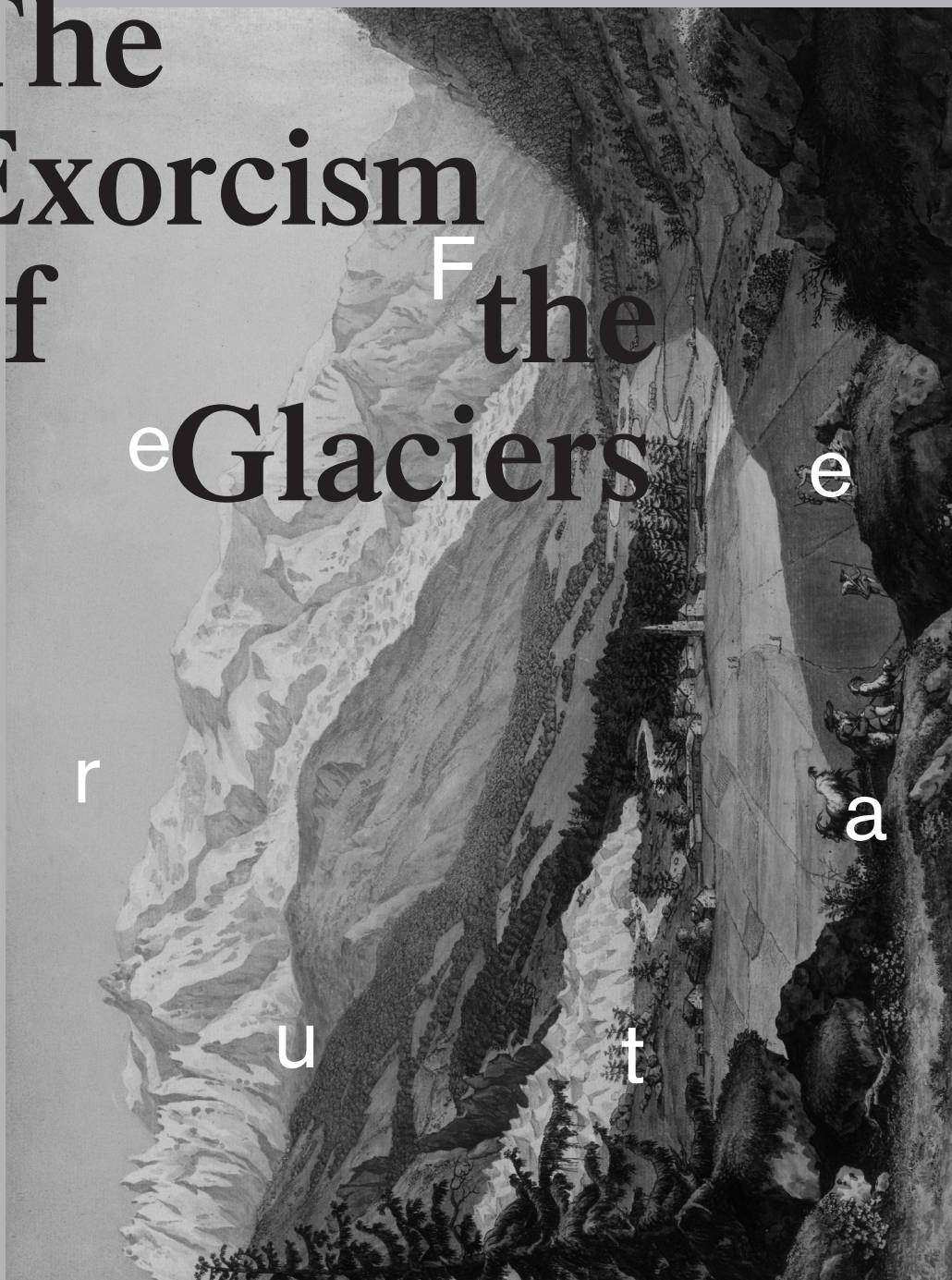


Andrew Toland

The Exorcism of the Glaciers

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The Alpine glaciers are almost gone, at least relative to the time-scale of their ten-thousand-year-old existence. By some estimations, they will almost entirely have melted away by 2030.¹ Some Swiss residents have even resorted to wrapping them, Christo and Jeanne-Claude-like, in blankets in an attempt to slow down the summertime melts.² However, this essay considers a series of earlier moments in human-glacier interaction from the seventeenth century, and more particularly the interpretations given to these events in the late-nineteenth and early-twentieth centuries in the context of ethnographic and legal scholarship, especially in a seminal paper by the University of Pennsylvania classicist Walter Woodburn Hyde, titled “The Prosecution and Punishment of Animals and Lifeless Things in the Middle Ages and Modern Times.”³ Such scholarship is evidence of the desire to establish a clear distinction between modern knowledge and rationality and the chaotic realm of pre-modern confusion and ignorance that mixed social institutions with “animals and lifeless things.” This process required a wilful blindness towards earlier complex theological rationalizations, no less based on “reason,” which focused around the application of ecclesiastical jurisprudence to various categories of “nature” (admittedly defined differently and structured around aspects of God’s creation). This elision is exemplified by the collapse, or rather conflation, in these “modern” texts of the distinction between the earlier juridical sanctions of excommunication and exorcism. By reattaching a fuller history of these seventeenth-century events to their nineteenth-century (mis)representations, I aim to retrace a path from the self-consciously “modern” perspective of these later scholars to an earlier configuration of human-nature relations. What this reveals about human-glacier interactions is that the jurisprudential repositioning of aspects of nature from a manifestation of either divine or satanic powers towards a realm that is squarely outside the law is also part of the upending of hierarchies that now sees humans cossetting the glacier rather than fleeing in terror before its wrath.

