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PREAMBLES
to a Formal Constitution
of the Earth

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The Social Contract

0.1. The contract of one human is exposed to other versions through the process of translation of its terms (or the simple fact of language between humans), and the possible emergence of a form of *social contract* would imply a common term of other terms of other versions of that contract. This term is not a universal, but a regulative term of the inherent lack of universal terms between the humans. One manner to construe this term is given in the image of a speculative contract of all contracts, which cannot itself be realised, but for which each single version is an instance in the course of an ongoing formulation.

0.2. The human social contract is not thinkable in terms that every party could adhere to, but is thought of in the sense that terms between may be contracted to begin with. The capacity for terms to be accepted by the humans is the essence of the contract that connects them.

0.3. The community of humans is the process of negotiating terms. That it lead to disagreement between parties, who stay held to this or that specific term that would appear to be opposed to other terms of other parties, only signifies the need for other terms to be contracted. A term that has contracted can by fact of its contraction not be pertinent to everything by which the human beings are related.

0.4. The impossibility of universal terms of the relation between humans is the sense of this relation. The only universal is the term that is to come, which cannot ever be a term that has contracted.

0.5. The existence of another human being and their version of the contract – even only the idea of other versions, or the sense of possibility of worlds of other humans, if there be no other version to compare to and engage with in direct negotiation – brings the terms that are accepted into question. The question of validity of contract is a question of the term that would allow for its effective operation, or of that to which it has not come to term, or not been opened by the contract. The validity of contract is always outside the limits of a contract, or is

grounded in the process of acceptance of new terms¹. Such reference to a term that be outside a given contract, or be yet to be included in the body of a contract, is made present to its human through the presence of another – or the sense of possibility of other human beings, or whatever other case of rational being –, and thus given in the sense of other versions. The capacity to come to other terms in any human will be opened by the sense of other humans and their versions of the real to be accepted.

0.6. Freedom is inherent to the contract, not by means of any term that be accepted by the parties, but by fact of their potential to accept it.

0.7. The language of the terms of other humans – not in spite of different meanings of the words and the impossible expression of the terms themselves in language, but because there is such difference – is conducive to the drafting and acceptance of new terms. The terms are not contracted from the outside, from another human being or whatever social form or institution, but arise within the body of the contract to allow what is external to have meaning to engage with. An apparent lack of meaning in the language of another may however work to stimulate this inner operation of the contract, to allow another meaning to exist in. The acceptance of a term that is expressed in an encounter with such language may appear to be accepted through that language, but the term is that which gives that language meaning to appear so. Notwithstanding the negotiation process, in which humans come to terms with and by means of other humans, has the superficial nature of consensus and continuous improvement of the terms that open access to the ground that is between them (which will be considered as *the Earth* in this example), and the contracts would appear to be but terms within a universal contract by which every human being has been opened, and with which they all must live.

0.8. That to which each version opens access may be thought of in one version as the ground of the community of versions; in another the reality for which each term contracted is the form of an acceptance; and another may refer to it as that to which be yet to be contracted, which is present as the void that would invalidate all versions of the

¹ See *of the Contract* (Punctum Books, 2017), clause 12.2-5. A digital copy is accessible at punctumbooks.com and library.oapen.org

contract, which appear and then give way to other versions of their access, in a neverending sequence of new worlds. The question of validity is relevant to every single version, though the worlds that they give rise to be more valid than the worlds that they inter – though the worlds that are interred may be more valid than the worlds they are interred in – though the fact of being interred is also fact of implication in the worlds they are interred in, and potential to give rise to other versions (for no longer worlds themselves, but concrete facts they had enabled, they remain the unsaid grounds of the event of other worlds). A term both ends and brings a world to life.

0.9. An awareness of the void is what allows a human being to entreat the terms of that without its contract, and entreatment is to think of as the ethical comportment of a human; but the terms themselves may simply be accepted by a human, through the fact of their autonomous contraction. The experience of acceptance may be recognised by someone when a matter of concern makes sense abruptly, and appears to them distinctly.

0.10. The social institution of the contract is a construct of consensus, but consensus is a process, not a general valid statement that be equally acceptable to every human being, let alone to every human generation. The fact that there can be no absolute determination of the contract, nor a fully unambiguous investment of the terms into a language that means equally to every human being, only means that the negotiating process must continue to the only rational end that it continue. It is a strength of human language that it signifies diversely from one human to the next, for this allows negotiations to continue. The disagreements between humans are more fruitful than apparent understandings, in the sense that they result in more developed explanations of the terms, and bring potential to contract to other terms of understanding that allow the separate parties to respond to their responses. The negotiating process is a process of translation, or the functioning of language between humans.

0.11. The language of the contract is the means through which the terms may be translated between parties, and in consequence the means by which the contract is construed into a social institution, though the terms that be accepted by the parties be diverse and inconsistent with each other.

0.12. The most relevant expressions of the contract are those instances in which it is apparent that the language of the terms is not a faculty of any human subject, and the subject simply functions as the means by which the contract is demonstrable in language. The appearance of a subject in the fragile operation of expression of the terms, as if that subject were the conscious and intentional capacity to speak them, only leads to a cessation of this fragile operation, and a commencement of betrayal of the terms. For the subject is enabled by the contract it would speak of, not the contract by whatever private will that it might bring to the discussion. The negotiation process that takes place between a number of such subjects only works when it be taken as an effort of those present to allow themselves to come to other terms (with both each other and the Earth), not enforce their preconceptions to obtain a pleasing outcome, nor a compromise between competing outcomes. The process of negotiating terms is not an effort to enforce the terms, but rather to accept the terms through reason (thus to listen to and think).

