

CHAPTER 1

Owning Things

Bags without people don't make sense.

—Notice on municipal river transport plying the
Brisbane River, Queensland, Australia

Spinoza thought that volatility of the human mind and the velocity of things were largely remedied by justice, “a fixed intentment to assign to each person what belongs to them” (Spinoza 2007: 203). This would slow the passage of property and calm the emotions. Hume was not so sure. Although distributive justice certainly hindered the rapid movement of things from hand to hand and caused a corresponding drop in turbulence of mind, there were plenty of events capable of disturbing “the stability of possession” (Hume 1978: 491) and precipitating “looseness and easy transition” among things (488). Invasions of property from outside, in the form of theft or war, could do it; or disturbance could come from the inside in the form of caprice, madness, and death. In such cases, three distinct factors would affect the tenure of property: first, the fixedness of possession would be disturbed; second, the continuity of the consciousness of possession would be interrupted; and third, a thing would be freed from the dominion of an owner, moving with varying degrees of impetus toward another, or toward independence. In the event of these contingencies, the fugitive qualities of minds and things characteristic of a state of great scarcity are restored: the food of humans flies at their approach (485), and they themselves recur to “that savage and solitary condition” that Hume always wanted to call a fiction, “a mere philosophical fiction,” “an idle fiction” (496, 493, 494) but which here defines for him the uncertain tenure of property. In the wilderness outside the city limits of Athens, the effects of such uncertainty are exactly noted by Robin Goodfellow:

Their sense thus weak, lost with their fears thus strong,
Made senseless things begin to do them wrong.
For briars and thorns at their apparel snatch;
Some sleeves, some hats—from yielders all things catch.
(*A Midsummer Night's Dream* 3.2.26–30; 1994: 190–1)

In this chapter I mean to chart the change from fixed possession to the looseness of things, and from calmness to passion, by way of introducing

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the manifold transformations that will be the theme of the rest of the book. But in anticipation of its eighth and tenth chapters, I want to suggest also that there is a kind of fixed tenure possible outside the government of civil society to which authors and intellectual property may jointly aspire. I have already outlined in the Prologue how sudden emergencies capsize the hierarchy of things and people, elevating the former to the condition of gods and depressing the latter to the condition of animals. These emergencies seem to arise from two antithetical motives. On the one hand, we find that the desire to fix property contractually beyond the faintest likelihood of truancy is a sure method to make it delinquent; and on the other, it is plain that to gain property without contracts is a state of war, in the course of which passions are stirred and all sorts of things take flight. The chief example I shall give of an overweening attachment to property is entail, a late innovation in the law of feudal tenure which appeared to allow an owner to own a thing forever, posthumously and without limit. I want to show how this attempt to glue things to the person was counterproductive. As for the state of war, it is useful to consider Nestor's characterization of the man addicted to battle as cursed and outcast, "void of law and right,/ Unworthy property" (Homer 1959: 166 [IX, 63]), together with Aristotle's comment on "the war-mad man" as one who is "like an isolated piece in a game of draughts . . . the figure of a man as an amputated hand is the figure of a hand, but neither enjoys the *condition* of man or hand, and is thus *another thing*" (Aristotle 1992: 60). I hope it will appear that as humans become more like things, things acquire the serene self-sufficiency typical of all personifications, in representing only what they are and nothing else. These personifications are the consummate agentive form of loose things, under whose dispensation human figures are so confused and passive that they can scarcely begin a history of their subjection unless they learn a thing or two from those very things, so secure in themselves.

PROPERTY

Mankind labours always in vain, and to no purpose . . .
because it does not know the limits of possession.

—Lucretius, *De Rerum natura*

When Blackstone said that the owner of property enjoys "that sole and despotic dominion, which one man exercises over the external things of the world, in total exclusion of the rights of any other individual in the universe" (Blackstone 1773: 2.2), he summarized a tendency in the

theory and practice of property-owning that had been growing stronger since the Reformation and became explicit by the seventeenth century. Basically this tendency involved a weakening of the feudal conception of property as a conditional right, held within a network of political and social obligations, and a corresponding strengthening of an impulse toward the unconditional and exclusive appropriation of what Blackstone calls “the very substance of the thing” (2.4). The desire of such absolute possession was destined to revise the feudal division between chattels real (land and the privileges belonging to its occupier) and chattels personal, such as clothes and ornaments. Under the system of feudal tenure, the latter were considered ephemeral and relatively unimportant because they fell outside the law of seisin, which by the end of the middle ages referred solely to property recoverable in real actions—real estate in short. You could be seized in a fee—tenure of an estate—but you could not be seized in portable property. The ancient law-books, says Blackstone, “entertained a very low and contemptuous opinion of all personal estate, which they regarded as only a transient commodity” (1773: 2.384). This explains why medieval law never mentioned ownership as such, concerning itself rather with the details of the fee, which embraced rights and restrictions deriving from an original act of homage to the king extending to embrace the future line of heirs to whom the real estate would descend (Simpson 1986: 41, 116, 61). This distinction between real and personal property was buttressed by a paradox. The quality which rendered tenured land real was not just its immobility but also its incorporeality, for even though it subsisted in houses, fields, and streams, these were the clothing of a set of ideas about duties and rights which cohered under the general heading of tenure. Advowsons, views of frankpledge, fee-farms, escheats, reliefs, rents, and reversions—the litter of invisible entitlements and duties that constitute the estate of Shandy in the marriage contract of Tristram’s father in *The Life and Opinions of Tristram Shandy*, for example—distribute fiefs as abstract entities throughout political space and genealogical time. Contrariwise it is the mere materiality of chattels personal that renders them inconsiderable and evanescent. They are no more than the weight in your hand at the moment of holding them: the substance of a thing lasts no longer than that.

The opposition between the high value of the incorporeal real and the low value of the ephemeral substance was destined to alter. Blackstone observed that the extension of commerce and trade brought mobile chattels, or personalty, almost to the level of realty. Merchants and stockjobbers took the private possession of the substances of things very seriously, having greatly augmented both the circulation and the value of articles such as “animals, household stuff, money, jewels, corn, garments, and everything else that can properly be put into motion” (2.387). What

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Blackstone calls “possession absolute” (2.389) comprises both right and occupancy resulting in that sole, despotic, and exclusive dominion exercised by an owner over the substance of a moveable thing; and this is owing to the elevation of personalty from its precarious status under feudal law into its robust modern form of the exchangeable commodity. As that division of property strengthened, so realty weakened, never having been susceptible to absolute possession. Various adjustments were made to laws of tenure to deal with the problem. The terms *forinsec* and *intrinsec* were coined in order to distinguish inalienable feudal duty to the crown from subinfeudation, a bargain struck over subsidiary grants and fees that were carved from the original feud (Simpson 1986: 5). Blackstone calls this the difference between proper and improper (or derivative) feuds, the former being founded on military obligation and honor, the latter being “bartered and sold . . . for a price” (2.58).

The most improper feud of all was an entail, although it masqueraded as a return to the feudal ideal of real estate as immobile in space and indivisible in descent. By means of an entail, the holder of an estate nominated a line of inheritance, usually through the males (tail male), although it could be devised for females (tail female) or for either gender (tail general). James Boswell and his father quarreled over the entailing of the Auchinleck estate, whether it should be secured for the succession of heirs general or heirs male (Boswell 1980: 666). In three important respects entail departed from the concepts on which the abstraction of real estate was founded; and in another it seemed to sustain them. What it sustained was the physical integrity of the estate, which had to descend undamaged from heir to heir; and in this it seemed to provide a guarantee for the imperishability of realty. But in the case of entail there were no heirs in the feudal sense of the term, for each succeeding occupant was in fact a tenant for life, a steward of what was only held in trust for another tenant, and so on down the line. The fee simple was lodged forever with the original donor, long dead, and each succeeding tenant was obliged to trace title not from the previous occupant of the estate, but from that first donor, leading to tangled and improbable lines of descent which made less and less sense in human terms, as Mrs. Bennett remarks in *Pride and Prejudice* (Simpson 1986: 61; Macpherson 2003). Johnson believed that entails ignored the change of times and opinions, adding, “I know not whether it be not usurpation to prescribe rules to posterity, by presuming to judge of what we cannot know” (Boswell 1980: 668). With regard to the tenants, there were limits set on feudal penalties for failure of service because they were not vassals: for an act of treason the entailed estate could not be forfeit beyond the life of the traitor, and after that the entail resumed. It was clear at least to Blackstone that the originator of an entail was intending to defeat three principles of feudal law. The first

was continuity of blood, for if it was impossible to attain an heir in tail, there was no true genealogical line of descent. The second was the axiom of common law that all property must cease at death:

For, naturally speaking, the instant a man ceases to be, he ceases to have any dominion: else, if he had a right to dispose of his acquisitions one moment beyond his life, he would also have a right to direct their disposal for a million of ages after him; which would be highly absurd and inconvenient. (2.10)

Yet this immodest aim impels an entailed estate through all the odd traverses and casualties of successive tenancies. In the motive for the immortality of a fee simple lies the third breach of feudal law, namely, the transformation of realty into personalty, the metamorphosis of a conditional into an absolute possession. Blackstone assigns responsibility for this innovation to noble families who wished to keep their estates intact within the family (2.112). Brian Simpson thinks it more likely to have been the ingenious plan of savvy parvenus, particularly lawyers, who, having purchased land, took steps to prevent its subsequent alienation by exercising a special form of despotic dominion over it (Simpson 1986: 209, 235). In any event, under entail immobile property began to function as if it were mobile, but not by means of the contracts and bargains which stimulate the rapid movement of commodities. Instead, the absurd ambition of a dead person endowed an estate with a kind of autonomy. It moved from hand to hand by virtue of its never being thoroughly owned at all, although the impulse that actually set it free was the human ambition to own its substance fully and without limit.

