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Entangled Hopes

Towards Relational Coherence

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15.1 Entangling Law 'from Below'

In a world that is deeply entangled, the relations between different bodies of law, different legal systems and individual norms originating in different systems are necessarily called into question. 'Cases' increasingly traverse legal systems and implicate subjects of multiple jurisdictions; conflicts in places far apart are, moreover, deemed comparable and references to norms that were applied to similar cases in different places are made by all involved actors – judges, lawyers, plaintiffs and defendants – irrespective of the legal specificities that distinguish jurisdictions. '[B]odies of norms become "entangled" not only as a matter of fact, but also in discursive construction … Actors – litigants, judges, dispute settlers, observers, addressees – make claims about the relation of norms from different backgrounds, and they thus define and redefine the relative weights and interconnection between the norms at play', writes Nico Krisch in Chapter 1.[1] Relations between different legal systems and different bodies of law today are increasingly relations of mutual information;[2] legal 'systems' are brought into conversation and challenged to influence and learn from each other by the various movements that are driving entanglement.[3]

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[1] See Chapter 1, Section 1.2.

[2] J. Eckert, 'What Is the Context in "Law in Context"?', in S. P. Donlan and L. Heckendorn (eds), *Concepts of Law: Comparative, Jurisprudential, and Social Science Perspectives* (Ashgate, 2014), pp. 225–36.

[3] This is the case in some fields of law more than in others, and in some areas of the world and for some people more than for others: Since state sovereignty and autonomy take

Among the diverse processes that lead to an increasing entanglement of laws in the current global situation as sketched out in Chapter 1, I am here concerned with one specific movement of entanglement, namely the way in which law is entangled by its mobilizations in local social struggles. In a world in which ideas of justice, rights and entitlements circulate among people far apart and concerned with very different problems, people perceive themselves to be in situations comparable to those of others and shaped by similar forces. Such struggles have regularly invoked norms from international conventions and from hitherto unrelated bodies of law such as environmental law, trade law and human rights or constitutional law. They have referred to presumed precedents from other situations and claim that norms from different jurisdictions and various bodies of law are applicable to their concerns. They hold accountable actors far removed from the occurrences in question, but who are, in their reasoning, deeply implicated in the conflicts at issue. Last but not least, they mobilize norms not hitherto incorporated into state law or international law – moral norms or those stemming from other (non-state) normative orders – and 'translate' them into the available legal instruments.

With these mobilizations, new possibilities for negotiation and the pursuit of legal rights are being sought.[4] Evocations of other norms may be strategic, as they mostly are when activist lawyers campaign to have certain interpretations of harms be heard, such as when they claim that damage to the environment amounts to a violation of the human rights of those affected in their health or livelihoods by environmental degradation, and when they advocate specific avenues of redress.

contrasting forms in different regions of the world, people are subjected to varying bodies of law and different constellations of legal entanglement, some being more directly impacted by various international norms than those who happen to live in parts of the world that are governed by clear rules of subsidiarity. See T. Bierschenk, 'Sedimentation, Fragmentation and Normative Double-Binds in (West) African Public Services', in T. Bierschenk and J.-P. Olivier de Sardan (eds), *States at Work: Dynamics of African Bureaucracies* (Brill, 2014), pp. 221–45; L. Eslava, *Local Space, Global Life: The Everyday of International Law and Development* (Cambridge University Press, 2015), p. 258.

[4] K. von Benda-Beckmann, 'The Contexts of Law', XIIIth International Congress of the Commission on Folk Law and Legal Pluralism: 'Legal Pluralism and Unofficial Law in Social, Economic and Political Development', Chiang Mai, Thailand (9–13 April 2002), p. 3. PDF on file with the author.

Evocations of other norms might also result from lay views of rights that do not differentiate between different systems of law and are oblivious to the origin of a norm in a specific system, assuming a general validity of the legal norms that promise rights.[5] Their hopes in law make broad comparisons about what is to be treated as – structurally – the same in cases far apart and located in multiple jurisdictions, and by making claims about the comparability of such cases they seek access to norms that promise rights. They operate by ignoring – strategically or idealistically – any boundaries between systems or bodies of law, be they jurisdictional or material, and furthermore, they interpret such bodies and systems of law in the light of moral norms which give them a particular content. 'Often enough, these linkages may connect individual norms, rather than "bodies" of norms as such, thus taking us yet further away from the notion of closed systems' writes Nico Krisch in Chapter 1,[6] and we can see in these mobilizations of law 'from below' what he calls 'the trans-systemic, networked character of law' emerging.[7]

These entangling mobilizations of law 'from below' often occur in highly asymmetrical relations; they concern, in particular, struggles around human rights violations and the destruction of the environment along the long global chains of value production. I argue that because they mobilize law in such asymmetrical relations against more powerful adversaries, their entanglements of law most often strive – implicitly – for a trans-systemic coherence. Entanglement stops short of integration, as Nico Krisch explains. I would argue that the moves towards normative relationality that these mobilizations of law from below engage in are moves to overcome the boundaries around legal systems and bodies of law and towards a trans-systemic and unsystematic coherence. Their end is not integration in a systemic sense; in fact, they do not bother with systematicity, but operate with fluid relations between existing norms. Moreover, these moves are concurrent with moves towards the

[5] J. Eckert, B. Donahoe, C. Strümpell and Z.Ö. Biner, 'Introduction: Laws Travels and Transformations', in J. Eckert, B. Donahoe, C. Strümpell and Z.Ö. Biner (eds), *Law against the State: Ethnographic Forays into Law's Transformations* (Cambridge University Press, 2012), pp. 1–22, at p. 3.

[6] See Chapter 1, Section 1.6.2.

[7] B. de Sousa Santos and C. A. Rodríguez-Garavito, 'Law, Politics and the Subaltern in Counter-Hegemonic Globalisation', in B. de Sousa Santos and C. A. Rodríguez-Garavito (eds), *Law and Globalisation from Below: Towards a Cosmopolitan Legality* (Cambridge University Press, 2005), pp. 1–26.

'distancing' of legal orders and bodies of law, or their entanglement along different lines – what could be called 'counter-entanglements'.

