Mapping Marriage Law

in Spanish Gitano Communities

SUSAN G. DRUMMOND

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For Noah Newton

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Preface

In 1995 I went to Jerez de la Frontera, in southern Spain, with Jean-Marc, my husband (at the time), who was doing ethnomusicological research, and our then two-year-old son, Noah, to carry out six months of fieldwork. The selection of Jerez as a "site" and Gitanos as a "culture" was, for me, a more or less arbitrary choice. The decision to move my research focus from northern Quebec to southern Spain was not principally dictated by a desire to move the ethnographic inquiry from a periphery closer to a centre – a polarity that anyhow quickly fell apart in my original foray into the domain of fieldwork. In the past I had carried out legal ethnographic research in Inuit communities in northern Quebec and had found that this context, though superficially remote and isomorphic, was, upon deeper investigation, linked to, and intersected by, translocal forces impinging on and forging local legal sensibilities. Although Inuit communities had highly distinctive ways of producing locality and indigenizing modernity, they were no more peripheral and locally contained than the island metropolis of Montreal, from where my voyage began. The internal ethnographic logic of a shift in research from northern Quebec to southern Europe was, therefore, not immediately jarring.

The decision to shift from northern Quebec to southern Spain was also not dictated by a desire to unearth legal continuities between nomadic or diasporic peoples – the Inuit and the Roma being paradigmatic cases in each point. These categories have lost their conceptual clarity in the face of (to give two small examples) mass migrations of supposedly long-settled Andalusian Gitanos to northern Europe for work in the 1950s and the ongoing travels of supposedly now-settled Inuit south and abroad for education, work, and leisure. Nor was it driven by a desire to shift from public law (criminal law sensibilities) to private law (family law sensibilities). The move was dictated, in fact, by the far more prosaic and pragmatic concerns involved in coordinating research agendas between two ethnographers with divergent research intrigues. I was not adverse to a change of locale. It was hence decided that I would study Gitano family law.

The pragmatic rather than logical motivations for the change of field forced upon me a more direct reckoning with what many ethnographers find themselves running up against in whatever field they enter and wherever they roll out their writing implements – the undeniable presence and localization of the extra-local. What emerged for me most clearly out of the experience of the geospatial shift between fieldwork venues – out of, indeed, the very arbitrariness that motivated it and the connections that emerged nevertheless – was the deepened sense that periphery and centre do not hold together anymore as conceptual divides. Nor do settled and dispersed hold together. Jerez, in a sense, could be anywhere. I was circumstantially obliged to abandon the aspiration of deepening my understanding of a single locale for a different aspiration: a deepened understanding of the problematic of locale.

Although I went to southern Spain to conduct a close-up examination of law on the ground within that space, the space to which I had constricted myself quickly lost its manageable contours and became a shapeless object made up of shifting, overlapping, and sometimes congruent terrains. My itinerary through the fluctuating conceptual space of Andalusian Gitano family law took me on itineraries through Paris, Madrid, and the Vatican City; through Indian dialects, English roadsides, and Californian courthouses; through the Roman empire, medieval legal history, and European unification; through the intrigues of royal courts, heroin addiction, and unemployed priests; and through northern European agricultural fields and Spanish car factories. Just like the Gitanos, who are a paradoxical incarnation of a settled diaspora still on the move within the rest of the world, the itinerary of this ethnography goes far and wide while it attempts to evoke one of the world's diverse and heterogeneous sites for the emergence of locality in a place-neutralizing world.

I owe a huge debt of gratitude to the people of Jerez, Gitano, and *payo*, who were unflinchingly gracious, hospitable, and generous with their lives. One cannot really envy a people their form of life (or else one would be better off choosing it for oneself), but Jerezanos and their city bring me close to that place of longing. I am also hugely appreciative of the thoughtful commentary provided by both Blaine Baker and Jeremy Webber. What great good fortune and pleasure their fostering and oversight brought to my life as they gave me the license and discipline to follow the trail of my investigations!

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Introduction: Le Guide du Routard

> J'essaie de vous faire voyager dans un pays. J'essaierai de montrer que les difficultés philosophiques proviennent de ce que nous nous trouvons dans une ville étrangère et que nous ne connaissons pas le chemin. Il nous faut donc apprendre à connaître le terrain, en nous déplaçant dans la ville, d'un endroit à l'autre, puis de cet endroit à un autre encore. C'est une pratique qu'il faudra répéter jusqu'à réussir à se reconnaître partout, immédiatement ou après un bref regard, quel que soit l'endroit où on vous dépose.
>
> Cette image est parfaite. Pour être un bon guide, on devrait commencer par montrer aux gens les rues principales. Mais moi, je suis un mauvais guide, je me laisse facilement détourner de mon chemin par des lieux intéressants, je m'engage volontiers dans des rues secondaires avant d'avoir montré les rues principales.
>
> – Ludwig Wittgenstein[1]

Synoptic Overview

I am going to take you on a voyage to an unfamiliar land through a strange city. It is a recapitulation of a journey that I myself took. There are normal expectations regarding such an offer. First, when we arrive in a strange city, we would expect not to know how to get about. Usually one would learn how to get to know the terrain by wandering from one place to another and then from that place to another again. We would repeat this pattern until we knew how to recognize where we are as soon as we are placed in a spot (or after a brief look around), *no matter where* we find ourselves. A good guide starts by showing people the principal streets. Yet this tour is not typical. Over the course of this voyage, I will open up avenues, intersections, and back alleys in the text so that the reader might be easily diverted by interesting places along the way. I will lead the reader up secondary streets before getting to the principal boulevards.

The reader has been brought to the city as a tourist, a traveller, an anthropologist, and a legal comparativist. The text offers two principal tours: comparative law and legal anthropology. The one is more focused on the boulevards of state law, while the other examines the side streets of cultural law. The city is an intermediary place between state and local culture – a middle ground. It is the place where people live their practical lives and

smooth over the intersections between the two. Both itineraries – comparative law and legal anthropology – have diversions and detours. Both itineraries, intersected as they are by such *excursi*, destabilize a sense of the coherence of the law and leave in its place an unsettled ethos of the city – a place characterized by matters that are perpetually out of place being constantly rearranged, sometimes tidied up by and with the law. Both itineraries cover the beaten track, the roads (whose imperfections prudence could not well provide against) that have been smoothed over by custom. Both leave the city with a sense of what seems to have developed organically – despite concerted efforts at urban planning.

In one way, then, this is a voyage through a metaphorical city – a place where disciplines converge. Yet it also recapitulates a journey through an *actual* city: Jerez de la Frontera. Jerez is a medium-sized agro-town (population of approximately 200,000) in Andalucía in the south of Spain. It is popularly known as the place where sherry is produced. In other circles it is known as one of the cradles (if not *the* cradle) of Flamenco. A significant portion of the research for this book is based upon a period of several months during which I lived in this city. And an important part of the text is written in a style and with a composition that reflects its presence in my imagination: how it looked, how it sounded, how it moved, and how it smelled. Each chapter is run through with a type of ethnographic writing that is meant to evoke the singular corners and turns, doorways, and bars of this actual place – a place that the reader could also visit in person; a place that some readers may already know. In this way, it is a voyage through a strange city in more than one sense: it is not only a foreign and, most probably for the reader, an unfamiliar city but it is also one that is strange in the odd configurations of its actual urban landscape.