0.13. The human is a subject of the contract to begin with, not a subject with a will and a capacity to formulate the contract to its own specific ends. Any formulation of the contract presupposes an original acceptance of the terms, and any will to realise any end has been enabled by the terms that are accepted (even if that fact be left behind by having consciousness of having an intention to be realised). The negotiating process is a process of accepting other terms, which are impossible to think of in the terms that have already been accepted.

0.14. The translation of the contract into language is as much of a construction of the contract as the physical investment of the contract in the Earth, although the physical investments of the terms are more susceptible to unities of meaning than their openings to language. A language may however be adapted to the purpose of constructing in the matters of the Earth between the humans, where the words are used in simple correspondence to the concrete situations of investment, and their syntax corresponds to the conjunctions and disjunctions that take place between the concrete correspondents of the names. This is an instrumental use of language. The translation into language of the terms themselves however, which allow for these investments to begin with, is another kind of reference than such simple correspondence.

Though the language corresponds to that which comes to be expressed in its unfolding, that which comes to be expressed is not an object of perception, nor an area of knowledge, but the sense of that implied in every object of perception and all areas of knowledge. The contract therefore cannot but escape from its expressions in the languages of knowledge and perception. The translation into language is significant of terms, but cannot constitute a statement of the facts, nor an objective formulation of those terms.

0.15. That the language be the language of another human being adds another complication to the problematic relevance of language to the contract. For at reception of that language what is signified is that which has allowed (or not allowed) it to have meaning, not the very terms themselves that had allowed it to be spoken by that human. However that the terms that they express be inconsistent with the terms that have allowed or not allowed what has been said to have a meaning for the listener, in the sense that the capacity for meaning is conflicted by the words, or is incapable of giving them clear meaning, then the language of the other is significant of terms that have not even been contracted, but would have to be contracted for the words to have clear meaning, and the listener to be able to respond to what they speak of. This significance may seem to be the presence of the contract of that other human being, and the terms to be contracted may appear to be the terms to be contracted with that other human being and their world; however were those terms to be contracted they would not thereby be relevant to only that relation to that human, but to everything to which could be related, and that other human being may not even be involved in any subsequent encounter. The relation between humans is an absence of relation which brings every human being into question. The language of the other speaks of that to which be yet to come through terms, and there will always be a gap in the translation.

0.16. Its immediate translation is the point at which the contract is most visible or present in the world, for it is here that it determines in the manner of its own determination, or how this same determination is demonstrable in language. Its translation into words that stand for that which give them meaning is a process that is relevant because it is a process, not an effort to arrive at one clear version to refer to as the source of its continuing construction. Every instance of translation is a singular example of the nature of a contract, which could never be

contained by any version, for the terms that give the meaning to the words of the translation are as transient as any written sentence on a page, were it not that it were written by a hand into a substance that remains for other readers, or sounded by a voice that may remain within the memory of a listener, or the file of a computer when it ceases. It is here that a translation, in the fact that it remains to be revived, is most misleading, for the terms that it translates were only valid in the instance of translation, as the singular conditions for that singular occurrence of translation. That which is implied in every singular occurrence in a world, as what allows it to be present and have meaning, cannot in and of itself be something present to reflect on, like a sentence on a page, or a flower in a garden, or the bee that comes in contact with its stigma. Yet the fact that its translation has remained as such a record of its brief determination, and exists as an example of the way in which it functions to allow for its appearance in the world, may lead the reader or the listener to another operation of the contract, to produce another version of its terms. That the sentence on the page have any meaning must imply an operation of the contract, which is not the operation it translated. Thus the presence of the text may be more present for the reader, and result in a more just and more dependable translation. The translation of the terms thus leads to terms to be translated.

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0.17. Humanity implies a formal competence to accept the terms of reason. To be human therefore means to be a party to the contract – which is not a set of terms that open access to the world for every human, but a process of contraction, or a limitless potential to contract the terms of reason. Freedom is the freedom to contract, which is inseparable from the void that is inherent to the terms that have already been contracted. The freedom to contract is the autonomy implied in human being such that it is free to come to terms with that which cannot be an object of its will. It cannot will these terms, and its autonomy consists in its acceptance of the contract (the autonomous contraction of new terms), which however then allows it to respond to or engage with that to which it has been opened by the terms. Freedom is implied in every subject to the contract, not by fact of any term that has contracted, but by fact of their potential to contract. Any term that specifies this fundamental freedom is a term of understanding of the

contract. A human in itself is as impossible to determine absolutely as the contract it has entered.

0.18. The freedom to contract is not the freedom to decide to enter this or that arrangement in which something will be given or completed in exchange for something given or completed on the other side, for such is either entered or not entered on the basis of the terms that have already been accepted; but the freedom to accept another version of the contract, through an instance of contraction of a term that would decide another world of possibilities. The autonomy of contact is not freedom to decide, but the capacity for terms to be accepted.

0.19. The potential for autonomy in every human being is the nature of the contract that has opened it to being in a world, and between the human beings is the ground their worlds have separately in common. The disagreement between terms of separate contracts to that ground, and thus the tension and the conflict this creates between the humans, is conducive to the terms of other worlds in every human. The disagreement between humans only signifies the need and the potential to accept a new agreement.

0.20. The community is that to which each self be in relation to begin with, in the sense that it be that to which, and that in which the self be that relation. The relations to the other, which are also the relations to the same, although it cannot be contracted as the same through all relations, are themselves in their relations to each other the potential to negotiate new terms. The presence of alternative relations brings the self of each relation into question. The negotiation process is not simply thus acceptance or rejection of the terms of other humans, but an openended question of alternative relations, or of terms that may contract in any human for another. It is a mutual facilitation process of acceptance of the terms of that to which the separate contracts are inadequate relations.

