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Orphaned mechanisms: hollow occupancy, hollow handover and the normative structure of exit

Mecanismos órfãos: ocupação oca, entrega oca e a estrutura normativa da saída

Mecanismos huérfanos: ocupación vacía, entrega vacía y la estructura normativa de la salida

Pablo Dietrich
Fundação Universidade Regional de Blumenau – FURB. Bacharel em Direito e Acadêmico de Pós-Graduação em Ciências da Religião e Filosofia e Sociologia pela Faculdade Líbano. Acadêmico de Teologia e Filosofia pela Faculdade Estácio de Sá.
Lattes: http://lattes.cnpq.br/2467496149913328 — ORCID: https://orcid.org/0009-0003-5447-0550 — E-mail: pablodietrichh@hotmail.com

Maurília Gabriela da Silva Dietrich
Centro Universitário Leonardo da Vinci – UNIASSELVI. Bacharela em Direito e Acadêmica de Pós-Graduação em Ciências da Religião e Filosofia aplicada à Religião e à Educação pela Faculdade Líbano. Acadêmica de Teologia e Licenciatura em História pela Faculdade Estácio de Sá.
Lattes: http://lattes.cnpq.br/1936666992909726 — ORCID: https://orcid.org/0009-0003-2756-6848 — E-mail: mauriliagabriela@outlook.com

Abstract: This article examines the normative structure of exit from an institutional position on which the continued operation of a mechanism depends. It argues that vacating such a position does not close the relation, because the mechanism does not stop when the party sustaining it withdraws: it carries on, and carries on without the withdrawal showing in what it produces. Two related distinctions are proposed, which the ordinary language of transfer runs together — between the titular face and the functional face of a position, and between transferring the title and transferring the conditions of its exercise —, and from them follow the notions of hollow occupancy and hollow handover. These distinctions do not by themselves generate the rules defended here: they allow the duties at stake to be identified and delimited, and it is on additional normative premises, stated and defended below, that the rules rest. With that support, it is argued that while the mechanism continues to operate whoever acquired or exercised the position is not discharged by abandoning it, and that the exit is regular only when it satisfies two cumulative requirements: not preserving the false appearance that support subsists, and having exhausted the transitional or protective measures that are proportionate and reasonably required of that agent. Handing over to someone able to perform the position, adopting an intermediate arrangement that passes both tests, and promoting safe cessation before whoever has competence to decide it are modes of complying with that criterion, not its definition. And it is argued that whoever received the position without seeking it and never exercised it cannot be coerced into sustaining it, but must declare their state, because silence preserves the appearance of occupancy. Hence the conclusion the article actually defends, stated without inflation: conditions of justifiable exit are grounded, and it is not guaranteed that every justifiable exit resolves the need for support. Whoever has exhausted what was required of them exits regularly even if the mechanism continues to operate with no one maintaining it, and it is from that possibility that a requirement addressed to the moment of putting the mechanism into operation is finally drawn. The argument depends on no general theory of the causal imputation of harms and on no attribution of responsibility for outcomes, and rests on three modest premises: certain positions are practical conditions of continuity; third parties organise their conduct counting on the position being occupied; and the appearance of continuity can outlive the loss of the capacity that made it true.

Keywords: Maintenance; Institutional succession; Capacity; Obsolescence; Implanted devices.

Resumo: Este artigo examina a estrutura normativa da saída de uma posição institucional da qual depende a operação continuada de um mecanismo. Sustenta-se que a desocupação de tal posição não encerra a relação, porque o mecanismo não cessa quando o seu sustentador se retira: prossegue, e prossegue sem que a retirada se manifeste no que ele produz. Propõem-se duas distinções relacionadas, que a linguagem corrente da transferência confunde — entre a face titular e a face funcional de uma posição, e entre a transferência do título e a transferência das condições do seu exercício —, das quais resultam as noções de ocupação oca e de entrega oca. Essas distinções não geram sozinhas as regras que se defendem: permitem identificar e delimitar os deveres em causa, e é sobre premissas normativas adicionais, aqui enunciadas e defendidas, que as regras se apoiam. Sustenta-se, com esse apoio, que enquanto o mecanismo continuar a operar quem adquiriu ou exerceu a posição não se exonera abandonando-a, e que a sua saída só é regular quando satisfaz duas exigências cumulativas: não conservar a falsa aparência de que a sustentação subsiste, e ter esgotado as medidas de transição ou de proteção proporcionais e razoavelmente exigíveis dele. Entregar a quem possa desempenhar a posição, adotar um arranjo intermediário que passe nas duas provas e promover a cessação segura perante quem tenha competência para decidi-la são modalidades de cumprimento desse critério, e não a sua definição. E sustenta-se que quem recebeu a posição sem a procurar e nunca a exerceu não pode ser coagido a sustentá-la, mas deve declarar o seu estado, porque o silêncio conserva a aparência de ocupação. Daí resulta a conclusão que o artigo efetivamente defende, e que convém anunciar sem inflação: fundamentam-se condições de saída justificável, e não se garante que toda saída justificável resolva a necessidade de sustentação. Quem esgotou o que dele era exigível sai regularmente ainda que o mecanismo continue a operar sem quem o mantenha, e é dessa possibilidade que se extrai, por fim, uma exigência dirigida ao momento de pôr o mecanismo a operar. O argumento não depende de uma teoria geral da imputação causal de danos nem de qualquer atribuição de responsabilidade por resultados, e assenta em três premissas modestas: certas posições são condições práticas de continuidade; terceiros organizam a sua conduta contando com a posição ocupada; e a aparência de continuidade pode sobreviver à perda da capacidade que a tornava verdadeira.

Palavras-chave: Manutenção; Sucessão institucional; Capacidade; Obsolescência; Dispositivos implantados.

Resumen: Este artículo examina la estructura normativa de la salida de una posición institucional de la cual depende la operación continuada de un mecanismo. Sostiene que la desocupación de tal posición no pone fin a la relación, porque el mecanismo no cesa cuando quien lo sostiene se retira: continúa, y lo hace sin que la retirada se manifieste en lo que produce. Se proponen dos distinciones relacionadas que el lenguaje corriente de la transferencia confunde: entre la dimensión titular y la dimensión funcional de una posición, y entre la transferencia del título y la transferencia de las condiciones de su ejercicio. De ellas resultan las nociones de ocupación vacía y entrega vacía. Estas distinciones no generan por sí solas las reglas defendidas: permiten identificar y delimitar los deberes en cuestión, que se apoyan en premisas normativas adicionales aquí formuladas y defendidas. Sobre esa base, se sostiene que, mientras el mecanismo siga funcionando, quien adquirió o ejerció la posición no queda exonerado por abandonarla, y que su salida solo es regular cuando satisface dos exigencias acumulativas: no conservar la falsa apariencia de que el apoyo subsiste y haber agotado las medidas de transición o protección proporcionales y razonablemente exigibles. Entregar la posición a quien pueda desempeñarla, adoptar una solución intermedia que supere ambas pruebas y promover el cese seguro ante quien tenga competencia para decidirlo son formas de cumplir ese criterio, no su definición. También se sostiene que quien recibió la posición sin

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buscarla y nunca la ejerció no puede ser obligado a sostenerla, pero debe declarar su situación, porque el silencio conserva la apariencia de ocupación. De ello deriva la conclusión efectivamente defendida, sin exageración: se fundamentan condiciones de salida justificable, pero no se garantiza que toda salida justificable resuelva la necesidad de apoyo. Quien agotó lo que razonablemente se le exigía sale de forma regular aunque el mecanismo continúe operando sin alguien que lo mantenga; de esa posibilidad se extrae, finalmente, una exigencia dirigida al momento de poner el mecanismo en funcionamiento. El argumento no depende de una teoría general de imputación causal de daños ni de atribuir responsabilidad por resultados, y se apoya en tres premisas modestas: ciertas posiciones son condiciones prácticas de continuidad; terceros organizan su conducta contando con que la posición está ocupada; y la apariencia de continuidad puede sobrevivir a la pérdida de la capacidad que la hacía verdadera.

Palabras clave: Mantenimiento; Sucesión institucional; Capacidad; Obsolescencia; Dispositivos implantados.

Introduction

There is a class of institutional positions whose occupancy is a practical condition of something continuing to work. The holder of an aircraft type certificate occupies one of them; the holder of a health authorisation over an implanted device occupies another; the maintenance provider of a system that determines social benefits occupies a third. In all these cases the mechanism produces effects on people who did not choose it and who have organised their lives around it, and it produces those effects because someone, somewhere, does what is needed for it to go on producing them.

The question examined here is what happens when that someone leaves. The question seems simple and is not, and the reason for its difficulty lies in a fact usually passed over: a mechanism does not collapse when the party sustaining it withdraws. It is not a vault resting on a pillar. It continues, by inertia, to do what it did — the server goes on serving, the algorithm goes on determining, the implant goes on stimulating. The withdrawal of the party that sustained it produces no interruption; it produces a gap. Operation continues and capacity does not.

From that fact follows the possibility the article takes as its object. If operation continues with no perceptible change, then the exit of the sustaining party does not show in what the mechanism produces. And if, in addition, the position has been transmitted to a successor — so that public registers go on displaying a holder —, the exit may show nowhere accessible to those who depend on it. This state will be called hollow occupancy, and the act by which a position is so transmitted, hollow handover.

The thesis defended is twofold. While the mechanism continues to operate, whoever acquired or exercised the position is not discharged by abandoning it: they exit by a transfer that puts another party in real conditions to perform it or, handover not being possible, by promoting the safe cessation of the operation. And whoever received the position without

seeking it and never exercised it cannot be coerced into sustaining it, but neither can they convert it, by silence, into an appearance of occupancy: they must declare what they hold and what they cannot do.

It is worth saying at the outset what the status of each piece of the argument is, because confusing them is the commonest source of misunderstanding in theses of this kind. The distinctions proposed in the first two sections are descriptive instruments: they show that there is a state which current categories do not separate from effective occupancy, and they allow us to identify who is in a position to produce it or to undo it. They do not generate duties. The duties defended rest on additional normative premises — about the function of obligation, about the asymmetry of access to the relevant knowledge, and about what voluntary acquisition of a position implies —, and those premises are stated where they are used, and defended there. When, at the end, it is said what the article has established, what the distinctions show and what the premises add will be said separately.

