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A TIME OF CLIMATE CHANGE

Matteo Nicolini

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IN A TIME OF CLIMATE CHANGE**

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Those who remain in a region ravaged by extreme weather often find themselves navigating an entirely new social and political structure, if one endures at all.

Wallace-Wells, *The Uninhabitable Earth*, 127.

1. 'A New Subject for the Law' in a 'Human-Altered World'

As members of political communities, we are now experiencing how alarming the threats posed by climate change are. Because of our living in the Global North, we thought that 'wealth was a shield against [its] ravages.' Consequently, we kept on 'mortgaging the ecological future of the planet' and, at the same time, allowed its 'cruellest impacts' to affect the less-developed countries.¹ Indeed, global warming goes hand in hand with economic inequalities. This means that the 'world's suffering will be distributed as unequally as its profits' (*UE*, 121);² and that 'the systematic pillaging of natural resources, environmental catastrophes ... and endless

¹ David Wallace-Wells, *The Uninhabitable Earth. A Story of the Future* (London: Allen Lane, 2019), 1, 54. Further references in the text, abbreviated as *UE*.

² Among legal scholars, Katharina Pistor, *The Code of Capital. How the Law Creates Wealth and Inequality* (Princeton: Princeton UP, 2019), 23.

wars' will be the cost the Global South is most likely to pay for climate change.³

On the brink of the final judgment, we are brooding over our acting 'selfishly' (*UE*, 10)⁴. After building 'our way out of nature.' we now realise 'how hard, and how indiscriminately,' climate change 'is hitting' (*UE*, 71, 74). In this 'human-altered world,'⁵ furthermore, legal scholars witness the disruption (if not the demise) of well-established taxonomies, on which communities have been building their political bonds for the last thousand years.

Climate change has become 'a new subject for the law.'⁶ Not only has it given rise to innovative areas of legal research, such as climate change law, but it also raises new issues and requires innovative responses.⁷ Evidently, it affects the realm of the law, which must adapt to environmental changes. Playing with book titles: climate change undermines both the 'Wealth' and the 'Health of Nations,' causing 'Famines, Fevers,' and extreme weather whose impact on 'the Fate of Populations' results in global mobilisation.⁸ As it may 'unleash as many as a billion migrants by 2050,' borders become blurred (*UE*, 133). Finally, the ecological crisis has led scholars to frame new

³ Mikhail Xifaras, 'The *Global Turn* in Legal Theory,' *Canadian Journal of Law & Jurisprudence*, 29.1 (2016): 215–243, 219.

⁴ See also *Letters to the Earth. Writing to a Planet in Crisis*, ed. Emma Thompson (London: Collins, 2019), 36. Further references, abbreviated as *LE*.

⁵ Chris D. Thomas, *Inheritors of the Earth. How Nature is Thriving in an Age of Extinction* (London: Allen Lane, 2017), 29. Further references in the text, abbreviated as *IE*.

⁶ Anne-Sophie Novel, 'Climate change: A new subject for the law,' *The UNESCO Courier*, 3 (2019): 13–15. See also Jan McDonald, 'The Role of Law in adapting to Climate Change,' *Wiley Interdisciplinary Reviews: Climate Change*, 2.2 (2011): 283–295.

⁷ See Daniel A. Farber, *Climate change law* (Cheltenham and Northampton: Edward Elgar, 2016).

⁸ Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of nations*, ed. Kathryn Sutherland (Oxford: OUP, 1993); Anthony McMichael, *Climate Change and the Health of Nations. Famines, Fevers, and the Fate of Populations* (Oxford: OUP, 2017).

categories, such as ‘environmental migration’ and ‘climate migrants/refugees.’⁹

2. *Climate Change and Mobility: Perspectives from Law and the Humanities*

As the introductory paragraph demonstrates, the story of climate change has often been told, and I do not intend to repeat it. My purpose is limited in scope: I shall reconsider some common assumptions, we usually make about the law, by locating them *in a time of climate change*.

A methodological change is required if we want to address ‘how our greenhouse-gas emissions warm the climate everywhere’ (*IE*, 5).

But climate change also challenges our legal paradigms and alters how societies perceive their political bonds: global warming makes us navigate ‘an entirely new social and political structure.’ It requires what Geoff Mann and Joel Wainwright term the ‘adaptation of the political,’ because ‘it will have massive impact on the way human life on Earth is organized.’¹⁰ Its effects ‘have already eaten into trust in state authority ... igniting a complex bundle of social kindling’ (*UE*, 128). Finally, it raises concerns about the legitimacy of state policies in confronting ecological emergencies.

Our troubled times suggest we address how global warming refashions the law *by a change of mood*. The change is both substantive – i.e. we must adapt the law, its contents and role to existing environmental challenges – and

⁹ Frank Laczko and Christine Aghazarm (eds.), *Migration, Environment and Climate Change: Assessing the Evidence* (Geneva: IOM, 2009). See also Carol Farbotko *et al.*, ‘Climate migrants and new identities? The geopolitics of embracing or rejecting mobility,’ *Social & Cultural Geography*, 17.4 (2016): 533–552; Jane McAdam, ‘From Economic Refugees to Climate Refugees?’, *Melbourne Journal of International Law*, 10.2 (2009): 579–595; *Research Handbook on Climate Change, Migration and the Law*, ed. Benoît Mayer and François Crépeau (Cheltenham and Northampton: Edward Elgar, 2017).

¹⁰ Geoff Mann and Joel Wainwright, *Climate Leviathan: A Political Theory of Our Planetary Future* (London and New York: Verso, 2018), x-xi. Further references in the text, abbreviated as *CL*.

methodological. In order to grasp the climate change-migration nexus, it is necessary to ‘pluralise the debate’ through cross-disciplinary research. Conceiving of, experimenting, and deploying innovative methodologies is crucial as regards the ‘political, ethical, legal and cultural dimensions of the relation between climate change and migration’ is therefore highly productive.¹¹ And, among lawyers, Irus Braverman has shown us how to tackle with cross-disciplinary climate-change related research. In order to understand how global warming affects the ‘political’ communities of the seas which are coral reefs, she has undertaken ‘a massive research ... that stretched across continents and disciplines’ with coral experts, whom she considers ‘the vanguard of conservation in the Anthropocene.’¹²

The article contributes to this methodological and substantive conversation. It discards the current positivistic approach applied to climate change; going beyond the limits marked by legal studies, it engages in cross-disciplinary investigations. This is the case for law and humanities, which provides scholars with new ‘possibilities’ and renovated ‘perspectives’ in order to assess how climate change affects the legal spectrum.¹³ Evidently, my cross-disciplinary legal approach will be that of a comparative legal scholar, whose critical attitude aims to detect how global warming affects the realm of the law.