0.21. The qualitative terms of social contract, which is not therefore a synchrony of terms that human beings have accepted (or that every human being could in theory have accepted), but is rather an unlimited capacity to formulate the terms of that in common – like “inherent right of everyone to everything”, and the consequential peace through

“laying down of rights to everything by everyone”, etc.² – are to understand as stages of an endless reconstruction of the human social form. “The right of nature” is not given as a consequence of reason, but is revealed by a specific term of reason, which brings consciousness to that which was already in effect, and thereby opens to another kind of real to be contracted. “The categorical imperative” is in reference to this limitless capacity and ongoing formulation of the terms of that in common, or a statement of the nature of the contract. That specific formulations of the terms that are consistent with its universal principle are in every case empirically determined, thus contingent formulations, has to mean that they are not in fact consistent with this principle, and the only universal has to lie in the ongoing need to formulate the terms.³

0.22. The intersubjectivity that constitutes the contract is not grounded on the fact of common terms between the parties, but consists of the communal possibility of contracting other terms that draws between the terms contracted through the parties, which possibility for terms to be contracted corresponds to the idea that terms contracted open access to a common ground between them, which is given as the Earth in this example. That the parties to the contract be materially implied in such a ground also implies that the translation of their terms into contingent formulations of their language opens access to that ground itself as well as to their access to that ground. The material expressions of the language of their terms are to be recognised as part of the condition of the Earth that they refer to.

² Hobbes, *Leviathan*. Reason for Hobbes is taken as an instrument for achieving the objectives of desire (for security and peace, for example), with reason having no ends in itself. But the primitive terms that constitute desire could be considered as condition for the later terms of reason not as purpose for, but that which has enabled their contraction, by which reason could be thought of as an end within itself. Though it have no ends, the facility of reason is a limitless potential to interpret and uncover other ends for that which is, and this includes the motivations of desire. If this be seen to be a planetary force that has potential to transform the Earth through blindness, it may serve an opportunity to reason to reveal another end for it in shaping an ongoing constitution of the planetary form. However this in turn could be reduced to a fulfilment of desire to live in safety on the Earth, and it is yet to be decided whether reason can find ends in human being that be not at base its own continuation and enjoyment. All that it is left with is the task of voiding ends for other ends, which may bring end to human being as we know it. The universe itself may be considered without end, and it may be that it will find in this interminate condition its own reason to continue and expand in.

³ If, according to Kant, the causality of freedom be not subject to the laws of the causality of nature, its realisations in the contexts and conditions of those laws may be regarded as the signs of other nature that implies the interventions of the rational in the laws of its causation.

0.23. That the humans could agree to such a statement as “the Earth is that in common” does not mean that it would signify the same in every human understanding, and a common definition of the terms that it implies would only open up between them as the endless task of renegotiation. Such a task however constitutes the essence of the common, and the bond that holds the humans to each other.

0.24. One qualitative term brings an inversion (or development) of the term of natural right of all to everything (in accordance with which term no human being had exclusive right to anything on Earth, but could procure a thing by force – which right was wholly sublimated by the terms of social contract into formal rights of property and liberty –) into the right of all to everything implied in the condition for a possible existence on the Earth, which may be thought as *the condition of the Earth itself*, implying there can be no formal right of any human to possession of a single mote of Earth. (The Earth is not the planet, but its living constitution that enables and maintains – for example through the biogeochemical regulations of the atmosphere – the conditions for the human to emerge, and for its living constitution to continue.) This recognition of the groundlessness of property, and freedom as defined by such a right, implies as well a reconception of this fundamental term of human freedom in the Earth. The so-called law of freedom, by which any human being may do anything they like as long as doing what they do does not impede that any other may do anything they like, may be extended to the Earth as the condition for this freedom to begin with: any human being may do anything they like as long as doing what they do does not imply that the conditions that allow them to do anything at all be undermined or contradicted. The economic form that could emerge from such a freedom may be thought of as the form of Earth itself, and the growth of such a form would be an increase or improvement of conditions for such freedom to continue. The coercive force to guarantee this form would be the force of Earth itself, in its potential to bring end to human being.

0.25. The Earth contracts the humans through their reason.

0.26. The community is not what is agreed by all to constitute relation between humans, but condition for relation to begin with. This is also the inherent insufficiency of any one relation, and the need to come to terms that it gives sign of. That an origin take shape that human beings

understand to be the ground on which to build their common story, as an openended project to continue, is a signal of the void that it came out of. The only work in common is the renegotiation of the terms of their relations, in awareness of this void that will inevitably bring end to their constructions.

0.27. The idea of an origin of contract that allowed a social order to emerge from a preceding “state of nature” has no relevance outside the terms contracted in last instance. The supposition of a first origination of the contract is not needed in the light of its ongoing operation.

0.28. The association of the terms of human being, through the process of translation, not a synchrony or system of the terms, is thus the sense of social contract. This free association of the terms is the negotiating process, which arrives at no definitive formulation on which every human being could agree, but allows for the appearance of new forms of social meaning and construction, and opens to consensus on the nature of the ground of the appearance of those forms. In the latest social construct this consensus may emerge in recognition of the finitude of Earth as the condition for the contract to be able to continue, to the extent that this condition for the contract be accepted as an image of the contract, or the form of Constitution that unites them. That the images of Earth be as diverse and irreducible as the beings it conditions, in the sense that every being of the Earth be an example that expresses a totality of Earth that is consistent in itself in separation from the other irreducible totalities of Earth (though each totality imply a whole of Earth that may be thought of as including every one of these unique and incommensurable examples in the fact of its material foundation), is analogous to the nature of the contracts that allow for their appearance. The conception of the Earth as the material condition for their beings to begin with may in consequence be taken as the symbol of the contract that unites them. The whole of Earth is only a contractual ideal that may be thought of as implied in every being of the Earth.