Blackstone says that, as a result, entails “were justly branded as the source of new contentions and mischiefs unknown to the common law” (2.116). Lord Hailes thought them an encroachment upon the dominion of providence (Boswell 1980: 673). Lord Kames called entail the idolization of property, a “swollen conception” that transgressed nature and reason (Kames 1788: 4.449). The breaking or barring of an entail could be accomplished only by means of fictions as absurd as the ambitions of those who, as Lord Nottingham said in his judgment upon the Duke of Norfolk’s case, “fight against God, by effecting a stability which human providence can never attain to” (cited in Simpson 1986: 226). These were fictions of entry, recovery, and settlement, by whose means a tenant collaborated with his heir in the pretence of occupying and then alienating the estate from the defunct owner of the fee, who was now no longer in a position to object to the injury. Alternatively, there were ways of mortgaging the estate almost to its full value, and then buying another (Simpson 233; Blackstone 2.117). Effectually a fiction of immortal and absolute possession is confronted by a counter-fiction of sudden

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occupancy and usurpation, proving (if any proof were needed) that the thing in contention, the real estate, was more “real” than the methods of owning it.

FICTIONS OF THE CIVIL STATE

How the wit of man should so puzzle this cause to make
civil government and society appear a kind of invention and
creature of art, I know not.

—Lord Shaftesbury, *Sensus Communis, An Essay on the
Freedom of Wit and Humour*

If this was happening at law, what was happening in the zone of political theory? In 1646, feudal tenures were abolished by Parliament, followed three years later by the execution of the king, an event that put a decisive end to the continuity of royal succession on which the concepts of feudal tenure necessarily depended. The incorporeality of realty and the rights of personalty required radical redefinition, and this was largely supplied by Thomas Hobbes and John Locke in their rival theories concerning the origin and structure of civil society and the nature of property. These were developed against a background of Continental thought concerning natural and civil law whose chief architects were Hugo Grotius and Samuel Pufendorf. The premise guiding the work of all these thinkers was that the state is constructed by human beings for their own advantage: that it has a distinct point of origin in an agreement to unite in a commonwealth, and that its history is an account of how the ends proposed by its foundation, chiefly self-preservation and the securing of property, are fulfilled in action. At the core of every discussion of civil society is the conjectural transition from the state of nature to the amenities of civil life, when some form of contract or covenant is supposed to have been ratified between the people as a whole and the representatives of the government to which they submit. In order to establish this point of origin in the history of rights, it was necessary to invent an account of the state of nature, a condition of life that was unrecorded and unremembered. Rather like the breakers of entails, then, theorists of civil society made their approach to the real by way of a fiction.

Not surprisingly, these fictions varied. Both Pufendorf and Hobbes believed the state of nature to be one of extreme privation, both savage and uncertain, although Pufendorf allays the horror of it by claiming a limited kinship among its inhabitants (Pufendorf 1991: 119). Hobbes makes no such concession, maintaining that there is no natural right, especially the right to property, that can be vindicated in such a condition, which he

calls a state of war: every man against every man. Grotius, on the other hand, dates the human dominion over nature from this period. “From hence it was, that every Man converted what he would to his own Use, and consumed whatever was to be consumed; and such a Use of a Right common to all Men did at that Time supply the Place of Property, for no Man could justly take from another, what he had thus first taken to himself” (Grotius 2005: 2.420–421). Locke is not so hesitant, declaring that whatever thing is taken from nature and converted by labor into the means of self-preservation is a property, and so inalienably ours that it can be no one else’s except by a singular breach of natural law (Locke 1963: 328; 314–15 [2.11.25; 2.26.1–18]). Moreover, the development of property from articles of present use into materials stored against future emergencies, and thence into commodities at first bartered and then exchanged for money, is a process consistent with a state of nature. Civil society, as far as Locke is concerned, comes about by an act of free will on the part of each individual, not as a compact forced upon creatures fearful for their lives, “For Truth and keeping Faith belongs to Men as Men, and not as Members of Society” (Locke 1963: 318 [2.14.20]). Of the four versions of the state of nature, Locke’s aims to be the least fictional because the transition from a natural to a civil state is a continuum involving a consistent self and an unrestricted right to the property necessary for its preservation. What is real now was real then; there is no fictional beginning—a proposition tested by Defoe in one of the earliest English novels, *Robinson Crusoe* (1719) and found (at least by a majority of its readers) to be true.

In their histories of the establishment of property Hobbes and Locke are therefore diametrically opposed. During the war that persists in a state of nature, there is, according to Hobbes, “no Knowledge of the face of Earth, no account of Time; no Arts; no Letters; no Society” (Hobbes 1996: 89). There is nothing one can call one’s own, or even remember, until a property is made. So histories of the self and nations begin only when (as Hobbes says again) “every man [has] his own”: for “where there is no *Own*, that is no Propriety, there is no Justice” (Hobbes 1971: 58). And to those like Locke who might say that property is acquired and justice maintained in the peaceful conversion of natural things to use, he puts this devastating rhetorical question: “How gottest thou this Propriety but from the magistrate. . . . We would have our Security against all the World, upon Right of Property, without paying for it. . . . We may as well Expect that Fish and Fowl should Boil, Rost and Dish themselves, and come to the Table; and that Grapes should squeeze themselves into our Mouths, and have all other Contentments and ease which some pleasant Men have Related of the Land of Coquany” (Hobbes 1971: 66). When Locke says that the venison that nourishes the American Indian

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“must be his, and so his, i.e. a part of him, that another can no longer have any right to it” (Locke 1963: 328 [2.26.14–18]), in Hobbes’s opinion he is dreaming of a utopia or a romance, where deer offer themselves to be eaten, just like the grapes, nectarines, and peaches in Marvell’s *The Garden*. In Hobbes’s narrative of the transition from a state of war into a state of civil peace, the problem of self-preservation without security becomes so urgent and terrifying that people agree with one another to come under the government of a commonwealth, a union he figures as Leviathan or the body of the people, which union is represented in its turn by a sovereign. Natural men, authors of their actions, are now obedient to an artificial man who acts on their behalf. The world is thus divided between those who formerly had rights they were incapable of enforcing, and a sovereign who enforces them with his sword. This is the difference between individuals who once were natural persons and acted by their own authority (“Authors”) and artificial persons who represent them and operate vicariously by virtue of the authority transferred to them from the people (“Actors”) (Hobbes 1996: 112). From that source of sovereign power duly delegated derives the capacity of the magistrate to exercise justice and apportion property. There is no other way to own a thing.

Despite their radically different approaches to property, Hobbes and Locke agree that justice is a matter of an individual’s relation to things and not, as Aristotle maintains, a proportionate or fair relation between people (Aristotle 2003: 257 [V.i.8]). The issue is not one of fairness but of security of possession: being sure of owning a thing. Once property is guaranteed, then a sequence is formed that can be delivered as an account. Each sees an intimate connection between possessing and telling things. A self preserved by what is its very own can begin a narrative of its life: “For that which in speaking of goods and possessions is called an Owner . . . speaking of Actions is called an Author . . . he that owneth his words and actions, is the AUTHOR” (Hobbes 1996: 112). So says Hobbes, eliding the distinction between the “Actor” and the “Author”; but Locke would not disagree. Having demanded, “Can [a man] be concerned in his actions, attribute them to himself, or think them his own?” (Locke 1979: 2.27.14; 339), he affirms that a man can and must, and so produces his definition of a forensic personality as one which “extends itself beyond present existence to what is past . . . whereby it becomes concerned and accountable, owns and imputes to itself past actions” (2.27.26; 346). The word “own” extends itself to comprehend both the means of self-preservation, what one *owns*, and the account of the experience of preservation, what one also *owns*. The security of the one account warrants the truth of the other. The action of preserving the self, the history of its preservation, the ownership of property, and the

authority of the civil state are all inextricably entwined in the one narrative enterprise.