In a time of climate change, the two constitutive parts of ‘law and humanities’ play different, albeit interlocked, roles. As for the humanities, I

¹¹ Andrew Baldwin, ‘Pluralising climate change and migration: an argument in favour of open futures,’ *Geography Compass*, 8 (2014): 516–528, 516. See also Calum T. M. Nicholson, ‘Climate change and the politics of causal reasoning: The case of climate change and migration,’ *The Geographical Journal*, 180.2 (2014), 151–160. On the need of pluralising the methodological debate in legal studies in a time of climate change see also Jaakko Husa, *Advanced Introduction to Law and Globalisation* (Cheltenham and Northampton: Edward Elgar, 2018), 165.

¹² Irus Braverman, *Coral Whisperers. Scientist on the Brink* (Oakland, CA: University of California Press, 2018), 2–3.

¹³ Ian Ward, *Law and Literature: Possibilities and Perspectives* (Cambridge: CUP, 1995).

examine neither the so-called climate-change literature nor the interactions between refugeeism and literary studies.¹⁴ Because of their fictional character, they do not allow us to capture the broad range of interrelations between climate change, mobility and the law. For these reasons, I have resolved to focus on a non-fictional literary genre, the climate-change pop-science, which has arisen very recently. Prompted by the insurgent ecological crisis, it comprises essays, pamphlets and writings related to the consequences of our burning the planet, thus conveying a convincing ‘callout to the public ... in response to climate and ecological emergency’ (*LE*, 6). As we shall see in due course, our troubled times share some common features with the Book of Revelation, which points to the collapse of both our physical and political heavens, too. It is the apocalyptic dissolution of both the ‘first heaven’ and the ‘first earth’ the Apostle John describes whilst contemplating the termination of human polities. The Book of Revelation is instructive, albeit disquieting, because it helps us to grasp what the climate change-migration connection means to our political communities.

By capturing the socio-legal consequences of climate change, such a literary genre undoubtedly assists legal scholars in evaluating how global warming is altering the organising themes within political communities. To this end, I complement the critical comparative approach with the legal theoretical perspective. Changes in how the political bonds are now arranged may be properly understood within the context of ‘contractarianism,’ according to which ‘political society is a form of contract produced by the consent of the people.’¹⁵ As ‘climate migration is both international and

¹⁴ Antonia Mehnert, *Climate Change Fictions. Representations of Global Warming in American Literature* (London and New York: Palgrave Macmillan, 2016), and Lyndsey Stonebridge, *Placeless People. Writings, Rights, and Refugees* (Oxford: OUP, 2018).

¹⁵ See Lee Ward, *The Politics of Liberty in England and Revolutionary America* (Cambridge: Cambridge UP, 2004), 48.

domestic,¹⁶ our political communities have become ‘transnational’ communities whose common concern is how climate change affects our lives.¹⁷ The phenomenon is transnational, because it disregards the role territory has traditionally played in organising communities – and, despite this, it has ostensible effects on both communities and territories.

The essay proceeds as follow. I shall consider how climate change affects the bonds of political communities, but first I shall reflect on how it impacts their geographic-environmental contexts. I shall then examine how climate change challenges contractarianism and undermine ‘the legitimacy of political authority’¹⁸. I term these challenges *state failures*, since nation states have failed to address the tensions triggered by climate change and migration.

Against this background, there are also arguments ‘in favour of open futures.’¹⁹ All our non-fictional texts are, in effect, the outputs of the most active forces within society, which may ‘fuel future dynamism;’ and provide us with the ‘new building blocks from which every future ecological system will be constructed’ (*IE*, 9). In opening up our future in a time of climate-induced migration, these forces stir the formalistic legal approach to climate change; in so doing, they make the law act as a bridge linking our troubled ‘reality to an imagined alternative,’ that is, an open and inclusive future.²⁰

¹⁶ Kate Aronoff *et al.*, *A Planet to win. Why We Need a New Deal* (London and New York: Verso, 2019), 3. Further references in the text, abbreviated as *PW*.

¹⁷ On transnational communities see also James Bohman, *Democracy across Borders. From Démos to Dêmoi* (Cambridge, MA, and London: The MIT Press, 2007), 65.

¹⁸ Ann Cudd and Seena Eftekhari, ‘Contractarianism,’ *The Stanford Encyclopedia of Philosophy* (Summer 2018 Edition), ed. Edward N. Zalta available at <https://plato.stanford.edu/archives/sum2018/entries/contractarianism/> (accessed 7 January 2020), 1.

¹⁹ Baldwin, ‘Pluralising climate change,’ 516.

²⁰ Alan Watson, *Failures of the Legal Imagination* (Philadelphia: University of Pennsylvania Press, 1988), 36.

3. *'And Fire Came Down ... out of Heaven'?* Global Warming and the Melting Bonds of Political Communities

All our non-fictional texts share a common feature: they address the insurgent ecological crisis in a distressing style, something after the fashion of an apocalyptic lexicon. *The Uninhabitable Earth* points to 'climate horrors,' 'sufferings,' and 'deprivation' (*UE*, 198, 200 and 192). *This is not a Drill*²¹ is oversaturated with either the term 'extinction' or ones of its associated lexical items (*ND*, 7, 30, 78). *Inheritors of the Earth* warns us against a 'human-created mass extinction' (*IE*, 117; see also *UE*, 173). Finally, the books are percolated through by the ideas of 'climate and ecological emergency' and 'collapse' (*ND*, 9; *LE*, 5; *UE* 155; *PW*, 19).

The Uninhabitable Earth, moreover, points to the 'ecological and political devastation' prompted by climate change (*UE*, 172). Climate change, it maintains, 'promises to transform everything we thought we knew about nature, including the moral infrastructure of those tales' (*UE*, 150). In the midst of the environmental crisis, we perceive a profound sense of 'annihilation.' Sociologists designate this feeling 'Sociology of Loss,'²² since we are experiencing the 'passing away' of our environmental and political tales 'characterized by open markets that ensure (sustainable) development and (environmentally-friendly) prosperity.'²³

The idea of our political and ecological 'passing away' is linguistically and culturally embedded in the Western world. According to the *OED*, 'to pass

²¹ Extinction Rebellion, *This Is Not A Drill. An Extinction Rebellion Handbook* (London: Penguin, 2019). Further references in the text, abbreviated as *ND*.

²² Rebecca Elliott, 'The Sociology of Climate Change as a Sociology of Loss,' *European Journal of Sociology*, 59.3 (2018): 301–337.

