ON COLLECTIVE OBLIGATION

§1 Dislocating agency

We encountered in the preceding essay Naomi Klein’s argument that nothing short of a maximally broad system of alliances synthesizing dispersed local attachments will suffice to combat global warming. Much of her impassioned study of global warming and fossil capitalism supports this argument by focusing on contemporary environmental activist practices and their recent victories. One noteworthy point that emerges from her encounters with demonstrators, organizers, and other opponents of environmental disruption is that as extractive projects, like drilling, digging, fracking, blasting, laying pipelines, and transporting oil and gas by rail and truck, intrude more and more deeply into residential American, Canadian, and European neighborhoods, creating new hazards and bringing formerly distant risks (expanding train cars, oil leaks and spills, groundwater contamination, etc.) closer to Western homes, those communities are increasingly mobilizing to resist not only the discrete projects at issue but the extractivist logic underlying them. As these previously insulated communities come to terms with the potential or actual presence of the material consequences of fossil extraction, they look increasingly like the communities in developing nations that have long suffered, and long resisted, the pernicious effects of oil and gas exploration and extraction. Klein detects here the emergence of something like “a transnational narrative about resistance to a common ecological crisis,” a narrative taking shape on diverse, scattered, geographically

1 Klein, This Changes Everything, 262.
unrelated, intensely localized, but nevertheless connected battlegrounds. She contends that the “defining feature” of this bottom-up movement, which she calls Blockadia, is a “connection to place.”

Klein’s vision of an organic, transnational climate social movement seems somewhat romantic after Trump’s election. Tens of millions of Americans voted for an avowed climate denier, failing not merely to appreciate the gravity of the ecological stakes but to flatly reject their very reality. The loss of the US as a potential ally is devastating to the existing climate social movements; clearly, the federal government is indispensable to their project of rebuilding a vibrant public sphere. While centrist politicians and regulators could conceivably be nudged by such groups in the direction of implementing tighter restrictions on exploration and extraction, more extensive public health controls, access to public educational and vocational programs, transitioning toward renewable energy sources, and so on, it is much more difficult to envisage a Trump administration populated by pro-fossil climate deniers bowing to similar pressures.

But this is certainly not to say that restrictions on extraction won in litigation or developed in environmental planning efforts at community, city, and other subnational levels, and blows against specific projects, companies, or the industry generally delivered through grassroots opposition efforts, are a thing of the past, or somehow not worth pursuing any longer. To the contrary, they are more important than ever. The broad alliances forged in the grassroots opposition to Energy Transfer Partners’ Dakota Access Pipeline, which was set to cut across Standing Rock Sioux territory in North Dakota and which has been suspended due to the Army Corps of Engineers’ denial of a necessary easement in the face of substantial popular pressure, are exemplary. Dozens of Native American tribes as well as environmentalists, civil rights activists, anti-racism activists, military veterans, local and national politicians, and Indigenous tribes elsewhere in the world stood together against the project, recon-

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2 Ibid., 295.
stituting it as a multidimensional affront to fundamental rights. But just as the climatologists have lost even the semblance of state support they formerly enjoyed, the environmental war machine will inevitably find itself opposing not only capital but also a despotic political and military power more prone to irrational violence than even the generally unregulated oil companies drilling in remote African and Arab villages. In this connection, we must note that Trump supports the pipeline project, and as one of the corporate directors of Energy Transfer Partners, Rick Perry, will lead the Department of Energy, all signs indicate that the activists’ victory will be short-lived, with the same or new victims likely to materialize as the project rolls onward. Vigilance and continued resistance will be indispensable.

The principle to be retained from the Standing Rock protests is the following: the more numerous and more heterogeneous the alliances forged, the more articulate the affected publics become. The Standing Rock public managed to translate a dispute framed originally as a Native American sovereignty question into a more complicated nesting of issues such as ecological and human health, religious freedom, freedom of speech, freedom from state repression, racial equality and ethnic dignity, and so on, through broad enrollment of allies interested in both the outcome and the means utilized to quash the pipeline’s opponents. Similar efforts will undoubtedly be necessary in the near future and this principle, by which narrow issues are magnified, small voices are amplified, and divergent interests are collected into a widely distributed agency, should not be neglected.

In addition to grassroots opposition, litigation also remains a critical resource in the fight against global warming and, with Trump in office, environmental litigation is likely to become much more important. Pruitt’s EPA, for example, is certain to take controversial steps to undermine the Obama administration’s environmental rules, which will result in a need for judicial review. But activists have already begun to deploy litigation in more creative ways. Former NASA climatologist James Hansen — among the first scientists to sound the alarm on global warming with his important public testimony to Congress in
1988, in which he explained the “greenhouse effect” through references to global temperature, sea level changes, and melting ice sheets — is a plaintiff in a federal lawsuit pending in the US District Court for the District of Oregon.3 Hansen is acting as a guardian for future generations in the lawsuit and has teamed with youths suing on their own behalves as well as climate justice advocates Earth Guardians. The plaintiffs assert claims against the federal government, President Obama, and certain government agencies for failing to take necessary action to cut carbon emissions, and they seek an order requiring the defendants to implement a plan to reduce atmospheric CO₂ concentrations to no more than 350 parts per million by 2100. The defendants and a number of intervenors, including the American Petroleum Institute and other energy industry groups, sought to dismiss the lawsuit in 2015, but on April 8, 2016, Magistrate Judge Thomas M. Coffin shocked many observers by issuing an eloquent report recommending that the District Court deny the motion.4 Judge Coffin found that the plaintiffs met the requirements for constitutional standing, did not raise a non-justiciable political question, and have asserted valid substantive due process claims. Months later, and just two days after the presidential election, District Judge Ann Aiken also surprised observers by issuing a disciplined, scholarly, historic opinion adopting Judge Coffin’s recommendations and expounding, in a judicial first, on the applications of the common law public trust doctrine in connection with carbon emissions and climate change.5

