
Prolegomenon to a Pedestrian Cartography of Mixed Legal Jurisdictions: The Case of Israel/Palestine

Susan Drummond*

The relationship between cartography and law provides a unique focus through which to examine mixed legal jurisdictions. Through an exploration of the various uses of law, cartography, and nation building, the author postulates that mixed legal jurisdictions are created through the subtle incorporation of the originally unfamiliar "Other". In Canada, European settlers asserted sovereignty through the mapping and naming of territory in ways that did not accord with traditional Aboriginal patterns of usage or conceptualizations of space. The eventual creation of a legal middle ground between these peoples, as articulated by Richard White, is the basis of the author's analysis of Israel/Palestine. From the middle ground of mutual understanding, which is an alternative to the use of force, there is a potential for alternative cartographies and legal traditions to emerge.

The centrality of the Holy Land in all three monotheistic religions has led to a proliferation of maps of that region, all of which communicate information that surpasses the mere physical description of the place. Both maps and laws are sources of authority that seek to orient an individual's intellectual perception of reality. Modern cartography recognizes that it is an ethnocentric projection to assume that there is a single conceptualization of space through which all others must be assessed. The author theorizes that certain silences in maps parallel silences in law, and that the contemporary focus on both is an attempt to promote social justice by attending to those who are ignored or marginalized by both of these disciplines.

Maps depict the physical borders of modern states, as well as the borders of legal jurisdictions. In defining these boundaries, the power creating the map superimposes a system of measurement that is the basis of future property transactions. The system selected is inextricably linked to specific conceptions of governance, society, and control. The result of these linkages is that maps are literally a reflection of the power that created them. The middle ground between those with the power to create official maps and those without such power emerges by reading alternative maps in combination with other historical maps. The author suggests that this process requires subjective attention to the content of both official and alternative maps, in an effort to create a mutual understanding that is impossible when focusing solely on ideas such as "historical accuracy" and "correctness".

Le lien entre cartographie et droit fournit une approche unique à la comparaison des juridictions de droits mixtes. L'exploration des différents emplois du droit, de la cartographie et de la construction étatique sert de base au postulat de l'auteure selon lequel les juridictions de droits mixtes sont le fruit de la subtile intégration d'un «Autre» originellement inconnu. Au Canada, les colonisateurs européens firent respecter leur souveraineté sur le territoire en le renommant et le délimitant d'une manière tout à fait étrangère aux conceptions de l'espace et coutumes autochtones traditionnelles. Partant de l'exemple de la création subséquente d'un terrain d'entente juridique entre ces peuples, tel que décrit par Richard White, l'auteure étend son analyse au cas israélo-palestinien. À partir d'un terrain d'entente caractérisé par la compréhension mutuelle, une alternative à l'emploi de la force, il est possible de voir apparaître des cartographies et traditions juridiques alternatives.

La situation centrale de la Terre Sainte pour les trois religions monothéistes a mené à la prolifération des cartes de la région, communiquant toutes des informations qui dépassent la simple description de l'espace physique. Les cartes comme le droit sont des sources d'autorité qui cherchent à influencer la perception intellectuelle qu'un individu a de la réalité. Les cartographes modernes reconnaissent que penser qu'une seule conception de l'espace dicte toutes les autres relève de la projection ethnocentrique. L'auteure avance l'idée que certains mutismes cartographiques font écho à des mutismes juridiques et que l'intérêt que nous portons à ces vides est une tentative d'encourager la justice sociale en nous préoccupant de ceux qui sont ignorés ou marginalisés par ces deux disciplines.

Les cartes tracent les frontières physiques entre les pays modernes, ainsi que les frontières juridictionnelles. En définissant ces frontières, les autorités à l'origine d'une carte y superposent un système de mesures qui constituera la base de transactions foncières futures. Le système choisi est inextricablement lié à des conceptions spécifiques de ce que sont le gouvernement, la société et le contrôle. Il en résulte que les cartes sont littéralement le reflet direct du pouvoir qui les a créées. Le terrain d'entente entre ceux qui ont le pouvoir de dessiner les cartes officielles et ceux qui n'ont pas ce pouvoir apparaît lorsqu'on se penche sur les cartes alternatives, en combinaison avec d'autres cartes historiques. L'auteure soumet que ce processus nécessite une attention subjective au tracé des cartes officielles et non officielles, afin de parvenir à une entente mutuelle autrement impossible si l'on ne s'attarde qu'à des principes tels l'«exactitude historique» et la «justesse».

* Osgoode Hall Law School, York University.

© McGill Law Journal 2005

Revue de droit de McGill 2005

To be cited as: (2005) 50 McGill L.J. 899

Mode de référence : (2005) 50 R.D. McGill 899

I. Insomnia	901
II. The Middle Ground	906
III. The Swollen Details of the Mundane	910
IV. Logical Minimalizations	915
V. The Maps that Are Not Made	918
VI. Names	920
VII. Space and Place	923
VIII. The Map as an Assertion of Sovereignty	927
IX. Cadastral Topography and Sovereignty	932
X. Cartographic Intimation	936
XI. Inventing a Present and a Future	941
XII. History and Memory	945

I. Insomnia

Immersed as I have been over the last several years in research on Israel/Palestine, I am by now familiar with a recurring preface written on the occasion of a book's publication, or introductory remarks spoken as a book gets published, with the author scrambling to incorporate developments that occurred since the manuscript was sent to the printer. These comments are typically written in a final preface. The writers take stock and try to reassess what they thought they knew at the time with what they know now. This checking of recent events against the narrative that they generated is part of the process of assessing history. They hope that their prior sense-making has had sufficient time-durable generality that what was prefigured in their rendering has framed what is relevant for the future. They evince an awareness of how previous endeavors have misread the cues about something that appeared innocuous but was really a tinderbox, or something that sounded ominous and grave yet was really only a death rattle. Time, though under one apprehension objectively measurable in discrete, uniform units, seems to profess something else as well—a story to be told, a judgment to be called.

These authors, in their prefaces, place recent developments within the context of their account. They take stock of time. The story—whichever story in the Middle East, in the Holy Land, or in the human heart and soul that they have focused upon—the story that they put to paper at a particular moment in history was part of a deeper, longer, ongoing story, whose unfolding could not fully, and with absolute certainty, be anticipated when the sense-making began. History, though we are participants in it because we are alive (and sometimes because we are dying or dead),¹ appears to have stories to tell of its own.

For these writers, struggling to put the original story to paper was simultaneously an effort, humble as most writing is, to shape the outcome of the story. In the context of these particular narratives, writing is a struggle to gather the explosively fractured bits and pieces of the past and rearrange them in such a manner that a compelling, though yet inchoate, sense of injustice might be rendered. Thus rendered, the story embodies an aspiration that its details might be accounted for in the general sweep and jumble of the contemporary moment; thus accounted for, that truth and justice might one day be enthroned.

I begin writing today, similarly lacking certainty about where the future will go from here, from the vantage point of a current news article in the *Globe and Mail* entitled “Jerusalem’s sacred hill a flashpoint for conflict: Concerns about extremist attacks, collapse of mosque have authorities on high alert”:

¹ I have in mind Yasser Arafat who is, at the moment of my *re-writing*, “clinging to life in a military hospital near Paris” as Israel agrees to allow his body to be buried in Ramallah (*New York Times* (10 November 2004).

In an Israeli police station at the Jaffa Gate into the Old City, in front of television screens picking up images from 280 cameras scattered across the densely populated heart of Jerusalem, a 24-hour watch goes on for stirrings of apocalypse. ... Israel's security chiefs are wrestling with two nightmare scenarios they say are increasingly realistic—an attack on the mosques by Jewish extremists trying to stop Israel's planned withdrawal from the Gaza Strip, and a collapse of parts of the structurally shaky mosque compound onto thousands of Muslim worshippers. Muslims would almost certainly blame either catastrophe on the Israeli government and transform its conflict with the Arabs into a full-blown religious war.²

This is the dread-filled atmosphere surrounding the summit of Mount Moriah, the exposed and sheltered rock that has been named the navel of the world in several world religions.³ From that place comes an alarm, sounded by Avi Dichter, the director of *Shin Bet*, Israel's secret service. In light of what the agency describes as a threat to Israel's existence, Dichter alerts us that "everyone should be losing sleep."⁴

Everyone should be losing sleep? Everyone?! The world is a much larger place than the scratch of rock upon which Abraham is said to have offered up his son Isaac to the God of the Abrahamic religions;⁵ larger than the swatch of land and desert and sea that makes up Israel/Palestine; and larger than the lands that make up the Middle East. Other traumas, ancient and open-wounded, abound in places near and far. Other Gods have touched the earth in other places. The silence of God has been heard resoundingly in the world's other manifold places that are filled with grief and despair and contemplation.

One presumes that Avi Dichter would have been quoted believing he was speaking to an Israeli audience (he is, after all, the director of *Israel's* secret service); perhaps to a handful of ambassadors in the economy of world power who read national newspapers; perhaps to a few souls in a range of diasporas who care. Could he have meant that *everyone* should be losing sleep? Such a claim would seem to be a kind of self-centered navel gazing, as though the problems of one small group, one small people, should be the problems of the world.

² Karin Laub, "Jerusalem's sacred hill a flashpoint for conflict: Concerns about extremist attacks, collapse of mosque have authorities on high alert" *The Globe and Mail* (18 October 2004) A12.

³ The Dome of the Rock, now with its brilliant gold covered cupola, was built (beginning in 685 of the Common Era, or year 63 of the Hijra) by the 9th Umayyad Khalif, 'Abd al-Malik, over the Noble Rock, which is the focus of its interior. This brief outcropping of the earth's bedrock, in the centre of the dome, is believed by Muslims to be the spot from which Mohammed was brought by night and ascended through the heavens to God. For the Jews too this place has otherworldly significance. This is not only the place where Abraham trembled before God with a knife to his beloved son's throat, it is the place where Jacob saw the ladder to heaven; a place within the boundaries of the innermost chamber of the Jewish Temple; the place too, where the first stone was laid in the building of the world. See online: Wikipedia <http://en.wikipedia.org/wiki/Dome_of_the_Rock>. See also *The Encyclopaedia Britannica*, 15th ed., s.v. "Dome of the Rock".

⁴ Laub, *supra* note 2.

⁵ This label includes Judaism, Christianity, Islam, and all their splintered variants.

In the face of the manifest unlikelihood that Dichter was speaking to me, and despite knowing that the world covers a *much* larger surface than the ripples of culture and history that spread out from Mount Moriah, I am tempted to leave the epicenter of insomnia in the considerable distance that exists between Toronto and Jerusalem in 2004. These are not my people. These are not my conflicts. The remoteness of Mount Moriah from Toronto is one apparent reason to leave this issue alone and to turn my own investigations in law to landscapes closer to home.

There is a more shameful reason for my reticence to wake up. It is akin to a fear of being banished from a comforting world of familiar values, in this case the values that derive from shared Canadian certainties about history and about anti-Semitism.⁶ Full, awake, open-eyed alertness to the depth of suffering brought about by anti-Semitism, contemporary and historical, is in many ways a core obligation of full and enlightened citizenship in Canada. Acknowledgement of the harmful consequences of all forms of racism has shaped our laws, domestic and international.⁷ It seems impossibly premature to leave that territory now (the nation of those committed, in the only ways we so far know, to it happening Never Again) as it is still being mapped out and adept cartographers and lawmakers are still needed. That nation of empathic humanity embodies a sense of injustice that is so deep and terrible that it seems still impossible to ever fully encompass and comprehend. Moving beyond the national contours of those shared values seems to present a willful betrayal of all of the missions associated with that nation. It can seem as though one were no longer committed to genocide happening Never Again, rather than just being no longer committed to the only ways we know *so far* of avoiding a return to the unthinkable. It can seem as though the Jews are left isolated in the mission to fulfill the commitment to a future of Never Again. If this is a familiar world from which to be exiled, it is not a familiar world of comfort and decadence; it is a familiar world of fragile humanity.

Though this shared world of recognition can hardly be an Eden given how fraught it is with grief and violence, the dread of being branded and sent into a cold and lonely exile keeps a somnolence warm and close. Writing from the same perspective from which the *Globe* article was read today, it is also a semi-somnolent trepidation about doing harm. Marc Ellis, a Jewish theologian in the Prophetic tradition, has called this holding back the ecumenical deal:

[T]he religious dialogue of Jews and Christians after the Holocaust, which features Jewish empowerment in Israel as untouchable and the critics of Israel

⁶ The word “certainties” is not too strong in the context of imputing specifically Canadian values, since Canada’s Supreme Court has given judicial notice to the Holocaust in *R. v. Zundel*, [1992] 2 S.C.R. 731, 95 D.L.R. (4th) 202, holding that evidence indicating the occurrence of the Holocaust need not be led. The Court assumes this history as background, in the way it can be assumed that water runs downhill, for the very great number of details that may need to be proven on its backdrop.

⁷ It has shaped, for example, the provisions of the Canadian *Criminal Code* that deal with hate propaganda and the public incitement of hatred (*Criminal Code*, R.S.C. 1985, c. C-46, ss. 318-19); shaped also the postwar development of refugee law and given added impetus to the development of international conventions on human rights.

as anti-Semitic—is also a political deal. The political deal is either unqualified support of Israel and its politics or silence on them, lest again the accusation of anti-Semitism is made with its attendant political consequences. These consequences are well known: removal from the moral, ethical and political discourse of the nation.⁸

A readiness to live in exile from this moral, ethical, and political nation (at least as we know it) must surely be approached with great wariness, for that nation includes an acute and pained awareness of the gulf of suffering that has given our contemporary moral world its known contours.

But as intimated by the (perhaps unwittingly multifaceted) nature of the place that Avi Dichter wants us to focus on, remaining alert and attentive to the world may mean encompassing more of the moral landscape than that narrow ecumenical deal asks us to embrace. Waking up may be to a bedrock that is as astonishingly new and unfamiliar as the first stone laid to build the world. If the place is indeed as multifaceted as the real world outcropping whose precariousness Dichter is anxiously alert to—the Haram El-Sharif/Temple Mount—, it may well signal the stirrings of some kind of anti-apocalypse—an incipient recognition that, as Ofer Grosbard phrases it, “The loss of our ability to listen is the greatest threat to our existence.”⁹ If these anti-apocalyptic stirrings are indeed rooted in the ability to recognize the “other”, in the fullness and dreadfulness and fragility of their humanity, then, as Marc Ellis also prophesies, we may be called to a deeper ecumenism, called to map out the inhabitable terrain of a wider sensibility.

It is in the spirit of this deeper ecumenical call (which includes both profound secularism and profound religiosity) that I am writing about mixed legal traditions in Israel/Palestine. I am calling the stirrings anti-apocalyptic as they flow from that sense of human agency which is also more prosaic, more ordinary, more banal, more pragmatic, more concerned with bread and butter, with the sports pages, with clothes that have been outgrown, with daily chores, and with the frequently dull and mundane laws of state.

Grosbard, in the context of his psychoanalysis of Israel’s current distress, gives a sense of how difficult the task of attending to that deeper ecumenism might be. “The problem,” he writes,

is difficult because there is no deeper insult to one religion than recognizing the existence of the other. Religions have not compromised with each other in human history. God is by definition one and mine, and there is no compromise on that. There is nothing as total as religion, which allows, by definition, only a

⁸ Marc Ellis, “The 11th Commandment” (Address presented to the American Muslims for Jerusalem 6th Annual Convention, Santa Clara, California, 17 May 2003). Marc Ellis dubs the “11th Commandment”: “Thou shalt be silent in the presence of Palestinian suffering.”