Hobbes recognizes there is no longer any pure authorship in his commonwealth, so his narrative is filled with useful fictions, chiefly composed of the artificial figures of Leviathan and the sovereign who, together with their delegates, represent the authority that was consolidated with the establishment of civil society. Government is transacted not by authors but by a series of actors, artificial persons representing people whose real authority lies in an immemorial past. When Hobbes includes in this pattern of state authority representations of things that never could have been authors, such as fools, madmen, churches, hospitals, and bridges, then the level of fiction necessary to the conduct of the state rises. “There are few things, that are incapable of being represented by a Fiction” (Hobbes 1996: 113). How can authors of such fictions draw limits around their inventions and determine their relation to truth when they are themselves creatures of similar fictions, owning actions that are not theirs? The answer as far as Hobbes is concerned is that there is a difference between good and bad fictions. Good ones serve the cause of the commonwealth, bad ones give individuals the illusion of a power they no longer possess, for example when they claim what is not theirs, or say they have done what they never did. When, for example, Locke declares that a man in a state of nature can lay claim to absolute dominion over whatever he picks up, or claims that a convention or contract requires no sacrifice of personal authority, he would be embarked in Hobbes’s view upon a bad fiction. For his part, Locke would rejoin by pointing out that anyone who is obliged to own an action in the name of someone else has forsaken title to property and identity alike, and is no different from the man who thought he was simultaneously the mayor of Queenborough and Socrates.

In his discussion of justice, Hume inclines to Hobbes’s judgment insofar as he distinguishes between the usefulness of those artifices and contrivances which secure property to an owner, despite the selfishness of individuals and the scarcity of goods, and the “idle fiction” of the state of nature, “a mere philosophical fiction, which never had . . . any reality” (Hume 1978: 494, 496). On the other hand, property is secured by a contrivance that looks very like Locke’s idea of incorporated ownership, namely “by putting these goods, as far as possible, on the same footing with the fix’d and constant advantages of the mind and the body” (489), as if they were as naturally a part of the owner as a limb, or a talent for mathematics. However, this security is achieved by means of an artifice, not a right, and it is made necessary because of the fugitive and mobile state of material goods, their “looseness and easy transition” as well as their scarcity (489): When the primitive human goes hunting, “The food,

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which is requir'd for his sustenance, flies his search and approach" (485). So the good fictions stabilize the relation of the individual to "the situation of external objects" (494), and the bad ones bring about the fluxing state of affairs invented by philosophers, "that savage and solitary condition, which is infinitely worse than the worst situation that can possibly be suppos'd in society" (497).

What is it that molests this fictional stability imagined by Hobbes and Hume, or the evolving state of nature that Locke believes at last merged into the social contract? Well, any event that disturbs the relation of civil subjects to the things that they own, what they both hold and tell, will break up the narrative and alter the relation of human to thing. These events may occur on the outside, in the shape of accidental loss, fraud, theft, or war; or they may originate from within, when madness or death dissolves a person's right to hold property. The framers of entails try to remove a threat that can never be neutralized. Horace Walpole wrote "The Entail: A Fable" to make the point: the butterfly means to entail his manor, the rose; but a small boy trying to catch the insect destroys both insect and flower (Walpole 1758). The moral of uncertain tenure is advertised in the custom of Maori called *muru*, which required that any misfortune, not just insanity and death, be met with the pillage of every item belonging to the afflicted party: "A man's child fell in the fire, and was almost burnt to death. The father was immediately plundered to an extent that almost left him without the means of subsistence: fishing-nets, canoes, pigs, provisions—all went" (Maning 1863: 97). Samuel Butler incorporated this system of double jeopardy into his utopia Erewhon, where illness is regarded as an offense and crime as a malady. However odd such usage may seem to us, it indicates the close correspondence between the degree of a misfortune and the looseness of things that is generally acknowledged in the case of death, when the worst exigency of all prompts all belongings real and personal to shift to new quarters or new owners. Johnson wisely observed in his discussion of entails that an individual in society is never "fully master of what he calls his own" (Boswell 1980: 668).

THINGS ON THE LOOSE

Recover, resist, repel, strive, arm.—War! War!

—Lord Shaftesbury, *The Philosophical Regimen*

If we put Blackstone's definition of personal property (absolute dominion exercised by a human being over the very substance of a thing) alongside these difficulties of Hobbes and Locke and Hume, it is evident that there

is a disparity between what the structure of society allows and what individuals desire. When people go about to obtain absolute dominion over things—for example by means of entails—it is evident that the two meanings of owning (possession and narrative) come under strain. Because we are unable to “judge of what we cannot know” (Johnson in Boswell 1980: 668), it is impossible for the donor of an entail, who has committed what Johnson calls usurpation and Hailes a breach of providential government, to give an account of what he or she has done. It is a story that might be told in a multitude of ways, none of them accessible to its originator. In such a narrative vacuum, the possibility of a thing’s appearing to own and move itself becomes very strong, as when an entailed estate follows the vagaries of a line of descent that becomes less and less predictable, having much more to do with chance or fortune, or maybe with the inclinations of the fief itself, than with the will of the person who set it in train. No one wrote a novel called *The Life and Adventures of an Entailed Estate*, but in *Sense and Sensibility* and *Pride and Prejudice* it is possible to see the outlines of the plot, and how volition passes from people to the land itself. If civil society is conceived of as the occupation of limited tenures in which fictions serve as probable accounts consistent with justice, it is flanked on one side by the dream of natural dominion over things exhibited by Locke’s Indian with his venison, so much his it can never be anyone else’s, and on the other by the fantasy of absolute possession encouraged by legal definitions of personalty. In either case, should an individual entertain the fiction of embodying possession rather than merely representing it, things will start to evacuate the realm of property, challenging the authority of owners and returning to the looseness and scarcity of the savage state.

Grotius’s definition of war describes a limited release of property from absolute dominion. He says, “Before the Right of War can entitle us to any Thing taken, it is requisite that our Enemy had first the true Propriety of it” (Grotius 2005: 3.1323). Grotius’s just war is like trade, except that things move from hand to hand by force of arms instead of by exchange. For him war becomes a problem only when violence prevents the thing passing whole from one hand to another, rendering the principle of property and ownership vulnerable, and amplifying the meaning of the word “spoil.” Fruit trees should be spared destruction because “Trees cannot, as Men may, rise up in Arms against us” (3.1459). He goes on to cite a number of authorities who conjecturally personify this kind of property, as if wittily to emphasize its immobility: First Philo, who has the figure of the Law demand of careless warriors, “Why are you angry with Things inanimate. . . . Do they like Men, discover any hostile . . . intentions against you?” Then Josephus, whose trees reproach men with injustice, being injured in a war that was none of their making. He is

followed by Cicero, who calls that species of war horrid and abominable “which was made against Walls, Houses, Pillars and Gates” (3.1460–61). As far as Grotius is concerned, these *prosopopeias* are amusing but fallacious, since even in a state of nature it is impossible to conceive of things performing as agents other than by way of trope. It is impossible because things are always owned, and even as booty they ought to pass from hand to hand as property, whole and unbroken.

However, the closer war approaches the injustice of total conflict, where property is alienated not in an orderly passage between successive owners but so violently as to leave things of value broken and destroyed, the more likely it is that the fiction of personified things will start to solidify and have to be taken seriously. Grotius resists this proposition. Tackling the topic of unintentional injury, he remarks on the absurdity of supposing a man in a state of nature may have satisfaction of a beast that has wounded him, implying that the animal can bear the fault. This is a purely figurative and inexact way of speaking: “I should as soon say, that when a Tree falls on a Man in a Forest, and wounds him, that he might have taken Satisfaction for the Damage by cutting the Tree” (2.896 n. 1). By setting the scene in a state of nature, he means to say that even in circumstances the most remote from civil government these fictions of active things are inappropriate, and derogate from the dominion of humankind. Like Locke, he wishes to vindicate the continuum of ownership common to all stages of the evolution of social life, and to recommend the exact mode of speech that belongs to it. Things have never not been owned, he insists, and the story of our possession of them has always been a full and true account. But the circumstances of total war are anomalous and seem to contradict him; for then human beings act as if there were a perfect but uncanny equality between themselves and things, no matter what reasonable people might say in non-figurative language to the contrary. This is why Aristotle is interested in Homer’s comparison between the stateless man and a warrior maddened by war, “having no family, no law, no home . . . like an isolated piece in a game of chess”: such a creature will appear in the human figure but be another thing altogether (Aristotle 1992: 60).

When Blackstone says the legal fictions associated with entail were without precedent in common law, he was himself being not altogether exact. The law governing unintentional injury identified the *deodand*, the instrument by whose means the damage was inflicted, as “an accursed thing” and liable to forfeiture or destruction, just like Grotius’s tree. Scottish law excluded inanimate objects from the category of *deodand* as incapable of committing felonies; but at the same time it allowed a place for felonious animals (Holmes 1991: 21; Tamen 2001: 80–86; Macpherson 2010: 157). That is to say, the *deodand* was not simply a figure for an accidental injury as Grotius understood it, but was in fact an agent

capable of motion and will. After its trespass, if an animal should escape or be sold, the former owner was cleared of blame and the new owner acquired the liability (Holmes 1991: 9). Fault lay with the thing and traveled with the thing; the owner simply provided the route to retribution. Marvell's nymph reverses the sequence of trespass (here it is man against animal, not animal against man), but the indelible guilt of the deodand is still plain:

And nothing may we use in vain.
Ev'n Beasts must be with justice slain;
Else Men are made their *Deodands*.
Though they should wash their guilty hands
In this warm life-blood, which doth part
From thine, and wound me to the Heart,
Yet could they not be clean; their Stain
Is dy'd in such a Purple Grain.

