human people:

they pictured the sky to themselves as a great animated body, which in that aspect they called aye, the first god of the so-called gentes maiores, who in the whirling of his bolts and the noise of his thunder was attempting to tell them something. And thus they began to exercise that natural curiosity which is the daughter of ignorance and the mother of knowledge, and which, opening the mind of man, gives birth to wonder.

«They pictured (...) to themselves» («se finsero»): thus, according to the Latin etymology, still quite recognizable in the corresponding Italian word, they created, shaped, constructed for their own use, imagined. Human history is born out of fiction. We notice en passant that even the original text generates an entire network of inter-related characters: Curiosity, daughter of Ignorance and mother to Knowledge, and which gives birth to Wonder. Here we have the rhetorical strategy of personification, signified also graphically through the use of capitalization (which cannot be suppressed in the published version of the text). And here, while talking about the act of picturing, about the creation of personae fictae, the author himself pictures these "persons", creates them in his own writing.

Jupiter / Gius the thunder — thus, at one time poetic fiction, interlocutor, religious conscience and juridical authority. It is a person, because the giants picture him as though he «was attempting to tell them something».

Primitive law and Jurisprudence are therefore a divine wisdom, called, as we have seen, mystic theology, which means the science of divine speech


a topic which asserts immediately the need to think about the early production of communication forms that could express their own links to the sacred, see B. Nuzzo, Prima della «Prudenza moderna». Giuramento sacro e fondamento metafisico del potere in Vico, in id., Tra religione e prudenza. La «filosofia pratica» di Giambattista Vico, Rome, Edizioni di Storia e Letteratura, 2007, pp. 169-309.


7. See on this topic the fundamental writings by V. Piacella, such as Alcune proposte per la nuova edizione delle opere di Vico (e in particolare di quelle filosofiche), in «Il Rintocca del Centro di Studi Vilchian», n. 8 (1989), pp. 47-81. See also A. Bartolini, La funzione simbolica del frontespizio e la semantica dei corpi tipografici nella «Scienza nuova» di Vico, in Intorno del testo. Approcci alle periferie del libro, edited by M. Santoro and M.G. Tavoni, Rome, Ateneo, 2005 pp. 479-484.
or the understanding of the divine mysteries of divinatio⁸. Its forms, its "discourses" are expressed in mute speech, an iconic language made up of gestures and physical objects⁹, solemn rituals and interpretations of the will of the gods ("To this first jurisprudence therefore belonged the first and proper interpreting, called interpreters for interpraters, that is, "to enter into the fathers", as the gods were at first called as we observed above")¹⁰.

Jurists, writes Vico, were called "the oracles of the city": Cicero himself attests to this practice, and "Among the Latinus the answers of the jurisconsults and the answers of the oracles were both called "responses" (responsum)"¹¹. Further, among the several etymologies that testify to the sacrality of legal language, we might remind here that of oratio, the basic and most widely used word in rhetoric and in Vico's own investigation on the subject¹², which even today, in Italian, preserves double semantic value. The words oratio (orator) and oratione (prayer) originally indicate the same person who incarnates the divine authority in the ritual utterance¹³.

In the old word jus, explains Vico, "the principle of strict law", where civil equity is the rule, requires absolute strictness, "exemplary chastisements" to the point of cruelty¹⁴, superstitious respect for formulas, and the obscurity of laws: this is the field of certum, where the age of heroes also belongs, where poetry, law, and religion still draw together the boundaries of civilization.

CXI. The certainty of the laws is an obscurity of judgment lacked only by authority, so that we find them harsh in application, yet are obliged to apply them by their certitude. In good Latin certum means "particularized", or, as the schools say, "individuated"; so that, in overelegant Latin, certum and commune are opposed to each other.

This axiom and the two following definitions constitute the principle of strict law. Its rule is civil equity, by whose certitude, that is to say by the determinate particularism of whose words, the barbarians, [men] of particular [not universal] ideas, are naturally satisfied, and such is the law they think is their due. So that Ulpian says in such cases: "the law is harsh, but so it is written" (ex dura, sed scripta est), may be put in finer Latin and with greater legal elegance, "the law is harsh, but it is certain" (ex dura, sed certa est)¹⁵.


