Sustainable development, experimenting with the rule of law

Introduction

This paper is motivated by the uneasy discrepancy between the adoption of sustainable development as a principle of international law and its effective outcome. This urges for a more effective legal strategy. Philosopher Gilles Deleuze contends that only jurisprudence is capable to create law. The question this paper goes into is how Passive time synthesis can help jurisprudence to effectuate of sustainable development. Perhaps this gives the impression that this paper is an indictment of the constitutional state. That is not the case. Indeed, one could read it as an invitation to provoke jurisprudence on sustainable development. But first of all it is a legal philosophic inquiry, a juridical philosophical introspection. For those readers who feel more at ease with jurisprudence: the charge is obstruction of sustainable development through active time synthesis; the defendant is state philosophy, represented by the Self.

Starting from Deleuze’s theorem that “the only realized Ontology - in other words, the univocity of being - is repetition,” we explore new waters. This naturalist theorem offers both naturalist and positivist legal theory a non-dogmatic grounding, which is actually an ‘ungrounding’. It gives law the opportunity to revalue its dogma’s of ‘equality’ and ‘freedom’. If we can affirm that repetition eternally produces difference, law is liberated from further disputes about its grounding. Then it can let the past be the past and head for the future.

The paper proceeds in four steps. The first step relates sustainable development to ‘becoming’, Deleuze’s and Guattari’s concept to encounter the endangered life conditions on earth. The second step engages of ‘state philosophy’ by means of of Schizoanalysis, Deleuze and Guattari’s analytical technique, as employed in Capitalisme et Schizophrenie. Here the technique is not only used to achieve the general aim, but also to investigate time syntheses in varying philosophical perspectives. Schizoanalysis, not just an analysis but also ‘the practice of becoming’, is demonstrated in Capitalisme et Schizophrénie (the double volume of l’Anti-Oedipe and Mille Plateaux). In each part of

1 United Nations A/RES/70/1 21 October 2015: “Our world today, 14. We are meeting at a time of immense challenges to sustainable development. Billions of our citizens continue to live in poverty and are denied a life of dignity. There are rising inequalities within and among countries. There are enormous disparities of opportunity, wealth and power. Gender inequality remains a key challenge. Unemployment, particularly youth unemployment, is a major concern. Global health threats, more frequent and intense natural disasters, spiralling conflict, violent extremism, terrorism and related humanitarian crises and forced displacement of people threaten to reverse much of the development progress made in recent decades. Natural resource depletion and adverse impacts of environmental degradation, including desertification, drought, land degradation, freshwater scarcity and loss of biodiversity, add to and exacerbate the list of challenges which humanity faces. Climate change is one of the greatest challenges of our time and its adverse impacts undermine the ability of all countries to achieve sustainable development. Increases in global temperature, sea level rise, ocean acidification and other climate change impacts are seriously affecting coastal areas and low-lying coastal countries, including many least developed countries and small island developing States. The survival of many societies, and of the biological support systems of the planet, is at risk.”


3 Supra note, p. 282, 283.
the Schizoanalysis it will be shortly discussed how Deleuze and Guattari’s philosophy can be applied as a jurisprudential method to effectuate sustainable development and how Time is synthesized; Time synthesis is a more or less conscious process, a kind of ‘time travel’⁴, described in Deleuze’s Différence et Répétition. In the third step The paper’s findings are summarized.

The mysteriosity of used concepts as schizoanalysis and time-analyses might give the impression that Deleuze and Quattari prefer a comfortable transcendent space high above reality. Such an impression, however, contrasts with the wholehearted dedication they demonstrated to demystify such spaces. Although the philosophy of Deleuze and Guattari is taken as the point of departure for this inquiry, it does not claim that the application meets the authors’ intentions. This does not withstand that it is tried to stay with their original philosophy as close as possible.

**Sustainable development/becoming**

The Rio Declaration on Environment and Development of 1992 marked the kick-off for sustainable development’s march through the labyrinth of i.a. international law, state law, trade law, case law, and civil law. The international political fundament for the Rio Declaration was laid in 1987 by the Brundtland commission. This UN-commission defined sustainable development as “A development that meets the needs of the present without compromising the ability of future generations to meet their own needs”⁵. Many formal statements have taken this definition as a leading legal principle. A recent example of this is the Dutch Environment and Planning Act, which is planned to come into effect in 2019.

