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The Territorial Inscription of Laws*

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The notion of space, in legal terminology, is not some Cartesian abstraction, which may be applied to any sort of place. Until recently the term was used exclusively to refer to parts of the world which cannot be occupied on a lasting basis because they have no perceptible limits and are unfit for human life. Such are the seas and the oceans, the skies and interstellar space. Moreover, the legal notions of air space and outer space, maritime space and oceanic space have, in their accepted usage, always been defined in opposition to the Earth. In law, the Earth is not conceived as an abstract space but rather as a mesh of territories, domains (public or private), regions or countries, jurisdictions and sometimes sites or zones (subject to overriding clauses). Significantly, it was only with the advent of globalisation that the notion of space began to be used to refer to the earth and not only the skies or the seas. And it was the European Union, which first described itself, in legal terms, as an “area of freedom, security and justice”, without discernible limits, rather than as a territory or group of territories. Gunther Teubner’s work has made a decisive contribution to our understanding of the emergence of a global law gaining strength independently of territorially based legal systems.¹ In order to pay tribute to this great jurist (and long-standing friend) I endeavour below to explore the meaning of – and the future awaiting – our contemporary desire for a spatial legal system that would have no territorial grounding.

This investigation is warranted particularly because the place of civilisation, in the primary legal sense of the term “civilised” (subject to the rule of civil law), has until now never been the inherently formless space of the sea or the skies, but always the *terra ferma*.

Civilising space has always meant referring it to terrestrial dimensions which give it at once a being and a form. Already in Roman law we can find

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¹ See especially *G. Teubner Global Law Without a State*, Dartmouth Publ., 1997.

an adage – *Forma dat esse rei*, “the form gives being to the thing”² – which registers the inaugural act by which all mythologies mark the birth or rebirth of the world: the “higher waters” of the Heavens rise up from the face of the waters, whereupon between the Heavens and the waters there emerges dry land. This founding act is normative, it gives the world its first limits and hence gives the measure of all things. Limiting and measuring are the two inseparable sides of the activity of the jurist and the geometer. These two figures come together in the figure of the surveyor who, in measuring the land, defines what is due to each and what is common to all.

This is how the world becomes *habitable*, in the multiple senses of this word derived from the latin “*habere*” (to have, to hold)³. To inhabit the world is to have a safe place in it, fit for *habitation*. It means giving the world a form, making it into a human *habitat*, through the words by which we name even the tiniest plot of land and through the acts by which we fashion our landscapes. To inhabit the world also means conforming to shared *habitual* modes of life which take the ecological environment into account. A habitable world is a world in which man’s relation to the land is laid down in rules, which assign to each a place fit to live in.

In the Western tradition, these rules are part of what is called the legal system, which encompasses penal and administrative law as well as civil law. This tradition shares with the civilisations born of the religions of the Book the ideal of a superhuman, atemporal and universal Law, which would apply to every person in every place and could ignore territorial diversity. But modern law is based on abandoning this ideal and on giving laws a territorial anchor. Pascal may have jibed at the geographical limits of human laws (“It is a strange justice that is bounded by a stream! Truth on this side of the Pyrenees is error on the other”); but Montesquieu’s implicit rejoinder affirmed that laws should precisely be relative: “They should be related to the physical aspect of the country; to the climate, be it freezing, torrid, or temperate; to the properties of the terrain, its location and extent; to the way of life of the peoples, be they plowmen, hunters, or herdsmen; they should relate to the degree of liberty that the constitution can sustain, to the religion of the inhabitants, their inclinations, their wealth, their number, their commerce, their mores and their manners” (Introduction to *The Spirit of the Laws*)⁴.

In modern times, the territorial inscription of laws is linked to legal systems in which the State crowns the institutional edifice. The world becomes a mosaic of sovereign States in competition with each other over borders,

² On this adage, which comes from the commentators on the *Digest* (35, 2, 80), see H. Roland and L. Boyer *Adages du droit français*, Paris, Litec, 3rd ed., 1992, no. 137, p. 278.

³ See *Lewis and Short A Latin Dictionary*, Oxford, Clarendon Press, 1879, s.v. “*habeo*”.

⁴ *Montesquieu The Spirit of the Laws*, tr. Anne M. Cohler, Basia Caroline Miller and Harold Samuel Stone, Cambridge, Cambridge University Press, 1989, I, I, 3, p. 9.

control of the seas and colonisation overseas. However, each acknowledges the other's right to lay down the law within its own national territory. Carl Schmitt theorised just such an international order in his *Nomos of the Earth*, while also diagnosing its gradual decline⁵. But his Nazi sympathies prevented him from apprehending the deeper causes of the crisis affecting this State-based organisation of the world. He attributed it to the increasing power of the United States and the abstract pacifism of the founders of the Society of Nations. What he overlooked was the return to a belief in universal and timeless law, which was the hallmark of major contemporary ideologies, including National Socialism with its theory of *Lebensraum*. These ideologies, based as they were on scientific certainties, tended to deny any idea of limit or human measure. "Law", said Hitler, "is a human invention. Nature knows neither the notary nor the surveyor. God knows only force."⁶

If one can talk here of the *return* of a belief in superhuman laws, it is because the laws that appeal to Science, like divine laws, do not accept the borders defining Nation States. Their dominion transcends any territorial limit. Just as the Catholic Church declares that it knows no territory⁷ and that its dogmas are true and valid for the entire globe, so it is with the truth of the "laws" of economics, biology or history. However, unlike the religious laws which unified Medieval Europe, the universal laws invoked today are immanent and not transcendent. They do not appeal to the Heavens but to the nature of things and of men: biology, economics and history are the disciplines summoned today to reign over the terrestrial world. Scientific normativity was already operative in the nineteenth century (particularly with Comte or Marx theoretically, and with colonialism politically) but it blossomed in the twentieth century in the guise of racial biology and historical materialism, along with their political by-products of racism, social Darwinism and the class struggle. We should not, however, forget what distinguishes these modern variants of scientism from religious proselytism: today, faith in these laws without a Legislator inspires not conversion but destruction of others, the destruction of those whose disappearance is deemed ineluctable and who must hence be treated like refuse⁸ destined for

⁵ *Carl Schmitt Der Nomos der Erde im Völkerrecht des Jus Publicum Europaeum* [1950]; tr. *G. L. Ulmen The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*, New York, Telos Press, 2003.

⁶ *Libres propos sur la guerre et sur la paix, recueillis sur l'ordre de Martin Bormann*, Paris, Flammarion, 1952, p. 69.

