Why Law’s Objects Do Not Disappear: On History as Remainder

“The animal lives unhistorically: for it is contained in the present, like a number without any awkward fraction left over.”¹

One of law’s more supple conceits is its ontology of equivalence. The equivalent stands for, it supplants, that which otherwise exists in life’s discordant realm of spatial, temporal, material, corporeal, sensorial difference. Equivalence renders the inhabitants of that realm (whether people, or things, or relations) commensurate, as completely as may be necessary for their induction into another immanent reality – the universe of legal recognitions and transactions. In that universe, once restated as legal persons, physical persons become – for civic or commercial or criminal purposes – correspondent. Their differences evaporate. They become “bodies.”²

Once restated as property, physical objects, however unlike in kind, begin to manifest essential commonalities, become components of a category, homologized by the application of a legal ontology. Discourses of contract render relationships as diverse in their intimacies as marriage and employment transactionally congruent. Law transubstantiates difference, produces sameness. In the service of managing life, law energetically annihilates liveliness.

Law obliterates difference amongst the objects of its attention by containing them within an imaginary dimension of perfect exchange. The containment is temporal, predicated on the fiction that at the moment of its apprehension, which is necessarily the present, that which differentiates the particular object of law’s attention from its equivalent has simply ceased to be. The object is recreated “like a number without any awkward fraction left over.” But the transubstantiation is never perfect. There is always an uncontained remnant, the agio or excess, the “awkward fraction left over,” the obstinate remainder that defies the perfection of equivalence, the symmetry of its exchange. We know it is there because it expresses itself to us as the object’s past – its revenant once-was. “[I]t is a matter for wonder: a moment, now here and then gone ... returns as a ghost and disturbs the peace of a later moment.”³ Let us call this surviving remnant the object’s soul; not just its once-was, that is, but its living-on. And let us think of history as the means by which the soul communicates its living-on.

² Just as, for an astronomer, a “celestial body” is any natural body outside the Earth’s atmosphere.
This essay explores three propositions, or ways of thinking: of law as a dimension of perfect exchange; of objects’ surviving traces as souls; and of history as the means by which those surviving traces live on either with or against (but always separate from) law’s transactional transubstantiations.

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