²³ Xifaras, 'The Global Turn,' 216.

away’ means ‘to perish or disappear; to be dissolved, to cease to exist.’²⁴ When it comes the earth’s dissolution, I understand that the Judeo-Christian underpinning of the Western World is pivotal in our discussion. In the Bible, indeed, God reveals through Isaiah that the ‘former’ heavens and earth ‘shall not be remembered, nor come into mind’ (*Is* 65:17). ‘Heaven and earth shall pass away,’ the Gospel declares (*Mt* 25:35). In his ‘The Second Coming’ William Butler Yeats depicts the Book of Revelation as the ‘inescapable sourcebook for Western anxiety’ (*UE*, 208).²⁵

The breakdown of our physical heavens makes the ‘relationship between human mobility and climate change ... profoundly geographical.’²⁶ Firstly, the relation is geographical because it is earth dependent: evidently, ‘There is No Planet B.’²⁷ The chapter headings of *The Uninhabitable Earth* are revealing: parts of our earthly environments will be rendered un-survivable by ‘Heat Death,’ ‘Dying Oceans,’ ‘Freshwater Drain,’ ‘Unbreathable Air,’ and ‘Plagues of Warming.’ Secondly, our ‘legal structures and practices’ are shaped by ‘the material experience of concrete spaces and environments.’²⁸ indeed, politico-legal arrangements presuppose geographic scenarios. Thirdly, ‘heaven’ means the earth’s atmosphere. This draws an equation between St John’s heaven, out of which ‘fire came down from God’ (*Rev.* 20:9), and ours: the loss of water (*Rev.* 21:1); our ‘carbon emission into the atmosphere;’ (*UE*, 101) ‘the melting of the glaciers’ (*ND*, 37).

²⁴ s.v. ‘to pass away’ Phrasal Verb 1, in *OED* <https://www.oed.com/view/Entry/138429?redirectedFrom=pass+away#eid31648223> (accessed 13 January 2020).

²⁵ William Butler Yeats, ‘The Second Coming,’ in *The Collected Poems by W.B. Yeats* (New York: Macmillan, 1934), 215.

²⁶ Baldwin, ‘Pluralising climate change,’ 516.

²⁷ Mike Berners-Lee, *There Is No Planet B: A Handbook for the Make or Break Years* (Cambridge: CUP, 2019).

²⁸ Manderson and van Rijswijk, ‘Introduction,’ 168.

Not only is it possible to compare the dissolution of St John's heaven and earth to ours, but there is also room for their contrastive analysis. The Revelation is part of the Judeo-Christian tradition of the 'beginning' and 'the end of all things and the life everlasting in the Kingdom of Heaven,' that is, the new Jerusalem:²⁹ 'And I saw a new heaven and a new earth' (*Rev.* 21:1). By contrast, the passing away of our physical world is *anthropogenic* in nature: the Anthropocene epoch is altering the laws of nature. Whereas God promised that there 'shall there any more be a flood to destroy the earth' (*Ge.* 9:11), our human-made ecological collapse will make extreme events possible. 'There'll be fires in the forests, floods in the cities,' *Letters to the Earth* poetically confirms (*LE*, 76).

We are also experiencing the collapse of our political earth and heaven. This entails the demise of the legal arrangements whereby we tried to restrain carbon emissions. The 1992 UN Framework Convention on Climate Change and the 2015 Paris Agreement seem to encapsulate (or are underpinned by) a Judeo-Christian sentiment. Both were supposed to be our *katechon*, 'what withholdeth that' (2 *Th.* 2:6) global average temperature be increased, and what makes efforts to limit it 'well below 2°C above pre-industrial levels' at least.³⁰ When it comes to curbing carbon emissions, though, 'the mystery of iniquity doth already work' (2 *Th.* 2:7). We have progressively removed restraints to emissions. 'Influenced by corporate lobbyists,' the signatories to both the 1997 Kyoto Protocol (and then the 2009 Copenhagen Accord) managed to establish an emissions trading system, thus commodifying carbon dioxide, i.e. the principal greenhouse gas. This legal

²⁹ Weller Embler, 'The Vocabulary of Political Theory: "Authority",' *The Christian Scholar*, 49.1 (1966): 60–76, 65.

³⁰ Art. 2.1(a) of the Paris Agreement adopted under the UNFCCC in FCCC/CP/2015/10/Add.1, decision 1/CP.21. See Lavanya Rajamani, 'The 2015 Paris Agreement: Interplay between Hard, Soft and Non-Obligations,' *Journal of Environmental Law*, 28.2 (2016): 337–358.

arrangement favours the ‘big emitters’, that is, nations which are the largest CO₂ contributors.³¹ But it also favours non-country actors, such as ‘international aviation and shipping:’ although they are big emitters, they are located outside the scope of the Paris Agreement.³² Evidently, ‘states are not neutral when it comes to whose interests in an asset shall be given priority.’ The prospect of benefiting from capital gains is ‘more likely to find [its] blessings than claims that assert self-governance or seek to ensure environmental sustainability.’³³

Instead of limiting emissions from private actors, our democratic societies have endorsed ‘Climate Behemoth’ (*CL*, 45) i.e. the ‘mutual support for capitalism and for the nation-state’ (*UE*, 192). In order to protect its own interests, capitalism ‘overruns the world’s borders to address the planetary crisis’ (*UE*, 192), and seeks a connection with both the public sphere and transnational communities. Capitalism usually draws this connection by turning its interests into *the* organising theme of political communities. Since these now count as the interests of the whole, our political bonds have been led astray by what transnational private actors have promised to us: ‘Commerce would civilize manners; offer everyone the benefits of peace, human rights, representative democracy, and moderate government.’³⁴

In so doing, however, a new ‘geopolitical struggle’ has begun; in order ‘to control the flow of resources,’ mainly fossil fuel energy, ‘from and through the north,’ hence, ‘capitalist states ... address the problems they have created by deepening’ them (*CL*, 8). Furthermore, this new acquisitive organising

³¹ Art. 17 of the 1997 Kyoto Protocol. On such commodification see Michael Watts, ‘Commodities,’ in *Introducing Human Geographies*, ed. Paul Cloke *et al.* (3d edn, Adingdon: Routledge, 2014): 391–412, 406–407.

³² On big emitters, aviation and shipping see Alice Larkin *et al.*, ‘What if negative emission technologies fail at scale? Implications of the Paris Agreement for big emitting nations,’ *Climate Policy*, 18.6 (2018): 690–714, 692.

³³ Pistor, *The Code*, 23.

³⁴ Xifaras, ‘The *Global Turn*,’ 216.

principle has prevented us from realising, *inter alia*, ‘that several small island nations ... face the risk of becoming practically uninhabitable,’ ‘economically nonviable,’ and of being ‘entirely underwater.’ This has both economic- and human-related consequences. The economic consequences point to both their submersion and the ‘loss of [their] territory.’ Certainly, this will affect states’ rights to a marine territory under Article 76 of the UN Convention on the Law of the Sea (UNCLOS)³⁵. We do not still know, however, whether the UNCLOS considers the boundaries of EEZs as permanent. To put it another way, it is disputed whether the submersion of the islands – such as the Maldives (*ND*, 31–34) – would unleash their former seabed to the pillaging from economic transnational actors, which may try again to convince us of an unceasing economic growth.