The Juliana litigation is a historic ecological civil rights action that substantially broadens the alliances at work in the fight against global warming. In Canada, similar, if more narrowly focused, legal battles have been playing out in recent years. As held by the Supreme Court of Canada in 2014, Indigenous peoples retain a form of sovereignty over unceded lands, that

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is, Canadian lands not signed away in treaties or conquered in war.6 According to the court, the Crown title — radical title, the legal foundation of political sovereignty — is held subject to “the pre-existing legal rights of Aboriginal people who occupied and used the land prior to European arrival,” which rights are independent legal interests burdening the Crown with a fiduciary duty.7 Since Aboriginal title is collective title held for present and all succeeding generations, the land cannot be misused or developed in such a way that future generations are deprived of the benefit of the land. Any governmental (or governmentally-approved) use of land subject to Aboriginal title that is not supported by the Aboriginal title-holding group’s wishes must satisfy several conditions, including that the use is consistent with the Crown’s fiduciary obligation to respect the intergenerational and collective nature of Aboriginal title. This concept of Aboriginal title clearly has important, far-reaching consequences for restricting government action that would result in the destruction of vast swathes of resource-rich Canadian territory, leading some to proclaim that Indigenous land rights are the key legal vehicle for fighting the fossil industry and global warming by helping to ensure carbon remains sequestered underground.

Each of these examples seems quite consistent with Klein’s rooting of climate social movements in “connections to place.” The question we should ask is: if place is such a fundamental category for the climate struggle, how does the latter differ from the Trumpist political ontology of natality, of *natus*, birth? Is Trumpism not also an alleged profound “connection to place,” to a nativist vision of place marked by racial unity and cultural homogeneity? Is this not what its deterritorialization of the modern Globe is all about? Klein’s notion of connection to place and its implication of harmony with local, situated, specific spatiotemporal rhythms (associated not only with daybreak and nightfall or the changing seasons but also where and when

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7 Ibid.
the fauna move, where the river is strong and where it is weak, where and when the fish are plentiful), the genius loci, and the Indigenous knowledges, traditions, and techniques of working with, not against, the flow of life that animate the spirit of place, is an effective counter to the radical placelessness of fossil capital and the distance-annulling abstract space of a Globe built on the groundless ground of coal, oil, and gas. But it does not tell us much about either the “connection” or the “place” at stake. We shall interrogate these notions before responding to the question, since in Klein’s work, these notions are underdeveloped.

First, is this connection not, at a minimum, a bond of dependence characterized less by powers, privileges, and rights than by liabilities, burdens, and duties? In contrast to the hubristic, self-assured, exploitative and thus essentially unilateral relationship between Humans and Nature stipulated by Trump-ism, under which a climate catastrophe unmanageable by Humans (as distinguished from various kinds of sub-Humans, who are left out of account) is strictly impossible, this bond is maddeningly tenuous, reactive, loop-like and thus traverses a whole spectrum of beings, each bound to that which it succeeds. Twisting their threads together in a chain of successive transformations, reprisals, and renewals, they slowly compose worlds out of what each owes the other.

Next, the place at issue is not simply there for the taking, but must be invented anew. As Latour comments on Carl Schmitt, the “land grab” (Landnahme) that founds legality by securing radical title in the modern legal tradition is here inverted: it is the land that seizes and holds us. Following the Schmittian thread, this would seem to demand a speculative rethinking of the foundations of law, for if the spatial ordering (nomos) founded on the taking of lands is literally undermined, if the lands are retaking space, the old nomos is no longer sufficient. Indeed, that method of ordering, that form of legality, that technique of placing, would seem to bear some responsibility for the crisis to which its own undoing belongs. This inversion and the discred-

8 Latour, Facing Gaia, Lecture Seven.
iting of the old *nomos* represents an opportunity for jurisprudential innovation—an opportunity that may well have been squandered by the time the right-wing nationalist wave passes, but an opportunity nonetheless. Conceptually and philosophically, it represents more than an opportunity; it is a necessity or an obligation to think through the limits of this contingent mode of legality that has for some time been taken for granted and to envisage a non-extractive, non-exploitative, non-appropriative mode of legality.

Place cannot be equated, therefore, with a National Identity, a nation-state, in the way the old *nomos* provides. The apparatus of territorial extension, with its “nation-states enclosed within their borders,” gives way not to the placeless Globe but to “networks that intermingle, oppose one another, become mutually entangled, contradict one another, and [which] no harmony, no system, no ‘third party,’ no supreme Providence can unify in advance.”

The geodic notion of place, of territory, differs markedly from that of Nature and Nation. According to it, “[t]he territory of an agent is the series of other agents with which it has to come to terms and that it cannot get along without if they are to survive in the long run.” Such an intensive territory is already an earthly body politic.

Unlike nativist attachments, these connections to place, these bonds that must reinvent their predecessors or perish along with an unsustainable system for ordering space and power, are not jeopardized by multiplicity, heterogeneity, and interference. On the contrary, they require them: unicity, homogeneity, and ontological isolation are existential and ecological disasters. There is no agent—not a despot, not a Nation, not Nature—that can sustain itself in existence without the mediation of others with which it can enter into composition, exchange properties, prolong its agency.

By what name should we refer to this distinctive “connection to place”? It is more than an undefined connection; it is a deter-

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9 Ibid.
10 Ibid.
minate bond of dependence, something rather closer to an obligation than a privilege or a power. Neither the property-owner’s privilege of exploitation nor the constituent power of the dispossessed multitude, it is instead a constituent liability. It is more than a situated place; it is a living, changing, material territory composed of entangled humans and nonhumans, shifting natures and cultures, dynamic bodies and signs. It is the dislocation of the extractivist nomos and the emergence of a novel body politic, a new mode of ecological legality. John Fortescue, the fifteenth-century English jurist, has a helpful formula: the law gathers a body politic and holds it together like the nerves and sinews of the body physical. According to Fortescue’s Thomistic etymology, law (lex) derives from ligando (binding) rather than legendo (reading), so the laws are to be understood primarily as the mystical or political ligaments sustaining a people and giving motion to the collective, rather than as a stipulated consensus, a view given preeminence in social-conventionalist

11 Sir John Fortescue, *De Laudibus Legum Anglie* [The Commendation of the Laws of England], trans. and ed. S.B. Chrimes (Cambridge: Cambridge University Press, 1942), 31: “The law, indeed, by which a group of men is made into a people, resembles the nerves of the body physical, for, just as the body is held together by the nerves, so this body mystical is bound together and united into one by the law, which is derived from the word ‘ligando,’ and the members and bones of this body, which signify the solid basis of truth by which the community is sustained, preserve their rights through the law, as the body natural does through the nerves.”

