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CITIES OF REFUGE:
HARASSING NATION-STATES' LEGAL SYSTEMS FOR A MORE INCLUSIVE RELIGIOUS STANCE[1]

"As religion becomes more and more globalized in the contemporary world of state-capitalist nations, it has come to be seen merely as a set of ideas or an external state of affairs, which can be surgically separated from the public conduct of business and from the religious person like a potentially dangerous tumor."
– Guardiola-Rivera[2]

INTRODUCTION

Legislation, limiting religious freedom, is gaining traction among European nation-states partly due to their inability to deal with religious diversity in a constructive way, partly fuelled by a fear of religious

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[2] O Guardiola-Rivera, "Law, Globalisation, and Second Coming," *Architecture: Journal of the Sociology of Self-Knowledge* 11, no. 1 (2013): 51.

extremism. Three examples of European nation-states' legal reaction to the perceived encroachment of religion on its virtual legal territory will suffice. First, the French ban on religious symbolism in public schools during September 2004[3]. The media interpreted this law as focused on the *khimar* (headscarves) that Muslim girls wear as part of *hijab* (modesty). Later, on 14 September 2010 an act passed in the French senate banning covering one's face in public, which of course has implications for those who, for example, wear *burkas*[4]. A third example might be the Swiss referendum in November 2009 resulting in a ban on the further constructing of minarets[5].

Maybe one should examine the problem of austere and protective legal action in fear of religious extremism in Europe from three fresh angles. First, one might update the theoretical grounding of legal territory from a scalar model to a complexity model. Once one takes leave of a scalar model in favour of a complexity model, it becomes apparent that not only religious legal territory, but also national legal territory might fall under the rubric of the virtual. Second, one may describe how multiplicity, meaning, and resilience in a complexity model of virtual legal territories work. Finally, by combining Derrida's speech in 1996 at the International Parliament of Writers in Strasbourg with an improvisation on a suggestion from Žižek, one might start to muse about possible ways how cities as floating legal territories can harass nation-states for a more inclusive religious stance.

Before expounding these fresh angles, let us first discuss, discursively, the term *floating territories*. Wilson's[6] still controversial book *Sociobiology: The New Synthesis*, describes floating territories as progressively evolving and devolving areas occupied by (semi)migrant

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[3] Elaine Sciolino, "The Reach of War: Religious Symbols; Ban on Head Scarves Takes Effect in a United France," *New York Times*, September 03, 2004.

[4] Steven Erlanger, "France Enforces Ban on Full-Face Veils in Public," *New York Times*, April 12, 2011.

[5] Nick Cunnnig-Bruce and Steven Erlanger, "Swiss Ban Building of Minarets on Mosques," *New York Times*, November 30, 2009, http://www.nytimes.com/2009/11/30/world/europe/30swiss.html?_r=0.

[6] Edward O Wilson, *Sociobiology: The New Synthesis* (Cambridge, Mass.: Harvard University Press, 2000).

animals or humans. Floating territories has also been used to describe urban planning's role in imagining cities of the future which, with the rise of sea levels due to climate change, might literally float[7]. This term has even drifted into the sphere of art, through Milton-Smith's[8] art installations, which create immersive virtual reality environs; virtual floating territories. Nearer to the concern of this paper is floating territories' legal use; the idea that sea-going vessels, air- and spacecraft fall under the legal jurisdiction of the country whose flag they fly[9].

Does such a discursive reading not leave the impression that interpreting floating territories in a scalar way would be a mistake? Our current parsing of legal territories reminds me of a joke. There are two types of people in the world: those who divide the world into two types, and those who do not. Recently, I saw an improvisation on this joke that skirts the issue of legal territory more precisely, but in a playfully open way. There are "10" types of people in the world: those who understand binary, and those who do not. A more honest approach would model the texture of legal territory as quantum scalar. In other words: legal territories are less like reservoirs, and more like an ocean where trade winds and ocean-currents jointly make societal resilience possible.