Sustainable development expresses a form of solidarity. It is both an inalienable human right to ‘development’ and an obligation to respect the right to development of others. On first thought, in its above cited general form, the principle does not deviate much from commensurable principles⁶, such as Kant’s categorial imperative: “Act only according to that maxim whereby you can at the same time will that it should become a universal law without contradiction”, popularly stated: ‘treat others like you would have them to treat you’. This traditional wisdom is also known as ‘the Golden Rule’. Comparable solidarity-formulae are found in a worldwide variety of ancient philosophical and religious traditions, such as Boeddhim, Tao, Confucianism, Islam, Greek philosophy, (with each their specific accents and nuances). This shows that solidarity has been very common in philosophy, long before there existed something like a principle of sustainable development. The universal validity of sustainable development for the whole present generation is neither a unique feature, but a general

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⁴ Smith, D., review of James Williams, Gilles Deleuze’s Philosophy of Time, A Critical Introduction and Guide, Edinburgh University Press, 2011, ISBN 9780748638543, Purdue University, 2013, online ‘gilles deleuze philosophy time critical introduction guide “according to Deleuze’s account, we are travelling back and forward in time all the time with no need for special machines or for odd physical properties such as wormholes”


⁶ Solidarity should not be confused with reciprocity. Unlike the cited Golden Rule, sustainable development does not express reciprocity. The segment “without compromising the possibilities of future generations to meet their needs” expresses a onedimensional solidarity or obligation of the present toward future generations, no obligation of future generations; in this intergenerational dimension reciprocity would be physically impossible. The segment “meeting the needs of the present” does neither express reciprocity nor solidarity.

aspect of human rights. On second thought, however, as a legal principle sustainable development is different. First, the principle has an unfamiliar syntax: ‘development’ is an ‘empty’ subject to which no rights or obligations can be attributed and ‘the present’ as the object is purely passive and not specified. Second, the principle expresses an obligation toward the future, that stretches across borders of our generation’s lifetime, into infinity; how can such an obligation be met?

In the philosophy of Gilles Deleuze and Félix Guattari, realization of rights is by no means something to be expected from regulation by a legislating power representing a majority: “[T]here are no "rights of man," says Deleuze, only rights of life, case by case. So it’s a question of situations that evolve [...] The creation of rights is the creation of jurisprudence and fighting for it.”8 Deleuze and Guattari do not use sustainable development as a concept, but the ‘global problématique’ of deteriorating conditions for life that it addresses, plays a major role in their work, especially in Capitalism and Schizophrenia. In a similar way as sustainable development, ‘becoming’ is a collective and future oriented ‘event’.

In Capitalisme et Schizophrenie ‘becoming’ is placed in the context of a body’s response to ‘the capitalist axiomatic’, i.e.; the ‘war-machine’ or ‘the pure flow’.9 “[T]he growing importance of constant capital in the axiomatic means that the depreciation of existing capital and the formation of new capital assume a rhythm and scale that necessarily take the route of a war machine now incarnated in the complexes: the complexes actively contribute to the redistributions of the world necessary for the exploitation of maritime and planetary resources. There is a continuous "threshold” of power that accompanies in every instance the shifting of the axiomatic's limits; it is as though the power of war always supersaturated the system’s saturation, and was its necessary condition.”10 Only ‘becoming’ offers a way to escape from this global war of attrition, the capitalist axioma has brought us in.

Deleuze and Guattari emphasize that becoming is ‘a practice’.11 Their work does not recommend any ethics or moral. Only the ‘Stoic’ rule not to be unworthy of what happens to us12 can bear Deleuze’s approval. This seems to be inspired by Spinoza13 qualified by Deleuze as the “Christ of philosophers