⁹ Ofer Grosbard, *Israel on the Couch: The Psychology of the Peace Process* (Albany: State University of New York Press, 2003) at 6.

fight to the death with other religions. One God has never been tolerant of other gods.¹⁰

Add to this the very deep distaste sometimes displayed by secularism for religious thought and behavior and the ecumenical mindset begins to appear like a logically impossible puzzle. Anti-apocalyptic stirrings would need to be open, indeed, to an almost impossibly unchartable landscape. An anti-apocalyptic movement in the current climate of world affairs would need to be open first of all to a dialogue between the excluded middles of monotheistic religions (paradoxically each vying to exclude the other while all hearkening to the same singular God). But given the history and presence of Enlightenment and humanist values, it would also need to be attentive to the by now entrenched secularism that is both rooted in the silence of God and self-consciously oblivious and nonchalant to the very question of his existence.

This paper on cartography and law (and by silent implication justice) is an attempt to anticipate that landscape—the stones that have been laid to build the world that awaits an alert and intrepid revelation.¹¹ This paper is a prologue to an examination of mixed legal jurisdictions, in the Israeli context. In starting with cartography and the relation of maps to law, it seeks to lay the ground for a reconceptualization of what mixed legal jurisdictions are about in general—or have the potential to be. As a paper that is more preoccupied with mixed legal traditions than the Middle East, it starts from what may seem a peculiar place. It starts with a discussion of another unofficially mixed legal tradition—that of Canadian Aboriginal common law.

It is an extrapolation of a discussion about mixed law arising originally on territory that seems territorially and historically remote to the Middle East, but very present and contemporary to those who are living within it. This paper on mixed law uses Richard White's treatment of the legal middle ground that arose between European settlers and the Aboriginal nations that thrived in the Great Lakes region of North America as a starting point for analysis. In the spirit of a larger understanding of ecumene, or, as Herodotus calls it, the entire known world of culture that potentially might be organized, I have extended its vision from the Great Lakes region of Canada to the remote Mount Moriah. This paper is about the various uses of cartography, law, and nation-building, and about the deepest sense of nation to which we might all be beholden. As law is also a more humble and less prophetic profession than theology, this paper is a first step in a way to conceive of how the mundane world of law—the technical and tedious world of contracts and delicts and matrimonial regimes—might anticipate a bolder kind of cartography than that which has been hooked up to empire for the last several generations.

¹⁰ *Supra* note 9 at 103.

¹¹ Surely it is a revelation of things that have always been there and have always been known.

II. The Middle Ground

The ripples of history and culture spreading out from Mount Moriah have been washing up around the world for millennia now and, as Richard White intimates, washing back again and intermingling with other pasts. This is an old history. And it was already an old, old overlapping of stories when it washed up on the shores of North America—the “New World”—half a millennia ago. Christianity had been entrenched in the Roman Empire by Constantine. Religion had then been comfortably wed to empire for 350 years prior to Justinian’s codification of civil law in 536 AD. By the time that Jacques Cartier sailed up the Saint Lawrence River in 1534, Justinian’s code had been revived, glossed, rescripted, humanized, and naturalized over and over again. The Catholic concern that the Empire be Holy and that holiness stand as a challenge to secular power had already been embodied in the prototype of a canonical code and entrenched in ecclesiastical courts all over Europe. Jerusalem had already fallen to the European crusaders and been restored 88 years later to the Muslim form of cohabitation with the Jews in the Holy City when Europeans came to the shores of the Great Lakes, carrying with them a mission to spill the history of Mount Moriah into the history of the New World.

Part of the mission to the New World was to bring the history of the Holy Land to the Indians, just as the Crusade intended to bring Christian domination to Jerusalem in 1099. The mission in the New World, however, was implemented on terrain where Europeans were originally a fragile minority, far from the reinforcements of their own shore, and Aboriginal nations were far from historyless blank slates. The mission was qualified by the compromises it had to make to arrive at a mutual understanding with the Aboriginals. The Aboriginal nations that the Europeans encountered had their own, developed understandings of the spiritual world.

In those early encounters between the French and the Aboriginal nations that lived further up the Saint Lawrence River in the Great Lakes region of North America during the seventeenth and eighteenth centuries, the religion of the Holy Land was not the only thing that figured in the relations between the two groups of peoples. The Jesuits following in the footsteps of the original traders and explorers, looking for souls to convert, would have carried one complex aspect of an alternate culture and history. In their originally awkward discussions with the Aboriginals on spiritual matters, they would have encountered on the ground the inescapable fact that the spiritual understandings of the Aboriginals were similarly just one, complex aspect of an elaborate alternative culture and history.

White documents how the Algonquian peoples appropriated Christian doctrine, converting the Christian God into “The Great Manitou” more than (or as much as) being themselves converted to Christianity.¹² White is also clear that discussions about Christianity were themselves but one aspect of the multiplex interactions

¹² Richard White, *The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1650-1815* (Cambridge: Cambridge University Press, 1991) at 26.

between the peoples, not even the predominant one. As White points out, “The Jesuit mission was, at best, a secondary attraction. To argue that either this mission or the later fort and mission at Michilimackinac led the Indians to settle the area is like arguing that people go to airports to be solicited by religious zealots and only incidentally to catch airplanes.”¹³ The Holy Land has figured for centuries, then, in the distribution area of Toronto’s *Globe and Mail*. But Richard White’s far greater theoretical point (and the one that I want to focus on for the purposes of this paper) is intimated in the conversion of the Christian God into the “Great Manitou” by the Algonquian peoples and the many other exchanges and encounters that surrounded that conversion.

The focus of White’s work, and the ultimate focus of this article, is on the elaborate and multiple ways that people incorporate aspects of the other’s world view, normalizing them in the process, in order to be able to understand and be understood. Jurisdictions that are made up, formally or informally, of mixed legal traditions are built upon this subtle, often unconscious, incorporation of the originally unfamiliar. These mutual incorporations become the foundation for shared understandings of injustice upon which the elaborations in law are built. Incorporating the other’s grief, as the opportunity (too occasionally) arises between Aboriginal nations and Canadian society, can lead to laws—common law, treaty, and statute—that build upon those intimate details.

Even when sensitivity to the other’s presence amounts to a self-conscious rejection of all that the other stands for, that self-consciousness manifests the kind of intimate understanding of the details of the other’s life that characterizes only the most familiar of strangers—familiar strangers on a par with alienated couples who cannot divorce; or couples who, though divorced, cannot separate for any number of reasons (psychological as well as parental) and for whom the relationship to the other is one of “divorce till death do us part.” Just as profoundly alienated couples know better than anyone else the uniquely grating details of the other’s physicality, a fair amount of the details of the other’s presence in the world needs to be incorporated even to sustain animosity.

It is this mutual understanding that I want to focus on for this prolegomenon to mixed legal traditions built upon a middle ground of mutual history. The alternative cartographies of that mutual understanding, and the alternative legal traditions that have the potential to arise from the fragile place of mutual recognition at its core, may take a determined mindset to map out. Elaborating the gaps and deficiencies in current representations of the territory of the possible—making explicit the partiality of contemporary maps and legal sensibilities—may need to suffice for now. It is here that insights into the anatomy of other middle grounds, like the fleeting one that White captured, may prove useful.

¹³ *Ibid.* at 23.

The larger theme that White works through a wealth of minute historical details (like the particular name given to the Algonquian version of the God of Abraham) relates to the ways that different peoples interact with each other and forge a kind of middle ground out of the understandings that emerge from their interactions. If the Algonquian understanding of *manitous*—an other-than-human person capable of taking manifold physical forms—offended Jesuit spiritual understandings, in their endeavors to

convert Algonquians by attacking native beliefs, *they, for tactical reasons, often themselves accepted native premises*. The Jesuits ridiculed the *manitous*, but they did so in Algonquian terms. ... Success in war, success in the hunt, survival after falling through the ice, all ... causes of events in the Algonquian world only meant that heads of animals once offered to the *manitous* at feasts were now offered to Christ.”¹⁴

The conversion of the Christian God into the “Great Manitou” by the Algonquian peoples was mirrored by an importation of *manitous* into Christian theology.

White’s larger theoretical point—and the one that I want now to import back to the context of Mount Moriah and its fractured ecumene—is that a negotiated middle ground emerged out of the originally strange-making encounters between each people. Although originally “the French reduced Indian religion to devil worship and witchcraft” and although the “Algonquians, for their part, thought of the first Europeans as *manitous*,” and although “on both sides, new people were crammed into existing categories in a mechanical way,” eventually, out of tactic and negotiation, out of the ranges of practical need to understand and be understood, and out of the multiple acts of cultural translation that were incorporated into each language, a common culture of understanding emerged. The boundaries of each world melted into the other, and the existing categories expanded and dissolved their hard mechanical edges. Each people had to deal with others who did not originally share “their values nor their assumptions about the appropriate way of accomplishing tasks. They had to arrive at some common conception of suitable ways of acting; they had to create ... a middle ground.”¹⁵ Though the original stages of arriving at mutual understandings of the other involved stark and two-dimensional depictions, the regular, pedestrian, practical encounters between individuals from each group generated a tacit background place which thickened into a bedrock of common understandings—an intercultural resource from which to draw both intercultural discernment and moral judgment.

Although this middle ground (about which White is spectacularly elaborate in its details) had explicit and articulate formal moments and agreements that could be drawn upon for the settlement of misunderstandings and disputes, it operated at another distinct level: the level of plodding, everyday life. Some subsequent writers on the middle ground identify the role of force as a component running through the

¹⁴ *Ibid.* at 26 [emphasis added].

¹⁵ *Ibid.* at 50.

middle ground. That is, they contemplate the thesis that force and justice may not be mutually exclusive.¹⁶ White himself, however, notes that “the middle ground depended on the inability of both sides to gain their ends through force.”¹⁷ The middle ground grew as an alternative to force, out of the felt necessity to assimilate enough of the other’s reasoning to put it to their own purposes.

Intercultural laws, agreements, and procedures may be construed as one of the formal levels through which a middle ground emerged, governing for example conjugal relations between both groups, or conflicts around cross-cultural assaults and murders. These institutions, instruments, and laws were not the only locus for the emergence of the law of the middle ground. In addition to these “high law” formulations, White and subsequent writers have also begun to construe Aboriginal common law, the distinct body of law that has acquired increasing formal recognition in the Canadian constitution and courts, as a feature of ongoing pedestrian and practical encounters, and the pragmatic efforts to assimilate enough of the other’s legal sensibility to arrive at a common legal purpose.

The legal order that emerged on that middle ground was not the formal structure of one order simply imposed by the dominant population on the other and gradually adopted through greater and greater acts of capitulation to the more dominant group. On the contrary, the now relatively entrenched resource of Canadian Aboriginal common law grew out of the ongoing relations, practical compromises and incorporations that emerged from the minutiae of daily encounters. This middle ground, however—this common law—has become a cultural resource that each group draws upon as though drawing on their own distinctive past. The civilian and common law legal sensibilities that were originally imported to Canada, already heavily infused with the contributions of local cultures from around Europe and the Middle East, became something more and different as they developed through the course of their own history in the Great Lakes region—and likewise for the Algonquian legal sensibility that coursed through the same shared river of history.

One of the things that is striking about this account for Mount Moriah is that White lays out the development of a middle ground as a progression of stages. This progressive account is perhaps inevitable in light of the punctual moments of encounter between Aboriginal and European populations—punctual in the sense that contact began at a now identifiable time and place, as opposed to the millennia of intermingling of the peoples of Europe and the Middle East. In the North American context, relations between European settlers and Aboriginal populations would seem to progress naturally from that set of stark original encounters. The original stage—a primitive one, White might say—is one where “On both sides, new people were crammed into existing categories in a mechanical way.”¹⁸ Fully formed world views

¹⁶ See *e.g.* Jeremy Webber, “Relations of Force and Relations of Justice: The Emergence of Normative Community Between Colonists and Aboriginal Peoples” (1995) 33 *Osgoode Hall L.J.* 623.

¹⁷ *Supra* note 12 at 52.

¹⁸ White, *supra* note 12 at 51.

had to place startling new understandings into an intractably familiar framework. From those early, awkward attempts at dealing with the other, and out of a burgeoning recognition that raw violence would ultimately incapacitate both sides from gaining their ends on the land, an intercultural sensibility emerged. A common understanding of what “Lord God Our Savior/The Great Manitou” meant could eventually allow either word to be used in a theological discussion between individuals from either group.

The paradox for this paper—and one that undermines White’s assumption that the middle ground emerged in progressive stages—is that the Great Manitou of Mount Moriah has been fractured (in the Holy Land itself) into the intractably familiar mechanical categories of one very local group or its other intimately local neighbor, with apparently no middle ground between the two—a middle ground that has splintered into a powder keg ceaselessly scanned by the unsleeping eyes of 280 cameras. It is this living example of the dissolution of a deeply sedimented and thickened middle ground that makes Mount Moriah such a striking counterpoint to the progressive account offered by White. The progression in the ‘new world’ seemed to move from belligerent ignorance to increasingly enlightened (though always precarious and fraught) mutual recognition. By contrast, in the old world, it seems to have deteriorated from intimate, even fraternal, familiarity to willful insensitivity.

III. The Swollen Details of the Mundane

White underlines the point that the middle ground between the Aboriginal nations and European settlers of the Great Lakes region in the seventeenth and eighteenth centuries did not exist only in the explicit, formal terms of treaties and diplomatic relations and through articulated institutions and rules (though for historians, the latter terrain would be easiest to uncover and chart out). There was another level on which this middle ground emerged which was just as commonly frequented, if not more so, by both peoples. This was the middle ground of everyday life.¹⁹ Indeed, that there were trading encounters and regular negotiations around the value of goods; that there were conjugal relations between the first waves of European traders and Aboriginal women (the European traders were almost exclusively male); that there were flare-ups of violence between the groups—these kinds of pedestrian encounters and exchanges and petty familiarities in many ways gave the formal middle ground its common sense and solidity, its legitimacy. These small details of a facial expression here, a voice raised in anger there, a way of holding back—originally peculiar and unexpected but then, after years of knowing the other and how the members of their group hold back in certain encounters but not in others—these are the thick history of details, too incomprehensibly massive to carry in a single memory or in a single law, that each group subsequently draws upon to set the more unbudging understanding that a particular law is fair or a particular court ruling unjust.

¹⁹ *Ibid.* at 53.

These are the kinds of “swollen details” of the subtle and unwritten cultural texts that anthropologists have attempted to excavate in their ethnographic inquiries. I have borrowed the phrase from Edward Lane’s depiction of his objective in *An Account of the Manners and Customs of the Modern Egyptians*: “to make Egypt and the Egyptians totally visible, to keep nothing hidden from his reader, to deliver the Egyptians without depth, in swollen detail.”²⁰

Ammiel Alcalay²¹ cites this passage in reference to Edward Said’s discomfort with the objectifying and ultimately appropriative way that the West “studied” other peoples: by contorting human comity in order to view “the Orient as spectacle, as *tableau vivant*.”²² I am aware of the suspect nature of attempting to grasp the other through the technologies of othering, but for the moment want to advocate for the revelatory potential of thick description for understanding both self and other. These are often the kinds of minute details that constitute our internal struggles to grasp ourselves through the same kind of swollen details that make up a human life. It is this tension between depicting reality and selectively describing it so as to appropriate it (intellectually and otherwise) that also characterizes the cartographic enterprise. When this tension is linked through cartography to law by the intermediate device of jurisdiction, it is the tension that distinguishes a *community* of those legitimately bound by law from an *empire* of law that allows one vision to predominate and thereby dominate. The swollen detail of the middle ground would be closer to providing a map of community than the more recently familiar maps of empire. That kind of intimate detail is closer to the ground upon which intercommunal legitimacy and law are built.

In some ways, this swollen detail about the middle ground is well known in the Middle East. It is so deep and pregnant with both unwritten *and* written detail that it seems like a far more arduous independent labour to forget it rather than to remember it. It seems as though it would take an extraordinary effort to arrive at the point where the world splits in two at the excluded middle and things line up on one side or another, all of the complex details of history lined up like iron filings around two polarized magnets.