SCALAR VS. COMPLEX TERRITORY

The first fresh angle takes leave of scalar analyses in favour of complexity. Scalar frameworks tend to see legal territories as hierarchical dams of power trickling into each other, mostly from the top

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[7] Vincent Berdoulay and Olivier Soubeyran, "Reflexive Strategies in Planning for Adaptation to Environmental Change," *L'Espace Géographique (English Edition)* Volume 41, no. 2 (June 01, 2013): 162-73, http://www.cairn.info/article.php?ID_ARTICLE=EGE_412_0162.

[8] Melissa Milton-Smith, "Installing the Game: Gameplay in the Installation *T_Visionarium*," *Symploke* 17, no. 1-2 (2009): 197–203, doi:10.1353/sym.2009.0021.

[9] Sompong Sucharitkul, "Liability and Responsibility of the State of Registration or the Flag State in Respect of Sea-Going Vessels, Aircraft and Spacecraft Registered by National Registration Authorities," *The American Journal of Comparative Law* 54, no. Fall (2006): 409–42, http://www.jstor.org/stable/20454547; Anna Petrig, "Expansion of Swiss Criminal Jurisdiction in Light of International Law, The," *Utrecht Law Review* 9 (2013), http://heinonline.org/HOL/Page?handle=hein.journals/utrecht9&id=444&div=&collection=.

to the bottom. Alternatively, scalar analyses might model legal territories as concentric circles: the supra-national forming a semi-permeable membrane creating space for nation-states and so forth until one comes to a given conception of the most local legal territory. What all these models have in common is a complicated idea of legal territory. What if one imagines legal territories slightly differently: not as complicated, but as complex? How would such a description change the concept of floating legal territories?

There are multiple ways to model complexity. Here we will use a model developed by Cilliers[10] who explains the difference between complicated and complex systems as follows:

> If a system – despite the fact that it may consist of a huge number of components – can be given a complete description in terms of its individual constituents, such a system is merely *complicated*. Things like jumbo jets or computers are complicated. In a complex system, on the other hand, the interaction among constituents of the system, and the interaction between the system and its environment, are of such a nature that the system as a whole cannot be fully understood simply by analysing its components. Moreover, these relationships are not fixed, but shift and change, often as a result of self-organisation. This can result in novel features, usually referred to in terms of *emergent properties*. The brain, natural language and social systems are complex.

Cilliers' description shows that scalar models, of both the hierarchical and concentric circle kind, falls under the rubric of complicated. Scalar models see a linear relation between legal codes or cases and their effects. It does not account for emerging properties, i.e. unpredictable effects in the complex web of human interaction. How does a complex description of legal territory differ from a complicated-scalar description?

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[10] Paul Cilliers, *Complexity and Postmodernism: Understanding Complex Systems* (London; New York: Routledge, 1998), vii, ix.

At the last EUREL conference in 2012, Ferrari[11] claimed religious identities are increasingly fluid: floating effortlessly beyond national identities and boundaries. Adding Isin's[12] description of supra-national, national, regional, and urban political spheres as virtual territories to Ferrari's claim opens interesting passages of thought, if one slightly rephrases Isin's theory of political territories, as legal territories. Virtual legal territories, such as nation-states, have a circular logic of law, creating identity, producing law, etc. Religions partake in the same circular symbol logic, so one might also include religious legal territories under the rubric of virtual. If the virtual symbolic texture of either nation-states or religions collapse and they perceive themselves as real legal territories both are in danger of degenerating into fundamentalism. Nation-states' and religions' legal territories might even, in some cases, undermine each other's virtual symbolic texture escalating fundamentalist extremism on both sides (cf. the effect of Rushdie's Satan Verses in Britain as sketched by Ward[13]). To summarise:

1. Both nation-states and religions' legal territories are virtually traced by the circular logic of law building identity, producing law, etc.[14]

2. Both nation-states and religions' virtual legal territories live under the hanging guillotine of fundamentalism when they confuse their virtual symbolic texture with real texture.