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9 Deleuze, G. and F. Guattari, A Thousand Plateaus, Capitalism and Schizophrenia, (foreword and translation). Massumi, B. (Minneapolis, University of Minnesota Press, 1987) ISBN 0-8166-1401-6 , p.219. Deleuze, referring to Gabriel Tarde: “Imitation is the propagation of a flow; opposition is binarization, the making binary of flows; invention is a conjugation or connection of different flows.”
12 Deleuze, G., Logique du Sens, p. 174:” Ou bien la morale n’a aucun Sens, ou bien c’est cela qu’elle veut dire, elle n’a rien d’autre à dire : ne pas être indigne de ce qui nous arrive”
13 Spinoza, B. de, Ethics, Part IV Appendix, 32, in: Spinoza Complete Works (Morgan, M. L. ed.), Baruch Spinoza, 1632,1 677, Hackett Publishing Company, Inc., Indianapolis I Cambridge, 2002, p. 362. “But human power is very limited and is infinitely surpassed by the power of external causes, and so we do not have absolute power to adapt to our purposes things external to us. However, we shall patiently bear whatever happens to us that is contrary to what is required by consideration of our own advantage, if we are conscious that we have done our duty and that our power was not extensive enough for us to have avoided the said things, and that we are a part of the whole of Nature whose order we follow. If we clearly and distinctly understand this, that part of us which is defined by the understanding, that is, the better part of us, will be fully resigned and will endeavor to persevere in that resignation. For insofar as we understand, we can desire nothing but that which must be, nor,
A Thousand Plateaus is an effort to construct a smooth space of thought. It is not the first such attempt. Like State philosophy, nomad thought goes by many names. Spinoza called it "ethics." Nietzsche called it the "gay science." Artaud called it "crowned anarchy." To Maurice Blanchot, it is the "space of literature." To Foucault, "outside thought." Deleuze and Guattari think life as 'an event' in which human beings participate for some time, something that was waiting for them and that they now actualize, express. People are the products of this event, not its cause. They refuse to reduce actual happening or reality to the 'personal responsibility' of individual subjects, defying judgment of personal acts as the cause of an individual as despicable. '[W]e reject, the personal resentment, the resentment against the event. There is no other bad. What is really immoral, is every use of moral notions just, unjust, good, wrong." 16. "What interests us are the circumstances."

'Becoming' expresses a philosophical practice, the building of a new habit by a human being or another body (an 'assemblage'). That becoming bears no imposed ethics or 'rule' is not to be seen as a justification for any kind of behavior. The way to improve society is to try to find one's deepest, natural desire, to move away from capture by the 'distorted' habits of the parasitic capitalist system, that usurps natural surpluses on an ever increasing scale: "There is, in fact, a joy that is immanent to desire as though desire were filled by itself and its contemplations, a joy that implies no lack or impossibility and is not measured by pleasure since it is what distributes intensities of pleasure and prevents them from being suffused by anxiety, shame, and guilt."18 "There is always a fundamental difference between living flows and the axioms that subordinate them to centers of control and decision making [...]. But the pressure of the living flows, and of the problems they pose and impose, must be exerted inside the axiomatic, as much in order to fight the totalitarian reductions as to anticipate and precipitate the additions, to orient them and prevent their technocratic perversion."19

'Becoming' implies a movement away from the standard. Artists can form an example. "The artist is a seer, a becomer."20 Becoming is an act of solidarity. As such it corresponds with sustainable development: "[A]ll becoming is a becoming-minoritarian. When we say majority, we are referring not to a greater relative quantity but to the determination of a state or standard in relation to which larger quantities, as well as the smallest, can be said to be minoritarian: white-man, adult-male, etc.

In an absolute sense, can we find contentment in anything but truth. And so insofar as we rightly understand these matters, the endeavor of the better part of us is in harmony with the order of the whole of Nature." 14 Deleuze G., Qu'est-ce que la philosophie? What is Philosophy?, translated by H. Tomlinson and G. Burchell, 1994 Columbia University Press ISBN 0-231-7988-5, p. 60.


16 Deleuze, G., Logique du Sens, p. 174:"voilà ce qui rend nos plaies répugnantes, le ressentiment en personne, le ressentiment contre l'événement. Il n'y a pas d'autre volonté mauvaise. Ce qui est vraiment immoral, c'est toute utilisation des notions morales juste, injuste, mérite, faute."


19 Supra note p. 463, 464.

Majority implies a state of domination [...] the majority in the universe assumes as pregiven the right and power of man. In this sense women, children, but also animals, plants, and molecules, are minoritarian.”21 “That is the formula for multiplicities. Minority as a universal figure, or becoming-everybody/everything (devenir tout le monde).”22