As Richard White has laid out the kinds of pedestrian intercommunal exchanges that made up the middle ground between Aboriginal nations and European settlers—and that makes up the middle ground of Aboriginal common law that is drawn upon by the Canadian Supreme Court in its rulings on a considerable range of Aboriginal rights—, so a deep history attests to the middle ground of pedestrian encounters in the Middle East. This middle ground is sometimes inchoate and unselfconscious in the superabundance of texts, maps, images, shared histories, languages, and ways of

²⁰ Edward William Lane, *An Account of the Manners and Customs of the Modern Egyptians* (London: Charles Wright, 1842), cited in Alcalay, *infra* note 21 at 65.

²¹ Ammiel Alcalay, *After Jews and Arabs: Remaking Levantine Culture* (Minneapolis: University of Minneapolis Press, 1993) at 65.

²² Edward Said, *Orientalism* (New York: Vintage Books, 1944) at 158-62, cited in Alcalay, *ibid.* at 65.

being in the presence of the other. On occasion, it is formalized in treaties and agreements and ways of formulating law and in constraints on judicial decisions.²³ On occasion, it is made explicit in accounts such as Alcalay's.

Alcalay's book, *After Jews and Arabs*,²⁴ depicts in detail the millennia of texts and encounters that attest to a kind of overlapping, dense familiarity between Mizrahi Jews (Jews indigenous to the Middle East and its surroundings prior to the creation of Israel) and their Muslim neighbours. He details precisely the kinds of minute and subtle familiarity that gave birth to the middle ground of shared forms of life and agreement in a manner similar to Great Lakes region of North America. He also occasionally links this middle ground of everyday life, in his scrupulous wanderings through the literature and poetry of the Middle East over centuries and centuries, to the law. For example, he cites the dense historical familiarity between Tunisian Jews and Muslims from an account by Abraham Udovitch and Lucette Valensi, tangentially transcribed into an unwritten legal middle ground:

There is no single generalization or rule which could serve to characterize the whole range of social and economic contacts between Jerban Jews and Jerban Muslims. Each circumstance between them has its own movable boundaries in which elements of friendship and hostility, confidence and suspicion, collaboration and competition are intermingled in varying proportions. In the market, the notion which governs commerce between Jews and Muslims is that of *haqq al-yahud*, a concept which has many meanings and uses, but which translated literally means 'the law, the justice, the honesty of the Jews. ...' It is not surprising to find this quality invoked by the Jews themselves. But it is also invoked by Muslims as a password to cut short bargaining or other negotiations concerning the price or quality of an object. Concluding a discussion with the invocation of *haqq al-yahud* is equivalent to giving an oath. The Jewish jeweller places his honesty, his reputation, his reliability on the line—that is, all the qualities which form the basis of his relationship with his clients. But, this is more than a personal engagement; it is, at the same time, that of the group to which the jeweler belongs. Beyond the single moral quality of honesty—individual and collective—there is also the reference to respect for the law. Put in another way, since the *ahl al-kitab* [people of the book] are people of the law, one can deal with them.²⁵

This passage about mutual incorporation, with the peoples renamed and the history of overlapping communities less historically deep, could be lifted from Alcalay's or

²³ The Israeli High Court of Justice, for example, in ruling on Israel's separation barrier and invoking the proportionality test that weighed Israeli security interests against the human rights of the occupied Palestinians, was aware of constraints imposed by the very familiar humanity of the people displaced and traumatized—more familiar than most of those interested international observers who read the decision, disquieted by a perceived lack of appropriate balancing (*Beit Sourik Village Council v. The Government of Israel* (30 June 2004), 2056/04 (Israel H.C.J.) at paras. 59-61.

²⁴ *Supra* note 21.

²⁵ Abraham L. Udovitch & Lucette Valensi, *The Last Arab Jews: The Communities of Jerba, Tunisia* (New York: Harwood Academic, 1984) at 117, cited in Alcalay, *supra* note 21 at 21.

Udovitch's book and pasted into White's account of the emergence of the middle ground between Europeans and settlers that eventually gave rise to the body of Aboriginal common law in Canadian law. Here too are the complex pedestrian negotiations bathed in friendship and hostility, confidence and suspicion, collaboration and competition.

These small marketplace and domestic epics that speak to the heart of Middle Eastern history can be reproduced effectively *ad infinitum*, not only all along the Maghrebi coast but also throughout the Middle East and beyond—banal stories of ordinary people from places of no significant geographical distinction that are in fact part of a larger exemplary and heroic (or “prophetic” if one is so inclined) tale.

It's not as though these pedestrian contributions to a middle ground between Jews and Muslims were places of sublime equality, with exchanges characterized by a perpetual unblemished equity. Far from it, though the hierarchies of asymmetry were often subtle. As with the world that White depicts, there were endless shifts in power relations between groups, sometimes cataclysmic. Though people lived and traded and conversed within the same communities, they also would have “made ... effort[s] to distinguish themselves from ... other[s] without thereby separating.”²⁶ Joëlle Bahloul provides an evocative rendering of this kind of subtle, contained world of hierarchical distinctions (in this case spatially hierarchized) in her ethnography of a Jewish-Muslim household in colonial Algeria between 1937 and 1962.²⁷ As she notes:

Things and people were not in fact blended in this house, even though memories seem to present them as such. ... As we have seen, a tenuous but complex social distinction was inscribed in the house's spatial organization. Socioeconomic differences between residents of the ground floor and those of the upper floor were tacitly recognized. To be downstairs around the courtyard meant being on the lower rungs of the social ladder. ... Needless to say, these differences in status overlapped with ethnic and religious differences: most Jewish families lived on the upper floor and all the Muslims below. And although they [the interlocutors of Bahloul's ethnography] say that they lived in happy cohesion, these two groups were significantly differentiated on a daily basis.²⁸

Of course, for the real house to hold together, there had to be an upper floor and a lower floor, the upper depending on the lower for structural support. The upper floor could not have floated in air, as the top half of an Algerian household in the 1930s, without its lower part, with the very particular details that made up the architectural vernacular of Algeria. The figurative house or community or society, at least the particular historical one that has the configuration and character specific to Algeria, also had uppers and lowers. And within these, there seemed an endless regression of

²⁶ Joëlle Bahloul, *The Architecture of Memory: A Jewish-Muslim Household in Colonial Algeria, 1937-1963*, trans. by Catherine du Peloux Ménagé (Cambridge: Cambridge University Press, 1996) at 40.

²⁷ *Ibid.*

²⁸ *Ibid.* at 40.

further distinctions, more refined uppers and lowers which distinguished those, for example, who slept on the bed and those who slept on the floor upon the upper level. Articulating the significance of these distinctions were all manner of refinements from near and far, for example:

At the very bottom of this hierarchy the discourse of memory placed those who had to sleep curled up on the floor. In colonial Algeria this sleeping position may have denoted a nomadic way of life and thus embodied the absolute opposite of a European lifestyle and the impossibility of emancipation.²⁹

Within these structured asymmetries, individuals both discovered and distinguished their idiosyncratic characters, as did groups.

Bahloul's remembered household in which Jews and Muslims lived together (albeit within a structure of minutely subtle asymmetrical tensions) came to an end with the Algerian War of Independence, and then definitively tumbled with Israel's Six Day War in 1967 when the remaining Jews fled the collapse of communal relations to Europe or to Israel. Bahloul's work (as with Alcalay's literary archaeology of Levantine culture) requires, now, a recollection of the past—an active pursuit of memories (literary or oral) of a time and place where the other was not only intimately known, but could draw forth acts of tenderness and could call upon subtle mutual recognitions. Works like Bahloul's seek to recover memories of those middle spaces where Jews and Muslims may recall how, despite distinctions, they were not separate—to bring back those ordinary moments of domestic interaction: “the odour of baking bread, the odour of cooking, and the small favours women exchanged every day. It was the children who brought the missing egg or the half pound of butter forgotten in the previous day's shopping”³⁰—, a reciprocity that was so elaborate that one of the Jewish members of an Algerian household, now dispersed to France, “does not hesitate to say that, had there been a Nazi invasion from Tunisia, the Arabs would have hidden the Jews whereas Frenchmen would gladly have handed them over.”³¹

Although the history of the region contains a deep intercultural reservoir of these elaborate memories of reciprocity, each subsequent generation appears capable of removing itself from this middle ground of collective memory and comity. Just as recollection can hinge on impossibly minute details like an odour or a tone of voice, the current shared ground is also capable of being seized by an obsessive hair-trigger awareness of every move of the other, every facial expression and glance, every turn of phrase and modulation of voice. The shared ground has never really ceased being part of a common intercultural past, even though that space is dominated by just as elaborate distinctions whose very purpose is to separate. Confronted by that contemporary drive for distinction, it must be painful and dangerous to recollect such a past—to compromise the felt necessity of its separateness.

²⁹ *Ibid.*

³⁰ *Ibid.* at 83.

³¹ *Ibid.* at 90.

And yet, if recollection might be drawn upon in the service of a greater legal ecumenism (of which these pedestrian and domestic details constitute articles of faith and rules of procedure), it might also map out the sorry journey from an historical intercultural middle ground that each were constrained (and moved) to draw upon as part of their own cultural reservoir, to the shared space of empire that now dominates the landscape. The rest of this paper will look at a small sample of the many maps of the area, and how they have transformed distinctions that don't necessarily lead to separateness into completely segregated worlds vying for ultimate and obliterative distinctions between self and other.

IV. Logical Minimalizations

The more or less stable categories of mixed law that Stephen Goldstein comments upon as the Israel reporter in Vernon Palmer's survey of mixed jurisdictions provides somewhat of a counterpoint to the idea of a legal middle ground that I am developing in this paper.³² Perhaps inevitably (and no doubt for obvious reasons), the mixed jurisdiction of Israel is construed as a discrete product of highly contained historical events arising out of a precipitous break with a local past—a past which, in Goldstein's formalist discussion of what is present now, has no place. Goldstein's report reads as though Israeli law came to birth in a world whose prior order had no bearing, rather than coming to birth in a world that was already ordered. There is no hint in his account of millennia of a routine and banal common sense shared by the very people that now continue to inhabit the Middle East, poised in starkly oppositional stances. Hence Goldstein notes very briefly that Ottoman Turkish law was replaced by English law in the period of the British Mandate over Palestine (1920).³³ From this almost *terra nova* description of the legal past, common law and civil law began to mix with each other. The common law of the Mandate was overlaid by the influence of the first generation of the legal elite, both during and after the Holocaust, and in the years following the founding of the state of Israel in 1948. Leading jurists on the highest courts, in ministries of justice, and in the leading faculties of law, fled the devastation of anti-Semitic Europe bringing with them the continental legal tradition and giving private law in Israel its civil law overlay. As a result, in both substantive and procedural private law, the influence of both secular European traditions can be seen alongside a limited range of official religious law.³⁴

Israel is a classic mixed or mixing legal jurisdiction on this description and from one point of view, no fault can be found in the ways things are laid out. The private law of Israel must depict the law of the state. The state came into being in 1948. It would appear to be picayune and academic (if not bombastic) to refer to continuities

³² Stephen Goldstein, "Israel" in Vernon Valentine Palmer, ed., *Mixed Jurisdictions Worldwide: The Third Legal Family* (Cambridge: Cambridge University Press, 2001).

³³ *Ibid.* at 449.

³⁴ Talmudic, Islamic, Druze, and Christian customs are all present in Israeli law of marriage and divorce.

and discontinuities beyond those borders. And yet those continuities and discontinuities do not go away with the precipitous creation of the state—just as they do not for any state. Formalist, statist descriptions of law are just as thin in the Middle East as they are elsewhere.

In light of massive transformations in both common law and civil law in the nineteenth century (each transformation attendant upon massive transformations in the nature of state, jurisdiction, and law), it is hard now to contemplate *anywhere* the deep and complex histories of the traditions of common law and civil law and the ways that each state-based tradition intermingled with local customary law. Prior to the rationalizations of law in the nineteenth century, however, local law figured much more prominently in the substantive and procedural structures of official law in England and on the continent. Though familiar prior to the Judicature Acts in England and prior to the codification of the European *ius commune* on the continent, these local legal sensibilities seem to have nothing to do with law as we know it today. It might seem anomalous and particular to Aboriginal law in Canada that a legal academic could, but a generation ago, draw on a mere handful of written cases delivered over the centuries on the topics of Aboriginal rights and Aboriginal title. It might also seem peculiar to that particular body of law that the courts (facing that paucity of written Aboriginal common law) drew retrospectively upon an unwritten body of common law—a middle ground of negotiated and unspoken arrangements that had been emerging over centuries of encounters between Europeans and Aboriginal nations. The body of Aboriginal common law seems to be a legal outlier, as remote from law as the Great Manitou might be from orthodox Christian dogma.

Each of the common law and civil law traditions, however, that make up the bulk of the state law of Israel in Goldstein's account have only a very thin history. These traditions would be nearly unrecognizable to the generations upon generations of pre-nineteenth-century peoples that drew upon something more akin to a middle ground of unformalized, unpositivized, habits of thought and life. Prior to Napoleon's codification of civil law in France, for example, the civil law permeating continental legal thinking—largely academic—was based on the permutations of Gaius' index to Justinian's sixth-century codification of Roman law, and was drawn upon by the parliaments principally as persuasive authority or to fill in gaps in customary understanding within local legal orders. In common law, the jury played an analogous role in bringing together the common sense of the hills and dales of England and the procedural structure of the ambulant common law courts. The nineteenth-century rationalization of law greatly centralized jurisdictions and also contributed considerably to the consolidation of empire.

A similar departure from fidelity to the legal common sense of the locale in favour of the imposition of a more remote and authoritative vision can be seen in the Great Lakes region of North America. White's progression over the course of his exactly detailed account passes from primitive states of cartoonish distinctions (“on both sides, new people ... crammed into existing categories in a mechanical way”) to a quite deeply incorporated middle ground which consisted in the acceptance and transformation of another people's customs. Finally, at the conclusion

of his book, White notes that the middle ground eventually fell apart, dying in bits and pieces. The book finishes with a note reminding us of Said's critical depiction of how Orientalism portrays the other ("Orient as spectacle, as *tableau vivant*"), and with Trowbridge studying the Aboriginal prophet Tenskwatawa,

preserving him and his people against the day they would disappear. From creators of the middle ground, from people who strove to maintain the necessary understanding of a common world, the Algonquians had become objects of study in a world of white learning.³⁵

This movement from oppositional innocence, to middle ground, to obliteration seems to be on its head in the Middle East, with the deep intercultural reservoir of the Levantine middle ground having been polarized beyond recognition. If the progression is understood to lack inevitability, there are prospects that the unambiguously raw violence of the moment could swell again to the familiar swollen details of mutual understanding, in recognition that the state is the country of the people living in it, rather than some ever-expanding "home" for one group or the other.³⁶ This would also involve recognizing state law as the law of the people living in it, rather than the national home for legal systems pulled from European and American metropoli. This is not a particularly utopian vision. Rather it is its antithesis: a pragmatic understanding that Mount Moriah is just a place, ordinary and mundane. This more pragmatic harnessing of contemporary and historical realities would be one, as Alcalay suggests, "in which a truer rapprochement between Israelis and Palestinians and the Levantine and Arab worlds could turn a potential climate into an actual one, reconnect old and familiar routes and realign the cultural constellations of the region."³⁷

An aspect of this endeavor to rescue a far deeper lingua franca of the country and region would be, as John Cage remarked about the function of art, "to preserve it from all the logical minimalizations that we are at each instant tempted to apply to the flux of events."³⁸ Both law and cartography are sublimely logical in their minimalizations, selectively oblivious to the flux of events and the process that is the world we live in. The task of contrasting a terrain and architecture of the legal process which is the world of the Levantine with the logical minimalizations that are abbreviated further in Goldstein's overview of the law of Israel is itself a daunting enterprise, and one which I am postponing for later work. For the rest of this paper, I want to examine the minimalizations of cartography, in general, and in the region, and their relationship to the minimalizations of legal jurisdiction of Israel/Palestine.