12 Fortescue’s reasoning is Thomistic, but the etymology (deriving lex from ligando) is not by any means confined to that tradition. Aquinas merely takes up the thread followed by Lactantius and Augustine before him. But contrary to a widely-held understanding, Lactantius is not the origin of the argument that the key dimension of legality is its binding force. Instead — in a somewhat ironic twist, given that Lactantius’s objective was to wrest the complex notion of religio from the pagans in order to ground the concepts of law and religion upon the bonds of piety tethering Christian believers to God — it is Lucretius, who, in *De rerum natura*, professed to “free the soul from the bonds of religion (or superstition)” [religionum nodis animum exsolvere pergo]. It is this claim that fascinates Lactantius, who admires Lucretius’s phrase for its subtlety of interpretation of the meaning of religio. See Lactantius, *Divine Institutes*, trans. Anthony Bowen and Peter Garnsey (Liverpool: Liverpool University Press, 2003), 277.
accounts of law from Cicero through contractualism to modern positivism. In Fortescue’s telling this origin story passes through the filter of naturalist metaphor (it assumes the isomorphism of physical and political bodies). Ligament nearly captures our meaning, but it carries an organicist charge that is inappropriate for the connection at stake, losing the sense of the body politic as a body to be collected and composed in the face of uncertainty, through a series of interconnected transformations, rather than a stable and well-ordered fait accompli. I can find no more adequate term for the connection that we have attempted to define than ligature, a term that not only gathers the relevant senses of binding, tying, and holding together, but also, through its medial dimension (that is, its lexical, typographical, literary dimension), registers the circuits of becoming in which heterogeneous agencies and modes of existence are entangled, and, importantly, extends from the same root as obligation, liability, and alliance — all key terms in the discussion so far.

A ligature is that torsion or twisting movement which braids and binds diverse interests together by means of ontological interferences. We might say that these ligatures are not narrowly or strictly legal — they never appear as such in legal doctrine — but they are wholly jurisprudential, constituting the very object of jurisprudence. In the following discussion, I will develop this construct in its relation to law, especially environmental law, and the problem of the body politic.

§2 The law of nature and nations

The political ecology of geodicy calls for a radical rethinking of the Law of Nature: after all, it is our lot to have inherited a neoliberal legal regime of environmental governance and natural resource management at precisely the moment the environment has disappeared and the logics of governance and management have revealed their impotence in the face of global warming. Add to this that Trump’s oily Cabinet intends to dismantle the meager regulatory infrastructure that does exist for the purpose of limiting fossil extraction and consumption, and the urgency
with which the Law of Nature, and the nature of law, must be reconsidered only grows.

Few readers of this book would celebrate American environmental regulation as a force unequivocally for good, and while none, I imagine, want to see the EPA, NASA, NOAA, the US Forest Service, or other agencies charged with investigating environmental hazards and enforcing environmental regulations stripped of authority, defunded, or abolished entirely, most of us are unlikely to place much faith in them—at least with respect to averting climate disaster. The extent of regulatory capture afflicting environmental agencies for the whole duration of their existence is relatively well known and seems to be a more significant threat to the success of these agencies’ mandates than in most other areas. This is quite logical given the high commercial stakes involved in even modest regulation: unlike other regulatory agencies—health, housing, education, etc.—environmental agencies’ actions tend to cut straight into productivity levels. They convey, with very low intensity, the truth that unbridled capitalism is essentially inconsistent with a habitable planet. Shot through with structural holes that encourage the use of administrative tricks (e.g., shifting definitions of key terms, manipulating baseline assumptions that influence the meaning and scope of standards) and special favors (e.g., declining to enforce the law against violators, issuing permits and licenses in line with lobbying efforts and political contributions), not to mention wholesale exemptions from regulations (e.g., the Clinton administration’s industry-sponsored 50% reduction to the frequency of blowout preventer testing in deepwater oil and gas drilling, a key part of the story of BP’s Deepwater Horizon catastrophe), US environmental protection law often amounts to the mere legalization of plunder. As Mary Christina Wood writes, “The wrongful transfer of public resources to private interests in response to political pressure takes place behind a veil of legitimization provided by environmental law.”

13 See Mary Christina Wood, Nature’s Trust: Environmental Law for a New Ecological Age (Cambridge: Cambridge University Press, 2014), esp. 68–122,
limitations and the challenges facing environmental law must be taken into account in any evaluation of law in the construction of a habitable planet, of ecological justice, of the polity that is desperately needed, we must not condemn it as hopelessly corrupt or constitutively incapable of meeting the needs of an Earth-In-Intensity. We should instead ensure the law remains a practice of experimentation, an art of risky, unforeseen connections: jurisprudence, in the sense we encountered earlier. To give up on legality in connection with ecology, whether because of its capitalist appropriation or because of its bureaucratic character, is a grave mistake. This remains true even as the state withdraws ever more violently from its mission of fostering a robust public sphere, a dynamic political culture, and a modality of civic life that cherishes equal protection of the laws and the differences that may compose and sustain multiple coexisting publics.