One of the current controversies in environmental law is whether nature should be recognized as having legal rights.⁴ Can a river, say, have standing, *sui juris*, to bring a claim?⁵ Similar controversies arise in relation to animals, both as a class of ecological actors seeking protection and as individual agents capable of exercising their non-human rights.⁶ In the

1 Roland Psenner, University of Innsbruck, quoted in “Alps Glaciers Gone by 2050, Expert Says,” National Geographic News, 23 January 2007, news.nationalgeographic.com/news/2007/01/070123-alps-glaciers.html.

2 “Glacier Covered with Blankets to Reduce Summer Ice-melt,” NBC News, 27 June 2013, photoblog.nbcnews.com/news/2013/06/27/19170081-glacier-covered-with-blankets-to-reduce-summer-ice-melt.

3 Walter Woodburn Hyde, “The Prosecution and Punishment of Animals and Lifeless Things in the Middle Ages and Modern Times,” University of Pennsylvania Law Review and American Law Register 64, no. 7 (1916): 696–730.

4 For example, see Peter Burdon, ed., Exploring Wild Law: The Philosophy of Earth Jurisprudence (Adelaide: Wakefield Press, 2011).

5 The Whanganui River has legal personhood under the Whanganui River Deed of Settlement 2014: see Ruruku Whakatupua Te Mana o Te Iwi o Whanganui (Ruruku Whakatupua Deed of Settlement), 5 August 2014, nz01.terabyte.co.nz/ots/DocumentLibrary/140805RurukuWhakatupua-TeManaOTeIwiOWhanganui.pdf.

6 David Favre, Animal Law: Welfare, Interests and Rights (New York: Aspen Publishers/Wolter Kluwer, 2011).

course of these contemporary legal debates, one invariably finds reference to earlier moments in legal history when aspects of “nature” entered into the body of the law. The classic text that is often invoked in these matters is Hyde’s 1916 essay.⁷

Hyde catalogues the following entities as having, at least once upon a time, been endowed with subjecthood in the annals of European legal history: stones, wooden beams, pieces of iron, javelins, oxen, dogs, axes, statues, pigs, rats, locusts, weevils, asses, beetles, leeches, caterpillars, dolphins, eels, mice, flies, goats, horses, moles, serpents, sheep, slugs, termites, turtledoves,

wolves, worms, snails, grasshoppers, bees, cartwheels, boats, and trees. But perhaps the most tantalizing example given by Hyde of the prosecution of an animal or lifeless thing is the following: “Even glaciers have been excommunicated for the damage they have done to mountain valleys, as is attested by an article entitled ‘L’excommunication des Glaciers,’ appearing in the Revue des Traditions Populaires (Vol. V, 1890).”⁸ The reference to the punishment of excommunication does not push this instance to the outer margins of Hyde’s examples. On the contrary, it marks the crescendo of the piece (hence the use of the emphatic particle “even” that denotes this as an extreme case that proves the general proposition). It comes at the end of a lengthy exploration of the cases and procedural specificities involved in the prosecution of animals in the ecclesiastical courts of the Middle Ages and early modern Europe. Excommunication was the preferred sentence for “all wild animals of the noxious sort,” and procedure was punctiliously adhered to: summons were issued, lawyers appointed, witnesses called, and judgment pronounced.⁹ After his exploration of animal trials, Hyde considers the cases brought against inanimate objects, which he also carefully parses as part of the historiographical battle he is waging against other interpreters of this aspect of ecclesiastical legal history. His primary target is E.P. Evans, a professor at the Universities of Michigan and Munich, and author of The Criminal Prosecution and Capital Punishment of Animals.¹⁰

In Hyde’s summation, Evan’s thesis was that the cases were a manifestation of pre-modern superstition, and that church authorities had a vested interest in “keeping up the superstitious belief that the devil was incarnate in every evil power of nature as well as in animals.”¹¹ Hyde, however, prefers to follow the interpretation given by the Finnish philosopher and sociologist

