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The lawyer as mapmaker and the spatial turn in jurisprudence

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South African legal culture is characterised by formalist error. The transformative project calls for different intellectual tools and approaches to argumentation in law. The spatial turn, in law and the broader humanities, possibly presents new ways of thinking in the form of cognitive mapping and mapping loss. Legal rules and legal culture, over time, play an important role in how spaces are regulated and constituted. If legal education in South Africa has spatial justice as its aim, an acknowledgement of the palimpsestic nature of law and space in South Africa is required. The spatial turn presents an awakening to the relationship between space and time and can be situated at various stages of the twentieth century in philosophy, literature, art and other disciplines in the humanities. In this contribution, I am concerned with what the spatial turn could possibly mean in the context of legal education and for jurisprudence.

Abuse of deduction is a fallacious form of reasoning and a common logical mistake among South African lawyers (Davis & Klare 2010). "Formalist error", as Davis & Klare (2010: 406) call this error in logic, is a distinguishing feature of South African legal culture and arguing. There is limited content in the LLB curriculum on logic and ways of reasoning, but because students "believe what they are told" not only explicitly, but also implicitly, habits of mind, including formalist error, are transferred through the actual syllabus content, as well as through the legal culture inherent to legal education (Kennedy 1998: 54). Davis & Klare make it clear that we need new thought patterns, and we need to know that we need to think differently. For Douzinas & Geary (2005:

3), jurisprudence represents the "prudence, the *phronesis* of *jus* (law), law's consciousness and conscience". Jurisprudence as discipline encompasses the active and conscious thinking about the law and thinking about thinking in the law. In this article, and building on the idea of spatial justice as spatial logic, I propose jurisprudence as mapping. In the introduction to Roederer & Moellendorf's student textbook *Jurisprudence*, Roederer (2004: 1-23) offers a model theoretic view from the philosophy of science for mapping the jurisprudential terrain in the "search for truth in the law". The mode of mapping that I propose departs from his reliance on natural and social sciences for a theoretic model of mapping and instead, in contrast to Roederer, I suggest a mode of mapping from the humanities. My proposed mode of mapping flows from the rhizomes of lawyer as writer and writer as mapmaker. I start by setting out Davis & Klare's understanding of the formalist error in South African legal culture; thereafter, I explore the notion of spatial justice and Philippopoulos-Mihalopoulos's argument that spatial justice requires spatialised thinking. Through Boyd-White's 'legal imagination', Bakhtin's concept of the 'chronotope', Jameson's 'literary cartography' and Graham's 'mapping loss', I argue for ways of thinking that view the lawyer as a mapper of time and space. The transformative project of the South African Constitution requires, among other things, spatial justice. A turn to space in law does not simply mean to consider social justice within a spatial context, but indeed requires new modes of thinking and reasoning in law that do not re-inscribe existing patterns of thought, but rather open up to the full uncertainty that space presents (Philippopoulos-Mihalopoulos 2010: 187-8).

1. Formalist error

However convinced we may be that facts of a case are 'on all fours' with a well-known rule, our conclusion is, in principle, epistemologically provisional. It reflects a *judgment* that is necessarily, if subtly, filtered through the sensibilities and outlook of the lawyers who make it (Davis & Klare 2010: 428).

In formal logic, arguments can be valid, but false, or invalid, but true. Fallacies refer to arguments that are invalid, but not necessarily false.[1] In the context of

1 An example would be: The first premise is that South African lawyers are conservative and the second premise is that Klare is not a South African lawyer. If we conclude from these two premises that Klare is, therefore, not a conservative lawyer, it is a logical fallacy; in other words, an invalid argument, regardless of the fact that the statement is true in the sense that it corresponds with reality. On the other hand, suppose our first premise remains that South African lawyers are conservative and our second premise reads that Klare is a South African lawyer. Should we now conclude that Klare is a conservative lawyer, our argument, according to the rules of formal logic, is valid, but it does not correspond with reality since the second premise is false.