However, at the same time that we see the plurality of legal orders moving into such fluid and dynamic relations of conversation, entanglement and distancing, we can also observe a tendency in law towards a particularization, or rather 'singularization', that not only distances normative orders from each other, but disentangles law. As in the case of entanglements, this is also a desystematization, but one that proceeds through the treatment of individual cases as singular. There appears to be a broader tendency in dispute resolution away from seeing the general norm in the particular case and towards treating incidents and constellations as solitary. This is evident most prominently in procedures such as arbitration, out-of-court settlements and alternative dispute resolution. These all focus on the specific circumstances of a single case, and the unique constellation of parties concerned, and aim at an agreement between those involved, rather than finding solutions according to a general norm. Even though the procedural norms governing these practices of singularization might become more alike, given that forms of arbitration and mediation are standardized and subject to increasing professionalization, cases are treated in their singularity. This might indicate an incremental but fundamental transformation in law that coincides with increasing entanglement, and counteracts it. In the following, I try to understand this coincidence and the dynamics of entanglement and disentanglement that ensue and which possibly prevent the legal change that is sought by movements towards relational coherence.

15.2 Cutting the Network

To understand movements of entanglement from below, we might consider in what way liberal law is at base an instrument of disentanglement, not only because it is so deeply shaped by its relation to the nation state and its borders, but also by way of its very categories, which – for better or worse – have at their horizon the protection of individual liberty and subjective private rights.[8] I find it useful to employ Marilyn Strathern's analysis of the specificities of modern liberal law to understand how our current legal instruments cut, into small segments, issues that are

[8] K. Pistor, *The Code of Capital* (Princeton University Press, 2019); C. Menke, *Kritik der Rechte* (Suhrkamp, 2018).

increasingly perceived by those concerned as crossing the boundaries of jurisdictions and entangling us in fundamental interdependencies. In her response to Bruno Latour's assumption about the prolongation of actor networks in modernity, she held that while the chains of interaction may become ever longer in modernity, modern institutions of law cut these chains at particularly short intervals. Strathern takes the example of intellectual property rights,[9] which privilege the 'invention' and the inventor, rather than accounting for the endless chains of actions that make a certain invention or innovation possible. She observes that many 'traditional' legal institutions take into account the sociality of property, and therefore reflect to some degree the actor networks that produce 'property', while modern legal institutions quintessentially abstract from, and thus disregard, these social relations.

From such an anthropological perspective, contemporary legal institutions could be said to 'cut' interdependent chains of action in several ways: first, as addressed by Strathern, they perform specific cuts around who is actually legally recognized to be a participant in the production of a situation or event. Such cuts can also take other forms. Stuart Kirsch, for example, when comparing the notions of liability that were raised by different Melanesian groups with those raised by multinational companies on the basis of scientifically established causal relationships, found that Melanesians hold accountable those who have created the context for a particular social interaction that has led to harm:

> The underlying principle of liability [relies on the idea that] social networks link specific losses to the person(s) or agent(s) responsible for the context (the road, the feast, the town) in which events occurred, regardless of their separation in time or the actions of other agents in the interim. In all of these claims, social networks are stretched to their logical limits.[10]

Such varying scopes of the social networks that are considered relevant for an issue concern not only the question of who is considered to have participated in bringing about a state of affairs, but also who can be considered affected by it in law. Here, too, liberal law relies on a narrow idea of who is personally affected and can thus appeal to law, and has instituted only a few exceptions in the form of public interest litigation.

[9] M. Strathern, 'Cutting the Network' (1996) 2(3) *Journal of the Royal Anthropological Institute* 517–35. See also K. Pistor, *The Code of Capital*, on the issue of intellectual property rights, particularly pp. 108–31, 211.

[10] S. Kirsch, 'Property Effects: Social Networks and Compensation Claims in Melanesia' (2001) 9 *Social Anthropology* 147–63, at 155.

Second, there are cuts around the time of an event. The most prominent temporal 'cuts' are forfeiture and limitation periods, which might fundamentally jar with the temporality of the effects of a contested action, the time of harm and suffering.[11] There are also more basic cuts in the temporal reach of law, which concern the narratives of when a situation actually begins and how long it lasts. This leads us back to Strathern's concern with the cuts within actor networks, which are, of course, also cuts in time.

The third set of cuts in liberal law are the ways that it separates different fields of practice. Particularly in international law, different bodies of law stand in relatively independent relations to each other,[12] separating trade from human rights, labour law from ecological issues, etc. More generally, the differentiation of various fields of law might not be entirely congruent with the factual interdependence of the fields of interaction that they regulate. Anthropologists have long questioned the adequacy of descriptions of social differentiation as conceived by understandings of modernity based on differentiation theory, observing the continuing interdependence of different fields of interaction even in what are considered highly differentiated societies.[13]

These cuts of liberal law culminate in distinctions concerning what can actually be addressed by legal measures, and between what is offered legal protection and what is not. These might constitute the most pressing cuts for the mobilizations of law from below, since such mobilizations address precisely the specific distribution of rights and privileges provided by current legal instruments. Human rights, for example, often the instrument of entangling legal struggles, protect only some concrete, specific individual rights. Although 'poverty, racism, sexism, imperialism, colonialism and exploitation' might be considered to violate the freedom and dignity of individuals,[14] these are forms of suffering that today cannot be addressed legally as injuries for which someone is liable. The loss of livelihood, or of employment, for example, is regulated via insurance and social welfare, or not at all, but is in most places not legally considered a violation of individual rights, because myriad forms of dispossession are

[11] D. Loher, 'Everyday Suffering and the Abstract Time-Reckoning of Law' (2020) 4 *Journal of Legal Anthropology* 17–38.

[12] Von Benda-Beckmann, 'The Contexts of Law', 4.

[13] See, for example, T. Thelen and E. Alber (eds), *Reconnecting (Modern) Statehood and Kinship: Temporalities, Scales, Classifications* (Pennsylvania University Press, 2018).

[14] R. Cotterrell, *Sociological Jurisprudence: Juristic Thought and Social Inquiry* (Routledge, 2018), p. 150.

legal. The fact that contemporary legal instruments rely at base on subjective private rights[15] makes for their inability to address what are still called structural issues or 'root causes'.[16]

These cuts are increasingly challenged by the mobilization of law 'from below' when people apply existing legal norms to their situations and entangle them with others, making claims that reinterpret and widen the scope of the norms' applicability to address the forms of suffering that they experience. They address the perceived inadequacies of current legal instruments to reflect the factual relations that shape our world and strive for (legal) change by advocating relations between different normative realms. Thus, the very legal norms that are in themselves inadequate to reflect the situations of suffering because of the diverse cuts through social relations in time and space that they entail are entangled in a way that produces novel meanings. They propose novel normative interpretations, thereby creating what Susanne Baer has called 'legal trouble',[17] claiming what does not – yet – exist in dominant legal discourse and hence opening up the possibility to think and speak it[18] – and possibly think and speak it into being.

15.3 Mending the Cuts: Entanglements from Below

Here I would like to consider the mobilization of law from below, which struggles against the cuts of liberal law by means of liberal law itself. There appear to occur two principal contestations in these mobilizations of law, each of which entangles law in specific ways to overcome specific 'cuts' of liberal law. One is the contestation over the attribution of

[15] Pistor, *The Code of Capital*.

