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Climate change, an opportunity for humanity?

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Abstract: Climate change is an opportunity if it provokes a leap of faith to avoid withdrawal into nation-states, to become aware of the common destiny of humans and to recognize the need for global governance. In other words, it is an opportunity to adapt our normative systems in the legal, political and anthropological fields. In the legal field, the Paris Agreement has constructed a normative space with variable geography and different speeds, and the climate processes underway already form a laboratory for observing the dynamics at work, including through failures. At the political level, the recognition of interdependencies calls for a new “governance” that would combine scientific knowledge with the wills of the citizens to frame the powers. In its turn, this recognition calls for an anthropological refoundation according to which the rights and freedoms of the emancipated individual would be complemented by new solidarity rights that would allow the transformation of the globalization into a pacified *mondialité*.

Keywords: Anthropology, Climate Change, Law, Global Governance, Mondialité, Globalization, Politics of climate change

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No state can now meet the global challenges alone: terrorism and corruption without borders, financial and social crises, health and ecological crises, humanitarian disaster of migration, climate change, etc. The latter is but one example, but it has triggered powerful transformations in the field of global governance. If it were to bring about the necessary awakening, in these times of withdrawal towards the nation-state model, climate change could be an opportunity for humanity to become aware of its common destiny and adapt to globalisation. The ongoing climate lawsuits¹ already serve as a laboratory for observing the dynamics at work.

Even if we were to reach a scientific agreement on the facts and their interpretation, almost everything needs to be reinvented and climate justice attempts allow us to assess the difficulties and test the instruments of response. From the governments of states to global governance, change of scale actually compounds the difficulties. On the one hand, it multiplies the uncertainty of the causal links between the event giving rise to the damage and the damage itself, leading to the uncertainty of the effects. On the other hand, it increases the unpredictability of human behaviour, stimulating creativity that prevents deducing the future from the previous situation. As for the instruments of response, climate change provides an opportunity to test their diversity, showing that, faced with the risk of irreversibility of damage, punishment is late and reparation imperfect. We must therefore try to adapt our systems of normative regulation from a triple perspective: legal, political and anthropological.

1. Legal adaptation

The Paris Climate Agreement does not create new concepts. It does not even form a coherent whole. Standards arise at all levels (international, global or regional, but also national and even subnational) and range from hard law with precise, mandatory and sanctioned rules to soft law, vague (imprecise), soft (optional) and /or indulgent (unsanctioned), encompassing all intermediate categories. However, this agreement establishes a dynamic combining common objectives, intended to be regularly updated, and differentiated responsibilities according to the evolving national context.

However, the assessment of responsibilities must follow the same criteria, while each state must communicate its contribution, which is determined at national level, without imposing a genuine common grid to guarantee comparability. It is a complicated system (INDCs, *for Intended Nationally Determined Contributions*) that determines state contributions. But it is beginning to outline a normative space with variable geography and a normative time at several speeds, which result less from a hierarchy of norms than from interactions "between" national law and international law. The result is like a "bricolage", in the sense given to this term by Claude Lévi-Strauss, then taken up by François Jacob about the evolution of living things, and summarised by the latter as a way of "making something new out of the old". This is indeed the work that litigants and judges do in these climate lawsuits where one invokes, sometimes a "contextualised" international law, sometimes an "internationalised" national law, in order to make not only states but also transnational corporations (TNCs), which have become global players, accountable.

As for states, judges try to reinterpret interstate responsibility through the notion of cause of action and the duty of care and use the practice of judicial dialogue. Even human rights are involved. Strongly influenced by the Inter-American Court of Human Rights with regard to indigenous peoples, they incorporate the principle of solidarity, even though they had been developed, at least the civil and political rights, in a perspective of emancipation of individuals in relation to their membership group(s). The emergence of a principle of solidarity could broaden the perspective of human *rights* to its *duties* towards humanity, present and future.