⁷ See *P. Legendre Dominium Mundi. L'Empire du Management*, Paris, Mille et une nuits, 2007, p. 21.

⁸ "War has returned to its original form. War between peoples has given way to another war – one which aspires to possess wide-open spaces. Originally, war was nothing other than a struggle over possession of pastureland. Today war is only a struggle over natural resources. By virtue of an immanent law, these resources belong to whoever conquers them

the “rubbish heap of history”⁹. This is doubtlessly the specific signature of the insane massacres that accompanied the various imperial enterprises dominating the history of our last century.

These empires have now fallen, one after the other, and the countries they once ruled over have all donned the garments of the Nation State. Today the State crowns the legal edifice, both internally and internationally. It is under the aegis of the State that today man inhabits the earth (I). But no one can ignore that this institutional edifice is coming apart and that an imperial logic is still at work. This logic no longer assumes the guise of a localisable power bent on extending the territorial scope of its laws but takes the form of a deterritorialisation of law, carried out in the name of the globalisation of the world (II). Neither the deterritorialisation of law nor a return to relations purely between Nations States has a viable future. The only thing of which we can be certain is that man is an earth-bound animal who must discover anew a sense of measure by which to redraw a world fit to live in (III).

I. Inhabiting the world: the institution of territories

Just as all cosmogonies show the birth of the Heavens and the Earth from the cosmic Ocean, so they all affirm the earthly substance of the human being. Adam, the first man in the religions of the Book, derives his name from the red earth (*adama*) from which God fashioned him. Man’s name comes from the Latin *humus* (damp earth): man (*homo*) is the one who comes from the earth and is destined to return to it (to be inhumed)¹⁰. Although born of the earth, man is endowed with a divine spirit which entitles him to take possession of it, to fashion it in his image and to make it fruitful by his labour¹¹. This second aspect – the “taking of

(...). This is in harmony with the laws of nature (...). This ceaseless struggle is justified by the law of selection which enables the best to survive. Christianity is a rebellion against this natural law, a protest against nature. Taken to its logical limit, Christianity would mean systematically cultivating the refuse of humanity”. *Adolf Hitler* *Libres propos sur la guerre et sur la paix*, op. cit., p. 51.

⁹ It was *Trotsky* who first used this expression to designate opponents of the Bolshevik party within the Congress of Soviets.

¹⁰ See *Lewis and Short* op. cit., s.v. “*humus*” and “*homo*”.

¹¹ In Mesopotamian mythology, the creation of man (out of earth mixed with the blood of a sacrificed god) is attributed to the fact that the lesser gods, weary of working, came out on strike. See *J. Bottero and S.N. Kramer* *Lorsque les dieux faisaient l’homme*. *Mythologie mésopotamienne*, Paris, Gallimard, 1989, p. 526 sqq. Cultivating the land was the first way in which it was made fruitful by human labour. Cultivating the land implied that one possessed it, and the Enlightenment philosophers were unanimous in considering cultivation to be the first title deed (see ch. V of *Locke’s* *Second Treatise on Civil Government* [1690], “Of Property”).

land”¹², taking possession by labour or force – has been dominant in the modern Western world, at the cost of repressing how man belongs to the land. This lop-sided vision, whose religious origins we can only surmise¹³, sees nothing but the imprint of man on the earth and remains blind to the imprint of the earth on man.

In order for our sight to be fully restored, we should turn to the civilisations which have not yet been blinded to the earth-bound dimension of man¹⁴. Black Africa has without a doubt remained most sensitive to what man owes to the land¹⁵, and it is on this continent that one can find the most subtle institutional forms reflecting the complexity of the relation. For example, there are two distinct and complementary authorities, which preside over relations to the land in the countries of Western Africa: the chief of the village and the “master of the land”¹⁶. The chief of the village parades the signs of his power and never walks barefoot. He embodies “the fate of a person who has chosen to adopt no other relation to the surrounding world than that pertaining between a hunter and his prey”¹⁷. The master of the land, by contrast, lives humbly and walks barefoot, and his “essential task is to ensure that each person and the whole village have a viable relation to the land”¹⁸. He presides over the rituals designed to ensure the land’s fertility and settles disputes relating to its use or distribution. Compared to the predatory figure of the chief, he incarnates the authority of the forefathers and the stability of territorial connections. African civilisations thus invite us to make a distinction within our own institutions between what connects a person to the land and what gives him control over it.

In the legal sphere, a *person’s connection to the land* continues to inform decisions on two fundamental issues: the determination of his or her identity and the laws which he or she must observe.

The question of identity arises in matters of personal status. Connection to a territory plays a role here through what is today called nationality law. “Nationality” is related etymologically to “being born”, and it situates each

¹² According to *Carl Schmitt*, the taking of land (*Landnahme*) is the same as the *Nomos* of the land, that is, the “originary act which founds the legal system”.

¹³ Christianity is both the religion of God the Creator without a woman and of a man-god on earth.

¹⁴ This dimension was of great importance in European Antiquity. See *J. Bachofen* *Das Mutterrecht* [1861], tr. *David Partenheimer* *Mother right: a study of the religious and juridical aspects of gynococracy in the ancient world*, 5 vols., Lewiston, N.Y., Lampeter, Edwin Mellen Press, 2003–2007: “As the Ocean faces the Land, so man faces woman”.

¹⁵ See *O. Journet-Diallo* *Les créances de la terre. Chronique du pays Jamaat*, Publications de l’Ecole Pratique des Hautes Etudes, Brepols, 2007, 364 p.

¹⁶ See the case of Kasena country in Burkina Faso, in: *D. Liberski-Bagnoud* *Les dieux du territoire. Penser autrement la généalogie*, Paris, CNRS-Ed. de la MSH, 2002, 244 p.

¹⁷ *D. Liberski-Bagnoud* op. cit., p. 100.

¹⁸ *D. Liberski-Bagnoud* op. cit., p. 206.

of us, as from birth, at the juncture of a territory and a lineage. Consequently nationality law combines considerations of the place of birth (*jus soli*) with that of the nationality of the parents (*jus sanguinis*) in different proportions depending on the country, to which should be added the possibility of acquiring one or more other nationalities later and hence having adoptive homelands. Nationality, which is an element of identity in the legal sense, is the source of personal status, that is, of a non-negotiable set of rights and duties towards the State or States of which one is a national¹⁹. This status can limit or even prevent the movement of a person beyond the territory to which he belongs²⁰. The weightiest duty is, however, to defend the national territory and hence run the risk of “dying for one’s country”²¹. It was on the basis of such a duty that motherlands devoured their children by the millions in the last two World Wars²².