0.29. The risk of social contract is the risk that the acceptance of a term lead to assumption of that term as universal, and confusion of the contract with that term. This is a risk not only of a tyranny of humans over humans, and of humans over Earth, but more importantly of incapacitation of acceptance of new terms that would allow for the

survival of the human, or the keeping of the Earth as the condition for the living to continue.

0.30. The text of a translation of the terms would be an instrument for further formulation of the contract, not a standard to refer to as applicable to every human being and their context in the Earth. It would be an instance of construction of the terms, and not a record of the terms of what is common. It could only be accepted as a common work of mutual translation and improvement, or an instrument for thinking an ongoing Constitution of the Earth.

0.31. That the terms of social contract be consistent with the being of all humans on the Earth, and the Earth as the condition for the being of all consciousness and life (which are implied in this condition, as conditions for it being their condition), is the criteria for acceptance between humans and each other, not the fact that they be actually accepted by all humans on the Earth. No contingent fact of a majority of humans could decide on the condition for all humans, for the fact that they exist implies the fact of this condition to begin with. The terms of their existence on the Earth are not agreed by every human, but are those that could in principle agree with the condition for their freedom to be able to accept them. No concrete term is able to fulfil this absolutely.

0.32. The human social contract does not constitute a world in which the Earth may be agreed on, but emerges from the fact that human beings have already entered into a plurality of worlds in which the Earth is held in common. That the Earth go round the Sun was not determined by consensus of the humans, but the humans could arrive at such consensus on the Earth because they found themselves already in such worlds in which the Earth went round the Sun.

0.33. It is perhaps more difficult to think about the contract without Earth than Earth itself without the contract, though there be no thought at all without the contract. That the Earth itself embody a conception of the contract, which be stated as “the Earth between the humans”, presupposes a specific operation of the contract. Though the Earth may be considered as a model of description of the contract, it is also an example of innumerable examples of particular construction of the contract.

0.34. That the Constitution of the Earth be a construction of the contract, which as that which is implied in both the presence and the meaning of all things cannot be present or have meaning in itself as something in the world, for even an apparent demonstration of the contract is a presence that implies an operation of the contract, and is not that operation in itself, but its construction; is analogous to the notion of the Earth as a particular example of a universal law which is not visible itself except by means of its innumerable examples, which may never be equated as identical examples, and include both Mars and Venus as the closest and most visible examples of such law besides the Earth. It could be said that the distinction of the Earth besides these others is the fact of its existence as a living constitution, but this cannot be excluded from the law for which they constitute examples. However this analogy is only an analogy deriving from a process of construction of the contract, which in principle is open to an infinite variety of such singular empirical constructions, and may never be contained by any one. This variety is not the same as limitless examples of a universal law, for though that law be seen to represent the fact of the material existence of a universe outside it, such a law implies the contract, and although this would appear to be implied in the existence of the universe itself, the universe itself would not be open to its law without the contract. If there be any kind of universal term that be inherent to the contract it could only be a term of operation of the void that would make void all universals.

0.35. The only instance of the contract yet uncovered in the universe is the contract of the human, yet the human is an outcome of the contract, not the contract of the human. The human is the fact of an acceptance of the contract, and the site of its emergence on the Earth. Were the limits of the human to be clearly demarcated, thus the limits of capacity of the humans to accept the terms of reason, this would not define the contract they were able to accept, nor the nature of another kind of entity that be able to accept it, nor what any other fact of its acceptance in the future might reveal about the universe it opens up to consciousness and reason. Any knowledge of the contract is a knowledge of construction of the contract, not a knowledge of the contract in itself.

0.36. The Constitution of the Earth is a specific application of the contract, which remains, and must remain, as the condition for the presence and the knowledge of the Earth as such, implied in but not present in the nature of the Earth as constituted. However in relation to itself as an idea the contract constitutes another fact of Earth that has emerged out of its substance, and implies the laws of nature, not as source of their initial and ongoing formulation or discovery, but as being of the nature of a law that it may open to some later formulation. For the contract is of Earth as much as Earth is of the contract for the humans. That the contract be not present in the Earth for human being to engage in in the manner of its physical appearance, as the immanent condition for the presence of its physical appearances themselves, and not as known but the condition for all knowing of the Earth, the question of how valid the appearance of the Earth is to the humans (through the many single versions of the contract) will be relevant to every single detail. Though the Earth be something given to the humans through the contract, it cannot constitute an object of closed reason, nor a single unambiguous construction. The contract opens to that open-to.

0.37. That which unifies the humans on the Earth is not their contracts with each other, but the ground to which their contracts open access – or the Earth itself between them. That their contracts be implied in Earth as far as in the possible appearances of Earth to human beings and their instruments, and these beings and their instruments be implied in the material condition of the Earth itself as such, and that the Earth itself appear to them uniquely, through their versions of the contract, in as many different worlds as there are humans on the Earth, means that the Earth itself includes its understandings and diversities of images and lifestyles and beliefs in that which constitutes the ground of their relations. The errors and ideals of human beings therefore have to be respected as pertaining to the real to which the humans (as a whole) must come to terms.

0.38. That the Earth itself be in itself outside the Earth that humans have contracted, is revealed in the contraction of new terms that they facilitate between them in each other. Though the terms of their relations be not present on the Earth like clouds and mountains, their relations to the Earth are heard concretely in the statements of their language, and it is through these facts of language that the contracts

with the Earth may open to it. This opening through language is the manner to negotiate its terms, and this negotiation process is itself the social contract.