**Schizoanalysis**

Schizoanalysis implies ‘cutting’ through a body to explore the ‘characters’ one encounters in the subsequent layers. In these layers one finds all the attributes of the body, including those of such an ‘impersonal’ object of study as the constitutional state. As opposed to psycho-analysis, schizoanalysis has an explorative character: “Schizoanalysis, rather than moving in the direction of reductionist modelizations which simplify the complex, will work towards its complexification, its processual enrichment, towards the consistency of its virtual lines of bifurcation and differentiation, in short towards its ontological heterogeneity.”23 Below, the object of schizoanalyse is the Self. Schizoanalysis has the paradoxical effect, however, that the deeper one digs into the body, the lesser one meets a ‘self’. The self ‘dissolves’ into an ever expanding ‘crowd’. As an effect it can less and less be discerned from a collective Self. The purpose of this paper, however, is not to be exhaustive. The analysis proceeds along the three-way-split of philosophical perspectives that is used throughout Deleuze’s and Guattari’s work of transcendent philosophy, transcendental philosophy and immanent philosophy. The session is limited to the layer that contains key influential thinkers about the constitutional state. On behalf of transcendent philosophy René Descartes and Thomas Hobbes pass by, as the leading transcendental philosopher Immanuel Kant, and as leading philosophers of immanent philosophy, Deleuze and Guattari supported by their illustrious predecessors Spinoza, Bergson and Nietzsche.

**Transcendent philosophy and individualism: Descartes’s Cogito and Hobbes’s Conatus**

The 17th century world of Descartes and Hobbes was dominated by the eternal present, or as Deleuze says, the philosophy of the Circle (end meets beginning).24 “The classical image of thought, and the striating of mental space it effects, aspires to universality. It in effect operates with two "universals," the Whole as the final ground of being or all-encompassing horizon, and the Subject as the principle that converts being into being-for-us.”25 René Descartes, prominent rationalist thinker launched the concept of the Cogito, the emancipated self-aware, thinking individual, icon of humanism, proudly stating: “I think, therefore I am”26. Descartes isolation of the human being from the social reality had a counterpart in the form of Hobbes’s Conatus, the human-being in Hobbes’s theory of the social contract. Both concepts can be seen as examples of the individual.

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22 Supra note, p.470.
23 Guattari, F., Chaosmosis, an ethico-aesthetic paradigm, translated by Paul Bains and Julian Pefanis, Indiana University Press, 1995, Bloomington &Indianapolis, p. 61. (Chaosmosis was originally published in French as Chaosmose, 1992, Editions Galilee).
26 Supra note, p.291.
In ‘Leviathan’ Hobbes launched the thesis that the state was the natural outcome of a voluntary transfer of power by rational the predominantly self-interested people to a ‘Leviathan’-ruler. In exchange the latter protected every individual against all others. Although the cogito offered established state power a practical philosophic solution to oppress ‘irrational’ religiously motivated violence, this theory tells us that the freedom of the rational individual in the state is a paradoxical freedom, a negative freedom, the freedom of an individual that has to be protected against itself. In the world of ‘social contracts’ only states are truly sovereign bodies, encompassing and controlling all other bodies. From this perspective, on an aggregated level states resemble human beings. Together these states constitute a ‘world society’, a fragile balance of territorially organized states, opposing each other, capturing groups of individuals opposing each other too.

The principle of sustainable development is at odds with the social-contract thesis. This thesis confronts states with a two major dilemma’s, inexistent in the preceding international politico-legal context. The first dilemma is to protect citizens of other states against the own state and its citizens. The Hobbesian logic gives rise to ‘prisoner’s’ dilemma of which Hardin’s doctrine of the Tragedy of the Commons as described by Garret Hardin forms an illustration. According to this doctrine it is a natural law that private interests are not compatible with a collective management of collective goods. Because of the predominant private interest no state or person is presumed to take the first step to respect the access of others to collective goods. This doctrine undermines a solidarity principle like sustainable development. It denies that ‘an actor’ can be the first to respect the access of all others, because it is unreasonable, not in its self-interest, against nature. The second dilemma, the voluntary application of sustainable development as an obligation toward future generations is even less likely, because there is no reciprocity: no actor would be the first to respect the interests of ‘not yet existing’ generations. For states there is an additional argument: it would be against reason, both from a state-perspective as from the perspective of their citizens, to set rules in the interests of the non-voters of future generations that oppose the direct interests of current tax-payers, rightful claimants and electorate, regardless if this concerns a Hobbesian Conatus or a Cartesian Cogito. In Hobbes’s world only ‘zero-sum’-games exist. This leads to the conclusion that when the social contract theory is taken as its point of departure, the constitutional state leaves no hope for sustainable development, which is a solidarity principle based on the interests of third parties outside the defined real.

As it is unreasonable to expect that rational individuals develop a habit that includes solidarity, schizoanalysis learns that the legal principle of sustainable development is opposed to transcendent philosophy.