deduction it refers to arguments that do not follow, instances where reflexivity is assumed in the premises or abuse of deduction (formalist error). Davis & Klare (2010: 406) describe formalist error as a specific kind of logical mistake that takes place when "a lawyer believes, or says she believes, that a particular authoritative legal norm [...] entails a specific legal result or conclusion", this while another lawyer can reach an alternative conclusion based on the same norm while still using accepted methods and following established modes of legal reasoning. They use formalist error in a manner explicitly distinguished from the jurisprudential theory of formalism and understand it to include a belief that reasoning in law is completely separated from politics (Davis & Klare 2010: 406).[2] The jurisprudential theory of formalism typically views the law as an abstract and neutral science devoid of politics and normative content. Formalist error relates more specifically to reasoning in law that entails an underlying conviction that "a finely shaded conclusion of law can be logically and neutrally derived from an abstract legal rule or concept", while, in fact, conclusions are reached through a number of "decisional stages", whether conscious or unconscious (Davis & Klare 2010: 407).[3] This, however, does not mean that any answer is as good as the next one; it means that one cannot simply "derive" the legal answer from the principle, but rather that the most suitable alternative from the various possible answers compatible with the norm should be selected by consciously considering aspects outside of the norm (Davis & Klare 2010: 407).[4] Formalist error denies the fact that judgement is a process and that, in order to reach a decision, it mugst proceed through several stages. At each of the stages, "value-laden" and "context-driven choices" enter the decision-making process. In the remainder of the article, Davis & Klare illustrate how this logical error perpetuates a certain approach to the common law and customary law.

Roederer's proposition of the model theoretic view from the philosophy of science is introduced by a discussion of different views of the truth. With

2 Klare's 1998 article "Legal culture and South African legal culture", on which the 2010 article builds, used the terms 'formalism' and 'formalistic' to describe South African legal culture The new South Africa has a Constitution with massively egalitarian commitments superimposed on a formalistic legal culture without a strong tradition of substantive political discussion and contestation through the medium of legal discourses. An opening to transformation requires South African lawyers to harmonise judicial method and legal interpretation with the Constitution's substantively progressive aspirations (Klare 1998: 188).

3 They do not limit their critique to the mere application of rules and legal norms, but also include abstract legal concepts such as 'dignity', 'contractual autonomy', 'property', 'reasonableness', and 'free choice'.

4 These aspects, according to Klare and Davis, could include the following: objectives intended to be served by a rule, insights regarding the social context, considerations of economic efficiency or human rights, beliefs about the goals of the legal system, or, indeed, beliefs about the good life.

reference to Zipurski, he lays a basis for four approaches to the truth: nihilist, sceptic, pragmatic and robust (Roederer 2004: 5-8). Nihilist notions correspond to positivism in that they are merely concerned with validity and are agnostic about whether propositions are also true. Sceptic views prefer to talk about validity and believe that adding the adjective "true" to propositions does not contribute anything more than what an "exclamation mark adds to a statement" (Roederer 2004: 6). The pragmatist approach to the truth, as identified by Roederer, entails a view which those in the legal profession find useful to the extent that, since the truth is relative, lawyers can defend any client (who is willing to pay) and still feel satisfied, because whatever argument they present will be warranted by virtue of serving some purpose, namely that of winning the case (Roederer 2004: 6).[5] Roederer's chapter adopts a robust view of the truth that claims to satisfy both the criticisms against strong correspondence theories while still having sufficient substance to evaluate the other theories put forward in the remainder of the textbook (Roederer 2004: 4).[6] Roederer (2004: 7) bases his conception of truth mainly on Putnam's reading of John Dewey, in an attempt to "squeeze a bit more substance out of the notion of truth".[7] Despite this attempt, the model theoretic view from the philosophy of science does not produce a much more robust notion of truth. It does not take account of truth and justice as law's utopias that will never be reached, and resembles strongly the pragmatic approach of which Roederer is critical.

The model theoretic view, deriving from formal semantics and mathematics, assists scientific theory to (only) predict, describe and explain. Roederer (2004: 9) emphasises that scientific theory never deals with actual phenomena, but rather with physical systems: "highly abstract and idealised replicas of phenomena". The model theoretic approach moves from normal phenomena to hard data in the model and is distinct from the alternative view in scientific theory, namely the "received view" which insists on a strict separation between theory and empirical data so as not to "pollute empirical enquiry with theory" (Roederer 2004: footnote 26). "Law-like generalisations of theory work with the model

5 On this account, as Roederer illustrates, lawyers are not liars, since the truth is merely what is justifiable and useful.