(Marvell 1971: 23; ll. 15–22; see Macpherson 2010: 165–169)

At the heart of common law then lies an idea of the guilty thing, capable of causing harm and consequently deserving punishment. The idea is not treated as a fiction but as a true state of the case. Even today, when ships are prosecuted for the damage they do as persons, this is not a dramatic way of saying somebody's property is about to be sold but an actual "proceeding against the vessel" (Holmes 1991: 26). A corporation functioning as a person absorbs the responsibilities of those who run it. Responsibility for keeping a parish bull was not Tristram Shandy's father's, although he takes the beast's failures personally; it was an obligation falling on the land itself (Holmes 392).

This raises some interesting questions about the status of things like deodands: are they absurd fictions that serve a legal purpose; are they prosopopeias with an imaginative or emotional value; are they dead metaphors that once stood for a power beyond human government; or are they what they are taken to be in common law, things with a real and culpable autonomy? Might they be inclined to take autonomy a further step and challenge the narrative of their guilt by proclaiming as false or wrong what humans say is real and right, and telling a different story? Is it possible to suppose that a thing might supplant its human master, and initiate its own actions, possessed of its own substance, not a person at all but another kind of author or idol? When Ulysses falls silent in an agony of grief after Demodocus has sung the history of the fall of Troy, incapable of answering the questions put to him by Alcinous, the king thinks it might be more useful to ask his ship; and Chapman adds this note: "Those inanimate things having (it seemd) certain Genij, in whose powers they supposed their ships' faculties . . . others have affirmed Okes

16 ☛ Property, Personification, and Idols

to have sence of hearing: and so the ship of Argos was said to have a Mast made of Dodone—an Oke that was vocall and could speake” (Homer 1956: 148 [8. 770–75]). Cowley’s vocal oak tells the story of Charles I, until it gets to his execution and then like Ulysses is stifled by passion:

Here stopt the Oak,
When from the bottom of its Root there broke
A thousand Sighs, which to the Sky she lifts,
Bursting her solid Bark into a thousand Clefts.
(Cowley1881: 2.252)

STONES

Revenged?—Of what? Of a stone? . . . Who is so mad?—for
a chance hurt, against thought or intention?

—Lord Shaftesbury, *The Philosophical Regimen*

The point Oliver Wendell Holmes makes about the personification of things in common law is that the passion of resentment is conserved by a legal fiction, and deliberately so: “Without such a personification, anger towards lifeless things would have been transitory at most” (11). It does not need to be anger. Livy mentions the citizens of Alba Longa who kissed the stones of the city they were being forced to leave. But Aristotle says we do not desire either the good or ill of a thing: we do not enquire about the feelings of a bottle of wine (Aristotle 1934 (2003): 457). So what is the point of keeping warm our anger or our grief over a thing, and formalizing what amounts to superstition? The answer seems to be that it depends how severely we are harmed by the thing, and not (as Grotius chiefly argues) how badly we damage it.

At this stage, the argument has to take a wider sweep. Let us say the deodand was a stone, an inanimate thing upon which we chose to wreak vengeance, like the one mentioned by Adam Smith: “We are angry, for a moment, even at the stone that hurts us. A child beats it, a dog barks at it, a choleric man is apt to curse it” (Smith 1982: 94). Smith adds that the passion soon abates when we realize that an inanimate object is not a fit object of resentment: “What has no feeling is a very improper object of revenge” (94). But this is not always the case, as he points out in the next two sections of *The Theory of Moral Sentiments*, where he discusses the effects of Fortune, and its contribution to the irregularity of our sentiments. He says that a castaway is bound to have affection for the plank of wood which saves his life, and that we would hate any object (say a stone) that killed a friend. Smith then goes on to discuss the deodand and

the “piacular” or fallacious guilt attaching to the perpetrators of accidental harm, whose trespasses are involuntary and yet are punished because the feelings of those harmed demand that an injury have a real cause, and perpetrator who is responsible for it. Even the impartial spectator must “feel some indulgence for what may be regarded as the unjust resentment of the [victim]” (104). A law that punishes the authors of unintended harm can equally well find things guilty too, for no matter how improperly a judgment against the deodand is made, it sorts with the rugged passions that incline us to see it as necessary—the same passions which the contrivances of civil society are designed to soothe and disable, according to Hume (Hume 1978: 487).

So, of Smith’s three conditions determining the propriety of gratitude or resentment—that the object cause pain or pleasure, be sentient, and act by design—only the first is applicable to the stone, or any other deodand. As for the human agent who never meant to do what he or she actually did, Smith says tragedies owe their finest and most interesting scenes to the discovery of faultless trespass—Oedipus’s incest and parricide, Monimia’s adultery (Otway, *The Orphan*), and Isabella’s bigamy (Southerne, *The Fatal Marriage*) (107). The connection between rebellious property and actions productive of the opposite of what was intended by them, that is to say between deodands and tragedy, is strengthened; for both generate narratives outside the scope of human intention and understanding. They describe a situation in which the element of passion is a measure of the enforced passivity and degradation of the human agent when faced with the actions of personified things, all operating under the license of a divinity called Fortune.

In following an irregular line of thought that ends up justifying a passionate relation to inanimate things he began by explicitly rejecting, Smith imitates Hume who, in the *Treatise of Human Nature*, lists the four passions (pride, humility, love, and hatred) which must be activated before a thing can attract or repel us. “Suppose we regard together an ordinary stone . . . causing of itself no emotion . . . ’tis evident such an object will produce none of these four passions. . . . [Even] a stone that belongs to me . . . [a] trivial or vulgar object . . . will [never], by its property or other relations, either to ourselves or others, be able to produce the affections of pride or humility, love or hatred” (Hume 1978: 333–4). However, Hume makes two large concessions in respect of the psychology of faultless trespass and the nature of passion itself which combine to blunt his remarks on the inertia of stones. He says, “Any harm . . . has a natural tendency to excite our hatred, and . . . afterwards we seek for reasons upon which we may justify and establish the passion. When we receive harm from any person, we are apt to imagine him criminal. . . . Here the idea of injury produces not the passion, but arises from it” (351). And he points out

that such a passion does not, as in his favorite examples of the double relation of impressions and ideas, involve a reflexive relationship to persons and imagination: “A passion is an original existence. . . . When I am angry, I am actually possest with the passion” (415). What is more, anger is put into possession of a person by means of a thing. In contrasting two cases, of a stone touching a hand and a stone lying against a stone, Hume points out that sensation distinguishes the first from the second, and that the nerves of the hand convey an impression, whole and unmodified, to the mind (230–31). Put Smith’s case that his foot strikes a stone in the road, that it hurts him and that he is possessed by anger which forces him to suppose that an injury has been done him. The passion provoked by the impression of the stone drives this narrative of harm, and reason does its best to supply the evidence. When Swift’s Houyhnhmns hit their hooves against a stone, even those models of rational stoicism call it a Yahoo stone “Ynlhmnawihlma Yahoo” [Swift 2005: 257]), personifying it in order to align it with the phenomenon of evil in their horse-world. Contrariwise, when facing what he thinks is the statue of his ill-used wife Hermione, Leontes asks, “Does not the stone rebuke me/ For being more stone than it?” (Shakespeare 1976: 155–6 [5.3.35–6]).

In these examples, passion prompts the human victim (who is very often figured as beyond the protection of the law, such as a castaway or someone unintentionally guilty of homicide or incest) to tell a story from a thing’s point of view—not owning a thing, but the very opposite: imagining what a thing might own. In this state of superstition, Lucius begins the story of his transformation in an ass: “Every thing seemed unto me to be transformed and altered into other shapes . . . insomuch that I thought the stones which I found were indurate [were] turned from men in that figure . . . and further I thought the Statues, Images, and Walls could goe, and the Oxen and other brute beasts, could speake and tell strange newes” (Apuleius 1923: 39). The same ambiguity hangs over the strange news told by Gulliver in his fourth book, whose reader absorbs two stories simultaneously: one is a man’s story of his life among horses; the other is a horse’s story of its life among men. The first is what happened to Gulliver; the second is what he owns of his life. But the author of that second story is no longer human.

Of all philosophers of the passions, Spinoza most clearly distinguishes between action and passion, between doing something and having something done to oneself. “We act when something takes place within us or outside of us whose adequate cause we are” (Spinoza 1993: 83). On the other hand, passion arises in proportion as the power to act is diminished. “Insofar as the mind has adequate ideas, thus far it necessarily acts, and insofar as it has inadequate ideas, thus far it is necessarily passive” (84). A mind operating under the influence of passion is in vain pursuit

of an adequate idea. The reason it will never find one is owing to the fact that the body has been changed by the power of something beyond it. It may try to invent an adequate idea, but such an explanation will always be a fiction. “The essence of passion cannot be explained merely through our essence . . . the power of passion cannot be defined by the power with which we endeavour to persist in our being . . . it must necessarily be defined by the power of some external cause compared with our own” (146). Passion is what happens to us when we are involved in an event not of our making, and not our own. As Hume says, passion is a real existence and it possesses us. Here is Spinoza’s defiance of the verisimilitude of Hobbes’s contract, designed to cure fear by turning authors into actors: “Weakness consists in this alone, that man allows himself to be led by things which are outside him, and is determined by them to do those things which the common constitution of external things demands” (164). Things make us do the things that make us creatures of things. Hobbes was incredulous at such propositions: “As if Stones . . . had a desire, or could discern the place they would bee at, as Man does” (Hobbes 1996: 468).