It is likewise worth delimiting the field, to avoid other misunderstandings. This article does not deal with the right to an explanation, nor with the contestability of decisions, nor with the forum before which account is given of the exercise of a power. Those questions bear on what a mechanism produces and on how those who receive it may react. The question here is prior and of another order: it bears on what remains when someone leaves a position on which the mechanism's operation depends. A system can be perfectly explainable and perfectly contestable, and be orphaned. Neither is the question who answers for the harms a mechanism produces, nor is any transfer of responsibility from some participants to others proposed. Nothing said here removes obligations from those who designed, sold, approved or used the mechanism, nor concentrates them in whoever holds the position at present. The duties at issue have their own object — the exercisability of the position —, their own time — that of the exit — and their own ground, and they coexist with any others falling to each participant on other titles.

One last delimitation, about causation. The argument dispenses with a general theory of the causal imputation of harms: there is no need to decide whether, and to what extent, whoever exits answers for the losses that may occur afterwards. What is obviously not dispensed with are the ordinary explanatory relations without which none of this could even be described — that withdrawing a team extinguishes a support structure, that silence preserves an entry, that the entry sustains an inference. Those relations are presupposed throughout. What is refused is converting them into a title of responsibility for outcomes.

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A case

According to the documents of the company that developed it, more than three hundred and fifty profoundly blind people received, in several countries, a retinal prosthesis called Argus II, and many of them have used the implant for more than ten years (CORTIGENT, 2024). The device is implanted in the eye and works together with external components.

What matters here is a property the Argus II shares with a whole class of implanted artefacts and systems in production, and not a peculiarity of its own: once set working, a mechanism of this kind goes on working without anyone having to do anything, and its needs — adjustment, replacement of parts, correction of defects, response to occurrences no one foresaw — appear only later, one at a time, and require someone on the other side.

On the other side was Second Sight Medical Products, a publicly listed company in the United States, holder of the regulatory authorisation under which the device had been approved — a humanitarian device exemption, HDE H110002, granted in February 2013. An authorisation of this kind is not a mere entry permit. It constitutes a position, with continuing reporting and surveillance obligations, and a determinate holder who owes them.

In 2019 the company ceased sales of the Argus II. On 30 March 2020 it publicly announced layoffs and the intention to liquidate. What followed is in its annual report filed with the securities authority. Under the risk factors heading one reads that, "in March and April 2020 we laid off the majority of our employees as a result of COVID-19 and an inability to obtain financing"; and, in the section describing the business, that "in furtherance of our decision to withdraw Argus II from the market, we have terminated two post-market studies for Argus II in Germany and the U.S.", and further, in the decisive sentence, that the company "suspended our technical support of Argus II worldwide" (SECOND SIGHT, 2021).

Between March 2020 and March 2021, therefore, the support structure then exercised was dismantled and technical support suspended. It is worth saying no more than this: the documents establish the extinction of a determinate structure, and not the non-existence of capacity in any person or organisation in the world. The devices themselves remained in people's eyes, and went on working.

After that, the position travelled. On 30 August 2022 a merger with another company was completed and the entity was renamed Vivani Medical. In December of the same year, according to that entity's 2024 annual report, "we contributed our neurostimulation assets from legacy company Second Sight and certain liabilities to Cortigent, Inc." (VIVANI, 2025). And

authorisation HDE H110002 appears today in the health authority's database with Cortigent, Inc. as applicant, and as active (FDA, 2013).

These are two distinct propositions, and they must be stated separately because the documents prove them separately: the first establishes the contribution of neurostimulation assets and certain liabilities to a company formed to receive them; the second establishes present holdership of the authorisation. The chronology warrants describing this as a succession; it does not warrant asserting that every element passed in the same act.

Two later developments, both from 2026, complete the picture. The first concerns the continuing obligations the authorisation carried. The quarterly report for the first half of 2026 records that the company was required to collect subject follow-up data by virtue of the 2013 approval, and that "this requirement to collect follow-up data was halted in 2020 with FDA approval" (VIVANI, 2026). The cessation of one of the position's obligations was therefore authorised by the authority itself. The second concerns the present state of the position. The same document describes the neurostimulation division in these terms: "includes activities from Cortigent and Cortigent's subsidiary in Switzerland, effectively closed in 2025". The sentence is grammatically ambiguous as to the scope of the closure, and only the closure of the Swiss subsidiary follows from it with any security. That Cortigent subsists follows from the document itself, which reports a merger agreement dated 1 July 2026 between Cortigent and a subsidiary of another listed company. The authorisation, meanwhile, remains registered in Cortigent's name. The position, in short, goes on circulating.

It is worth now saying exactly what these documents establish, and no more. They establish that the support structure then exercised was extinguished and the product withdrawn from the market; that assets and the regulatory position were transmitted along a succession; and that the authorisation remains active in the successor's name. One conclusion follows from them, and only this one: the legal position outlived the capacity structure that originally made it exercisable.

It does not follow that the successor neither received nor rebuilt operational capacity. That the parent company's annual report does not mention the device is negative evidence, not autonomous proof — all the more so since the holder's corporate position may make it improper to expect its activity to appear there. This article imputes to no one any intention, unlawful abandonment or breach that no authority has declared, and does not present the Argus II as a proven instance of hollow occupancy. What the case proves is something else, and it is enough: the historical separability of title from capacity structure, and the insufficiency of the register to reveal whether capacity was afterwards received or rebuilt.

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The problem, in its simplest form, is this. A person with the implant in their eye has no way, looking at the implant, of knowing whether anyone is in a position to sustain it. The device works today as it worked before. The public register shows a holder. The title is in force. And the only thing demonstrated is that the title outlived the capacity structure that made it exercisable — which is compatible with there being someone who sustains it and compatible with there being no one. That indeterminacy is not accidental. It follows from institutional registers recording who holds and not who can.

The two ways a position can be missing

It is worth beginning by separating two things the word position runs together. A position is occupied when someone holds the institutional title to it — the entry in the register, the certificate, the contract, the designation. Call this the titular face of the position. A position is exercisable by its occupant when the occupant has the capacity to do what the position requires: in the case we started from, to maintain, correct, respond to occurrences, withdraw safely. Call this the functional face.

Under normal conditions the two faces coincide, and it is because they coincide that institutions can use the first as a sign of the second. A register says who holds, and from that it is inferred, without anyone giving it a thought, that whoever holds can. The inference is good almost always, and that is what makes it dangerous when it fails.

A position can then be missing in two ways. In the first, no one occupies it: the position is vacant. This is the simple case, and it is visible, because the register shows the absence, or shows a holder known to be extinct. Institutions have abundant machinery for this — designation, replacement, interim management, legal succession. Vacancy is a state that summons an institutional response, because it is itself the signal that a response is needed.

In the second, someone occupies it, and the occupancy does not bring with it the capacity that made it a position. This is hollow occupancy. It is not vacancy: there is a holder, there is a register, there is someone answering at the address, and it is, for all visible purposes, an occupied position. Nor is it declared breach, because there may be, at the moment one looks, no obligation fallen due and unsatisfied — the obligations of the position show themselves only when something goes wrong.

Under the conditions that concern this article, the second way is normatively graver than the first, and for a reason that is not one of degree. Vacancy is a state that announces itself; hollow occupancy is a state that disguises itself as itself. More than that: it disguises itself using precisely the mechanism that exists to raise the alarm. The public register of holders is the

instrument by which a community assures itself that someone answers for each thing that affects it, and it is that instrument which, in hollow occupancy, produces the false guarantee. The appearance of continuity is not a side effect. It is the consequence of the institutional system doing what it was designed to do, upon a fact that has ceased to be true.

The comparison, however, should not be universalised, and the argument does not need it in that form. There are vacancies worse than any hollow occupancy: the one in which the mechanism stops at once and the harm is instantaneous, or the one in which the absence of a holder prevents intervention by someone who could help. What is maintained is narrower and is enough: when the mechanism goes on operating and the community depends on the register to know whether anyone is sustaining it, hollow occupancy adds to the lack of capacity the suppression of the signal that would lead to its being supplied. It is to that combination, and not to hollow occupancy in the abstract, that the gravity is attributed.

One may ask why registers display the titular face and not the functional one, if it is the second that matters to those who depend. The answer is not that capacity cannot be registered. It can: a regime will be examined below that conditions the transfer of a sustaining position on the demonstrated capacity of the transferee, with approved organisation, procedures and means. Registering capacity is possible, and there are legal orders that do it.

What there is, is an asymmetry. Holding a title is a discrete, dateable fact, with a determinate subject and a document that proves it: it is registered directly. Having capacity is a dispositional state, gradable, distributed across people, contracts and environments, which shows itself only when called upon: it is certified only indirectly, by indications, tests and demonstrations — and a demonstration has a date. It certifies what there was when it was made, and not what there will be when it is needed. It is a photograph of a state that ages.

From this follows a conclusion stronger than impossibility, and more useful. Better registers can reduce hollow occupancy, and should; what they cannot do is abolish the distance between present certification and future response. The defect does not lie, therefore, in there being registers: it lies in letting the continuity of the title work as a substitute for the revalidation of capacity. And the moment at which that substitution becomes most dangerous is precisely the one at which the earlier certification loses its basis — the exit of whoever was certified.

From this likewise follows what will be called the alarm-consumption effect. If the position were vacant, someone would look for a successor: the regulator, the dependent party, a competitor, an heir. Hollowly occupied, it is likely that no one looks, because the question does not arise. Hollow occupancy not only fails to sustain; it tends to prevent the failure from

being noticed and supplied. It is this double effect that distinguishes it, and not the mere lack of capacity.

Three situations the same description conceals

The expression hollow occupancy covers situations that an analysis of duties must separate, because what can be required of an occupant depends on what they know and on what they do with what they know. Three may be distinguished.

In the first, the occupant lacks the capacity and knows it. This is the case of the successor who received the title and the files and neither received nor rebuilt the organisation able to use them, and who is aware of this. It is the simplest situation, and it is to it that the rule of exit is addressed without mediation: whoever knows they occupy without being able to exercise must rebuild the capacity, hand over to someone who has it, or promote cessation — and, on any of these paths, inform those who depend and the competent authority for as long as the state lasts.

In the second, the occupant lacks the capacity and does not know they lack it. This is probably the commonest situation, and the least studied. Whoever receives a system with abundant documentation usually believes they received it whole, and the belief is sincere: nothing, at the moment of receipt, contradicts it. The defect of a hollow handover does not show at the handover; it shows at the first case the documentation did not foresee, which may take years. Here one cannot require correction of a state the occupant himself does not know about, but something else can be required, and it is what the European legal order already requires on transfer: that capacity be demonstrated, and not presumed. The duty, in this situation, is to submit to a test — of simulated exercise, of response to a constructed occurrence, of audit of the organisation received —, because that is the only way to convert ignorance into knowledge before the real occurrence does it.