A person’s connection to a territory can be seen in a different light when the question is no longer who he is but by what law he is governed. Are people bound at all times and places by the laws of their nation or must they obey the laws of the place in which they happen to be? The reply to this question has evolved over hundreds of years in the West. In Europe, the invasion and dislocation of the Roman Empire led to populations living together while obeying different laws. The new barbarian masters followed their various customs while the descendants of the subjects of the Empire (and the Church) remained subject to a largely adulterated version of

¹⁹ According to the Court of Justice of the European Communities (henceforth CJEC), the bond of nationality is founded on “a particular relation of solidarity with respect to the State and reciprocal rights and obligations” (CJEC 3 June 1986, Case C-307/84, Commission of the European Communities v French Republic, European Court Reports 1986, 1725; CJEC 16 June 1987, Case C-225/85 Commission v Italy, European Court Reports 1987, 2625; CJEC 30 May 1989, Case C-33/88 Allué and Coonassu v Università degli studi di Venezia).

²⁰ Numerous institutions in the history of law oblige peasants to stay on the land they cultivate (see, for example, the Roman *colonus* system or later serfdom, in: *F. Girard Manuel élémentaire de droit romain*, Paris, Rousseau, 5th ed. 1911, p. 132 *sqq.*; also *Ch. Revillout Étude sur l’histoire du colonat chez les romains*, Paris, A. Durand, 1856, 44 + 64 p.; *Fustel de Coulanges Recherches sur quelques problèmes d’histoire*, vol. 1, Paris, Hachette, 2nd ed. 1894, reprint, Brussels, Culture et civilisation, 1964, pp. 3–186). This obligation to remain on a particular territory has not disappeared (see, for example, the residence requirements accompanying certain jobs) but it tends today to involve a prohibition on entering or remaining on other territories rather than a prohibition on leaving one’s own.

²¹ See *E. Kantorowicz* “Pro Patria Mori in medieval political thought”, *American Historical Review*, vol. 56 (1951), p. 472–492.

²² The number of soldiers killed during the First World War is estimated at 7.8 million. In the Second World War, the number of civilian casualties of both sexes rose dramatically. Half of all the human losses on the European continent were sustained by the USSR alone, with 21 million dead (11 % of its population), of which 13.6 million were soldiers and more than 7 million were civilians (see *A. Bullock* *Hitler and Stalin. Parallel lives*, London, HarperCollins, 1991; 1993).

“Roman law”. In this system, which lasted from the fifth to the eleventh century, each person lived by the law of his origins, that is, of his ethnic group²³. This principle, which was called the personality of laws, was undermined by the mingling of populations and the rise of feudalism, which led to the same local or regional customs, the same law of the place (*lex loci*), being applied to all the inhabitants of the same seigniory. This is how the principle of the territoriality of laws gained currency, and its progress accompanied that of the Nation State²⁴. The world came to look like a jigsaw of separate legal regimes, with each State having sovereignty over the laws to be applied on its territory. But since States were not absolutely separate from each other, it was necessary to decide what judge was entitled to adjudicate and what law was to be applied in situations involving a foreign element. The objective rules laid down for this constituted what is called Private International Law, which, despite its name, was until recently largely internal and differed from one State to the next. In all countries, however, the degree of territorial purchase of national legislation is a function of what the law applies to: it has greatest territorial purchase in the fields of immovables, liability in tort and public security, and the least purchase in the context of international transactions, which by definition are associated with different territories²⁵.

In modern law, *man’s control over the land* takes two distinct but complementary forms: sovereignty and property. Both of these establish an exclusive relation between the sovereign or owner and the lands he governs or possesses. This exclusivity is completely new in the long history of law and could well be only a temporary phase. For if we take a comparative historical view of land laws, man’s rights in the land have at almost all times and places been a function of the bonds between men or with the gods²⁶. This stems from a deeply rooted sense that the human being, who is an earthly and mortal creature, cannot seriously lay claim to sovereign power over the natural elements. The power man *retains* over the land is always derived

²³ See *L. Stoff* Étude sur le principe de la personnalité des lois depuis les invasions barbares jusqu’au XII^e siècle, Paris, Larose, 1894, 102 p.

²⁴ This principle is only apparently straightforward, since it has received different interpretations in international law. See *P. Mayer and V. Heuzé* Droit international privé, Paris, Montchrestien, 9th ed. 2007, no. 49 sqq; *D. Bureau and H. Muir Watt*, Droit international privé, Paris, PUF, 2007, vol. 1, no. 329 sqq.

²⁵ See Article 3 of the French Civil Code: “Statutes relating to public policy and safety are binding on all those living on the territory. Immovables are governed by French law even when owned by aliens. Statutes relating to the status and capacity of persons govern French persons, even those residing in foreign countries”.

²⁶ *C. M. Hann* applies a concept developed by *Karl Polanyi* to property, and talks of the “embeddedness of property” (see *C. M. Hann* (ed.), Property relations. Renewing the anthropological tradition, Cambridge, Cambridge University Press, 1998, Introduction, esp. p. 9 sqq.).

from an other: from a master or a god, who has granted man use of it but may revoke this.

In the history of Western law this notion of *tenure* is linked to the feudal structures, which dominated the Medieval period²⁷ to varying degrees (in France more than elsewhere²⁸). For the feudal world, it was the bonds of dependence between men that determined their rights in the land. This was true of political power (which the suzerain exercised only indirectly over the territory of his vassals) and also of economic power, which was divided (with the exception of allodial land) between the *dominium eminens* of the lord and the *dominium utile* of the vassal or tenant. Tenure, whether in its noble form (the fief) or common form (censive tenure) was always *tenure-service*, a concession granted in return for dues. Rights in the same piece of land were thus distributed between different people. This type of legal set-up was not, however, restricted to Western feudalism, nor to the Medieval period. In the Ottoman Empire, for example, rights in the land were divided between those who farmed it and had certain rights over it (on condition that they cultivated it successfully), regional administrators who collected taxes on the produce and lastly the imperial treasury, which had ultimate tenurial superiority²⁹. Another example can be found in a study by Jacques Berque on land farmed in terraces in the valleys of the High Atlas in Morocco, where each family has tenurial superiority over its plot, which is handed down from generation to generation; the family can always demand to buy back the land from its present occupier³⁰. One of the features which these variants have in common is that several people may exercise different rights simultaneously in the same property, which itself remains indivisible.