³⁵ *Supra* note 12 at 522.

³⁶ Paraphrase of Ammiel Alcalay, "The Geography of Time" (1992) 31 Michigan Quarterly Review 498 at 505 [Alcalay, "Geography of Time"].

³⁷ *Ibid.* at 505.

³⁸ Quoted in *ibid.* at 514.

V. The Maps that Are Not Made

As I have intimated the prospects of a Levantine Israel—country of the people living in it, rather than some ever-expanding “home” for one group or the other³⁹—, one would imagine that there might already exist maps of Israel that represent the terrain of community rather than the jurisdiction of empire. There are all manner of artistic and political movements that join the two peoples (and more) together. To give one small example, Nasser Al-Tae'e writes of the fusion of Arab and Jewish musical styles, performances, and lyrics in his article “Voices of Peace and the Legacy of Reconciliation.”⁴⁰ Although this musical interpenetration need not be juxtaposed on top of something as set and durable as land, it borrows from settled musical conventions and the real-world limitations of voices and instruments in order to build its vision. One would think that it would be easy to translate this understanding into cartographic terms, borrowing from cartographic traditions respectively embedded in ways of relating to land and direction, transposing a middle-ground sensibility onto a commonly understood topography. As the critical cartographer J.B. Harley points out, however, “The social history of maps, unlike that of literature, art, or music, appears to have few genuinely popular, alternative, or subversive modes of expression. Maps are preeminently a language of power, not of protest.”⁴¹ Mapping a Holy Land, then—one that shows all the routes, alleyways and households of pedestrian and domestic intermingling, exchange, and cross-pollination—would seem to be a desperately utopian exercise; one that might unfold within yearnings, confined to the imagination, but not within “real” space.

In fact, such maps of the Holy Land have been far from uncommon. As Naftali Kadmon indicates, “Israel does not constitute the subject of the oldest known maps ... [b]ut the Holy Land undoubtedly boasts the longest unbroken chain of graphic representations in the world.”⁴² In the history of cartography, Jerusalem is perhaps the most mapped city in the world. From the medieval period onwards, a significant number of those maps of Jerusalem were drawn up with no visit to the actual land. As a result, the mapping of this of-the-world/otherworldly space resulted in the development of a whole series of practices, across a range of communities and cultures and religions in the European and Middle Eastern world. Those practices were elaborated upon the foundation of the maps, and vice versa. In this sense, both

³⁹ *Ibid.* at 505.

⁴⁰ Nasser Al-Tae'e, “Voices of Peace and the Legacy of Reconciliation: Popular Music, Nationalism, and the Quest for Peace in the Middle East” (2002) 21 *Popular Music* 41.

⁴¹ J.B. Harley, *The New Nature of Maps: Essays in the History of Cartography*, ed. by Paul Laxton (Baltimore: Johns Hopkins University Press, 2001) at 79.

⁴² Naftali Kadmon, “The Holy Land in Maps: From Stone Mosaic to Satellite Image” in Ariel Tishby, ed., *Holy Land in Maps* (Jerusalem: The Israel Museum, 2001) [Tishby, *Holy Land in Maps*] at 13.

the complex practices and the maps shared a relative location in a common world view and it is upon this foundation that modern cartography was built.⁴³

As a result of the centrality of the location in both monotheistic religions and world politics, the “Holy Land”⁴⁴ has been criss-crossed by pilgrims and travelers, expeditions and surveyors, for thousands and thousands of years. One can see from the maps produced following those journeys that maps always share relative location, however locale and space is conceived. And they always seek to orient a map-reader to the shared intellectual space of the cartographer.⁴⁵ Rehav Rubin writes that

[m]ost of the ancient maps were not intended to guide travelers or to serve any other practical purpose. They were regarded rather as a means of communication, transmitting information, viewpoints, ideas and, in the case of Jerusalem, conveying the sanctity of the city and its centrality in the eyes of the faithful.⁴⁶

As I will argue with respect to the embedded cultural and political elements of modern map making—the world view and implicit morality of maps—the desire to depict a bedrock central reference point of reality (to represent a world of virtually unchanging topographical permanence) is just as directive in modern “scientific” maps as it is to ancient religious maps. Modern maps too serve principally as a means of communication, of transmitting information, of conveying viewpoints and ideas.

As I will argue shortly, the legal traditions most familiar to the nineteenth- and twentieth-century imagination are built upon a notion of jurisdiction deeply wed to the episteme of accuracy—the universal science of measurement and order and the principle of classification and ordered tabulation.⁴⁷ The common law and civil law traditions that Goldstein focuses on are wed both to the rise of the nation state and to the emergence of “modern” cartography. One can imagine that conceiving of an alternative cartography (perhaps one more self-conscious about its own cultural and historical contingency) might also lead to a reconception of law and the means by which it is conceived of as an answer to injustice. It has been suggested in cartography that “the map that is not made ... warrants as much attention as the map that is made.”⁴⁸ The same suggestion should be made about law: that those legal sensibilities that are not recognized by orthodoxy warrant as much attention as those

⁴³ See *e.g.* the exquisite range of images in Tishby, *Holy Land in Maps*, *ibid.* This is one of many works written on the history of cartography in the Holy Land.

⁴⁴ The term “Holy Land” has been placed in quotations because place names are one of those contested aspects of cartography—particularly in the land I am addressing—to which I will return momentarily.

⁴⁵ See Arthur H. Robinson & Barbara Bartz Petchenik, *The Nature of Maps: Essays toward Understanding Maps and Mapping* (Chicago: University of Chicago Press, 1976) at 4.

⁴⁶ Rehav Rubin, “From the Center of the World to Modern City: Maps of Jerusalem through the Ages” in Tishby, *Holy Land in Maps*, *supra* note 42 at 25.

⁴⁷ See Harley, *supra* note 41 at 98.

⁴⁸ *Ibid.* at 106.

that are; that law's silence about multiple senses of injustice warrant as much attention as those that are recognized and remedied.

VI. Names

Attending to the silences in maps is a project that has grabbed the attention of cartographers for several years now as one facet of the struggle to understand the sources of authority of maps. J.B. Harley⁴⁹ is perhaps the most prominent, if not the first, of these critical cartographers to underline the essential requirement of a properly functional map: to lie about aspects of the reality therein represented, and to occlude as much as is revealed of the topographical landscape. These silences are reflected in the cartographic world of the North American middle ground between Aboriginal peoples and European settlers. In the early centuries of "discovery", the French and English settlers busily drafted and redrafted maps of the region, supplanting French place names with English ones, and vice versa, as though they were planting flags of sovereignty. To assert through a toponym the predominance of one nation against all others required the French and English settlers to be silent about the history and presence of others occupying the same space. As between the European colonizers there was by then a shared emerging practice of dividing the world into discrete Cartesian units, all equivalent, all geometrisizable. This shared conceptualization of space allowed for the ever-expansive mapping of the earth's territory as one (conquerable) unit.

But now, even outside of the European certainty that the world could be mapped truly or falsely within a single, universal Euclidian space, and outside of the preoccupation with joining the mapping and naming of territory to acts of sovereignty, there is recognition that North American Aboriginal peoples had their own names for places, and that they had their own ways of organizing those names. There is also recognition that Aboriginal people had their own elaborate world views, territorial sensibilities, and frameworks for conceptualizing space. Law is linked to those territorial sensibilities in ways that are just being recognized in Canada.

So for example, Aboriginal toponymic maps serve as evidence of land use patterns, and hence constitute the basis for land claims settlements which are still being negotiated across Canada between Aboriginal nations and the Canadian government. These maps reflect forms of life and land usage that simply do not correspond to the industrializing, private property model of generations of European settlers. Borders of sovereign land, for settlers, would be cadastrally and jurisdictionally fixed and unchanging except by acts of will or accession. This same territory was historically in flux for Aboriginal peoples. For example, for one period of their history the Inuit shifted their patterns of land use quatro-annually in response to the abundance and dearth cycles of the fox; in another period they modified their

⁴⁹ *Ibid.*

land use according to the seasonal shifts in the high water mark and modulations in the ice flows.⁵⁰

The belief that there is just one spatiality by which all others must be assessed is now recognized in cartography as an ethnocentric projection, and not only at the margins of the field.⁵¹ Although “the received wisdom is that ‘smaller, less developed societies have no need to map land ownership, tax assessment districts, the topography of tank attacks, sub-surface geology likely to contain oil, sewer lines, crime statistics, congressional districts, or any of the rest of the things we find ourselves compelled to map ... this does not mean that they don’t create in their heads dense multi-layered, fact-filled maps of the worlds they live in.’”⁵² The Aboriginal place name maps drawn up as both alternative representations of the world and as alternative ways to stake interests in Aboriginal land provide a sense of how partial and relative the European cartographic tradition has been. They intimate whole other ways of conceiving of the spatial world. And they illustrate how rhetorical some of Europe’s most “realistic” representations of space have been. This reflection also surely gives us pause with regard to how historically contingent and rhetorical our contemporary maps must be.

The toponymic silences of maps are a familiar feature of map making in the Middle East as well. The 2004 film *Route 181: Fragments of a Journey in Palestine-Israel*, co-directed by the Israeli filmmaker Eyal Sivan and his Palestinian peer Michel Khleifi, provides narrative accounts of precisely that kind of obliteration of the other’s place in the world that can be found in countless maps of Israel produced from 1948 onwards.⁵³ The title of the film refers to UN Resolution 181, which attempted to partition Palestine into an Israeli State and a Palestinian one in 1947—a prototypically modern and instantaneous cartographic creation of clear jurisdictions where no such clarity had existed before (or since, for that matter). The filmmakers interviewed Palestinian and Israeli people living along the 1947 partition line, thereby creating an oral history of the contemporary schism. Throughout their epic car journey along the line, Sivan and Khleifi routinely refer, in their discussions with interlocutors, to places on a map (which is enshrined on the dashboard of their car and reflected in the windshield as they proceed along the route). The filmmakers ask people, as they find themselves in the very places once named, if they have heard of the Arab town that used to exist underfoot or across the way. The towns have

⁵⁰ See Susan G. Drummond, *Incorporating the Familiar: An Investigation into Legal Sensibilities in Nunavik* (Montreal: McGill-Queen’s University Press, 1997) at 27-31.

⁵¹ Part of the research that I carried out on Inuit legal sensibilities was based on the place name maps produced by McGill University geographer Ludger Müller-Wille. See Ludger Müller-Wille, “Place Names, Territoriality and Sovereignty: Inuit Perception of Space in Nunavik (Canadian Eastern Arctic)” *Schweizerische Amerikanisten-Gesellschaft Bull.* 53-54 (1989-90) 17.

⁵² Daniel Dorling & David Fairbairn, *Mapping: Ways of Representing the World* (Essex: Longman, 1997) at 71.

⁵³ Eyal Sivan & Michel Khleifi, *Route 181: Fragments of a Journey in Palestine-Israel* (Momento, 2003).

vanished from both contemporary maps and, for the most part, from contemporary consciousness (and conscience).

The contemporary obliteration of place is by no means unique to the Israelis. The history of huge swathes of Europe in the 1930s-50s is also a history of the wilful obliteration of Jewish places and Jewish presence. I assisted my partner's father in giving his testimony to the Holocaust Museum in Montreal in 2003, and one of the most painfully poignant moments in that recollection was when he briefly returned to his home in Poland from a Displaced Persons Camp in Berlin, looking for his mother's grave. She had died, wrenched from him out of the blue, from septicemia when he was a twelve-year-old boy, several years prior to the moment that the bricks started going up around him in the Warsaw Ghetto. Upon his return to his city of origin, he found that the Poles had obliterated the cemetery in which she was buried. They had completely destroyed it. She had disappeared from his life when he was still a boy. When he returned as a deeply traumatized adult to his mother's gravestone, the place where her body had rested had disappeared from the face of the earth. That Jewish cemetery would not exist on a contemporary Polish map of the place of his birth.

The contemporary focus on the "silences" in maps—on the peoples ignored or marginalized—is an attempt to promote social justice by belying the comprehensiveness of those maps which speak the language of power.

Attending to the silences contained in dominant maps would be essential for a redrafting of the middle ground. Just as issues of contemporary sovereignty are beginning to flow in Canadian law from these alternative cartographies that attend to the names that have been overlooked, along with the complex and extensive sensibilities that underlie those names, so the implications for legal sensibilities are more nuanced than the exclusive sovereignty of state law has so forcefully implied for so long.

The language of power that is wed to maps does not dwell only in the toponymies by which silences are created. An awareness of how naming reshapes a political landscape is part of a broader critical understanding of how spatial knowledge—contingent, partial, and historical—is disseminated through the map. Not only is the information conveyed in maps purely relative, in the sense that "no matter what other characteristics objects do not share, they *always* share relative location"⁵⁴—the information conveyed in maps is also connected to a particular time and place and cultural conception of space. It is worth dwelling, as have recent cartographic critiques, on the variety of rhetorical devices that are routinely invoked to fortify the power of maps before passing on to how exactly modern cartographies got wed to the rise of the nation state and the rise of exclusive legal jurisdictions—and how the legal

⁵⁴ Robinson & Bartz Petchenik, *supra* note 45 at 4. See also Leonard Guelke, ed., *The Nature of Cartographic Communication* (Toronto: University of Toronto Press, 1977) at 2.

cartographies of state, by prioritizing territory over place, empty space of the complex interactions between historical subjects.

VII. Space and Place

Place names on maps illustrate one of the ways in which power is wed to the representation of space and the manner in which the silences of maps belie alternate understandings of the history of the landscape, if not alternate ways of conceiving of spatiality and sovereignty. Toponymy is one of the many ways that maps reveal themselves to be, as Alan MacEachren notes, reflections of the cultures that produce them, as much as they are a representation of a section of the earth or activities upon it.⁵⁵ A toponymic map in conformity with the representations of one culture rather than another represents the triumph of that culture's historical and epistemic priorities, preferences, and proclivities.

Beyond the partiality of toponyms, cartographers have been explicating in general how maps elaborate a similar kind of epistemic paramountcy. They have done so through an examination of the representational (as opposed to communicative) nature of maps—through an examination of *how* maps convey what they are intended to convey. This includes the question of how maps naturalize spatial understandings and subtly reinforce agendas, both political and epistemic. The idea that maps are mirrors of nature—or at least that modern cartography advances along a cumulative progression toward increasingly more accurate delineations of reality⁵⁶—is one of the articles of faith that critical cartographers have recently assailed. Beginning with recognition of the fact that reduced scale, two-dimensional maps necessarily distort the complex, three-dimensional world, cartographers have been exploring the ways that maps offer selective, incomplete views of reality, and thereby reify cultural practices and priorities along with relations of power.⁵⁷

One of the means by which cultural preferences are reified is through the valorization of a very particular notion of accuracy. The manner in which “scientific” approaches to analysis are proffered as superior methods of correcting for inaccuracies in apprehensions of reality is one of the ways that a particular western European world view has been promoted, through successive maps, as generating more and more accurate (because scientific) pictures of the world. Even within internal European history, medieval conceptions of Jerusalem, for example, are not conceived as one way of representing the place of the city within a whole web of shared meanings, but rather as inaccurate and subjective projections of an imaginary city that has a “real world” counterpart that can be accurately mapped out. Though the idea of what is “real” may indeed acquire its solidity through participation in

⁵⁵ Alan M. MacEachren, *How Maps Work: Representation, Visualization and Design* (London: Guilford Press, 1995) at 10.

⁵⁶ See Harley, *supra* note 41 at 10.