In the third, the occupant knows of their incapacity and preserves the appearance. For that, no lie is needed: it is enough to keep the entry and say nothing, and the entry says it for them. This is the only one of the three situations in which it makes sense to speak of concealment, and the only one in which moral censure is directed at a conduct and not at a state. The duty here is to inform, and it is the cheapest of the three; it is also the one that silence violates with no effort whatever.

The distinction matters for a practical reason. A regime that treats the three alike will be unjust to the second and lenient with the third. And it matters for a reason of method: it shows that the duties at stake do not follow from the state of hollow occupancy considered in itself, but from the conjunction of that state with what the occupant knows and with what they are in

a position to do. Rebuild, demonstrate, inform: three distinct requirements, addressed to three distinct situations, and their order of onerousness is the inverse of their order of blameworthiness.

An antecedent, and what is separated from it

Nothing said so far is a discovery, and the distinction was made sixty years ago, in the domain of law. Fuller maintains that legal norms and legal systems can and do exist "by halves", and adds that this truth is obscured by the conventions of ordinary legal language. The example with which he illustrates it already contains both halves of what has been described here: "it is probably a good thing that our legal vocabulary treats a judge as a judge, though I may say, with complete sincerity, to a fellow lawyer: 'he is no judge'" (FULLER, 2022, §3.6; quoted from the Brazilian edition consulted). There is the dissociation between the titular face and the functional face of a position, and there is the observation that institutional vocabulary conceals it.

This section is therefore application and development of an antecedent, and not the discovery of hollow occupancy. What remains as our own contribution is narrower, and must be demonstrated rather than claimed. In Fuller, what fails is the occupant's fidelity to the enterprise: the judge who is no judge decides badly, applies what was not laid down, stops doing what the office requires — and, in his eighth desideratum too, the congruence that breaks is between the norm laid down and the action of the one who applies it (FULLER, 2022, §2.12). What is asserted here is another possibility: a position may keep the title and lose the conditions of sustaining the enterprise without any breach by the occupant, because what is missing is neither will nor fidelity but capacity, and capacity can be extinguished by facts that are nobody's conduct. It is a difference in kind, not in degree. Fuller's unfaithful judge is in breach and can be called to comply; the occupant without capacity is in breach of nothing, and calling them to comply would produce nothing.

It is also worth recording that the phenomenon, in its documentary form, was named harshly in an official inquiry. Examining the loss of a military aircraft, Haddon-Cave described the safety documents that preceded it as "big fat, glossy, consultant-produced documents which said the kit was 'safe' when manifestly it was not", and summed up the lesson in a sentence this article might have taken as its epigraph: "safety is delivered by people, not paper" (HADDON-CAVE, 2009). Hollow occupancy, in the form of an intact documentary system over an absent capacity, is described there. What is not there, and is the object of what follows, is the normative structure of the exit that produces it.

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Orphaning as the result of an exit

Hollow occupancy can set in by many routes: by erosion, by budget cuts, by staff turnover. One of them concerns us here, because it has a structure of its own and an identifiable agent — the one produced on exit. Call orphaning the result of that withdrawal: a mechanism that goes on producing relevant effects and to which no one any longer corresponds who is in a position to maintain, correct or safely withdraw it.

It matters to say what orphaning is not. It is not a new species of responsibility, nor a metaphysical relation between an agent and an artefact. It is the result of an action — that of leaving — described by the state in which it leaves the world. Whoever withdraws from a position does not thereby acquire a new property; they produce a state of affairs that did not exist before. All the normative force of what follows comes from that, and not from any thesis about what the occupant causes.

Two delimitations keep the concept from dilating until it ceases to serve. The first: orphaning is not obsolescence. An obsolete mechanism has ceased to be worth maintaining, and its orderly withdrawal is a decision that is announced, prepared and executed. The orphan was not withdrawn: it remains in operation, and it is that combination — continued operation plus absence of a sustaining party — that constitutes the state. The second: orphaning is not, in itself, breach. The commonest cases are those in which no one violated anything, for an insolvent company complies with the law in being wound up, a service complies with the law in transferring competences, a contract ends at its term — and, in the case we started from, a follow-up obligation ceased with the authority's own approval. Orphaning is frequently the residue of lawful conduct, and that is why it needs to be named: the existing categories do not catch it.

It remains to say why exit and not erosion. Hollow occupancy also sets in with no one leaving — budget cuts, retirement of the person who knew, staff turnover —, and those cases are perhaps more frequent. But in them the agent and the moment dissolve into a diffuse process, and the questions put to it are above all questions of policy and management. Exit has a date, has someone who leaves and has an act: it is the form of the phenomenon that most sharply displays the structure of a question about what someone ought to do, and it is for that reason, and not because it is the only relevant form, that it is the one chosen here.

A comparison helps to fix what is proper to this case. In the paradigms Jonas examines — the responsibility of parents and that of the public man —, continuity derives from the total nature of the object, and the exercise of responsibility cannot be interrupted: "parental and

governmental assistance cannot take a holiday, for the life of their object goes on, renewing its demands without interruption" (JONAS, 2006, p. 185, as cited in MOREIRA, 2014, p. 155). What makes interruption grave there is that the life of the object goes on renewing the demands: assistance is necessary because the object goes on needing it.

It is worth then saying precisely where the difference lies, because it does not lie where it would be convenient to put it. It does not lie in the continuity of the object: in both cases the object continues — the child goes on living, the affairs of the community go on existing, the mechanism goes on operating. In Jonas's paradigms, the passage quoted grounds the continuity of assistance in the renewal of demands. This article's problem bears on the possibility that apparent operation conceals the loss of support: the mechanism may go on producing the same effects without revealing that there is no longer anyone in a position to maintain, correct or safely withdraw it. It is that possibility of invisibility that individuates the phenomenon analysed here. The argument does not require that neglect always be visible in Jonas's paradigms, nor does it attribute to the passage quoted any thesis about its visibility.

It is worth noting that the concept is not a philosophical invention. It exists, under this very name, in aviation law. For the European authority, an aircraft becomes orphaned when "the legal person holding the Type Certificate (TC) has ceased to exist", and the consequence the authority draws is notable: "the TC automatically becomes invalid by law because there is no one to be in compliance with the TC holder's responsibilities", so that "orphan aircraft cannot be issued a Certificate of Airworthiness, which requires that a TC holder takes responsibility for the continued oversight" (EASA, [n.d.]a).

It matters, however, not to draw from this more than is there, and the authority itself makes it clear. The invalidity of the type certificate does not determine that the aircraft stops flying: it determines that it stops flying under that title. There is a regime of continuation, and it is with this that the authority deals in detail — the orphan aircraft may operate under a restricted certificate of airworthiness, issued on the basis of specific airworthiness specifications constructed for that type without a holder, or, failing those, under a permit to fly (EASA, [n.d.]b). The real consequence is not the cessation of operation, but the substitution of a title that presupposed a sustaining party by a title that does not presuppose one, more restrictive in what it authorises and explicit as to what it no longer guarantees. That is less than the extinction of operation and is, for the argument, more interesting: the regime does not preserve the earlier entry, it adjusts it to what actually exists. That the source says this is a fact; that it does so in order to prevent false inferences about support is a reading of these authors, and it will be said below with what weight.

The American legal order answers the same problem by the opposite route, and the comparison is instructive. There the certificate may be surrendered to the regulator, and the regulator's internal guidance states, without circumlocution, what results: "when a TC is surrendered, there is no TC holder responsible for developing and making available the necessary inspection requirements, repairs, or design changes" (FAA, 2015, §8e). The same document defines an abandoned TC as "a type certificate (TC) for which the Federal Aviation Administration (FAA) cannot locate the TC holder", and the authority keeps a current public list of holders it cannot locate. And there are airworthiness directive preambles that say the thing in twenty words: "because the STC holder is no longer in business, the FAA is unable to determine how many U.S.-registered Boeing Model 757-200 series airplanes modified by STC SA1727GL will be affected by this AD" (FAA, 2001).

Let us retain what these two answers have in common, because it is more important than what they differ about. One annuls the title when the holder ceases to exist and reduces the operation to a lesser title; the other keeps the title available for surrender and declares the vacancy, making it public and assuming custody. They differ about what to do. They converge on what neither admits: that the title should go on holding good, in the register, as if the holder were in a position to exercise it. In the two legal orders examined, visible orphaning is dealt with; about others, nothing is asserted here.

What makes the problem difficult is not, therefore, a lack of consensus about hollow occupancy. It is that hollow occupancy rarely becomes visible — and exit followed by nominal succession is precisely the way of producing it unseen. A position declared vacant summons a response. A position transmitted to a successor summons no response at all, because, from outside, it is a successful succession.

Effective handover and hollow handover

We thus reach the heart of the problem. If leaving without a successor produces visible vacancy, and leaving with a successor produces invisible succession, then everything turns on knowing when a succession is effective. And here ordinary language fails.

A position is said to have been transferred when its signs have been transferred: the source code, the documentation, the credentials, the contracts, the registered title. But these are means of the handover, not its criterion of success. The criterion has to be given by the object: the handover is complete when the successor is effectively in a position to maintain, correct and withdraw the mechanism under the relevant conditions.

The following distinction is therefore proposed, and it matters that the criterion be the resulting state and not the provenance of what produced it: a hollow handover is the transfer of the institutional position to someone who, having received it, is not in a position to exercise it. It is not required that the capacity have come from the transferor. A successor who already has organisation, means and knowledge of its own may receive from the transferor no more than the title and still succeed effectively, and the handover is not hollow; and a successor who receives everything the transferor had to give may remain unable to exercise, and the handover is hollow despite the generosity of the transmission. What is assessed is the condition in which the successor ends up, and not what the transferor gave over. That formulation has a cost which is accepted: it makes the transferor's duty sensitive to facts about someone else. But it is the only one compatible with the object, which is the exercisability of the position, and not the completeness of an inventory.