The situation reversed with the advent of the modern right to property: land was no longer perceived as the site of relations between people but was treated as a thing submitted to the will of one person alone. The far-reaching consequences of this reversal could not fail to have considerable impact on how human environments were shaped, corresponding, in the legal sphere, to what Augustin Berque as a geographer called the “freeze on the object”³¹. As Louis Dumont has shown, an economic ideology implies the subordi-

²⁷ See *M. Bloch* *La société féodale* [1939], tr. L. A. Manyon, Feudal Society, London, Routledge & K. Paul, 1961.

²⁸ *A. Esmein* *Cours élémentaire de droit français*, Paris, Larose, 1898, p. 185 *sqq.*; *J.-F. Lemarignier* *La France médiévale. Institutions et sociétés*, Paris, A. Colin, 1970, p. 161 *sqq.*

²⁹ See *M. Mundy & R. Saumarez Smith* *Governing Property, Making the Modern State. Law, Administration and Production in Ottoman Syria*, London-New-York, IB Tauris, 2007, p. 11 *sqq.*

³⁰ *J. Berque* “Documents anciens sur la coutume immobilière des Seksawa”, *Revue Africaine* XCIII, 1948, pp. 363–402, reprinted in: *Opera Minora*, Paris, Bouchène, 2001, vol.1, pp. 359–384.

³¹ *A. Berque* *Écoumène. Introduction à l'étude des milieux humains*, Paris, Belin, 2000, p. 69 *sqq.*

nation of relations between men to relations between men and things³². Moreover, the market economy needs goods fit for exchange, that is, cleansed of any trace of personal bonds. In the Napoleonic Code the direct relation between men and things (treated in Book II) forms the basis of the contractual relations between men (treated, with successions, in Book III). The equivalent of this development in the political order was the establishment of the figure of the sovereign, incarnated in the State as guarantor of respect for private property. Public and private were no longer interlinked in feudal fashion but sharply differentiated: the public domain of national territory was controlled by the State and seamlessly³³ juxtaposed with private domains subject to the sovereign will of their owners. The *dominium eminens* of the State has not disappeared completely, however. Legislation provides for the expropriation of land for public use in return for compensation³⁴, and in the absence of legal claimants property still escheats to the State. More generally, the right to property must operate in conformity with the law³⁵. Exercising this right even supposes the existence of a sovereign State to ensure that the property of each is respected by all. When this condition no longer applies, the fiction of a direct and exclusive legal bond between men and things is no longer tenable and the relations of dependence between people once again come to the fore³⁶.

³² L. Dumont *Homo æqualis* I. Genèse et épanouissement de l'idéologie économique [1985], tr. From Mandeville to Marx: the genesis and triumph of economic ideology, Chicago-London, University of Chicago Press, 1977, 236 p.

³³ This leads to the issue of the legal regime applicable to the public face of private property. The question arose, for example, of whether the owner of a building had rights over the image of its façade (the French courts ruled that the owner did, but this was subsequently annulled by the Court of Cassation (7 May 2004). See Y. Strickler *Les biens*, PUF, coll. *Thémis*, 2006, no. 12; p. 36 *sqq.*).

³⁴ See the Declaration of the Rights of Man and of the Citizen (1789), article 17: "Since property is an inviolable and sacred right, no one shall be deprived thereof except where public necessity, legally determined, shall clearly demand it, and then only on condition that the owner shall have been previously and equitably indemnified".

³⁵ See the French Civil Code, art. 544: "Ownership is the right to enjoy and dispose of things in the most absolute manner, provided they are not used in a way prohibited by statutes or regulations".

³⁶ As A. Macfarlane notes: "The dissolution of the state is not a good basis for modern private property, which is ultimately underpinned, as Locke and his successors recognized, by powerful, if largely invisible, state power" (in: "The mystery of property: inheritance and industrialization in England and Japan", in: C. A. Hann (ed.), *Property relations. Renewing the anthropological tradition*, op. cit., p. 104 *sqq.*, cited p. 115).

II. Globalising the world: the deterritorialisation of laws

The term “globalisation” is a slogan more than a concept. It embraces a heterogeneous body of phenomena which should be carefully differentiated. The abolition of physical distances through the circulation of signs between people is a structural phenomenon enabled by new digital technologies. By contrast, the globalisation of trade in things is a conjunctural phenomenon which is the result of reversible political decisions (lifting trade barriers) and of the temporary over-use of non-renewable natural resources (keeping transport costs artificially low). It is the combination of these two different phenomena, which impoverishes the heterogeneity of signs and things by referring them to a single monetary standard, that is, by transforming them into “liquidities”³⁷. Even territory does not escape this process of “liquidation”. It ceases to be seen as a place from which one comes and to whose laws one is subject, existing only as object of property and as such submitted to laws, which transcend its singularity. This process of uprooting laws from their territorial grounding has clearly not come to an end (nor can it, without an apocalyptic liquidation of the entire world)³⁸. But it has led to the dislocation of territorial legal systems due to the dual pressure of personal laws undermining them from within (A) and universal laws dismantling them from without (B).

The *personality of laws* first reappeared in Western legal systems with colonisation, when the colonisers enjoyed a different status to that of indigenous populations³⁹. It then reached Europe when certain States began to base personal status on racial characteristics. Nazi Germany was obviously the principal actor in grounding legal status in biology. While it certainly had no

³⁷ A debt or a debt-claim is termed “liquid” when it can be converted into a determinate quantity of money. Liquidating an asset means making it fungible, converting it into monetary rights. In everyday language, French “liquide” refers both to ready money (cash) and to an aqueous medium (see *G. Cornu* (ed.), *Vocabulaire juridique*, Paris, PUF, 1987, *s.v.* “Liquidation” and “Liquide”); in English, the terms “liquidities” and “liquid” communicate in a similar way.

³⁸ As observed by *G. Deleuze and F. Guattari* (*Mille plateaux* [1980], tr. Brian Massumi, *A thousand plateaus: capitalism and schizophrenia*, Minneapolis, University of Minnesota Press, 1987) any process of deterritorialisation leads to a reterritorialisation, which is never a return to a primitive or a former territoriality. The many signs of the current reterritorialisation would call for a further paper.