18. Ibid.: "After such orationes (or observations or interpolations) and after such observations, they possessed the act of constructing the criminals (...) And again, they made these words (this was the first incunabula, which means to make solemn vows with consecrated formulae) and they consecrated them to the Furies. "Dopo tali Orationi, ovvero observazioni, ovvero interpolazioni, e dopo tali Obestationi, venivan all’atto di sceglier esti rei (...) e contro loro concepit insevati i detti, che fu il primo incunabula, che significa far voti solenni, ovvero con formule conseguite, e gli
needs that the words contained in orders and laws must be scrupulously observed even when 'proved harsh' (eriuscisse dure) \(^17\).

Formalism, therefore, represents the axiological restriction given to the heroes by act of Providence so that they could tame violence and avoid civil entropy, «in order that they should not break out into disputes, quarrels and killings» (perché non prorompessero in priet, risse e uccisioni) \(^18\), and to maintain justice. This last function, as we read in De uno, like an 'iron rule' (regula ferrea) that, unbending and never failing the lines of the codes, coerces them into adjusting to it \(^19\), an iron rule which is necessary, according to Vico, before a new one could appear, made of very different material, flexible and adaptable, representing natural impartiality and prudential \(^20\). Heroical wisdom, the harshness of which humanity had twice experimented, belongs to him who respects the letter and, like Ulysses, «speaks so adjority (...) that he obtains the advantages he seeks while always observing the propriety of his words». (sempre parla si accorta, che consegna la propositasi utilita, serbata sempre la proprieta delle sue parole) \(^21\).

The second kind of judgments, because of their recent origin from divine judgments, were all ordinary, observed with an extreme verbal scrupulousness which must have carried over from the previous divine judgments the name religio verborum, even as divine things are universally conceived in sacred formulae which cannot be altered by as much as one little letter; whence it was said of the ancient formulae for actions: qui cadit virgula, causa cadit, «who drops a comma loses his case.» This is the natural law of heroic nations, observed naturally by ancient Roman jurisprudence; and it was the praetor's fari, which was an unalterable utterance (... whence later the name Fatum was given to the ineluctable order of causes producing the things of nature, as being the utterance of God. Hence perhaps the Italian verb ordinare, as applied especially to laws, in the sense of giving commands which must necessarily be carried out \(^22\).

In the natural law of heroes, thus, the formal rule is endowed with the strength to coerce which springs from sacred necessity: the formula, like an iron rule, coerce facts into adapting to it, sanctions deals between men and no modification is allowed in the tokens of divine fari, the unavoidable will, fate \(^23\).

It is the principle informing the engraved command of the Twelve Tables: uti lingua nuncupatis, ita ius est. (as the tongue has declared, so let it be bindings). The requirements of ancient justice are thus expressed in the harsh sentence that, while unfolding its meaning, makes itself into law.

It is worth noting that modern scholarship in ancient Roman law confirms the validity of Vico's insisted arguments about the inalterability of the formula, a binding due to remote religious institutions and pre-requisite for ensuring continuity and certitude in the delivery of justice. For instance, Ernesto Bianchi, explains that «in the field of Roman law studies, it is recognized how the formalism featured in ancient Roman law has to be connected to that which is featured in sacred law» and underlines «the parallelism between formulae and the strict forms of the sacred, sacred law in particular, and the formulae and forms of secular law». These observations are grounded in the idea that «forms and formula, belonging both to sacred and secular law, originate in magical beliefs or in what were thought to be transcendental forces». Their main features are «the unity of the act and the