A complex narrative of harm forms what there is of the story of *Tristram Shandy*. It begins in the trenches of Namur, when uncle Toby was wounded in the groin by a fragment of stone dislodged from a parapet by a cannonball. The basic fact of this disaster is that the stone fell on him. His surgeon tells him that it was its weight that did the damage, not the projectile force of it. Although this is construed as a fortunate circumstance by the surgeon, it does nothing to soothe the “passions and affections of the mind” (Sterne 1983: 68) which are excited not only by the agony of the wound, but more particularly by Toby’s failure to explain exactly how it occurred. Once he has a map, his explanatory techniques get him only so far toward a cause. He studies cannonballs and the parabolas in which they move; and he is evidently fascinated by artillery and the impetus behind the ball which broke off the stone which fell on his groin. But he cannot identify a gunner who pulled the lanyard of the gun, or an artillery officer who gave the command to fire. There is no person at the breech fit to represent an adequate cause.

Undoubtedly one of the most rapturous and private moments of his mock sieges is when he plays a battery of six brass cannon against the walls of Lille by puffing tobacco smoke through their barrels, as if occupying himself the position of the cause he seeks. But he feels it necessary to disappear into the sentry box in order to do so, rendering this mimic cause less than visibly adequate by a maneuver Tristram entirely discommends.

On his best days, when the news from Flanders allows him to take a citadel, Toby does what his passions and affections would teach a man

in his situation to do, he takes revenge upon the deodand, the stone that wounded him. The exclusive point of every one of his sieges in the War of Spanish Succession is to make himself master of the works by battering down bastions and ruining defenses, including parapets (Sterne 1983: 363). It is a curiously formal and repetitious pursuit of ruin, but it completes the shift from pain to pleasure. “What intense pleasure swimming in his eye as he stood over the corporal . . . lest, peradventure, he should make the breach an inch too wide,—or leave it an inch too narrow” (357). Never in this book is accident so perfectly contrived or so effortlessly fetched into the scheme of intention; and it is a feat performed again and again. Towns and siege architecture are constructed with no other end in mind than putting them in “a condition to be destroyed” (372). Toby is the impresario of this ruin, not its victim. Even though what he fashions mimics the scene of his overthrow, now he appears to act and not to suffer, destroying stonework like that which once nearly ruined him—again and again until he meets more dangerous artillery in the shape of Mrs. Wadman’s eye. The pleasure swimming in his own tells us however how far he is from an adequate idea of his personal history. Still possessed by passion, he constructs a scene that is supposed never to change, since it has no other purpose from his point of view than the regular rhythm of its being built and then demolished. The story of the bowling green is less like a narrative than a rite, with Toby the priest and the works the sacrifice. As for the ultimate agent, the external force with the adequate idea of what this is all about, Tristram locates it in the benign personification of Fate, who “reclected for what purposes, this little plot, by a decree fast bound down in iron, had been destined, —she gave a nod to NATURE—’twas enough—Nature threw half a spade full of her kindest compost upon it” (Sterne 1983: 356).

But there is another female presence in the back garden, rather more aggressive, that might exert a stronger claim to tutelary divinity. Mrs. Wadman is heavily ornamented with metaphors of war (cavalry, artillery, phalanx) and resembles the personification of the very business Toby has been so intently following. Cesare Ripa says that the icon of siege architecture is “a woman of ripe Years, in a noble Garment of divers Colours . . . in one Hand the Mariner’s Compass, in the other the Description of an hexagon Fortification” (Ripa 1709: 6). That she should lead Toby at least figuratively back to his groin and the wound it sustained at Namur, restoring him to the mute confusion his assembly of siege miniatures had banished, is consistent with the paradox of all obsidional structures. Like other fractal forms, whether of fern-leaves or crystals, fortified positions extend by reinforcing with identical chevrons those angles imagined to be weak. They are elaborate patterns of their own ruin rebuilt, and in this respect much like Toby, who has mended his weakness in exactly the

same way, by an accumulation of supplements. But their fate is always to return to ruin, for no matter how well they anticipate the improvements in artillery with the multiplication of their curtains, ravelins, and horn-works, cannon will always outstrip them. Likewise, Mrs. Wadman's artillery is too much for Toby, even though he retreats to what he foolishly believes to be the place of maximum security, his sentry box. So blown up once again, silence once more envelops the wounded soldier, this time dignified by his nephew with the name of modesty.

Lucretius is very cogent in his assault on the stupidity of doing what Toby and his nephew are doing. He says stones have nothing to do with vital sense, and that it is superstitious folly to believe that matter is sentient. Personification incarnates accident as intention; so when passion inclines us to invest an inanimate thing with sensation and intelligence and call it an adequate cause, a god, an idol, or a deodand, we delude and disturb ourselves: "It is no piety to show oneself often with covered head, turning towards a stone" (Lucretius 1924 (1997): 165, 169, 471). Hobbes makes the same point about the materials of which the thrones of kings are made, their "visible creature." We attribute to the stone and wood the spirit of royalty and divinity, and worship them as idols (Hobbes 1996: 449). He also says that personifying Fortune is a way of disguising ignorance (468). Hume explains the whole history of polytheism as figures of the passions, lodged in various materials, personified and then worshipped as if they really existed. He says these are instances of false piety magnified by our own confusion into a pantheon of causes of fresh vicissitudes (Hume 1956: 47).

In the early modern period, the idea of a sphere of spiritual power freely mingling with the material world gained considerable currency. Tommaso Campanella's *De Sensu rerum* (1620), a book that had a powerful influence on Charles Gildon and seems also to have affected Defoe's *Roxana*, treated the sense of things as a literal truth exhibiting the vitality of the "world animal." He wrote, "We affirm that the sense with which animals seem to be equipped and which seems to distinguish them from inanimate things, can be found in every thing" (cited in Heller-Roazen 2007: 171–2). Campanella pictured experience as perpetual metamorphosis and perception as extensive sympathy. To feel movement is to be moved, to see light is to be brightened; and this truth depends upon another, namely the sapience of all things: "We see that the existent is, because it knows that it is, and there is no existent that does not know itself" (172). Campanella adapts the curious self-awareness of Ovidian metamorphosis, of which Narcissus's self-absorption is exemplary, to an anti-Lucretian theory of motion. Where Lucretius was at great pains to deny any link between consciousness and constituent matter ("One can laugh although not grown from laughing things"), Campanella locates

sensation everywhere, and finds all things capable of perception, for “there can be no sensation without the sensing being’s acquiring a likeness of the sensed” (173). For his part, Francis Bacon pointed to the lodestone as an example, and drew a conclusion very like Campanella’s: “No body when placed near another either changes it or is changed by it, unless a reciprocal perception precede the operation . . . in short there is Perception everywhere” (Bacon 1863: 9.56).

The issue has pursued thinkers to the present day. Heidegger asks what is proper to a stone, and he answers that it is the sum of those traits that are empirically stated of it, which renders a stone a mere object, the inert predicate of the human subject’s empirical observation. When he poses a different question, “What in the thing is thingly?” the answer comes out differently, more like Campanella’s or Bacon’s account of the sense of things, or Spinoza’s of the passions. Stones move us, he says, when we perceive what lies behind the manifold of given properties. Like the undistinguished drops in Leibniz’s waterfall, we hear a door shut only when we “listen away from it” (Heidegger 2001: 22–3, 165, 25). And, like the odor of Pope’s rose, so keen it can scent a man to death, this is an experience which reverses the order of agency, for the door does the shutting and the rose organizes the fatal smelling. In *Minima Moralia*, Theodor Adorno, referring to the alarming efficiency demanded in the shutting of modern doors, laments what humans are exposed to when they are plunged into events managed by things and submit to: “the implacable, as it were ahistorical demands of objects” (Adorno 1974: 40; see Pinney 2002: 125–61).

Things acquire powers of moving us when they emerge from a human system of representation into a zone of experience which is as it were self-organizing. Panpsychism, the modern version of Campanella’s and Bacon’s theories of immanent perception, is a philosophical position based on the impossibility of an intelligence that is not distributed through all matter. Panpsychists maintain that it is incoherent to think that thinking matter such as ourselves could emerge from matter merely inert: if we laugh we are made of potentially humorous stuff, despite Lucretius’s derisive jokes about atomic hilarity (Lucretius 1997: 77; 1.915). Similarly, what humans call experience is derived from matter’s own experience. To put it in Galen Strawson’s words, “[You] cannot deny that when you put physical stuff together in the way in which it is put together in brains like ours, it constitutes—is—experience like ours; all by itself” (Strawson et al. 2006: 12). In his defense of the category of properties, or what he called *coniuncta*, Lucretius encountered this problem of anomalous experience, which he distinguished as accidents, or *eventa*, pointing out that these could not possibly have an existence of their own (Lucretius 1992 [1975]: 39 [i.449–82]). This is precisely what Strawson denies: “There

cannot be a subject of experience, at any given time, unless some experience exists for it to be a subject of, at that time” (Strawson et al. 2006: 192). Talk of properties he says is a blind, designed to introduce the counterfactual possibility of a subject with none, accident-free and purely autonomous.