7 Hyde, “The Prosecution and Punishment of Animals and Lifeless Things,” 696–730.

8 Ibid., 726.

9 Ibid., 703–704.

10 E.P. Evans, The Criminal Prosecution and Capital Punishment of Animals (London: William Heinemann, 1906).

11 Hyde, “The Prosecution and Punishment of Animals and Lifeless Things,” 721.

Edvard Westermarck in his book The Origin and Development of Moral Ideas.¹² Westermarck's "solution," which to Hyde's mind seems "the simplest and most conformable to all the facts," is that all these historical instances, from the ancient to the early modern, are "nothing more than a manifestation of the primitive *lex talionis*" (literally "the law of retaliation," often rendered in English as the principle of an eye-for-an-eye).¹³ Westermarck has been described as an early "Darwinian sociobiologist"¹⁴—a phrase with possibly sinister overtones today, and not without good reason. Westermarck's positions are suffused with class and cultural chauvinism, something that also appears to have appealed to Hyde: he paraphrases Westermarck's view that "if the cultured mind feels anger at the deed of a mischievous animal, how much more easy is it for an ignorant man and for a savage to exaggerate the feeling."¹⁵ The practice of making animals and things juridical subjects is thus interpreted as the practice of "barbarous and half-civilized peoples,"¹⁶ or, in the case of European history, treated with more paternalistic indulgence as "the childish disposition to punish inanimate objects."¹⁷ By contrast, in "our modern theories of crime and its punishment, based on anthropological, sociological and psychiatric investigations, which were wholly unknown until a few years ago, the distinction between man and beast, so far as moral responsibility for their acts is concerned, tends to be obliterated."¹⁸ Hyde then goes on to invoke the scientific "facts" uncovered by Cesare Lombroso, the now-infamous popularizer of Social Darwinist criminology and criminal phrenology, regarding the inborn criminality of humans and animals. Hyde's concern is to place modern theories of punishment on a rational, scientific, and, more crucially, "civilized" basis. It is thus important that he consign the ecclesiastical approach to everything from rats to glaciers to a realm of irrationality and immaturity.

Nevertheless, as soon as we begin to dig deeper into Hyde's sources, his strategic deployment of this historical example, in what is essentially a skirmish in the wars of science and reason against religion and irrationality, begins to unravel. The article, "L'Excommunication des Glaciers" from the Revue des Traditions Populaires, that he cites appears in a section entitled "Les Glaciers."¹⁹ This section contains only two extracts: a passage from Prince Roland Bonaparte's Le Glacier de l'Aletsch et le Lac de Märjelen about the monster of the Aletsch glacier,

12 Edvard Westermarck, The Origin and Development of Moral Ideas (London: McMillan & Co., 1906), 255 & 257.

13 Hyde, "The Prosecution and Punishment of Animals and Lifeless Things," 698.

14 Petteri Pietikainen, "Finland," in The Oxford Handbook of the History of Psychology: Global Perspectives, ed. David B. Baker (Oxford: Oxford University Press, 2012), 214.

15 Hyde, "The Prosecution and Punishment of Animals and Lifeless Things," 722.

16 Ibid., 724.

17 Ibid., 726.

18 Ibid., 723.

19 "Les Glaciers," Revue des Traditions Populaires 5, no. 4 (1890): 250–251.

and then the passage on which Hyde relies, taken from Antony Dessaix's 1875 book, Légendes et Traditions Populaires de la Haute-Savoie.²⁰ The latter extract is extremely brief and recounts how, towards the end of the seventeenth century, the Bishop of Geneva, Jean d'Arenthon, was summoned to the villages of the Chamonix region because the glaciers there had advanced so far that they were destroying farmland and threatening the villagers' houses. The passage reports that the bishop performed an "exorcism" on the glaciers "according to the prescribed [Church] ritual."²¹ The Revue's reproduction of the extract from Dessaix's book actually works quite hard to tone it down (literally, in the sense that it carefully diminishes the rhetorical excesses of the original). The tone of Dessaix's original passage is highly sardonic:

The mountain ranges of Mont Blanc were formerly known as the "accursed mountains." The impression they made was not so much one of the majesty of the spectacle they presented, so much as the terror they inspired. Admiration is a feeling which derives from civilization, whereas fear is a base instinct. This much is enough to justify this aphorism: primos deos fecit timor (the chief of the gods is fear). Indeed, fear preceded admiration in the art of conjuring gods, and it is for this very simple reason that the gods are the contemporaries of everything from their very beginnings. Nevertheless, it seems to us that with equal passion we pronounce ourselves in favour rather of that which produces admiration and recognition than that whose role is to make mortals tremble. But never mind.

The imagination, struck by the majesty of these grand phenomena of nature, populated these frozen wastelands with fabulous monsters, fantastical animals, supernatural beings, and finally gods of a lesser order, charged with guarding caves with walls of diamonds that could be reached only by crossing treacherous crevasses and traversing unfathomable abysses.

But credulity does not stop there; it makes these objects of terror the domain of evil spirits. In the thunderstorms that burst onto these elevated heights, popular tradition saw the work of vengeful infernal spirits, aroused by celestial wrath to punish the inhabitants of these cold regions for the looseness of their morals or for their lukewarm faith.

Some years, the spirits of the mountains caused the glaciers to advance right up to the walls of their dwellings, while at the

²⁰ Antony Dessaix, Légendes et Traditions Populaires de la Haute-Savoie (Annency: Aimé Perrissin, 1875), 161–163.

²¹ "Les Glaciers," 251 (quotes translated by the author).

same time invading their farmland. As a result, they resorted to prayers in Church. They even sought the intervention of the Bishop of Geneva, Monsignor Jean d'Arenthon.

Towards the end of the seventeenth century, this prelate, whilst on a pastoral visit to Chamonix, blessed the populace, then, approaching the foot of the glaciers, performed an exorcism and excommunication of them according to Church ritual. It is asserted that the evil spirits took this to heart, and never dared reappear.