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17. NS46, § 538; G. Vico, The New Science, p. 84; Id., Scienza nuova, p. 86.
19. O, § I CLXXVII; G. Vico, On the One Principle, p. 192. Id., De uno, p. 144. «Circa dubium Romanorum jurisconsulti aequitas Civile Regolare Ferrata similitudinem. Unde conceptus formulorum religiosum custodirem atque ad eas, tamquam ad formam Ferrae, quae ad se corpora non se ad corpora dirigat, causas accommodaret. «Civil equity as an iron rule. The patrician religiously proceeded the precise verbal formulas to which legal cases had to conform. The formula was like an iron rod used to measure a body. The body had to fit it; it could not be adjusted to the body».
22. NS46, § 595; G. Vico, The New Science, p. 321, Id., Scienza nuova, pp. 294–295; Ai secondi giudizi, per la recente origine de' giudici divini, furono tutti ordinari, conservati con una somma scrupolosita di parole, che da giudici, innanzi stati, divini dovevano restar detta religio verborum: conforme le cose divine universalmente non concorrono con formule consacrate, che non si possono d'un lettere scritte alterare; onde dette anche forme dell'azione si diceva, qui cadit virgula, causa cadit. Oltre il Diritto Naturale delle Geni Etruschi, osservavano naturalmente dalla Guarigione Roma Antica, e fu il fato di Pistrice, ch'era un parlar insubalterabile (...) dove non può fato Fatum sopra le cose della Natura l'ordine insubalterabile delle cause, che le producono, perché tale sia il parlare di Dio: onde forse agli Italiani venne detto ordinare, ed in specie in riguardo di Leggi, per dare comandi che si devono necessariamente eseguire.
23. «Thanks to his insightful, if sometimes inaccurate, etymologies, Vico demonstrates how from the root fari comes also fatur, the divine decree, as well as fun, which is unchangeable fari, issuing from God, containing the whole human law, while fari, law created by humans, betrays its divine origin in the etymology itself; if it is true, as Vico would have it, that fari is the contract form of Iwai, a term linked to Jupiter» (A. Scogianaglìo, «Religione e diritto nel De uno, in «BCSV», XXXIV, 2004, p. 109).
The binding has to do with the primordial dimension of orality, because, at the time when the jurists were the prophets (seers) of Rome, «city oracles», verdicts were delivered in speech; sacred formulas were articulated through fixed patterns, thus becoming proper songs; those old laws, we read in De uno, were ruled by rhythm and sense of proportion (…) and were accompanied by the sound of musical instruments85. If, from songs and meter, as Vico will explain in the second book of the last New Science, developed the first speech of humanity, in the like manner, from that wild and imaginative age comes the carne, destined to be identified as poetic expression throughout the centuries. «Poetic rhythm», which represents the formal framework of versification, is originally associated to the formal binding coming from sacred words, with the unalterable harshness of the verdict.

Not only versification, but theatre is also protagonist in Vico’s history of juridical wisdom: amongst the most beautiful pages in New Science, we can include the Corollary to Book Fourth, titled «That the Ancient Roman Law Was a Serious Poem, and the Ancient Jurisprudence a Severe Kind of Poetry, within Which Are Found the First Outlines of Legal Metaphysics in the Rough; and How, among the Greeks, Philosophy Was Born of the Laws». Here the author describes, through his trademark use of etymological links, the origin of the juridical idea of person, and connects it to the «masks» of family heads meeting in the market square:

Thus there appeared in the market place as many masks as there were persons (for a person properly means simply a mask) or as there were names. The names, which

24. E. Bianchi, Figuris ivi, pp. 35-37. Francesco Todescan, too, argues that «in ancient Roman law, no principle has been pursued with such commitment as form has been, and no principle has achieved such complete and vast fulfillment. «Form is granted, since the old 1uo Quiritium, a crucial function, i.e. to ensure the certificate of law: this fact highlights a symptomatic motif. The strength of juridical development rests on historical continuity, on the unbreakable connection between past and present. Forors contribute to ensure this conformity: contrary to the changeable, and sometimes inscrutable, inner features, the form of juridic acts, in its ongoing reproduction of itself, remains visible, and it is also instrumental in allowing populations to achieve awareness of themselves». (T. Todescan, Diritto e realtà. Storia e teoria della ficitu vittas, Padova, Cedam, 1979, p. 19.) Thus, attention to the letter of the text, which Vico had seen respected in the ancient formulas, is grounded in the deeply felt covenant of permanence and identity.