The human-related consequence is even more distressing. The loss of territories will trigger impressive migrations. Rising sea levels would indeed ‘made [them] to err from’ their lands (*Is.* 63:17). These events will probably boost the ‘movement of people across territorial borders, the mixing of bodies and places, and the reconfiguration of labour markets’.³⁶ This would also increase the threats of war: in ‘a global future ... climate-displaced people will be both numerous and threatening to global security.’³⁷

³⁵ Leal-Arcas, ‘Climate Migrants,’ 89.

³⁶ Baldwin, ‘Pluralising climate change,’ 516. See Mathias Risse, ‘The Right to Relocation: Disappearing Island Nations and Common Ownership of the Earth,’ *Ethics & International Affairs*, 23. 3 (2009): 281–300; Margaret Moore, *A Political Theory of Territory* (Oxford: OUP, 2015), 210. See also Dennis Wesselbaum, ‘Revisiting the climate driver and inhibitor mechanisms of international migration,’ *Climate and Development*, 2020, DOI: [10.1080/17565529.2020.1711700](https://doi.org/10.1080/17565529.2020.1711700)

³⁷ Farbotko *et al.*, ‘Climate migrants’ 534. See also Gregory White, *Climate Change and Migration: Security and Borders in a Warming World* (Oxford: OUP, 2011); Jon Barnett, ‘Security and climate change,’ *Global Environmental Change*, 13.1 (2013): 7–17.

4. *Climate Change and State Political Failures: The ‘Constitutional Violation’*

‘Normal politic has failed us,’ the authors of *This is Not a Drill* maintain, because granting ‘access to government by big business ... has brought the whole planet to the brink of ecological disaster’ (*ND*, 22–23). From a contractarian perspective, *This is Not a Drill* frontally challenges state authority because of its failure to tackle climate-change induced migration, as well as to manage the tensions that arise from environmental issues. Despite this, however, the ‘Climate Behemoth’ is still fascinating for those to whom globalisation promises an ‘impeding radiant future.’³⁸

States have adopted the same organising theme of global capitalism, which deliberately sacrifices the interests of political communities in favour of the gains of a limited elite. Not only does this raise concerns about the legitimacy of state policies, but it also questions the authority of the global actors in challenging political obligations. As we have noticed, this has triggered a change in how societies perceive their political bonds: interests are now arranged after a hierarchical scale, thus causing an imbalance between the interests of the communities and the interests of the economic actors. In case of conflict, it becomes clear, the interests of the former prevail.

Within contractarianism, this order of interests raises concerns as to the legitimacy of the current political obligation. In order to support the economic interests of its economic sectionalities, sovereign states have ignored the geographical and socio-cultural contexts within which the bonds of communities and the mobility-climate change nexus take place. By acting selfishly, then, we accepted the idea that ‘economic growth [would] save us from anything and everything’ (*UE*, 115) – global warming included.

³⁸ Xifaras, ‘The Global Turn,’ 216.

When global actors control the levers of wealth distribution, the availability of resources is even more reduced, and ‘our fragile web of life ... poisoned and broken’ (*ND*, 6). This means that the political obligation becomes unsustainable. In times of political and environmental crisis, the conveyancing of the political obligation should seek an equitable balance of bargain powers and conflicting interests. *This is Not a Drill* suggests ‘Every parliament, state legislature and local authority [need] to declare a climate and ecological emergency,’ following the lead of more than 25 countries and more than 1,000 local councils throughout the world (*ND*, 22). The UK House of Commons was the first House to declare

an environment and climate emergency following the finding of the Inter-governmental Panel on Climate Change that to avoid a more than 1.5°C rise in global warming, global emissions would need to fall by around 45 per cent from 2010 levels by 2030, reaching net zero by around 2050 ...³⁹

Several other countries soon ensued.⁴⁰

As for climate change and migration issues, in particular, the mutual support for capitalism and for the nation-state opposes the ‘production of useful scientific knowledge’ in environmental issues and the ‘democratic participation’ in decision-making process related thereto.⁴¹ Public-finance and budgetary concerns have also marginalised climate-change issues in almost all political discussions. This hinders a further failure: ‘that of state

³⁹ HC Hansard 1 May 2019 Vol 659, Columns 317–318.

⁴⁰ A comprehensive list of climate emergency declarations is available at <https://climateemergencydeclaration.org/climate-emergency-declarations-cover-15-million-citizens/> (9 January 2020).

⁴¹ Adrian Howkins, *Frozen Empires. An Environmental History of the Antarctic Peninsula* (Cambridge: CUP, 2017), 8.

authorities to create the law that was wanted' by the political community, i.e. a law which should be firmly rooted in an environmentally, sustainable egalitarian commitment. The 'readiness on the part of the state authorities to allow' the private international investors to 'make a considerable part of the law' discloses state successful opportunism towards these contentious topics.⁴²

This probably explains why Extinction Rebellion has recently declared the same 'bonds of the social contract ... to be null and void:'

When Government and the law fail to provide any assurance of adequate protection, as well as security for its people's well-being and the nation's future, it becomes the right of its citizens to seek redress in order to restore dutiful democracy and to secure the solutions needed to avert catastrophe and protect the future (*ND*, 1-2).

This resonates with Johannes Althusius's idea of gross 'constitutional violation,' which entails a general callout to the public when there is any 'egregious,' 'chronic,' 'persistent,' 'pervasive,' 'wilful,' 'intentional,' or 'widespread' 'breach of a ruler's constitutional duties.'⁴³ There are hints of *abusus potestatis publicae* both when a ruler 'violates, changes, overthrows, or destroys' the fundamental law and people's rights; and when, as Althusius indicates, the abuse disrupts 'the natural laws and rights' (i.e., the environmental context) on which the constitutional framework is based. Furthermore, the 'Climate Behemoth outcome' has 'chronically neglected

⁴² Watson, *Failures*, 87, 96.

