Tilburg, March 29, 2024

Dear colleagues,

I have spent the better part of my career articulating a theory of legal ordering as a boundary-setting process, drawing to this effect on phenomenology and collective action theories of analytical provenance: the boundary between self and Other; spatial, temporal, subjective, and material boundaries; the boundaries of a world; the boundaries of legal concepts.

The leading concept through which I have sought to approach legal order is *alegality*, the legal manifestation, I argue, of what Husserl calls the experience of strangeness. As I define it, a-legality speaks to situations that challenge *both* legality and illegality as drawn by a specific legal order, thereby disrupting the capacity of its rules to take hold of the real. On the one hand, a-*legality* refers to a situation that in principle can be qualified as either legal or illegal; on the other, *a*-legality speaks to that situation as resisting qualification either as legal or illegal by defying, eluding, and exceeding the order's norms. A-legality is the mode of legal experience in which withdrawal from a given legal order is how something appears in that order. As such, an a-legal situation is both inside and outside a legal order: something is excluded by how the legal order includes it. Whereas the qualification of an event as (il)legal presupposes and reaffirms legal unity, a-legality is how political plurality manifests itself to a legal order, ultimately in the form of those aspects of situations that are definitively unorderable for a given collective: a legal order's fault line. A-legality, I argue, is the central manifestation of the political in legal orders; it calls into question how a legal order orders by drawing boundaries that include and exclude.

Thus far, however, my theorizing of a-legality has presupposed that legal ordering and the politics of boundaries in response to a-legal challenges are an affair for and between humans. I have not considered more radical situations of a-legality that challenge two presuppositions that have governed modern constitutionalism's approach to the authoritativeness of lawmaking. First, that lawmaking is authoritative if it is act of collective self-legislation: autonomy. Second, that law-making is about human collectives situated in a stable natural environment. I take the "Anthropocene" to function as a placeholder for challenges to these two presuppositions and their internal connection. To this extent, all of my earlier research stands fully within what modern constitutionalism calls lawmaking; as such, it demands critical and sustained reconsideration.

The text I present to your consideration—with apologies for its length—is Part I and most of Part II of a four-part book that queries how thematizing and problematizing the aforementioned presuppositions might shed new light on the concept of authoritative lawmaking in the Anthropocene. Its key organizing concept, to be introduced in Part IV, is what I call "Anthropocenic a-legalities," which challenge the concept of lawmaking operative in modern constitutionalism, and not merely specific instantiations of that concept. To this effect, the book critically explores the constitutional imaginary of authoritative

lawmaking in modernity, considering whether and how that imaginary needs re-conceptualization in confrontation with the Anthropocenic challenge: “geoconstitutionalism,” as I call it.

My motto, in a riff on the title of Donna Haraway’s well-known book, is: “stay with the conceptual trouble.” Or, if you wish, “go slow.” My concern, in adopting this motto, is twofold. On the one hand, I am amazed at the casualness—and haste—with which a wide range of legal theorists assume that they have been able to move on from modernity and “the subject” when putting forward their alternative accounts of sociality in the Anthropocene. My (sympathetic) critique of Latour and Haraway in Part I (and of Karen Barad and Elizabeth Povinelli, when dealing with representation and recognition in Part III) explains the reasons for my concern, which extends to much of contemporary work in the field. On the other hand, I am dismayed by the defensive tendency of professional philosophers to retreat behind the ramparts of a textual corpus, defending its author *à outrance* with regard to “outsiders,” while engaging in protracted and bitter feuds with other “insiders” about the corpus’ true meaning. As you will see, while I have considerable reservations about the readings of modern subjectivity that are making the rounds in the Anthropocene literature, I share with those readings the conviction that modernity’s concept of human agency, a concept that underpins modern constitutionalism’s interpretation of authoritative lawmaking as collective self-legislation of a human polity located in a natural environment, urgently needs critical re-consideration.

The book will appear, in abridged form, in a Spanish translation with Editorial Astrea, in Buenos Aires, and a Portuguese translation with Editora Contracorrente, in São Paolo. I hope to find an English-language publishing house for the full version. I view it as a preliminary study for a follow-up book that will explore a number of case-studies to test the strength of the concept of lawmaking advanced in the book of which this text is Part I. Taken together the two books are, if you wish, an exercise in abductive reasoning.

You will notice that this piece includes a range of extended footnotes which may be distracting. I beg your patience: several of these are, to use an inimitable Flemish word, “denkpistes” to be developed in later sections of the book, but which I include for the time being as footnotes so as not to forget them.

Thanks in advance for taking the time (if you can!) to read the piece and offer your comments, whether during the encounter or thereafter, via email.

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