³⁹ In the French colonies, for example, indigenous status (French *indigénat*) combined the original personal status with a restricted French nationality. Citizenship was reserved for those who were “native French” and, in Algeria, was extended to indigenous Jews by the Crémieux Decree in 1870, and later to non-Muslim (that is, European) foreigners in 1889. Similar solutions were adopted in the English colonies (see, on India, *Ved P. Nanda & Surya Prakash Sinha* *Hindu Law and Legal Theory*, Aldershot, Dartmouth, 1996, p. xiv *sqq.*). Far from contributing to reducing the diversity of personal statuses, colonisation helped anchor them in the legal culture of the country: after Algerian independence, being a Muslim became a condition for attribution of Algerian nationality.

monopoly on biologism⁴⁰ or racial discrimination⁴¹, it took these to their most extreme limit in its programmed extermination of the Jews and the massacre and enslavement of Slavs living in the *Lebensraum*, which it wanted to annex. The monstrosity of these acts, together with the independence progressively gained by colonised countries, explain why the idea of personal status was thoroughly discredited in the immediate post-War period. However, it is reappearing today in different forms, but instead of being imposed it is actually claimed in the name of individual liberties; and it is no longer by racialist biology but by genetics that men are being governed, through certain legal provisions.

Today, the *free choice of one's status* is driving a roaring trade, both economically and personally.

In the realm of economic exchange, the freedoms associated with free trade (freedom of establishment, to supply services and to put goods and capital into circulation) have been invoked to allow investors and firms to dodge the legislation of the country in which they operate in favour of another, more profitable, one. Flags of convenience, which used to be confined to the law of the sea, have been hoisted on dry land in the form of a *law shopping* which treats national legislation as a product competing on an international market of norms⁴². This approach has been actively promoted in Europe by the Court of Justice of the European Communities which upheld a company's right to avoid the rules of the State in which it is operating by registering in a State with less restrictive rules⁴³. In order to facilitate such *law shopping*, the "Doing Business" programme of the World Bank regularly ranks 178 countries (renamed "economies") according to their tax and welfare legislation – the least stringent first⁴⁴. The legal view of the world implicit in these developments is that of a market of norms in which free individuals may choose to adopt the law, which is most profitable to them.

⁴⁰ See the useful summary by *André Pichot* in: *La société pure. De Darwin à Hitler*, Paris, Flammarion, 2000.

⁴¹ On Vichy legislation, see *D. Gros* (ed.), *Le Droit antisémite de Vichy contre la tradition républicaine*, journal "Le Genre humain", Seuil, 1996, 624 p.

⁴² For an overview and a substantial bibliography, see *H. Muir Watt* *Aspects économiques du droit international privé (Réflexions sur l'impact de la globalisation économique sur les fondements des conflits de lois et de juridictions)*, Académie de droit international de La Haye, Recueil des cours, vol. 307 (2004), Leiden-Boston, *Martinus Nijhoff* 2005, 383 p.; also her "Concurrence d'ordres juridiques et conflits de lois de droit privé", in: *Le droit international privé: esprit et méthode. Mélanges en l'honneur de Paul Lagarde*, Paris, Dalloz, 2005, p. 615 *sqq.*

⁴³ CJEC, 9 March 1999, *Centros*, Case C-212/97, *European Court Reports* 1999, I, 1459 concl. La Pergola. For a similar conclusion, see CJEC, 11 Dec. 2007, *Viking*, Case C-438-05 (which deduced from the freedom of establishment the right to use flags of convenience).

⁴⁴ See <www.doingbusiness.org>, and particularly a map of the world represented as a space of competition between legislations ("Business planet mapping the business environment").

This sort of market will gradually eliminate the normative systems which are the least able to satisfy the financial expectations of investors⁴⁵.

This free-market version of the personality of laws is not restricted to the economic field. The notion of personal law, which was reinvented in the nineteenth century in the context of colonialism or slavery, has found a new lease of life through the vast numbers of people in Western countries who have been imported to work there for next to nothing or have been driven from their homes through the destruction of their traditional environments. Western countries, which are faced with this situation have opted for one of two policies: assimilation or multiculturalism. Assimilation means upholding the territoriality of laws whereas multiculturalism requires the personality of laws to be reintroduced so that different legal cultures may coexist in a single country. This kind of multiculturalism, however, in contrast to older forms of coexistence between communities (such as indigenous status under colonialism or the Ottoman *millet* system⁴⁶), claims to act in the name of human rights and the freedom of the individual to choose his or her personal status. Demands shift here from having to being, from the realm of the socio-economic to that of identity – and it is not only groups but individuals who want to become their own law-givers. On the collective level the “right to difference” has been championed by various minorities – ethnic, sexual and religious – which invoke their position as victims in order to have a special status attributed to them and hence to limit the scope of the law which applies to all the inhabitants of the same territory⁴⁷. On the individual level, the right to privacy is invoked to erode the principle of the inalienability of civil status so that each person may determine his or her own identity⁴⁸. As always in the history of law, the reemergence of older legal structures does not imply a return to the past but contributes to the construction of new categories. The personality of laws, in its individualist form of “a law for me” and “myself as law”, is the legal expression of the po-

⁴⁵ On the ideological origins and logical insufficiencies of this normative Darwinism, see A. Supiot “Le droit du travail bradé sur le marché des normes”, *Droit Social*, 2005, pp. 1087–1096.

⁴⁶ On this form of exercise of imperial power, see R. Mantran “L’Empire ottoman”, in *Centre d’analyse comparative des systèmes politiques, Le concept d’empire*, Paris, PUF, 1980, p. 231 *sqq.*

⁴⁷ For the United States, see M. Piore *Beyond Individualism*, Cambridge, Mass., Harvard University Press, 1995, 215 p.; for Canada (and using the same notion of “minority” to refer to the Inuits, homosexuals and women), see A. Lajoie *Quand les minorités font la loi*, Paris, PUF, 2002, 217 p.

⁴⁸ For this shift towards laying claim to a self-determined personal status in the name of the right to privacy, see H. Muir Watt *Droit international privé*, op. cit., vol. 2, no. 642, p. 43 *sqq.*; D. Gutman *Le sentiment d’identité. Étude de droit des personnes et de la famille*, Paris, LGDJ, 2000, p. 340 *sqq.*; J.-L. Ranchon “Indisponibilité, ordre public et autonomie de la volonté dans le droit des personnes et de la famille”, in: A. Wijffels, *Le code civil entre ius commune et droit privé européen*, Brussels, Bruylant, 2005, p. 269 *sqq.*

tentially devastating narcissism which characterises this latest stage in Western culture⁴⁹.