[16] S. Marks, 'Human Rights and Root Causes' (2001) 74 *Modern Law Review* 57–78. See also D. Kennedy, 'The International Human Rights Movement: Part of the Problem?' (2002) 15 *Harvard Human Rights Journal* 101–26; S. Moyn, *Not Enough: Human Rights in an Unequal World* (Harvard University Press, 2018), particularly pp. 173–222.

[17] S. Baer, 'Inexcitable Speech: Zum Rechtsverständnis postmoderner feministischer Positionen am Beispiel Judith Butler', in A. Hornscheidt, G. Jähnert and A. Schlichter (eds), *Kritische Differenzen – geteilte Perspektiven* (Westdeutscher Verlag, 1998), pp. 229–43.

[18] See the arguments of Maksymilian del Mar on how legal imagination in legal fictions and other forms of legal reasoning provide new possibilities of interpretation 'hinting at the possibility, perhaps even desirability [. . .] of introducing, more explicitly, a new rule in the future'. See M. Mar, 'Legal Reasoning in Pluralist Jurisprudence', in N. Roughan and A. Halpin (eds), *In Pursuit of Pluralist Jurisprudence* (Cambridge University Press, 2017), pp. 40–63, at p. 51.

responsibility in the long chains of 'distributed agency' across the globe. The second type of contestation is over which norms actually apply to a case. This often also contests the limits of what can be addressed legally as a harm.

The field in which such struggles against the 'cuts' of liberal law are possibly most evident is struggles around human rights violations and environmental damages along the long global chains of value production. The transnational lawsuits brought by people affected by harm resulting from the activities of multinational corporations concern the question of who is to bear responsibility for this harm.[19] Such transnational lawsuits first attempt to expand the scope of responsibility from the person on the ground, whose actions directly lead to harm, to the headquarters of multinational companies. This move raises the question of where to sue, and thus, which jurisdiction and which legal system comes to bear on the case.[20] Transnational lawsuits thus entangle the laws of host states with those of the home states of multinational companies. Furthermore, they often try to distribute the burdens of liability anew by renegotiating mediate responsibility: actions and omissions that enable (rather than directly cause) situations of damage and injury are increasingly moving to the centre of litigation.[21] They address a wider range of actors than conventional legal treatments of global value chains, which typically cut short these chains into contractual relations between a limited number of actors. By addressing a larger set of actors, such struggles entangle the laws that regulate liability, tort and criminal responsibility in the various legal systems to which the actors partaking in these long chains of production and consumption are subject. In both tort and criminal law, claimants as well as lawyers are reaching ever farther, drawing causal and moral connections between events, actions, suffering and remedies.

[19] See e.g. M. Galanter, 'When Legal Worlds Collide: Reflections on Bhopal, the Good Lawyer, and the American Law School' (1986) 36 *Journal of Legal Education* 292–310; S. Sawyer, 'Disabling Corporate Sovereignty in a Transnational Lawsuit' (2006) 29 *Political and Legal Anthropology Review* 23–43.

[20] See N. Krisch, 'Entgrenzte Jurisdiktion: Die extraterritoriale Durchsetzung von Unternehmensverantwortung' (Jurisdiction Unbound: Extraterritoriality and Corporate Responsibility), in Deutsche Gesellschaft für internationales Recht (ed.), *Unternehmensverantwortung im internationalen Recht* (2020), pp. 11–38.

[21] In other fields, such as that of international criminal law, the role and responsibility of those who enable violent conflicts by legally exporting weapons, trading in 'conflict resources', etc. is also now receiving increasing attention, as is the role of states in human rights violations committed by third parties.

Current legal initiatives such as the French *loi de vigilance*, the *Lieferkettengesetz* debated in Germany or the *Konzernverantwortungsinitiative* in Switzerland all seek to transform both the delineations of jurisdictions[22] and, to a lesser degree, the relative weight of primary and secondary responsibility. However, to the extent that these laws and legal proposals concern very specific obligations, such as disclosure requirements or due diligence principles, and rely on rather nebulous identifications of a corporation's 'sphere of influence', they do not overcome the narrow spatial or temporal cuts of current conceptions of liability.[23]

At the same time, such struggles over the attribution of responsibility are now sometimes carried onto a different level. Litigation against states, the host states of multinational companies as well as – particularly in relation to climate change – the home state of companies that globally pollute or enable pollution, is increasingly chosen as an avenue of protest via law. For example, in a case brought against the Ministry of the Environment of Ecuador and the state-owned mining company ENAMI EP over a mining concession granted to the Canadian company Cornerstone, which Laura Affolter observed[24] – the 'Los Cedros case' as it is referred to – claims were made not against the corporation, and not for harms that had occurred. Rather, the plaintiffs targeted the government of Ecuador for issuing the licence for mining, thereby shifting responsibility to the state for making economic activities possible that would – in their perception – inevitably produce harms to the environment and the people living in the vicinity of the mine.

The shift from local causers to transnational enablers is now followed by a shift from those transnational enablers to the states that make their operation legally possible – the enablers of the enablers, so to speak. This puts at issue the legal structure in which corporations, or rather corporate activities, are embedded. Such legal structures are today not made by states alone, particularly as concerns international law, as multiple actors including corporations, international organizations and private law firms

[22] Krisch, 'Entgrenzte Jurisdiktion', 22f.

[23] They are often counteracted by bilateral or multilateral trade agreements, or the institution of special economic zones, which respond to movements of jurisdictional extension by limiting contractually what norms and regulations corporations are required to comply with.

[24] L. Affolter, 'The Responsibility to Prevent Future Harm: Anti-mining Struggles, the State, and Constitutional Lawsuits in Ecuador' (2020) 4 *Journal of Legal Anthropology* 78–99.

are increasingly involved in drafting law.[25] International organizations such as the World Trade Organization (WTO) and the International Monetary Fund (IMF) have developed their own norm-generating formats, and while they are formally constituted by their member states, only some states have an effective say in them. This should not deflect attention from legislatives as lawmakers, administrations as issuers of licences and governments as signatories to investment treaties and the governmental decisions that make corporate activities possible. Even if some states are severely restricted in their choices of whether or not to ratify international agreements, formally it is states that make the laws that regulate the global economy and give corporations their legal shape. More importantly, it is state governments that choose which laws to enact, and how and when to enact them.[26] This is what Shalini Randeria pointed to with her observation of the 'cunning' of states to avoid accountability towards their citizens.[27] Randeria also points to the differences among states in the degree of autonomy they have towards international organizations, corporations and international law. However, it could be claimed that even severely 'dependent' states have room to manoeuvre, and the way they do so is a matter of political choice. Ecuador is an interesting example in this regard, considering the different choices subsequent Ecuadorian governments have taken.