25. 00, § I CLXXXIII 10; G. Vico On the One Principle, pp. 300-301; id., De uno, p. 154: «ha priscis Jurisconsultis carminibus responsa habebat; ut de legum formulis supra diximus; in quibus si quis hos Poeticos numeros non sentient, ne eos quidem audiat in Carminum Salutum fragmentis, quae tamen ad sympathiam canebant. (...) ut Jurisconsultis videantur esse Divini, seu Vates Romanorum». «The first jurisconsults gave their responses in verses or songs. Thus the jurisconsults seem to be the seers and poets of the Romans».

The question is very important to Vico, and we find hints also in his epistolary. In particular, we mention here a letter to Giuseppe Pasquale Cirillo, dating from August 30th 1733, where Vico corrects the younger colleague86.

It has been brought to my attention a rumour which has falsely spread throughout the city, according to which I, with a brief offhand argument, had pinpointed some mistakes in the most erudite speech that your honourable person delivered at the Academy. (…) What I did was to add three simple details that you, for the sake of brevity, have not mentioned. The first concerned the first mask that appeared on Earth, and I argued that it most likely was that of a Satyr: the second concerned the etymology of the word Personae, as the length of its middle syllable preclude the possibility of the word coming from Personare, to resound everywhere, and the smallness of early theatres would not call for such a practice: and showed how it came from the ancient word Personari, from which had originated Personatus,

26. NSAb, § 1033-1035, 1037; G. Vico, The New Science, pp. 349-350, id., Scienza nuova, pp. 317-319: «Si portarono in piazza tante maschere; quante son le persone, chi persona non altro propriamente vuol dire che maschera; e quanti son i nomi, i quali, ne tempi de' parlari nostri, che si facevan con parole reali, doveter essere l'Insegna delle famiglie; e sotto la persona o maschera d'un Padre d'una famiglia si nascondevano tutti i figlioli, e tutti i servi di quella; sotto un nome reale ovvero Insegna di casa si nascondevano tutti gli agnati e tutti i gentilissi della medesima; (…) La ragione esiste da' Principii della Poesia che si sono sopra trascritta, che gli Autori del Diritto Romano, nèl trah, che non potevano intendere universali intelletti, ne fecero universali fantastici; e come poi i Poet per arte ne portarono i Personaggi e le maschere nel Teatro; così essi per natura innati avevano portato i nomi e le persone nel Fono (…) perché persona non deve essere detta da persona, che significa resumere dapprima (…) ma dev'esser venu da persona (…) sentir più di fere (…) e da tal origine del verbo (…) confiteramur che gl'italiani dicono Personaggi gli uomini d'altro stato e di grande rappresentazione (…) e dalle maschere, le quali usarono tali Favole Dramatiche e vere e severe, che furon dette personaggi, derivano nella doctrina De Personari la prima Origine».

masked, which among the early Latins it meant dressed with animal skins.

Masks and characters "brought by art" onto the stage originate, according to Vico, from "names" and "persons" meeting in the market square to sanction the authority of political choices and draw the boundary inside which those decisions could be implemented. Further, states Vico: from the true and severe masks, called personae, present in dramatic fables, originate those persons who are the object of the De jure Personarum doctrine. Before being a concept ("intelligibile universale"), the person is a mask standing for all the individuals belonging to the same family. The mask is described here as a family coat-of-arms, like an imaginative universal.