Although the very *concept* of "place," as I will shortly reveal, is the central analytical problematic of the book, I chose from the outset to base my research on what is, at least in the conventional sense, undeniably a "place" – the actual city of Jerez. As the dialogic emphasis of the book should increasingly become familiar as it is articulated and revisited over and over again in both its form and content, it was critical for me that all of my itineraries were kept on track and kept in line with the contours of a world that is actually out there, beyond our readings and imaginings. By bringing the actual city into contact with the metaphorical city of the book's theoretical musings, it is hoped that both will come more clearly into view.

Itinerary

In the following voyage through family law in the strange city of Jerez, I have tried to set a course that will take the reader through some of its main roads, side streets, and back alleys as well as into people's homes. The point of entry into the city is not inevitable. I could have started at the threshold

of people's homes or at the entrance to a main boulevard or on the tarmac of the local airport. As it is, the first chapter starts with the state (metaphorically, a main street in legal studies), and it is not until the second chapter that the Gitanos and their culture (a side street in legal studies) are approached. The first chapter is a comparative law overview of Spanish state family law. The second chapter is a critique of cultural accounts of the Roma and Gitanos. The final chapter regroups around the theme of marriage, fanning out over the disparate trajectories and disparate cultures and different senses of law in the previous two chapters.

In looking at a map of a city, it is apparent that everything is connected to everything else and that everything flows together. A visitor to a city, however, cannot take everything in all at once. Choices need to be made about where to go first and then next, step by step, corner by corner, even though these choices appear arbitrary when looking down at a map of the whole. In the same way, the division of the body of this book into three parts, covering state, culture, and marriage, must appear arbitrary.

As the reader embarks on the first chapter of the book on state and religious law in Spain, the absence of the Gitanos in its pages must be conspicuous. The Gitanos have dwelt in the same principally urban landscapes as non-Gitanos for centuries. Further, the Gitanos are, after all, the fulcrum of this study. It is the ethnographic material on the Gitanos that is intended to shed light on the development of national and transnational law as well as on the complex interconnections between local law and the larger systems of law that attempt to regulate it. Yet the Gitanos are almost entirely absent from the first chapter. In addition, as the reader leaves the comparative law analysis of the first chapter and heads into the legal anthropology of the second, he or she will surely feel that there is a further postponement of a synthesis between the two. The reader must wait until the third and final chapter for the synthesis that is central to the book.

This suspension of critical elements is intentional and perhaps inevitable, albeit artificial. As the reader will discover over the course of the book, given the interpenetration of the Spanish state and the Gitanos of Spain, it is difficult to understand the latter if they are conceived of as a stand-alone, independent group. And the same can be said of the state – that it does not take its shape independently of local and extra-territorial influences. However, I have postponed a discussion of the Gitanos for the entire first third of the book in order that the reader might first become familiar with the tension between the relevant state and religious law. Once the reader has this knowledge of the background, she or he should be able to approach the material on the Gitanos in the second chapter (and the explicit synthesis between state and culture in the third) *oriented* to read the critique in the shadow of its state/religion doppelgänger; *oriented* by the end of the second chapter to read state and culture together; better able to recognize

where she is, no matter where she finds herself. While the third chapter makes the synthesis explicit, the integration is implicitly invited over the course of the materials by the way that the chapters walk alongside each other. In fact, Chapter 2 and Chapter 1 (with their respective emphases on culture or state) could have intelligibly been reversed. Such a reversal might indeed have generated a different feel from the voyage. What writing teacher Jack Hodgins says about stories is just as apt about legal itineraries:

> Some writers have suggested that a story is like a house: it doesn't matter which door you enter so long as you visit all the rooms before you leave. Yet choosing this door instead of that door, visiting this room before that room, can make a difference. By the time you step out of the house and stand back far enough to get some perspective, your experience of the building will have been affected by the order in which you visited the rooms as much as by the contents of the rooms themselves. Imagine visiting Manhattan immediately after spending some time in the tiny mining village of Elsa in the Yukon Territory. Imagine visiting the same two places in the reverse order.[2]

This comparative law ethnography could just as easily have started with cultural law as with state law and have spread out to the other from there. It is really in the conjunction of scales and itineraries that the text produces its sensibility.

Ultimately the comparative enterprise in this book works more like a juxtaposition of odd objects and scales (to borrow Annelise Riles's metaphor of Wigmore's Treasure Box),[3] each speaking sometimes surprisingly to each other and suggesting the emergence of interesting new relations. What is law and what is not law is not predetermined (or even eventually answered) in this query. Yet by laying out several of the perspectives from which this topic might be viewed, I hope that various projections of law might come more clearly into view. In addition, it is hoped that some of law's itineraries (in the sense of both agenda and trajectory) will emerge in a place-neutralizing world. The ultimate destination of this wide-ranging itinerary will be – as is so often the case with the comparative passion to expand one's horizons – back home. The person who knows many traditions begins to know his or her own – and perhaps begins to feel at home in its capaciousness and within its limitations.

If a story might be like a house, it might also be like a city: your point of entry does not matter as long as you visit all of the sights before you leave. Yet choosing one point of entry over another can make a difference. Arriving by plane, with its preliminary visual embrace of the entirety, will offer a different sensation of the city than entering the chopped-up oily harbour by boat. And plodding into the city on foot from the dusty fields will offer

up a different perspective than entering by car after a road trip across the entire country. If I had available to myself in this textual documentary the range of representational options available to visual artists, this text would approximate a cubist representation of a city – a place that can be rotated and absorbed and explored from several different angles simultaneously. Given the limitations of text and the sequential demands of narrative, I must start someplace.

This story could have begun with the Gitanos and Gitano law. Instead, it will begin with a concentration on the official family law of Spain. It could have started with culture, but it will start with the state. This decision was made partially because there is no part of the world that is not allocated to a sovereign state, and all cultures are therefore deeply and organically imbedded within larger world systems. A group such as the Gitanos, which has been dwelling in the Andalusian landscape for over five hundred years, will *a fortiori* respond to its peculiar shape. And states have always been filled out by diverse cultural groups and impregnated by their presence. The story of state law is part of the story of Gitano family law and vice versa. The story must begin somewhere. Missing out on the tale of official family law would be like visiting a city and sticking to the side streets and back alleys. Missing out on local law would be like keeping to the main thoroughfares and boulevards.

I have employed one other device that mimics the city's cross-cutting streets and roads. Each of the three chapters sets up a dialogue between two points of reference – one that is more historical and theoretical (in a serif font) and the other that is more ethnographic in style (in a sans serif font, tagged with an arrow). For example, although the first chapter's point of entry into the problematic of Spanish/Gitano family law leads to the familiar European boulevard of state law, the text is intersected by ethnographic moments that allude to another ethos of the city of Jerez – a more intimate one where shoulders are rubbed with real human beings, not only the mock-ups of historical narrative. The chapter, like a city, has side roads. Just as the visitor to Jerez is implored by *Le guide du routard* (see herein p. 27) to get out of the car and walk – to get a feel for how the place smells and sounds and to begin to sense what it might be to live in it – this chapter takes the reader on some detours. In the case of the first chapter, I will be taking the reader quite literally through the streets of Jerez. We will follow *pasos* (the large platforms upon which the statues of Christ and the Virgin Mary are hoisted during Holy Week), enter churches and homes, and go up alleys and down one-way streets. In a very graphic sense these intimate forays (set in a different font and tagged with an arrow) intersect the more ponderous historical narrative of the main text. These excursions draw the reader's attention to the ways in which historical narrative is threatened at the edges with seeping facticity.