0.39. That the Earth be in as many worlds as humans on the Earth does not imply that Earth be wholly inconsistent with itself between those worlds. That a statement such as “Earth is like a sphere”, or “Earth is orbiting the Sun”, or “Earth is finite” be acceptable or correct in a majority of worlds is an explicit demonstration of the fact that there are common terms implied in the coherence of those worlds, and that the Earth be in itself without their contracts. That these contracts be implied in the existence of the Earth as it be in itself without them also means that they will have to come to terms with having come to terms already.

0.40. Also the Sun binds human beings to each other. It is also *that between* to which each human is contracted, and by which they are contracted to each other. The term of Earth that binds them to the Earth implies the Sun to which the Earth itself is seen to be contracted, and by which it stays contracted to itself. The terms of social contract are the secondary forms of resignation to these terms that bind already, which are not to understand as they be in themselves without the terms of contract. The acceptance of those terms could have as many variations as the human individuals to which they have been offered, but only those that function to allow their operation to continue (and for other valid terms to be contracted in the future) will be acceptable as forms of valid contract.

0.41. A breach of social contract, in the form of a fixation of such terms as “human liberty” and “property”, “the market”, and “electoral democracy”⁴, which are understood to constitute a self-consistent system that could guarantee the life of every single human being, in the sense that such a breach is a cessation in the process of negotiating terms, has resulted in a general degradation of conditions for the human social project to continue, having failed to take account of them

⁴ A principle of democracy that accords with the condition of the Earth, or which expresses the condition for ongoing constitution of the planetary bounds as they be understood as relevant to life, as life be relevant in turn to this continuing condition, is explored in later sections of the book this essay serves as introduction.

as that on which their guarantee depends. This breach of social contract may be thought of as a breach of the condition for the human.

0.42. The fear through which new terms of social contact of the Earth may come about appears no longer that between the human beings of each other, but a fear for the conditions of their mutual existence on the Earth. The war of all against all is not a war between the humans, but the violence of the Earth against the human, as an outcome of the violence of the human to the Earth. The only way to end such total war is through contraction of new terms of understanding to invest in that which threatens to destroy the human being and the contract, which is also that which holds them and unites them. Other terms of social contract may translate the state of nature of the Earth into the sovereign that determines the validity of law through terms of reason.

0.43. The idea of the void as that which corresponds within a world to that which be without it, or to that to which be yet to be contracted – the interminate without for which there be no clear conception, but which signifies a threat to the consistency of things that be in this world or another – is a principle by which the human beings may entreat new terms to enter a relation to that threat, by which that threat will be revealed as something given to make sense of and invest in.

0.44. To negotiate the terms of Constitution of the Earth is an ongoing application of the contract, and the task of constitution has no end beyond a possible ongoing constitution of the Earth in which the human may continue to contract to the conditions of existence.

0.45. The significance of the human is as open to revision as the contract that defines it.

Preliminary Draft of Constitution

1.1. The contract cannot constitute the ground of all legitimate lawgiving, but allows the pre-existing constitution of the Earth to be accepted by the human.

1.2. The contract is a process that facilitates transition from the living constitution to a formal Constitution of the Earth to guarantee that the conditions for the human can continue.

1.3. The Constitution of the Earth is not agreed on by the states and other so-called representatives of peoples of the Earth, but is for every human being to accept as the condition for its own unique existence. The negotiation phase is first a process of resistance to an ultimate acceptance of the being of the Earth as the condition for the human, thus the need for an agreement of the human with the Earth.

1.4. The Earth that is in common is not consciously decided by agreement of all humans, through some form of global contract, but is opened to each human who accepts its pre-existing constitution. That this come to be accepted on a planetary scale by the majority of humans may in future be interpreted as grounded on a singular agreement for ongoing habitation of the Earth, and for a form of Earth-in-common, but the Earth precedes the forms of social contract.

1.5. The Constitution is enacted not through terms that human beings have been able to agree on, but is recognised by humans and accepted in those terms.

1.6. The Constitution is not a deliberate recreation of the Earth for human being, or the design of an alternative formation of the Earth to guarantee the habitation of the human, but an ongoing recognition of the being of the Earth as constituted, and already the condition for the human and its legal institutions. The formal Constitution thus allows the Earth to be not this or that imagined Earth, but to simply be the Earth that has a reason. The human speculations on the future of the Earth are also of the Earth itself, and so included in its concrete constitution. The Earth thereby facilitates its own facilitation through the human. The recognition of this recognition in the Earth is not

fulfilled by recognition of that very recognition and so on into an endless and unfounded chain of consciousness of consciousness, but is the legal recognition of the void that means that total recognition of the Earth is an invalid proposition to begin with. Which is not in turn to lead to recognition of an impotence of thought, but to ongoing recognition of the need for further thinking. The form of a totality of Earth will be implied in every single recognition of the Earth not as its substance, but a rational imperative to leave each recognition as a stage in an ongoing undertaking to allow the Earth to be, or to account for its dimensions and think through it.

1.7. The Earth-in-common is the ground of any number of autonomous existences that implicate the Earth in their own manner, so that the common have as many different shapes as there are versions of the contract, and the term that is agreed as “Earth-in-common” is not relevant to any concrete state or special nature of the Earth, but is a principle of thinking Constitution with which every single version of existence in the Earth should be consistent.

1.8. A realisation of the common, in the sense that it be given in totality to humans to take part in, in the form of perfect law to be adhered to by all parties, or the form of an objective understanding of a total constitution of the Earth in which each party has a role, and every region of the Earth a legal status to conserve, would be the total dissolution of the common, and a breach of social contract. The Constitution of the Earth is not the form of a totality of Earth that would include determination of the single interactions and -dependencies of parts, but is the *principle* of being in accordance with a possible consistency of Earth as the condition for ongoing constitution. This consistency of Earth is an ideal of Earth, and not the Earth itself, which cannot constitute the object of a total comprehension. It is the regulative principle of being in the Earth in such a way that this accord with the conditions for continuing existence in the Earth. It is only in the need to come to terms that the community of thinkers can be founded.