6 The textbook includes chapters on Natural Law Theories, Positivism, Third Path Theories, Historical Jurisprudence, Marxism and the Law, Legal Realism, Law and Economics, Interpretative Approaches, Critical Legal Studies, Critical Race Theory, Feminism and the Law, Gay and Lesbian Legal Theory, Postmodernism(s) and the Law, Justice and the Law, Communitarian and Civic Republican Theories, "Traditional" African Jurisprudence, Islamic Jurisprudence, Traditional Chinese Jurisprudence, The Duty to Obey the Law, Legal Punishment, Law in the Context of Globalisation, and Transitional/Transformative Jurisprudence.

7 Putnam (1995: 6-9) asks "Are moral and legal values made or discovered?". With reference to, and reliance on Dewey (1926, 1938).

like a logical axiomatic system (e.g. like standard geometry)". Relying on Geire, (1991), Roederer (2004:10) compares the scientific model with a map. The map can be considered a particular type of scale model and, despite not claiming to be comprehensive in its representation, the map (like scientific models and, in Roederer's argument, jurisprudential theories) has two basic requirements, namely correspondence and value. Correspondence or coherence with our warranted set of beliefs consists of theoretical hypotheses, experiments, quasi-experiments and counterfactuals. Theoretical hypotheses are claims regarding the level and degree of accuracy of the map or model. Experiments are ways of arriving at the data that the model or map claims to predict, whereas quasi-experiments are performed to determine whether other models can also predict the given data (Roederer 2004: 10-5). Quasi-experiments or crucial experiments can, to some extent, challenge the formalist error, in the sense that it highlights the possibility of two theories or models predicting different outcomes for the same experiment. However, experimentation is often not plausible (as in the case of law) and then counterfactuals stand in. Counterfactuals are observations that substitute experiments; they are readily explained as 'if-then clauses'. Roederer (2014: 12) provides the following example: "If socio-economic background influences judges' decision-making, then we expect that judges with similar backgrounds will tend to make similar decisions". As a model in terms of a scientific perspective, mapping asks first whether the map fits the reality it purports to describe and, secondly, whether the map is valuable; in other words, is it beautiful or does it provide important information (Roederer 2004: 14). The value of a map or theoretical model, within the field of philosophy of science, can be divided into two different aspects. The value can either be established as constitutive value (this is the value of the scientific method and the scientific process itself) or as contextual value (more broadly conceived values). Mapping viewed in this way does not necessarily amount to formalist error, but it could. This view of mapping constitutes a particular view of space and place and their representation. For lawyers whose laboratories are libraries, Roederer's approach could foster rather than prevent formalist error. Comparing scientific models to maps reduces both the model theoretic approach and maps and mapping, and shadows the political nature of power relationships connected to mapping. Approaches to geography and spatial representation have changed significantly, and those involved in projects of radical geography are acutely aware of the manner in which space produces and is produced by unequal relationships (Massey 2005: 1-9). Roederer's mapping advocates for a (re)turn of law to geography's concreteness, whereas Philippopoulos-Mihalopoulos (2010: 196-7) insists that this should be "conditioned by an adequate conceptualisation of space" as pervaded by simultaneity. The reasons why the model theoretic view fosters

rather than counters the formalist error include the following concerns: none of the mentioned steps take cognisance of the power and politics in the process of mapping; the point of departure is coherence with an existing view, which will lead to the perpetuation of dominant discourses and leading approaches; the conclusion is still reached through formal logic, because data is collected and conclusions induced, and value is established by means of deduction. Spatial logic understood in terms of radical geography calls for rhizomatic instead of axiomatic reasoning and for transduction instead of deduction and induction. I elaborate on these concepts with reference to Philippopoulos-Mihalopoulos, Deleuze & Gauttari, and Lefebvre.