The second chapter, like the first one, is also traversed by a series of snapshots from the field, thematically linked this time by a query about the nature of Gitanitude and how it is made manifest. And the third chapter is intersected by analogous ethnographic forays – this time into weddings: spoken about, attended, and witnessed. The sidestreets are ethnographic material culled from several months of fieldwork in the spring of 1995. The threads, pulled out of the crazy quilt of fieldnote entries, depict, from the vantage of the ethnographer, the ambience of Jerez de la Frontera. They literally provide a way for the reader to wander about in the setting for family law in Jerez, to get a feel for a time and place – an ethos loosely bound. A tale is told, a point of entry selected. Yet, like Wittgenstein's errant guide, the intersected texts invite the reader to wander up secondary streets on their grand tour of the principal roads and byways of law.

Approach

Even as the two itineraries of comparative law and legal anthropology are brought together in this book, its agenda remains essentially *just one itinerary*. A word of caution and foreshadowing is in order so that the reader does not feel that the regular expectations of either independent discipline are unduly thwarted. Insofar as it is just one itinerary, some parts of the trip – which one might normally think would be *de rigueur* for either discipline – have had to be left behind. The text as a whole intends, through its travels, to push the settled understandings of both disciplines. It cannot then be an entirely predictable voyage for those who are familiar with one discipline or the other. An anthropologist looking for standard anthropological frames and methodologies will, no doubt, be disappointed, as will a comparativist who is most comfortable on excursions that compare national legal systems. In a classic recapitulation of the spirit of interdisciplinary work, Roland Barthes foreshadows the difficulties and disappointments that a reader at ease with the routines of anthropology or comparative law might encounter in reading the text against the grain of a constituted discipline. The point of interdisciplinary work, according to Barthes, "is not about confronting already constituted disciplines (none of which, in fact, is willing to let itself go). To do something interdisciplinary it's not enough to choose a 'subject' (a theme) and gather around it two or three sciences. Interdisciplinarity consists in creating a new object that belongs to no one."[4] This particular piece of research and the theoretical paradigm upon which it is grounded manifest a quite self-conscious move away from traditional anthropological paradigms of culture and jurisdictional conceptions of state in preference for a more conflicted, dynamic, and unstable model of the interactions between the scales of the local, the national, and the global.

The overarching place of this work within interdisciplinary studies might well lead some readers who are devoted to one of its constituent subjects to

lament the absence of some familiar landmarks. The dissonance between the cultivated expectations of each discipline and the new object that belongs to neither may be most conspicuous in the bodies of literature upon which the overall work draws. It might be worth acknowledging before things really begin that if this work was situated solely within the familiar domains of either literature, it might well come up short. Yet the interdisciplinary nature of this particular manuscript cannot serve the masters of its constituent subjects without losing its more important obedience to the disciplines of interdisciplinarity. Of necessity – and as with any journey – the literature drawn upon will be selective rather than comprehensive. The selection will be driven by the objective of bringing the distinctive preoccupations of each field into dialogue with each other rather than going over the familiar terrain of each in greater depth.

There are other ways in which this self-consciously new object, which belongs to neither discipline, might lead readers afar from their expectations. So, for example, anthropologists looking for a standard ethnographic account may well feel thwarted by conventional anthropological expectations for both cultural representations that cover "the culture" and for the attendant methodological certainties about how to extract the data upon which such representations rest. The research on which this book is based not only is grounded in an actual city, it is also concentrated on a particular group that lives in this city – the Gitanos. Jerezano Gitanos are a group of people linked most frequently in anthropological literature with the Roma, or Gypsies. They are a group that has dwelled for over five hundred years in Andalucía.

It would be fair to assume that some readers will come to this text with the expectation that this account will fill in the details of how the well-covered traits of the Gypsies or Roma (and, in particular, the details of their distinctive legal system) play out among the Gitanos. As is argued throughout the book, however, this type of trait ethnography should give way to a process ethnography. There are recent discussions going on in Gypsy studies of a movement away from internally coherent views of the culture. This trend is part of a more general movement in anthropology away from imageries of coherence and totality. The "cultural" analysis of this book builds on the recent intrigues in Gypsy studies and quite self-consciously declines to canvass putatively stable traits – in fact, it sets out in some ways to destabilize them. Given the ferment for an articulation of processes over traits in the field of anthropology more generally, there may indeed be more at stake in this work than just Gypsy studies, as the text unsettles an entire, relatively stable anthropological concept of culture.

Furthermore, the "ethnographic" writing that cross-cuts the text (marked with an arrow) may seem atypically allusive and novelistic for an ethnography. The representations of culture in the text – that is, its style – may

seem as idiosyncratic as the content that is covered. However, given the overall intent to emphasize the ongoing tensions within cultures, rather than any settled and stable structures of understanding, the form is quite closely wed to the content of the arguments that course through its pages.

Having laid out how the manuscript goes astray of conventional expectations, I should note that it is not situated completely outside of the disciplines of legal anthropology and comparative law. There is a significant anthropological literature that is consonant with the critiques that are now arising in the literature of comparative law. This critical literature goes against the grain of a far more ponderous and stable anthropological literature devoted to conceptions of culture wed to a static spatial cultural imagery. Although studies in ethnographic writing have been wrestling with representational and epistemological dilemmas for decades, these preoccupations are relatively fresh in comparative law. Comparativists coming to this text, then, may be slightly more curious about, if not craving for, representational experimentation. Comparative law has been strikingly and obsessively preoccupied with taxonomy and structure almost since its inception. The recent engagement of comparative law with epistemological and representational preoccupations stems, for the most part, from an awareness of the fragility of comparative law's long-standing recapitulation of the nation-state's preoccupation with jurisdiction, borders, and conspicuous authority (a spatial preoccupation that is often unwittingly shared by conventional anthropological understandings of culture).

All in all, then, this book will likely not be an entirely familiar journey for anthropology or for law. In fact it ought not to be. It intends to recapitulate a journey extrapolated from both of these well-travelled routes through to an unfamiliar place where both disciplines intersect and ideas from each congregate, communicate, and argue with each other.

Preparations

The Problematic of Locale

Against the deluge of increasingly globalized forces, place is reputed to be losing its footing. Forces such as mass tourism and mass migrations, far-reaching and deeply penetrating financial networks, and widespread information technologies are supposed to be dramatically de-territorializing the world and neutralizing the significance of place. This claim is intended for the place of the state as well as for the place of culture. Transnational economic forces are prevailing over the ability of sovereign states to direct and manage their economies, destabilizing their integrity and marginalizing their responsiveness to domestic contingencies. Not only is the state losing its position as a political player on the world stage but domestic phenomena

are also becoming attenuated as globalization reaches beyond the boundaries of the state and deep within it. And just as the state is losing its heuristic fixity, the idea of a discrete locale or field, community, or region is providing an increasingly elusive purchase, as ethnographers are turning up in places and finding that the locals, as Appadurai explains, are no longer (if indeed they ever were) historically unselfconscious, tightly territorialized, and uninflected by modernity.[5] The things that are particular to locale and place have apparently been smoothed out and worn down by extraneous influence and given a less idiosyncratic configuration.