⁴³ Johannes Althusius, *Dicaeologicae libri tres, totum et universum jus, quo utimur methodice complectentes* (Heidelberg 1617), I.113.9–17. The quotations from Althusius are from John Witte, Jr., *The Reformation of Rights. Law, Religion, and Human Rights in Early Modern Calvinism* (Cambridge: CUP, 2007), 201.

the sick, the poor, and innocent.’⁴⁴ Evidently, ‘People – disproportionately the poor – die in floods, storms, and heat waves.’ It is predicted that, ‘between 2030 and 2050, climate change will cause approximately 250,000 additional deaths per year, from malnutrition, malaria, diarrhoea and heat stress.’⁴⁵

Against this background, we do not need what, in contractarian terms, Theodore Beza termed as the ‘theory of self-defence,’ whereby ‘sorting out what people could and should do when a political structure [goes] awry.’⁴⁶ The manifold lawsuits brought against oil companies and states on the grounds of climate liability count, for our purposes, as forms of self-defence. Certainly, climate-liability lawsuits are highly productive when it comes to challenging the Behemoth connection; and yet, they operate within traditional precincts and resort to the same formalistic legal arguments which saturate the capitalism-state nation nexus and its outcomes.⁴⁷

Within their own precincts, states may exhibit *relaxed political tactics* and therefore play the game of ‘strategic formalism.’ I understand that this type of formalism may ‘camouflage law’ and deny ‘the political moral, social choices which should to be involved in any legal decision making even in hard cases,’ such as climate change. This also accounts for another pattern of strategic formalism: the lack of pieces of legislation directly related to climate change amplify ‘the disparate perspectives of scientist and lawyers’ in this ambit and result in ‘tensions and disagreements about how to use the law.’⁴⁸ In so doing, states hide their own agenda, i.e. the preservation of the

⁴⁴ Althusius, *Dicaeologicae*, I.113.1–3 and I.113.8–9, 13.

⁴⁵ Elliott, ‘The Sociology of Climate Change,’ 303.

⁴⁶ Theodore Beza, *Letter to Bullinger* (December 1574) as discussed in Witte, Jr., *The Reformation of Rights*, 124.

⁴⁷ Novel ‘Climate Change;’ Catriona McKinnon, ‘Climate crimes must be brought to justice,’ *The UNESCO Courier*, 3 (2019): 10–12.

⁴⁸ Braverman, *Coral Whisperers*, 163.

capitalism-nation state nexus,⁴⁹ and ‘conspire to limit climate liability – for oil companies, for governments, for nations’ (*UE*, 168).

5. Migration and Climate Change: Walls, Colonial Hierarchies and their ‘Unnatural’ Argument

Strategic formalism causes politico-ecological failure when the bonds ‘of trust, loyalty, protection, and assistance between the citizen and the state’ are severed – or, at least, harmfully shaken.⁵⁰ As it backs the capital-state connection, strategic formalism also is an enthralling organising theme for state communities. This is apparent when it comes to managing climate-induced migration.

The connection places emphasis on the radiant future promised to humanity, in general, and to economic and climate migrants, in particular. Suffice it here to remember that, under the aegis of the United Nations, two *Global Compacts* were signed in 2018. The *Global Compact for Safe, Orderly and Regular Migration* (GCM), and the *Global Compact on Refugees* (GCR)⁵¹. The GMC acknowledges that migration has been ‘part of the human experience throughout history;’ it also makes reference to migration as ‘a source of prosperity whose ‘positive impacts can be optimized by improving migration governance.’ Furthermore, the signatories to the compacts acknowledge that both instruments are ‘complementary international cooperation

⁴⁹ Zdeněk Kühn *et al.*, ‘EU law and Central European judges: Administrative judiciaries in the Czech Republic, Hungary and Poland Ten years after Accession,’ in *Central European Judges Under the European Influence: The Transformative Power of the EU Revisited*, ed. Michal Bobek, (Oxford: Hart, 2015): 43–72, 45.

⁵⁰ Andrew Shacknove, ‘Who Is a Refugee?’, *Ethics*, 95.2 (1985): 274–284, 279. See also Scott, *Climate Change, Disasters, and the Refugee Convention* (Cambridge: UP, 2020), 4.

⁵¹ Resolution adopted by the General Assembly on 19 December 2018, UN Doc A/RES/73/195 (11 January 2019) Annex: Global Compact for Safe, Orderly and Regular Migration. Report of the United Nations High Commissioner for Refugees (13 September 2018) UN Doc A/RES/73/12 (Part II) Global Compact on Refugees.

frameworks,’ because ‘migrants and refugees may face many common challenges and similar vulnerabilities.’⁵²

There is something treacherous in such sanctification of global mobility. Climate-induced refugeeism, indeed, hardly squares with existing legal instruments, such as the 1951 Geneva Refugee Convention and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.⁵³ According to the High Court of Australia, for example, ‘a person fleeing from’ natural disasters does not qualify as refugee under the 1951 Convention.⁵⁴ The UN High Commissioner for Refugees (UNHCR) does the same, because the 1951 Convention ‘rules out such persons as victims of famine or natural disaster, unless they also have well-founded fear of persecution.’⁵⁵ Nor is the 1967 Protocol applicable, since it does not cover ‘sociopolitical factors,’ such as ‘fleeing climate breakdown’ or ‘economic collapse’ (*HE*, 31).⁵⁶ A citizen from Kiribati applied to New Zealand in order to qualify as the ‘first’ climate change refugee in 2015. There was ‘no evidence,’ the Supreme Court argued, ‘that the Government of Kiribati [was] failing to take steps to protect its citizens from the effects of environmental degradation to the extent that it can.’⁵⁷ That is why, in 2015, the International Organisation for Migration (IOM) addressed the topic

⁵² Paras 3 and 4 of GCM. See Elizabeth G. Ferris, Katharine M. Donato, *Refugees, Migration and Global Governance: Negotiating the Global Compacts* (Abingdon: Routledge, 2020), ch 5.

⁵³ Christel Cournil, ‘The inadequacy of international refugee law in response to environmental migration,’ in *Research Handbook on Climate Change*, 85–107. On the OAU Convention see Rafael Leal-Arcas, ‘Climate Migrants: Legal Options,’ *Procedia - Social and Behavioral Sciences*, 37 (2012): 86–96, 94.

⁵⁴ *Applicant A v Minister for Immigration and Ethnic Affairs* [1997] HCA 4, [1997] 190 CLR 225.

⁵⁵ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, HCR/1P/4/Eng/Rev. 4 (2019), 39.

⁵⁶ See *Matter of Acosta*, A-24159781, United States Board of Immigration Appeals, 1 March 1985, available at https://www.refworld.org/cases,USA_BIA,3ae6b6b910.html (accessed 30 December 2019).

⁵⁷ *Teitiota v Ministry of Business Innovation and Employment* [2015] NZSC 107 (20 July 2015), at 13.

establishing a dedicated ‘Migration, Environment and Climate Change’ (MECC) Division.

Legal scholars defend such disqualifications using strategic formalism. Formalistic arguments are indeed rooted in the principle of non-discrimination as *the* central tenet of refugee law. Climate-change related ‘disasters are not considered “political” events.’ Certainly they are ‘sources of vulnerability;’ their being ‘beyond social control,’ however, imposes ‘no obligation on a government to secure a remedy.’⁵⁸ In addition, persecution or discrimination are ‘integral [features] of the refugee definition’ under international law.⁵⁹ Quite ironically, climate change has a democratic allure, because it hammers without discriminating among individuals.