For our part, we think that if there is a person from Geneva who has done the most to change things in Chamonix, it is not Monsignor d'Arenthon, but M. de Saussure.²²

The M. de Saussure referred to here is the Genevan aristocrat-scientist Horace-Bénédict de Saussure, who developed a particular obsession with reaching the summit of Mont Blanc in the middle of the eighteenth century.

There is, not coincidentally, a similarity in the tone of Dessaix's text and the tone adopted by Hyde in his Law Review essay—both are skirmishes in the same war. Nevertheless, Hyde does not appear to have been an entirely loyal or reliable foot-soldier when it comes to the veneration of science and its early heroes. In another piece, published three years earlier in The National Geographic Magazine, Hyde recounts his own personal encounter with the Chamonix glaciers in the course of an expedition to ascend Mont Blanc.²³ Hyde's account is characteristically filled with historical anecdotes and apocrypha, and copiously illustrated with full-page photographs. Hyde's expedition came at the tail end of the so-called golden age of alpinism, part of the gentlemanly craze for "outdoor sports" that gripped the nineteenth-century bourgeoisie and minor aristocracy. Whereas once the competition to ascend ever higher peaks of the Alps operated as a kind of nineteenth-century European space-race, bound up with emergent nationalism and technical innovation, with the great alpinists becoming household names, by Hyde's day, at the start of the twentieth century, such activities had been normalized by being absorbed into upper-middle-class tourism. Hence, Hyde is somewhat dismissive about the challenge—"with good guides and proper precautions, with a good pair of legs and good lung power, the ascent will not be unduly difficult"²⁴—in other words, well within the capabilities of the robust Edwardian gentleman. This is in stark contrast with the first successful

²² Dessaix, Légendes et Traditions Populaires, 161–163 (passage translated by Maxime Decaudin and the author).

²³ Walter Woodburn Hyde, "The Ascent of Mont Blanc," National Geographic Magazine 24, no. 8 (August 1913): 861–942.

²⁴ *Ibid.*, 879.

“conquest” that Hyde recounts, by a village youth named Jacques Balmat, who returned almost disfigured from his feat. Balmat, in Hyde’s telling, is something of an usurper, having attached himself as “an unwelcome guest” to de Saussure’s climbing party. According to Hyde, de Saussure, in a visionary act of imagination, was likely the first person ever to have conceived the bold idea of attempting to reach the summit. He offered a reward for a successful climb in 1760, but only a “few feeble attempts,” in Hyde’s words, were made over the next 23 years. Finally, in 1785, de Saussure took it upon himself to try, and then made another attempt in 1786. It was on this latter bid that Balmat “attached himself to the others against their wishes.” When de Saussure’s party again turned back, Balmat was seized by, in his own words (as quoted by Hyde), “an ambition to attempt the ascent alone.” Balmat too failed on this occasion, but in the course of his solo efforts discovered an alternate route, which he kept secret, before making use of it again on his successful second ascent several weeks later. After learning of Balmat’s achievement, de Saussure hired him to guide his party of nineteen, plus a heavy load of scientific equipment, to the summit. Hyde’s portrayal of de Saussure is faintly mocking: he uses his alpenstock in the wrong manner (almost “harpooning his own foot!”) and, “dressed in a long-tailed silk coat with huge buttons [...] he looks much more as if he were ready for an afternoon promenade than a climb in the ice fields of Mont Blanc.”²⁵ Thus Hyde appears both to identify with de Saussure’s capacity for genius, the product of a cultured mind, and also reject his effete eighteenth-century bumbling. Unlike Dessaix, he appears determined to cast de Saussure as a not-quite-modern figure.

One wonders if Hyde, as a professor of the humanities, holds some kind of subtle contempt for his colleagues in the sciences: “I should not fail to speak,” he writes later in the essay, “of the boldest monument ever erected to the glory of science.”²⁶ This is the Janssen Observatory, a barometric measuring facility, erected by Pierre Janssen, president of the French Academy of Science, on the summit of Mont Blanc in the early 1890s. But in the subtext of Hyde’s account, the observatory seems a vainglorious, and almost failed, construction. The summit of Mont Blanc is entirely composed of snow and ice to a depth of several hundred feet. The snow is perpetually subsiding and being replaced with fresh deposits. The danger is of the observatory not sinking