With respect to this thesis on the levelling of local salience, both national and local law are declining in significance. Local and national legal traditions are no longer social phenomena that recapitulate a set of distinct shared values, agreements, beliefs, and practices. The legal comparativist seems to be left with less and less salience to compare as legal systems harmonize with each other, borrowing from other jurisdictions legal reforms that facilitate the integration of global economic forces into domestic policy. The legal anthropologist is similarly left with informal legal orders so thoroughly infused with extraneous and seeping political economies that any form of local, integrated governance seems utterly elusive.

Recent work coming out of the disciplines of anthropology, literary criticism, and political economy in the last two decades has begun to offer a counter thesis to this imagery of the neutralization of place – without having recourse, however, to dated conceptions of place.[6] It is a counter thesis in which the familiar conceptions of field, and by extension jurisdiction, do not survive entirely intact. Part of this work contests the idea that culture refers to some kind of social *space* with fixed, localized boundaries and internally coherent structures. It also contests the idea that any seamlessly bounded sociological entity exists that can be characterized holistically by shared values, beliefs, and practices. It insists that differentials of status, discrepancies in knowledge, and ongoing conflicts about such asymmetries characterize all social groupings. Furthermore, any influence on a field – local or extra-local – will be refracted, indigenized, resisted, incorporated, and naturalized in a context. The influence is given some play in a manner that *creates* a locale.

A more historically oriented stream of this critique points out that, while the pace, intensity, and scope of global influences have shifted over the last century, globalization is itself a deeply historical process with the idea of locality itself – a circumscribed place – being a historical product of larger-scale interactions. The state, similarly, is not (despite the seductive immobilizing imagery of maps) a natural, discrete, bounded entity fixed by pre-given themes. It has always been a foil for local and global forces, has always had its own coterie of transnational economic actors, and has always been

imbedded in a larger world history, out of which its specificities and diffuse character have emerged by contrast.

This critique suggests that there *is* a place for discussions of cultural and national heterogeneity in a world of overarching influences but that this heterogeneity is far more conflicted, dynamic, and ephemeral than previous conceptions of national and cultural integrity suggested. Comparative law and legal anthropology, by extension, continue to offer vitally important disciplines to get at what is going on at the local, national, and global levels, but only on the understanding that the separation between the entities to be compared is not – and has probably never been – as clear and distinct as previously construed. This work takes up the tension between homogenizing pressures in world historical processes and heterogenizing reactions that situate and shape the nature of locale and state within these global, deterritorializing influences. This study, then, is both a small- and large-scale study of the concrete processes through which globalization impinges on local sensibilities – in this case, on local conceptions of law.

In order to hold this more slippery and elusive object in focus – not jurisdiction but rather the processes of jurisdictionalization – a reconceptualization of conventional comparative disciplines is in order. Old habits of inquiry need to be married to new ones in order to maintain the object within the sights of the investigation. This investigation, then, is a synthesis of conventional doctrinal research in law (which characteristically has been rooted in national legal systems and paradigmatically based on place), the methodologies of comparative law and legal anthropology with their parallel anxieties about locale-centrism, and the delimitation of an appropriate subject of interest and field of vision.

As a synthesis of several sub-disciplines of law, the concrete focus of the work is neither state law, nor local law, nor the regulatory mechanisms of a global economy. This text sets out to capture a more four-dimensional cartography and lays out how conventional jurisdictions are strategically manipulated, trumping, finessing, and renewing settled understandings of place in the service of competing understandings of law. The locale of this work is the tension-riddled nexus of relations that take shape between family, community, city, state, and globe. The real *place* of this study is the strategic terrain that articulates the tensions between these conceptual entities. The text leads the reader into the complex, overlapping, disjunctive, and unstable interplay between near and far – an interplay that loops back into the very conceptualizations of near and far, here and there. Local law – municipal law (in both senses of the word) – is a product of these journeys and the tensions that emerge *en route*.

In light of this work's preoccupation with near and far – and with the problematic of locale for law – this work is about a sustained merger of the

disciplines of comparative law and legal anthropology operating alternatively on the small and large scale. It works through a continuous displacement of the optic lenses of one discipline by those of the other, persistently substituting the magnifying glass for the wide-angle lens and the microscope for the telescope, insisting on the revelations of each perspective for an overall disclosure of the object.[7] This unification of disciplinary scales in one investigative space is intended to generate more faithful renderings of the nature of legal phenomena and also serves to cross-pollinate each discipline with the insights of the other.

Maps, Scales, and Context

Comparative law and legal anthropology simultaneously have to rethink the nature of their enterprises in light of the deterritorialization of proximity and place.[8] This re-conceptualization is already underway, grouped, coincidentally, around similar imageries of the problematics of cartography and representation. Recently both Bonaventura de Sousa Santos and Annelise Riles, for example, in legal anthropology and comparative law respectively, have dwelled upon the same cartographic preoccupations with scale, projection, and representation. Both individuals have also made use of Jorge Luis Borges's metaphor of the penultimate representational map of the empire to tease out the problem of context, which is recapitulated by de Sousa Santos:

> The great Argentinian writer Jorge Luis Borges has told us the story of the emperor who ordered the production of an exact map of his empire. He insisted that the map should be exact to the most minute detail. The best cartographers of the time were engaged in this important project. Eventually, they produced the map and, indeed, it could not possibly be more exact, as it coincided point by point with the empire. However, to their frustration, it was not a very practical map, since it was of the same size as the empire.[9]

I, too, am engaged in the process of creating a map – a representational reduction of reality – to transport the reader to a strange city. And this work, in the complementary registers of comparative law and legal anthropology, is also vexed by the problem of needing to reproduce exactly the right amount of detail to accurately evoke the presence of the place. This problem of calibration is one that has preoccupied both disciplines over the course of their histories. On their trajectories since the nineteenth century, comparative law and legal anthropology have occasionally joined paths, exchanging instruments of observation, complementing magnifying glasses with wide-angle lenses, and vice versa. Bronislaw Malinowski's work

has opened the door for lengthy parallel traditions in both disciplines.[10] In comparative law, his influence is found in the preoccupation with the trans-systemic function of legal rules and institutions within different legal families. His imprint is found in legal anthropology in his focus on the non-state functional analogues in societies without courts and constables.

Just as frequently, however, the history of each discipline has seemed to head off on different routes that are mutually oblivious. The two disciplines have alternatively headed off steadfastly in opposite directions. Comparativists have occasionally rejected the overly thick and unmanageable features generated by the anthropologist's "great expedition into social context,"[11] while legal anthropologists have revolted against the comparativist's commitment to predetermined (generally state-centric) categories of law. The itineraries of the two disciplines are now beginning to merge once again in the recent turn of comparative law towards a reflexive preoccupation with the social, political, and discursive mechanisms through which law acquires its distinctive characteristics.[12] From the trajectory of legal anthropology, the paths are merging in what Brian Tamanaha critically calls the "ensconced establishment maturity" of legal pluralism, which has induced a naturalized sensitivity to the diverse sociological sources of law in jurists and social scientists alike.[13] The parallels of the problems at the core of each discipline, which appear merely to manifest themselves on different scales with different degrees of magnification, are becoming more apparent. Thus, for example, the debate between the comparativists that Annelise Riles labels "context or category school" almost exactly parallels the seminal Max Gluckman/Paul Bohanan debate in legal anthropology (though apparently with less heat).[14]

Category school comparativists are those mostly European émigré postwar scholars who cut their teeth with American legal realism and other functionalist critiques of legal formalism. Context comparativists are the next generation of scholars that grew up with the emergence of area studies in the 1960s and, unlike the first school, focused on remote non-Western national legal systems in a more in-depth thick-description kind of way. Context comparativists criticized the Category school for creating typologies and ethnocentric comparisons that were deeply rooted in Western conceptions of law and ill-suited for states without common law or civilian roots. Category school proponents countered that this descent into jurisdictional detail was the study of foreign law, not comparative law, and prescribed an antidote to the spiralling facticity generated by area studies – a reaffirmation of the relative autonomy of law. Annelise Riles frames the worry about the unmanageability of law's social details as a quagmire:

> [C]ontext, for many, is a kind of quicksand; it draws comparativists ever deeper, into a potential infinity of details. These traditional comparativists

> therefore remind themselves that they lack the tools of social scientists for a great expedition into social context, and in any case too much context might obscure what is distinctive about the "law" they compare.[15]

On the precipice of this amorphous mass of indistinguishably relevant facts, Category school comparativists "reaffirm[ed] the centrality of 'law' as a safe haven from the quagmires of context."[16] This response, as well as the quicksand of context, has been bogging down the comparative enterprise ever since.