Furthermore, as its para 7 affirms, the GMC has ‘a non-legally-binding’ character and is not enforceable. This minimises the extent to which ‘Natural disasters, the adverse effects of climate change, and environmental degradation’ have to be tackled as regards migration. In addition, the narrative of prosperity and progress hides a *narrative of superiority*, where the ‘radiant future’ covers an imbalanced correlation between the actors of globalisation. Egalitarian in its commitment, this narrative facilitates the harmonisation and the convergence of laws in order to stimulate business and economic development. It also proposes a transnational, borderless legal framework into which heterogeneous legal systems coalesce. The pursuit of happiness and the illusion of taking part in the global distribution of wealth mobilises mass migration. As *The Uninhabitable Earth* upholds, ‘the promise of growth has been the justification for inequality, justice, and exploitation,’ with more wounds to heal ‘in the near climate future’ (*UE*, 166).

⁵⁸ Shacknove, ‘Who Is a Refugee?’, 275.

⁵⁹ Matthew Scott, *Climate Change*, 4.

This triggers a spill over effect, because it makes the capitalism-state nexus the organising theme of the transnational community. The theme is contractarian but, at the same time, it multiplies the iniquitous effects of the economic conveyance underpinning the state politico-legal arrangements. In fact, the capital-state link generates sharp divides between discrete sectionalities of the same political community, and replicates ‘colonial histories and racialised hierarchies of powers’ between groups.⁶⁰ This is evident when we consider how Western states have mimicked the ‘racially marginalised hierarchies’ between the metropolis and its colonies within their urban areas. As a result, migrants are located into cordoned-off ‘periphractic spaces,’ which constrain immigrants’ participation in public life ‘in terms of location and their limitation in terms of access – to power, to (the realization of) rights, and to good and services.’⁶¹

In our social imaginaries, this process of displacement and spatial marginalisation triggers a ‘really hostile environment for [allegedly] illegal immigrants’ (*HE*, 2),⁶² i.e. a by-product of ‘heightened border measures that restrict migration, measures that play well with anxious electorates and hawkish politicians.’ It might be argued that, in so doing, states disavow ‘the West’s complicity in the wider social, political and economic conditions that contribute to the migrations the West seeks to secure.’⁶³ But this also accounts for another application of strategic formalism: the securitisation of climate-induced migration. Whilst praising the economic benefits of global mobility

⁶⁰ Maya Goodfellow, *Hostile Environment. How Immigrants Became Scapagoats* (London: Verso, 2019), 39. Further references in the text, abbreviated as *HE*.

⁶¹ David T. Goldberg “‘Polluting the body politic:’ race and urban location,” in *The Legal Geographies Reader: Law, Powers, and Space*, ed. Nicholas Blomley (Oxford: Blackwell, 2001): 69–76, 71, 72.

⁶² The so-called ‘hostile environment immigration’ policy was coined by the then UK Home Secretary Theresa May. See James Kirkup and Robert Winnett, ‘Theresa May interview: “We’re going to give illegal migrants a really hostile reception”,’ (London) *The Telegraph* (25 May 2012).

⁶³ Baldwin, ‘Pluralising,’ 521. See Gregory White, *Climate change*.

and the protection of migrants' rights, 'politicians work together across borders to make it more difficult for people to move, while capital is allowed to flow freely' (*HE*, 35).

Take, for example, the most recent public policies related to climate migrants. On the one hand, the EU immigration and refugee policy is strongly inclusive but, on the other hand, the lexicon embedded in the EU Treaties and legislation is overpopulated with references to 'external borders.' Schemes such as 'Frontex,' for example, are considered 'the culmination of the process of securitization of the EU external borders,' whereas the European Border Management (IBM) has 'multiple dimensions:' it encompasses several methods of 'border checks and surveillance,' which make it hard for migrant to access the EU. Evidently, the 'principle of solidarity and fair sharing of responsibility,' which underpins the 'Area of Freedom, Security and Justice' laid down by the Treaty on the Functioning of the EU, is a privilege referred to the EU Member States, whereas third-country nationals must merely be treated fairly when they try to access the EU.⁶⁴ The same holds true as far as the litigation for the erection of the U.S.-Mexico border wall is concerned. When granting President Trump the petition for a writ of certiorari for the erection of the wall, the U.S. Supreme Court has explicitly ranked public-finance concerns as superior as regards ecologic and solidarity issues. In the Court's reasoning the 'construction of a border barrier ... would cause irreparable harm to the environment and to [individuals;] however, if the federal government were 'unable to finalize the contracts [for the wall] then the funds at issue will be returned to the Treasury' – and cost borne by the U.S. taxpayers. Such impressive use of strategic formalism 'is a straightforward way to avoid harm

⁶⁴ Article 80 TFEU. See Vitoria Moreno-Lax, *Accessing Asylum in Europe. Extraterritorial Border Controls and Refugee Rights under EU Law* (Oxford: OUP, 2017), 31 and 34.

to both the Government and respondents while allowing the litigation to proceed.⁶⁵

Not only do migrants enter into irredeemable conveyances with the capitalism-nation state nexus, but they also accept to bear the costs of such a politico-legal marginalisation. This creates a flaw within the contractarian speculation. Although ‘Nature herself seems to proclaim this with a loud voice,’ i.e. that ‘rulers receive their authority ... by the free and lawful consent of the people,’⁶⁶ it is undeniable that the capitalism-state nexus arranges the political bonds of the community after ‘structures of [economic] authority and [political] obedience.’⁶⁷ Althusius termed these bonds ‘unnatural.’ Migrants – even the climate-induced ones, which bear the costs of the politico-economic domination – ‘subject themselves’ to this organising principle and accept its ‘authority by their own consent and voluntary act.’ Within our wealthy communities, they ‘subject themselves to these “unnatural” structures and strictures of authority, for they realize that without them ... even their most basic rights will mean little.’⁶⁸

The process whereby this organising theme is accepted by the political community is a deliberative process. Through argumentation and persuasion, this process gives way to the broadest consent possible in public decisions on the new organising them. In order to be accepted by the community, however, arguments have to be persuasive and, at least at first glance, ‘incipiently egalitarian in orientation.’⁶⁹

⁶⁵ U.S. Supreme Court, *Donald J. Trump, President of the United States, et al. v Sierra Club, et al.* on application for stay 588 U.S. (2019) 1, 26 July 2019.

⁶⁶ François Hotman, ‘Francogallia,’ in *Constitutionalism and Resistance in the Sixteenth Century: Three Treatises by Hotman, Beza, and Mornay*, ed. Julian Franklin (New York: Pegasus, 1969), 55–70.