The ongoing claim against the state of Ecuador in the Los Cedros case mentioned above calls into question the mining policy adopted by the current government, and with it its entire economic policy. In this way, it inches closer to challenging the production of the structural possibilities of harm that have so often been overlooked in human rights struggles.

Such claims not only shift responsibility onto states – host states as well as the home states of multinational companies – but further, by focusing on the creation of the legal conditions for harmful activities by

[25] J. Mugler, 'Regulatory Capture? Fiscal Anthropological Insights into the Heart of Contemporary Statehood' (2019) *Journal of Legal Pluralism and Unofficial Law* 379–95; P. Dann and J. Eckert, 'Norm Creation beyond the State', in M. C. Foblets, M. Goodale, M. Sapignioli and O. Zenker (eds), *The Oxford Handbook of Law and Anthropology* (Oxford University Press, 2020).

[26] Dann and Eckert, 'Norm Creation beyond the State'; Krisch, 'Entgrenzte Jurisdiktionen', 34.

[27] S. Randeria, 'The (Un)making of Policy in the Shadow of the World Bank: Infrastructure Development, Urban Resettlement and the Cunning State in India', in C. Shore, S. Wright and D. Però (eds), *Policy Worlds: Anthropology and the Analysis of Contemporary Power* (Berghahn Books, 2011), pp. 187–204.

multinational corporations, they involve a move from retrospective responsibility to the prospective responsibility to prevent potentially harmful operations. It might be too early to speak of 'a (re)turn in the understanding of responsibility', as Klaus Bayertz[28] put it, with prospective, precautionary responsibility, and possibly even strict liability gaining in importance in law. However, such normative possibilities become part of the debate as a result of mobilizations of this kind, and it is to some degree independent of their legal outcomes whether they thereby provide a model for new legal 'imaginations'[29] that 'consider possible or alternative solutions to the problem',[30] and are taken up elsewhere, travelling to new sites and situations and yet further interpretative translations.[31]

15.4 The Import of Other Norms

The interpretations of the responsibilities of different actors thus challenge the jurisdictional cuts currently shaping liability. Beyond these jurisdictional entanglements engendered by the mobilization of law from below, it is the actual 'import' of other norms into the legal reasoning pertinent to a case that entangles law in these struggles over the harms that result from global capitalism. To come back to the case brought against the Ministry of the Environment of Ecuador and the state-owned mining company ENAMI EP over a mining concession granted to the Canadian company Cornerstone, potential harms addressed were those to a healthy environment, harms to livelihood and harms to nature. The lawyer for the plaintiffs argued on the basis of Articles 71, 73, 397 and 407 of the Constitution of Ecuador that enshrine the principle of '*buen vivir*' and the rights of nature as inherent in it. Other activist lawyers at first criticized the mixing up of claims to the rights of nature and the rights to a healthy environment, arguing that these were separate issues, and that the rights of nature were not well served by being mixed up

[28] K. Bayertz, 'Eine kurze Geschichte der Herkunft der Verantwortung', in K. Bayertz (ed.), *Verantwortung – Prinzip oder Problem?* (Wissenschaftliche Buchgesellschaft, 1995), pp. 3–71, at p. 29.

[29] Like the imagination in legal reasoning that Maksymilian del Mar call us to explore for providing models of possible interpretation for the future (see Mar, 'Legal Reasoning in Pluralist Jurisprudence'), such mobilisations suggest new normative possibilities. .

[30] See Mar, 'Legal Reasoning in Pluralist Jurisprudence', p. 45.

[31] For this notion of translation, see e.g. A. Behrends, S-J. Park and R. Rottenburg (eds), *Travelling Models in African Conflict Management: Translating Technologies of Social Ordering* (Brill, 2014).

with, or even identified with (and reduced to), rights to a healthy environment. They then changed course, and joined as *amici curiae* to invoke Article 11 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), which establishes the right to a healthy environment and states that everyone shall have the right to live in a healthy environment and to have access to basic public services, and that the signatory states shall promote the protection, preservation and improvement of the environment. They referred to the Stockholm Declaration of 1972 and to the judgement of the Inter-American Court of Human Rights (IACrtHR) in the case of *Indígena Yakye Axa* v. *The State of Paraguay*, which established property rights over ancestral land and the state's obligation to protect the traditional means of livelihood of Indigenous communities as part of the right to life. Furthermore, they referred to an Advisory Opinion of the IACrtHR (OC-23/17, 15 November 2017), the Rio Declaration on Environment and Development (1992), the Convention on Biological Diversity, the United Nations Framework on Climate Change and a judgement by the Columbian Constitutional Court. In the second instance, the 'Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean' was added to this list.

The claim thus brought into relation regulations on biodiversity with social and economic rights, judgements on Indigenous rights and resolutions on states' obligations to take measures preventing further climate change. Moreover, the concept of *buen vivir*, which was incorporated in the Ecuadorian constitution in 2008, could be said to directly challenge the cuts that liberal law makes to separate different fields of human action. Characteristic of the principle of *buen vivir* is that it overcomes the opposition between human and non-human nature that modern law creates by separating the bodies of law that regulate the economy, intimate relations, the use of resources and the treatment of non-human nature. Like the Indigenous approaches to law that Kirsten Anker describes in Chapter 3, *buen vivir* provides for norms that perceive all relations as inextricably entangled.[32]

[32] The lawyers bringing the case were initially criticised by colleagues who were otherwise in favour of their endeavour precisely for 'mixing up' the rights of nature and the right to a healthy environment, which it was claimed would weaken the claim. They were also critical of the employment of the instrument of a '*consulta previa, libre e informada*',

Everywhere, the constitutional claims made in the name of the rights of nature or in relation to the right to life and physical integrity aim at structural change that goes far beyond legislating binding due diligence norms for corporate legal responsibility. In this way, they transgress the conventional limitations of which harms can actually be addressed by law. The claim that issues regulated by different bodies of law are in fact intricately connected is a central proposition in such struggles. Keebet von Benda-Beckmann shows how, paradigmatically, in the dispute about the availability of low-priced AIDS medicine, the WTO accepted the argument that the prices of medicines were not only an issue of free trade regulation, but also one of human rights: 'In this dispute two bodies of law that had been regarded as separate, had been successfully linked. WTO could no longer reject the human rights as not belonging to its relevant context. From now on, arguments of human rights are in principle legitimate claims in WTO procedures.'[33] The World Health Assembly and the UN Human Rights Commission, following activist campaigns, urged an interpretative entanglement of the different areas of legal regulation. The discursive entanglement provided for the concepts and (legal) arguments to become part of negotiations where they had not been so before. The 'cuts' of liberal law around jurisdictions and the limited reach of liability, including temporally (and regarding the 'rights' of future generations), are thus contested; different fields of interaction and regulation are purported to be inseparable. In this contestation, claimants draw upon hitherto unrelated norms from various bodies of law and connect them in a 'situation'. In this situation, the distinctions between different bodies of law and between moral and legal norms are dissolved. What emerges is interlegality.[34] Interlegality, in the understanding of Santos, does not denote hybrids, but rather the mutual informing of different norms and normative orders, through which novel forms and meanings emerge.