This concern that great expeditions into social context would not find their feet without the friction of familiar terms of reference is almost exactly Gluckman's retort to Bohanan. In a seminal debate in legal anthropology, Bohanan accused Gluckman of ethnocentrism in his translation of Barotse legal sensibilities into familiar English jurisprudential concepts such as "right," "duty," "obligation," "tort," "injury," "evidence," and "reasonable man."[17] Gluckman himself valued the importance of thick description. Yet he also placed an ultimate value on more abstract, less contextualized tools of legal analysis – tools that depended on prying what is distinctive about law from its richly textured surroundings in order to engage the comparative exercise.

The critique that overly descriptive and contextualized work dissolves any meaningful distinction between law and context has been a recurring one in legal anthropology ever since Malinowski's refreshing anti-ethnocentric "discovery" of law in out-of-the-way places and in unfamiliar guises.[18] Forays into thick description in law lead eventually to the point where it is difficult to know when we have left off speaking of law and are merely describing social life. This complaint has been most forcefully launched against strong legal pluralists by Brian Tamanaha, who charged that the strong pluralist equivalence (as opposed to contrast) of state law and society "tramples everyday usage of these very familiar terms. Law, by our common understanding, is something distinct from the notions of normative order or social control."[19] Better to hold on to familiar terms of reference, he argued, in order to retain something to contrast law *to* in studies of law and society.

This vexing awareness that law turns no wheels outside its context but is nondescript if overcontextualized has also plagued comparative law and has led to the legal comparativist fear of being sucked into Riles's "quagmire of context."[20] Riles draws on anthropologist Marilyn Strathern's evocation of this familiar quicksand:

> The more closely you look, the more detailed things are bound to become. Increase in one dimension (focus) increases the other (detail of data). For example, comparative questions that appear interesting at a distance, on closer inspection may well fragment into a host of subsidiary (and probably more

> interesting) questions ... The perception of increasing complication – that there are always potentially "more" things to take into account – contributes to a muted skepticism about the utility of comparison at all.[21]

The pragmatic comparativist – anthropological or legal – wonders how one can get any bearings from a map that reproduces the entire landscape in excruciatingly faithful – and utterly impractical – detail. Yet the quandary of context seems intractable. By veering too far in the direction of familiar categories, one is thwarted by the anxiety that he or she who knows only one tradition knows no tradition.[22] Further, to know another tradition is to know it on its own terms. Comparativists bent on understanding phenomena by their own terms sense that experience-distant accounts of social phenomena (including law) are anaemic or narrowly and blindly instrumental. They are not like Borges's map of the empire, exact to the minutest detail and coinciding point by point with the empire. Rather, they are like the cursory map de Sousa Santos offers in contrast to Borges's overly representative map of the empire – an instrumental device, which de Sousa Santos notes is the kind of map produced for an invitation to a party in a house whose location you do not know: "[T]he host will ... draw a map which will be very effective in orientating you though very inaccurate in representing the features of the environment along the way to your destination."[23] In comparative work such a cursory synopsis is useful for an introduction to alterity, but it barely counts as an initiation into the subtle and multiple deceptive ways in which differences count. Setting the ratio of distance on a map to correspond to the distance on the ground is precisely the representational problem that confounds comparative work.

The centrality of the problem of context plagues both legal comparativists and legal anthropologists, though historically on different scales. The introduction of global phenomena into both arenas brings the well-honed optics of each to bear on the same impinging phenomenon. It also raises questions about the accuracies of familiar scales of field and jurisdiction when maps of the most *pressing* contemporary fields and jurisdictions seem to be maps of the global empire. Either these maps threaten to be callously instrumental in meeting the ends of global capitalism or else their enormous shifting contours appear maddeningly elusive and unwieldy. In order to see how these massive-scale forces are affecting the familiar maps of state and culture, a reconceptualization of context is required. It is as though the host has given you a map to her house but everywhere you turn on your way you find a detour. At some point you will require a recalibrated representation of the features of the shifted environment for the map to regain any intelligibility. In this sense the great expedition into social context is promising. It provides a clarification of how the global is now imbedded in familiar places and how familiar places can now spread out across the world.

Climate of Law

Annelise Riles intimates that context for comparative lawyers is like a quagmire – as they venture into the amorphous background out of which law emerges in order to understand its local significance, those features that might have seemed distinctive about law melt into the depths of their background. The vexatious problem of context has haunted comparativists for a long time. It was identified early in the history of comparative law, and with singular clarity, by Montesquieu's climatic theory of law. His mid-eighteenth-century analysis of the law is familiar to comparativists who seek to grasp the limits of law's applicability and transplantability.

Montesquieu identified a catalogue of national characteristics that binds local rules and institutions to their locale and determines *l'esprit des lois*. These characteristics include environmental factors such as geography, climate, fertility of the soil, and the size and geographical position of the country. They also include social and economic factors such as the way of life of a people (hunters, labourers, and pastoralists) and their wealth and population density. Other factors that he identified are cultural, such as the religion of the people, their mores, and their manners. In addition to all of these organic linkages between law and place, Montesquieu identified purely political factors such as the nature of government and the degree of liberty that the national constitution could sustain. Given the rootedness of law in these particular and distinctive contexts, the transplant of a law from one context to another looked like a highly problematic endeavour. "Les lois doivent être tellement propres au peuple pour lequel elles sont faites que c'est un très grand hasard si celles d'une nation peuvent convenir à une autre," Montesquieu concludes.[24] So wed are laws to their context that they cannot be sensibly lifted from one and squeezed into another without great distortion of both the original laws and the alien context.

Also seminal to comparativists is Otto Kahn-Freund's updating of Montesquieu's legal sociology in light of the globalizing trends that have occurred in the two hundred years following the celebrated foray. In Montesquieu's epoch, the greatest challenge to his thesis about the locality of law might well have been the rational, ordered legal planning and reform of the modern era and the ambitious state – an Enlightenment project to which Montesquieu made monumental contributions. The modern French bureaucratic state was indeed one of the larger impersonal events that impinged upon and remodeled the multiple organic subnational *and* transnational legal worlds of Montesquieu's age.

Kahn-Freund would argue that this type of rationalized nineteenth-century state was but one of the modern events to wear down the salience of Montesquieu's observations.[25] Micro-legal practices that were once tied to a geography, a sociology, and a national or local temperament have been deluged by sweeping macro systems that have worn away a good deal of the

spatially contained contingencies that gave rise to even national legal orders. Forces such as industrialization, urbanization, and the development of transnational transportation and communications have tended to homogenize social landscapes so that the social, economic, and cultural ambience of both developed and developing countries no longer poses any real environmental obstacles to legal transplantation.