1.9. The term of Constitution is the concrete implication of the contract in the Earth, and a conception of the Earth on which the humans could continue to agree, which would ground another nature

of the Earth through the emergence of the laws of the investment of the human.

1.10. The law is an emergence of the Earth through which the Earth in turn emerges.

1.11. The Constitution is not law itself, but is the principle of valid legislation. This principle implies the Earth itself in its material foundation, and the rational condition that the laws of Earth must realise to be validly enacted. This rational condition may be stated as “a law will be deemed valid if it does not contradict the possibility that thinking be continued in the Earth”; however it is not a simple statement of this kind, which is but one of its examples, but an absolute imperative to come to terms of reason with the Earth as the condition for that reason to begin with. This condition may be stated in an infinite variety of ways, both in itself and its relation to the Earth as the material foundation of the laws that it conditions, and which guarantee in turn these same conditions. It follows that the principle of law (or Constitution) is an immanent relation between reason and the Earth. This relation is in every case empirical in nature, but cannot be contained by its empirical examples.

1.12. The formal Constitution is a positive decision for an Earth that human beings could agree on – for example for an Earth that have a reason – but this positive decision has the form of an acceptance of the pre-existing concrete constitution that allowed it to have reason through the human. Reason is a quality of Earth that has emerged through human being in the Earth. The reason of the Earth becomes the reason for the Earth through the acceptance of the terms of Constitution; or the reason for the Earth is made inherent to the Earth through a decision to enact the Constitution. The reason of and for the Constitution is the reason of the Earth as the condition for all reason.

1.13. The Principle of Earth as the Condition for all human legislation does not specify particular material conditions, nor particular characteristics of the regions and the layers and the systems of the Earth to be supported and maintained through a collective human being, but is simply the *criterion* by which the concrete factors of the Earth may be accounted and determined. Earth as principle is not therefore the Earth as it appears in one perspective or another – even that which would

appear to be an image of the Earth in its entirety, like a photograph of Earth that has been taken from its outside, which is part of Earth, and functions in the Earth – but the juridical condition by which each of its phenomena will be deemed as either being or not being in accordance with a possible ongoing constitution of the Earth with human being.

1.14. The Principle of Earth is an emergence of the contract, or an expression of the fact of implication of the contract in the Earth. The contract is not present, but is signified in that to which it opens, as the Earth itself is present in the structures and occurrences that come to pass in Earth, but is not present in itself. An image of the Earth is thus a symbol of the contract it has opened, and which consequently opens Earth to humans.

1.15. A thought that were consistent with the Principle of Earth would be a thought that thought this principle more clearly, and so made it more consistent with the Earth as the condition for its thinking to begin with and go on with.

1.16. The Principle of Earth is the condition for lawgiving, and the laws that pass according to this principle will constitute the form of human being on the Earth. It is a rational conception of the concrete constitution that allowed the human project to emerge, and is implied in turn into this apriori constitution, through the process of conception by the humans. Law transforms the constitution of the Earth that it comes out of, by investing human consciousness in that which is already its condition, and allowing it to be as such continued through investment.

1.17. There is no necessary law of Earth, but a necessity for laws that be consistent with the Earth as the condition for the law to be continued (with “the law” being both the image of and means for the community of humans). This necessity for valid laws can only ever lead to an ongoing legislation of the Earth, because each law is a contingent and empirical realisation of a finite understanding of one version of the Earth. The legislative process is not conscious formulation of an Earth for human being to exist in, but is rather an ongoing human effort to conform through understanding to continue. The laws of Earth can only be acknowledged, not decided by the humans – though the

legislative process presupposes a decision to continue to exist on Earth together, this decision is enabled by acceptance.

1.18. The Constitution of the Earth is therefore given in two senses: the pre-existing concrete constitution of the Earth to be accepted by the humans; and the formal Constitution that arises through the process of acceptance of its terms, as the rational Condition for the humans to continue to agree on in the terms of Earth that come to be contracted between humans. The second sense is relevant to the pre-existing concrete constitution, but emerges in a context of this concrete constitution, in the midst of which this very constitution has appeared and been accepted through the contract. It implies and is implied into the very constitution it came out of. The formal Constitution is the concrete constitution of the Earth as it is recognised and formalised by humans. The merging of the senses is the sense of its emergence.

1.19. The two sides of the Condition are the principle by which all law be validly enacted on the Earth (“valid on condition that...” etc.), and the material condition of the Earth that has allowed for the appearance of the law (“the coherence and stability of the regulative systems as autonomous conditions for...” etc.). The first may be induced from to ensure continuation of the second, in the light of its emerging dissolution, through the laws that it determines as invalid, and the widespread illegality of humans in relation to the Earth. The two sides of this Condition correspond to the two sides of Constitution, but the order of emergence is reversed: the Constitution is the Earth itself as it implies the recognition of the principle of valid legislation of the Earth, therefore it follows the emergence of that principle on Earth through human reason, or the process of negotiating terms of social contract. Constitution and Condition are two terms of designation of the Earth for human being, the coherence of which terms describes the Earth in a new phase of evolution.

1.20. The form of Constitution cannot specify the content of the laws that pass within it, nor the particular procedures for the passing of new law, and any legal system would be simply a construction or investment of the terms of Constitution. Such would constitute a concrete guarantee of the Condition of the Earth, but not the ground of the validity of laws that pass within it. No law can be considered universal, though the universal form of Constitution be the ground of the validity

of every law of Earth. The empirical nature of the laws that pass between the human beings necessarily precludes that they attain to universal application. There can be no single law nor jurisdiction under which all other laws will be subsumed, and any number of new laws and jurisdictions may emerge in the ongoing quest to formulate a valid form of law.