That said, the necessary couplings between legality and ecology are still yet to be drawn, for the most part. The literature is vast and growing, but it often remains well within the cosmology of mononaturalism, comfortably grounded in the transcendent Law(s) of Nature. The argument at this stage still appears to be: we must bring our environmental law into harmony with Nature’s Law. And this, as we noted above, precisely at the moment the environment, to say nothing of Nature, has definitively disappeared. If we take the prospect of geodicy seriously — or, for that matter, if we take the impossibility of Nature (and thus of the Nature/Society or Nature/Culture dichotomy, the fact/value dichotomy, the human/nonhuman dichotomy…) quite seriously, if we manage to become sensitive enough to the complex nonlinear action/reaction loops that at once support and threaten us, to feel responsible for them, even to feel “responsible” to them — it is abundantly clear that Nature’s Law has nothing to tell us. The plea to restore harmony between Human Law and the Law of Nature typically amounts to little more than an effort to re-coronate Science as the privileged epistemology

which details the insurmountable shortcomings of a discretionary model of environmental protection law.
of government.\footnote{Fritjof Capra and Ugo Mattei, \textit{The Ecology of Law: Toward a Legal System in Tune with Nature and Community} (Oakland: Berrett-Koehler, 2015); and Wood, \textit{Nature’s Trust}, are prominent examples of legal thinking that falls into this trap.} (This is emphatically not to say that traditional legal doctrines, like the public trust doctrine relied upon by the Juliana court, have no place in a renewed legality/ecology coupling; it is, however, to say that the jurisprudential thinking that justifies such doctrines must be reconstituted, as many of those doctrines inherit a naturalistic cosmology.)

What, then, does a geodicical mode of legality look like, if it does not bow to the Law of Nature? The first step, counterintuitive as it may be, is to grasp that legality is not reducible to state law. This seems quite close to natural-law thinking, which claims that state law does not exhaust law as such because it is necessarily founded upon a more authoritative form of legality inscribed in universal Nature itself. The state has captured legality, to be sure, and has arrogated to itself the right to create laws and to interpret and administer them (fairly, it is hoped), but that is not equivalent to creating legality. This right, the point at which political and legal theorists alike, with their dogmatic Grundnormen and their primordial “social facts,” often conclude their inquiries,\footnote{Neil MacCormick, for example, directs attention to constitutional politics as the non-juridical ground of the basic norm of legality. See MacCormick, \textit{Institutions of Law} (Oxford: Oxford University Press, 2007), 57. Hans Kelsen is probably alone in maintaining that this ground is juridical in nature, but for that very reason, he renders it inaccessible to legal analysis. This explains our conceptual need for a Leibnizian jurisprudence as distinct from legal analysis.} has immanent juridical grounds of its own.

These are the bonds we have called ligatures. They are the raw materials of law, conceived as an original mode of existence (and not merely a supplemental instrument or technique), that states, markets, and other forms of collective life can take up and translate to prolong their own existence. The state defines classifications of persons, establishes standards of conduct (and of government), and arranges the procedures and rituals that must be respected to generate transformations the state itself
will respect, and we must add that the modern state grants itself the capacity to delegate any of these functions to non-state actors. All of these rather abstract functions occur through the manipulation of concrete ligatures, of successive ontological combinations and interferences. By this triad of functions — anthropological, materiological, sociological — state law shapes a dogmatic space, a structured space of common belief, common sense, common feeling, beyond which reason cannot penetrate.\(^{16}\) The structure of the dogmatic universalizes, and conceals, a normative vision of rationality, agency, and authority that passes without question and withdraws from all criticism: a kind of Providence, eminently neutral but at the root of subjectivity, which it alone institutes and destines. It is there, just where the structure of the dogmatic materializes, that the infra-juridical space opens.

For the moment, this is the point: it is not the state, or the market, that creates ligatures, or legality; it is the concrete alliances formed among different modes of existence that give rise to the inventive jurisprudence of ligatures. The notion of legality at stake cannot be confused with positivism. It does not constitute its object on the problematic of the validity of law, it does not rely on extra-juridical “social facts,” and it does not maintain the strict separation of law and morality or any other mode of existence. But neither can it be confused with naturalism. It does not constitute its object on the problematic of the legitimacy of law,

\(^{16}\) For Pierre Legendre, the dogmatic signals an unconscious attachment to power, a kind of allegiance (significantly, a term belonging to the same order as ligature, obligation, alliance, etc.), sustained through representational discursive means, that remains within the realm of social convention: it is the realm of “unprovable and nevertheless sacrosanct truths, the coherence and normative consequences of which turn on their happening to be authenticated socially, and on nothing else” (Legendre, “Appendix: Fragments,” trans. and ed. Anton Schutz, in Law, Text, Terror: Essays for Pierre Legendre, eds. Peter Goodrich, Lior Barshack, and Anton Schutz [New York: Routledge, 2006], 147). The dogmatic is also a crucial category for Alain Supiot, who defends law as the “last refuge of dogma” (Alain Supiot, Homo Juridicus: On the Anthropological Function of the Law, trans. Saskia Brown [New York: Verso, 2007]).
it does not posit a higher standard against which actual laws or legal orders can be measured, and it does not conflate or run law together with morality or any other mode of existence. Instead of validity or legitimacy — which are static models of becoming, that is, rationalizations or purifications — this approach problematizes the generative circuits of becoming through which a dogmatic space is organized. Instead of conventions or stubborn social facts like the rule of recognition, or ideal principles of justice and the good, it grasps the originality of law as a mode of existence, appropriated by the state but always exceeding it. And instead of firmly separating or zealously unifying law and morality, or other ontologies, it calls for scrutiny of their many entanglements, making ontological pluralism a foundational commitment.