⁶⁷ Witte, Jr., *The Reformation*, 183.

⁶⁸ Witte, Jr., *The Reformation*, 184.

⁶⁹ Richard Mullender, ‘*Politeia*’s place in our practical life: Pierre Bourdieu on the modern state,’ *University of Toronto Law Journal* 68.4 (2018): 694–718, 694.

The argument is persuasive because it is *consociational*. The expression points to those federalist processes whereby highly conflictive societies, usually divided along ethnolinguistic cleavages, are accommodated and the maintenance of territorial integrity is secured.⁷⁰ The consociational argument arranges the different sectionalities around a power-sharing organising principle. It assumes that there is an unequal distribution of wealth; and yet, this does not prevent each member of the community – even the displaced climate migrants – from gaining access to it.

Although it does not reflect an egalitarian commitment, the consociational argument is egalitarian in its commitment, because it gives us all the illusion of taking part in the global distribution of wealth. In addition, Ruth Houghton has identified how processes of decision-making can give the illusion of democratic legitimacy, when in fact they are exclusionary and little decision-making power is given to the constituents.⁷¹ However, in a time of climate change, this mobilisation is also palatable to those who are environmentally displaced and forced to join a new political community.

6. Being the ‘authors of what comes next.’ A New ‘Sustainable,’ Organising Political Principle in a Time of Climate Change

Several conclusions may be drawn on how strategic formalism is applied to the current ecological crisis.

Firstly, its application encourages the recourse of a formalistic approach when it comes to managing climate change. The law has traditionally addressed the climate change and migration after an approach which

⁷⁰ On consociational federalism see Lijphart (1979: 505).

⁷¹ Ruth Houghton, ‘Looking at the World Bank’s safeguard reform through the lens of deliberative democracy,’ *Leiden Journal of International Law*, 32.3 (2019): 465–483.

advocates for the application of traditional legal devices international, supranational and domestic orders make available to us. However, this approach scarcely squares with the current state of affairs. Under no circumstances do climate migration and refugeeism qualify under the international law of refugee protection, but strategic formalism also does not formulate innovative responses to the concerns raised by climate change. Take, for example, the lawsuits filed against carbon-emitters. Strategic formalism tends to adapt them to traditional taxonomies, such as climate liability, thus normalising the same idea of ecologic and climate loss. This also holds true for the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts (WIM). Whilst implementing Article 8 of the Paris Agreement, its role is limited to the ‘recommendation and assistance’ for losses triggered by climate change.⁷²

The second conclusion regards how scholars should tackle the migration and environmental issues. As a comparative legal scholar, I understand that we have to go above and beyond the boundaries marked by strategic formalism. This, it becomes clear, entails reframing the political bonds of our communities and considering our ‘future as a site of infinite potential rather than foreclosure.’ Sidestepping strategic formalism also means boosting the potential of our politico-legal imagination, so that ‘we can invent the future we want, rather than merely prepare for the futures’ that the capitalism-state nexus and its ‘experts tell us we should expect.’⁷³ In such wise, the Book of Revelation has been extremely illuminating, because the passing away of our contemporary heaven and earth is also linked to the regeneration of our

⁷² Decision 2/CP.19 ‘Warsaw international mechanism for loss and damage associated with climate change impacts,’ Report of the Conference of the Parties on its nineteenth session, held in Warsaw from 11 to 23 November 2013, FCCC/CP/2013/10/Add.1. See Frank Bierman and Ingrid Boas, ‘Towards a global governance system to protect climate migrants: taking stock,’ in *Research Handbook on Climate Change, Migration and the Law*, 405–419, 410.

⁷³ Baldwin, ‘Pluralising climate change,’ 526.

social, political, and legal imaginaries and, therefore, deeply rooted in the establishment of ‘our’ new Jerusalem.

That is why, throughout this article, I have been constantly engaging in a conversation with non-fictional texts related to climate-change issues. If they represent the outputs of the most active forces within our societies, we must point to them when stretching our thinking into the future. *Letters to the Earth* invites us to ‘be the authors of what come next:’ we should mobilise our societies and their forces because we need ‘the largest creative response to these times of crisis the world has yet seen’ (*LE*, 6). *This is Not a Drill* advocates for ‘the liberation of our mind from colonizing categories’ (*ND*, 7), which may also entail ‘undertaking mass civil disobedience to create a new political reality the whole world over’ (*ND*, 22). *The Uninhabitable Earth* points to what Mann and Wainwright indicate as the ‘Climate X’, that is, ‘a global alliance operating in the name of a common humanity’ (*CL*, 173), rather than in the interest of its sectionalities, such as ‘the interests of capital or nations’ (*UE*, 192).

I am not advocating the ‘creation of spaces of collective rebellion;’⁷⁴ but, as a legal scholar, I encourage ‘every principled and peaceful citizen’ to challenge the application of strategic formalistic approaches, to liberate ourselves from the economic categories’ (*ND*, 7) we have been imposed by the ‘Climate Behemoth’ connection, and therefore to arrange political arrangements around new organising principles.

The third conclusion relates to the methodological approach we have applied when tackling mobility and migration in a time of climate. The cross-disciplinary method law and the humanities provide us with has proved to

⁷⁴ On collective rebellion when confronting the state of flux see Dan Silver, ‘Everyday Radicalism and the Democratic Imagination: Dissensus, Rebellion and Utopia,’ *Politics and Governance* 6 (2018): 161-168.

be a highly imaginative activity in itself, since it has ‘the potential to broaden and deepen the individual’s [as well as the collective] understanding of ethics, politics, and human relations.’⁷⁵ It is also an ‘important source for all those interested in questions of morality and justice,’ such as those connected to climate justice or the bonds of our political communities.

It is not just a matter of upholding climate justice or addressing ‘the distributive effects of climate change.’⁷⁶ When we open it up to contexts of mutual interference and interdisciplinarity, the law ceases to be a mere dry legal text, and allows us to read it ‘in a wider variety of ways’ thus filling the gap ‘between general law and more perfect justice’. This also entails continually ‘[stirring] up what the law,’ as well as its formalistic approach, sets down.⁷⁷ This is the kind of legal pragmatism which adequately reflects the transnational concerns underpinning the law and the new instances triggered by climate change. That is the reason why, in order to stir the rules of global law, it is necessary to mobilise the most active forces within society.