PERSONIFICATION

To acknowledge the reality of affliction means saying to oneself: “I may lose at any moment, through the play of circumstances over which I have no control, anything whatsoever that I possess, including those things which are so intimately mine that I consider them as being myself.”

—Weil 2005: 90

The idea of a subject of experience thinned by affliction and war, more provisional, passionate, and uncertain than was ever thought possible, seems to me a useful way of getting closer to the questions of property and personification that have been raised earlier in the chapter. Locke and Hobbes between them were aware that a civil subject required a fictional supplement if it were to function in a predictable way. The creature in perpetual flight for fear in Hobbes’s state of nature finds refuge within the artificial man, a figure made in his likeness who *acts* for the citizen and out of many individuals embodies a unity, namely the state or commonwealth. From the discontinuous and passionate fragments of the experience of the self, Locke fashioned an internal representative in the form of the person, who likewise renders coherent what otherwise would be inchoate. Each is aware that the price paid for unity is a fictive representational synthesis, what Hobbes calls “the unity of the representer” or Leviathan (Hobbes 1996: 114) and Locke “a precise multitude (Locke 1979: 289 [2.22.2]): the inchoate considered as a unity. Therefore, they are very deliberate about drawing the boundaries between what deserves to be represented by a person and what doesn’t. Let us say that in the very moment of inventing a political subject capable of emerging from the state of nature by means of contracts, Hobbes and Locke are forced to deal in a sidelong way with that thinner sort of subjectivity that makes people vulnerable to things and the sense of things, liable to play parts in narratives that are far different from the veridical first-person records on which civil society depends for its own history. Locke smells this danger in the alienation of property by payment of money, expediting “the partage of things” that once were our very own, and so much so it was supposed impossible they could belong to anyone else (Locke 1963: 344). Hobbes

knows that the necessary fictions of a civil state may slip into gloriation, and that the figure of an artificial man might become nothing but an idol. Such dangers can only be skirted by re-inflating the civil subject to dimensions as large and round as is consistent with the delegation of power (for Hobbes) or with the forensic duties of a public self (for Locke).

In this respect, personification is a critical index of where things have got to in the relations of humans to things. As Quintilian and, later, Hume point out, it is the great resource of poets. Quintilian specifies two fundamental forms of substitution in personifications: animate for inanimate and cause for effect. He praises the sublime feelings that erupt “when we attribute some sort of action and feeling to senseless objects” (Quintilian 2001: 3.431). Likewise, he draws attention to those locutions which emphasize the dual function of agent and patient in personification, such as “pale Death,” “pale Disease,” and “slothful Ease” (3.441). The passions embodied by these figures generate this ambiguity in acting both as the force behind what is felt and the feeling itself: “Fear, however, is to be understood in two ways: fear which we feel and fear which we cause in others. Likewise envy: one kind makes a person ‘envious,’ the other ‘invidious,’ though the first applies rather to persons and the second to things” (Quintilian 2001: 3.55).

Like Longinus, Quintilian is fascinated by the reciprocity between the symptoms of passion and their springs, which he refers to *enargeia*, “not so much talking about something as exhibiting it” (3.61). And, like Lucretius, neither he nor Longinus is interested in the representation of sensations in the form of idols or deities, only in the physical immediacy of them. Both critics call sublime that sort of oratory or poetry which succeeds in generating passion by moving rapidly from a quotation or an imperfect description of experience to the experience itself via a figure which, like personification, acts simultaneously as the trigger of the feeling and the feeling itself. This rhetorical maneuver Longinus called being sublime on the sublime and it is one which Quintilian associates directly with personification, clearly for him a far more potent figure than Grotius believed it to be. *Enargeia* is therefore a powerful inducement to sympathy, along the same lines as Campanella’s brightening light or Bacon’s lodestone. If we are to identify with the sufferings of those whose misfortunes we lament, then we have to act as if theirs were ours until the transfusion is complete: “We play the part of an orphan, a shipwrecked man, or someone in jeopardy” (Quintilian 2001: 3.63). One way or another, *enargeia* reaches a point where it is hard to distinguish between those who introduce and describe the experience and those who endure it. When the circumstances of fear are exhibited not as the properties of another person in peril but as Fear itself, then the conventional distinction between action and passion breaks down, and Fear is what it does

to you and me. Personification abbreviates the reversal of sequence to be found in doors that shut to one side of us, or roses that smell us dead, or actions of our own that turn into the events which happen to us. Fear does not represent itself; it is what it does, the author of itself.

The problem with personification is that, of all literary ornaments, it is the one most threadbare and trite, especially in the eighteenth century when every abstraction seems to have had a machine-life of its own (“Can Honour’s voice provoke the silent dust,/ Or Flattery soothe the dull cold ear of Death?”). It is profitable therefore to consider how Quintilian analyzes the language involved in making the change from the description of things and emotions to the action of things and passions. He chooses as his example the siege and capture of a city.

No doubt, simply to say “the city was stormed” is to embrace everything implicit in such a disaster, but this brief communiqué as it were, does not touch the emotions. If you expand everything which was implicit in the one word, there will come into view flames racing through houses and temples, the crash of falling roofs . . . then will come the pillage of property . . . the frenzied activity of plunderers carrying off their booty. (3.379)

He is recommending such a multiplication of circumstances of war that the panoptic point of view implied by the passive voice (“the city was stormed”) is replaced by personified destruction (racing flames and crashing roofs) and by scenes of what Hume calls the “looseness and easy transition” of property (Hume 1978: 489). Personification, like the deodand in common law, conserves the intensity of passion and the activity of things. The circumstances and properties of animated things familiar to Grotius as an empty trope are presented by Quintilian as not only rhetorically successful but true to the experience of destruction, or more accurately Destruction; that is, the experience of roofs that engineer their own fall, flames that delight in their own motion, and booty that rides off on the backs of frenzied pillagers. Their ideas of themselves are as adequate as ours are inadequate who passionately register or assist in what they do.

It is surprising how inevitably personification invades descriptions of extreme distress, such as shipwreck, plague and war, and sieges. Here are some examples, taken almost at random from fiction and historical accounts. This is James Cook reporting from the Endeavour Reef, where his ship was holed by coral and apparently sinking, owing to an error in the reading of the water level in the hold: “A Mistake soon after happened which for the first time caused fear to operate upon every man in the Ship” (Cook 1955: 345). Notice it is the mistake, or Mistake, which happens and Fear that then affects the whole crew, no human agent visible.

Here is Joseph Banks in the same predicament: “The Capstan and Windlace were mannd and they began to heave: fear of Death now stard us in the face” (Banks 1962: 2.79). Capstan and Windlass do the heaving; Death does the staring. And here is Don Juan in an open boat: “Twelve days had Fear/ Been their familiar, and now Death was here” (Byron 2000: 445; [II, 49, 391–2]). “Death now began not, *as we may say*, to hover over every ones Head only, but to look into their Houses, and Chambers, and stare in their Faces” (Defoe 1990: 34). “The yellow fever stalked openly through the city of the Cape . . . now it had become like a giant person that could no longer be hid away” (F. Tennyson Jesse 1981: 90). “I had felt Death’s hand once before . . . but this time his grip was more and more determined” (Jünger 2004: 281). Here is Victor Hugo: “The Saint-Antoine barricade used everything as a weapon, everything civil war can hurl at the head of society . . . a mad thing, flinging inexpressible clamour into the sky. . . . It was a pile of garbage, and it was Sinai” (Hugo 1982: 889–90).

W. G. Sebald has talked of the hollowness of descriptions such as these. “The reality of total destruction, incomprehensible in its extremity, pales when described in such stereotypical phrases as ‘a prey to the flames,’ ‘that fateful night,’ ‘all hell was let loose,’ ‘we were staring into the inferno,’ and so on and so forth. Their function is to cover up and neutralize experiences beyond our ability to comprehend” (Sebald 2003: 25). Yet when he is faced with the job of describing the destruction of the city of Hamburg by a firestorm in 1943, in astonishment he resorts to the same language:

The fire, now rising 2000 metres into the sky, snatched oxygen to itself so violently that the air currents reached hurricane force, resonating like mighty organs with all their stops pulled out at once. . . . At its height the storm lifted gables and roofs from buildings, flung rafters and entire advertising hoardings through the air, tore trees from the ground and drove human beings before it like living torches. (28)

He takes the necessary next step in the representation of ruin recommended by Quintilian in making the effects so vivid that they embrace the function of causes. Here is an example from a bombardment of Rowton Heath during the English Civil War, where the same thing happens: “Our houses like so many splitting vessels crush their supporters and burst themselves in sunder through the very violence of these descending firebrands . . . two houses in the Watergate skip joint from joint and create an earthquake, the main posts jostle each other, while the frightened casemates fly for fear” (Duffy 1979: 155). Houses do the work of their collapsing, rather like Toby’s towns, each falling according to a pattern some power other than he, the contriver of ruin, has decreed. In Ernst Jünger’s description of the bombardment of the village of Fresnoy, the

antics of things take over the scene. “As if by some magical power, one house after another subsided into the earth; walls broke, gables fell, and bare sets of beams and joists went flying through the air, cutting down the roofs of other houses. Clouds of splinters danced over whitish wraiths of steam. Eyes and ears were utterly compelled by this maelstrom of devastation” (138). And Edmund Blunden, on the other side of the same conflict, noticed how “A small brick building between our trench and Festubert village behind began to jump away in explosions of dusty yellow smoke” (Blunden 2000: 11).