We saw earlier, in the first essay, that the Trumpist regime of despotic representation promises a new nationalist overcoding of law. As part of this process, the law’s immanent anthropology — which, as writers as diverse as Alain Supiot and Luc Boltanski would agree, establishes a coalescence of biological and symbolic identities — undergoes a shift, consecrating troubling chains of equivalence that serve to justify state recognition of classifications previously tucked away in opacity (dark causalities), blessing them with officium. In particular, the Muslim/terrorist and immigrant/criminal identifications stand to attain objective, institutional legal reality (through, e.g., policing techniques, religious registries or outright bans on migrants from majority Muslim countries, deportation orders, border walls, etc., but not necessarily legislation or judicial intervention). As these figures are premised on a dispossession of self, we referred to their new legal status as dis-anthropic or ex-anthropic. Solidarity with those dehumanized in this manner can, however, alter the law’s anthropology. The state claims a monopoly on the use of law, it is true, but it does not possess one: it has theories about what the law is and should be, and tremendous, deep-rooted power to build and revise institutional arrangements that advance those theories, but it is constitutively incapable of coinciding with the law.
Similar points hold with respect to law’s immanent materiology and sociology of action. As we saw earlier, the despotic overcoding of law’s materiology operates to naturalize the circulation of legal beings, for example privileges and duties, and to lend them an aura of necessity. But again, these beings are not uniquely creatures of the state. They are fashioned in the most quotidian of interactions, from home, workplace, or social media conversations to marketplace transactions to encounters with artworks to worship to political assembly or occupation. Actual alliances generate legal meanings and legal forces that impact the network of existing state and non-state legal relations. Although it is not necessary to the defense of this point that a state organ recognize such a novel legal construct, consider the Juliana court’s extension of the public trust doctrine to impose a fiduciary duty on the federal government to limit sea level rise and ocean acidity levels, by restricting the amount of carbon dioxide it allows to enter the atmosphere. Like any other legal doctrine, the public trust, grounded in the recognition of “the air, running water, the sea, and consequently the seashore” as res communes in Roman law, underwent a particular kind of transformation in being “applied” by the court. The parties, in written and oral argument, developed competing chains of value-objects (that is, considerations or things demanding to be taken into account) interpreting and modifying the public trust construct, mobilizing prior judicial utterances (precedent and persuasive authority), academic utterances (treatises, law journals, historical sources), the US Constitution and its (imagined, reconstructed) intellectual context, scientific knowledge about global warming, the plaintiffs’ own experiences, lives, and means of subsistence, the government’s and the corporate intervenors’ alleged conduct, the state of contemporary environmental regulation, and so on. The court constructed its own chain that, as it happened, did not align with the defendants’ preferred chain of value-objects (e.g., limits on federal common law-making, and prior judicial utterances rejecting application of the public trust doctrine to the federal government), finding the plaintiffs had asserted a viable legal claim. To see what happened to the public
trust doctrine, it is necessary to consider both the plaintiffs’ and the defendants’ sequences: both the rejection of the defendants’ value-objects and the endorsement of the plaintiffs’ value-objects become a part of the doctrine, with which subsequent parties and courts will have to engage. To see why the public trust doctrine (and not some other construct) was modified in this way, it is necessary to focus on the plaintiffs’ theory. According to the plaintiffs, the federal government already had an obligation to limit sea level rise, ocean acidification, the concentration of CO₂ in the atmosphere, and so on, at the time the lawsuit was filed, and was failing to do so, as reflected in its existing environmental regulations. The government’s actions, including its failure to act to reduce emissions, expressed its legal theory, its interpretation of its obligation. The public trust doctrine is a formal legal translation of that jurisprudential obligation—a translation that reconstitutes it from the ground up, adding and subtracting characteristics it may have possessed prior to being asserted in court papers, and which will continue to transform it as the proceedings unfold, progressing through various stages (summary judgment, trial, appeals). In this light, what formal legal proceedings add to concrete ligatures is not legality but doctrinal specificity, which may be progressively refined over the course of the ordeal, and a history with which it must become compatible. And, equally importantly, concrete ligatures themselves substantially transform the doctrinal constructs that are used to contain, express, represent, and reshape them, as the Juliana court’s public trust analysis shows.17

Does this view instrumentalize (state) law, reducing doctrine and procedure to a mere vehicle for the realization of essentially non-legal ends? I do not believe it does, because the translation into doctrine cannot be understood without appreciating its reconstitution of the ligature in what I have elsewhere called a

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process of jurimorphosis. The reframed obligation takes on new properties in order to materialize in the court or other forum, in order to bear the weight of other legal beings represented by other parties, the forum itself, perhaps a jury or a witness or any number of other agents capable of voicing an objection on behalf of a value that has not yet been adequately taken into account. It's in this way that legal materiality and legal objectivity are manufactured, and there is nothing passive or inert about this process.

New legal beings and new ordeals may be produced without state involvement, then, although enrolling the state in support of a legal theory clearly increases its amplitude owing to the state's broad and deep connections to other actors. And further, if under this view, positive laws and regulations are the legal theories of a state, then corporate practices are the legal theories of a corporation, and personal practices are the legal theories of a person. Not just any practice amounts to such a theory, of course; we refer to practices that participate in the relational circulation of standards, by intentionally or unintentionally affecting the attachments of others. Thus an oil company's erection of a deepwater drilling rig and the precautions taken or not taken, or a chemical company's practice of dumping manufacturing waste in an unlined lagoon, express those companies' interpretations of their varied obligations to neighboring communities, ecosystems, animal life, regulatory agencies, and so on, drawing circles of responsibility radiating out to encompass even absent actors, like future generations and far-removed populations. When they fail to satisfy these obligations — as interpreted by those affected by their failures — it is essential that they be held to account, submitted to formal and informal, official and unofficial ordeals. It is therefore essential, by the same token, that those affected, or those willing to speak on their behalf, use all democratic means at their disposal to invent new ordeals in which to petition publicly for remedies — in courts and administrative hearings, of course, but also in streets, squares, encampments, media forums, and elsewhere.
This perspective on the non-institutional life of the beings of law brings out a number of interesting traits belonging to those beings that would otherwise remain partly or entirely obscured. For the moment, perhaps the most salient implication is the connection this argument draws between what we earlier called the existential exigency — the demand, the right — expressed in the worldings of those most vulnerable to the ravages of global warming and the obligation to amplify them, to broadcast them, to prolong them into new vicinities. This obligation, attaching the more to the less vulnerable, arises from a non-institutional historical delict that is still occurring. Negligence of this bond is not only an ethical but a legal failure.