First synthesis of time (synthesis in the present)

According to Deleuze, the transcendent philosophic perspective of Descartes and Hobbes corresponds with ‘the first time synthesis’. In the dominant transcendent worldview of their era, time was eternal, fixed. The eternal present was the measure for time synthesis: the future and the past are functions of the present. “To the first synthesis of time there corresponds a first question-problem complex as this appears in the living present (the urgency of life). “Descartes could draw his conclusion [‘I think, therefore I am’] only by expelling time, by reducing the Cogito to an instant and entrusting time to the operation of continuous creation carried out by God. More generally, the

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supposed identity of the I has no other guarantee than the unity of God himself.”\textsuperscript{28} According to this philosophy transcendent reality is as it should be: it’s the law that determines and prescribes reality in both a formal and substantial sense. “This living present, and with it the whole of organic and psychic life, acts by habit.”\textsuperscript{29} The legal strategy that fits the Cartesian cogito of transcendent philosophy, departing from habit is *purposive law.*

**Transcendental philosophy and law over moral: the legal subject of the Kantian cogito**

With the growing influence of rationalism, at the end of the 18\textsuperscript{th} century Immanuel Kant invoked a radical change in philosophy. “With the possible exception of Plato's Republic, ([Kant’s]Critique of Pure Reason) is the most important philosophical book ever written.”\textsuperscript{30} Kant provided a metaphysical fundament for the Cogito as the moral measure, known as the ‘Kantian reversal’\textsuperscript{31}. This reversal established ‘the right over the good,’ placed law over moral\textsuperscript{32}. Deleuze concentrates on a crucial change Kant brings about in the cogito, because of the split he creates between the ‘I’, who remains in the world and the ‘think’ that needs to be found outside the world. “[W]hen Kant puts rational theology into question, in the same stroke he *introduces* [emphasis added] a kind of disequilibrium, a fissure or crack in the pure Self of the ‘I think’, an alienation in principle, insurmountable in principle: the subject can henceforth represent its own spontaneity only as that of an Other, and in so doing invoke a mysterious coherence in the last instance which excludes its own -namely, that of the world and God. A Cogito for a dissolved Self: the Self of ‘I think’ includes in its essence a receptivity of intuition in relation to which I is already an other.”\textsuperscript{33}

“The entire Kantian critique amounts to objecting against Descartes that it is impossible for determination to bear directly upon the undetermined. To ‘I think’ and ‘I am’ must be added the self -that is, the passive position (what Kant calls the receptivity of intuition); to the determination and the undetermined must be added the form of the determinable, namely time. [...] Time signifies a fault or a fracture in the I and a passivity in the self, and the correlation between the passive self and the fractured I constitutes the discovery of the transcendental, the element of the Copernican Revolution.”\textsuperscript{34} “[T]he fracture is quickly filled by a new form of identity - namely, active synthetic identity.”\textsuperscript{35}

Quoting and complementing Lyotard, Deleuze and Guattari give an impression of the larger context of Kantian philosophy: “[The] collusion between philosophy and the State was most explicitly enacted in the first decade of the nineteenth century with the foundation of the University of Berlin, which was to become the model for higher learning throughout Europe and in the United States. [...] to be achieved by “deriving everything from an original principle” (truth), by “relating everything to
an ideal” (justice), and by "unifying this principle and this ideal in a single Idea" (the State). The end product would be "a fully legitimated subject of knowledge and society"—each mind an analogously organized mini-State morally unified in the supermind of the State. [emphasis added]

Prussian mind-meld

Deleuze’s critique on Kant reads: “Existence is [...] supposed to occur in space and time, but these are understood as indifferent milieux instead of the production of existence occurring in a characteristic space and time.” With Kant the legal principle of sustainable development encounters a complication: the future is a field about which we cannot collect ‘evidence based’ experiential data. Law cannot be grounded on ‘evidence’ to meet the demands of ‘truth’. There is a paradox: the collective and future dimension of sustainable development, a product of human understanding, cannot be effectuated because it exceeds the limits of rational legal and scientific understanding.

‘Pure thought’ captures the collective mind: “This is the paradox of the legislator-subject replacing the signifying despot: the more you obey the statements of the dominant reality, the more in command you are as subject of enunciation in mental reality, for in the end you are only obeying yourself! You are the one in command, in your capacity as a rational being. A new form of slavery is invented, namely, being slave to oneself, or to pure "reason," the Cogito. Is there anything more passionate than pure reason? Is there a colder, more extreme, more self-interested passion than the Cogito?”

According to Deleuze and Guattari the basis of pure thought in the empty assumption of ready-made, predefined laws of nature waiting to be discovered outside the world, is deemed to end up in a black hole. Subjectification in the form of the cogito worsens the adverse effect of pure thought: “Every consciousness pursues its own death, [...] and all the black holes resonate together.”