25 Ibid., 867–875.

26 Ibid., 895.

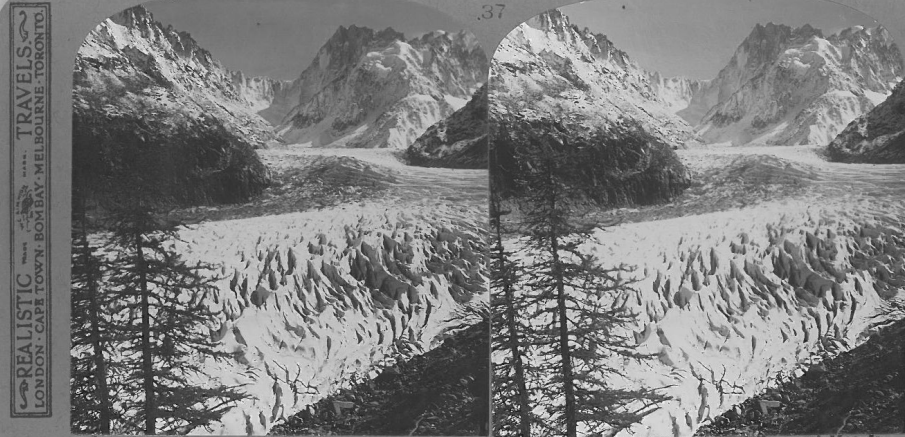
into the snow, but *with* it. Janssen even hired Gustave Eiffel to engineer the project, but Eiffel gave up after tunnelling 96 feet into the side of the mountain, only 49 feet below the summit, yet still failing to strike solid rock. After Eiffel's departure, Janssen extended the tunnel to 171 feet, but still found no rock. The workers mutinied, and the attempt to put the observatory on firm foundations was abandoned. Instead, Janssen erected a "frail structure" of wood and iron. By the time Hyde observed it, he declared, perhaps with pun intended, "That the apprehension as to its stability was only too well founded is now apparent." When Hyde visits, the observatory has completely subsided, its roof nearly level with the surface of the snow, and its interior almost completely filled with snow. Only its tower protrudes above the surface.²⁷ The "glory of science" indeed!

The motivation behind Hyde's narrative construction of himself in this essay relative to these men of science appears to be that Hyde sees himself as a rationalist without being scientific. In fact, he seems to see science as full of temptations towards vainglorious folly (unless it conforms with his own prejudices, say, about the primitivism of criminals or other races). Hyde's implication is that science as a form of knowledge must be tempered by a cultured sensibility and a keen knowledge of history. Progress is embodied not by mere science or technical achievement, but by civilization and culture. It is modern sensibility, including its capacity to aestheticize "the ruggedness of mountain scenery," not just science, that is truly behind the banishment of our savage and immature past. This is the argument that Hyde makes in another essay, titled "The Development of the Appreciation of Mountain Scenery in Modern Times,"²⁸ and similarly he venerates the poetic Greeks over their "less imaginative" successors, the Romans, in a further essay, "The Ancient Appreciation of Mountain Scenery."²⁹ Hyde's own exploits in the Alps, then, appear to be an enactment of a self-consciously modern desire to prove (perhaps especially to himself) that the superstition, irrationality, and terror elicited by alien and unfamiliar landscapes had been banished to the outer margins of the modern identity—legs and lung power arguably standing as metonymns for an entire continuum of ruggedly individualist, nineteenth-century pursuits from alpinism all the way to imperialism. These are the assumptions that connect Hyde's position to that of Dessaix, even though

²⁷ Ibid.

²⁸ Walter Woodburn Hyde, "The Development of the Appreciation of Mountain Scenery in Modern Times," Geographical Review 3, no. 2 (1917): 107–118; 118.

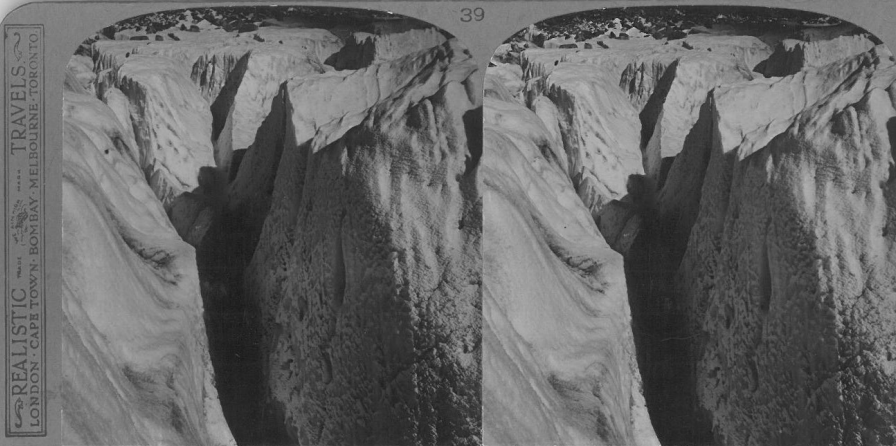
²⁹ Walter Woodburn Hyde, "The Ancient Appreciation of Mountain Scenery," The Classical Journal 11, no. 2 (1915): 70–84; 78.



Billowed stream-like formation of the great Mer de
Glace glacier, from Montanvert to Grand Jorasses.



Crossing the crevassed surface of the Mer de Glace,
an immense sea of "frozen waves" of snow and ice.



Frightful deep crevasses in Mer de Glace glacier

they might invoke Horace-Bénédict de Saussure differently. But what Hyde's and Dessaix's accounts of the "excommunication of the glaciers" obscure is an even more complex set of relations between seventeenth-century Roman Catholic practices and theological doctrine, and the advancing glaciers.

A more comprehensive account of the same set of historical occurrences is given in Emmanuel Le Roy Ladurie's Histoire du climat depuis l'an mil, first published in 1967.³⁰ Despite its title, the book is essentially a painstaking study of the documentary evidence concerning the Alpine glaciers since 1000 A.D. Ladurie devotes a large portion of the work to evidence obtained from the archives of the Chamonix region, and from his piecing together of these sources we are able to obtain a much more accurate picture of the events that Dessaix so dismissively renders and Hyde briefly invokes.