Cities, Isin claims, differ from virtual legal territories, such as nation-states and religions, because they safely straddle both the virtual and

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[11] Silvio Ferrari, "Between 'geo-Law' and 'theo-Law'. Considerations on Religions as Transnational Centres of Identity," in *Proceedings of the EUREL Conference "Religion and Territory,"* ed. Anne-Laure Zwilling (Manchester, UK, 2012), 2, 7, http://www.eurel.info/IMG/pdf/ferrari.pdf.

[12] Engin F. Isin, "City.State: Critique of Scalar Thought," *Citizenship Studies* 11, no. 2 (May 2007): 211-28, doi:10.1080/13621020701262644.

[13] Graham Ward, "Christian Political Practice and the Global City," *Journal of Theology for Southern Africa* 123, no. November (2005): 34-38.

[14] Lucian N. Leustean and John T. S. Madeley, "Religion, Politics and Law in the European Union: An Introduction 1," *Religion, State and Society* 37, no. 1-2 (March 2009): 3-18, doi:10.1080/09637490802693072; Ferrari, "Between 'geo-Law' and 'theo-Law'. Considerations on Religions as Transnational Centres of Identity," 3, 5.

real. Cities' realness, or what Lefebvre[15] calls Urban Form, is a function of a demarcated thickness of infrastructure, necessitating concentrated social contracts between dwellings and dwellers, constituting a nodal mesh of legal intricacies. Cities' straddling of both virtual and real legal territories affords the opportunity to imagine cities as nodal thickenings in the complex system. Such nodal thickenings matter, because to study any complex system one needs to demarcate a particular area of interest. Cities, in the sense of a demarcated nodal thickening in the complex modelling of virtual legal territories, can be said to float.

Ironically, cities 'float' as legal territories precisely because they are not only virtual but also real, not merely open but highly constrained, not simply sparse but thickened in legal infrastructure. Cities are floating legal territories in the sense that they sail because, and sometimes despite of, the currents and trade-winds created by virtual legal territories such as nation-states and religions. Cities at the same time create a wash disturbing these very trade-winds and currents. How then might one imagine cities as floating legal territories harassing European nation-states' assumption that austere and protective legal action in fear of religious extremism creates more meaningful and safer societies?

Cities as floating legal territories feel the effect of European nation-states' enactment of austere and protective legal action against religions in multiple ways, of which I mention but two. First, such legislation immediately has an effect a city's denizens. Second, cities are the main sites of terrorist attacks; the breakdown of social cohesion or even unrest; and the atmosphere of suspicion or fear such legal actions effect non-linearly. Cities double legal mapping allow them to function as nodal points for harassing nation-states assumption that its austere and limiting legal measures aimed at religions create more meaningful and safer societies. Describing the relation between diversity, meaning, and resilience in complex systems will elucidate why cities, as legal nodal points, can and should harass nation-states for a more inclusive legal stance when it comes to religions.

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[15] Henri Lefebvre, *Writings on Cities*, ed. and trans. Eleonore Kofman and Elizabeth Lebas (Cambridge, Mass.: Blackwell, 1996), 133-136.

COMPLEXITY'S DESCRIPTION OF MEANING

The second fresh approach comes from complexity theory's description of meaning. It shows why co-existing diversity makes societies more resilient to unpredictable future eventualities. Cilliers[16], describes meaning in complex systems as follows:

> …[W]hat one could call the law of meaning: *without difference there can be no meaning*…it will follow that if we want a rich understanding of the world and of each other (i.e., a lot of meaning), if we want resilient and dynamic organizations, then we need an abundance of differences.

According to this description of meaning, legal measures that clamp down on diversity subsequently also reduces societal meaning. Complexity theory, furthermore, suggests that by limiting diversity, and by proxy, societal meaning, one reduces systemic resilience to future eventualities. Again Cilliers[17]:

> A system should not only have the 'requisite variety' it needs to cope with its environment (Ashby's law), it should have more variety. Excess diversity in the system allows the system to cope with novel features in the environment without losing its identity – as long as one remembers that identity is now a dynamic concept which is subject to change…What is more, if a system has more diversity than what it needs in order to cope with its environment, it can experiment internally with alternative possibilities. The capability to experiment may just be another word for being creative. Thus viability, resilience, even survival, are notions intimately linked with creativity.