⁵⁷ See e.g. Mark Monmonier, *How to Lie with Maps*, 2nd ed. (Chicago: University of Chicago Press, 1996) at 1. See also Harley, *ibid.* at 35.

contiguous intellectual or semantic space, and thus real in the sense of being something close to the depictions of contemporary map making, this is not what is projected. What is projected is what is *really* real. The grids of Euclidean geometry and Cartesian space reify a particular ordering of that space. But that is very difficult to apprehend from the vantage point of centuries of post-Renaissance cartography that is deeply epistemologically wed to the apprehension of the world through measurement, tabulation, and classification.

Harley has pointed out how modern maps not only facilitate the reproduction of such values and make them appear natural, but how they camouflage their own historical contingency and the agendas that they promote in the process. Despite their ambitions to appear both realistic and natural, modern maps are driven by a very partial world view. As he notes, “an accurate outline map of a nation, such as Cassini provided for Louis XIV, was no less a patriotic allegory than an inaccurate one, while the ‘plain’ maps of the Holy Land included in Protestant Bibles in the sixteenth century in part to validate the literal truth of the text, were as much an essay in sacred symbolism as were more pictorial representations of the region.”⁵⁸ As it would have been hard to convince a Protestant cartographer that their cartographic counterpart to clearing the church of ornamentation was in fact a further ornamentation of the history of Christian theology, the naturalization of the proclivities of modern map making are difficult to apprehend as other than the progressive eradication of subjectivity from a world that is only objectively knowable through the modern talisman of accuracy.

The quantification of space lends legitimacy to maps conceived within the “cumulative progress of an objective science always producing better delineations of reality.”⁵⁹ This reification of the epistemological values of “scientific” accuracy, when added to the toponymic distortions in map making, provide two examples of the ways that critical cartography focuses on the representational distortions inherent in the enterprise of conventional map making. Beyond these epistemic and political reifications, there are other ways in which representational preferences reproduce and reinforce world views.

These epistemic and political reifications occur through the manipulation of the standard logic and semantics of map making—that is, through playing with the rhetoric of reading and writing maps to convey a point of view in the same way that novelists play with and subtly push the conventions of writing in order to seduce the reader into the narrative dream of their novel. This rhetorical repertoire, which has been the subject of cartographic deconstruction in the last several decades, includes such conventional devices as scales, symbols, colouring, and projections. These tropes of cartography underlie cartographic perception and allow a cartographer to reconstruct a conception of space by invoking conventional ways of writing and reading cartographic texts.

⁵⁸ Harley, *supra* note 41 at 77.

⁵⁹ *Ibid.* at 10.

Mark Monmonier provides one small example of the expressive manipulation of cartographic convention in his commentary on a map of the Middle East. The map of the region depicts each of the Arab countries in Israel's vicinity (in black), which highlights the extraordinarily tiny piece of land (in white) that Israel occupies in comparison. The map underscores graphically not only the humility of Israel's claim to the land, but also its vulnerability in the context of (the map's portrayal of) a monolithic and uniformly hostile Arab world. As Monmonier notes, the map

portrays a cartographic David-and-Goliath contest between tiny Israel and the massive territory of the nearby oil-rich Arab nations. Even though the map's geographic facts are accurate, a map comparing land area tells us nothing about Israel's advanced technology, keen military preparedness, and alliances with the United States and other Western powers.⁶⁰

As Monmonier points out, the map follows the contours of agreed-upon topographical space to convey a qualitative message—a message that is not inherently present in the three-dimensional contours of the terrain but which the map implies is just as accurately described as present as if one were describing the mountains and river basins. The map relies on the shared reality of cartographic conventions, with all of the region's topography shown as a base map and the additional information overprinted upon a conventionally agreed-upon framework. The map borrows further rhetorical force by relying upon conventional cartographic agreements about the use of shading to block off national space in a uniform way within borders contiguous with the nation state. This results in flattening out human complexity within national borders: the space is represented as uniform and one-dimensional. The use of colour and shading in this stark black and white map to convey a rhetorical message through a play with cartographic convention is one sample (of many from critical cartography) of the ways that maps tell stories, all the while claiming to be merely transmitting reality.

In the same way that the map that Monmonier analyzes can be deconstructed as text, borrowing rhetorically on conventions that naturalize a scientific view of the world (the map is topographically “accurate” and therefore its message also acquires the legitimacy of an accurate representation of the world), it is possible to extend the reading of the map as a narrative, or as a story that is being told through cartographic constructions. I offer this further reading of the map's text—one perhaps not intended as its primary message—to get at another dimension of naive cartography, namely the eradication of the existential subject in favor of a projected objectivity.

Taking the starting point of cartographic colour conventions to “read” the map, it speaks not only as a projection of spurious vulnerability, but also reflects a telling depiction of the ominous sense of fragility and doom that clouds the Israeli perception of space. This is a qualitative apprehension of the precariousness of Jews in a world in which they have for millennia been surrounded, closed in, and crushed by anti-Semitism and wholesale efforts to obliterate the space that they do take up. In other

⁶⁰ Monmonier, *supra* note 57 at 94.

words, the map is a compelling portrayal of subjectivity—of the emotional content of the message. In this sense, the map, if read qualitatively for what its representations “tell us” about the world, is an informative representation of an important Jewish perception of place in the world. In his book on the psychology of the peace process, Ofer Grosbard emphasizes that the preoccupation with who is right and who is wrong (as though, like the naive view of modern maps, there is one true delineation of history that can correct all others) is a distraction from the far more central question of the emotive and narrative content on each side.⁶¹ That focus on the epistemology of the object over the epistemology of the subject is projected in not only the creation of maps focused on correcting misapprehension, but also in the reading of maps that might otherwise convey dimensions of humanity. That is, the quantitative emphasis on “correct” apprehension misconstrues the real issue that might be more fruitfully placed on empathic apprehension of the other’s subjectivity. The peace process—and its dark underbelly—is fundamentally an emotional process.

The purpose in underlining the subjectivities on either side of both map making and map reading, and how the representation of space distorts as much as it conveys an understanding of space, is to point to a qualitative apprehension of reality that underlies the artful manipulation of quantitative legitimacy. This is a kind of subjective feel for the stories that maps tell despite the fact that the modern bent of progressive cartography is that maps don’t tell stories, they reflect reality. The qualitative silence of the subjective world is seen in the way that the map Monmonier refers to occludes the many, multifaceted, complex, multivocal perspectives in the blackened Arab parts of the map. It is also seen through the blackened view of Israel’s advanced technology, military preparedness, and alliances with the United States and other Western powers—a similarly shallow apprehension of the anxieties and complexities that drive such figures.

This suppression of the multidimensional nature of human cartography is facilitated also by the triumph of space over place within modern cartography. The two most standard types of modern map are those of the nation state and those of the city, the former depicted (in the context of its neighboring states) as monolithic and of a uniform colour, the latter as a grid of fungible streets and roads—the same thing reproduced over and over on the grid, with narrowness or wideness as the allowable variation. Jeremy Black talks about this kind of obliteration of qualitative differentiation in the structure of modern maps, an obliteration that allows for the dehumanization of the landscape—even as it intends to create a human cartography. As Black notes on the subject of urban cartography,

In the ‘A-Z’-ing of life, habitations emerge as the spaces between streets. Differences within the city or town, for example of wealth, or environmental or housing quality, are ignored. The perceptions that create and reflect a sense of urban space, often rival, contested and atavistic, are neglected, in favour of a

⁶¹ *Supra* note 9.

bland uniform background that is described, and thus explained, insofar as there is any explanation, in terms of roads.⁶²

As urban places are depicted in a uniform manner, they can be treated in a uniform manner, with the qualitative realities of social space voided, “a geometrical landscape” as Harley depicts it, “of cold, non-human facts” in which the “subject is kept at bay.”⁶³ In this manner, the most familiar maps of the modern period (national and urban maps) reinforce the many silences that allow maps to falsify human reality. It should be added that the intersecting grid of minimalizations in statutes and legal rules have the same tendency to evacuate legal space of subjectivity.

The triumph of space over place—the triumph of a single uniform view of a territory over complex, subjectively construed landscapes—has been most potent when the “scientific” pretensions of modern cartography have conjoined with modern notions of sovereignty and the state.

VIII. The Map as an Assertion of Sovereignty

Maps have historically been interlocked with the sometimes delicate enterprise of asserting sovereignty. This is true of the maps created by the English and French during their colonial periods in North America: as between themselves, European place name maps served as evidence of control over the territory—a component of the assertion of sovereignty by each group. As between the descendants of the conquering European nations and the indigenous nations of North America, Aboriginal place name maps serve to ground land claims and the concomitant entitlement to self-government attached to those jurisdictions. In recent years, the place name maps of North American Aboriginal groups have been drawn upon both in land claims processes and as a basis for self-government within these jurisdictions. Returning to the map of the Middle East in which Israel is a small white swatch of land surrounded by a sea of black Arab neighbours, the portrayal of space in a way that conveys manifest threats to territorial integrity can be seen as part of an arsenal for the assertion and maintenance of sovereignty.

To a large extent, maps of the modern era are linked to the territorial principle and to the rise of the nation state, in much the same way as immigration laws, border police, and economic tariffs. Contemporary maps, with scientific accuracy as their talisman, are oriented to the reconstruction of the world along the lines of the modern state. This orientation of the representational values and features of cartography—in this case measurement, tabulation, and classification—is not new to map making.

Maps of the Holy Land are infused with such orientations to a world view—orientations that tell a moral tale at the same time as they tell a tale about governance. Rashi’s medieval “boundary drawings” of Jerusalem, reproduced in standard printed

⁶² Jeremy Black, *Maps and Politics* (London: Reaktion Books, 1997) at 13.

⁶³ *Supra* note 41 at 99.

editions of the Babylonian Talmud and copied numerous times by later Talmudic commentators, provide another example. His schematic maps represent the city as a grid of perpendicular lines. Rashi's map was designed to accurately indicate relative location rather than measurement, explicating thereby the boundaries within which those of God's commandments that were operative in the land of Canaan would apply.⁶⁴ Although the lines are oriented, they are nowhere close to the grid of streets or borders that one would find on a contemporary road map. Locating oneself within them would not mean eventually finding a particular street corner or plaza; rather, it would mean creating oneself within a moral, legal, and theological space.

Another representation of orientation can be found in the way that words and language (written in this case) relate to the physical space traversed by human beings. Rashi wrote the Hebrew script accompanying the map upside down so that the eye follows (anomalously for Hebrew) left to right or west to east, so that the line of the words graphically portrays the line of the Israelites' eastward march from Egypt across the Red Sea and the Sinai Desert to Transjordan. The city is thereby located within an historical, geographical, and theological space.

Similarly, many of the representational devices of modern cartography—toponyms, colour, accuracy as a talisman of authority, space triumphing over place—are employed in the service of a vision of how the world is divided up—a secular theology. In the modern case, the world divides up into the jurisdictions of modern nation states, with hairline, almost vertical borders, oriented to a putative understanding of “reality” (scientific, measurable, accurate) of the world upon which it is hinged. Medieval Jewish maps of the Holy Land, like the many Christian maps that placed Jerusalem at the center of interest of the Christian world, aspire to offer a “true” representation that corrects former errors.⁶⁵ The invocation of accuracy is not new, but the standards of accuracy have changed according to the map's function. The governance aspirations of a modern state demand a set of standards and conceptions tailored to its needs, just as the Halakah (Jewish law) needs a way of conceiving of holy space and its demands and commands.

There are a number of actions which can be taken to secure the modern vision of national sovereignty. These include warfare, boundary making, propaganda, and the preservation of law and order. Maps appropriate to these functions of state accompany each activity. One of the precursors to the modern need to produce maps as assertions of sovereignty is the military map. These maps were contoured initially for the reconnaissance required to stake out the land to be defended or conquered;

⁶⁴ See Catherine Delano Smith & Mayer I. Gruber, “Rashi's Legacy: Maps of the Holy Land” *The Map Collector* 59 (Summer 1992) 30 at 30, 32.

⁶⁵ For example, Rabbi Elijah ben Abraham Mizrahi replicates the following caption on his map of the Land of Israel, 1523, based on Rashi's map in the Talmud: “Here is a delineation of the boundaries of the Land of Israel according to the commentary of Rashi, as I received it and as it is true and correct according to Rashi's words” (cited in Ariel Tishby, “Maps after Commentaries by and on Rashi” in Tishby, *Holy Land in Maps*, *supra* note 42 at 119).

contoured also to the particular style of warfare and needs of the military; contoured also with an eye to enemy surveillance and subterfuge, for example maps specifically drafted with crucial elements missing. Cartographic history contains numerous maps of such selective reproduction of terrain. For a great number of recent nation-building exercises, surveyors marched alongside soldiers.

The British mapping of Israel/Palestine during the First World War and following into the mandatory period provides a classic example of mapping tied to the aspirations of sovereignty and empire, along with an example of how cartographic epistemes are wed to the particular conceptions of governance affiliated with that sovereignty.

British mapping of the Levantine region began during the French Revolutionary Wars, driven, as in North America, by competition for prospective colonies. The original maps that the British drew upon were funded by private organizations inspired, at least in theory, by philanthropic, archaeological and theological aspirations. These philanthropic mappings were increasingly linked to British governmental interests, culminating in the work of the Palestine Exploration Fund (“PEF”) following its founding in 1865. It was the PEF’s production of maps following their major survey of the region in the early 1870s that provided the basis for all subsequent military mapping until ground and aerial surveys were undertaken in the First World War.⁶⁶ The mandate of the PEF, originally an extraordinarily well-placed group of privately funded British clergymen and academics, was laden with the *tableau vivant* Orientalism that Said refers to, as well as the sacred symbolism of the by-then entrenched Protestant mission to unearth the literal truth of the text through pictorial representation⁶⁷—in this case the text of the land. These missions were linked eventually to an aspiration to dominate the territory. The PEF’s original mission was *biblical* exploration, stimulated by Victorian religious zeal, informed by the emergence of a “scientific” understanding of the natural world that was there, ready to be revealed, by a certain detachment and dispassion. As Dame Kathleen Kenyon, one of the distinguished biblical explorers of the PEF wrote,

The middle years of the nineteenth century constituted a period in which the great civilizations of Western Asia were being revealed by the space of the archaeologist and the interest aroused was very great. ... It was in this climate of excitement at the revelation of remains contemporary with the Biblical record of the history of the kingdoms of Judah and Israel that the Palestine Exploration Fund came into existence. ... The objects of the Fund were the “accurate and systematic investigation of the archaeology, the topography, the geology and physical geography, the manners and customs of the Holy Land for Biblical Illustration.”⁶⁸

⁶⁶ See Peter Collier & Rob Inkpen, “Mapping Palestine and Mesopotamia in the First World War” (2001) 38:2 *The Cartographic Journal* 143 at 143-44.

⁶⁷ By way of interest, the PEF, which is still going, has amongst its list of luminaries T.E. Lawrence, a.k.a. Lawrence of Arabia.

⁶⁸ Colin Osman, *Jerusalem: Caught in Time* (New York: New York University Press, 2000) at vii.

It was upon the foundation of the twenty-five sheets printed by Britain's Ordnance Survey in 1880 that British military intelligence built its subsequent refinements, most particularly prior to and during the First World War. When the details of the PEF's maps proved inadequate to protect emerging British interests and contemporary warfare, these were supplemented by an alliance between surveyors and military intelligence. Army training was reformed so that surveyors could be commissioned as captains and lieutenants to advance with the army and draw topographical survey maps appropriate to the advance of an early twentieth-century army.⁶⁹ PEF maps were supplemented with aerial photographs, and then with detailed plane table surveys. The need to project the land for surveillance from a military vantage point generated an enormous volume of topographical surveys, with extraordinary detail filling in the foundational (if not at times explicitly covert) work of the PEF.