As for TNCs, the "emblematic" lawsuits are equally heterogeneous with regard to the victims. What is there in common between the Peruvian farmer who has had his claim against the German energy conglomerate (RWE) declared admissible by a German court, while waiting for experts to determine the possible causal link between RWE's polluting emissions and the melting of huge ice blocks in the Andes and also the city of New York,

¹ See Cournil C. et Varison L., *Les procès climatiques — Entre le national et l'international*, Pedone, 2018.

engaged in a lawsuit against five fossil fuel companies that deliberately misled the public about the effects? To do something new, judges will have to revisit concepts such as the causal link (civil law) or misrepresentation (business law).

The "recipe" for a successful climate lawsuit would be to bring together particularly vulnerable plaintiffs, legally "tangible" defendants and "innovative and solid" legal foundations. Thus concludes Emet Gebrel, regarding the *Juliana* case, a lawsuit brought against the US federal state by a group of young people between the ages of 9 and 19 and their guardians because of the risks for future generations created by carbon dioxide emissions. The case has been deemed admissible, but we are waiting for the decision.² While the recipe may seem simple, climate lawsuits nevertheless show the extraordinary complexity of a global law characterised by interactive normativity (arising from multiple horizontal and vertical, top-down and bottom-up interactions) and evolving with unpredictable shifts, retreats or rebounds, which call for vigilance and inventiveness. They reveal the extent of the change in legal thinking which, no longer able to identify the right to the state, tries to build a rule of law, without a world state, "between the national and the international", perhaps even going beyond this distinction. They also demonstrate that a political recomposition is at work within a climate governance that associates state and non-state actors in new configurations.

2. Political Recomposition

Climate risks have radically changed global governance. The famous "COP 21"³ expressed first of all a realisation of this change. The international community recognised that its destiny — like that of all living things on this planet — depends largely on human behaviour, because the disruption of the climate system is largely human-induced. And states recognised their interdependencies: none can combat this phenomenon alone.

It was also a political surprise because the states gradually lost control over the dynamics, even though they were the only official actors on the international stage and, at the national level, their powers were protected in democracies against a government of judges by the separation of powers into three "branches", the legislative, the executive and the judiciary. However, the principle of separation of powers, which was reiterated in 2007 by the United States Supreme Court in the famous *Massachusetts v Environmental Protection Agency* case, is now interpreted with great flexibility, whether in the German constitution, or in Dutch law in the famous *Urgenda* case in 2015.

As for the reorganisation of powers and checks and balances on a global scale, we are also very far from Montesquieu's vision, because the legislative power and the executive power are mixed up for the benefit of the states, while the increase in power of the judges already seems to place the judicial power on a global level, even when it comes to national jurisdictions, as long as they behave as global judges and sanction the violation of international commitments. On the other hand, the other checks and balances seem to come from non-state actors, "non-parties" in UN language. Between them, a new distribution of competences is emerging, that extends the power of political actors to private economic actors, combines the scientific knowledge of "scholars", climatologists, and economists, the knowledge of "knowledgeable people", drawn from the experience of the native populations; finally makes the will of civic actors contribute to the development of the texts and their implementation, broadened by the organised civic society (NGOs, trade unions, Universities, religious movement...) and simple citizens selected at random (cf the CCC, Citizens Convention for Climate, July 2020 report).

Admittedly, this balance, based on voluntary commitments, remains unstable and nothing there is still a long way to go, this global KWP (Knowledge/Will/Power) governance has emerged from an alliance, which would have probably been impossible without the new digital technologies, between the various actors of

² *Les procès climatiques*, aforementioned, p. 129.