From this follows, with no further step, the relation between the two concepts of this article: when hollow occupancy arises from a succession, hollow handover and hollow occupancy are two descriptions of the same episode at two moments — the first, of the transferor's act; the second, of the successor's state. The restriction is obligatory. Hollow occupancy also sets in with no transmission at all — by erosion, by budget cuts, by the departure of the person who knew —, and in those cases there is hollow occupancy and no hollow handover; and, conversely, an insufficient handover may be followed by reconstruction on the successor's part, and then there was hollow handover without lasting hollow occupancy. The two notions coincide in the domain of succession, and only there.

A grammatical precision is also in order, and it avoids confusion. Occupancy is a state; handover is an act. What is proposed, therefore, is not four parallel states but two related distinctions: the one that separates, in an occupant, title from capacity, and the one that separates, in a transmission, the passing of the title from the passing of the conditions of exercise. The second distinction presupposes the first, because one can only say that the transmission left the successor without conditions if title and capacity have already been distinguished in him. And it is precisely because they are things of different kinds that distinct duties can attach to each: to the transferor, duties about the form of the act; to the successor, duties about the state in which he finds himself.

What matters is still missing: why is this even possible? If the position was transmitted in full — and in the case we started from it was, including the regulatory title —, why does what was needed to exercise it not go with it?

The answer lies in the composition of capacity, which is not made only of things transmissible by title: it is made also of people who know why a design decision was taken eight years ago, of environments whose reconstruction no one documented because it was never needed, of relations with suppliers of components no longer manufactured, and of tacit knowledge about what usually goes wrong.

There are, however, two things to separate here, and the distinction is the core of the problem. An inventory of contingencies — the list of foreseen occurrences and of what to do about each — is necessarily incomplete, and it is so for reasons that no amount of further work corrects: the position exists, in good measure, to absorb what was not foreseen, and what was not foreseen does not, by definition, appear on any list. But it does not follow that adaptive capacity is untransferable. It is transferable, and by means that can be described: a team that knows the system, fault-investigation routines, a test environment that works, supplier relations, escalation procedures, knowledge general enough to apply to what has not yet happened. Aviation proves it again: no regulator enumerates the future failures of an aircraft type; what it requires is an organisation able to respond to them.

Where, then, does the hollow handover lie? Here: the handover can be hollow not because capacity exceeds any inventory, but because the documentary handover can exhaust the inventory without the successor ending up with the organisation able to use and complete what was handed over. That is why a handover can be at once complete and hollow — complete as to what was listed, hollow as to what was to make use of the list. And that is why the defect does not show in an inspection of what was handed over: what is missing is not an absent item, it is whoever would know what to do when the first case the list did not foresee arose, which may take years to appear. A demonstration of capacity can reveal it, and that is precisely why requiring one is defended below; an inventory, however complete, cannot. Meanwhile, the register shows a successor, and the mechanism works.

If effective handover is not proved by inventory, it is proved by demonstration: the successor must show that he can, and not declare that he received. This is no requirement invented by any philosopher — it is, word for word, what one of the two legal orders examined below already imposes on the transfer of a sustaining position.

The rule of exit

The first of the two rules is now formulated, with its domain and its proviso already in place. While the mechanism continues to operate, whoever acquired or exercised a position on which that operation depends is not discharged by abandoning it: they exit by a transfer that

puts another party in real conditions to perform it or, handover not being possible, by promoting the safe cessation of the operation.

The abbreviated formula "one exits only by handing over", used throughout the article, has as its domain the first half: exit with continuity of the mechanism. And the rule is an obligation with high deliberative priority, not a prohibition without exception: no obligation so understood excludes that a sufficiently important end may justify, on some occasion, departing from it. Two things weaker than exclusion are maintained, and are maintained below: that the priority is high, and that the burden of justifying falls on whoever departs.

It might be thought that the rule rests on something the occupant promised. It does not, and it is important that it should not, because in the cases that matter there is no promise at all: whoever receives determinations from a system has entered into no contract with whoever maintains it, and the patient who carries an implant does not know the name of the register's holder.

The ground is another: the practical dependence that the exercised occupancy helped to stabilise. When a position is occupied and exercised, those who depend on the mechanism adjust, and in ways that narrow their alternatives. They stop looking for substitutes. They build on top. They let atrophy the capacities of their own that the mechanism made unnecessary: the service dismantles the manual procedure the automatic one replaced; the patient chooses this treatment and not another, and there are treatments one chooses only once. None of this is anyone's fault — it is what a mechanism working means. But it means that the exercise of the position contributes to producing the dependence the position then sustains.

Dependence alone does not generate the restriction. Many people contribute to stabilising it: the clinician who prescribes the mechanism, the buyer who adopts it, the regulator who approves it, the user who organises their life around it. If contributing were enough, the restriction would reach everyone, which is absurd, or would reach no one in particular, which would make it useless. What singles out whoever exercised is the conjunction of four things: that the dependence was foreseeable for whoever occupies the position, since it is not a remote effect but what the mechanism is for; that the exercise of the position contributed specifically to stabilising it, and not generically as any participant in the arrangement does; that the occupant holds exclusive or privileged control over the form of the exit, that is, over whether there is a handover, to whom, with what content, and over whether and how the operation ceases; and that it is their exit that aggravates the vulnerability of those who depend, by converting a sustained mechanism into a merely functioning one.

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The third is what individuates, and the reason is simple: the clinician, the buyer and the regulator contribute to the dependence, but are not in a position to hand the position to a successor or to promote the safe cessation of the operation — they do not have the keys, the design data, the title. Whoever exercised is. And of whoever holds privileged control over the form in which a foreseeable dependence will be met or unmet, an account of the form chosen is asked. It is the step that converts a fact about dependences into a requirement addressed to someone determinate.

Why acquisition also binds

The conjunction just set out has a limit that must be faced squarely. It speaks of whoever exercised, and it is from exercise that it draws the specific contribution and the stabilisation of the dependence. Now, the rule speaks of whoever acquired or exercised, and the disjunction is no ornament: the acquirer who never came to exercise — bought the portfolio of assets, received the title, and never signed an update — does not satisfy the second conjunct and perhaps does not satisfy the first. If the rule reaches him, it reaches him on another ground, and that ground has to be stated.

There are three reasons. None of them produces on its own the whole duty the rule states, and it is worth saying so before setting them out, because presenting them as independently sufficient would cost more than it would yield. Each sustains a distinct fragment, and it is from their conjunction — and from the voluntariness that runs through them — that the integral duty results. Set out in this way, they also explain why the acquirer's duty is not uniform: where one of the three is missing, less remains, and how much will be said below.

The first is assumption. Voluntarily to acquire a sustaining position is to assume the position, and to assume a position is to assume what defines it. What defines this position is not a bundle of powers, it is a burden of support: the type certificate exists so that someone maintains the design and answers for continued airworthiness; the health authorisation exists so that someone monitors and reports. Whoever acquires acquires that, and not a version of the position purged of its burdens; and assumption does not need exercise in order to operate, just as whoever assumes a debt owes it before the first instalment falls due.

That reason has, however, an exact reach, and to overstep it would be cheating. It establishes that the acquirer owes the burdens the position institutionally carries — reporting, monitoring, maintaining the design —, and it establishes this by a short route, which is that of the definition of the position itself. It does not establish, and could not establish by that route, the duty of exit this article defends, because that duty appears in the definition of none of those

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positions: it is precisely what is being argued ought to appear there. To include it in the definition and then extract it from the definition would be to demonstrate by stipulation. What assumption gives, and it is much, is the difference between the acquirer and the bare holder: the first wanted the position with what it is, the second found himself with it. The duty of exit is added to that basis; it is not deduced from it.

The second is the concentration of the means. Whoever acquires a sustaining position typically acquires what no one else can sustain without: the design data, the credentials, the rights over the software, the contracts with suppliers. It is not required that the concentration be perfect nor that the acquirer be the only one who can — it is enough that the set of indispensable means be predominantly in his hands for the question about the mechanism's fate to address itself to him before addressing itself to anyone else.

Here too the reach is limited, and for a reason the correct objection identifies: concentration can occur without anyone having sought it. Whoever receives by legal succession the same data, rights and credentials ends up with the same capacity to intervene, and the reason, taken in isolation, does not distinguish the acquirer from the bare holder. What it grounds, and grounds for both, are duties proportionate to the capacity held: to cooperate, to make available what one has to whoever can use it, not to destroy or render inaccessible the means on which future support would depend. It is little by comparison with the rule of exit, and it is not nothing: it is what keeps possession of the means from being normatively indifferent.

The third is blocking. Acquisition is not neutral with respect to the other possible successors. In acquiring, the acquirer removes the position from the set of what is available to whoever might receive it, and at the same time produces, in the register, the sign that the succession has taken place. It is the alarm-consumption effect seen from the side of whoever consumes it: while the position figures as transmitted, it is unlikely that anyone will look for a successor, and the candidate who would have received it with capacity tends not to be sought.

The objection to this reason is symmetrical to the previous one, and it is just. Material blocking is also produced without choice: whoever receives the position involuntarily occupies, in the same way, the place another might occupy. Voluntariness does not determine the existence of the effect; it determines on what title it is imputed to whoever produces it. And what blocking grounds, in itself, is a duty correlative to the obstacle: to undo it — by declaring, by ceding, by not opposing another's taking over. It does not ground, on its own, either the duty to sustain or the duty to promote cessation.

Having stated the reach of each, we may say what results from their conjunction, and it is worth first fixing the status of the three. They are not necessary conditions of the integral

duty, nor alternative grounds of the same duty. They are cumulative reasons of variable weight, and each grounds on its own a lesser and determinate duty: assumption, the burdens the position institutionally carries; concentration, cooperation and non-destruction of the means; blocking, the undoing of the obstacle. The integral duty is not the arithmetical sum of those three lesser duties, and it is important that it should not be, because a sum of small duties does not produce a large one. It results from a principle that the three reasons, taken together, make applicable, and that principle must be stated and defended rather than presupposed.

It is stated thus: whoever, being able to choose, voluntarily occupies the place on which the meeting of another's dependence rests, and thereby concentrates in himself the means of that meeting and displaces the candidates who might have occupied it, owes an account of the form in which the meeting will be assured when he leaves the place. The principle does not make duties spring from mere will, and that is not what is maintained. Its point is another, and it connects directly to Williams's premise already invoked: the reliability that the dependants made use of was assured by an arrangement, and this agent replaced that arrangement by his own. Whoever replaces what assured reliability answers for what will assure it afterwards — not because he promised, but because, having occupied the place of the alternatives, it is to him, before anyone else, that the question about them addresses itself. It is not claimed that he is the only one to whom it can address itself: knowledge and control are distributed, as has already been acknowledged, and the priority of the question is not exclusivity.