The "Wilderness of Zin" survey motivated by the Turko-German alliance and carried out by the PEF in 1913-14 provides an illuminating example of the tangled links between the natural and human sciences (topography, archaeology, anthropology), a Protestant world view, military intelligence, and empire building. The objectification of the natural world (the Protestant reading of it as a text to be interpreted with a literalist, unadorned sensibility) conjoined with the objectification of the other ("the Orient as spectacle, as *tableau vivant*") lays the groundwork for a further objectification of the territory, thus prepared for appropriation. A survey of the Negev Desert was undertaken by Sir Leonard Woolley and by T.E. Lawrence ("of Arabia" fame). Both men were serving with Military Intelligence in Cairo when their report was published in early 1915. The aims of the survey were:

- To clarify the history of occupation of this area of the southern Negev by examining and mapping the archaeological remains from all periods;
- To trace the old inland route of caravans from central Palestine to Egypt;
- To identify sites mentioned in the Bible and other ancient texts;
- To investigate the area of 'Ain Kedeis, traditionally associated with the site of Kadesh Barnea as mentioned in the Book of Exodus in the Old Testament of the Bible.⁷⁰

In fact, the survey generated detailed military intelligence under cover of archaeological work⁷¹—though there was no doubt also sincere interest on the part of each surveyor in the naive goals of their undertaking.

⁶⁹ See Collier & Inkpen, *supra* note 66.

⁷⁰ See online: Palestine Exploration Fund <<http://www.pef.org.uk/Pages/ProjWZin.htm>>.

⁷¹ See Collier & Inkpen, *supra* note 66 at 144.

Military maps such as these also illustrate the preference of the state for lines drawn in the sand, for declaration of where an army may venture and then no further. Drawn with such non-fluid borders, they consolidate a conception of military might as well, a sense of when—because where—force is legitimately invoked against another territorial intruder.

Beyond these initial reconnaissance maps, maps have been tied to the state-building enterprise through their dissemination of corrected information, and through their reinforcement of orthodoxies. When military maps succeed in facilitating the surveillance of the land and in guaranteeing the advance of an army, maps get impregnated with a kind of legitimacy. This legitimacy stems from an alliance with the successes of force. The triumph of force says something about human relations—if only, and perhaps most potently, about triumph itself. This legitimacy can extend deeply into the world view associated with the successful marshalling of force, including the versions of accuracy that allow for advances to succeed, as well as the gestalt or world view that fosters (and is synergistically reliant upon) such claims of accuracy. Force triumphs if the version of corrected vision upon which it builds triumphs. This partly explains Harley's comment that maps are preeminently a language of power, not of protest.⁷² Officially, a conception of land drawn by the conquered is a representation, not a map. As Dorling and Fairbairn note, "A picture is a map when it is drawn by someone with the authority to draw maps."⁷³

As much as maps are wed to sovereignty in the modern era through their alliance with military force and military surveillance, they are also wed to sovereignty through law. The military maps provide reconnaissance of lines that will need to be consolidated into borders through more genteel forms of legitimacy. The borders of state, however conceived, are the lines within which the law runs.

As the example from Rashi illustrates, maps that lay out the boundaries of jurisdiction are not new. But Rashi's medieval conception of the Holy Land and law generated a very particular schematic with which to represent the land. As Delano Smith and Gruber point out, his preoccupation with mapping the dividing lines between the sacred and the profane is tied to Jewish belief and how it links up with the realm of geography and how both relate to law. To the question "Why should God's word concern itself with cartography?", Rashi answers:

Insofar as many [of God's] commandments are operative in the land [of Canaan] ... he [Moses] was required [by God] to write down the boundaries on each of [the land of Canaan's four] sides so as to inform you that from these boundaries inward the commandments are operative. [Commentary, Numbers 34.2].⁷⁴

The union of theology and cartography is not anomalous in the history of either; nor did the association of borders and law only emerge with the rise of the nation state.

⁷² *Supra* note 41.

⁷³ *Supra* note 52 at 71.

⁷⁴ Smith & Gruber, *supra* note 64 at 32.

However, the conception of territory, jurisdiction, and accurate representation of each, and of each in relation to the other, is very different from modern statist conceptions of the same. Space may need to be understood as territory in each version, and each may address clearly identified people within that territory, but the conception of accuracy and “realistic” portrayal of a “natural” world is different in each—and is therefore tied to different legal formulations of appropriate governance.

While Rashi’s commitment to accuracy operates with a more allusive, associational and dread-filled context, the contemporary commitment to accuracy is beholden to the gods of measurement and precision. Rashi, scripting his commentaries in Troyes, France and never having traveled to the Holy Land, is disciplined by the text, committed to ensuring that the depiction of the Holy Land conformed to the Holy words in Numbers 34.3, Numbers 34.4-11, Judges 21.19, Ezekiel 45.7 or Ezekiel 48.35. The definition in the lines drawn is corrected by the text. Contemporary maps of state, and the refinements of definition upon which they are dependent, allow the commitment to measurement and tabulation of an objective natural order “out there” to offer progressive corrections to maps.

IX. Cadastral Topography and Sovereignty

Maps are not only like law in their conveyance of authority: each discipline is also mutually reinforcing of the other’s imbedded world view. They are like Möbius strips in having only one side and one edge, and in being therefore unorientable.⁷⁵ The cadastral mapping of Palestine, occurring over the same period that the PEF was undertaking its biblical explorations, provides an example of how conceptions of accuracy and “dispassionate” scientific attachment to measurement are conjoined with a mission of state—and a conception of law—quite distinct from the theological mission of cartographers like Rashi. These maps confirm the single-sided, single-edged nature of maps and laws—and the single world view that makes up the texture of the strip of that single edge and side.

Cadastral maps are those that set out as a matter of public record—hence in a manner controlled by a bureaucratic authority—the value, extent, and ownership of land as a basis of taxation. In order to render public, central, and authoritative such a construction of the land, each of the individual plots of land has to be not only laid out according to criteria that quantify it in standard terms of mathematical reference (typically metes and bounds); it must also be placed within a structured framework based on a uniform system of quantification that equally quantifies the surrounding plots of land. If the information that maps convey is purely relative, this is not only with respect to the location of other fixed reference points, but relative to a

⁷⁵ “Very roughly a surface is orientable if it has two sides so that, for example, is it possible to paint it with two different colours. A sheet of paper or the surface of a sphere are examples of orientable surfaces” (Dan Summons, “What is the Mobius Strip?”, online: Physlink.com <<http://www.physlink.com/Education/AskExperts/ae401.cfm>>).

standardized way of conceiving of space—a conception that itself moves to the background so things can be relatively located upon its foreground. The emergence of cadastral maps in general, from the Renaissance onwards, laid over topographical maps that group the terrain under a single rubric of measurements, assisted the project of lining human space up into a single world view. The way that cadastral maps served this function in Palestine, as well as the way that cadastral maps are tied to statecraft and the conjoining of a particularly modern conception of the relationship between space and law, has been nicely laid out in Dov Gavish and Ruth Kark’s article, “The Cadastral Mapping of Palestine, 1858-1928.”⁷⁶ The symbiotic overlay of such narrowly conceived ideas of land and law on top of the foundations of broader topographical surveys (undertaken, at least originally, with both theological and colonial aspirations in mind) can also be seen in the historical coincidence of this cartographic exercise.

The superimposition of a cadastral construction of property boundaries and territorial subdivisions on a swath of land, made to create units suitable for transfer or to define the limitations of title, is linked to a very particular conception of governance, society, and control. As Gavish and Kark point out:

From the Renaissance until the late nineteenth century the cadastral map was, in many areas, an established adjunct to effective government monitoring and control of land. ... [A] number of uses to which cadastral maps have been put by state agencies [have been identified], including evaluation and management of state land resources, land reclamation, land redistribution and enclosure, colonial settlement and land taxation. Maps also served as symbols of state control over land and as tools of an enlightened government. ... [C]adastral mapping constitutes an instrument of control which both reflects and consolidates the power of those who commission it, whether economic, social or political.⁷⁷

It is not as though the land itself in any way suggests that it naturally breaks down into cadastral units; once it is so compartmentalized, however, those maps take on an irrefutability, a reality, of their own. Linked to both original force (following in the footsteps of military maps) and to the epistemology that accompanies that force (topographical surveys outlining increasingly more accurate perceptions of land—always under the tightly conceived criterion of accuracy), cadastral surveys both lend the state the authority of measurement and control while they allow the state to measure and control.

Though the original association between the cadastral maps and modernity may have derived from a link with the West, the British were not the first imperial power in Palestine to be aware of the affiliation of cadastral maps with statecraft. The Ottomans, during the nineteenth-century surge in cadastral surveys throughout Europe, were alert to the power inherent in such spatial reconfigurations. As Ireland,

⁷⁶ Dov Gavish & Ruth Kark, “The Cadastral Mapping of Palestine, 1858-1928” (1993) 159:1 *The Geographical Journal* 70.

⁷⁷ *Ibid.* at 70.

France, Austria, Bavaria, and the United States (among others) were superimposing cadastral maps upon topographical maps and creating public registries of title through these cartographic devices, the Ottomans also began to pursue a similar ordering and systematization of the lands under their control. Coincident with this aspiration, the law proposing such a conceptual rearrangement of the territories under their jurisdiction was passed in 1858. Though the *Ottoman Land Law* of 1858 created a Land Code and opened three Land Registry offices in Palestine, creating an official system of Land Books and Records, making compulsory the registration of arable land, the registration of land was based on deeds.⁷⁸ These deeds were not imposed on a larger survey or uniform framework.

The symbiotic relationship between a more global reconceptualization of land under the new “science” of topography and the systematization of title according to cadastres—a relationship that needs to be closely maintained for the consistent and thorough management and control of land—is apparent in the fatal way in which Ottoman cadastral surveys were isolated from larger topographical surveys. The importance of rooting cadastral to topographical maps is apparent also in the ultimate consequences of the disjunction between cadastral and topographic maps. What persists in the documentary record are maps of Palestine that “shared no common guidelines, lacked any uniformity with regard to cartographic method, legal status, quality and appearance.”⁷⁹ The registration of individual deeds under the *Ottoman Land Law* in fact was completed, for the most part, in accordance with standards of quantification that were generally recognized. The deeds were based on metes and bounds, described the length of the land and the square area enclosed, depicted bearing and scale, and described neighbouring lands. But they were detached from the larger system of coordinates that topographical surveys generate. The latter were not yet available—at least not in a form consistent with the epistemic criteria of statist cartography. As a result, the deeds, though accurate in describing very local plots according to the same terms of reference employed by modern topographical mapping (the same frame of reference for accuracy), remain impossible to localize in a larger context.

Though the *Ottoman Land Act* was intended to introduce those elements of order and systematization that would bring private land into the purview and control of modern states, when Jewish settlers began to arrive in Palestine, the first wave coming in 1882, the Ottoman government quickly restricted Jews (and Christian settlers) from land registration. Until 1867 foreigners could not legally possess immovable property in Palestine, and following 1867, as a result of pressure from foreign governments, foreigners could only purchase land if the government of the country from which they came entered into agreements with the Ottoman government. Jews and some Christian settlers often did not have such agreements

⁷⁸ See *ibid.* at 71.

⁷⁹ *Ibid.*

operating at an intergovernmental level. Thus they were excluded from purchasing and registering land.

Since excluded groups (principally Jews) lacked the capacity to publicly register their land purchases through the cadastral system, indeed lacked legal personality in Muslim and Ottoman law, purchases of larger pieces of land were made on their behalf by third parties. The land was registered vis-à-vis the third party purchasers with the equivalent of counter letters. Within the group, the land was parceled up and an internal cadastral analogue was generated, each plot measured, and the dimensions of the land noted, along with the legal status of the land and any obligations imposed upon it. All of these details were registered in the Hebrew Land Books. Alongside these internal registries, both the settlers and local authorities also hired surveyors and other technical workers to carry out large-scale topographical surveys that served as the underlying foundation of this cadastral system (which was not yet officially recognized).

By the time the British took over the Mandate of Palestine, the discrepancies between Ottoman cadastral survey of deeds (which were dislocated from general large-scale topographical maps) and the occulted Jewish cadastral maps (which, though unofficial, were integrated with underlying topographical points of reference) were resolved by bringing the Jewish cadastral maps out of the shadows. The British brought Sir Ernest Dowson from Egypt to undertake cadastral reform (consistent, of course, with the version of sovereignty and governance that they had been developing alongside modern statecraft). One of his most strident recommendations was to bring those maps that were most consistent with the quantitative methodology of state-affiliated cartography out into officialdom. As he wrote,

The third piece of immediately and permanently useful work consist in taking over the Land Registers of various Colonies, for the most part Jewish, who have long complained with considerable justification that their own Land Registers though reliable and comprehensive are legally invalid, while the Government's Registers though legally valid are unreliable and incomprehensible.⁸⁰

When this legitimation of the occulted land registries was further consolidated by a survey of Palestine, undertaken shortly after the institution of the British Mandate in 1920, the far-reaching solidity of the modern cartographic episteme—governed by a putatively universal science of measurement and order and the principle of classification and ordered tabulation, reinforced by a conception of legal order running along the same single-edged, single-sided epistemic surface—was entrenched. Alternatives were thereby excluded. And quite literally, those staking alternative claims to the land, alternative ways of conceiving of a relationship to occupied space, were excluded. Those landowners who today attempt to locate their land and assert ownership, having possession of deeds in conformity with the *Ottoman Land Act*, find themselves unable to locate their property as the deed does not fit into the larger topographical survey that became the substrata (the cartographic

⁸⁰ Cited in Gavish & Kark, *ibid.* at 76.

land upon which the cadastral plan was laid) of public registration.⁸¹ Location is relative not to three-dimensional reality “out there”, but is relative to the standardized way of conceiving the space within which location has meaning.

Of course, far more unrecoverable within this framework were the earlier conceptions of ownership, property, and relationship to space that underlay the Ottoman mapping in 1858. Mapping out this sense of space would be a step removed from re-creating underlying topographical projections in order to clarify nineteenth-century cadastral plots, and would be more like attending to the spatial sensibilities in Aboriginal maps, laying these on top of topographical surveys to get a more nuanced feel for the deep and varied contours of the landscape.

X. Cartographic Intimation

I have followed, through these meanderings, a very narrow trajectory from the representative and rhetorical nature of maps and their linkages to power and sovereignty. There are a phenomenally large number of maps of the Holy Land and of Jerusalem. And there are a larger number of contemporary maps. Many of these are linked up to other elements of the laws in play on the territory. I have focused on the law associated with military surveys and cadastral maps. Many other kinds of maps that track, for example, constitutional law, or absentee property law, or nationalist holdings, have carried out similar missions in Israel to the maps I have focused on. I have focused on these particular maps because they offer insights into the various epistemologies and representational devices at play in contemporary cartography and the link between knowledge (as cartographically constructed or revealed) and power.

As I indicated above, echoing Harley, maps more than other cultural phenomena speak the language of power. Accessing and reading an alternative and subversive cartography is accordingly often an act of imagination—an effort to read the silences, often intentionally wrought—in maps.

I am not certain that an alternative map would be a single affirmative entity, a single “more accurate” and dense representation of the territory. An alternative cartography might not indeed *be* the representation of a singular reality. Submitting to the criteria of authenticity under which cartography has been laboring may indeed be an unnecessary capitulation. Aboriginal place name maps—or rather not the inert maps but how those maps are used—may intimate a more subversive cartographic model of the middle ground. Rather than the maps simply being laid over a “real” topography, like so many transparencies, the maps should be read in dialogue with other historical maps, the way novels leave an intertextual trail of the writer’s prior literary wanderings, the way one reads novels and hermeneutically situates them within a literary tradition. They offer a direction of correction—not only for the location and naming of places, but for the sense of completion and wholeness that other maps have mistakenly appropriated for themselves. If location is relative not

⁸¹ See *ibid.*

only to three-dimensional reality “out there” but also to standardized ways of conceiving space within which location has meaning, then an alternative cartography would relativize maps and locations to the details of other regular, mundane, pedestrian (and, most particularly in the case of Jerusalem, otherworldly) world views that provide maps with their projection of reality.