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1.21. There can be no jurisdiction for the whole of Earth, but Earth grounds any number of specific jurisdictions.

1.22. The jurisdictions of the Earth are irreducible dimensions of its concrete constitution, and may open in, or over, or beneath its pre-established jurisdictions. Every one is an example of relation in the Earth, which is consistent in itself – though it contain, or be contained, or be coincident with other jurisdictions. A law is both a knowledge in the field of one consistent jurisdiction, and its concrete application through the same, and the material effects of this internal application may result in the emergence of attendant jurisdictions. The connection and dependence of two separate jurisdictions may arise in the emergence of a third.

1.23. A jurisdiction is not given as a predetermined space in which to exercise the laws that are determined, but as an opening of research and reflection that conforms to a dimension of the Earth in which the laws that have already been established may be deemed as either valid or invalid, and new laws of understanding may emerge. The emergence of new laws may open novel jurisdictions to find law in, and dissolve the jurisdictions they emerge from. The laws in any single jurisdiction will be relevant to that which is within it, but may also be decided in accordance with the laws of jurisdictions that are open either inside or outside it. A jurisdiction over flight paths, for example, may exist within the many jurisdictions of the atmosphere, and the laws that pass within it may imply the laws relating to the contents of the atmosphere, or the other forms of transport, in accordance with the concrete constitution of the Earth as the condition for the freedom to take flight and travel round it.

1.24. A jurisdiction is not limited in terms of geographical isolation from the territories of other jurisdictions, so that the sum of jurisdictions could be figured on the surface of a map as an arrangement of adjacent spatial regions, which would only overlap through the specific disagreements of shared borders; but in terms of their consistency of function and conception. The dimensions of the Earth that ground the separate jurisdictions may be immanent to Earth as well as closed within themselves, and they may permeate each other without touching. A single jurisdiction may extend to every section of the surface of the Earth, without exerting its validity on all that lies within it. The borders of the Earth are drawn by qualitative terms that are internal to and carried by its territories themselves, not by external limitations that enclose them from the outside in a quantitative measure of the Earth. The territory of a single human being is the whole of Earth in one unique relation.

1.25. The Constitution does not generate the laws and institutions of the Earth, but is a principle of critical reflection on its laws and institutions to determine if these laws and institutions be consistent with the being of the Earth as their condition. The condition of the Earth is what allows for legislation and investment, and the laws and the investments that take place in Earth are valid for as long as they are deemed to be consistent with the sense of this condition by being able to maintain it. To invest in the condition is a manner of adherence to the same.

1.26. “Unconstitutional” means against the Earth itself as the condition for the human to be able to continue to imagine the improvement of the same. The writing of the law is constitutional in such that it be grounded in the Earth, and also part of the emergence of that ground.

1.27. The layers of the Earth may be interpreted as laws of the formation of the present Constitution, and the fact that they inhere still to the Earth is not a consequence of having still validity as law, but of their status as a record of the precedents that signal and inform the legislations that take place on Earth today. The internal regulations have been written into rocks and other layers through the ages, and require an understanding to construct on.

1.28. A tree cannot be subject to the formal Constitution of the Earth, but is a singular constituent of Earth. Although the Constitution be accepted through the human, the constituents of Earth are of all natures. The constituents of Earth include the laws that set new limits in accordance with the pre-established limits of the Earth, and the technologies that function in accordance with these new and pre-existing limitations, and which alter them to bring about the need for other laws. The laws and the technologies of Earth are as substantial to the Earth as its tectonics, and the mountains these give rise to. The formulation of a law will be consistent in itself as an expression of the Earth in its last instance, and a text of formulation as substantial as the graphite in the pencil that has traced it, and as functional to Earth as the formation of the clouds that it refers to, for example.

1.29. The sovereign is the Earth that is in common, but the sovereignty of Earth may be conceded to constituents that have to both submit to and extend the very sovereignty with which they are invested. A single sovereign figure of the Earth is only sovereign in the instance of validity in which it has appeared, and is not sovereign in itself but in accordance with the Earth that it comes out of. Every sovereign figure is a figure of the Earth, which has to cede to other figures of the same. The sovereignty of Earth may be embodied in a scientific network, a single thinking subject, or an instance of the general human will, and in a multitude of unattached inanimate constituents at any given moment. A law may be considered as both subject to and actual expression of the sovereignty of Earth that grounds the law.

1.30. The Principle of Earth cannot be stated as the content of contingent formulations that take place in any region of the Earth. As condition for ongoing legislation of the regions of the Earth it also cannot be fulfilled by the contingent states of Earth, but is the principle by which contingent states may be determined in the law.

1.31. That the writing of a formal Constitution be example of adherence to the principles themselves that it expresses, and its necessary failure to express them in contingent formulations, with the sense of its adherence being the fact of a continuing attempt at formulation, notwithstanding the inexorable results of failed expression, is a symbol of the project of producing an enduring Constitution of the Earth for human being. For the Earth itself that

stands as the condition for the formal Constitution is not present in empirical descriptions of the Earth that may be written in such document, and the knowledges of Earth that it contains would be provisional to other kinds of knowledge that they signify diversely. The writing of the laws will be as held to the Condition as the human interventions and investments into Earth that they are written to determine.

1.32. A formal legal text is to interpret as a single emanation of the Earth that it applies to. The diverse interpretations of the text may alter Earth in ways that cannot be prescribed in its initial formulation, and although the text itself be a particular expression of the sovereignty of Earth, it may be voided by the Earth that it has opened.