The emergence of a *biological status* is the other facet of this contemporary version of the personality of laws. The idea of grounding private property of land in biological inequalities is as old as economic liberalism itself⁵⁰. It was used to justify the colonisation of peoples who continued to view their land as an oecumene⁵¹ and not as a commodity, long before racialist biology supplied “scientific” arguments. “We shape the life of our people and our legislation according to the verdicts of genetics”, said the Nazis⁵², thus expressing a conviction which today has become a commonplace: that the only laws really binding on man are those revealed by science. The genetics of populations may have given way to biomolecular genetics over the last half century, but explanations based on the genome have simply replaced racial ones, within a discourse whose dogmatic structure has remained unaltered⁵³. Nowadays biotechnology enables us to ascertain the genitor of any mammal. Consequently, the complex institutional mechanisms, which used to refer every human being to a territory as much as to a filiation – and that filiation itself to a familial status rather than to a “genetic truth” – seem suddenly outdated. And indeed, the last thirty years have seen the idea of a “biological truth” of filiation gain ground, to varying degrees, in the legislation of European countries⁵⁴. In countries, like Germany, where *jus sanguinis* was already the cornerstone of nationality, there was little resistance to this⁵⁵. In countries attached to the *jus soli*, however, like France, people

⁴⁹ Christopher Lasch *Culture of Narcissism: American Life in an Age of Diminishing Expectations*, New York, Norton, 1979. See also the notion of “self-grounded subject-king” developed by Pierre Legendre, for whom “Forcing the subject to act as the Third towards himself is no liberation; it crushes him, transforming social relations *politically* into a free-for-all concealed beneath a discourse of generalised seduction. What is implicit in the new management-inspired legal initiatives can be revealed for all to see, and I would summarise it as follows: *good luck to you*” (*P. Legendre Les enfants du Texte. Étude sur la fonction parentale des États*, Paris, Fayard, 1992, p. 352).

⁵⁰ See *J. Locke* *Treatise on Civil Government* [1690], §. 27 and 32; *A. Thiers* *De la propriété*, Paris, Paulin Lheureux, 1848, Bk.I, ch. IV: “That man has among his personal faculties a first incontrovertible property, which is the origin of all the others”, p. 32 *sqq.*

⁵¹ “The oecumene is the totality and the condition of human environments in their properly human, but no less ecological and physical, dimension”, *A. Berque* *Écoumène. Introduction à l'étude des milieux humains*, op. cit., p. 14.

⁵² *Nazi Primer*, cited in: *Arendt* *The Origins of Totalitarianism*, London, Allen & Unwin, 1967, p. 350.

⁵³ See *A. Pichot* *Histoire de la notion de gène*, Paris, Flammarion, 1999; also *P. Legendre* “L'attaque nazie contre le principe de filiation”, in: *Filiation*, Paris, Fayard, 1990, p. 205 *sqq.*

⁵⁴ See *C. Labrusse-Riou* *Écrits de bioéthique*, Textes réunis et présentés par M. Fabre-Magnan, Paris, PUF, 2007, esp. p. 49 *sqq.* and 327 *sqq.*

⁵⁵ See *R. Frank* “La signification différente attachée à la filiation par le sang en droit allemand et en droit français de la famille”, *Revue internationale de droit comparé*, 1993, 635.

were less keen to let test-tubes decide on a person's identity⁵⁶ but the pressure to do so was strong. The bill on the use of genetic testing to monitor the family reunion of immigrants, which was thrown out in 1987, has just been adopted in France, in 2007, with the approval of the Constitutional Council⁵⁷. Moreover, the highest echelons of the French State make no mystery of their belief that human behaviour is genetically determined, which would justify screenings and preventive measures⁵⁸. A similar faith inspires the economists who look for the ultimate laws governing their vision of the world in biology. It is a world peopled by hordes of contracting particles whose behaviour could be explained and monitored by analysing their genes or cerebral cortex⁵⁹. Biological identity is even set to supplant civil status in border controls, through the progressive extension of biometrics by which cosmopolitan elites entitled to circulate across the entire globe may reliably be distinguished from migrants driven out by penury, who are to be turned back or selectively passed according to manpower needs⁶⁰. Inhabiting the global world in these two extreme ways – as winners or as losers – should not be confused with the ancient figure of the nomad. No-

⁵⁶ See articles 16–10 *sqq.* of the French Civil Code, which set stringent conditions on the examination of the genetic particulars of a person.

⁵⁷ French Constitutional Council, Decision no. 2007–557 DC, November 15th 2007 (“Act relating to the control of immigration, integration and asylum”).

⁵⁸ Their belief goes under the banner of scientific truth, as illustrated for example by *Nicolas Sarkozy's* declarations when he was Minister of the Interior on the existence of genes for paedophilia and suicide (Interview with *Michel Onfray* Philosophie Magazine, 2007, no. 8). Likewise his programme for early detection of children genetically predisposed to delinquency. This programme set out to give legislative expression to the results of a report by the National Institute for Health and Medical Research (INSERM), which maintained that 50% of “Oppositional Defiant Disorders” were genetically determined and which also recommended screening for these disorders as early as the crèche or nursery school (INSERM, *Troubles des conduites chez l'enfant et l'adolescent*, Sept. 2005, 428 p. <<http://ist.inserm.fr/basisrapports/trouble-conduites.html>>).

⁵⁹ See *G. S. Becker* *The Economic Approach to Human Behavior*, Univ. of Chicago Press, 1976, esp. the last chapter, p. 282 *sqq.*: “Altruism, Egoism, and Genetic Fitness: Economics and Sociobiology”. The most recent trend is called *neuroeconomics* and refers to neurology rather than genetics to explain economic behaviour. See *P. W. Glimcher* *Decisions, Uncertainty, and the Brain: The Science of Neuroeconomics*, MIT Press, 2003, 375 p.; also *C. Camerer, G. Loewenstein, D. Prelec* “Neuroeconomics: How neuroscience can inform economics”, *Journal of Economic Literature*, Vol. XLIII, March 2005, pp. 9–64; and *Jean-Pierre Changeux and Christian Schmidt* “La refondation de l'analyse du risque à la lumière des neurosciences”, *Risques*, no. 71, September 2007.