Comprehending Mount Moriah and its ancient encircling city, from all of its corners and alleyways and angles, provides a hint of how such a map might begin to look. This could only be the most abbreviated of sketches, not only because the maps that one would want to begin swallowing up into this prolegomenon to a dialogic description are so detailed and so abundant—effectively as numerous as the inhabitants and travelers who have wandered over and through its twisted alleyways and tunnels in three-dimensions or in their imaginations—that it would be impossible to encompass them in a minute survey. It would also be logically abbreviated as the intention of such cartography is not to reproduce a singular reality but rather to set a multiplicity of map-making enterprises into motion with each other.

One could compile a composite model of what the sleepless eyes of Jerusalem’s surveillance cameras take in as they scan the surrounding space, framing alleyways and egresses and human beings suspiciously.

One could also start by casting our imagination out over the Mount from one of the children’s kites that frequently criss-cross the air space over the old city, hanging taut in the wind and swooping in crescents like the swallows. Although from there one could take in the Temple Mount/Haram El Sharif, the Church of the Holy Sepulcher in the northwestern quadrant of the city and the now-exposed southern wall that runs perpendicular to the Western Wall (formerly the Wailing Wall), we would probably be struck more by the quality of light cast over the Old City, the nestling of human architecture within the surrounding hills and Judean desert haze.

The closest to this perspective of Jerusalem that I have come across—kindred to the sensation of being tossed, as a child, in the air by a favorite uncle; kindred to the dream where one is desperately fleeing a crushing rodef (or pursuer) only to discover with exquisite delight that one can depart the ground and escape gravity, flying and floating over the trees and rooftops—is a map of the Old City drawn up by Hermann Bollmann in 1967 following the Six Day War.⁸² Bollmann created the map by photographing different angles and perspectives of the city from the ground and from the air and then sketched the map, with the depth of three dimensions, in which “every window and balcony, every floor and special building, and even such things as construction cranes were blended into the map as part of the panorama at that particular point in time.”⁸³ The frame of the map has the name “Jerusalem” written along its borders in a Babel of the world’s languages and scripts. From up close, the

⁸² To access an electronic depiction of this map, see online: The Middle Ground <<http://themiddleground.osgoode.yorku.ca/default.htm>>.

⁸³ Tishby, *Holy Land in Maps*, *supra* note 42 at 160.

ink etching of trees and turrets in the wall, the light coming from the northwest leaving the southeast side of buildings and cliff edges in cool blue-gray shade, the colours of the exposed earth yellow and ochre, have a quality similar to children's illustrations, beckoning sweetly for the reader to descend to one of the streets, warm in the glow of the afternoon, and wander.

One could also map out the quotidian journeys taken by those who frequent the Western Wall or the Dome of the Rock or the Church of the Holy Sepulchre (at a distance from Mount Moriah, though still within one of the quarters of the sixteenth-century Suleiman walls of Jerusalem) and expose the Old City through its tunnels and covered alleyways and narrow passages. One could begin with the loving familiarity of the places that are most holy to them and then follow their regular journeys on daily errands under the canopy of sky to schools and markets and pizza parlors. From subjectivities like averted eyes, ways of walking, hostile stares, and furtive steps one could map out which parts of the city are occupied in what manner by which inhabitants, and which parts are off limits to the other. Although Alcalay's Levantine Jerusalem may be the home of the people living there, the composite of those who frequent Jerusalem contain in a microcosm all and more of the compounded, conflicted, puzzled, enraged, anxious, utopian, and grieving world views, with their attendant histories and far-reaching maps, that one might find in any analysis of the Middle East. There are any number of ambitious maps projected out from the perspective gained by these daily excursions that possessively seek to encompass larger parts of the terrain so that these perambulations can feel safer and more at home. They can be found in diverse peace plans, and in any of the ways that the city of Jerusalem is divided up or united (or left to be later jurisdictionalized in light of the perilously fraught maps of use and occupation that each trajectory can produce). Arguments are made that, in the crucible of the facts on the ground, these maps are the only viable middle ground.

In creating a cartographic projection of the middle ground, one could also start with the way of comprehending place that is most familiar to the modern imagination: with a depiction of the "facts" about the "space", as revealed through the "scientific" revelations of archaeological digs. The Jerusalem Archaeological Park that encroaches on the south side of the enormous stone blocks that make up the wall that Herod built around 37 BC is the most significant archaeological site in the region. The foundation that operates the archaeological excavation has posted a fairly extraordinary website that lays out the history in which its artifacts can be located as well as accompanying historical maps and virtual reconstruction models.⁸⁴ The excavation reaches the Temple Mount on the north, the slope of the Mount of Olives and the Kidron Valley on the east, and the Valley of Hinnom on the west and the south. In the latter quarter, excavations have proceeded literally right under the blue-gray shadow of the Al-Aqsa Mosque, prompting concerns and complaints that the digs, sponsored primarily by ministries in the Israeli government and Israeli

⁸⁴ See online: The Jerusalem Archaeological Park <<http://www.archpark.org.il/intro.asp>>.

government companies, through their tunneling and digging, are undermining the supporting structure of the edifices, pivotal to Islam, above.

This anxiety has its counterpart in archaeologists concerned about uncovered artifacts buried in the earth on the summit. Excavations can proceed within Israeli jurisdiction around and below the platform of the Mount, but the Mount itself remains under the jurisdiction of an Islamic Waqf, an institution in Islamic law that creates an endowment or assignment of revenues or land for religious or charitable purposes in a form of trust. Just as the Muslim occupants of the Haram are suspicious that the objects and places that sustain their world view are being treated cavalierly by the digs around the Herodian walls that support them, so archaeologists are anxious that renovations to the mosque and to the Dome of the Rock are not treating their objects and places with respect commensurate to the place of the artifacts within an archaeologist's world view.

The same anxiety about the physical sanctity of place is felt along the Western Wall where there are concerns that digging and renovation under the Dome are causing the wall to bulge. That there is less concern about the secular world view underpinning excavations along the Southern wall is no doubt due to the fact the excavations are being sponsored by a Jewish state.

One could assert that the template for all other maps of the middle ground will be the neutral place that contemporary science discloses and depicts, devoid, by its own claims, of value. This is a middle ground that is familiar to the Western world: that the religiously non-committed counterpart of modern science—the secular state—should have priority of place as a result of its indifference (cumulatively and progressively established) to one or the other God. Science has betrayed Judaism, equally to Islam and Christianity, and hence reveals no partiality. This would be the map that is most congenial and least unsettling to the modern post-Enlightenment political landscape. The latter, though, appears to be something that is disappearing on the horizon as increasingly national discourses are laced with religious overtones that would have been difficult to imagine twenty years ago. From a Canadian point of view,⁸⁵ following the 2004 American election, that landscape seems at times to be perilously close to becoming a distant and forgotten land, to be longingly and lovingly mapped out in the imagination of map makers in the same manner that Rashi and the Crusaders drew up maps of a Holy Land upon which they never set eyes.

Daniel Lazare echoes this concern about the slippery purchase of the secular world view in Israel. Religious laws are creeping into the daily lives of Israelis,

⁸⁵ Canadians are, in a larger generality than the United States, less religious and less inclined to favour a link between church and state. The 2001 census indicates that 16 per cent of Canadians declared themselves as having no religion; that figure was 12 percent a decade ago. The increase represents a significant 44 per cent jump (online: Statistics Canada <http://www12.statcan.ca/english/census01/products/highlight/Religion/PR_Menu1.cfm?Lang=E>). The 2004 American elections were widely viewed as a resurgence of the religious right's hold on American politics.

citizens of a country that, for its founders, aspired to emphatically secular socialist values. As illustration he points out, somewhat stridently, that

family law in Israel is in the hands of Orthodox mullahs—er, I mean, rabbis. But few really grasp all that this entails. To put it in American terms, imagine that you are looking to get married or divorced, or to adopt a child or undergo an abortion, or to bury one of your parents in a local cemetery, and that to do so you must first obtain the permission of your local Southern Baptist minister. Even Southern Baptists would be outraged. Yet, as Noah Efron makes clear in his stunning new book, *Real Jews: Secular vs. Ultra-Orthodox and the Struggle for Jewish Identity in Israel*, this and more are what Israeli Jews face on a daily basis. Take *kashrut*, the exceedingly complicated Jewish dietary laws governing what foods are forbidden, which can be mixed and which, such as meat and dairy products, must be kept strictly separate. As Efron, an American-born Israeli who teaches at Bar Ilan University near Tel Aviv, tells it, *kashrut* affects not only what Israelis eat but, thanks to an increasingly expansive definition being pushed by the Orthodox rabbinate, what they believe and say.⁸⁶

Lazare is emphatic that “[m]ore religion, no matter how progressively construed, is the last thing this God-soaked piece of terrain needs.”⁸⁷ Lazare’s prophylactic against the projections of religious (or nationalist) perspective is greater secularism for Israel—ultimately a one-state solution that eliminates the Jewish nature of the state in favour of a complete secularism. “Instead of immersing themselves in separate religious traditions,” he asserts, “Jews and Palestinian Muslims and Christians must join in a common tradition based on internationalism, secularism and democracy. Instead of burying themselves in ancient texts, they must understand the irrelevance of those texts to modern politics.”⁸⁸

Given the emphasis in this article on a shared or common place for the state, the one-state solution that Lazare offers is admittedly appealing. After all, binationalism, bilingualism, and bijuridicalism are deeply held and long-standing Canadian ideals. Although inchoate for too long and now increasingly explicit in at least Canadian Aboriginal common law, Aboriginal nations, languages, and legal traditions are now recognized as part of Canada’s “one state/many nations” model for the middle ground. This model is predicated on internationalism, secularism, and democracy. Further, in light of, for example, the revelations of Israeli Prime Minister Ariel Sharon’s closest friend and colleague, Dov Weissglas (Senior Adviser and Chief of Staff) to the effect that Israeli disengagement from the Gaza strip “was actually intended to *prevent* a peace process, to consign [American President George] Bush’s road map to oblivion, and to preclude the emergence of a Palestinian state of any kind,”⁸⁹ it is hard not to conclude that the “realities on the ground” in the occupied

⁸⁶ Daniel Lazare, “The One-State Solution” *The Nation* 277:14 (3 November 2003) 23 at 28.

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ Henry Siegman, “Sharon and the Future of Palestine” *New York Review of Books*, LI:19 (2 December 2004) 7.

territories have passed the point of being dislodged and thus passed the point where even the two-state solution has remotely credible prospects of viability.⁹⁰

However, I'm not certain that the evacuation of religion from public space and public places in favour of a "neutral" commons is necessarily the best way to bring about a rich and robust middle ground, a deep intercultural reservoir from which the best in each tradition can draw. As I have argued thus far, this is partly because I am suspicious of the neutrality, and congeniality, of the space that secularism has mapped out.

No doubt archaeological history is a corrective and offers a compelling way to be in the world, and surely the loss of the Buddhist statuary or the objects that underlie the Temple Mount calls out for a lament not only from a Buddhist or Talmudic or Islamic or religio-cultural vantage point but also, and just as poignantly, from the point of view of that robust secular way of understanding humanity. There is, in the impressive majesty of secular history, irreplaceable value in, for example, the pleasure of culture for its own sake; the swollen details and *tableau vivant* reconstructions; the location of the places and things of humanity within the incomprehensibly large ocean of post-Renaissance human knowledge. This secular understanding, however, is not by virtue of its accomplishments necessarily the best-placed perspective from which to draft a map of the middle ground (that is, if only one is to be chosen).

XI. Inventing a Present and a Future

It is tempting to assert, in the spirit of the laments for the Buddhist statues demolished by the Taliban, that *artifactual* rapport with the physical world at least provides a testament to a *universal* history, shared by all. The archaeological process of disencrusting the physical world of its sacred aureole seems to parallel modern cartography's belief that it advances along a cumulative progression toward increasingly more accurate delineations of reality. The "real" reality of the object is its place within the place of *things* in the history of humanity. The imputed misapprehension of the archaeological significance of artifacts derives from a perception that the religious apprehension of the physical world is partial and biased, misconstruing the place of things in the universal history of humanity, and therefore permitting a cavalier disregard for the object. Just as geological and topographical surveys are intended to serve as correctives for the imaginative projections of maps like Rashi's or the Protestant Bible maps, a sense of indignance accompanies the perception that archaeology (like cartography) can correct misapprehensions of the world, rather than just replace them with its own apprehensions.

This tone of indignance, along with the sense that everything but the archaeological understanding is political and biased, can be heard at the edges of a growing body of literature that emerged out of missions such as those conducted by

⁹⁰ *Ibid.* at 10.

the Palestine Exploration Fund. Ironically, despite Dame Kenyon's acceptance of the PEF's stated mission as the "accurate and systematic investigation of the archaeology, the topography, the geology and physical geography, the manners and customs of the Holy Land for *Biblical Illustration*,"⁹¹ out of those very exercises a disjuncture opened up over the course of the twentieth century. Literary criticism of the Bible in the nineteenth century uncovered linguistic and textual recurrences that established that the Pentateuch was not written by Moses but was redacted and retrospectively ordered by scribes in the post-exilic period. Similarly, biblical archaeology moved from its original agenda, sometimes explicit, sometimes implicit, of selectively seeking "factual" confirmation of dearly held articles of faith.⁹² As the mission was passed down through subsequent generations of Holy Land archaeologists to the late twentieth century, archaeology increasingly found its discoveries at odds with the faith-based version of history it had originally sought to confirm.

The original mission may have been inspired by a British Protestant desire to disenchant, with the newfound utensils of science, the overly ornamented Holy Land of Catholicism and renew, through proofs, Protestantism's version of the place of God in human history. The team of investigators, however, found themselves consistently disappointed over the years by the way in which the artifacts that turned up (or failed to turn up) frustrated the story that they were trying to tell. Just as the British Mandate was taken over by the new state of Israel, so biblical archaeology was appropriated by aspirations to find scientific support for nationalist claims to a deep historical Jewish presence on the land, to find archaeological support for the belief that the Bible is the history of a real people. And just as the Protestant pursuit of verification was thwarted by artifacts, so the Israeli archaeological establishment has had to concede that, as the title to Daniel Lazare's review of biblical archaeology in *Harper's Magazine* suggests, archaeology refutes the Bible's claim to history.⁹³

Given how archaeology appears to have prevailed despite the deep-seated, scientifically misoriented, and politically committed drives that sought to marshal it, it does seem as though, through a cumulative progression of corrections, the really "real" has been revealed, a universal history disclosed that should emerge as the ultimate arbitrator of disputes about the land, its history, and its people. It appears that the maps provided by the Jerusalem Archaeological Park should provide the substratum for all subsequent *accurate* maps of the Holy City. They appear to be neutral and wholly uncommitted politically and theologically. The political counterpart of these maps would clearly be the vision of a secular state with religion at most allowed a role akin to religious visits to the Israel Museum's Shrine of the Book—the artifacts housed in a secular building in which visitors submit primarily to

⁹¹ Kathleen M. Kenyon, *Digging Up Jerusalem* (London: Ernest Benn, 1974), cited in Osman, *supra* note 68.

⁹² For a summary of the developments in Holy Land archaeology, see Daniel Lazare, "False Testament: Archaeology Refutes the Bible's Claim to History" *Harper's Magazine* 304:1822 (March 2002) 39 [Lazare, "False Testament"].

⁹³ *Ibid.*

the rituals of beholding, detachedly, though with awe, the spectacle of modern science.