This hypothesis about the levelling of legal difference may be exaggerated if the focus is on state law as a general phenomenon. It may be less hyperbolic if the implications for particular bodies of law are examined. If the question is raised in the domain of family law, the hypothesis about a homogeneous geography of law becomes more concrete and more plausible. It is in the domain of family law that the borrowing and exchanging and incidental harmonizing of legal reforms have been prodigious. Kahn-Freund was, in general, extremely cautious about the possibility of legal transplantation from one legal system to another without a painstaking examination of the original meaning and effect of the principle in its national context. In family law, however, this caution did not seem warranted to him. Thousands of minute and large-scale sub-legal assimilations in the modern era have generated a "sameness" among national cultures such that they can effectively insert into their family law systems, in a mechanical manner, family law reforms that have been fashioned elsewhere. Kahn-Freund took this homogenization of the social, cultural, and economic environment to be so obvious as to be beyond argument.[26]

In the approximately twenty-five years since Kahn-Freund made this observation, globally integrated economic environments can be added to the top of the list of impersonal systems that have levelled both national and cultural frontiers and flattened what is particular in the legal culture of distinct geographic and social spaces. There are a number of contemporary globalization theorists who take the homogenization of local cultures, legal or otherwise, to be a matter of fact. Contemporary observations about the levelling of national and cultural particularity have given comparative law's perennial quandary about legal transplants a different complexion.

The temptation for legal comparativists to emphasize the convergence and harmonization of legal traditions as their underlying contexts lose their national distinctiveness is paralleled by a voice within anthropology lamenting the disappearance of cultures. The overlaps between the two comparative disciplines are instructive. Conventionally the anthropologist works in an identifiable field where observation is taken to encompass something roughly commensurate with the limits of the literal field of vision. Just as the field of vision has implicit spatial limits, the traditional micro-social field is implicitly delimited by the frontiers of a cultural unit occupying a more or less geographically bounded space. Where the legal comparativist

often sets up shop at state borders, the traditional anthropologist puts up his or her tent not far from the borders of a culture.

Just as the legal or political comparativist frames legal units in self-contained national space, the legal anthropologist adopts a spatial approach to culture, employing conventions of ethnographic description that frame cultural units as self-contained, homogeneous, and domestically (albeit exotically) governed. Holding onto this heuristic device of containment for the purposes of keeping a disciplinary object – culture – in sight has become increasingly problematic for the ethnographic fieldworker. Ethnographers can no longer avoid coming to terms with the omnipresence of the familiar – whether it is Coca-Cola, the Internet, or tourists – as these things have become undeniable parts of whichever local landscape they visit. Anthropology has for some time been experimenting with transformative ways of looking at locality in light of this omnipresence of the familiar. Comparative law may also be on the point of similarly turning itself inside out as national borders are increasingly recognized for the useful, but arbitrary, constructs that they are.

Arjun Appadurai poses the dilemma for contemporary ethnographic work in the following way:

> As groups migrate, regroup in new locations, reconstruct their histories, and reconfigure their ethnic "projects," the *ethno* in ethnography takes on a slippery, nonlocalized quality, to which the descriptive practices of anthropology will have to respond. The landscapes of group identity – the ethnoscapes – around the world are no longer familiar anthropological objects, insofar as groups are no longer tightly territorialized, spatially bounded, historically self-conscious, or culturally homogeneous ... the task of ethnography now becomes the unravelling of a conundrum: what is the nature of locality, as a lived experience, in a globalized, deterritorialized world?[27]

Posed as a challenge to the discipline of anthropology, this statement is a call for a shift in disciplinary practice, a revision of what the field – both in the sense of the locale for fieldwork and the discipline of anthropology – amounts to. It serves as a salutary reflection on whether, how, and to what end conventional ethnographies have misconstrued their subject by eliding mass migrations, multiple exchanges, and cultural flows. It is this latter approach that I want to explore in relation to family law. It should suggest ways of looking at diversity that neither salvage local tradition for its own sake nor dismiss its contemporary relevance – ways of looking at diversity and uniformity in family law that provide multi-dimensional accounts of the relation between locale and looming imperatives.

The challenge for the legal comparativist is comparable to those challenges facing legal anthropologists. The state, which is the traditional field for the comparativist, is also losing some of its locality. Just as the notion of proximity is being deterritorialized, so is the notion of jurisdiction. This conundrum about peoplehood and its legal expression is different from that confronted by the nineteenth-century construction of nationhood. The latter tension within state ways/folk ways was familiar enough in Spain. It surfaced in nineteenth-century Spanish debates about codification, and it was an element in how family law was conceived. German Romantic opposition to the rational, centralizing, and jurisdictionally unifying codifications modeled on France resonated not only in Spain – it was the principal brake on a codification project that dragged on through much of the nineteenth century. Spanish private law was only codified in 1889. A good deal of the resistance came from the mosaic of medieval regional *fuero juzgos,* which were the local legal orders that acquired their pedigree from the Christian monarchs who provided grants of legal control as the crusades advanced and as conquered territories needed reinforcements in population and local governance. The historical nature of the Spanish family was also invoked to protect the nation from the incursion of foreign models (most particularly the liberal French model) of the family. Although the final 1889 code contains almost a direct translation of the law of obligations from the French *Code civil,* the 1889 Spanish *Código civil* contained many institutions indigenous to Spain, including foral law (law of the *fueros*) and the parallel persistence of the Catholic canon law regime in family law for Spanish Catholics.

This idea of the nation, however, or of the folk spirit inspiring the law, has been surpassed in the twentieth century by an understanding of the porous and amorphous nature of such an entity. The push-me/pull-you in nineteenth-century European debates about the ordered, institutional planning of the state through codification and the organic local folk ways that supposedly gave law its local meaning has been displaced as the authority of the state itself has been surpassed by influences extending far beyond its borders and deep into its inner recesses. The question remains whether (and in which domains) there is a point for the comparativist to focus on national legal systems, or whether cultural, national, economic, and political homogenization is an inevitability that makes the study of national legal systems a withering science. The comparativist at the turn of the twentieth century was preoccupied with the *intentional* and *planned* unification of legal principles across national borders as a sign of progress. Divergences were attributed to historical accident, to earlier evolutionary stages of development, or to temporary or contingent circumstances. Contemporary comparativists (those at the turn of twenty-first century), on the other hand, appear to be wrestling with an unengineered alignment of legal systems

with unplanned, unlegislated supranational forces compromising the capacities of actors in single locations to understand, much less to anticipate or resist, the implications for national jurisdictions.

Kahn-Freund's article had, as a practical goal, the aim of advising the would-be comparativist about the conditions making it desirable and possible to import law from foreign jurisdictions in the reform of the comparativist's home legal system.[28] Through his exposition of the constraints on, and limits of, transplantability, he availed himself of the comparativist's eye for the taken-for-granted contextual backdrop to the rules and institutions of law that renders them meaningful and functional. He developed the double metaphor of transplants being, on the one end of a continuum, a mechanical insertion not unlike the transfer of a wheel or carburettor from one car to another or, on the other end of the continuum, a surgical transplant comparable to the transplant of a kidney or heart, which is attended by all the risks of organ rejection. There are degrees of legal transplantability, the mechanical end representing the most facile and the organic end representing the most perilous and likely to fail.