From here originates the notion of legal person. And even concerning this topic, modern philosophers of law do not contradict Vico's position. Francesco Galgano, for instance, shows how the modern conception of legal person, still accepted by contemporary law, is actually a metaphor, originating from ancient fiction: "The notion of person, employed in classic Roman law to designate human beings, during the Middle Ages is broadened in order to include collective bodies, then still known under the Roman name universitas". For example, in the 14th century, Bartolus of Sassoferrato wrote: "universitas proprie non est persona, tamen hoc est fictum positum pro vero, sicut ponimus nos iuristae." As Galgano explains, Bartolus moves from a premise "which grants only to human beings the status of proper persons, that is, they are such only in the natural world; hence, the idea that organized collective bodies can be seen as persons is fiction created by jurists, and it has validity only in the restricted field of law, as fictio iuris." "It is imago quaedam, adds Baldus". "Only between the 17th and 18th century, in the context of the general redefinition of the entire body of jurisprudence undertaken by the School of Natural Law, persona ficta effectively becomes a real person: the metaphor — imago quaedam, as Baldus had termed it — gets translated into actual reality, and alongside the persona naturalis, Grotius places, with a fundamental parity of rights and duties, the persona moralis. Consequently the "as though", implied in every metaphor, and in every legal fiction, is converted into an "is": collective organizations may well be regarded as persons, but only for the purposes of law."31

It is precisely on the civil functionality of the "as though" that the "master key" of Vico's Science is based. With time, he writes, violence starts to abate, and a breach is slowly opened which brings about a different way of administering justice. True force is replaced by fictional force, violence is exorcised through its "imitation", through a ritual representation that preserves the memory of old rituals, but forges its most brutal effects. Consequently, property rights evolve by discontinuing physical action and using imitative acts as replacement.

Part of the same development that leads from violence to symbolic acts, fictio makes its appearance in ancient Roman law, in order to hold off the embarrassment aroused by the brutality of such violent acts, felt to be more and more unacceptable. The part for the whole — in other words, a symbol — compensates the whole of a ceremony that has lost its justification.

The relationship to the sacredness of the formula becomes more and more problematic: historical developments and the new needs of the social body make the rule appear excessively strict. But in order not to undermine the formula, to preserve the inviolability of the letter, imaginary situations are created, fictive contexts and figures that act in order to discipline the new needs. Already in the De ratione, Vico reflects on the statute of fiction and of its crucial mediating role between new needs that changing circumstances imposed on public and private interests, and the contrasting duty to abide to the law.

28. Galgano comments the consequences, which are still up to date, of this "transfers" from "as if" to "as". "However, it is unreasonable to take the metaphor too seriously and proclaim that always and in effect legal persons are persons, credit instruments are physical objects, immaterial goods are goods. This is not an obvious detail. The greatest masters, and sentences by the highest courts as well, have incurred in the mistake of considering the metaphor as reality, drawing conclusions that had the appearance, but only the appearance of rigorous logical deductions. Such is the case for legal person, which judges and lawyers had considered an actual person for too long, while experience shows how it could be, as it is clear from the etymology of the word, nothing but a mask, concealing unspeakable human interests." (F. Galgano, Le istituti del diritto privato, pp. 22-25 passim.)

29. In his investigation, Vico gives a lot of attention to this crucial passage, for instance one chapter in De uno devoted to "substitutes for violence; property, ownership, promises, punishment, combat, contract" (OC, § CXXIV, G. Vico, Onde la prima, p. 109). Id. De uno, p. 77: "Imitations violentiae: mancipatio, usucapio, usurpatio, obligation, vindicatio, manus consortio, conditione" (De uno, CXXIV, pp. 144-145).

30. See P. Gasparinelli, who underlines the steps of a transition from property law seen as direct concrete and material responsibility towards objects, to a dominium which is seen for the first time, in the thought of Roman jurists, as abstract and hence a juridic institution. Therefore, a chronological succession of juridical attitudes that are more and more refined and developed: an early one linked to "tangible" elements, and a later one more mature and allowing for technical rationalizations (Dalla "politica poetica alla regola di Stato", p. 57).