It is this principle that establishes the content of the duty, and explains why it requires a materially justifiable transition and not merely a notice. To give an account of the form in which the meeting will be assured is, precisely, to exhibit an arrangement and justify it; a notice informs that the earlier arrangement has ended and says nothing about what replaces it. The three reasons do not demonstrate the duty: they show that this agent brings together, in high degree, what makes the principle demanding in his regard — he wanted the place, he has the means, he displaced the alternatives —, and the principle does the rest of the work. Whoever would refuse it must refuse it, and not the three reasons.

The grounding has a determinate reach, and it is worth marking it rather than announcing a uniform rule for every acquisition. It rests on the replacement of an arrangement that assured reliability, and it covers well whoever takes the place of whoever was sustaining. It does not in the same way cover whoever acquires an already orphaned position in order to try to recover it: there no arrangement was replaced, no one was displaced — because no one was contending for the place —, and the dependence was not stabilised by the acquirer, who found it unattended. Assumption and the means subsist, and with them a duty subsists; the integral duty does not,

and it would be perverse if it did, since loading it onto whoever arrives to improve an already bad state is the surest way of guaranteeing that no one arrives. What is defended, therefore, is not that every acquisition binds in the same way, but that acquisition which replaces existing support binds in this way.

Two cautions keep this from proving too much. The first: a duty not chosen may be entirely legitimate, and nothing here suggests otherwise. What assumption does is not to make legitimate a duty that without it would be illegitimate; it is to dispense with the supplementary justification that imposing a burden on someone who did not want it always requires. The second: someone may assume a sustaining position without displacing any candidate, because there was none — and the case is not rare, since whoever assumes what no one wanted is usually precisely the person who prevented the thing from being left without a holder. Blocking is then absent. The principle still applies, because assumption and the means suffice for the question about future meeting of the dependence to address itself to that agent; what changes is its weight, and of whoever assumed what no one wanted less is required, not more. That is the sense in which the three factors are cumulative reasons of variable weight: none of them is a switch, and the absence of one grades the duty instead of suppressing it.

From this follows also the situation of the bare holder. He lacks assumption, and he lacks the voluntariness of the blocking; it is maintained that what remains has insufficient weight for the integral duty, and for that reason it is not imposed on him. This is a thesis, and not an automatic result of the grading: whoever assigns to the concentration of means a weight greater than the one assigned here may maintain that the bare holder too owes more, and the discussion is legitimate. What favours it is what has already been said about imposition — a burden of support required of someone who did not want it calls for supplementary justification, and mere possession of the means, without choice and without displacement of anyone, does not supply it. There remain to him, in any event, the lesser duties that concentration and the objective obstacle ground in themselves: to declare, to cooperate, not to render useless what another would need. It is exactly the content that the section on the duty to declare assigns to him.

Why this expectation, and this occupant

The form of the inference is not original, and it is worth saying where it comes from. Williams maintains that the considerations given deliberative priority in order to secure reliability constitute obligations, and that to these correspond rights "possessed by people who benefit from the obligations", obligation working to secure "a state of affairs in which people

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can reasonably expect others to behave in some ways and not in others" (WILLIAMS, 1985, pp. 186-187). This gives the function — securing reliability, which is what a hollow exit destroys — and the direction — the rights belong to those who benefit —, with no need to invoke second-personal authority or fiduciary analogies; and it gives the limit as well, since the same author allows that the obligation "may be broken on this occasion" in the face of a sufficiently important end, which is the proviso already made. It does not give, however, the step that is missing: not every expectation others form about someone's future conduct generates an obligation of his, and whoever closes his shop frustrates expectations and owes nothing.

The missing step rests on a distinction already introduced. The register declares holdership; capacity is what is inferred from it. The expectation at issue is not, therefore, that the occupant will continue, nor is it an expectation he created: it is the practical inference anyone draws from an entry in force — that that position, being occupied, is being performed. And an entry may remain literally true, because that person does indeed hold that title, and still sustain a false inference.

The occupant is not, then, the author of the expectation. He is the one whose occupancy sustains the inference drawn from it, and is for that reason in a position to undo it. The duty bears on the misleading appearance the uncontradicted entry produces, and not on the truth of the entry; and it does not presuppose that every title certifies capacity. It arises from an asymmetry of position: there is an institutional representation in force, that on which its correctness depends is matter to which the occupant has access, and whoever depends on it has no way of verifying it. He need not be the only one who knows, nor the only one who could correct the register — capacity is distributed across people, contracts and environments, the technicians may know of its loss, an authority may correct the entry. The relevant knowledge and a reasonable possibility of communicating are enough.

From this comes, and comes whole, the duty to inform, for any occupant, whether or not he sought the position — including, therefore, whoever holds without ever having exercised and induced no expectation at all, but whose holding is what keeps standing the entry from which the inference is drawn. That is why the duty examined below is a duty to undo a representation, and not to sustain anything.

Let us not ask of this ground more than it gives. It does not on its own sustain the more demanding duty to hand over or to promote cessation, which continues to depend on the premises of the previous section — assumption, concentration of the means, blocking — or on exercise. It is those premises, and not the correction of the appearance, that separate the bare holder from whoever assumed the position.

It is also explained why the priority is high and why the burden of justification falls on whoever departs from the rule: the dependence already exists and is not reversible by the dependent party; the loss of support is, by construction, hard to detect from outside; and the consequences of a withdrawal without handover fall entirely on those who could not anticipate them. Whoever departs from the rule does so, moreover, with the relevant knowledge on his side and with the decision about the form of the exit in his hands — which is reason enough to ask the justification of him, and not of whoever suffers the result.

The restriction is not a duty to sustain forever, nor even a duty to sustain. It is a restriction on the form of the exit: one does not exit leaving in operation, for those who depend on it, a mechanism no one is any longer in a position to maintain. Whoever wants to leave, leaves; what he cannot do is leave in any manner whatever. And because the restriction bears on the operation and not on the person, it admits of more than one route of compliance and must have a term — two conditions without which it would turn into servitude, and which the following section makes precise. Once the rule is complied with, the duties of support for the future are extinguished, and nothing more. Nothing here erases obligations falling to the occupant for what he did while occupying — for design decisions, for warnings he ought to have given, for harms he may have caused. A regular exit is not a retrospective release: it is the correct way of ceasing to be that by which the operation continues.

Why handing over or promoting cessation, and not something else

The rule states two routes and may give three wrong impressions: that there are only two; that the second is an alternative the occupant chooses when the first fails; and that the rule is complied with by undoing the misleading appearance. None of the three is exact, and correcting them makes the rule more defensible, not less.

Begin with the number of routes. Between complete handover and cessation there is a field of intermediate solutions that practice knows well: informed temporary continuation, in which whoever is leaving maintains the operation for a declared period while a successor is sought; reduction of functionality, in which the parts requiring active support are switched off and the core that does not require it is preserved; partial monitoring, in which no one maintains the mechanism but someone watches and warns; distributed support, in which several entities take on fragments of the burden; gradual reconstruction, in which the successor receives the title together with a dated plan for acquiring capacity and intermediate obligations of demonstration. None of these is effective handover, and none is cessation. All of them may be, in determinate circumstances, the best thing to do.

The rule does not exclude them, and it is necessary to say why, on pain of its being refuted by the first example. But it is necessary to say so without reducing the rule to a requirement of transparency, and it is here that the argument must choose. It chooses this: the rule imposes two distinct requirements, and neither absorbs the other. The first is transparency — one does not exit preserving the false appearance that support subsists. The second is material — the concrete conditions under which the dependence will be met after the exit must be justifiable to those who depend. Undoing the appearance satisfies the first and does not satisfy the second. That is why it will be said below that in insolvency publicity undoes the appearance and does not undo the orphaning: the sentence does not contradict this section, it states the reason why the requirements are two.

Drawn in this way, the boundary of intermediate solutions has two crossings and not one. An intermediate solution is admissible when, first, it presents itself for what it is, so that those who depend can know what has ceased to exist; and when, second, it meets the dependence in a way that is justifiable to those who depend on it, given the alternatives reasonably available and knowable to the agent. Note that the second test is one of justifiability and not of optimality: it is not required that the arrangement chosen be the best of all conceivable ones, which would presuppose in the agent a comparative knowledge he as a rule does not have, but that it withstand the question why not another, put by those who suffer the consequences. Informed temporary continuation passes both tests when the period is used to look for a successor, and fails the second when it is mere postponement. Reduction of functionality passes the first if those who depend know what they have lost, and the second if what was switched off was what required active support, and not that on which the dependence lived.

Partial monitoring is the most exposed case, and it serves as a test. Presenting it honestly as watching without capacity to correct satisfies the first requirement and says nothing about the second. For the second, what matters is whether a superior alternative was reasonably available and whether the risks and limitations it leaves uncovered are justifiable to those who bear them. Duration, in itself, does not decide: an arrangement of watching may be permanent and justified, when nothing better exists and what it covers is proportionate to what is at stake. What permanence usually indicates — and it is only an indication, though a strong one — is that no one is still looking for the alternative; and an arrangement presented as definitive tends to extinguish the search that would justify it. It is against that consequence, and not against duration, that the second test is directed.

It is the double requirement that explains, finally, why the two named routes occupy the extremes. Effective handover satisfies the material requirement by making the appearance true: the meeting of the dependence is assured by someone who can. Cessation satisfies it in another way, and this must be described with care, because switching a mechanism off does not remove the need of whoever depended on it — it removes the operation, and with it the false appearance and the continuing risk of a functioning no one is watching. Its justification is comparative: it is justified when leaving the mechanism operating without support is worse, for those who depend, than withdrawing it. Where that comparison is reversed, the route closes, and that is exactly what the implant case will show below, in which the need not only remains but is aggravated by the loss of function.

Between those extremes there are degrees. And outside them, and outside the intermediate solutions that pass both tests, there remains the conduct the rule prohibits — and it is alternative, not conjunctive, because the requirements are cumulative. It is enough to fail one. It is prohibited to exit preserving the false appearance that support subsists, even if future meeting of the dependence would be justifiable; and it is prohibited to exit leaving a future meeting that cannot be justified, even if everything was declared with exactitude. A transparent and materially unjustifiable exit is not a regular exit: it is an honest exit, which is less.