Schizoanalysis learns us that in transcendental philosophy, sustainable development encounters an alienated philosophy that is strangled in fixed rules of thought, constructed in the past. Contradictory to these rules, this philosophy imposes a requirement upon individuals to provide ‘evidence based’ data about the future.

Second synthesis of time (synthesis of the past)

In contrast with the Cartesian cogito, Kant’s cogito has to undertake an activity to get back what had been placed external to the world: understanding. This resulted in an ‘incomplete cogito’, groping in a twilight zone between past and present. “The Ideas [of God as the creator of the world] nonetheless remain the ground on which the successive presents are organised into the circle of time, so that the pure past which defines them is itself still necessarily expressed in terms of a present, as an ancient mythical present.[...] It is in this sense that it creates a circle: it introduces

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37 Jurgen Habermas’s notion of "consensus" is the updated, late-modern version.
41 Supra note p. 131.
42 Supra note p. 133, 134.
movement into the soul rather than time into thought.” To achieve this reconstruction the Kantian cogito needs to use its memory (to remember oneself and to remind others: in the latter sense memory takes the form of reminiscence). By means of pure thought it gets back (dis-cover) what it experiences. It needs an image, an ‘ideal’ of reality, a representation to do that: The correspondent legal strategy to guide the Kantian cogito of transcendental philosophy, is law that offers room for individual thought, provided that thought abides pregiven rules and predefined predicates. In summary: law controls reality in a formal sense, departing from memory. Law is descriptive.

Immanent Philosophy of Spinoza, Nietzsche and Deleuze: Difference and repetition

Immanent time is the time of the eternal return. In his book Différence et Répétition Deleuze elaborates this concept. Being makes place for Becoming. From an historic viewpoint, immanent philosophy cannot be regarded as ‘state philosophy’, but prevalingly as its counterpart, more often found at the side of jurisprudence than at the side of law. In Deleuzian ‘language’: ‘it comes closer to nomad thought than to sedentary thought’

Above, in his envisioning of the ‘black hole’ of transcendental thought, Deleuze diagnostices that transcendental ‘state philosophy’ is on a dead end. But he does by no means advocate a return to the transcendent worldview. Deleuze heavily builds on Nietzsche and Spinoza, with whom we find a reversed version of ‘conatus’ than Hobbes conceptualized. Spinoza’s conatus is also ‘desire’, yet a desire that is the cause of the individual, not a conatus of isolated individuals. It is this deeper desire from which Spinoza’s philosophy points at. Spinoza: “By conatus to motion we understand, not some thought, but that a part of matter is so situated and stirred to motion that it would in fact be going in some direction if it were not impeded by any cause.” Deleuze defines conatus as the power of which modes, such as individual human beings, are the expression.” Although Deleuze acknowledges Spinoza’s conatus, he emphasizes that in his own philosophy not this conatus, the quantity of power, as such is important, but the way the “faculties of judgement such as perception, memory, imagination, understanding, …”, practice this power. With Nietzsche Deleuze rejects the representational faculties of ‘common sense’ and ‘good sense’ (Cogitatio natura universalis) of transcendental philosophical’s natural law, incorporated by the cogito, because these faculties crucify the inherent difference of new values.

Deleuze sketches how this ‘framework of capture’ obstructs the free movement and fusions of the ‘assemblage’ on its process of becoming: “Every time desire is betrayed, cursed, uprooted from its