31. De rai. § XI, On the Study Methods of Our Time, p. 53: "At times, necessity to protect the common welfare, and at times, private utility, dictated the introduction of some new rules infringing
Ancient jurisprudence, according to Vico, deserves praise because it had preserved and safeguarded the norms in force without ignoring the call for equity required by changing circumstances. Roman citizens, taken as prisoners in foreign lands, maybe while fighting for their own country, would originally lose every right, starting from citizenship itself. If they died, their will would be automatically made void. The *Lex Cornelia* comes to remedy this injustice: it dictated that the captive who dies in prison had to be considered *as though* he had passed away as a free man in *civitate*: such a fiction made sure that his will would be executed.

The institution of fiction, according to historians of Roman law, is often closely linked to questions of space, for instance, *fictio* about the *ager Romanus* or *fictio* about the *ager Hostiarius*. Here we find an interesting

...
into "fictional" ones using less valuable objects. This was expression, for Todescan of a symbolic primitivism, devised by putting wax or clay reproductions in place of "real" animals, because they were considered in the pontifical ritual as equivalent of the object they represented. This process, according to Demelius, shows the religious foundation of fiction. It is interesting to note, however, that when certain principles scattered throughout the religious ritual became an organic system of simulations, there emerged a character of normative equalization, that marks the passage from "symbol" to juridical fiction in the strict sense. In this perspective are to be understood the famous expressions of the ancient Roman ius sacrum: "in sacris simulata pro veris accipiantur" and "quod dictum est quasi actum, videtur etiam actum", that indicate the origin of magical-symbolic representation as they could be preserved, in secular form, also in the ius civile.

Ernesto Bianchi elaborates on the topic, as he traces the origin of fictio back to the evolution of sacrifices in symbolic direction. The creation of a "principle of avoidance, real and not just formal," takes place with a series of replacements carried out during most rituals in order to make them bloodless. Scrutinizing the sources that describe those substitutions and focusing on the criteria that regulate them, the scholar, who does not mention Vico, reaffirm the latter's fundamental discovery.

As to Procrustatio, for instance, Plutarch, Ovid and Arnobius show that the purgative ritual that had to performed after a thunder stroke, with offers of onions, hair and sareines to Jupiter, traces its roots to a negotiation carried out between the God himself, who demanded that expiation had to be made through human sacrifices, and king Numna, who was looking for alternatives. Eventually, Jupiter accepted capitales (hair) and cepa (onion) for capita (heads), κεφαλαί (sardines) for κεφαλά (heads).

42. E. Bianchi, Fictio iuris, p. 40.
43. Plutarch, Numna, 15; Ovid, Fasti 3, 339-44; Arnobius, Adversus Nationes, 5, 11.
44. E. Bianchi, Fictio iuris, pp. 46-47. In the like manner, during Saturnalia (which were celebrated between December 17th and 21st), a replacement function for human sacrifices is recognized to human figures thrown in the Tiber and to burnt candles. (43) According to Varro’s version, as told by Macrobius, the Pelasgians, once arrived in Latium, thought they had to obey Apollo’s verdict that asked them to sacrifice to Ditis human heads and men to Saturnus: (44). This tradition identifies Hercules as the figure who made possible to change the ritual and make it bloodless; the stratagem suggested by the demi-god was based on the ambiguity in Greek, and even more in Doric, of the word μαν, beside meaning "man," also indicate "lights." Further, during the ritual of Pahbaris, celebrated during the calend of June, broad beans, speck, and land were offered to Carina, goddess of hell, with the purpose of keeping off the mythical striges birds, avid, according to tradition, of children’s bloods: here the replacement, as chosen in the light of some element of physical resemblance (it is the case of the broad beans, with their shape that reminds of a human foetus. To placate the infernal beasts, instead, Proci’s wet nurse asks help to Cranios, who suggest

The paradigm at the core of these replacements, that might be worthy of inclusion in Lacan’s writings, is clearly of rhetorical nature; in fact, in these cases, as with many other that Bianchi relates, we are dealing with analogical principles, phonetic associations, external resemblance, ambiguity, contiguity, etc. In order to contain violence without breaking a law that is violent, humans replace, move, play with sounds, find resemblance. Like metaphors and figurative meaning, narrations, brief and simple stories, too, are born out of fear and of the attempt to overcome it. Nonetheless, they respect the law.