When stirring the law, these groups give raise to a new organising principle, which reflects ‘the view that, as conceptions of justice change over time, so too should’ our legal rules in a time of climate change.⁷⁸ Whilst bridging legal reality to its imagined alternative, I understand that the legal mobilisation of the most active forces within societies perfectly matches ‘the deep-rooted Anglo-American practice of the common law, according to which the law involves an unceasingly exercise of imagination.’ As it has been vividly noticed, ‘This can be partly due to the inherently open-textured

⁷⁵ James Seaton, ‘Law and Literature: Works, Criticism, and Theory,’ *Yale Journal of Law & the Humanities*, 11.2 (1999) 479–507, 479, 580.

⁷⁶ Joseph Wenta *et al.*, ‘Enhancing Resilience and Justice in Climate Adaptation Laws,’ *Transnational Environmental Laws*, 8.1 (2019): 89–118, 110.

⁷⁷ Gary Watt, *Equity Stirring. The Story of Justice Beyond Law* (Oxford: Hart, 2009), 1.

⁷⁸ Richard Mullender, ‘Context, Contingency and the Law of Negligence (or from Islands to Islands of Time),’ *Bracton Law Journal*, 29 (1997): 23–33, 27.

nature of the common law. Those entrusted with the task of interpreting and reshaping the common law must remain imaginatively vigilant at all times.⁷⁹ It is not accident that ‘stirring the law’ is a typical Anglo-British legal device, a highly productive metaphor, which describes the relation between equity and its formalistic counterpart, i.e. the more ‘classical’ common law as it had been moulded in Westminster Hall.

The fourth conclusion considers the most suitable methodological approach in confronting the mobility-climatic nexus. To this extent, equity offers us a productive paradigm applicable to cross-disciplinary research in this ambit. How it stirs the law reminds us of its being ‘a door having one side within the law and one side without,’ whilst strategic formalism prefers ‘to keep the door closed and to see only their side of it’.⁸⁰ How equity assists us in redeeming the bonds, interests, and organising themes within our communities is the same attitude which is required to ‘every principled and peaceful citizen:’ to challenge strategic formalism incrementally.

7. ‘A New Heaven and a New Earth’? Subversive Legal Methodologies and the Challenge the Narrative of Legal Decline

There is also a fifth (and final) conclusion, which is related to how comparative law may engage in a methodological conversation with the cross-disciplinary ambit of research which is climate change. Because of its subversive and critical approach to the realm of the law, comparative law runs somewhat counter the “paradigm of biological decline” which is predominant ‘among ecologists, environmentalists and conservationists’ (*IE*,

⁷⁹ Thomas D.C. Bennet *et al.*, ‘Legal Imagination in Troubled Times. An Introduction,’ in *Law and Imagination in Troubled Times: A Legal and Literary Discourse*, ed by Richard Mullender *et al.* (Abingdon: Routledge, 2020 forthcoming).

⁸⁰ Watt, *Equity Stirring*, 1.

30). This is not to deny the ecological threat: ‘the extinction crisis is real,’ *This is Not a Drill* warns us (*ND*, 30); as ‘The world’s climate is getting hotter, and they have nowhere to go’, *The Inheritors of the Earth* concludes (*IE*, 76). But, as we have already seen, there are also hints of hopes, as well as arguments in favour of open futures. Notwithstanding the changes caused by anthropogenic drivers, biologists have demonstrated that, when coping with global warming, ecological biodiversity ‘responds by evolving’ (*IE*, 117), i.e. proposes a new biological organising theme whereby ‘the biological diversity of the Earth’ may be increased (*IE*, 117 and 9).

The same holds true in comparative legal studies. We should shackle off the ‘pessimism-laden, loss-only view’ of our future (*IE*, 117 and 9), which is reflected in how strategic formalism tackles with what we may term the legal biodiversity of the world. The ‘Climate Behemoth’, indeed, disregards legal variety. Consequently, its transnational concern – the governance of both mobility and climate change along economic lines –, should be confronted thorough homogeneous politico-legal features throughout the world. Indeed, such features reflects the new economic organising theme, which stimulates business, mobilises mass migration and, at the same time, grant the illusion of taking part in the global distribution of wealth. In a time of climate change, however, it mainly manages (i.e. simplifies) legal complexity.

In a globalised economic world, strategic formalism assumes that the legal biological decline is consistent with the radiant future promised to humanity. This is an assumption that totally departs from what comparative legal studies presuppose, i.e. the sustainability of legal variety and legal diversity. Again like equity, the mobilisation of the most active forces does not mean breaking the rules, but merely bending them, by progressively introducing a set of ‘comparatively novel legal principles’ and therefore ‘claiming to override the older jurisprudence’ which is strategic formalism and the

organising theme ‘of the country on the strength of [its] intrinsic ethical superiority.’⁸¹

Arranging societal interests around novel organising themes, such as climate justice and migration, may therefore ‘increase the responsiveness of substantive laws to change in socio-ecological systems.’ Climate change and its induced migration should be confronted throughout a variety of legal responses. *A Planet to Win*, *On Fire*, and *The Case for a Green New Deal* advocate for a deal as the new foundation of our political bonds.⁸² Assisted, as we are, by unceasingly exercises of legal imagination, we should indeed stir the law and explore it so that it might ‘be interpreted and applied in a manner that responds to changing conditions.’⁸³ This form of pluralising the legal debate may be extremely useful when it comes to addressing the distributive effects of climate change and contrasting the environmental racial segregation Western communities practice as regards migrants – even if they are climate-induced migrants. This might be fostered by ‘new regulatory practices’ and new ‘forms of governance,’ such a public participation, or legislative frameworks whereby decision makers stir the law simply by adjusting ‘existing legal processes to accommodate changing environmental or social condition.’⁸⁴

And this, I argue, may forestall the inception of ‘a new heaven and a new earth’ (*Rev.* 21:1), as well as of a new organising principle, which, like equity, should be able to stir the law and open the ‘side of door’ to the plurality of forces and interests which populate our communities. What we need is not a

⁸¹ Henry Sumner Maine, *Ancient Law. Its Connection with the Early History of Society, and its Relation to Modern Ideas* (first published 1861; Cambridge; CUP, 2012), 45.

⁸² Anne Pettifor, *A Planet to win. Why We Need a New Deal* (London: Verso, 2019); Naomi Klein, *On Fire. The Burning Case for a Green New Deal* (London: Penguin, 219).

⁸³ Wenta *et al.*, ‘Enhancing Resilience,’ 108.

⁸⁴ Wenta *et al.*, ‘Enhancing Resilience,’ 113 ad 108, who quote the *Biodiversity Conservation Act 2016* (NSW), s. 1.3(d). See also P.C. McCormack, ‘The Legislative Challenge of Facilitating Climate Change Adaptation for Biodiversity,’ *Australian Law Journal*, 92.7 (2018): 546–562.

climate-change altered law for a ‘Human-Altered World.’ We need to explore, by acts of imagination, how to turn our transnational concern into new legal patterns whereby ecological and political hostile environments may eventually pass away.