Kahn-Freund took as his point of departure for the mechanical/organic continuum Montesquieu, who was highly sceptical of the ability of states to perform legal transplants. Montesquieu perceived laws to be like kidneys or corneas, living organisms intricately imbedded in a complex living body. Laws function more organically than mechanically for Montesquieu.[29] It would be a *grand hasard*, a great coincidence, were the laws of one country to serve the needs of another, so enmeshed are they with the people for whom they were made.

Of the many linkages between law and place that determine *l'esprit des lois*, Montesquieu also identified purely political factors such as the nature of government and the degree of liberty that the national constitution can sustain. This latter component of the compound that makes up *l'esprit des lois* has taken on, in Kahn-Freund's view, a preponderant, almost overriding, importance over the other elements (geographical, social, cultural, and economic factors) in the two hundred years since Montesquieu laid out his anatomy of law. The disproportionate gain in importance of political factors as a determinant of transplantability is the central thesis of Kahn-Freund's article. The strongest organic element in the law today is law's close links with

> the infinite variations of the organizations of power in culturally, socially, and economically very similar countries. The question is in many cases no longer how deeply [a legal rule] is embedded, how deep are its roots in the soil of its country, but who has planted the roots and who cultivates the garden. Or in the non-metaphorical language: how closely it is linked with the foreign power structure, whether that be expressed in the distribution

> of formal constitutional functions or in the influence of those social groups which in each democratic country play a decisive role in the law-making and the decision-making process and which are in fact part and parcel of its constitutional and administrative law.[30]

For Kahn-Freud it is principally the failure to account for the political climate in which laws operate that leads to the most consistent misuse of comparative law and the rejection of transplants from one legal system to another.

It is precisely this hypothesis about the centrality of national political structures for the cross-pollination of legal sensibilities that preoccupies the first chapter. As the book progresses through the course of the first and second chapters, familiar understandings of law are destabilized from what we have been trained to regard as the rock-solid ground of national political structures. A solid alternate understanding seems to be required to reorient us for moving forward.

Dead End

De Sousa Santos, like Riles, focuses on how maps distort reality through devices such as scale and projection – the former being the ratio of distance on a map to the corresponding distance on the ground, and the latter being the creation of a field or representation within which forms and degrees of distortion are unequally but determinably distributed. Laws, for de Sousa Santos, are maps. Maps are, following Clifford Geertz, ways of imagining the real.[31]

The question remains about how the quagmire of context has been theoretically resolved for this work given the infinite thickness of context into which such a study, on so many scales, wades. At this point I will indicate that it has not been resolved so much as it has been declined. The first two chapters emphasize distinct projections (state or culture) – a distortion contrived for didactic purposes. The intention is that the different projections eventually work conjunctively to evoke tensions arising between them. This approach does not resolve the question of which scale is appropriate to a discussion of law. It merely puts the products of each scale into play with each other, doing so on an even more immediate textual level as the work tacks back and forth between the scales of intimate pedestrian details and overarching historical and theoretical perspectives.By putting a range of scales into play with each other, this monograph leaves untangled the longstanding knot found in both disciplines: the preoccupation with nailing down a standard of scale prior to investigations. This is the problem of definition.

Tamanaha levels his critique of legal pluralism on the grounds that pluralists are glossing over a rather devastating and embarrassing flaw in their

analysis, namely that they have not arrived at an agreed-upon definition of law prior to their departure into the welter of undistinguished data that confronts any empirical study. They have, then, no criteria of relevance for determining salience in the field – context, like Borges's map of the empire, consumes the enterprise. According to Tamanaha, this leads to the pluralist tendency to pervert the commonsense language of law that regularly and spontaneously draws on common, though implicit, criteria for salience.[32] This need to preserve a realm of the distinctively legal (and hence to qualify it in advance) is pressing in both comparative law and legal anthropology. What this text presents as an alternative is something far more novelistic and evocative than a quasi-empirical definition.

Foreshadowed Problems and Unforseen Events

One of the most familiar methodological problems confronting the ethnographer in the field is the problem of salience. This is the case whether salience is pursued in the field of literature, canvassed for foreshadowed problems prior to departure, or whether it is in the field of unforseen events that await the ethnographer upon arrival. Something gets noticed, however. Something gets noted down. And the process is not very different from the process that Tamanaha followed in writing his critique of legal pluralism. In his critical enterprise, not every word in the literature on legal pluralism leapt out at him, nor did every writer in the field speak to him. There is an infinity of peripheral perspectives that theoretically await any critical writer. Central preoccupations emerge, however, as do central problematics. Tamanaha did not embark on this inquiry with a completely prefigured map into the literature – a mental picture of every word uttered on the subject. It nonetheless evoked something in him, an interplay with central preoccupations and problematics in other bodies of literature, ringing true or false with those fields and with the fields that make up the unforseen events of any human life.

It is this more novelistic process of evocation that I want to draw upon in this text. Whether it rings true or false will not depend upon either myself or the reader entering the field with a prefigured map that describes the overall field (pointing out law from non-law) prior to the excursion. The route in for the reader is more suggestive, more allusive, as was the route in for me as the ethnographer. The various juxtaposed texts and scales speak more to a struggle for salience than to a predetermination of what it will look like when it is found. There is a persistent declining of narrative wholeness in this enterprise. The infinite facticity of detail that the world presents seeps at the edges of this account and threatens its coherence.

The argument of this work is that if the cartographic metaphor is apt then it will work more honestly with an association of cartography and the arts rather than the natural sciences; not with the triumph of universal

standards but with the compulsion of evocative tales. Writing a comparative law ethnography is more like writing a novel than writing a scientific treatise. Apart from the fact that the success of each text lies in evocation, allusion, and intrigue, the novelist too must bring salience out of the infinite possibilities that could compose a story. If a novelist brings out particular details to write about in a literal, evocative way, then it is precisely because those details tell the story in a way that creates what John Gardner calls a "vivid and continuous fictional dream." Details, which are the lifeblood of fiction, need to be carefully calibrated to the narrative direction of this fictional dream in order not to distract from its itinerary. If they are so marshalled, "[w]e read a few words at the beginning of the book or the particular story, and suddenly we find ourselves seeing not words on a page but a train moving through Russia, an old Italian crying, or a farmhouse battered by rain. We read on – dream on – not passively but actively, worrying about the choices the characters have to make, listening in panic for some sound behind the fictional door, exulting in characters' successes, bemoaning their failures."[33] The fact that there is an infinity of details that could be marshalled and that a writer could fall prey to the temptation to get off the course of the story through an extraneous diversion into decorative facticity does not mean that lean compelling stories cannot be told.

Novel writing is clearly not exactly like ethnographic writing. Although the relevance of a detail may be dictated by the stories that each tell, the criteria of relevance in each practice are different. To some measure, the criteria of relevance of each are set by the body of literature that the text presumes to expand upon. Salience in writing is determined by the concerns and interests of previous readers and writers in the field. Yet it cannot be overdetermined if it is to say anything new. Malinowski captures this tension between the salience of the ethnographic enterprise and the background from which it emerges in his description of the methodological problems to which ethnographic study gives rise (nicely suggesting, by the way, the hermeneutic nature of the sciences as well):

> If a man sets out on an expedition determined to prove certain hypotheses, if he is incapable of changing his views constantly and casting them off ungrudgingly under the pressure of evidence, needless to say his work will be worthless. But the more problems he brings with him into the field, the more he is in the habit of moulding his theories according to facts, and of seeing facts in their bearing upon theory, the better he is equipped for the work. Preconceived ideas are pernicious in any scientific work, but foreshadowed problems are the main endowment of a scientific thinker, and these problems are first revealed to the observer by his theoretical studies.[34]

Rather than a flight to a safe haven of preconceived ideas of overdetermined definitions, ethnographic comparative work emerges out of the tension between foreshadowed problems and unforeseen events and the constant hermeneutic tacking back and forth between the two that such an expedition into context demands.