And modern spectacle and ritual it is, attendant with all of the hallowedness and cyclical returns of religious rites. As the Israel Museum describes the shrine, “the dome covers a structure which is two-thirds below the ground, and is reflected in a pool of water that surrounds it. The striking juxtaposition of the white dome and black basalt wall, precise and opposing geometrical shapes, creates a monumental effect and contributes an extraordinary phenomenon in the Israeli landscape.”⁹⁴ The architectural underlining of the sanctity of the place, housing “the greatest manuscript discovery of modern times,”⁹⁵ is reinforced by rituals of revelation and reverence eerily resonant with annual Talmudic cycles of textual renewal. The inner logic of the rituals is driven by a quite different sense of necessity and almost otherworldly common sense: “As the fragility of the scrolls makes it impossible to display them on a continuous basis, a system of scroll rotation has recently been developed. After a scroll has been exhibited for 3-6 months, it is removed from its showcase and placed temporarily in a special storeroom, where it is given a ‘rest’ from exposure. Scrolls that have been removed from exhibition are replaced by other authentic scroll fragments.”⁹⁶ If a spiritual message has been rescued from the dark cave in which it was buried, it speaks ultimately to the triumphant and auspicious revelation of secular science, no longer handmaiden to religion but occasional heroic and vigorous protector.

Compelling as this vision of the relationship between state and religion may be, the affiliation with such an insight and the religious forms that it borrows underline the rhetorical flourishes of contemporary representations of accuracy, the way that such rituals command a certain stance and attitude to what they are revealing. One could conclude from the representational economy of the presentation of scientific ideas that this is all mere puffery, mere contentless rhetoric, all artifice, and no substance. The “thing” at the imputed centre of the frames that govern our ways of looking at objects is not a thing at all, but merely creation of the framing devices invoked. At worse, a claim can be made that such illusion (in this case scientific) amounts to an opiate, camouflaging with unparalleled success unspoken political agendas.

The step from emphasizing the rhetorical, ritualistic, and representational aspects of modern science to the claim that they are lying or at least false is one that need not be taken. And indeed, in the space between taking it and refraining from taking it, there may well be an opening for a middle ground between all of the contending visions for the Middle East. There may indeed be another way to approach the

⁹⁴ Online: Israel Museum <<http://www.imj.org.il/eng/shrine/>>.

⁹⁵ William Foxwell Albright to John C. Trevor in March 1948, assessing Trevor’s photos of the scroll of Isaiah from Cave 1 at Qumran, cited online: Into His Own <<http://virtualreligion.net/iho/dss.html>>.

⁹⁶ Online: Israel Museum <<http://www.imj.org.il/eng/shrine/scrollsondisplay.html>>.

various visions that is not focused on the accuracy or inaccuracy of claims. Such an approach, consistent with the representational focus of this article, depends on another kind of revelation. This opening, that I might call the expressive potential of shared space—is present also for cartography and law.

I have laid out above how particular and contingent and rhetorical many of the maps of the Middle East are, including those that are most modern and most beholden to the auspicious talisman of accuracy. It would be inaccurate to say that those maps are lying. Similarly, it would be unfair to claim, unequivocally, that the laws that are built up upon those maps are unjust. Rather something akin to Grosbard's psychoanalysis of the peace process might be called for—and this might suggest the analogue of the middle ground of Canadian Aboriginal Common Law (all the while speaking, in a continuation of that centuries-old dialogue between the God of Abraham and the Great Manitou, to the ways that Canadian common law could attend to its own injustices).

Grosbard's therapeutic intervention underlines that “[t]he loss of our ability to listen is the greatest threat to our existence.”⁹⁷ The relief for this psychological distress is not to hear better, but to listen more deeply. In other words, the resolution of the argument is paradoxically not solved by discovering who is correct. The resolution comes more from attending to the subjective content of what is said—a process not unlike attending to the representational conveyance of a map, the picture of the world that it projects—rather than the information thereby conveyed.

This approach is not unfamiliar to secular proponents such as Daniel Lazare. As he points out in his *Harper's* article,

To say that the Jerusalem priesthood intentionally cooked up a phony history is to assume that the priests possessed a modern concept of historical truth and falsehood, and surely this is not so. As the biblical minimalist Thomas L. Thompson has noted, the Old Testament's authors did not subscribe to a sequential chronology but to some more complicated arrangement in which the great events of the past were seen as taking place in some foggy time before time. The priests, after all, were not inventing a past; they were inventing a present and, they trusted, a future.⁹⁸

Lazare avoids the naive epistemological correction that contemporary archaeology would seem to provide and instead opts to point out that the entire activity of historical writing was different for each epoch, the nature and shape of history and of the human relationship to that history were incommensurate with each other. This avoidance of narrow ideas of correctness and historical accuracy in favour of a more sophisticated and nuanced attention to alternative and complicated ways of viewing the arrangement of time hints at the kind of listening to which Grosbard is alluding. One could attend to “facts” from a purely archaeological point of view and thereby miss the message. This stance does not by any means undermine the message of

⁹⁷ *Supra* note 9 at 6.

⁹⁸ Lazare, “False Testament”, *supra* note 92.

secular archaeology, which, as the shrine of the book glorifies, has contributed a cornucopia of awesome and earth-shaking revelations.

Why *not* attend to the vision (as opposed to the facts) that each is presenting? It is clear where the anxiety surrounding such a demand for deep attention to the other flows from—for example, I don't seriously contemplate arguing my partner's father, a Holocaust survivor, out of his tenacious affection for the only state that provided a refuge for the only other two of his two hundred family members who survived. The origins of the perception of existential threat to all that one holds dear and familiar, on both sides of the green line, are evident. The source of the anxiety is palpable and extraordinarily well documented on both sides. But where is the harm?

XII. History and Memory

Lazare manifests a sort of kindness to the post-exilic priests in his statement; an admonition not to judge them by a wholly alien set of referents. The kind of attention that this passage solicits is also a kind of detachment—a willingness to detach oneself from familiar moorings in order to float, even for a moment, over the kind of place from which such perspectives can be generated.

This detachment, and its attendant (and anxiety-producing) sense that the moral gravity that is most intimately familiar to us has lost some of its hold on things, can seem to present an excluded middle to a religious sensibility. The Jewish historian Yosef Hayim Yerushalmi, in his distinction between Jewish memory and Jewish history, depicts this seemingly intractable opposition between the detachment of modernity and the engagement of religious feeling. Yerushalmi is devoted to writing about a people who prototypically construe their religion as unfolding within history. As he points out, “No more dramatic evidence is needed for the dominant place of history in ancient Israel than the overriding fact that even God is known only insofar as he reveals himself ‘historically’.”⁹⁹ Although he notes that his subject is, at core, historical, Yerushalmi is aware of an important distinction between Jewish memory and Jewish history. The obligation to remember, the call to *Zakhor*, is not something that is fulfilled by an attention to historical detail and fact. It is something that is executed in ritual and tradition, embodied and sustained in collective rehearsals of group memory. Jewish memory, embodied and carried forward in these vehicles, most particularly between the fall of the Second Temple and the Haskalah (or Jewish Enlightenment) of the eighteenth century, was not synonymous with Jewish historical writing, which had virtually no presence throughout that long period.

Indeed the emergence of Jewish historiography took over just as collective Jewish memory was waning, and the transition had virtually nothing accidental about it. Yerushalmi argues that Jewish historical writing can only fully emerge when a collective and ongoing commitment to Jewish memory falters. As he notes,

⁹⁹ Yosef Hayim Yerushalmi, *Zakhor: Jewish History and Jewish Memory* (Seattle: University of Washington Press, 1996) at 89.

There is an inherent tension in modern Jewish historiography even though most often it is not felt on the surface nor even acknowledged. To the degree that this historiography is indeed “modern” and demands to be taken seriously, it must at least functionally repudiate premises that were basic to all Jewish conceptions of history in the past. In effect, it must stand in sharp opposition to its own subject matter, not on this or that detail, but concerning the vital core: the belief that divine providence is not only an ultimate but an active causal factor in Jewish history, and the related belief in the uniqueness of Jewish history itself.¹⁰⁰

Jewish history, a product of the modern era, both operates at the demise of Jewish memory, and is also to some extent the cause of that demise, as it has a vocation to recreate “an ever more detailed past whose shapes and textures memory does not recognize.”¹⁰¹ The rise of Jewish historiography, then, emerges out of a sharp break in the continuous transmission of Jewish memory through the rituals exhorted in the phrase *Zakhor*. “In this sense,” Yerushalmi writes, “history becomes what it had never been before—the faith of fallen Jews.”¹⁰²

This opposition between the sensibilities of history and memory is a parallel to the cartographic and legal oppositions that have preoccupied this paper, respectively focused on place and injustice. Though so familiar to us as to have been almost completely naturalized, history is dependent on a highly contingent sense of time that accompanies contemporary cartography’s sense of space. It is based on a framework of isochronal time (now increasingly digitized), where each beat of time is equivalent though unrepeatably and only invested *superfluously* (as a topographical map might have a toponymic overlay) with human meaning.

To come full circle with the *Globe and Mail* article on the tinderbox of the Temple Mount/Haram El-Sharif that opened this paper, the passage of time between the opening of writing and this closing can be marked in discrete and equivalent units that are mute about the significance of that passage. By analogy with the cartographic pretension that its understanding of accuracy more and more closely approximates reality, through the neutrality of that metronome, historical writing aspires to being tethered to an accumulation of discrete points, moments big and small being measured against this utterly impersonal march of seconds. But moments of isochronal time are not so much actual facts as virtual facts—as Gilles-Gaston Granger has characterized the data of science in general—, objects of a schematic model rather than perceived reality. It is a fact that has already been “completely determined within a system or network of concepts.”¹⁰³

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.* at 94.

¹⁰² *Ibid.* at 86.

¹⁰³ Geoffrey Samuel, “Epistemology and Comparative Law: Contributions from the Sciences and Social Sciences” in Mark Van Hoecke, ed., *Epistemology and Methodology of Comparative Law* (Portland: Hart, 2004) at 45.

It is not as though, within its own frame of reference, historiography does not generate more accurate understandings of the past, does not advance historical knowledge. Just as the epistemological and representational values associated with a particular cartographic enterprise will generate the contours and outlines of particular maps, the schematizations associated with isochronal time generate a progressive account out of moments so depicted. This understanding of time as isochronal allows for neighbouring and connected epistemologies that are reliant upon this understanding of time to be extended and to advance as they recur to it.

Modern history writing is one of those neighboring and connected epistemologies that apprehend moments in a manner analogous to the cartographic apprehension of space and the scientific apprehension of virtual objects. The naive pretension of the historical framing of time is analogous to the pretensions of archaeology and cartography: that their frames are devoid of narrative content; that they do not tell a tale but present a cumulatively more progressive revelation of a narrative-free world. The emboldening admonition of Lazare or the lament of writers like Yerushalmi seems to indicate that those committed to this revelation are, of logical necessity, fallen. Yerushalmi, in particular, is aware that there are other ways of reading those moments, big and small, other schemas that incorporate the time that has passed between the opening of writing and this closing, crammed with its daily dose of newsworthy details—other ways of reading the significance of intervening events.

Isochronal time is represented as insignificant just as the modern cartography's landscape itself is inert and narrative-free. The kind of detachment that the scientific world view demands, when extrapolated to the human "sciences" (including cartography, archaeology, anthropology, history) is one that is a priori excluded from a religious viewpoint, in which each rock and contour and ritual and moment is evidence of a history that can only be intimated from afar. The same "things", from another vantage point, tell a different story; they are not "things" but signs.

I am not so certain that the place where history and memory meet needs to be the place of the faith of the fallen—of those committed exclusively to the silence of God and the Babel of human history, though the points where the presence of one excludes the presence of the other should be acknowledged. After all, these points of divergence have often been quite self-consciously chosen, as a better way, as an explicit argument against what has gone before.

Though recognizing the points of radical incommensurability, I am not so certain that this wholly mundane space needs to be the only viable middle ground, Mount Moriah transformed, ultimately, into a seamless archaeological park with residual surface rights granted to religion. In this regard, the old city of Jerusalem, with its quarters and walls and, on the Haram itself, its intimately protruding and abutting world views, endlessly intersected and traversed by a still incomprehensible human history, offers up a good metaphor for an alternative place to begin mapping the space at the intersection of several world views, some historical, some secular, some religious.

I don't really have much to offer up as an alternative commitment other than metaphor. It would be a metaphor of a kind of lightness, a kind of relative weightlessness, a detachment from some of the dragging certainties of familiar forms of life and a recognition that forms of life are, above all, attitudes to the world. The virtues of tolerance and multiculturalism, even the domestic entrenchment of these values in thing like anti-hate laws and the international entrenchment of them in declarations of human rights and refugee conventions, seem too trite and fragile and innocuously Canadian to carry the ambulance loads of grief and despair on either side of the green line. The metaphor that pulls those pragmatic arrangements, however, may indeed be capable of carrying more weight.

This is partly because metaphors are imbedded in a way of reading the world that is more narrative than expository, as cartographic, historical, and archaeological texts tend to be. And metaphors don't *correct* prior metaphors; don't suggest that they are more *accurate* than another. A metaphor cannot be disproved. Rather metaphors are more or less compelling, more or less artful, more or less capture the imagination.

And this metaphorical way of reading archaeology and history, cartography and law, is consistent with the argument of this paper. I have been tracing, through this discussion about cartography and archaeology, a certain aspect of that modern detachment, one that for itself might make the claim that accepting its premises means excluding the validity of others, and, if accepted, in the spirit of *quod est desmonstratum*, that a universal reality has been disclosed. The arguments I have been making about the representational and rhetorical dimensions of modern epistemology suggest that such pretensions are effective by virtue of the power of their persuasive results and ignoring the Möbius strip-like nature of their arguments—how tied the conclusion is to the prior acceptance of arbitrarily established criteria of accuracy. Each is arguing, with utterly compelling persuasive force for insiders, that their invention of the present and the future rests on a bedrock past. If the modern sciences of humanity demand that we recognize the contingency of prior histories, a representational analysis of how they convey their authority obliges us to pay attention to the embeddedness of contemporary ones.

The understanding that modern science also tells a tale, albeit a dominant and domineering one, does not by any means suggest that it should be jettisoned. The accounts that it reveals are so indisputably fulsome and compelling that only a fool would question their veracity. But there may be room for a middle ground of history that is both prophetic and mundane at the same time; a shrine for things that are both precious and hallowed; a clearing of space for the multiple cartographies of place; a common law for several senses of injustice.

This postmodern middle ground does not need to lead to a weightless, uncommitted detachment. The map of this metaphorical middle ground might well look more like the angle from the kite, suspended between Jerusalem and its heavens.

That sense of delight in the given world has kinship with not only the religious movements that populate Jerusalem, but also with the spirit of secularism that pervades the streets. It's not far from the perspective of cartographers who have a

tenderness for maps often sorer than their tenderness for the terrain that the map conveys. In fact it is hard to envisage a cartographer who does not also love maps for their own sake, who does not, every so often, pass their eyes and hands over them, both thoughtfully and lovingly; does not take that engagingly detached pleasure in maps and how they tell a story about a place.

This may seem like a coldly detached way of beholding maps, not unlike the *tableau vivant* orientalism to which so many of the beholden have objected. It's more engaged than that, though it does simultaneously acquire some of its capacity for flight from the struggle to describe even its own skin dispassionately, like the painful task of writing clinically about one's family of origin as though they could be assessed just like any other case study.

The vision of the kite flying over all of the Jerusalems—past, present, and future—is not detached in (only) this objectifying way. Literally it is attached to the ground to where it must eventually return—a connection without which it would cease to fly as a kite, crashing pathetically to the ground after a brief escape, tangling itself in the wires and branches. That sense of exaltation in the given world has kinship with not only the religious movements that populate Jerusalem and aspire to soar above it, but also with the spirit of secularism that pervades the streets. It could be a metaphorical substratum of a cartography of the Middle Ground.