1.33. A written constitution is not ground of the validity of laws, but is the formal recognition and acceptance of the pre-existing ground of valid law. No text of Constitution could equate to the Condition that allows for human writing to begin with, however as a form of the emergence of the Earth it has emerged from such a document could come to be implied in the existence of that ground. That it be written in accordance with the sense of the Condition of the Earth for human being could in other words contribute to a possible improvement of that very same condition. Such a text would be implied into the concrete constitution, but not constitute its form.

1.34. The writing of the Constitution is not only an attempt at formulation of the principles of valid legislation of the Earth, but attempted in accordance with those principles for which it seeks expression. These principles are not themselves determined to begin with, but the language of the text is the location of their first determinations, which in consequence can only be continued to improve on. The formulations are to signify in such that they adhere to the Condition of the Earth, in that the writing in itself proceed by way of its adherence to the same. The Condition could be stated as the need to be expressed in such a way that its expression could improve the said Condition, or contribute to its clearer, more effective formulation in the future. The imperative to write the Constitution in accordance with its principle thus opens this same principle to Earth.

1.35. It is not in laws themselves that the ideal of Constitution is fulfilled, but in their endlessly improving formulation. A single law may signify the sense of its validity as law, but never realise this validity itself. But until a better law can be established, an invalid law may stand between the humans. The human institutions are legitimate in Earth not by adherence to its ideal Constitution, but by continuing attempt to meet that standard.⁵

1.36. A law may have no actual validity outside the single era of the Earth in which it came to be enacted, but as that which has been passed it is irreparably the one that has been given to emerge from (or simply to return to and reflect on). The respect for prior laws is mostly owing to the fact that they were passed as they were passed, and that their general applications had resulted in material expressions that would have to be determined by the forms of other law. That one law and not another be enacted at one time will be a fact that gives that law ongoing relevance to Earth, for such an act cannot be altered, though it can be written over. That a prior law be shown as inconsistent with the principle of standing in accordance with the nature of the Earth as the condition for ongoing legislation cannot alter its enactment, but may lead to the enactment of a law that be consistent with this principle, to abrogate that law. The law as it now stands is without ground – or is significant of grounds of other law.

1.37. The term of Constitution and the term of the Condition are contractions of the two distinct dimensions of the so-called modern Earth – in simple terms: the natural Earth, and human culture – into one consistent planetary union. This is not a fact of thinking and technology being integrated whole into the Earth conceived as nature, for the human has always been of this nature; but the fact of recognition of this fact, and that this fact of recognition has requalified the nature of the Earth (and of the human).⁶

⁵ Plato, *Statesman* (297a): οὐ γράμματα τιθεῖς ἀλλὰ τὴν τέχνην νόμον παρεχόμενος, “not writing laws, but making knowledge law”, as long as all of us be captains of our ship, or the many sovereign weavers of our fabric, and this fabric be in endless need of terms of other knowledge to construct with.

⁶ Which is not to then extend the human competence of contract to the rest of earthly nature, but also not to then preclude that it be able to emerge outside the human, which in any case is subject to a process of ongoing termination through the contract.

1.38. Technology is not distinct from nature, but is nature that implies a recognition of itself. Technology is not the facts or objects of technology, but the fact that there be consciousness in nature, which then opens up that nature. The technical investments into Earth are as internal to the Earth as the materials in which they are invested.

1.39. One might imagine the first tools as primate hands, which had been gradually released through recognition of their nature to the freedom of the air, through the medium of which they could continue to facilitate the nature they emerged from. The terms that had allowed them to reach out and grasp their meaning were not given in the nature of the body they came out of, but the limits of their nature were the ground of recognition of their usage. Thus the contract had allowed them to emerge as human hands, but this had happened through a process of acceptance of a pre-existing nature, which acceptance then allowed it to reveal another nature. The same may be imagined in relation to the limits of the Earth: though technology transform it this is opened in the Earth, and presupposes the conditions of the Earth.

1.40. The law is but one form of the technology of Earth, and but one manner to conceive its constitution.

1.41. The disposition to the universal, or the absolute imperative to formulate such laws as could apply to all examples, which has characterised the task of social contract, necessarily exceeds the finite nature of the Earth that it comes out of. The Earth remains a single and contingent application of the contract. It cannot be determined if the Earth will be a factor in the future of the contract, nor even if it had been in the fact that it emerged at all to start with. On the other hand the fact of the emergence of the contract through the Earth is simple proof of the existence of the contract in the universe, even if this cannot be considered a specific demonstration of a universal law that be the contract. The fact that it be able to emerge on Earth proves only that the universe allowed it to appear, not that the contract be a necessary feature of the universe at large. There is however nothing to dispel the possibility that the contract cause itself to be such law.

1.42. The impossibility of thinking the beginning of the universe may be thought of as according to the principle of reason that has come to be conceived of as the void. The invalidation of the origins on which

the human being has constructed its survival, is the opening to other social forms and common histories. The beginning is revealed in termination.

1.43. The implication of the human in ongoing constitution of the Earth is not its power to design an Earth in order to accommodate all human aspirations, but its limitless capacity to formulate the terms of Earth itself as it accepts them. The ongoing guarantee of its ongoing constitution is the void in the agreements of the human, which is signified on Earth in their perceptions of the possible extinction of the human. The void however constitutes the ground of other functions to avoid this.

1.44. That the Constitution be the essence of an eon of the Earth, in which the thought that Earth gave birth to will give birth to Earth itself, in a process of increasing self-awareness of the planetary form; or the fact of an emergence of a law of the emergence of the universe itself; or the condition for an infinite expansion of the mind outside the Earth; or just a fictional pursuit to be continued to the end that it has coming, are examples of the reason that the formal Constitution may allow a human being to invest into the Earth, but they are not themselves its reason. The formal Constitution is the simple guarantee of the condition for all reason.

1.45. There is no other end to Constitution than ongoing constitution – irrespective of the ends that it enable.