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43 Deleuze, G., a.o. Différence et Répétition, p. 36, 37, 57, 224, 225, 269, 285, 304.
45 Gilles Deleuze, Spinoza philosophie pratique, « Index des principaux concepts de l’Ethique », article « puissance » (extraits) p. 135-143: “Le conatus ne doit surtout pas être compris comme une tendance à passer à l’existence : précisément parce que l’essence de mode n’est pas un possible, parce qu’elle est une réalité physique qui ne manque de rien, elle ne tend pas à passer à l’existence. Mais elle tend à persévérer dans l’existence, une fois que le mode est déterminé à exister, c’est-à-dire à subsumer sous son rapport une infinité de parties extensives. Persévérer, c’est durer; aussi le conatus enveloppe-t-il une durée indéfinie ([Spinoza, Ethica] III, 8).” http://spinoza.fr/sur-le-conatus-extrait-du-lexique-de-gilles-deleuze/, last visit 10-12-2016.
46 Deleuze, G., La voix de Gilles Deleuze, online, Université de Paris, Ledannois, M. (transcription), 16-12-1980, Deleuze 16,12,80, 501/3A, http://www2.univ-paris8.fr/deleuze/article.php3?id_article=117
47 Deleuze, G., p. 2, Différence et Répétition, p. 133.
field of immanence, a priest is behind it. The priest cast the triple curse on desire: the negative law, the extrinsic rule, and the transcendent ideal."⁴⁹ ‘Becoming’ is a liberation process from enslaved thought. "Something in the world forces us to think. This something is an object not of recognition but of a fundamental encounter. What is encountered may be Socrates, a temple or a demon. It may be grasped in a range of affective tones: wonder, love, hatred, suffering. In whichever tone, its primary characteristic is that it can only be sensed. In this sense it is opposed to recognition."⁵⁰ Understanding does not begin with thought, but with a sensation: “The privilege of sensibility as origin appears in the fact that, in an encounter, what forces sensation and that which can only be sensed are one and the same thing, whereas in other cases the two instances are distinct. In effect, the intensive or difference in intensity is at once both the object of the encounter and the object to which the encounter raises sensibility.”⁵¹ The notion that problems can only be sensed, implies that, although they can be stated and presented, they cannot be rationally found and solved.⁵².⁵³

Particularly in Différation et Répétition Deleuze describes the profundity and radicality of his philosophy of becoming: “There are no individual statements, there never are. Every statement is the product of a machinic assemblage, in other words, of collective agents of enunciation (take "collective agents" to mean not peoples or societies but multiplicities). The proper name (nom propre) does not designate an individual: it is on the contrary when the individual opens up to the multiplicities pervading him or her, at the outcome of the most severe operation of depersonalization, that he or she acquires his or her true proper name. The proper name is the instantaneous apprehension of a multiplicity. The proper name is the subject of a pure infinitive comprehended as such in a field of intensity.”⁵⁴ How to achieve a state of becoming? Deleuze and Guattari: “Desubjectify consciousness and passion.”⁵⁵ Becoming is always an immanent becoming. Bodies are not actors but respondents to sensations that pass through them, caused by time. Bodies are ‘intensities’, events, and participants in larger events, that can sense and select/contract. They actualize a specific state at a specific moment. In this concept the philosophies of Spinoza, Nietzsche and Deleuze/Guattari meet. The perhaps clearest description of the process of becoming comes from Nietzsche’s description of the Übermensch in the opening of the second essay of On the Genealogy of Morals: “Übermensch is not an ontological state or way of being that a subject could instantiate [...]

⁵⁰ Deleuze, G., Différence et Répétition, p. 139.
⁵¹ Deleuze, G., Différence et Répétition, p. 144, 145.
the emphasis is always on the process of going rather than the destination reached [...] [on] work in progress” 56

Gilles Deleuze and Félix Guattari do not only denounce the Hobbesian individualistic manview but the entire humanist manview of a fixed identity, of in-dividuality. The virtual (all the opportunities that are locked-up in the existent) is the real. The existent has ‘already gone’. “We opposed the virtual and the real: although it could not have been more precise before now, this terminology must be corrected. **The virtual is opposed not to the real but to the actual.** [emphasis added] **The virtual is fully real in so far as it is virtual.** 57 “the virtual must be defined as strictly a part of the real object” 58 Sustainable development, a continuous becoming, is real in the sense of a virtual reality. It is however obstructed on the basis of the moral concept of the cogito. When we departed from the common sense of the cogito it was logical to oppose the virtual to the real. When we depart from the virtual reality to Become, we have to oppose the predefined thought of the cogito, to bury the cogito. Deleuze and Guattari make the concept of the Self, the human being as a stable entity with a fixed identity, fundamentally separated from ‘others’ and the outer world evaporate. According to them this standard subject is a non-existent phantasy. But this is not a call to throw overboard all our ideals, such as rights-declarations. **It means that the Self not yet exists but needs to be realized,** which requires to break the reality of existent laws: “In fact, we are confronted with great difficulties in thinking: lack of method, technique or application, and even lack of health. These, however, are fortunate difficulties: not only because they prevent the nature of thought from devouring our own nature, not only because they bring thought into relation with obstacles which are so many ‘facts' without which it would not manage to orientate itself, but also because our efforts to overcome these obstacles allow us to maintain an ideal of the self as it exists in pure thought, like a 'superior degree of identity with ourselves', which persists through the factual variations, differences and inequalities which constantly affect us.” 59

A reorientation of state philosophy from transcendentality to immanence engenders a movement from the ‘restoration’ of law to its ‘creation’. It needs a law that is adaptive to the experienceable reality of time creating continuous difference and repetition. This reality is easy to prove by the most instantaneous experimental conditions of real experience: it can be sensed. Such a reorientation offers unprecedented opportunities for advocates of sustainable development, a legal principle that is thus far hardly concretized in legal norms. To enforce such a change in legal principle these advocates have to elucidate and motivate, in concrete circumstances, what the faculties say about the realization of rights, to make them forget about the predicates.