2. Spatial logic and spatial justice

Over the past twenty years, there have been a number of key publications engaging the law, space and place. This series of engagements were introduced by Nicholas Blomley's (1994) challenge to place law and space on equally solid sociolegal and philosophical ground. The following questions remain: Did this constitute a spatial turn in law? What could the spatial turn mean in law? How could a spatial turn also take place in legal education, particularly in the South African post-apartheid context? Regarding the first question, the concept of spatial justice (despite the possibility of critique presented by space) has not embraced the potential of space to disrupt and unsettle the *status quo*. Instead, Philippopoulos-Mihalopoulos (2010: 188) argues that engagements with space in law are, to a large extent, undertheorised and, in fact, "despatialized". Law's spatial engagement, he explains, has paradoxically been a turn away from space, because it has been either parochial and affirming through, for example, established principles of jurisdiction, or merely a 'flirtation' with terminology through the use of spatial metaphors. Philippopoulos-Mihalopoulos (2010: 192) calls this "simply add space and stir". In this approach, space is another social factor, spatial justice amounts to the distribution of resources in a given area and it is simply social justice within space. A third approach to spatial justice has co-opted space in such a manner that it fetishizes space – in the way Lefebvre describes it – as a "panacea for social injustice" in a manner that space cannot sustain (Philippopoulos-Mihalopoulos 2010: 189-92). Philippopoulos-Mihalopoulos finds all of these approaches unsatisfactory. Accordingly, he suggests that the ontological status of spatial justice should be distinct from the usual temporal or social conceptualisations of justice. Spatial justice should acknowledge simultaneity and embodiment. Epistemologically, spatial justice should be somewhere between space and law, between geography and jurisprudence (Philippopoulos-Mihalopoulos 2010: 195). Spatial justice should truly be in-between, in the sense that it belongs neither to law nor to space, with space and law forever elusive to one another. Understood

in this way, spatial justice is a radical conception and not merely a linguistic endeavour or an attempt at geographical grounding. Therefore, spatial logic in law, as opposed to formal logic in law, exposes law to the "simultaneous contingency of space"; it allows space to be law's mirror, and treats space as an ethical position (Philippopoulos-Mihalopoulos 2010: 195-6). In calling for the project of spatial justice to be both realistic and utopian, Philippopoulos-Mihalopoulos (2010: 195) relies on Lefebvre's view of space as a "concrete abstraction". Butler (2012: 40) explains that Lefebvre rejects the Cartesian view of space as grid-like substance in itself, along with the Newtonian conception of space as a vacuum, and instead returns to Leibniz's understanding of space not as a vacuum, but as something constituted by the bodies within space. Lefebvre uses this view to argue, based on a Marxist understanding, how space is produced through relationships. This also justifies his insistence on social space as opposed to abstract space. As part of his call for the right to the city, Lefebvre (1996: 151) expresses an urgent need to change our intellectual approaches and tools. He specifically suggests experimental utopia and transduction. With the former, Lefebvre (1996: 151) envisions that utopia be studied from the ground through experimental consideration of its implications and repercussions. Knowledge in utopia is introduced through transduction. Transduction is distinct from induction and deduction and requires a constant feedback between the conceptual framework that is used and observations made (Lefebvre 1996: 151). The method of transduction also differs from Roederer's model theoretic view, the creation of simulations as well as the simple statement of a hypothesis (Lefebvre 1996: 151). A possible theoretical object is constructed from reality and from the problematic that this reality presents. As a methodology, it requires spontaneous mental operations and, according to Lefebvre (1996: 151), it "introduces rigour in invention and knowledge in utopia". Transduction is dialogic and not monologic, in terms of Bakhtin's (1981) distinction. The idea of transduction has also influenced the thinking of Deleuze & Gauttari (2004) and relates to their insistence on rhizomatic thinking.

With reference to Joyce and Nietzsche, Deleuze & Gauttari (2004: 21) explain how these authors shatter the linear unity of the word and knowledge to posit a cyclic unity. This happens whenever a multiplicity is taken up into a system which they refer to as a rhizome. The way in which they use the term rhizome relates to botanical rhizomes, such as tubers, ginger and other bulbs. Rhizomes are distinct from the structures of trees and roots in that they have "no point or position [...] only lines" (Deleuze & Gauttari 2004: 4). They use the concept of a line of flight to explain a rhizome. What is the value of rhizomatic thought, as opposed to arborescent logic, for thinking in law? How can we approach the relationship between space and law in terms of a rhizome? The rhizome encompasses the

related principles of connection, multiplicity, asignifying rupture and the principles of (anti-)cartography and decalcomania (Deleuze & Gauttari 2004: 7). Asignifying is a term created by Deleuze & Gauttari to point to resistance of signifying and corresponds with anti-cartography. This means that a rhizome can break out of its boundaries (or de-territorialise) and start again on new lines, in other words, re-territorialise (Deleuze & Gauttari 2004: 11). A rhizome resists the process of tracing and rather encompasses mapping. This is again contra tree logic, which is a logic of "tracing and reproduction" (Deleuze & Gauttari 2004: 12, 21). Deleuze & Gauttari (2004: 12) insist that the rhizome is a map and not a tracing:

> What distinguishes the map from the tracing is that it is entirely orientated toward an experimentation in contact with the real [...] The map has to do with performance, whereas the tracing always involves an alleged 'competence'.