As we know, however, death powers the fossil economy: not only in the sense that fossil resources are themselves photosynthetic energy-rich decomposed remains of organic matter, but also in that, by the time the victims of global warming (including those that have already fallen victim) feel the effects of the crime, the perpetrators most directly responsible for it are long gone. The spatial and temporal complexity of global warming, as many a critic has lamented, appears to push the imputation of responsibility out of reach, a fever dream or simply a moot point. But there seems to me to be tremendous value and importance in working through the chains of obligations that bind even long-dead actors to their victims’ suffering. Harald Walzer observes in his lucid study of climate violence, “[h]owever distant it seems, the creation of an international environmental organization and court of justice is urgently needed — although the planet will probably be a couple of degrees warmer by the time they take shape.” He recalls much later in the book, apropos of such an institution, that “international criminal law has its roots in the social disaster of the Nazi crimes, which the Nuremberg

18 Some of these traits will be explored in forthcoming work; I cannot address them here without going astray.


trials defined as ‘crimes against humanity.’”21 Though despondent with respect to the prospects of international environmental law (“at present international agreements on environmental questions are limited to self-imposed obligations, and any failure to meet these does not make a country liable to sanctions,”22 he accurately notes), I suspect Walzer would agree that the juridical project of tracing and firmly attaching the chains of obligations sundered in the Holocaust is an historically important one. Along these same lines, but perhaps more ambitiously, Latour gestures toward a new form of legality supplanting the jus publicum Europaeum or modern international legal order: a jus publicum telluris, “still to be invented […] [and] capable of taking the presence of Gaia into account, so that we shall be able to limit the extent of wars to come.”23 The jurisprudence outlined here may provide a useful starting point — not, of course, by sketching an abstract, potential ecological legal order to come but rather by shifting the terrain from transnational institutions back to the project of constituting the democratic polity they presuppose.

§3 Between territory and polity

The fate of such a polity is quite uncertain, and it clearly cannot be confused with any existing state or organization, but neither is it a mere fiction or a far-flung utopia. It remains to be constituted, instituted, structured. But it insists — even if it does not yet exist — in the intensive territories at the basis of all democratic opposition to unhinged fossil capitalism and of the virtual body politic of geodicy. To be sure, the figures of the Globe, the Nation, and Nature, in varying ways, cover those territories, claim them as their own only to annihilate them, aggregate them into totalities entirely foreign to them and to the networks of bonds of dependence, of ligatures, that compose them. But

21 Ibid., 167.
22 Ibid.
Totalization is costly. It is of course necessary to exclude what does not fit neatly into a pregiven category or scheme, what resists closure, what cannot be integrated, and this violence leads inevitably to loss and so to incompleteness. But there is another cost, related to the first but easy to miss: to make a totality durable, massive and unforgivingly local expenditures must be constantly repeated. Neither the Globe, the Nation, nor Nature, all of which give the impression of floating effortlessly above our heads and beyond our reach, can sustain itself autonomously or indefinitely; their embarrassingly terrestrial grounds have to be encountered before they can be enslaved, reduced, and ultimately repudiated. Totalization itself, in other words, occurs through local processes of collection. One reason the ligature is so fascinating is precisely that it registers the local dislocation of agency, the succession of relations inter se that define or distribute a territory, which affords or facilitates the inversion of the territory. To become a Nation, territorialized on the body of the despot, is one possibility; to become a polity is another. The one consists in allowing constituent liability and collective obligation to ossify under the aegis of a state, coalescing into an aggregate social identity predicated on the inviolability of individual rights. A whole and its parts. The other consists in multiplying techniques of holding onto the bond, the vinculum juris, that ties obligor and obligee, whether human or nonhuman, by a common thread. A chain, a sequence, a cord, a line, without whole and without part.

It would no doubt be naïve to place too much faith in law. As we saw above, environmental law and its agencies are subject to both ordinary and unique limitations in prosecuting their mission. More generally, the law is widely perceived as an inherently conservative force serving more often to resist the kinds of widespread, qualitative change in the fabric of society necessary to respond to global warming and other ecological hazards, than to propel such change. But these objections equate law as such with law captured by the state. If we suspend the state and descend to the jurisprudence its law inherits, things look rather different.
Legal theorists well accustomed to fusing law and state have nonetheless discovered the infra-juridical. For example, Wesley Newcomb Hohfeld, who cannot be accused of any form of radicalism, originally recognized that the beings of law occupy a distinctive relational space. Hohfeld is often more or less loosely associated with American legal realism—a grab bag of approaches to legal reasoning united only by their common rejection of the view that legal doctrine supplies definite courses of reasoning and definite answers to actual legal questions brought before courts—and continues to attract interest from post-realist scholars. His obsessive focus on analytical clarity and descriptive adequacy, conveyed in his famous distillation of legal concepts, makes him a realist oddity. His punishingly abstract schema calls to mind a simplified formal-analytic program of systematic reduction, a kind of semiotic legal cube. For Hohfeld, the beings of law are limited to eight constructs—right, duty, privilege, no-right, power, liability, immunity, disability—that are linked up into correlative pairs and oppositional pairs. Although Hohfeld’s schema was adapted to plenty of adventurous causes, including E. Adamson Hoebel’s influential social anthropology of “primitive law,” it was frequently criticized for


25 For instance, Hohfeld was construed as a “semiotician” of legal relations by Jack Balkin, see Balkin, “The Hohfeldian Approach to Law and semiotics,” *University of Miami Law Review* 44 (1990): 1119–42; and a recent introductory article by Pierre Schlag underscores the utility of the Hohfeldian schema for unpacking the socio-economic, political, and aesthetic values with which legal concepts are freighted, see Schlag, “How to Do Things with Hohfeld,” *Law & Contemporary Problems* 78 (2015): 185–234. For Schlag, the paramount value of Hohfeld’s scheme is that it shows “[t]he conceptual architecture of law not only allocates the [socio-economic, political] stakes explicitly, but in conceptualizing, formalizing, and naming the stakes in the first instance [i.e., in furnishing the grammar of controversy], it has already enacted an allocation” (ibid., 217).

its dryness and, importantly, for failing to gain traction on legal discourse. According to some who attempted to use it—that is, to translate it for their own purposes—the schema does not yield recommended alternatives to what courts did in fact, and so it fails the test of utility. Instead, it supplies a purely descriptive idiom that may, in some sense, help sharpen or clarify the concepts and metaphors that legal thought requires, but which is ultimately not worth the trouble of learning.