Souvenir

This introduction, then, is like a map of a strange city – one that is unfolded, unfolded again, and then unfolded once more before the full city can be seen. It provides, between the creases of the section headings, a synoptic overview – or several of them, sequentially built around different conceptual layers. The reader has been invited to unfold the introduction panel by panel, in anticipation of laying down and smoothing out the broad maps of Chapters 1 and 2. Inevitably those chapters, too, will lay out an invitation to wander ... and a memento for the voyage.

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1
State: Intersections in Spanish Family Law

> Jerez: Ville assez importante, ni belle ni laide ... cette cité moderne est plutôt mal conçue. On s'y perd facilement, surtout en voiture. Les quartiers ont poussé un peu anarchiquement, et les sens interdits pullulent. Si vous devez y séjourner, munissez-vous d'un plan et marchez.
>
> – *Le guide du routard: Espagne du sud, Andalousie*[1]

In a conventional historical mode, the main text of this chapter explores the implications of supranational trends for family law. Looking at developments in Spanish family law focuses the question about the coherence of state law in light of cross-cutting venues of proximity. Are the major family law reforms of the 1980s in Spain "Spanish" family law reforms, or is it more accurate to label recent legal developments as inevitable incidents in the development of European, Western, or, indeed, transcontinental family law? Is Spain merely the incidental territory for a general and inevitable levelling of family law norms? This chapter covers some of the history of the struggle in Spain between voluntarist aspirations in family law (both by the state and by the Roman Catholic Church) and the local conditions that facilitated or interfered with those aspirations.

The main text follows a less than direct chronology. Many of the sections read like temporal forays out from a central plaza and back again via a circuitous route, sometimes covering the same terrain, though on a different journey and with a slightly different itinerary. The central story of this chapter – official family law – lays out the central query about the limits of local and remote influences on the law. From here it ventures into the church's contemporary place in Spanish family law. Having started close to the centre of the contemporary moment, the text then takes the reader to a slightly older *quartier* of Spanish family law – the ambient surroundings for family law reforms in the period surrounding Spain's Second Republic and civil war (1929-38). It then traverses the shifted sociological terrain separating the family law reforms of the Second Republic and the 1980s, followed by a detour through the cross-cutting transnational and local influences in family law including an itinerary through the deeply criss-crossed and well-worn intersections between the church and state in European family law. The text eventually regroups and covers the ground

of contemporary Spanish family law reform as the state enters a supposedly homogeneous global village.

As much as this historical backdrop is officially invisible in the now constitutionally secular laws of the nation, the particular way that Catholicism is manifested in Andalucía plays a considerable role in the culture of the Andalusian family. And as much as the following social and historical context of Spain's family law reforms in 1981 shines light on the significance of these reforms, the complex and contemporaneous background of the culture of religion in Andalucía provides a counterpoint to the tacitly progressive and modern account of the history. This progress has often been characterized as a creeping homogenization across nation-states. The resilient and, to an outsider, idiosyncratic spirit of Catholicism in Spain belies the central place given to formal law in changing the anatomy of a nation.

The final excursion of the chapter regroups for an overview of these various chronologies through Spanish history, including the condensed moments of a particular sojourn on the streets of Jerez that course through the main text. By highlighting the sidestreets of official accounts of law throughout the chapter, the text manifests ambivalence about the sufficiency of its own mainstream account. This ambivalence is intended to recreate the labyrinthine ethos of the ill-conceived modern city of Jerez where the *quartiers* have sprung up somewhat anarchically and the one-way streets proliferate. The chapter finally asks whether the place at which we have arrived in the end is truly anywhere – a neutralized place, generic and nondescript, a mere point of entry into a cosmopolitan centre that is as large as a single, increasingly familiar, global village – or whether the central plazas of historical itineraries, far ranging (indeed global) as they might have been, draw us back to singular places with their distinct character and spirit. To get a feel for the singularity of the place requires some moving about within it.

All of these perambulations are centred on the theme of family law, which, as alluded to in the introduction, is one of the three domains of law that Kahn-Freund reviewed for his hypothesis. The strongest organic element in the law today is law's close links with "the infinite variations of the organizations of power in culturally, socially, and economically very similar countries."[2] According to him, of all of the diverse and amorphous elements that constitute the spirit of the laws, the political climate (associated by Kahn-Freud with national political structures) is of paramount importance in determining whether national and local law can be penetrated by foreign legal elements and whether this penetration will be rebuffed.

Prima facie the family ought to be the subject of legal regulation that provides the greatest validation for Montesquieu's warnings about the localized spirit of law. "What can be closer to the moral and religious conviction,

the habits and the mores and also the social structure of a community than the making and unmaking of marriages, and their effect on the legal position of the spouses, including their property?"[3] asked Kahn-Freund. One would expect a high incidence of resistance to foreign law to be inserted into this domain. And yet, family law in the West has seen a rapid and intensive assimilation of ideas and institutions across national borders in recent history. Country after country has undergone a shift in perceiving the deeply rooted idea of divorce as redress for fault or sin to the idea of divorce as relief from marriage failure. Kahn-Freund accounted for the rapid migration of the institution of faultless divorce by referring to the conformity of social, cultural, and economic climates that have emerged in the West over the last two hundred years. Countries that had barred the importation were not significantly different in those environmental characteristics. According to Kahn-Freund, the principal impediment to assimilation was the political factor in countries such as Ireland, Italy, and Spain. The political status of the Roman Catholic Church in those countries where reform was delayed or rejected is what accounted for a difference in the local *esprit de droit familial*.[4]

Kahn-Freund's article appeared in 1974. Following its publication, each of the Western states that had been noted for their resistance to the attenuation of legal ties among family members ushered in, in short order, the same legal restructuring of the family that moved freely across other national frontiers. Kahn-Freund's hypothesis had projected that, in each of those countries, the massive legal reform of the family had not arisen in response to regional environmental factors but rather in response to the growing impotency of the Roman Catholic Church within the power structure of the state. Religion as a predominant personal characteristic of the Irish, Spanish, and Italian people had faded away as a factor in the national legal structure of the family when the church, as an institution embedded in the state, began to lose its hold. Similarly, according to Kahn-Freund's thesis, other geographical, socio-cultural, and economic elements have diminished importance in the structure of family law compared to the political structure of the state. Whether Kahn-Freund got the cart before the horse in attributing transformative agency (even if through its loss) to the Roman Catholic Church in shifts of popular mores and political climates is a question to which I will return. For now, however, I want both to lay out his thesis and to address the distinctive national arenas in which the Roman Catholic Church used to be a player.

Yet just as we are about to enter onto the main routes into the context of Spanish law, the sidestreets into the ethnographic moment (marked with an arrow) begin to emerge as foretold. They wind their way throughout the text, spilling the reader back into it with a subtly modified perspective.