How does this tracing and mapping translate to legal education? Instead of tracing the law or describing the current legal position, legal education should present lines of flight out of the confines of the existing legal framework. Assessment should allow for answers that do not merely represent, but map the law, and thereby incorporate the potential of disruption. Rhizomatic thought conceives of culture as proceeding "from the middle, through the middle, coming and going rather than starting and finishing" (Deleuze & Gauttari 2004: 25). The rhizome presents history as a map or wide array of attractions and influences (Deleuze & Gauttari 2004: 25). In formal argumentation, conclusions flow from premises, claims are based on warrants, and decisions are reached based on reasons. The linear one-way flow from premises to conclusions is important for formal logic; otherwise arguments, according to the rules of formal logic, are circular and fallacious. Rhizomes function differently; lines of flight do not follow a linear flow and instead challenge formal logic and formalist error. Transduction and rhizomatic thinking as mapping have the potential to open up law and legal reasoning. I specifically suggest that a conception of mapping found within literary theory is the mode of mapping that could give expression to the transformative potential of the South African Constitution (Klare 1998).

3. Lawyer as mapmaker

Literary cartography is tied to genre as the "aggregate of the means of collective orientation in reality", which is "capable of mastering new aspects of reality" (Tally 2013: 59). Both literature and cartography create worlds and represent reality literally and figuratively. This can be related to Lefebvre's (1991: 356) conceived and perceived space, respectively. Boyd White (1973: xiii) asserts that the law (also) makes a world. The lawyer uses words and, therefore, like

others who also use words, s/he has to capture unexpressed and inexpressible experiences (Boyd White 1973: 3). Law is a language, not merely a collection of locutions and terminology, but a culture in the manner that Klare defines legal culture: the habits of mind and intellectual reflexes of lawyers (Boyd White 1973: xiii, Klare 1998: 156). In the context of legal education, this means that writing in the curriculum and during the course of a student's education cannot simply entail mastering the tricks of the trade, enumerating paragraphs correctly, getting the structure for the heads of argument or office memorandum correct, but should be a process that is self-aware of its world-making and worlding potential (Van Marle 2011). Worlding acknowledges that law is not simply about language, but also about power. Mapping, even if it is not merely tracing, draws lines and borders. Seeing the lawyer as writer, I turn to literary cartography to insist on particular views of mapping. The idea of literary cartography relates to the notions of 'cognitive mapping' and 'mapping loss'. I give an overview of these two notions, established by Jameson and Graham, respectively.

Jameson's cognitive mapping, albeit somewhat controversial, has had a significant impact on the spatial turn and literary criticism. He introduced the concept in a 1983 essay entitled 'Postmodernism, or, the cultural logic of late capitalism'. For Tally (2013: 66), the idea of cognitive mapping stands central to Jameson's project in creating a theory on the relationship between social formations and literary forms, and informs his broader critique of late capitalism and globalisation. Jameson defines cognitive mapping as follows:

> Cognitive mapping involves the practical reconquest of sense of place and the construction or reconstruction of an articulated ensemble which can be retained in memory and which the individual subject can map and remap along the moments of mobile, alternative trajectories (Jameson 1991: 51).

One of the points of departure for Jameson's cognitive mapping is the way in which existentialism has illustrated how the imagination can aid in navigating social spaces and, by extension, how the imagination is a way of making sense of the world and, therefore, a form of mapping. Existential *angst*, associated with the rise of modernity and its growing alienation through industrialisation and urbanisation, can, according to Sartre, only be dealt with by giving meaning to our existence through the projects we embark on. In this sense, one's project defines one's existence, and cognitive mapping, in accordance with Jameson's use of the term, can therefore be one way to overcome the existential alienation of modern life (Tally 2013: 67). Tally (2013: 66) describes Jameson's lifelong project as an attempt to theorise a relationship between literary forms and social formation. One of the meanings of cognitive mapping focuses on the individual subject, and