The advance of the Chamonix glaciers occurred during the period known as the "Little Ice Age," approximately between the mid-sixteenth to the mid-nineteenth centuries (although there are different datings). A more comprehensive chronology of the historical incident that appears to have found its way into Hyde's article can be reconstructed from Ladurie's review of the archival evidence. At the start of the seventeenth century, the villagers of various settlements in the Chamonix area made a series of complaints to the authorities. The deputy commissioner of the *Chambre des Comptes*, Nicolas de Crans, was charged with carrying out an inquiry.³¹ It would appear that during their supplication to worldly powers, the inhabitants were also addressing their petitions to heavenly ones. Ladurie mentions a text found in private archives by a local historian after the publication of the first edition of his book that records a meeting between a notary and a village petitioner who wanted to know if it was true that the parishioners of an adjoining area had sent a delegation to Rome asking the Pope to pray for God's intervention to make the glaciers withdraw. The notary responded that the parishioners had actually "appl[ie]d to God" directly "without going through an intermediary" (it is not entirely clear what Ladurie means in his paraphrasing of this evidence).³²

However, the greater problem for the authorities, both lay and ecclesiastical, was not a concern for their subjects or flock, but rather more mercenary; the villages were beginning to refuse

30 Published in English as Times of Feast, Times of Famine: A History of Climate Since the Year 1000, trans. Barbara Bray (London: George Allen & Unwin, 1972).

31 Ladurie, Times of Feast, Times of Famine, 146–151.

32 Ibid., 151–152.

to pay their taxes and tithes as their cropland was destroyed and their harvests ruined by the glacial onslaught. As a result, official written records on the glaciers began to proliferate. By the middle of the seventeenth century, the auditor at the *Chambre des Comptes* recorded that petitioners from Chamonix “live every hour in extreme dread for fear they should perish.”³³

An arbitration report recorded that “the glacier Des Bois [...] advances by over a musket shot every day. [...] We have also heard it said that there are evil spells at work among the said glaciers, and that the people, last Rogation-tide, went in procession to implore God’s help to preserve and guarantee them against the said peril.”³⁴ Two years later, the syndics of Chamonix visited the coadjutor bishop of Geneva, Charles-Auguste de Sales, with news of the villagers’ agitation and their concern that the glacial ravages were “happening to them by divine permission as punishment for their sins.” As a result, de Sales led a procession of three hundred people to ritually bless two of the wayward glaciers. Twenty years later, the success of this expedition was reported on in a text that recorded the “Monseigneur of Geneva [having been petitioned] to exorcise the said glaciers, which have since gradually retired: but they have left the land they occupied so barren and burned that neither grass nor anything else has grown there.”³⁵ Similarly, the Aletsch glacier was said to have been stopped after the Jesuit Fathers Charpentier and Thomas led a procession to it and gave a blessing “in the name of all the saints in Paradise, in order that the snake-shaped glacier should be held in check, and in order to stop it advancing further [...and used] [t]he most important exorcisms,” setting up an effigy of St. Ignatius looking (in a melding of the classical and Christian) “like an image of Jupiter, ordering an armistice not to his routed troops, but to the hungry glacier itself.”³⁶

Eventually, we get to the actual incident that inspired the late-nineteenth century ethnologists on whom Hyde relied. The successes of the 1640s were starting to unravel by the 1660s. Ladurie mentions two visits by bishop Jean d’Arenthon to “bless” the glaciers; the first in October 1664, the second in August 1669.³⁷ He does not mention any exorcism. However, in the re-issued nineteenth-century edition of Dom Innocent Le Masson’s biography of Jean d’Aranthon, first published in 1697, chapter eight opens with a laconic summary of highlights in the

33 Ibid., 169–170.

34 Ibid., 170.

35 Ibid., 171–172.

36 Ibid., 172–173.

37 Ibid., 174.

manner of nineteenth-century books, amongst which appears: “He exorcised and blessed the glaciers of Chamonix.”³⁸ Le Masson’s actual text is not much more enlightening; he writes, “and whenever the bishop would make his visits to these areas, the people would petition him to go and exorcise and bless these mountains of ice.”³⁹ Curiously, Le Masson accompanies this with the footnote, “Notably, he blessed them on 7 August 1669.”⁴⁰ This almost tallies (it’s off by one day) with the date quoted from the priory records given by Ladurie.⁴¹

These various accounts of glacial blessings and exorcisms lead us back to one of the principal concerns of Hyde’s “Prosecution and Punishment” essay: the technicalities of ecclesiastical jurisprudence, procedure, and penalties. In the nineteenth-century French texts, both the French words (which are essentially identical to their English counterparts) for “exorcism” and “excommunication” are used. According to current Catholic doctrine, excommunication is the most severe sanction or punishment within the ecclesiastical jurisdiction, and literally refers to exclusion from the communion; exorcisms, on the other hand, are recitations against the devil. Because the devil is already *anathema* (ἀνάθεμα in Greek, “a thing dedicated to evil; an accursed thing”⁴²), he cannot be excommunicated; he does not belong to the Church. The French verb derives directly, via late-Latin, from the Greek, ἐξορκίζειν, which combines the preposition “out” with the word for an adjuration (in other words, it is the opposite of an invocation). Thus exorcisms were directed at those who had never formed (or could never be regarded as forming) part of the Christian community, whereas excommunication was the most severe punishment for those who were. It is thus significant that the Carthusian Prior-General le Masson uses only the verb “exorcise” when describing d’Aranthon’s acts, and all the sources quoted by Ladurie refer variously to “blessings” or exorcisms. None of these texts appear to refer to excommunication. This is a significant point in relation to Hyde’s argument. He spends a significant portion of his essay examining cases (largely involving animals) tried in the European ecclesiastical courts of the Middle Ages and early modern period, in which the punishment was either death or excommunication. However, Hyde (and, for that matter, also Dessaix) appears to conflate excommunication and exorcism, and to not fully appreciate the doctrinal distinction between the