Fictio iuris, writes Todescan, is introduced and afterwards used with vigilant awareness by the main bodies of Roman administration: legislator, magistrate, jurists. It belongs in the main fabric of the juridical experience in Rome; it is born and carried out in the multiple forms imposed by historical and social needs. And if these boundless forces of juridical creation demand deep transformations in content, the necessary guarantee of incontestability demands respect of external forms. In this contradiction it is perhaps to be found the original source of the use of fictio, which will prove to be a flexible tool in the development of Roman law. By means of fictio, the action of jurists and magistrates, in regulating the interests ofives, implements, against some problematic points in the ancient ius civile, the protection of the new relationships. The legislator, jurisprudence and the magistrate, thanks to the intelligent use of several technical devices, — fictions in the first place — help law in its development, making it fit to meet changing needs.

Vico’s accomplishment is to have understood that this "technical device" discovered by ancient law is fundamentally imitation of nature, potetic activity, inventio. That fictiones are born, like imaginative universals, out of sensorial experience, and out of the metaphors (trasporti) in sensorial perceptions; that characters and scenarios present in Roman law are substantial to characters and scenarios of poetry. And that therefore the ancient civil Gius, through which "truth invades the certain and sure expression of the laws", is a symbolic configuration of the natural gius, and ancient jurisprudence is almost like a poem, as we already read in De uno.

offering the raw interioris of a sow (Hovid, Fasti 6, 143 sq.), a replacement based on the fact that the Latin name of the animal (pœna) is the anagram of the girl’s (E. Bianchi, Fictio iuris, pp. 47-50).
45. But before bothering with Lacan, we might recall Aristotle, both Rhetoric and De memoria et reminiscencia 432a 16-25, where the philosopher shows how memory proceeds starting from something similar or opposite or strictly connected. This passage has been singled out as the first formulating of the association principle about resemblance, diversity, contiguity; in particular the association by contiguity and resemblance is at work in that analogic-projecting principle that is at the basis of the main rhetorical figures such as metaphor or metonymy.
46. F. Todescan, Diritto e realtà, pp. 21-22.
47. OQ, § I CLXXIII; On the One, p. 18: ‘In the introduction to his Institutes, Justinian called all these fictiones of the ancient civil law “fables of ancient law.” Lawyers protected the certainty of the
In the clash between word and existence, the latter undergoes a complete restructuring. Before the appearance of the feminine law, flexible and adaptable, and the iron one is still in full force, it is fictio iuris that gives flexibility to the real world, extends its boundaries by introducing new ontological configurations; in this hybrid space, kingdom of verisimilitude, natural equity appears. Thus in all legal fictions that ground all positive law, writes Vico, «there is to be found a truth dictated by reason». Truth pushes forth, paradoxically, from fiction. From a “possible world”, whose existence is factum, it depends, that is to say, form the “activity” of its creators. Personifications, temporal constructions, imaginary events, i.e. civil law by means of them, and by means of these same fictions and fables the truth of the natural law emerged. Thus was said about a particular case of adoption, an imitation of nature, can be said about the ancient civil law in general: that original Roman jurisprudence could quite acutely be called a kind of poem. From this poem came the natural law of the gentes and the later natural law of the philosophers. Both developed from a perpetual false told with innumerable and various characters, yet told with the grace and propriety of Roman law and with the gravity and dignity of the laws and with their constancy and integrity. De uno, p. 190: «...Civile antiquum juris Naturales Fabula — Per certum verum verum — in civile antiquum imitatur naturam. Priscus Jurisprudencia Poema quoddam. Sed per has omnes Juris antiqui quiones, quas ex iuris loci genere, cum justiniano in institutionum Proemio juris antiqui fabulas dixissent, et per qua jurisprudentes Juris Civile curabant, per eas ipsas fictions et fabulas, Juris naturales verum evanescat. Quae quid in specie dicatur de adoptione cum imitatur naturam, id ex generi universali de omni Juris Civile antiquo dicere quis potest, et quae acuta vere coniceris priscorum Romanorum jurisprudentiam, poema quodnam fuisse, quod primum juris naturalis genetur, denuo juris antiquis philosophorum, popetaum fabulam sub innumeris et variis personas egisse, cum Romanis juris dixeretur, sive lapsum legum gravitate et constanter. Sed in Toscana, Dominico e melà, p. 15 n., in cuius use of fictio in juridice practice is attested since the Sumerians, in the second millennium BC, concerning the recourse to adoption with the purpose of circumventing the inalienability of feudal goods.