it refers to the way in which an individual subject finds his/her spatial orientation within a broader social context amidst a complex spatial setting (Tally 2013: 68). In terms of another meaning of cognitive mapping, as used by Jameson in the context of the broader late capitalist multinational world system, it cannot be limited to the perspective of an individual subject. In these instances, the term implies a supra-individual within the abstract or objective production of space (Tally 2013: 68). Jameson's notion of cognitive mapping is (mostly) derived from the works of Lynch and Althusser, with Lynch providing a practical framework for the concept, and Althusser a theoretical structure. A short summary of these two authors will shed more light on the rubrics used by Jameson to formulate the concept of cognitive mapping. Jameson equates cognitive mapping to what Althusser defines as ideology, "a representation of the imaginary relationship of individuals to their real conditions of experience" (Tally 2013: 68-73). This view is also important in the discussion of space as relational. Lynch introduces notions of way-finding and imageability. In his *The image of the city* (1960), which empirically compares Boston, Jersey City and Los Angeles, Lynch argues that the lack of traditional markers (distinctive borders, demarcated downtown areas, significant landmark buildings) lead to a reduced imageability (Tally 2013: 70).

Poor imageability or difficulty in way-finding, to use Lynch's terms, can be ascribed to a failure to form a clear mental diagram of the city and leads to an increased feeling of an alienated city. This alienation manifests as a difficulty to navigate or form a clear image of the surroundings, even while making one's way through the space. However, Massey (2005) stands critical towards such a view of space. She questions the view of space as disorientating and threatening from a feminist perspective. Her view represents a coming to terms with the rogue elements of both space and place, and echoes Philippopoulos-Mihaloppoulos's warning that it is the fear of space that prevents law from truly embracing its chaotic, disorderly, unruly and destabilising features. The concept of rogue urbanism appears in a recently edited volume by Pieterse & Simone (2013). The collection of essays asks whether there is something unique to be discerned in African cities. The concept encapsulates the notion of diversity and builds on Nuttall & Mbembe's *Johannesburg: the elusive metropolis* (2008). In the introduction, Pieterse & Simone (2013: 2) refer to the project as an "unruly programme of engagement" and describe African urbanisms as "tempestuous". Although they acknowledge that the term 'African' is a construct devoid of a particular meaning due to the diversity across the continent, they draw on some commonalities based on similar pressures, historical lineages, colonial oppression and postcolonial perversion. Palimpsests are important features of rogue cities. It reminds us that the "contemporary urban condition cannot be understood or fully re-imagined without a spatially informed obsession with historical

antecedents" (Pieterse & Simone 2013: 3). A palimpsestic approach to space (and law) provides insight into the ways in which territory, the built form, classificatory registers and regulatory systems all trace back deep into the heartland of the colonial project, with some aberrant manifestations in the contemporary era. The concept of rogue urbanism more broadly entails that historical traces cannot be comprehended as a "neat teleological story that flows from pre-colonial to colonial to post-independence temporalities" (Pieterse & Simone 2013: 4). Instead, "there is an ebb and flow of times, social registers, political imperatives, symbolic economies and spatial imaginaries that accumulate unruly fragments of modernity along the way' (Pieterse & Simone 2013: 4). Legal education as cartographic mapping presents courses in relation to one another instead of in separation. It teaches theoretical approaches and highlights their context instead of teaching legal principles in isolation.

Graham invokes the figurative and literal modes of mapping of the apartheid and colonial past and argues for the acknowledgement of the palimpsestic nature of South Africa's spaces and places. With reference to post-TRC poetry, plays and memoirs, as well as South African novels on urban and rural themes, he highlights the importance of the remapping of social space. The Khulumani support group's play *The story I am about to tell*, *He left quietly* by Duma Kumalo and Yael Farber, and *Ubu and the Truth Commission* by the Handspring Puppet Company are the plays which, according to Graham (2009: 9), are post-apartheid works that should be "a new roadmap" or at least "a repertoire of social-cartographic tools" that can be used to produce different spaces. The use of space and the disconnections within the theatre space are key features of these plays. Graham also discusses the urban novels of Dangor (2001) (Graham 2009: 94-102), Vladislavić (2004) (Graham 2009: 103-19), Mpe (2001) (Graham 2009: 114-9), Duiker (2001) (Graham 2009: 120-6) and Hassim (2002) (Graham 2009: 127-32). He describes these works as having the ability to reconfigure certain modes of special mapping in that the works record the movement of city inhabitants through spaces over time, while describing the physical spaces and built environment of the city. A map of loss is not simply a representation or a model that purports to correspond with reality (Graham 2009: 182). It shows both the fixed locations in space and the trajectories through time-space and is therefore simultaneously a tracing and a map. South Africa's negotiated legal revolution inaugurated a change not only in the physical, but also in the social landscape. This requires new forms of literal and figurative mapping, in literature as in law (Graham 2009: 1-12). Graham's (2009: 5) point of departure is that colonisation, modernisation, and apartheid all ruptured the connections between places and people in South Africa. Viewing the law as palimpsest acknowledges the impact of law on places and spaces over time.