The only sites both sufficiently complex and grounded in reality to protect such creativity is the floating legal territories of cities.

The thickened mesh of legalities that make cities nodes of both virtual and real legal territory is also ironically the quality that makes cities float. Cities, as floating legal territories grounded in reality and immedi-

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[16] Paul Cilliers, "Difference, Identity, and Complexity," *Philosophy Today* 54, no. 1 (2010): 61, doi:10.5840/philtoday201054135.

[17] Ibid., 62.

acy, can be a great proofing ground for virtual legal territories, such as nation-states and religions, to cautiously experiment beyond their tensions[18]. Complexity theory's meaning description – social diversity produces meaning that in turn heightens resilience to unforeseen future eventualities – can act as guidance for this legal experimentation in cities. Cities not only float as legal territories because they are nodal thickenings in a complex system. They also float because they connect beyond the virtual legal territories of which they are part.

CITIES' HARASSING POSSIBILITIES

A final fresh approach returns to Derrida's 1996 address at the International Parliament of Writers (IPA) in Strasbourg, later published as *On Cosmopolitanism*. Established by 300 writers during July 1993 after the assassination of a few writers in Algeria, the IPA set out to create an international network of asylum cities where persecuted writers could flee. Derrida challenged the IPA to expand the global network of asylum cities to including all refugees, not only writers, even those who are without the right documentation. Derrida[19] claimed that skulking in the very name of the city there is a spirit of diversity and openness allowing it to act as a special place of refuge:

> Could the City, equipped with new rights and greater sovereignty, open up new horizons of possibility previously undreamt of by international state law? ... If the name and the identity of something in the city still has a meaning, could it, when dealing with the related questions of hospitality and refuge, elevate itself above nation-states or at least free itself from them (*s'affranchir*), in order to become, to coin a phrase in a new and novel way, a *free city* (*une ville franche*)? Under the exemption itself

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[18] Something religions, such as Islam, are already doing according to Nielsen "Islam and Secular Values in Europe: From Canon to Chaos?," in *Religion, Rights and Secular Society*, ed. Peter Cumper and Tom Lewis (Northampton, MA: Edward Elgar Publishing, 2012), 271-292, doi:10.4337/9781781953495.

[19] Jacques Derrida, *On Cosmopolitanism and Forgiveness* (New York: Routledge, 2004), 7, 8.

(*en général*), the statutes of immunity or exemption occasionally had attached to them, as in the case of the right of asylum, certain places (diplomatic or religious) to which one could retreat in order to escape from the threat of injustice.

The gauntlet thrown down by Derrida should still dog us, especially since the establishment of the Global Mayor's Forum and The Global Urban Alliance Network. Such organisations make it possible for cities to fully assume their role as vanguards of openness and social diversity: overcoming, what Lefebvre[20] called, the problem of the near and the far orders. Cities not only float by straddling both real and virtual legal territories allowing for legal experimentation, but also float internationally: directly accountable to its denizens locally, and to organisations that might take collective action globally.

Indeed, such collective action, taken by global networks of cities, might be the only hope for fostering the creative diversity and tension, which enhances meaning and future resilience, in a "post-political" world. Kindling the fire of political (and one might add religious) difference is, in some ways, the prerogative of floating legal territory of the city, as Swyngedouw[21] explains:

> Proper urban politics fosters dissent, creates disagreement and triggers the debating of and experimentation with more egalitarian and inclusive urban futures, a process that is wrought with all kinds of tensions and contradictions but also opens up spaces of possibilities.

As ideas goes this does not seem like a bad one, but how might one imagine cities actively countering that European nation-states seem to be going in the opposite direction?

Here a passing remark by Žižek comes in handy, but to understand it one first needs some background. In 2003, after France did not support an invasion of Iraq by the United States, the Chairman of

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[20] Lefebvre, *Writings on Cities*, 194.