I want to look more closely at this process. When Plume is advancing an argument for fornication in *The Recruiting Officer*, Ballance objects, “War is your Mistress, and it is below a Soldier to think of any other” (Farquhar 2000: 700). To coin Holmes’s phrase, is this just a dramatic way of saying that military duty lies in the field rather than the tent; and if it is more than that, what does the personification amount to? Guy Chapman offers a more hectic version of War as lover. “Once you have lain in her arms you can admit no other mistress . . . [we] arise from her embraces pillaged, soiled, it may be ashamed, but [we] are still hers” (Chapman 1988: 226). He gives examples of lovers transmogrified by War. He mentions the inquisitive idler who catches himself being watched, “but if you turn to surprise the watcher, there is nothing except the fog filtering between the trees” (43). More dramatically, he pans across the vista of wreckage in no-man’s land, listing the accidents of his mistress, “The shovels, water bottles and tin hats, maps stamped and ground into brown mud, the cotton bandoliers . . . boxes of bombs, of Very-lights, odd rounds of Stokes shells, flares, entrenching tool handles, stretchers” (218). “That war was a jealous war,” says Blunden of the deity who makes her votaries attend to the singular difference that prevails in all the things she owns as hers: “no single brick, no wheelbarrow, no sandbag should be omitted” (Blunden 2000, 1, 179). Like the three hats, one cap, and two non-matching shoes that take the measure of Crusoe’s nakedness when he is cast away on his island, or like the multitude of familiar phenomena Gulliver lists as absent from the land of the horses, these things belong to the experience of total destitution Hobbes called the state of war. Such details make up their own account, they are that species of “facts [that] stare us straight in the face” (Sebald 2003: 53). To be War’s paramour is to be possessed by the experience of such things.

Chapman begins his memoir of the First World War with an epigraph from Hobbes on the state of nature: no account of time, no traffic, no arts or letters, and very little of human life. There are many accounts of extreme suffering that talk of the weird sense of suspended time, of the fantastic importance acquired by things, of the perpetual fear, and above all of the impossibility of putting the experience into language. For instance, in *If This Is A Man* (published in the United States as *Survival in*

Auschwitz), Primo Levi attempts an illustration of the intense and unremitting hunger of the victims of Auschwitz, which he can render logically in no other form than as absorption into a personified experience (“the Lager is hunger: we are ourselves are hunger, living hunger” [1996: 74]). There is a picture of a steam-shovel moving earth that shows dramatically how thin Levi’s subjectivity has become, and how full of activity is every thing beyond it: “At every bite of its mouth our mouths also open, our Adam’s apples dance up and down. . . . We are unable to tear ourselves away from the sight of the steam-shovel’s meal” (ibid.). Under such a revision of the relationship between human and thing, where nothing is owned, and nothing can simply be told from a secure position by a subject, personification ceases to be a rhetorical choice; it proclaims its ownership of the experience itself, and refuses to be depicted in a frame or reported in a sequence. Levi includes a persistent nightmare of survivors: “They had returned home and with passion and relief were describing their past sufferings, addressing themselves to a loved person, and were not believed, indeed were not even listened to” (Levi 2005: 2). To be placed so precisely on the other side of authenticity and even of verisimilitude, where every enormity endured contributes to the improbability of a vile romance, is to endure a special kind of silence. It is not owing to the want of words, or an ability to articulate them, but to a re-orientation in the relationship of the individual to experience so severe it cannot be expressed as true or even likely. To make such an account plausible, everything remembered by the narrator would have to be sacrificed to a criterion that judges such memories to be false. “In reality, *wood* cannot feel, nor *iron think*,” says a child’s toy faithlessly of its own report (Anon n.d.: 34). But if the circumstances of misery and fear were to overtake the toy’s audience, then wood and iron would feel, speak, think, and move about, as they do at Rowton Heath, Festubert, and Auschwitz.

AUTHORS AND BOOKS

Are these *propria*? are they thine? thy very own true
and certain possessions properly belonging to thee and
naturally thine?

—Lord Shaftesbury, *A Philosophical Regimen*

An individual metamorphosed by war or the Lager loses the rank of person or character, and with it most of what represents a secure relation to social and literary affairs. Alice finds this out when she tries to recite familiar verses in the worlds underground or behind the looking-glass, and they all come out as nonsense. Words printed in books, no matter how

familiar, are changed, and mean something different or nothing at all. Caught in the artifices of those who have read his book and now want to read him as if he were print, Don Quixote wishes to destroy the false history of himself he finds in the press of the Barcelona printing house. Ernst Jünger explores a ruined house at Guillemont and discovers how strange it feels to come across a book there, even one he used to know very well:

I took a walk through the ravaged gardens, and looted delicious peaches from their espaliered boughs. On my wanderings I happened into a house surrounded by tall hedges, which must have belonged to a lover of antiques. . . . Old china sat in piles in large cupboards, ornate leather-bound volumes were scattered about the floor, among them an exquisite old edition of *Don Quixote*. I would have loved to pick up a memento, but I felt like Robinson Crusoe and the lump of gold; none of these things were of any value here. (Jünger 2004: 103)

The very novel which, according to Hobbes, drives people into fits of romantic vainglory is set aside here as antithetic to the state of war, exemplified by reference to another novel, as if it were not fictional enough to do justice to the extremity of it. There is an example even more peculiar from the anonymous *A Woman in Berlin*, a story told by a woman who experienced the first months of the Russian occupation in 1945. She has to resort to special metaphors and locutions in order to show how acts of war, especially rape, reduced her to a category beyond the human. The measure of her own metamorphosis is given by the booty that comes her way, named with “its own specialized jargon . . . ‘my major’s sugar,’ ‘rape shoes,’ ‘plunder-wine,’ and ‘filching-coal’” (Anon. 2003: 190). Like the hats and shoes that stare Crusoe in the face on the beach, these things are not property and trace their genealogy not from their manufacture and sale but from the violence that liberated them from ownership. While in this condition of servitude to alien stuff, the woman opens a book and reads the following sentence, “‘She cast a fleeting glance at her untouched meal, then rose and left the table.’” “Ten lines later,” she confesses, “I found myself magnetically drawn back to that sentence. I must have read it a dozen times before I caught myself scratching my nails across the print, as if the untouched meal—which had just been described in detail—were really there and I could physically scrape it out of the book” (4). A page of print divides her from the world she once enjoyed. She is now on the other side of it, what is written rather than she who reads and eats and has choices to make. So she scratches at the paper in a hopeless effort to reclaim dominion over the substance of things, emphasizing by the futility of her gesture the fictionality of the world that was once her own, and the pointless and scarcely communicable materiality of the one she is in now, which isn’t her own at all.

In respect of the eighteenth-century novel, several questions are raised by such a state of affairs. How was it owned, for example, and what was owned in it? What kind of property did it embody, or represent, and what kinds of persons, or characters, handled it? I shall tackle these questions later, but I want to finish this chapter with a brief account of the relation of authors to books, and the equivocal thingliness of this form of property.

By the Statute of Anne, 1710, known as the Copyright Act, it became possible to negotiate the limited sale of literary property. For a period of fourteen years a bookseller had the right to print copies and sell them; afterward, the right returned to the author. Discussions of copyright seemed to hew closely to the new definitions of portable property and the doctrine of absolute dominion. Defoe wrote in *The Review*, “A Book is the Author’s Property . . . `tis as much his own, as his Wife and Children are his own” (No. 2, 1710, cit. in Rose 1993: 37). John Dunton, author and bookseller, stood up for his “sole Right and Property for the Children of his Brain” (Dunton 1705: 255). So literary property made its way into the marketplace from the author’s point of view as something totally possessed, so much the author’s own it could be no one else’s. This led to a host of metaphors of authorship involving gestation, birth, and tutelage, all strongly suggestive of an embodied good not easily alienable. Nevertheless, the point of owning literary property was to plan for its sale or “partage” to a bookseller. By means of the limited copyright, authors hoped to reconcile their embodied and peculiar ownership of the copy with the need to exchange it for money. But from the booksellers’ point of view, the alienation of literary property ought to have been like the contract of sale of any other commodity—forever. It seemed to them an impossible novelty to sustain a contract of sale for only a certain number of years.