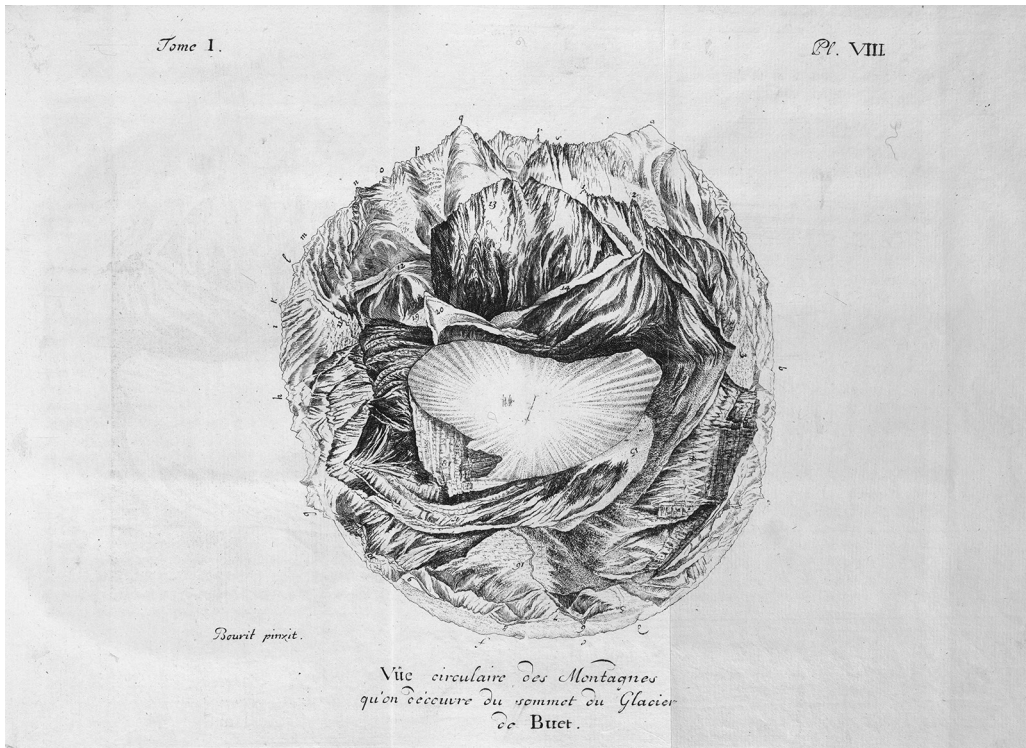
38 Dom Innocent le Masson, Jean d’Aranthon d’Alex, Évêque et Prince de Genève (Annecy: Imprimerie Abbay, 1895), 141 (quotes translated by the author).

39 Ibid., 145.

40 Ibid.

41 Ladurie, Times of Feast, Times of Famine, 174.

42 Henry George Liddell and Robert Scott, A Greek-English Lexicon, revised by Sir Henry Stuart Jones (Oxford: Clarendon Press, 1940).



two. This is in spite of spending considerable space discussing in some detail the juridico-theological controversies over whether the “lower animals” in particular had legal rights, because “they had been created before man and God had provided for them in the ark.”⁴³ Those opposed to this position argued that legal subjecthood presupposed a contract between God, the source of canon law, and those animals subject to it, but since most animals had no intelligence, no such contract could said to have been made, and the ecclesiastical courts therefore had no jurisdiction to try and punish animals of the lower orders. Hyde notes that these canonists asserted that the church could not “anathematize” such animals; furthermore, they had not been baptized, so again should be regarded as being outside the Church’s purview.⁴⁴

Hyde also discusses the position argued by Thomas Aquinas in relation to the punishment of animals.⁴⁵ According to Hyde, Aquinas’s reasoning was that ecclesiastical courts had jurisdiction to pursue animal culpability because animals engaged in crime did so because they were instruments of the Devil, and that “[o]n this ground alone the church had the

43 Hyde, “The Prosecution and Punishment of Animals and Lifeless Things,” 704.

44 Ibid.

45 Ibid., 716–717.

right to excommunicate and punish them with death, for it is not the animals but the Devil through them that is aimed at.”⁴⁶ It is at this point that we begin to realize that this entire section of Hyde’s argument was taken almost verbatim from Evans (the relevant pages from Evans are cited), but it is not clear from Hyde’s footnoting just how much of the examples and argumentation come from Evan’s text. So, while Hyde directs us to “Cf. Evans, pp. 53–55,” if we do indeed *confer* (compare), we will discover that, according to Evans, Aquinas’s reasoning is not directed towards the validity of the sanctions of “excommunication [or] punish[ment] [...] with death,”⁴⁷ but towards a debate over “the right of excommunication [versus] anathematization.”⁴⁸ The significance of this is that a few pages earlier Evans makes a point of discussing the technical ecclesiastical legal-theological meanings of excommunication and anathematization:

*Properly speaking, animals cannot be excommunicated, but only anathematized; just as women, according to old English law, having no legal status of their own [...] could not be outlawed, but only “waived” or abandoned. [...] Excommunication is, as the etymology of the word implies, the exclusion from the communion of the Church and from whatever spiritual or temporal advantages may accrue to a person from this relation. [...] This was the generally accepted view [...] but it has not always been held by writers on this subject, some of whom do not recognize this distinction between anathema and excommunication.*⁴⁹

This qualification sheds some further light on the ritual forms described in the various contemporaneous accounts cited by Ladurie, none of which explicitly refer to excommunication. It may be that the Church representatives in question adhered to this “generally accepted view” and only performed rituals of exorcism upon the glaciers.

The complications to which this more complete account of the acts of Church authorities in response to the advance of the glaciers, and the ecclesiastical distinctions between excommunication and exorcism, point is a further set of problems in the elisions of Dessaix and, especially, Hyde. For at the same time that Hyde was celebrating the banishment of the irrational and immature impulse to punish animals and lifeless things embodied in the *lex talonis*, the actual practice of the law was

46 Ibid., 717.

47 Ibid.

48 Evans, The Criminal Prosecution and Capital Punishment of Animals.

54. The original Aquinas text speaks of punishment by adjuration (expulsion by adjuration is the primary meaning of exorcism as an ecclesiastical judicial sanction).

49 Evans, The Criminal Prosecution and Capital Punishment of Animals, 51–52.

developing and refining an entirely new bestiary of non-human categories within its domain, most notably corporations, which were first recognized as having legal personhood in 1819 in the United States (Trustees of Dartmouth College v Woodward 17 US 518 [1819]), but not definitely in English jurisprudence until 1897 (Salomon v A Salomon & Co Ltd [1897] AC 22). In addition to this, the legal system had been playing its part in the grand reordering of responsibilities that consigned the potency of “God” to a purely metaphorical status in establishing the complex system for the distribution of economic losses found in the laws governing liability, and in re-centring that system around the concept of risk, particularly insurable risk.⁵⁰ These developments were one of the juridical correlatives of the rapid expansion of trade and industry throughout the first phase of globalization. Within that system, the “Act of God”—a phrase Lord Esher of the English Court of Appeal emphasized in 1886 had a strictly “mercantile sense,” rather than an “ecclesiastical and Biblical” one⁵¹—demarcated the boundary of liability between those events for which one could obtain compensation from some other “negligent” party, and those which failed the test of “reasonable foreseeability” and for which no compensation could be obtained.⁵² Seen in relation to this history, what the contemporary attempts to re-establish the legal standing and personhood of animals and landscapes signify is an attempt to deal these actors back into the game. But “modern” jurisprudence and its pre-modern forms—or, representatively, Hyde and Saint Thomas Aquinas—are not nearly so far apart as Hyde thinks. They are each intent on dividing up the world through the application of “reason.” In Aquinas’s case, the lower animals fall on one side, and humans on the other. In Hyde’s system, it is primitive peoples, the ignorant and criminals versus the standard-bearers of Western civilization. What the seventeenth-century events around the Chamonix glaciers and their subsequent nineteenth-century representations reveal, however, is the continuity, rather than the discontinuity, of Western legal representations of “nature.” The objects are constantly sorted and re-sorted, but the underlying techniques remain the same; whether the target is satanic glacial agency or criminal neuro-psychology, mechanisms must be found to attribute responsibility and empower sanction. As old legal and theological categories (excommunication/exorcism) collapsed, new ones (governing corporations and

50 Frank Oberholzner, “From an Act of God to an Insurable Risk: The Change in the Perception of Hailstorms and Thunderstorms since the Early Modern Period,” Environment and History 17, no. 1 (2011): 133–152.

51 Lord Esher M.R. in Pandorf & Co v Hamilton, Fraser, & Co (1886) 17 QBD 670 at 675.

52 C.G. Hall, “An Unsearchable Providence: The Lawyer’s Concept of Act of God,” Oxford Journal of Legal Studies 13, no. 2 (1993): 227–248.

negligence, for example) have opened up. The distinction between excommunication and exorcism and its subsequent erasure marks the beginning and end of a long series of debates within ecclesiastical jurisprudence about the status of the non-human within the divine order. In the nineteenth century, nature/“God” was assigned a new rationalizing role in a juridical-economic system that was constructing a model of the world based on the distribution and re-distribution of “risk” rendered in a monetized (and hence commodified) form. The more recent attempts to realign the human and non-human within the framework of the law are an expression of a new set of ethical concerns focused around the “environmental,” the “ecological,” or simply a stand against speciesism. These distant and recent histories should remind us that, as we work towards a legal recognition of the agency of other entities, we are inevitably also shifting the entire epistemological system, albeit in increments calibrated to the smaller domain—in this case, the law—where that reordering is taking place. Who knows what further limitations and possibilities may arise?