A map of loss must be a palimpsest. If mapping in legal culture envisions a form of mapping that corresponds with a view of space as abstract and disconnected to time, it runs the risk of becoming another form of formalist error. Viewing space as palimpsest and mapping loss require the connection of space and time. Bakhtin, a Russian literary critic, employs the term 'chronotope' to clarify the relationship between geographical space and historical time in literature. For Bakhtin, time and space cannot be separated, and he coins the chronotope in his essay entitled 'Forms of time and of the chronotope in the novel: notes toward a historical poetics' (1930), to capture this close relationship. Within this concept, time and space are "inextricably bound" and the chronotope is a "formally constitutive category of literature" that conceptually gathers together genre, space and time (Bakhtin 1981: 425-6). Within this strong link with genre, his understanding of the chronotope has its roots in the development from the ancient Greek romance, where space is abstract (what he terms "adventure chronotope"), to the ancient Roman novels with more substantial time that fill more concrete spaces. The chronotope acknowledges that the world created by the writer is not an abstract world that functions in an isolated vacuum removed from reality, but instead, this world corresponds to, and draws on the organising categories of the world inhabited by the writer. Connecting time to space opens up a third space, where the real and imagined converge (Soja 1998). The chronotope and palimpsest present us with significant questions as to how to teach (and treat) the system of precedent and the sources of South African law.

5. Conclusion

South Africa's history is marked by spatial regulation, segregation, allocation and, in particular, the organisation of spaces politically through a carefully crafted system of laws. Various laws all wrote indelibly on the spaces and places in South Africa, and as such the law can be approached as mapping. In concluding their article, Davis & Klare (2010: 494-501) address innovative methods of reasoning that have already been introduced into South African law. They show, however, how these new methods present the possibility of being both post- and neo-formalist. They refer to contextual legal reasoning, balancing and proportionality and the separation of powers. As with mapping, these can either re-establish current approaches to law and therefore encourage formalist error, or destabilise the law through thinking differently. In respect of contextual thinking, lawyers usually identify an unjust apartheid practice and then illustrate how this is irreconcilable with new constitutional values. Therefore, a new (constitutional) norm should be used to reach a decision in the case. As Davis & Klare (2010: 494) correctly point out, this can also result in a mere recipe, a belief that a conclusion necessarily flows from a given norm: "If 'social context' merely invokes past injustice without

providing legal-analytic content – legal reasoning based on social context can easily slide into a new kind of formalistic discourse, purporting to derive concrete solutions from highly abstract legal concepts". Similarly, balancing is often viewed as superior to deduction from abstract norms and authorities; however, balancing is not necessarily superior; in fact, it is neither inferior nor superior: "[e]verything depends on how the tool of balancing is deployed – that is, with what level of attention to context, what level of self-awareness and candour, what scope of vision, what sense of values, and what policy orientation" (Davis & Klare 2010: 499). This is most notable in the manner in which courts treat the separation of powers in which Davis & Klare (2010: 500) identify a "denial about the destabilising power of 'advanced' legal methods". Separation of powers considered spatially in terms of mapping could acknowledge this destabilising effect. Separation of powers understood in terms of mapping not only pays heed to the historical situatedness of the doctrine, but also acknowledges the links and relationships along with the separation: the near and the far and the simultaneity (Foucault 1984: 1).

Mapping encompasses a call to context understood as time connected to place; it questions established views of the public/private divide; it problematises the place and standing of common law and customary law; it insists on a relational approach, and it challenges the inevitability presented by formalist error in showing how unequal relationships and imbalanced distribution of power and voice underlie and are perpetuated by decisions, decision-making, reasoning and judgement in law. Mapping in the domain of the humanities does not consist of distinctive steps culminating in a simple formula, but is instead a process where constant interaction between utopia and reality not only reveals that different answers are possible, but also sets an agenda for spatial justice in which it becomes clear that certain answers make spatial injustice (im)possible. Spatial justice presents an impetus for reaching answers, via cognitive mapping, transduction, rhizomatic reasoning and experimental utopia.

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