which applies only to areas in which indigenous people and descendants of Africans live, which this was not. The opinion that ecological preservation and human rights were distinct legal fields and had little to do with each other was voiced, and different interpretations of *buen vivir* were articulated in the case in Ecuador by the amicus curiae of the defendants and that of the plaintiffs. See Affolter, 'The Responsibility to Prevent Future Harm'.

[33] Von Benda-Beckmann, 'The Contexts of Law', pp. 4–5.

[34] B. de Sousa Santos, *Toward a New Legal Common Sense: Law, Globalization, and Emancipation* (Cambridge University Press, 1995), p. 473.

15.5 Is This Entanglement?

We might debate at what point norms originating in different legal systems or different bodies of law are truly entangled. References to other norms and laws, which 'are not heard' and do not affect the way a case is interpreted in the last instance, or do not determine what harms are seen to be at issue, might arguably not actually entangle law. However, as Krisch argues in Chapter 1, entanglement proceeds here discursively, that is by way of the interpretative and argumentative realms that mobilizations of law(s) open up: 'If we understand law as ultimately socially constructed, a shift in the ways in which actors relate different parts of the legal order to one another reshapes the law itself'.[35] The actors that need to be taken into consideration are not only judges, Krisch insists:

> [W]e cannot limit ourselves to considering the formal rules that govern these relations or the occasional pronouncement of a court – too much of the postnational legal order only has loose connections with courts or other formal dispute settlers. Instead, we need to take into view the ways in which different kinds of actors – norm-makers, addressees, dispute settlers and other concerned societal actors – construe these relations and resolve (potential) conflicts between different norms.[36]

To return to the idea of legal trouble that Susanne Baer proposes:

> Legal trouble can be caused by judges who make a dissenting judgment in the lowest instance [. . .]. Legal trouble can be triggered by lawyers who simply claim what does not yet exist in the traditional, regularly dominant and discriminatory discourse. Or legal trouble can be created within the framework of a legal policy in which, last but not least, draft laws are presented that oppose the dominant discourses by dissident positions.[37]

One might thus argue that norms inform each other not only when incorporated into the effective normative legal realm through adjudication and the legal reasoning of judges,[38] but also when rejected in

[35] See Chapter 1, Section 1.2.
[36] Chapter 1, Section 1.5.
[37] Baer, 'Inexcitable Speech', p. 242 (my translation).
[38] Stuart Kirsch also points particularly to adjudication as a process of 'reverse translation' that is the import of norms from other normative orders into liberal law. See S. Kirsch, 'Juridification of Indigenous Politics', in J. Eckert, B. Donahoe, C. Strümpell and Z. O. Biner (eds), *Law against the State: Ethnographic Forays into Laws Transformations* (Cambridge University Press, 2012), pp. 23–43, at p. 39. See also F. von Benda-Beckmann, 'Pak Dusa's Law: Thoughts on Legal Knowledge and Power', in E. Berg, J. Lauth and A. Wimmer (eds), *Ethnologie im Widerstreit: Kontroversen über Macht,*

courts as invalid alternatives. Even when rejected, norms that remain in a dissident or minority position have an effect on the dominant norms that they are set in opposition to. The arguments made to deny their applicability themselves set norms in relation to each other. More importantly, the relational meaning established might be taken up by other struggles, and further imaginative interpretations.

Nonetheless, we can presume that not all actors' entanglements have the same effect on normative transformations. Judges import norms into legal reasoning in a different manner than the claims of lay people do. Therefore, different pathways of entanglement can be explored for their different normative effects and processes of homogenization,[39] standardization,[40] pluralization or coherence.

15.6 Counter-Entanglements

This is therefore not the end of the story. When local social struggles against multinational corporations succeed either in winning their cases, or in obliging their governments to regulate corporations' activities more strictly, the conflicts today often shift to arbitration between the corporations and host states on the terms of the investment regimes that host states have concluded with the home states of the corporations in question, or their national investment laws. In Ecuador, for example, after the civil lawsuit against Chevron, in the so-called 'oil dumping' case about the devastating pollution in relation to Texaco's[41] operations in the Lago Agrio oil field, was won in all instances, the international arbitral tribunal in the dispute between the government of Ecuador and Chevron obliged Ecuador to pay compensation for damages to the company's

Geschäft, Geschlecht in fremden Kulturen (Trickster Verlag, 1991), pp. 215–27. Here, Benda-Beckmann argues that it is ultimately judges who determine what is law.

[39] J. Eckert, 'From Subjects to Citizens: Legalisation from Below and the Homogenisation of the Legal Sphere' (2006) 38 *Journal of Legal Pluralism and Unofficial Law* 45–75.

[40] F. von Benda-Beckmann, K. von Benda-Beckmann and J. Eckert, 'Rules of Law and Laws of Ruling: Law and Governance between Past and Future', in F. von Benda-Beckmann, K. von Benda-Beckmann and J. Eckert (eds), *Rules of Law and Laws of Ruling: On the Governance of Law* (Ashgate, 2009), pp. 1–30.