[21] Erik Swyngedouw, "Post-Democratic Cities for Whom and for What," in *Regional Studies Association Annual Conference* (Budapest, 2010), http://www.variant.org.uk/events/pubdiscus/Swyngedouw.pdf.

the Committee on House Administration, Bob Ney, renamed "French Fries" to "Freedom Fries" in three Congressional cafeterias[22]. Similarly, in 2006, after a cartoon caricature of the prophet Mohammed appeared in a Danish paper, causing uproar, Iranian bakeries renamed "Danish pastries" to "Roses of the Prophet Mohammed"[23]. Žižek[24] comments on these events:

> Would it not be nice to live in a world where the US congress would change the name of French fries to Mohammed fries, and the Iranian authorities transform Danish pastries into roses of freedom.

Could cities not provide symbolic spaces to resist and harass European nation-states' austere and protective legal order aimed at religions? Such symbolic events might circumvent nation-states' austere legal action, while simultaneously taking a positive stance for religious diversity. Consider, for example, what would happen if the City Council of Geneva, in the dominantly French speaking part of Switzerland, which did not support the minaret ban, decided to inaugurate a minarets art festival to celebrate religious difference. In the French case, imagine if Paris or Lyon started a "religious pride" parade, similar to a "gay pride" parade. Even if such symbolic actions does not have an immediate legal impact it would at the very least stem some of the reactive tide from extremist religious groups who view some of the European nation-states' legal actions as an attack on its virtual legal territory.

CONCLUSION

According to complexity studies, if one wants a society resilient to unforeseen eventualities, one needs an excess of societal meaning, and this comes at the price of prizing diversity. Austere legal actions by the virtual legal territory of nation-states and reactive pushback from the virtual legal territory of religions might leave society meaning-anaemic.

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[22] "US Congress Opts for 'Freedom Fries,'" *BBC News*, March 12, 2003.
[23] "Iranians Rename Danish Pastries," *BBC News*, February 17, 2006.
[24] Slavoj Žižek, *Violence: Six Sideways Reflections* (New York: Picador, 2008), 111.

Only cities, as floating legal territories hugging both virtual and real legal territories, can harass the nation-state into a more inclusive stance. Our hope should be, that in the future, European cities would take up Derrida's challenge; turning their ears to what whispers in the very name of the city; fully appropriating their mitigating responsibility as custodians of societal diversity, meaning, and resilience.

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„MIASTA SCHRONIENIA": NĘKANIE SYSTEMÓW PRAWNYCH PAŃSTW NARODOWYCH O BARDZIEJ INKLUZYWNĄ POSTAWĘ RELIGIJNĄ

Streszczenie

W dniu 2 września 2004 roku, na początku nowego roku szkolnego, została we Francji uchwalona ustawa zakazująca noszenia ostentacyjnych symboli

i strojów religijnych w szkołach publicznych. Media przyjęły, że zakaz ten koncentruje się na chustach (khimar), które muzułmańskie dziewczynki noszą jako część hidżabu. W dniu 14 września 2010 roku, wszedł w życie kolejny zakaz obejmujący zakrywanie twarzy w miejscach publicznych. Tego rodzaju działania, ograniczające wolność religijną, zyskują zwolenników w państwach europejskich. Dzieje się tak częściowo ze względu na trudności w radzeniu sobie z różnorodnością religijną w sposób konstruktywny, a częściowo napędzane jest przez strach wobec religijnego ekstremizmu. Jednakże według rozwijających się badań teorii złożoności w filozofii, radzenie sobie z różnorodnością religijną w taki sposób, doprowadzi jedynie do radykalizacji podziałów społecznych.

Tłumaczenie: Anna Sieradzka-Wawryszczuk

Słowa kluczowe: Miasta, religia, relacje Państwo – Kościół, wolność sumienia i wyznania, pluralizm religijny, religia w przestrzeni publicznej, przekonania światopoglądowe, laickość, sekularyzacja

Key words: Cities, Religion, State-Church relations, freedom of conscience and religion, religious pluralism, religion in public space, philosophies of life, secularism, secularization