But the reality is more complicated. This criticism misses the mark because Hohfeld in fact subverts certain expectations of legal scholarship: instead of a normative language or analytical model with which to evaluate a chain of legal reasons, he offers an exacting immanent modelization of each successive transformation composing such a chain. His descriptive modelization formulates the material couplings and connectors of legality, using only the resources offered by actual (state) legal discourse. Hohfeld insists on this point, providing lengthy quotations from judicial opinions in which the relations at issue have been mobilized to produce a particular legal effect, and demonstrating time and again how and precisely where state jurists have dropped the thread of the law. Such demonstrations would not be possible, or coherent, if law were in essence nothing more than the command of a sovereign, e.g., or a procedurally, constitutionally, or socially authorized utterance. The ontology of law that Hohfeld introduces entails that state legality is a reduction of a more primordial reality, a translation (and distortion) of original jural relations that are the real conditions or grounds of state law. Indeed, it’s for this reason that Hohfeld will refer to many familiar legal notions, like property or contract, which are often assumed to be simple or fundamental so far as legal notions go, as complex aggregates or composites of more basic jural relations. This means that such notions can be broken down and rearranged; instead of basic realities, they are black boxes, stabilized by the performances of other actors kept mostly out of sight.

And so, at around the time that Freud “discovered” the continent of the unconscious lying beneath the empirical formations
of speech and dream, Hohfeld “discovered” the continent of the infra-juridical within the state formations of legal discourse. There is plenty of room for dispute with Hohfeld, but not on this point: the infra-juridical, the proper locus of the beings of law, is irreducible to the law of the state.27 By formalizing these relations, Hohfeld recasts them as a kind of closed self-referential system. Putting aside the drawbacks of that approach, one advantage is that it helps to offload the weights foreign to legality that the state imposes. In this way, Hohfeld’s scheme of jural relations undoes the law’s subjection to the supreme values of modernity, from morals to markets to the state itself. Divested of transcendence — wholly a product of state capture — the law may seem incapable of redressing the condition of war, of the utter lack of commonly recognized authority, of that godlessness which presages the wasteland, marking the political ecology of geocide and geodicy. But that is so only if a viable response to this condition is thought to adhere to prevailing norms, and if the war is understood as a straightforward bilateral conflict. Neither of those assumptions holds.

Here, shifting back to politics, it is instructive to consider the immanent political strategies of geocide and of geodicy, which are different in an important way. Trump’s extraordinarily divisive campaign relied on a technique we may call exclusive disjunction, which proceeded by, e.g., dividing economic classes on racial lines, races on gender lines, genders on economic lines, etc., scrambling predictable demographic codes through the mobilization of dark causalities. For this reason, post-election ruminations on the “white working-class males” who voted Trump into office are off-base. Such proclamations rely on a popular, centrist brand of demographic homogeniza-

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27 It is true that Hohfeld notes in his study of legal and equitable principles that, “in any sovereign state, there must, in the last analysis, be but a single system of genuine law,” but this is not at all to say that “genuine law” requires a “sovereign state.” Rather, Hohfeld here merely observes that state legality presupposes the reductive operation discussed in the preceding paragraph above (Hohfeld, “The Relations between Equity and Law,” Michigan Law Review 11, no. 8 [1913]: 557).
tion that the 2016 presidential election helped to invalidate. The answer to exclusive disjunction is not the Clintonian appeal to stable, state-sanctioned identity-boxes but *inclusive disjunction*, a political logic that affirms both sides of the putative division without collapsing one into the other. Disjunction—exclusive or inclusive—fractures static or statistical aggregates, but the exclusive variant redistributes them according to novel principles of distinction, where the inclusive variant redistributes them according to variations in becoming, transitional states. Exclusive disjunction is extensive (or extensional) because it dichotomizes, orders, unifies—a whole and its parts; inclusive disjunction is intensive (or intensional) because it multiplies differences: “*everything divides, but into itself.*”

The distance between the disjoined terms is not annulled, it is affirmed, but it nevertheless does not restrict the operation or the identity of either term. One is not identified with the other, but the one is situated at the end of the other, transforming extensive distance into intensive *betweenness*. Inclusive disjunction does not mean that classes, genders, races, and other markers of identity dissolve into an undifferentiated mass, but that the previously outlawed zone between them becomes habitable. This is, ultimately, what we mean by a term like *solidarity*: no body occupies a terminal point in this intensive spectrum, yet all bodies traverse it, adopting partial identities as the pressure arising from extensive disjunctive strategies, their expulsive force, mounts.

It is this sense of *betweenness*, of solidarity practiced on the model of inclusive disjunction, that accounts for how the jurisprudence of ligatures may supply an answer to the political-ecological condition of godlessness. To become a polity ordered not by part/whole or individual/community relations, but betweeness, means that the Sovereign Exception, atomistic indifference and detachment, and the other signs of transcendence give way to existential entanglement and collective obligation in the name of the struggle for the Earth.