[41] Litigation against Texaco claiming for the clean-up of the polluted area and compensation to its inhabitants began in 1993. In 2001 Chevron acquired Texaco and in 2011 was ordered to pay compensation by an Ecuadorian court. However, a US court in 2014 overturned the verdict, arguing that the plaintiffs had used coercion and bribery, and opening a case against their lawyer under the RICO Act. The Permanent Court of Arbitration in The Hague in 2018 ruled in favour of Chevron, too.

reputation on grounds of the US–Ecuador Bilateral Investment Treaty. The arbitral tribunal also ordered Ecuador to quash the earlier Ecuadorian court ruling.[42] The tribunal held that the plaintiffs should be prohibited from filing any further class actions against the group.[43] Affected persons should only be able to file individual claims for damages. Furthermore, the arbitral tribunal suggested that Ecuador should see to it that the plaintiffs did not file lawsuits in other countries where Chevron has subsidiaries.[44] Pablo Fajardo, the chief lawyer in the Chevron case in Ecuador, presented a document at a lecture in Bern in October 2019 showing that the Ecuadorian Attorney General's Office had asked the courts in Argentina, Brazil and Canada to stop dealing with the cases there, and deny the plaintiffs the possibilities to collect the Ecuadorian judgement.[45] The General Prosecutor's Office thereby hoped to minimize the amount the Arbitration tribunal would allow Chevron to request from Ecuador.[46]

As well as being prohibited from filing suits against the company, Ecuador was also required to pay all outstanding debts it had accrued through such arbitration cases in order to be eligible for a loan from the IMF.[47] The government is apparently willing to comply with all of these requirements. Furthermore, when the bilateral investment treaty with the USA was terminated in 2018, Ecuador adopted its own investment law (*Ley de Fomento Productivo*), which provides that disputes arising out of investment agreements are to be resolved through arbitration, and arbitral awards arising therefrom are immediately enforceable in Ecuador, without the need for any further recognition by the courts.[48] The government repeatedly warned those organizing public consultation

[42] See *Chevron Corporation and Texaco Petroleum Company* v. *Ecuador*, PCA Case no. 2009-23, UNCITRAL, Partial Award, 30 August 2018, part X, para. 10.13 (i).

[43] Ibid., para. 10.13 (ii).

[44] Ibid., para. 10.13 (iii).

[45] *Informe Ejecutivo Sobre Estado Del Caso Chevron Corporation y Texaco Petroleum Company* v. *Republica del Ecuador* (Caso CPA No 2009–23), Procuraduría General del Estado, 2019), p. 2.

[46] Personal communication from Pablo Fajardo to Laura Affolter, received by the author 13 November 2019.

[47] Memorando No. MEF-SFP-2019-0036 (Subsecretario de Finanziamento Publico, 2019), p. 15.

[48] Article 37 of the law stipulates that the Ecuadorian state must agree to domestic or international arbitration to resolve disputes regarding investment agreements. In a further provision, the law states that for investment agreements whose value is over US$10 million, the investor may initiate proceedings before a number of arbitral institutions, namely the Permanent Court of Arbitration, the International Chamber of

meetings on international mining projects, such as those in the Los Cedros case described in Section 15.3, that if such consultations succeed in preventing mining, corporations would likely bring further disputes against the Ecuadorian government in international arbitration tribunals.[49] The costs would be borne by all citizens.

This could be said to be the counter-entanglement to the entanglements from below in transnational relations. It might be considered to fall under the third pathway of entanglement identified by Krisch: coercion. 'Today, for example, the adoption of World Bank rules on resettlement in the context of infrastructure programmes on the part of borrowing states is often a matter of conditionality and necessity rather than persuasion or attraction', he writes in Chapter 1.[50] In this particular case, and this holds for many others, coercion forced the entanglement of particular norms, counteracting other entanglements. Here, in several steps culminating in the conditionalities of the IMF, but significantly moving via the bilateral investment agreement between the USA and Ecuador that was, upon termination, immediately followed by the new investment law, Ecuador's environmental law, human rights law ratified by Ecuador, its trade law and even its administrative law are entangled.

Such coercive entanglements set the contexts for entanglements from below; they limit the possibilities of entanglements and drive them to strive for a trans-systemic coherence, so as to make binding norms for more powerful opponents, thereby limiting the latter's possibilities of forum shopping.

15.7 From the Particular to the Singular?

Beyond the different pathways of entanglement there is, it seems, yet another response to the protesting entanglements from below. This points neither towards plurality finding a form nor towards greater coherence, but in an entirely different direction: beyond its effects on normative developments 'within' systems of law, the entanglement of law created by appeals to other norms might actually lead to cases being treated increasingly as singular, that is, with regard to their unique

Commerce or the Interamerican Commercial Arbitration Commission. The arbitration will be governed by the UNCITRAL Rules or the relevant institutional rules.

[49] Personal communication from Pablo Fajardo to Laura Affolter, received by the author 13 November 2019.

[50] See Chapter 1, Section 1.4.2.

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constellation rather than how they relate to general norms (regardless of which system they might stem from). Rather than entanglement leading to closer and more systematic relations between legal systems, entanglement might actually support – possibly inadvertently – another tendency in litigation, namely 'singularization'.

We observe that the legal struggles against multinational corporations that cross jurisdictional boundaries in seeking to attribute responsibility for harm that occurs in relation to these companies' economic activities are rarely adjudicated but tend rather to be settled out of court, if they are not simply dismissed beforehand.[51] As in many such litigations, in the Monterrico case analysed by Angela Lindt, an out-of-court settlement was reached three months before the trial date. Claimants had sued the British mining company Monterrico and its Peruvian subsidiary Rio Blanco Copper for human rights violations in relation to a protest against the mine, in which twenty-eight people were arrested. The claimants sought damages for the involvement of Monterrico and Rio Blanco personnel in the violence perpetrated against them during the three days of detention, as well as for the material support provided to the police, and the companies' failure to prevent police violence. In a way that was reminiscent of Union Carbide case in Bhopal and many others, Monterrico did not admit any liability, but agreed to pay compensation to the plaintiffs. In return, the plaintiffs withdrew their complaint by accepting the compensation and waived the need for a judgement on whether the parent corporation bore any responsibility.[52] The exact content of the settlement and the precise sum of compensation were not disclosed, and the plaintiffs were obliged not to make them public.

Settlements concentrate not on what is specific to a case and how that specificity might be related to a general norm. Rather, cases are treated as singular, as concerning a singular relationship between the parties

[51] See Chapter 8. See also A. Lindt, 'Transnational Human Rights Litigation: A Means of Obtaining Effective Remedy Abroad? (2020) 4 *Journal of Legal Anthropology* 57–77; J. A. Zerk, 'Corporate Liability for Gross Human Rights Abuses: Towards a Fairer and More Effective System of Domestic Law Remedies', report prepared for the UNHCHR (2014), www.ohchr.org/Documents/Issues/Business/DomesticLawRemedies/StudyDomesticeLawRemedies.pdf.

[52] Lindt, 'Transnational Human Rights Litigation'; C. Kamphuis, 'Foreign Investment and the Privatization of Coercion: A Case Study of the Forza Security Company in Peru' (2012) 37 *Brooklyn Journal of International Law* 529–78.

involved; they need not have any comparable aspects with others, and if they do, these need not become an issue in the negotiations leading to a settlement.

Since the settlement prevents a ruling on the question of whether a corporation actually is at fault and thus bears legal responsibility, it cannot be used as precedent in comparable cases.