A second correction follows, and it is more serious. The rule written as a disjunction suggests that the occupant may opt for cessation, and in most cases he cannot. Whoever decides that an approved device ceases to operate is not the holder of the authorisation: it is the authority that granted it, in the exercise of its competences, and often with the intervention of whoever prescribed and whoever uses. Switching off a system that determines social benefits is the decision of the body that adopted it, and not of the maintenance provider. The second route does not, therefore, confer a power to decide cessation. It confers a duty to promote it through the competent channels.

Trading a requirement of result for a requirement of conduct obliges us, however, to say when the conduct is enough, on pain of the duty being left without a term — and a duty without a term is the servitude the article wants to avoid. The criterion cannot be a list satisfied by documentation, because such a list would satisfy the procedure and leave the material requirement untouched. A two-level criterion is therefore proposed, and the second governs the first. At the level of diligence, cessation has been promoted by whoever formally communicated the state to whoever has competence to decide and to whoever is known to depend; supplied what the decision requires; applied for whatever there was to apply for; remained available for a reasonable period for whatever the decision might demand; and did not undo or render

inaccessible the means on which the execution of that decision would depend. Two of those five elements — the reasonable period and what the decision requires — are open criteria, and no more is claimed for them: they are verifiable, in the sense that whether they were satisfied can be argued, and not determinate, in the sense that they might apply on their own.

At the material level, which is what decides, those acts discharge when, once they are concluded, no transitional or protective measures proportionate and reasonably required of that agent remain within his reach. That is the subordination that was missing, and one case shows why it is necessary. Suppose the agent has performed the five acts, that the authority has decided nothing, and that he can still, at small cost, maintain for a few days a protection without which serious and imminent harm will occur. The answer is that he may not withdraw, and not because some act is missing from the list, but because the material requirement is not satisfied: a proportionate measure remains within his reach. The list describes the diligence owed to whoever decides; it does not measure what is still owed to whoever depends.

Putting the two together, we obtain the definition of compliance the article will use from here on, and will use everywhere: whoever has ceased to preserve the false appearance of support and has exhausted the transitional or protective measures proportionate and reasonably required of him has complied with the rule of exit. The routes — handover, intermediate arrangement, promotion of cessation — are the modes of achieving that, and the five acts are the content of diligence in the third of them. None of these is the criterion; the criterion is what has just been stated.

Once the two conditions are satisfied, and the absence of a decision from whoever ought to decide persists, the agent may leave — and it is necessary to say frankly what then happens, and above all what does not happen. The mechanism goes on operating without support: the orphaning subsists. What does not subsist is its invisibility, nor the doubt as to whether that agent still ought to have done something and did not. As to the other participants, the question remains open, and the following paragraph says why.

Let it not be concluded from this that the burden passed to someone else. The correct conclusion is narrower, and the difference matters for two reasons. The first is that competence to decide is not capacity to sustain: the authority that can authorise or prevent the operation of a device as a rule does not have the organisation that would maintain it, and to say that the problem is now hers would be to attribute to her what she cannot do. The second is that absence of decision is not one single thing — it may be inertia, and it may be a decision to wait, a legitimate controversy about what to do, or the lack of elements the agent himself did not supply —, and those situations are neither equivalent nor assessed in the same way.

What is established, therefore, is the discharge of one participant, and not the resolution of the problem. These are distinct conclusions, and the article asserts only the first: this agent's duties have been extinguished, the state is declared and visible, and the question of who must now do what remains open and addressed to the institutional arrangement — which is where, as will be seen, it belongs. This is consistent with what was said at the outset: obligations are not transferred from some participants to others, and this is not where one would begin to do so.

A third observation keeps cessation from being read as the preferred outcome. The same facts that ground the duty of whoever exercised — the foreseeability of the dependence, the specific contribution to stabilising it, the control over the form of the exit and the aggravation of vulnerability — argue, nearly all of them, against cessation. Whoever depends on the mechanism depends on it, and switching it off is precisely to realise the harm the dependence made possible. Safe cessation is not the good route: it is the route that remains when the good one does not exist, and its justification is always comparative and never general. It is not maintained that a known evil is, as such, preferable to an unknown one — a certain loss may be much greater than the risk continuation entails. It is maintained only that cessation is preferable to orphaning when, for those who depend, leaving the mechanism operating with no one maintaining it is worse than withdrawing it. It is that comparison, made case by case and from the point of view of whoever suffers the consequences, that authorises it; where it is reversed, the route closes.

The rule already exists, and it has a rival

There is here a finding that corroborates the plausibility of the thesis, without demonstrating it: "one exits only by handing over" is no unprecedented proposal. It is one of two competing legislative solutions, to the same problem, in two legal orders regulating the same matter.

An aircraft type certificate is a sustaining position in the exact sense of this article: its holder is bound to maintain the type design and to assure the continued airworthiness of the units in service. Now, on the transfer of that certificate, the law of the Union provides that "the transfer of a type-certificate or a restricted type-certificate or an ETSO authorisation for an auxiliary power unit may only be made to a natural or legal person that is able to undertake the obligations laid down in point 21.A.44, and, for this purpose, has demonstrated its capability in accordance with point 21.A.14" (EUROPEAN UNION, 2012, point 21.A.47).

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Read slowly what is there. The transfer may be made only to someone able to undertake the obligations and who, for that purpose, has demonstrated their capability. It is not a recommendation of good practice, nor a duty whose breach generates responsibility after the fact. It is a condition of validity, and the condition bears on the state of the transferee: a transfer to someone who has not demonstrated capability is not an irregular transfer — it is legally impossible. Note that the regime does not require that the capacity come from the transferor, and that is why it confirms the definition proposed above: what is controlled is the condition in which the successor ends up, and not the provenance of what put him there.

And the American legal order, for the same certificate and the same matter, provides that a holder who transfers it must send the authority a written communication with the certificate number, the transferee's name and address and the intended date of transfer (UNITED STATES, 14 CFR 21.47). There is no capability test. There is no requirement that the transferee hold the design data. There is no prior approval.

One regime requires demonstration of capability; the other requires notice. The difference between the two is exactly the object of this article, and the article argues for the first. This changes the dialectical position of the thesis: it is no longer a matter of proposing a new duty against a silence, but of maintaining one of the two answers positive law has already given, and of saying why it is the right one.

In favour of the European answer there is an argument that is not one of value but of internal coherence. The American alternative answers orphaning by custody and publicity, which works when the holder disappears, because then the vacancy appears; but the written communication is precisely the instrument by which a position passes to a holder without capacity without the vacancy appearing. The regime that deals well with the holder who disappears deals badly with the holder who is replaced — and replacement is the frequent case, because whoever becomes extinct almost always becomes extinct by transmitting what he has.

It is necessary, however, to measure what this comparison proves, because it does not prove the thesis and was not brought in for that. It proves three things, and they are the three the argument needs: that the problem is recognised by legislators who had to decide it; that the solution defended here is not eccentric, since a mature legal order has adopted it; and that the milder alternative has an identifiable blind spot. It does not prove that the European solution is morally correct, nor that it should extend to other domains, and it is obvious that a transfer requirement is not a complete theory of admissible exit: the European regulation says nothing about what to do when there is no capable transferee, about intermediate solutions, or about

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who decides cessation. Those questions were answered above by argument of our own, and it is there that the demonstrative weight rests. Positive law is here a witness, and not a guarantor.

The rule speaks of whoever acquired or exercised, and the disjunction, already grounded, finds structural confirmation in company law. English law defines a director so as to include "any person occupying the position of director, by whatever name called" (UNITED KINGDOM, 2006, s. 250) — making the quality depend on occupancy of the office and not on formal appointment —, and on how to establish it we cite Holland v HMRC with its result, which was negative: the Supreme Court held, by a majority, that the person concerned was not a de facto director, since directing the legal person that formally occupied the office was not enough to make him an occupant (UNITED KINGDOM, 2010). Only the analytical proposition is retained — the quality is established by examining what the person did and whether he assumed the responsibilities of the office —, as confirmation that mature legal orders make duties depend on exercise. It is not a positive application of responsibility to whoever exercised without appointment, and it does not prove the thesis.

Insolvency, and what remains when nothing more is possible

The most serious objection to the rule invokes insolvency. The occupant is being wound up; there are creditors; there is no money to sustain anything; and the law orders the assets to be realised. The objection is serious, and it is not answered by saying that it is enough not to transmit the position in silence: by the double requirement fixed above, publicity satisfies transparency and leaves the material requirement untouched — it undoes the appearance and does not undo the orphaning. The answer distinguishes three moments, and the distinction is the essential thing.

Before insolvency, while there is capacity and there is time, there is a duty to structure a possible exit: to foresee who might receive, to keep in a deliverable condition what a handover would require, and not to let the only available exit turn out to be the impossible one. This is the moment at which the requirement is cheapest and is frequently the moment at which it is ignored.

During insolvency, capacity still being present, the routes of the rule hold: effective handover to someone who can, one of the intermediate solutions that undo the appearance, or the promotion of safe cessation before whoever has competence to decide it. The rule does not require that the insolvent go on financing maintenance indefinitely — that would be to prefer some creditors over others by an oblique route —, but it does require that one of those routes be taken while it is still possible to take it.

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The third moment is the difficult one, and it must be faced without palliatives. Once capacity is lost, one cannot hand over what one no longer has; and if cessation depends on someone else's decision that does not come, or is materially impossible, that route too closes. Then both routes have disappeared, and the rule, as formulated, has nothing to require. It is worth saying this plainly, and not suggesting that a weakened version of the same requirement remains.

What remains is something else, and it is three distinct things that ordinary language runs together. The first is a judgment about the arrangement, and it has two degrees that must not be confused. That no one can, at the final moment, do what would be needed demonstrates that the arrangement was insufficient to meet the need: this the result proves, and proves on its own. That the arrangement was badly designed is another assertion, and that the result does not prove — it depends on knowing what alternatives existed and what information was available when it was designed, and a reasonably designed arrangement may fail in the face of what was neither foreseeable nor avoidable. The distinction matters because only the second degree is a criticism of the regulation that permitted operation without provision for exit, of the contract that reserved no means, of the insolvency regime that does not treat the burden of support as it treats other burdens. The first is merely the record that the need went unmet, and that is already enough to be getting on with. It is from the second, when it obtains, that the requirement of entry, formulated below, arises.

The second is a set of residual duties, which subsist because they do not depend on the lost capacity. To declare that one cannot; to communicate to the competent authority and to whoever is known to depend; to cooperate with whoever comes to receive; to hand over the artefacts and, above all, the description of what does not go with them — which is what allows whoever receives to know what he will have to rebuild. A successor who receives artefacts with an honest account of their gaps is incomparably better off than one who receives them on the presumption that they are complete.