³ The 21st Conference of the States Parties to the Climate Convention, held in Paris in Dec. 2015, brought together 195 states that unanimously adopted the Paris Agreement. This agreement, which entered into force less than a year later, had been ratified, as of March 2018, by 174 states, including China.

civil society. The alert had been issued within the IPCC (Intergovernmental Panel on Climate Change) by climate scientists, researchers and scientific experts, who have long been organised on a global scale. Their legitimacy was not won yet. It was necessary for the IPCC to overcome the doubts raised about the 4th report (this "Climate Gate" may have contributed to the failure of the Copenhagen conference in 2009); then escape the "witch hunt" initiated by the new US president (*Le Monde*, December 15, 2017), as well as the instrumentalisation of certain scientific works ("Halte à la manipulation de la science", *Le Monde* 30 November 2017). However, the alliance very quickly became familiar with organised civic society, which has long been sensitive to environmental issues. This alliance, supplemented and strengthened within the Economic and Social Committees, undoubtedly accelerated the procedures for signature, then ratification or approval, which required the entry into force of the Paris Agreement.

The status of these new actors, including randomly selected ordinary citizens (CCCs), as future "citizens of the world" should be strengthened to protect them, especially when they become whistle-blowers, and to define their ethics and responsibility in climate lawsuits. Without neglecting, at the local level, a kind of territorial citizenship that ranges from the commitment of certain states, such as California, to the coalition of large cities "Under 2°", giving full meaning to the injunction: "Think globally, act locally". The US withdrawal paradoxically strengthened the alliance, to the point that former New York Mayor Michael Bloomberg, now the UN Secretary-General's Special Envoy, led a coalition of non-state actors determined to do "*everything America would have done if it had stayed committed*".

Nevertheless, given the slow pace of UN processes, it will be necessary for national laws to take over to prevent climate justice from getting bogged down. In France, after the law of 17 August 2015 on the energy transition and ruling of the 31 December 2016 on GHG emission balances and energy audits, we can cite the law of April 2017 on the duty of vigilance of companies, which strengthens the justiciability of standards, particularly climate ones. In 2018, the so-called PACTE law (The Action Plan for Business Growth and Transformation) expands the interest of the company to the defence of common goods, such as climate, while it is proposed to include climate protection in the ongoing constitutional reform. For its part, China has just added the contribution to the concept of community of shared destiny for mankind in the preamble of its constitution, revised in 2018.⁴ This could be seen as the beginning of an anthropological refoundation.

3. Anthropological refoundation

To the emancipated humanity of the Enlightenment, climate change adds an "interdependent" humanity, interacting with the Earth's ecosystem of which it is only a mere component and not the owner. To the principles derived from human rights, the fight against climate change adds a principle of ecological solidarity, inviting us to think of a plural and evolving humanism. Such a transformation calls for new narratives to renew the peoples' imagination. For only a true "rebellion of the imagination" will make it possible to think of the universal without reducing it, as we have done for millennia, neither to our own interests, collective or individual, nor to our own systems of thought. While it is recognised that, unlike national communities based on memory and history, the global community will be based on anticipation and common destiny, it remains to be seen what destiny we are heading towards.

Recognising interdependencies could lead to an anthropological refoundation, if the emancipation of the individual, inherited from the humanism of the Enlightenment, were supplemented by new rights of solidarity. Such a development cannot be achieved without a new narrative. It would be neither the story of human rights, nor that of the market and its invisible hand (including in the Chinese version of The New Silk Roads), nor the post-humanist story of augmented human, nor even the catastrophic story of the collapse of the planet. It would be a combination of these narratives to ultimately obtain the adventure narrative of a peaceful globality, as opposed to a wild globalisation.

⁴Gosset D., « from Chinese Renaissance to community of shared destiny », *China Daily* 23–24 June 2018.

In conclusion, legal adaptation, political recomposition and anthropological refoundation should make us modest. We had learned that the Earth is not the center of the solar system, which itself is not the center of the world. We are now discovering that humanity is not the centre of the Earth's ecosystem, but merely component. It is true that this is the only "responsible" component because it is endowed, according to the UDHR,⁵ with reason and conscience. So, yes, climate change is indeed an opportunity for humanity if it teaches us to govern ourselves with sufficient wisdom so that the earth remains habitable by living things, human and non-human, and remains the common home of present and future generations.

⁵The UN Universal Declaration of Human Rights of 1948.