⁶⁰ According to an agreement signed between the United States and some thirty (mostly Western) countries, holders of biometric passports do not have to obtain a visa to enter the U.S.A. A PARAFES file of biometric data on air passengers has recently been created in France (PARAFES: “Automated fast track crossing at Schengen external borders” (*Passage Automatisé Rapide Aux Frontières Extérieures Schengen*), in order to “improve border police controls of air passengers and enable [Schengen area] external borders to be crossed more rapidly” (Decree no. 2007–1182 of 3 August 2007, *Journal Officiel* of 7 August 2007, p. 13203).

madism is not defined by moving from place to place; the nomad is not without a territory but simply will not settle on any part of it⁶¹. This doubtless makes him unassimilable to the categories derived from Roman law which all emanate from the idea of attributing to each his own. By contrast, insofar as biometric methods of identification extract identity from any territorial reference, they are ideal for controlling nomads (or what remains of them) as well as sedentary peoples, migrants and transnational managers.

The belief in *universal laws* is the second factor in the dislocation of the territorial inscription of laws. Today it takes the form of the economic dogma of globalisation. Unlike classical economic liberalism, which viewed the legal system as the institutional basis for the production and distribution of wealth, this new *credo* views it simply as an instrument in the service of the supposedly immanent laws of the economy. This dogma was systematised in the West in the *Law and Economics* doctrine, which tallies with the Marxist creed of law as the “reflection” of the economic base. It could therefore serve to justify combining capitalist and Communist systems in the development of what the Chinese Constitution calls the “Communist market economy”⁶². In this hybrid system, the free market has contributed the competition of all against all, free trade and maximising individual utilities, while Communism has contributed “limited democracy”, the instrumentalisation of the legal system, an obsession with quantification and the abyss separating the lot of the rulers from that of the ruled. This system is not specific to China and it has gained ground, in different guises and to varying degrees, in Eastern and Western Europe⁶³. It has contributed to the deterritorialisation of law in two different ways.

The first and most obvious effect has been the dismantling of any sort of legal limit, which might hinder the circulation of goods and capital or the provision of services internationally. The system’s ultimate goal is a Total Market encompassing all of humankind and all the products of the planet, within which each country would abolish its trade barriers in order to exploit its “comparative advantages”. Such a programme was clearly spelled out in the Preamble to the Marrakesh Agreement establishing the World

⁶¹ See *G. Deleuze and F. Guattari* *Mille plateaux* [1980], tr. Brian Massumi, *A thousand plateaus: capitalism and schizophrenia*, Minneapolis, University of Minnesota Press, 1987; “*Traité de nomadologie*”, cited by *A. Gokalp* “Palimpseste ottoman”, in: *A. Supiot* (ed.), *Tisser le lien social*, Paris, Éd. de la MSH, 2004, p. 93 *sqq.*

⁶² The exact phrase (which can be found in Article 15 of the Constitution of the People’s Republic of China) is 社会主义市场经济 (*shehuizhuyi shichang jingji*), which translates literally as “socialist market economy”. In order to avoid confusion with the sense which “socialist” has acquired in French politics (the idea of a mixed economy, which the Socialist Party espoused for a time), I have preferred the translation “Communist market economy”.

⁶³ See *A. Supiot* “L’Europe gagnée par l’économie communiste de marché”, *Revue du MAUSS permanente*, 30 janvier 2008 <www.journaldumauss.net/spip.php?article283>.

Trade Organization (WTO). The growth in quantifiable economic indicators – employment levels, a large and steadily growing (*sic*) volume of income and demand; increased production of and trade in goods and services – is presented in this text as an end in itself, to be attained by means of “the substantial reduction of tariffs and other barriers to trade and the elimination of discriminatory treatment in international trade relations”. Such a policy entails destroying the heterogeneity of national legal systems, which are summoned to rid themselves of any rules liable to hinder the free circulation of goods and capital⁶⁴. Dismantling trade barriers in this way has significant environmental effects⁶⁵ which are not addressed by the high-profile condemnation of countries which forbid the importation of goods whose mode of production does not conform to their own environmental legislation⁶⁶. The economic dogma is even applied to the planet itself, which is assimilated to a commodity and so must be open to investment or real estate speculation⁶⁷. The transformation of the earth into an asset which can be liquidated on a global market goes together with a change in terminology: the notion of space, which was previously restricted to the law of the sea, has now been extended to the “law of the earth”. The European Union, for example, no longer defines itself as a single territory or a group of discrete territories but as an “espace sans frontières intérieures” (“area without internal frontiers”) or an “espace de liberté, de sécurité et de justice” (“area of freedom, security and justice”)⁶⁸ designed to include an indeterminate and indeterminable number of new member States.

This dissolution of the singularity of territories into an abstract, measurable and negotiable space encounters strong resistance in some countries

⁶⁴ Article 56E of the EU Treaty prohibits “all restrictions on the movement of capital [or on payments] between Member States and between Member States and third countries”.

⁶⁵ For example, the removal of customs duties on imports into the European market of American oilseeds and related animal-feed proteins in 1962 led to intensive soil-less culture in Brittany which caused massive pollution to the region’s entire hydrographic system. (See *L. Lorvellec* “GATT, agriculture et environnement” in: *Écrits de droit rural et agroalimentaire*, Paris, Dalloz, 2002, pp. 491 *sqq.*)

⁶⁶ See the famous cases of tuna or shrimp fished with nets which destroy dolphins and sea turtles; or the condemnation of Europe’s refusal to import American hormone-treated beef. On the rulings, see *R. Howse and D. Regan* “The Product/Process Distinction – An Illusory Basis for Disciplining ‘Unilateralism’” in: *Trade Policy, European Journal of International Law*, 2000, vol. 11, no. 2, pp. 249–289.

⁶⁷ According to the European Court of Justice, “Whatever the reasons for it, the purchase of immovable property in a Member State by a non-resident constitutes an investment in real estate which falls within the category of capital movements between Member States. Freedom for such movements is guaranteed by [the] Treaty” (CJEC, 13 July 2000, *Alfredo Albore*, Case C-423/98, *European Court Reports* 2000, page I-05965).