> The practice of pursuing out of court settlements before disputes are finally determined, while benefiting the victims in the particular case, impacts upon the development of jurisprudence and precedent. As a litigation strategy, out of court settlement prevents the development of a settled body of law, which may pave the way for more victims to bring claims against corporations for human rights abuse.[53]

In fact, comparability is made irrelevant, as the settlement is a private agreement between the two parties involved in the particular case, a fundamentally unrepeatable situation.[54] Occurrences of harm turn from being 'cases' to being singular 'incidents', and the very legal entanglement created by the references to various norms that might possibly be relevant is dissolved in these cases, which are treated as private negotiations between the involved parties.

This prevention of precedent and, with it, a settled body of law that could be entangled with other such settled bodies of law is facilitated by the fact that settlements such as the one in the Monterrico case are conducted in private and as matters of private contract law. Even if we learn on what terms the settlement was reached, that is, what arguments about duties and responsibilities came to bear on it, it has no relevance for other cases because it is a private agreement that holds only for that specific constellation of actors and the claims which they make on each

[53] J. Robinson and L. Lazarus, *Report for the UN Special Rapporteur on Business and Human Rights – Obstacles for Victims of Corporate Human Rights Violations* (Oxford Pro Bono Publico, 2008).

[54] This unrepeatability is apparently not always strong enough for the defendants, and is therefore sometimes further enforced by the conditions they insist on for engaging in such negotiations: 'Several practitioners pointed to instances where the business defendant required that the law firms make commitment to not representing any other plaintiff in any similar case for a period of several years, or not providing even general information about the kinds of harms identified during the case to any other person. Such commitments may be enforced by a threat that a breach of the commitment by the law firm will result in the plaintiffs having to forfeit the settlement.' See M. B. Taylor, R. C. Thompson and A. Ramasastry, *Overcoming Obstacles to Justice: Improving Access to Judicial Remedies for Business Involvement in Grave Human Rights Abuses* (Amnesty International, 2010), p. 17.

other. The parties involved are free to agree over which norms come to bear on the settlement. The privacy of the agreement can 'convert [. . .] the accountability of the perpetrators into a private matter'.[55]

When the parties involved are furthermore obliged to keep the outcome secret, settlements and the norms that are activated within them are entirely removed from public view. Thus, singularization proceeds in several ways: the avoidance of a judgement about fault relating the case to a general norm, the private agreement between the parties involved and secrecy. Everything prevents the case from being a precedent, or simply an example or model, for others; by making comparability irrelevant, entanglement, too, is inhibited or at least left suspended.

The privatization inherent in such settlement negotiations thus introduces new 'cuts' in Strathern's sense, cuts around a single constellation of actors brought together by the specific legal limitations regarding legitimate claimants in the event of a harm. Even when settlements include compensation payments to collectives, or compensatory action in affected regions, the limitations of who can actually be a party to a settlement are decided by as yet unentangled law, as I mentioned earlier in this section. The question of who is to be considered 'involved', that is, who is a legitimate plaintiff, is most often determined according to the conventions of the jurisdiction where the corporation has its headquarters – its home country. As I briefly discussed in Sections 15.2 and 15.3, liberal law tends to rely on comparatively narrow conceptualizations of the reach of liability and likewise of identifying those who are affected, particularly in cases related to human rights, because of the concentration of human rights on specific violations of individual rights.

The avoidance of precedent, one could say, responds to entanglement by actively making the comparability of cases irrelevant. Singularization disentangles cases from the systematicity of law and redirects the hopes that had once aimed at 'justice'[56] towards individual remedy. The fact that these cases are settled out of court is not directly *caused* by the entanglement of law so much as triggered by the arguments and claims of the plaintiffs. They are settled out of court for various reasons,[57] foremost

[55] Kamphuis, 'Foreign Investment and the Privatization of Coercion', 562.

[56] See Lindt, 'Transnational Human Rights Litigation'; Loher, 'Everyday Suffering and the Abstract Time-Reckoning of Law'.

[57] See e.g. M. Galanter, 'A Settlement Judge, Not a Trial Judge' (1985) 12 *Journal of Law & Society* 1–18.

among them the many obstacles that stand in the way of plaintiffs successfully suing multinational corporations, such as the high costs and long durations, time limitations and jurisdictional limitations. It is commonly argued that such alternative forms of dispute resolution in fact particularly benefit those plaintiffs who cannot afford long and expensive court procedures. Settlements lessen the costs of procedures and make restitutive measures more accessible for the victims, and because they do not need to spend their efforts on attributing fault, can ameliorate suffering more effectively.[58] However, they often do not bring about a judgement about where fault lies, nor do they produce a precedent, the two issues which are often central to the plaintiffs' hopes, their ideas of justice and their desire for preventive signals.

We have here another form of the proximity-distancing dynamic Krisch describes in Chapter 1: the 'distancing' entailed in singularization not only preserves or increases the distance between different bodies of law or among different systems of law. Rather, it creates a distance between cases, so that cases cease to be 'cases' exemplary of a general type, but become unique, that is singular. Singularization is thus a specific form of distancing, possibly the most radical one, in as much as singularization does not preserve an earlier distance but introduces a new logic. This new logic concerns not merely the relation between different laws, but the idea of law in itself. Law ceases to operate by subsuming specific instances under a general principle, valid beyond the specific parties to a legal dispute, and turns into a tool of mediation.

Singularization thus not only prevents precedent but also makes the development of tertiary norms unnecessary, because it circumvents rather than regulates the interface.[59] A different logic emerges, one that develops neither systematicity, nor modes of dealing with normative

[58] See M. Galanter and M. Cahill, 'Most Cases Settle: Judicial Promotion and Regulation of Settlements' (1994) 46 *Stanford Law Review* 1339–91, for a critical discussion of the arguments for settlements as the preferred mode of conflict resolution.

[59] Could singularization be considered a kind of tertiary procedure in which plurality is accommodated by singularising cases? This conclusion could be drawn from the observation that judges, in response to the plurality of norms that could possibly be relevant for a case, tend to adopt relatively minimalist stances, avoiding broader principles and instead deciding cases on as narrow grounds as possible (just because the questions of general principle are so wide open). See e.g. Mar, 'Legal Reasoning in Pluralist Jurisprudence'; and N. Krisch, *Beyond Constitutionalism: The Pluralist Structure of Postnational Law* (Oxford University Press, 2010), in particular pp. 263–96. Theirs, however, is rather a reaction to pluralism than an accommodation of it, inasmuch as pluralism disappears from view in such minimalism.

pluralism, but rather entails a radical singularization where common ground can be found only in procedural norms at best. The paradox is that entanglements engendered by strategic comparisons across legal systems and bodies of law increase attention to the singular.