It is now appropriate to apply to these duties the definition of compliance fixed above, and not the old one. It used to be said that they do not achieve a regular exit because they produce neither a sustained mechanism nor a switched-off one. That measure no longer serves, because the rule has ceased to be measured by the institutional result: it is measured by not preserving the false appearance and by exhausting the proportionate measures required of that agent. Now, the residual duties can satisfy exactly that. Whoever lost capacity, declared the state, alerted whoever could decide and handed over what he had together with a description of what was missing, has exhausted what was required of him — and his exit is regular, although

the problem remains entire. It is the distinction that runs through this section and that is worth stating without circumlocution: an exit may be morally justified without the institutional problem being resolved. The orphaning subsists, and subsists in its least harmful form, the visible form, in which those who depend know their situation and in which a capable third party may appear. Confusing the two things produces the two opposite errors: treating as culpable whoever did everything he could, or taking as resolved what has merely been brought into the open.

The third is censure for the earlier decisions, and it is the only one addressed to someone. Here too the result is not enough. That an earlier choice contributed to the final state does not make it censurable: the risk must have been foreseeable at the time it was made, the alternative conduct must have been one that could be required of whoever made it, and the final state must have been avoidable by it. Where the three conditions are met — not reserving means when there were means and reason to reserve them, not preparing a succession when succession was foreseeable, transmitting in silence, postponing the communication while there was still time —, censure is warranted, and present impossibility does not absolve it. Where one is missing, there is no censure, and what remains is the judgment about the arrangement. Distinguishing the three things is what prevents both the complacent reading, for which impossibility excuses everything, and the vengeful reading, for which every bad state has a culprit.

The case we started from makes the distinction vivid. The support structure was dismantled in 2020 and 2021; the transmission took place in 2022. Between one and the other, what the transferor still had to hand over was no longer the structure it had exercised — and what remained of it that was most valuable was, at best, the exact description of what was missing. Note, finally, that insolvency law itself knows that there are things one does not exit by simply letting go: disclaimer of onerous property, where admitted, operates "by the giving of the prescribed notice", by formal act and not by abandonment (UNITED KINGDOM, 1986, s. 178). It is a partial model and nothing more: it would be an error to convert a special institution into a general right that does not yet exist.

Declining is an act

The rule of exit has to be limited, on pain of catching whom it should not catch. Three positions may be distinguished. The acquirer sought the position and received it: he bought the keys, the contract, the title. The intermeddler did not seek it, but exercises it: he signs updates, renews certificates, answers requests, charges for maintenance. On these two the rule of exit falls in full, and the reasons have already been given separately: on the intermeddler, because

his conduct integrated the position into the expected continuity of the mechanism; on the acquirer, by assumption, by concentration of the means and by blocking of the possible successors. The bare holder neither sought it nor exercises it: he received it by succession, by enforcement of security, by legal transfer of competences, by an allocation to which he was not party. On him the rule of exit would be unjust, for obliging him to sustain what he never wanted or exercised is to impose a burden that nothing in his conduct justifies.

It does not follow, however, that he owes nothing. It follows that he owes something else: whoever holds a sustaining position without having sought it and without exercising it owes no maintenance, but cannot let his holding function as an appearance of occupancy. The formulation must contain both qualifications, because without them it would reach the acquirer who has not yet exercised, to whom the previous section showed the rule of exit applies.

The duty bears on a qualified subject, and the qualifications are no ornament: without them, a duty justified by being the least onerous becomes, in certain cases, impossible or epistemically inaccessible. It bears on whoever knows that he holds the position, or is ignorant of it through having disregarded signs that reasonably called for confirmation; on whoever knows that he does not exercise it, or that he lacks the relevant capacity; and on whoever can, at reasonable cost, declare that state before the forum able to correct the appearance.

The first condition must be read with care, because a careless formulation gives birth to what one wants to deny. There is no general duty to audit whether one occupies: no one is bound to rummage through registers looking for sustaining positions that may have fallen on them. What there is, is what already holds in any domain: ignorance excuses when it is the ignorance of someone who had no reason to suspect, and does not excuse when it results from disregarding signs that called for confirmation — the mention in a list of assets one bought, the communication received and not read, the question asked and not answered. Whoever was brought to a sustaining position without any sign of it lies outside the rule's reach.

The crucial point is the last. Omission does not undo the appearance. And the reason lies entirely in what has been said: silence preserves the titular face of the position. Whoever holds and says nothing does not leave the position vacant; he leaves it hollowly occupied. To leave without saying so is not to leave — it is to remain in the only way that keeps anyone from noticing.

It is now appropriate to be exact about what the argument establishes here, because it is easy to ask too much of it. What the alarm-consumption effect sustains is a declaratory duty: whoever holds without exercising must say so, on pain of his holding going on producing the false guarantee. That is solid, and it is what is defended. What the argument does not establish

is that the declaration suffices to extinguish the position, that is, that there exists a general power to exit by unilateral declaration. Whether such a power exists, and with what effects, is a question that depends on the regime of each position: there are positions one exits by declaring, positions one exits with the authority's acceptance, and positions one does not exit while there is no successor. The article does not settle that question, and does not need to — its point is that the declaration is owed in any of those cases, because in any of them silence produces the effect one wants to avoid. Where the position is not extinguished by the declaration, the bare holder keeps the position and is free of the burden of support, but with the duty, which subsists, of not letting the entry go on sustaining an inference that has ceased to be true.

This still marks a real difference between the positions, and the double requirement already fixed says what it consists in. Declaring satisfies the requirement of transparency, and it is what is asked of the bare holder, because the material requirement presupposes the assumption he did not make. Of the acquirer and the intermeddler the material requirement is asked too: for them, the exit is to hand over, to adopt an intermediate arrangement that passes both tests, or, with the provisos already made, to promote cessation on the terms and by the definition of compliance fixed above. Of the bare holder the declaratory act is asked, together with the duties that mere possession of the means grounds — to cooperate, not to render useless what another would need —, and that is his advantage; its price is that the refusal must have a form.

If declining is an act, it matters to know what the act must contain, on pain of the requirement being satisfied by a formality — which would be to repeat, in the remedy, the defect the article diagnoses. The minimum content follows from the function. The declaration exists to undo the appearance of occupancy, and that appearance is undone by saying three things: that one holds the position, that one is not in a position to exercise it, and to whom, if to anyone, one intends to transmit it. None of these requires technical competence — it requires saying what one knows of one's own situation, which is what the holder is in a position to say with no inquiry whatever. It is less, therefore, than giving an account of the state of the mechanism, which it would be unjust to impose on someone who never exercised it: he is not asked for a diagnosis, he is asked only not to leave his name in the register guaranteeing what he cannot guarantee.

It may be said: why does the bare holder owe even this? He did nothing. The position fell on him. To impose an act on him, however cheap, is to impose a cost he did not seek. The objection has force and has a limit. Its force lies in refusing that mere imposition generates duties: whoever receives something he did not ask for is not bound to look after it. Its limit lies

in this, that here he is not asked to look after anything — he is asked not to produce an effect, and the effect is produced by the holding and not by the action.

It is here that the analogy with things breaks down. Whoever receives a parcel he did not order can ignore it without harming anyone, because no one is counting on it. Whoever holds a sustaining position is, by the mere fact of holding it, occupying the place another could occupy and suppressing the signal that would lead someone to look for him. His inertia is not neutral: it is what maintains the appearance. The duty to declare is the least onerous one compatible with not producing that effect, and it is because it is so that imposing it on someone who sought nothing is justified.

That acts of refusal produce effects by being formalised acts is an established feature of institutions which, though they do not ground the thesis, confirm its structure. Disclaimer of an inheritance is the clearest example, because the heir is the paradigmatic involuntary holder: he did not seek the position, and the law does not oblige him to keep it. Disclaimer is subject to the form required for alienation of the estate; its effects are retroactive to the moment the succession opened, whoever disclaims being deemed never to have been called; and the right to accept lapses at the end of ten years counted from knowledge of the call (PORTUGAL, 1966, arts. 2059, 2062 and 2063). Form, retroactive effect and time limit: a refusal that is an act, and not an absence.

It matters, nonetheless, to say precisely what this institution sustains and what it does not, on pain of drawing from it more than it gives. It shows that a legal order organised refusal as a formal act in a domain where the burden is patrimonial and the person called has not yet acquired. It does not show that every sustaining position admits unilateral refusal, and there are good reasons why many do not: when the position is the only one on which the operation depends, allowing any holder to return it to nothing is to create, by another route, the orphaning one wanted to avoid. Add that Portuguese law does not oblige the heir to speak. Acquisition depends on acceptance; silence is a possible position while the time limit runs; and what exists is the faculty of any interested party to force the matter, calling on the person entitled to declare (PORTUGAL, 1966, art. 2049). The analogy sustains, therefore, two things only: that acceptance and refusal operate by acts, and that merely conservatory acts do not amount to acceptance. The spontaneous duty to declare, in the argument set out here, comes from the alarm-consumption effect, and the succession institution merely confirms the form it would have to take.

That same institution also supplies the criterion of the boundary. The case law fixes tacit acceptance in acts that necessarily imply the intention to retain the estate, or that are "of such a

nature that he could not perform it except in the capacity of heir", requiring of them a conclusive and unequivocal character (PORTUGAL, 2013). Now, that is exactly the criterion the distinction between bare holder and intermeddler needed. Preserving what deteriorates, preventing collapse while one decides, doing what any depositary would do: this is not assuming. Signing updates, renewing certificates, answering as holder, charging for the exercise: this is done only in the capacity of occupant, and it is assuming. The boundary drawn for inheritance is the same one that separates the two positions of this article, and drawing it required a quantity of concrete cases that philosophical reflection would have had no way of assembling.

Without some provision of this kind, the bare holder would face a false dilemma: to sustain, and be tied to the position, or to touch nothing, and let it degrade. The law of succession invented the third way long ago, in providing that acts of administration performed by the person entitled do not imply tacit acceptance of the estate (PORTUGAL, 1966, art. 2056, no. 3). Preserving is not assuming. Whoever holds the position without having sought it may do what is needed to keep the capability from collapsing while he decides, without that converting him into a full occupant.