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Social psychologists warn against appealing to any notion belonging to the semantic horizon of debt, burden, or loss — including, of course, obligation, duty, boundedness — in connection with such an immense problem as global warming. Instead, the appeal must be couched, they say, in terms of benefit, improvement, and gain: *work for a better future, a better climate, a better world*. But we can readily see how such appeals merely reproduce the problematic logic of untrammeled growth. Such ideological discourse seems calculated to ensure the crisis is perpetuated, framed such that the known concrete solutions (planned reductions in global economic growth, enforced restrictions on fossil extraction and carbon and other greenhouse gas emissions, transition to renewable energy sources, substantial Northern investment in Southern infrastructure) are strictly unrealizable — and unsurprisingly, the mainstream environmentalists, the ecomodernists, the big charity funds are the paragons of this approach. By focusing, as we propose, on the jurisprudence of ligatures, on liabilities and collective obligations, we take aim at precisely this manic logic that underwrites the political ecology of geocide. Contrary to its surface positivity, the strategy of repressing these burdens and vulnerabilities is not a strategy for defending the living. It is thanatopolitics by other means.

Musing on Philip K. Dick’s master work, *Ubik*, and the prospects of “the end of the world,” Déborah Danowski and Eduardo Viveiros de Castro observe that, in *Ubik*, objects grow old faster and faster, until we finally realize that death is not, as we thought, an external enemy against which we fight a hugely asymmetrical war, but an internal enemy: we are already dead and life is what has passed into the outside. […] *While we thought of ourselves as defending the world of the living, we had long been captured by the point of view of the dead.*

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Danowski and Viveiros de Castro do not buy into the gloomy atmospherics of extinctionism or its metaphysical counterpart, eliminativism; instead, in an extended ecological dialogue with philosophy, literature, and anthropology, their book richly raises the question of the rhetoric and mood proper to the political ontology of geodicy. The “time of the end” of the world that grips them is not the temporality of the already-dead of (arche-)fossil capitalism. That temporality, as we have seen, merely deepens and extends the disinhibiting certitude that the end has already come, whereas the problem is just to think, and to inhabit, the present time of the end. The only rhetorical register adequate to this other temporality is the apocalyptic, begetting a mood of religiosity. Dread, anxiety, hesitancy, uncertainty color its affect, but in a manner that fails to coincide with both the political ontology of natality and of mortality, of birth and death. For here, it is not a question of one or the other, either/or, but of the space of the living, of the polity lodged in virtuality between them.

At stake in the composition of this polity is not only the problem of the architecture of this space of alliance (a broad theme calling for its own separate treatment), but the question with which this volume opened, departing from an observation of Bruno Latour: how shall we “learn to encounter” the people of the Nation, the people of geocide? I noted in the second essay that the political ontology of Trumpism disclosed its affective attunement by exploiting a kind of noisy unrest — which I likened to nausea or seasickness, and which Bernard Stiegler, referring to a similar disquietude in France’s 2002 electorate, called a certain “ill-being” — that was indefensibly ignored by the Democrats, who wrongly assumed that voters had come to accept their political and symbolic alienation. Precisely this civil noise should, on the contrary, be welcomed and sheltered, because it arises from and responds to the very injustices that make the political ecology of geocide possible. The twin vertigoes of placelessness and landlessness must be made into a political, moral, and legal resource.

If we speak of an apocalyptic rhetoric and a mood of religiosity, it is not to reintroduce a master dispatcher, but to re-tie
(re-ligare) our bonds of dependence under the sign of the time of the end. But this remains impossibly abstract so long as those who found themselves unmoored on the seas of the Globe, who found solid ground in the borders of the Nation and nativism, are discounted or delegitimized, since their problems are our problems, too. If we continue to fail to recognize this—not only that we share common political problems (exploitation, disenfranchisement, alienation, discrimination, etc.) but that problems perhaps uniquely “theirs” (racist, nativist, and Islamophobic prejudices, exceptionalisms of various kinds, etc.) are by the same token “ours” because we are mutually dependent and obligated to coexist—all is lost.30

In a 1945 essay, George Orwell formulated a rule: “that ages in which the dominant weapon is expensive or difficult to make will tend to be ages of despotism, whereas when the dominant weapon is cheap and simple, the common people have a chance.” Thus, tanks, warplanes, and atomic bombs are “inherently tyrannical weapons” while muskets, rifles, and bows are “inherently democratic weapons”: “A complex weapon makes the strong stronger, while a simple weapon—so long as there is no answer to it—gives claws to the weak.”3¹ Orwell’s rule implies that no longer will any age be other than an “age of despotism,” for his “democratic weapons” seem unlikely to make a comeback. Without doubt, the weaponization of the climate through

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30 Perhaps we are “enjoying our hopelessness” a bit too much, in Laurent de Sutter’s formulation (personal communication). After all, is not Trumpism an opportunity for the left to reinvent itself, to find itself, to consolidate and redouble its collective efforts to bring about a more just world? But I do not see why Trumpism could not impel a newly energized resistance movement that clearly grasps that it is resisting the catastrophe of geocide, proceeding rhetorically through a kind of prophylactic apocalypticism.

geoengineered global warming (without regard to whether the underlying hostile intention is actual or constructive); the systematic reduction of environmental protections; and the racist, nativist, xenophobic immigration, policing, and civil rights reforms that characterize Trumpism must be described as inherently tyrannical.

But instead of looking to the nature of the dominant weapons, we should perhaps look to the nature of the resistance. Perhaps the potency of the democratic weapons giving claws to the weak depends less on the state of military technology than on the density of the connections constituting the opposition to despotism. True democratic weapons—alliance, assembly, occupation, strike, protest, march, demonstration, above all, appearance, especially on behalf of those with no right to appear—cut against all political isolation and demographic homogenization, which only feed the despot, by calling into being a new polity outside of the geocidal state.

32 See Jacques Rancière, *Disagreement: Politics and Philosophy*, trans. Julie Rose (Minneapolis: University of Minnesota Press, 1999); Judith Butler, *Notes Toward a Performative Theory of Assembly* (Cambridge: Harvard University Press, 2015). Butler’s argument at times locks itself in the sort of rights-centric discourse that views obligation and normativity as either secondary categories or modes of repression, which my account opposes, but such differences are overwhelmed by a commonality of purpose. Moreover, her account of bodily vulnerability (chapter 4) and political exposure (chapter 5) resonates productively with the notion of constituent liability sketched above.