**Third synthesis of time (synthesis of the future)**

“The past and the future do not designate instants distinct from a supposed present instant, but rather the dimensions of the present itself in so far as it is a contraction of instants. The present does not have to go outside itself in order to pass from past to future. Rather, the living present goes from the past to the future which it constitutes in time, which is to say also from the particular to the general: from the particulars which it envelops by contraction to the general which it develops in the field of its expectation (the difference produced in the mind is generality itself in so far as it forms a

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57 Deleuze, G., p. 2, Différence et Répétition, p. 208.
living rule for the future). In any case, this synthesis must be given a name: passive synthesis. Although it is constitutive it is not, for all that, active. It is not carried out by the mind, but occurs in the mind which contemplates, prior to all memory and all reflection. Time is subjective, but in relation to the subjectivity of a passive subject. Passive synthesis or contraction is essentially asymmetrical: it goes from the past to the future in the present, thus from the particular to the general, thereby imparting direction to the arrow of time.” 60

The immanent notion that ‘the virtual is already enclosed in the actual’, invokes a turnaround of temporal perspective in the form of a psychological ‘displacement’ to look at the present ‘in reverse’, from a future perspective. “In the third synthesis [...] the present is no more than an actor, an author, an agent destined to be effaced.” 61 “The future, which subordinates the other two to itself and strips them of their autonomy, is the royal repetition. The first synthesis concerns only the content and the foundation of time; the second, its ground; but beyond these, the third ensures the order, the totality of the series and the final end of time. [...] [B]y traversing these stages [the philosophy of repetition, repeting itself] ensures its programme of making repetition the category of the future: making use of the repetition of habit and that of memory, but making use of them as stages and leaving them in its wake.” 62

In summary: from the perspective of immanent philosophy itself is adaptive, departing from desire. The concomitant strategy is jurisprudence.

Final remarks: scheme of time syntheses 63

<table>
<thead>
<tr>
<th>Corresponding Metaphysics</th>
<th>First synthesis of time (synthesis in the present)</th>
<th>Second synthesis of time (synthesis of past and present)</th>
<th>Third synthesis of time (synthesis for the future)</th>
</tr>
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<tbody>
<tr>
<td>Transcendent</td>
<td>Transcendental</td>
<td>Transcendental</td>
<td>Immanent</td>
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<tr>
<th>Corresponding Practice</th>
<th>Habit (Habitus)</th>
<th>Restoration (Memory, reminiscence, reflection and reproduction)</th>
<th>Desire, Creation and imagination</th>
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<tr>
<th>Corresponding Legal strategy</th>
<th>Purposive</th>
<th>Descriptive</th>
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The above scheme shows that opportunities to create law for sustainable development through jurisprudence correspond with the third synthesis of time (synthesis for the future), an immanent philosophic perspective and affirmation of the faculties of desire, creation and imagination. At the

62 Supra note, p. 94.
63 This scheme, strongly adjusted for the purposes of this paper, was inspired by: Williams, J., Objects in manifold times, Deleuze and the speculative philosophy of objects as processes, in: Cosmos and History, The Journal of Natural and Social Philosophy, 7, 1 2011.
same time, distance should be taken from transcendent and transcendental perspectives with their corresponding faculties.

Case-building of sustainable development should not be troubled by illusions that an old-fashioned Kantian approach can open up new horizons. Therefore it must be said: Deleuze didn’t preserve the right over the good. He preserved neither ‘right’ or ‘good.’ His time brick is a revolutionary one: his revelation that there is no being but only to becoming reconnects thought with sensation and desire. It opens up to the future and heals our fractured Us.

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64 Deleuze, G. and F. Guattari, (1987) A Thousand Plateaus, trans. Massumi, B. (Minneapolis, University of Minnesota Press, 1987) “A concept is a brick. It can be used to build the courthouse of reason. Or it can be thrown through the window.”