The limit of exit and the condition of entry

There remains the question that decides whether all this is a requirement or a trap: what if no one accepts? The temptation is to answer that there is always a final occupant — that the authority which authorised the mechanism, or the State, receives what no one wants. That way out must be refused, for two reasons. The first is that positive law says the contrary: where the assets of an extinct company pass to the State, the State may in turn refuse them, on notice and within a time limit. What exists is a public chain of refusals, not a guaranteed custody. Inventing a residual occupant would be to describe the world badly in order to spare the argument some work. The second is that the figure is not even necessary.

If the argument is followed to the end, the correct answer is not that someone has to keep the position. It is this: if no one receives the capacity, the mechanism must cease to operate, or continue under an intermediate arrangement that passes both tests — and it falls to whoever leaves to promote the decision before whoever has competence to take it, on the terms and by the definition of compliance already fixed. It is the consequence that closes the argument, and it is that, together with that definition, which meets the objection of personal servitude. It meets it without resolving it entirely, and this should be said: the definition places the problem where it belongs, which is the proportionality of what can be required, and it is there that accumulated

cost and duration come in, capable of making the continuation of a series of interventions unrequirable even if each one of them is small. Whether that happens, and at what moment, depends on the circumstances. The article does not demonstrate a necessary term for every duty of support, and it is not on that demonstration that what is defended here rests.

The alternative to handover is not to remain forever. Whoever occupies a sustaining position has, at the limit, more than one exit: to hand over to someone who can, to adopt one of the intermediate solutions that pass both tests, or to promote the cessation of what no one can any longer sustain. And because the requirements are cumulative, the conduct against which the argument runs is twofold: exiting while preserving the false appearance of support, and exiting while leaving unperformed transitional or protective measures that are still required. Either one suffices to make the exit irregular, and it is departure from the rule, and not either of those courses of conduct, that requires the justification described above.

This conclusion, too, finds partial support in positive law, and it is worth measuring the support exactly. The European authority does not let the orphan aircraft fly under the type certificate: that becomes invalid by operation of law. What it does is to reduce the operation to a lesser and explicit title — restricted certificate of airworthiness or permit to fly —, adjusted to the conditions that actually exist. It is not, therefore, pure cessation that is provided for there, but the substitution of a title that presupposes a sustaining party by another that does not, with a declared route of continuation where safety permits. To read that regime as an application of the principle defended here is an interpretation of these authors, and not a conclusion the source supplies: the authority does not state the purpose of preventing false inferences about support, and its regime is compatible with other justifications, beginning with the most obvious, which is flight safety. What is asserted without interpreting is more modest and still useful: the regime is congruent with the thesis, because it adjusts the authorisation to existing capacity instead of keeping it intact; and congruence corroborates without demonstrating. It is, moreover, the intermediate solution examined above, in positive form.

It would be dishonest to stop here, however, because the case we started from tests the conclusion in a way that requires it to be made more precise. And it is worth beginning by dismissing what would be easy to suppose: an implant does switch off. The approved labelling for the Argus II expressly instructs the user to "immediately halt operation of the system by removing the Argus II Glasses or turning off the Argus II VPU" upon any undesirable sensation, and forbids switching it on aboard an aircraft (FDA, 2013). Explantation, in turn, was studied before approval — a preclinical study concluded that "the device could be safely explanted" —

and one clinical trial subject was explanted after 1.2 years. Neither cessation of stimulation nor removal of the device is technically impossible.

What is going on here is something else, and it is normatively more interesting. Cessation is technically available and normatively very onerous: to deprive a person definitively of the function for whose sake they underwent invasive surgery, leaving in their body a device that goes on requiring follow-up, is not a withdrawal from circulation like the others. It is not an evil distributed among alternatives; it is a harm concentrated on the very person the rule was meant to protect, and inflicted by compliance with the rule. The category must therefore be corrected. What was earlier called material unavailability of cessation covers two distinct cases: the one in which switching off is impossible, and the one in which switching off is possible and its cost falls entirely on the protected party. For the purposes of the argument they count in the same way, because in both the route of cessation ceases to be an exit one can choose without more.

This does not refute the argument. It shows where it ends and what must continue it. When safe cessation is unavailable in the sense just made precise, the rule of exit is left practically without that route, and the requirement does not disappear: it runs back to the moment of entry. It is formulated thus: when it is foreseeable that the safe cessation of a mechanism will come to be impossible, or possible only at a cost borne by whoever depends on it, whoever decides or authorises putting it into operation must, at that moment, have a reasonably demonstrated arrangement of support, handover or withdrawal for the foreseeable life of the mechanism.

Three precisions avoid wrong readings. The subject is whoever decides to implant or whoever authorises it — the clinician who implants, the service that adopts, the authority that approves —, and not whoever designed the artefact without power over its placement. The object is a demonstrated arrangement, of the same kind as the one seen to be required for the transfer of a type certificate: organisation, means, procedures, and provision for who will succeed. And the standard is reasonableness over the foreseeable life, not certainty over perpetuity: to require a guarantee of support forever would be to require the impossible of everyone, and would have the effect of preventing treatments that ought to exist.

Put another way: the ethics of exit has a limit, and at that limit it turns into a condition of entry. It is not a thesis about implants; it is what the structure of the argument obliges one to say about any mechanism whose cessation is not an available option — and there are more and more of those.

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Concluding remarks

The aim has been to show that exit from an institutional position on which the continued operation of a mechanism depends has a normative structure of its own, and that this structure is not caught by the categories with which transfer is habitually described. The point of departure was a simple fact: the mechanism does not stop when the party sustaining it withdraws, and for that reason the withdrawal does not show in what it produces.

It is worth separating, at the end, what the distinctions show and what the premises add, because only so can one see what has in fact been established. The distinctions proposed — between the titular face and the functional face of a position, and between transmission of the title and transmission of the conditions of its exercise — show that there exists a state, hollow occupancy, that registers do not separate from effective occupancy, and an act, hollow handover, that produces it without anyone having to do anything wrong. They identify the phenomenon, delimit it against vacancy and obsolescence, and point to who is in a position to produce it or to undo it. Thus far, no duty has been derived.

The duties came from three normative premises, and it is on these that discussion should bear. The first, from Williams, is that the considerations given deliberative priority in order to secure reliability constitute obligations, whose corresponding rights belong to those who benefit from them. The second is that whoever holds the relevant knowledge about the correctness of an institutional representation in force, and a reasonable possibility of communicating, must undo it when it has ceased to be faithful — whence the declaratory duty, which reaches every occupant. The third is that voluntary acquisition of a sustaining position binds through the conjunction of three factors that in isolation do not suffice — assumption, concentration of the indispensable means, and blocking of possible successors — whence the more demanding duty, which reaches whoever acquired or exercised, and not whoever merely found himself with the position in his hands.

From the three premises came the two rules, each with its own content. The rule of exit imposes two cumulative requirements: transparency about the capacity that subsists, and justifiability of the concrete conditions under which the dependence will be met after the exit. It is complied with by whoever has ceased to preserve the false appearance of support and has exhausted the transitional or protective measures proportionate and reasonably required of him — whether by handing over to someone able to perform the position, by adopting an intermediate arrangement that passes both tests, or by promoting safe cessation before whoever has competence to decide it, with the diligence described. Failing either requirement is enough

to make the exit irregular: a transparent and materially unjustifiable exit is honest and is not regular. The rule of the bare holder imposes only the first requirement, together with the duties that possession of the means grounds, because he lacks the assumption on which the second depends. The first is an obligation of high deliberative priority, and not an absolute prohibition; the second is a declaratory duty, and not a general power to extinguish the position by declaration.

One consequence of that definition deserves to be stated, because it is the result the inquiry actually reached and not the one with which it began. A morally justified exit and a resolution of the institutional problem are distinct things, and there can be the first without the second. Whoever has exhausted what was required of him exits regularly even if the mechanism goes on operating without support; the orphaning then subsists in its visible form, and the question of who must now act is not answered by the rule of exit.

Nor is it answered by the condition of entry, and it would be convenient to pretend that it is. The condition of entry is preventive: it says what ought to have been provided for before putting the mechanism into operation, and it addresses future cases. It does not determine who must act in the case already installed, still less where the initial arrangement was reasonable and failed through circumstances no one could foresee — a hypothesis in which the question may simply have no determinate addressee. What the possibility of justified exits with persisting orphaning grounds is the preventive requirement, and that is much; what it does not do is retroactively resolve the present case. This limit does not weaken the distinction won: it is a consequence of it, and it is the honest way of stating it.

The rule of exit is not proposed against a silence: one of the two solutions positive law has already given to the same problem requires demonstrated capability, and the other is satisfied with a written notice, and the article argues for the first. That material is a witness and not a guarantor: a transfer requirement is not a theory of admissible exit, and the weight of the argument rests on the premises above. And the argument meets the objection of servitude with two things, without resolving it entirely: the existence of more than one route of compliance, and a definition of when the route has been sufficiently taken, within which accumulated cost and duration are the proper place for the discussion. If no one receives the capacity, the mechanism must cease to operate, or continue under an intermediate arrangement that passes both tests — and, neither being possible, whoever has exhausted what was required exits, the problem remaining where the institutional arrangement left it. Where cessation is unavailable, or its cost falls entirely on the protected party, the requirement runs back to the act of putting

the mechanism into operation, in the form of a demonstrated arrangement of support, handover or withdrawal.

There remain the limits of what has been proposed. The argument does not depend on a general theory of the causal imputation of harms, does not attribute responsibility for outcomes and does not transfer obligations from some participants to others; it presupposes, as any description does, the ordinary explanatory relations between a withdrawal and the state it leaves behind. The distinction between the titular face and the functional face of a position is not original, and has been acknowledged as an antecedent; what is claimed is its application to a different object — the capacity to sustain, which can be missing without anyone's breach — and the structure of the exit that produces it. As to the case examined, it is not presented as a proven instance of hollow occupancy, and nothing in the argument depends on its being one: what is drawn from it is the historical separability of title from capacity structure, and the insufficiency of the register to reveal whether capacity was afterwards received or rebuilt.

If the distinctions proposed are worth anything, they are worth it for allowing that gap to be formulated without accusing anyone. Between effective occupancy and vacancy there is a third state, which registers do not distinguish from the first and which exit rules do not prevent; and there is an act — the nominal transmission of a position — that can produce it without anyone having to do anything wrong. A person with a prosthesis in their eye, looking at the only public register available, sees an active title, and sees nothing more. Of the functional face of the position, the registers say nothing, in either direction.

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