⁶⁸ Preamble and art. 2, 29, 40 and 61 of the Consolidated Treaty (Official Journal of the European Union, 29. 12. 2006). Absent from the Treaty of Rome signed in 1957, The notion of “*espace*” (or area) was introduced into the 1986 Single European Act.

and has not yet taken place at a global level as completely as it has in the European Union⁶⁹. More generally, the process of globalisation cannot of course ignore the concrete diversity of landscapes, human environments, modes of life, languages, cultural treasures and intellectual riches. Unlike commodities (and what the market economy assimilates to commodities, like work, land and money), their value has no market price, which is why their preservation and renewal should in principle be governed by the *lex loci*. Yet the global market still considers them as resources to be taken into account when evaluating the comparative advantage of a country or a region of the globe. This is why new techniques designed to quantify and measure the relative value of these non-market goods and find a universal accounting image for them have materialised. Such techniques of *scoring* are applied today in fields as diverse as scientific research, comparative law (for the purposes of *law shopping*: see above) and “human development”. Geographical elements such as towns, nations and territories are treated like competing trademarks, from which the notion of *nation branding* has emerged, based on quantitative indicators of “local identity capital”⁷⁰. This presupposes that local identity can be broken down into a normalised list of features which may be evaluated (landscape, climate, public infrastructures, public safety, cuisine, etc.) and that local political and economic “players” are enlisted to vie with each other in “territorial competitiveness”⁷¹.

Here the law applicable to a territory gives way to a new type of normativity which claims to be based on the observation of fact and no longer on legal imperative. This is a last avatar of the positivist temptation to dissolve law into the immanent laws revealed by science, such that the political headaches and uncertainties of *governing* a territory may be swept away by the techniques of good *governance*. The attempt to transform any and every singular quality into a measurable quantity launches us into a speculative loop in which belief in quantitative representations gradually supplants any real contact with the realities, which these representations are supposed to refer to. Territorial performance indicators, which are typical of this Communist

⁶⁹ In China, “Decision 171” of 11 July 2006 limited the access of foreigners to the property market and reserved real estate investment to legal persons under Chinese law. Poland has a scheme whereby non-Community nationals require authorisation to acquire land, and in Turkey foreigners may not purchase areas of more than 6.2 acres (2.5 hectares).

⁷⁰ See *L. Doria* “La qualità totale del territorio: verso una fenomenologia critica”, *Archivio di studi urbani e regionali*, no. 80, pp. 11–56; and his “Managing the Unmanageable Resource: Multiple Utility and Quality in the EU Policy Discourses on Local Identity”, in: *L. Doria, V. Fedeli, C. Tedesco, Rethinking European Spatial Policy as a Hologram*, Aldershot, Ashgate Publisher, 2006, p. 235 *sqq.*

⁷¹ See *L. Doria's* analysis (in the work cited above) of the LEADER programme of the European Commission. It received 2 billion euros for 2005/2006, with a remit to “help rural actors consider the long-term potential of their local region” <http://ec.europa.eu/agriculture/rur/leaderplus/index_fr.htm>

market economy, are founded on the same dogmas as Soviet planning and produce the same effects: public initiatives target quantitative objectives rather than concrete results, and the real situation of the economy and society is concealed from a governing class disconnected from the lives of those it governs. The quantified representations of the world, which today determine how private and public affairs are run imprison international organisations, States and companies in an autism of quantification which increasingly cuts them off from how people really live⁷².

III. Redrawing the world: a sense of measure

The market economy is not a state of nature. In order to make the market into a general principle regulating economic life, it was necessary to behave *as though* work and money were commodities, which clearly is not the case⁷³. The market economy is based on legal fictions, but fictions which are not the stuff of novels: they cannot be *sustained* unless they are humanly viable. From this perspective, environmental law could be defined as the set of rules, which sustain the fiction of nature-as-commodity, just as labour law could be defined as the rules which sustain the fiction of work-as-commodity. These legal supports were established at the national level and are being eroded by the process of globalisation. When the rules of the free market are no longer subtended by anything, their grounding in the diversity of territories and people collapses, which can only lead to ecological, social or monetary catastrophe.

Making competition into the only universal principle of organisation of the whole world leads to the same impasse as twentieth-century totalitarianisms, which precisely had in common the subordination of the legal form to supposed laws of competition (between races or classes). This statement, and the prediction that such a doctrine will ineluctably generate insanity and violence, is not dictated by some political or moral stance. Rather, it stems from one of the rare certainties that the “science of Law” may contribute: namely that since egoism, greed and the struggle for life are well and truly present in this world as it is, they must be contained and channelled by a common reference to the world as it should be. By contrast, making universal struggle into the founding principle of the legal system refutes the latter’s very possibility and sets humanity on the road to disaster.

⁷² See *R. Salais* “On the correct (and incorrect) use of indicators in public action”, *Comparative Labor Law & Policy Journal* [Vol. 27] n°2, 2006, pp. 237–256.

⁷³ See *K. Polanyi* *The Great Transformation: The Political and Economic Origins of Our Time*, Victor Gollancz, London, 1945.

The West shows some signs of becoming aware of these risks. The dangers entailed by the disappearance of public space are at last being recognised in the most “advanced” countries in which, increasingly, “to each his law”⁷⁴. It is also becoming more difficult to ignore the systemic risks to the planet incurred by a real economy, which is disconnected from the potential of our biosphere (ecological risk), from its monetary representation (financial risk) and from minimal standards of social justice (social risk). But this awareness of diffuse dangers has not as yet led to any genuine challenge to the economic dogma governing globalisation. One can only hope that the rising economic powers will use the resources of their own cultures to avoid embarking along the same calamitous paths.

In this respect China is eminently well placed. Confucianism is of course one such resource, with its emphasis on the close links between the cosmic and the social order. But the Legalist School, introduced to French jurists by the work of Léon Vandermeersch, is another⁷⁵. In many respects, the Legalists of the *Fa-kia* School can be seen as precursors of Western utilitarianism. Two thousand years before the English political philosophers, the Legalists saw man as an egotistical being driven by self-interest alone. They had no notion of civil law and were also the first to develop a technocratic conception of law – with efficiency as the measure of legitimacy – and to use law purely as an instrument for exercising power. But unlike utilitarian philosophy, they had the pessimism of intelligence and considered man’s egoism and greed as a threat and not as a benefit from which the common good would spring spontaneously. They would not have dreamed of making the calculation of individual utility into the supreme universal norm. On the contrary, they viewed egoism as an energy, which the law should take into account, but in order to channel it so that it would serve the general interest. In this respect they were jurists in the fullest sense, and the lessons we can draw from them can still today assist us in civilising globalisation.

⁷⁴ See the debates in Québec on “reasonable accommodation”, which gave rise to the establishment of a Consultation Commission on Accommodation Practices Related to Cultural Differences <www.accommodements.qc.ca>.

⁷⁵ L. Vandermeersch *La formation du légisme: recherche sur la constitution d’une philosophie politique caractéristique de la Chine ancienne*, Paris, École française d’Extrême-Orient, 1987, 106 p.