There were various attempts to define literary property—as the print-run of a single edition of a work, as the name on the title-page, as a common-law right in the fruits of literary labor, as the patent of an invention, or as a supplement to common-law right. In his *A Letter from an Author* (1747), William Warburton took up the cudgels for authors. “Surely if there be Degrees of Right, that of Authors seemeth to have the Advantage over most others; their Property being, in the truest Sense, their own, as acquired by a long and painful Exercicio of that very Faculty which denominateth us Men” (Warburton 1747: 2). William Blackstone thought it was in the very idea of composition, and not in the labor of actual writing, that a property was formed; it was lodged therefore in the sentiment, not the script, and literally constituted sentimental value. The sentiment and style of a literary work, “These alone,” he said, “constitute its identity” (cited in Rose 1993: 76, 89). Warburton called this

essence of literary property its “Doctrine” or “ideal Discourse,” “the true and peculiar Property in a Book” (Warburton 1747: 13, 8). John Dunton named it “the very Life and Soul . . . of the Copy” (Dunton 1705: 248).

Unlike any other bargain, the exchange of literary property confounded the meaning of property; for it was something belonging entirely to an individual, yet its value was determined by a quality inherent in the thing itself. No matter how hard Defoe, Dunton, Warburton, and Blackstone argued for the inalienable essence of literary property, only in the material form of a printed book and via an act of exchange that made its contents public could its sentiment or “doctrine” be known to have a value. Booksellers paid a standard miserly rate for copy that was almost always a gamble, with publication alone justifying the price paid. This uncertainty no doubt influenced their view that the sale should be final and unconditional, and their ownership of the copyright absolute. On the other hand, no amount of emphasis laid by them on the price and materiality of the print commodity could obliterate the truth that in paper, board, thread, glue, calfskin, and printer’s ink there lodged an immaterial quality that gave one book a value greater or less than another. Is knowledge to be scratched out of a page with a penknife, as Walter Shandy thinks, or is a meal to be scraped from the page with a finger-nail, as the woman of Berlin believes? If not, is a book assumed to have an immaterial core or soul deriving from the mysterious quality of sentiment, originality, doctrine, ideality, or genius like that which inhabits the mast of Ulysses’ ship?

Mark Rose names this genius the “ownness” of literary property, which he understands to be both the result of its reification, treating thought and invention as a thing, and of the recognition of its distinctive quality, or what Warburton calls its “true and peculiar Property” (Rose 1993: 88, 118). The property of authors is, Warburton maintained, “in the truest Sense, their own” (Warburton 1747: 2); but at the same time the author “should be owned and protected in a Property . . . which he hath not merely acquired to himself, but which is generously objective to the Benefit of others” (11). These inner and outer aspects of literary property, that which is publicly owned in respect of what an author personally owns, are handled too by Edward Young, who said of the author and his works, “His [is] the sole Property of them; which Property alone can confer the noble title of an Author” (Young 1759: 53–4; Rose 1993: 115). It is not quite a tautology. Consider what he is saying: the works must first confer the title of an author, and only then may the author claim the work as his own. The author sues for title from the “ownness” of the book itself; and only after the transformation of manuscript into print, author into vendor, and book into semi-commodity, does this proprietary ingredient become evident.

In this first essay in the law of intellectual property it was clear that other commentators such as Defoe and Dunton, both of whom were professional writers living by their pens, wished to locate authorial property in the copy prior to publication, lasting as long as the interval between its creation, or birth, and its partage to a bookseller. When Defoe talks about it as an infant conceived and born, or Dunton as a thing with life and soul, it is clear that the copy is the embodiment in ink and paper of a virtue whose “ownness” is complete and unconditional as it stands: totally the author’s own property. The “ownness” that survives after sale in the printed text, on the other hand, is the shrunken commodity form of absolute possession, amphibian in the sense that it straddles the interiority of originality and the public realm of trade and value, and likewise in the sense that it belongs both to the present moment of alienation and the future when it will come back home. Richardson was a rare exception to this difficulty in being both author and seller of his books. For many others, the totality of ownness must have seemed a pointless fantasy, any alternative to publication being bound to strike them as absurd: why write only to oneself and keep secret what was meant to be communicated? Nevertheless, it was evidently a dream of some Grub Street writers that they might be able to reserve to themselves what they regarded as peculiarly their own. In his *A Pocket Library; or, A Voyage Round the World* (1691), John Dunton (who like Richardson was both a producer and an agent in the book trade) uses the forum of print to chide readers who expect him to reveal all of himself, invoking as his warrant the quality of authorial glory: “So great a Glory do I esteem it to be the Author of these Works, that I cannot . . . endure that any should own’em who have nothing to do with’em” (Dunton 1691: 2.19). He goes on, “[No] other Person[s] yet named or suspected, are the real Authors of this Book, or the real Evander, but that I, and I only am he; and who I am, is yet, and ever shall be a Secret” (2.23). By means of digressions, lacunae and Swift adapts the ploy of an author writing solely to himself at the end of *A Tale of a Tub*; and a similar ambition of publishing only what cannot fully be told informs one of the strangest novels of the eighteenth century, Defoe’s *Roxana*, where the suppression of the story is the story. The accident of Tristram Shandy’s autobiography, whose narrative retreats in geometrical proportion as it advances, requires constant allusions to Tristram’s life as a writer, with inkhorn, pen, and sheets of paper held up for inspection, the badges of his experience of serendipitous privacy. Shaftesbury and certain writers of slave narratives, as we shall see, have in common a preference for ink over type, and one of his most interesting works, *A Philosophical Regimen*, lay a long time in manuscript, just like Hannah Crafts’s *A Bondwoman’s Narrative*. When the abstractions of intellectual property began to proliferate in the nineteenth century, Samuel Warren and Louis

Brandeis articulated a legal defense of the right to privacy, identifying as objects of concern words which a person did not wish to communicate, which they called a “secret-writing,” a term Dunton seems intuitively to have understood and embraced. “In every such case,” they wrote, “the individual is entitled to decide whether that which is his shall be given to the public” (Warren and Brandeis 1890; 199; cited in Best 2004: 50).

The question is whether the desire among authors to own their literary productions absolutely is identical with other ways of seeking dominion over the very substance of things; and it seems as if it is not. According to Hobbes, property is acquired by means of the magistrate, a vicar of the sovereign who assigns us what is our own on the basis of a system of distributive justice originating in the sovereign. According to Grotius we enter nature like a theater, and occupy a vacant seat which we call our own and to which we then have a right. Locke comes closest perhaps to what authors understand as property when he says that by means of labor we somehow incorporate what we take from nature, making it so far our own it cannot possibly be anyone else’s. But in all these theories of property, an object comes to the individual from the outside as a good which is then assimilated and owned. But children of the brain are on the inside to begin with, until such time as the parents choose to part with them; hence, for the duration of that magical interval they are “in the truest Sense, their own” (Warburton 1747: 2). That is to say, no force other than invention, imagination, judgment, or wit has made them property: not the magistrate, right of occupancy, or labor expended on nature. They are the closest it is possible to get in civil society to an action owned by an author, or natural person, as Hobbes would say, as opposed to an action performed or acted by authority lodged in some representative or institution of civil order. Thus, Tristram Shandy is at a loss to explain the operations of originality, and is forced to construe them as a form of ideal theft, as though composition were a war waged in a state of nature: “I wish you saw me half starting out of my chair, with what confidence, as I grasp the elbow of it, I look up—catching the idea, even sometimes before it half way reaches me—I believe in my conscience I intercept many a thought which heaven intended for another man” (Sterne 1983: 436).

Whatever quality of fugacity or independence belongs to things which have escaped human dominion belongs to authors, too. They are consubstantial with a kind of property whose thingness they share, and which more than one of them calls *glory*. Dunton described it in the third person: “What his industrious Toes do tread, his ready Fingers do write, his running Head dictating” (Dunton 1691: 1.9). Hobbes was quite right to associate this authorial superbia with Don Quixote, a man whose actions are exactly synchronized with the rhythm of his author’s pen, and whose proximity to print therefore is measured by artifices whose

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unpleasantness—deceit, dispossession, and disappointment—declares their distance from ink. “Gloriation of mind” was understood by Hobbes to be an egregious self-delusion, but it is experienced in situations that are not easily gained or maintained in being in every sense extreme, on the edge of what is known, allowed, or intelligible, not civil and sometimes not even safe. The manuscripts of such authors are what Hobbes would call idols, being the material substance in which the products of the imagination are lodged; and authors are an unbloody species of human *figure*, to coin Aristotle’s term, cut off from ordinary systems of tenure by a kind of idolatry. They arrive at a perfect equivalence with a thing, from which it is impossible to part or be parted, like the castaway with his plank.

As I write this, Internet search engine Google’s attempt to settle issues of copyright flowing from its planned digitization of 30 million books is proceeding through a court in New York’s Southern District. The company is attempting on a vast scale what booksellers in the eighteenth century wanted instead of the Copyright Act—namely, total control over the copy for an indefinite period. This includes seven million so-called orphan books which are still in print but whose rights holders are unknown. Google, it seems, wishes to annihilate the anomaly of a book’s ownness at the same time that it puts authors into a petitionary relation to the terms on which their works will be read. Nation-states such as France and Germany are offering memoranda to the court pleading for value of the book, “a product unlike other products” (Darnton 2009: 83). If what I have written in this chapter has any truth, then the usurpation of dominion over the substance of book-things and their authors by a global corporate network cannot possibly succeed. I wonder how it will fail.