48. On the “classical” conceptions (which is already present in roman) of fictio iuris, in which «...not only the nature of the事物 and equtiy was highlighted “omo fictio est introduc ta ex quattuor naturae acquirer”, But: see, A. Bottoni, “De una, p. 190, with reference to Bartolus de Saxoferrato, In primam Digesti Novi partem commentary, Lugduni, 1851, ad I. 3. 1. 187 pro emptore, ff. De iucunobis et usurpationibus (D 41-1 17) 2. 1.

49. O.C. § I LXXII; In the One, p. 190; De uno, p. 190: «Quae verum omnia fictio, quae omnes juris voluntarii sunt (...) substantia quoddam verum ratione dicatur».

50. We are pointing here to the complex question concerning the semantic of fiction and to the Brito’s argument about «...the existence of these, or linguistic existence (idea taken from Andrea Bonomi, but differently articulated), that vis non proper “objective” existence, “created” by the text but at the same time chained to the text. It relies on our metalinguistic activity, which is an activity, performed by us. Although bound by language (...) “existence” can take on only a pragmatic character. And if the pragmatic character is constitutive, then the suspension of belief is completely legitimate” (R. Brito’s, “Semantica della finzione”, in Id., Critica della ragione poetica e altri saggi di letteratura e filosofia, Turin, Bollati Boringhieri, 2002, p. 216). On fiction and the question of illusion and substitute, with reference to Vico as well, see A.M. Iacono, L’illazione e il sostituto. Riprodurre, imitare, rappresentare, Milan, Bruno Mondadori, 2010. On fiction and semantics of possible worlds, see N. Goodman, Ways of Worldmaking, Indianapolis, Hackett, 1998; K. Walton, Mimesis as Make-Believe: On the Foundations of the Representational Arts, Cambridge (Mass), Harvard University Press, 1990; A. Volfoni, Lo far finta e i suoi oggetti, Rome—Bari, Laterza, 2010. On fiction as the semantics of possible worlds in a literature perspective, see M.-L. Ryan, Possible Worlds, Artificial Intelligence, and Narrative Theory, Ithaca, Indiana University Press, 1997; A. Bonomi, Lo spirito della narrazione, Milan, Bompiani, the «fables» popularizing ancient jurisprudence, thus, explore the real and make it knowable.

On these same principles, because they did not understand abstract forms, they imagined corporeal forms, and they imagined them, after their own nature, as animate. Heredities or «inheritanze» they imagined as mistresses of hereditary property, and they recognized her as entire in every particular item of inherited goods, just as when they presented to the judge a hump or cloth from a farm, they called it hump fundum in the formula of rei vindicatio. Thus, if they did not understand, they at least sensed in a rough way that rights were indivisible. In conformity with such natures, ancient jurisprudence was throughout poetic. By its fictions what had happened was taken as not having happened, and what had not happened as having happened; those not yet born as already born; the living as dead; and the dead as still living; estates pending acceptance. It introduced so many empty masks without subjects, i.e. the same subject, rights invented by imagination. It rested its entire reputation on inventing such fables as might preserve the gravity of the laws and do justice to the facts. Thus all the fictions of ancient jurisprudence were truths under masks, and the formulæ in which the laws were expressed, because of their strict measures of such and so many words admitting neither addition, subtraction, nor alteration were called carminia or «song»... Thus all ancient Roman law was a serious poem, represented by the Romans in the forum, and ancient jurisprudence was a severe poetry?

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