15.8 Plurality, Singularity or Coherence: Towards a Conclusion

Entanglements of law initiated by struggles for fairer relations, be they fairer trade relations, fairer labour relations, fairer distribution of the costs of climate change or a fairer attribution of responsibility in incidents of violence, not only bring into closer proximity norms originating in different legal systems or bodies of law, they also challenge the boundaries or cuts that current law establishes along the chains of distributed agency and around different fields of practice and interaction. These mobilizations aim to overcome the cuts established by current legal instruments, even the ones they are mobilizing, and to articulate new forms of (legal) relations that reflect the interdependence of different fields of social practice within the (global) chains of action. They are anti-pluralist in that they strive for trans-systemic coherence.

Krisch explains in Chapter 1 that entanglement is precisely not synthesis; it stops short of integration. I argue that, indeed, integration in a systemic sense is neither the goal nor the effect of entangling mobilizations of law from below. These mobilizations of law from below are not concerned with systematicity in the sense of an intra-systemic logic, and probably too fragmented and case-bound to produce it.

Nor are these movements much concerned with finding ways to accommodate the existing legal pluralism so as to avoid conflicts of law. There are indeed many struggles that strive for the possibility of pluralism, also struggles that mobilize law from below. Rachel Sieder, for example, has described the struggles for 'legal sovereignty' of the Maya in Mexico.[60] Such struggles for legal sovereignty, and for a realm of autonomy in legally plural situations, are, however, movements of 'distancing' rather than entanglement. They can mobilize liberal law because it provides for the recognition of some forms of plurality, such as those based in legal categories like indigeneity.

[60] R. Sieder, 'The Juridification of Politics', in M. C. Foblets, M. Goodale, M. Sapignioli and O. Zenker (eds), *Oxford Handbook of Law and Anthropology* (Oxford University Press, in press).

The entanglements produced by the mobilization of law from below I consider here do not strive for such accommodations of pluralism. In fact, they are often at base anti-pluralist, in that they produce novel relational meanings, thereby moving towards a trans-systemic and, at the same time, unsystematic coherence. In their position of relative weakness, they entangle law simply because they need to make use of any norm that might provide them with benefits. It is beneficial for them if all laws providing their claims with legal arguments, no matter where they stem from, are applicable to their situation. They need to strive for the normative amalgamation that comes to bear on their case to be binding for their opponents, and thus for its trans-systemic (trans-jurisdictional) validity. Hence, I argue that these entangling mobilizations of law from below strive for coherence. Such coherence is trans-systemic inasmuch as it refers to norms from various normative orders. It is unsystematic in the sense noted earlier in this section, not being concerned with systematicity, but rather with coherent relationality.

The vision of coherence that comes to the fore in these hopeful mobilizations of law leaves behind the systemic character of individual legal systems; it transcends global legal pluralism, and articulates a more universal notion of the coherence of law. These mobilizations claim that different norms, such as those of trade agreements or environmental conventions and those of civil or human rights, are intricately related to each other, inseparable even. This is a kind of 'legal holism', an approach to law that attempts to counteract the differentiation of various legal fields and the borders of different legal systems.

The fact that hopes are placed in the very law that underlies the unequal distribution of rights and privileges might be due to the 'appeal' of the norms invoked, their charisma.[61] Krisch distinguishes three pathways of entanglement, namely mutual benefit, appeal and coercion. The appeal of norms, as Krisch writes, might arise 'for their substantive content but also for the aura of progress they come with, the Zeitgeist they represent or the fit they produce with existing commitments. Likewise, the actors creating such norms may appear as appealing – as embodying the right values, as culturally superior, etc.'.[62] Such appeal might of course also indicate the hegemonic sway of liberal law and its power to shape people's understanding of the world, of themselves and of

[61] Philipp Dann and I have distinguished between structural privilege, similar to Krisch's coercion, expertise and charisma. Dann and Eckert, 'Norm Creation beyond the State'.
[62] See Chapter 1, Section 1.4.2.

their aims and conflicts. The question of whether an alternative imagination of the world is possible within the parameters of existing law has been much debated. I have argued elsewhere that when people turn towards legal norms to express their hopes and struggle for their future, they interpret norms in the light of these aspirations – rather than simply in terms of existing normative orders.[63] Of course, these aspirations are shaped by the normative orders that currently prevail in the historical situation in which they live. More than being simply evidence of the hegemonic power of the existing norms of liberal law, such mobilizations of law from below put forth specific interpretations of rights and entitlements and act upon them in order to shape institutions accordingly.[64] Concepts such as 'vernacularisation', as proposed by Sally Merry,[65] or 'reverse translation', as suggested by Stuart Kirsch,[66] provide us with instruments to turn this question into an empirical one.

Singularization that proceeds through the privatization of dispute settlement and the move from public courts to private agreements between specific parties runs counter to this. While circumventing rather than resisting the challenges to current legal instruments and norms posed by such entangling struggles, singularization prevents entanglements of law from producing novel legal meanings and thus obstructs legal change. By doing away with precedent, it inhibits the development of normative entanglements that could better reflect current relations of interdependence, position anew the various actors concerned in them and respond to the enabling mechanisms that produce the conditions that make harm possible.

Singularization does not revert the extensions of jurisdictions, nor does it refute the plurality of normative possibilities. It rather proceeds in a different way, namely by making comparability irrelevant, and relationality obsolete; the very idea of normative coherence that drives hopes in law is circumvented, and cases claimed to be equal to others are dissolved into the singular relationships among parties to the individual agreement. Singularization is a form of distancing that keeps not only different bodies or systems of law apart, but even individual cases.

[63] Eckert et al., 'Introduction: Laws Travels and Transformations', pp. 1–22.
[64] De Sousa Santos and Rodríguez-Garavito, 'Law, Politics and the Subaltern', 1–26. S. Kirsch, *Engaged Anthropology* (University of California Press, 2018).
[65] S. Merry, 'Transnational Human Rights and Local Activism: Mapping the Middle' (2006) 108 *American Anthropologist* 38–51.
[66] Kirsch, 'Juridification of Indigenous Politics', 36.

If hope in law is hope in the coherence of law in the sense of the promise of the applicability of norms to one's concerns irrespective of jurisdiction, the tendency to singularization does not bode well for it. Time and again the argument has been made that law operates for the 'haves' not merely because of its substantive content, but also because of the advantages the haves possess in negotiations.[67] We see here that the two are related, that is, that the substantive content, and above all the distinctive 'cuts' of current law, are protected by the turn to settlement, which prevents change. There is no hope in singularity.

[67] Galanter, 'A Settlement Judge, Not a Trial Judge'; Galanter and Cahill, 'Most Cases Settle'.