

# Book Review: Mapping Marriage Law in Spanish Gitano Communities, by Susan G. Drummond

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Book Review

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*MAPPING MARRIAGE LAW IN SPANISH GITANO COMMUNITIES* BY SUSAN G. DRUMMOND (VANCOUVER: UBC PRESS, 2006) 271 pages.<sup>1</sup>

BY H. PATRICK GLENN<sup>2</sup>

Hanging out in Spanish flamenco bars may be a surprising way to study family law, but this remarkable book demonstrates the utility of the practice in “mapping” the complex relations between state and non-state law in contemporary societies. The particular state law is that of Spain (always tending to diversity) and the non-state law is that of the Gitanos (Gypsies or Roma, though the book warns of problems of identity) of the famous sherry-exporting town of Jerez, Andalucía, in southwestern Spain (where they prefer their sherry *seco*). The Gitanos would have arrived in Jerez some five centuries ago, after a probable departure from India—not Egypt—and there are now identifiable Gitano *barrios* or quarters in the city. They make up an urban community which would define itself—at least in part—by its ongoing

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*lex non scripta*: an unwritten code said to be centred on notions of personal cleanliness and pollution (*marime*), but extending also to family law in general, and supported by specific notions of courts (*kris*) and adjudication. The existence of such a population, in a largely Catholic country with a long-standing tradition of legislation and codification, is taken (or suggested) by the author as typical of a current process of “deterritorialization” in which “Jerez ... could be anywhere”<sup>3</sup> and identity is no longer (as it might once have been) simply a question of locale. There is, therefore, a need to track both influence and practice in a field of competing normative claims, and Jerez would stand as an exemplar of the contemporary phenomenon of “polyjurality.”

The main device employed in *Mapping* (which has an introduction entitled “Le Guide du Routard”) is the metaphor of “mapping” the different laws and their practice onto a notional urban grid. The grand, sweeping boulevards are those of state law, while the side streets and back alleys, teeming with commerce and contradiction, are those of non-state law, particularly the law of the Gitanos. Replicating a view of an aerial photo, the first chapter begins with the grand boulevards of state law, though, as throughout the book, the cartographic description is interspersed with the walking tourist’s encounter with life on the street. An overview of the history of Spanish family law (and the state’s competition with the Catholic Church) is contrasted with the author’s experiences in the street with the intensity of Catholic celebrations during Holy Week and its accompanying processions.<sup>4</sup> The second chapter enters into the labyrinths of the side streets, providing official “cultural” explanations of Gypsy history, law, and life—that is, as reflected in the dominant literature and notably the writing of Walter Weyrauch and Maureen Bell. It is also interspersed with *récits* of life in the *barrios* of Jerez and their bars and social places. The third chapter turns to marriage law, where the specifics of state and Gitano law are confronted both with one another and with the elaborate (and on occasion near riotous) forms of celebration of individual engagements and marriages in the local Gitano community. Going to the parties of strangers can be exhausting, but there is an inherent interest in the proceedings (tearing off of dresses and shirts, et cetera)

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<sup>3</sup> *Mapping*, *supra* note 1 at x.

<sup>4</sup> The *pasos* or platforms for carrying the cross are so heavy that the young men beneath them must regularly practise to master their bulk and weight.

and the author captures much with her language (the “fuggy odour of a street person” or the “utterly redundant” instructions of a self-appointed street parking attendant).

Contemporary social theory is entirely capable of disaggregating the most established and reified of social identities. There would be a “myth” of nations—in the cultural or sociological sense—such that even long-standing European groupings (*e.g.* the Dutch or the Germans) would best be re-thought of as highly contingent present constructions, whose “past” is an essential part of the ongoing present construction.<sup>5</sup> To this intellectual perspective must also be added the more empirical phenomenon of “deterritorialization” that occupies such a central place in *Mapping*. We have all become more “Gypsy-like,” either through actual physical displacement, or through a vicarious, media-assisted appreciation of the other place. Laws thus may come to overlap and the inherent instability of human groupings may be exacerbated by the instability of relations between them. State law would have a large and expanding task, larger and more challenging than at any previous time; in *Mapping* it steadily recedes in visibility, as the grand boulevards are left behind in the stroll through the side streets of Jerez.

It is not only state law that is the target of *Mapping*, however, but the intellectual constructions that give rise to stable and reified views of human groupings and their relations. The objective is presentation of a “more conflicted, dynamic, and unstable model of the interactions between the scales of the local, the national, and the global.”<sup>6</sup> Each of the local, the national, and the global is subject to the same disaggregating regard. Anthropological notions of culture and nation are each found wanting, the former for its emphasis on “coherence and totality,”<sup>7</sup> and the latter for its “subservience to an ethnic master narrative.”<sup>8</sup> Even the notion of Gitano law becomes “messier,”<sup>9</sup> to the point where one might even conclude “from this

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<sup>5</sup> Patrick J. Geary, *Myth of Nations: The Medieval Origins of Europe* (Princeton: Princeton University Press, 2002). In particular, at 11, Geary notes “distinct, stable and objectively identifiable social and cultural units ... supposedly formed either in some impossibly remote moment of prehistory, or ... at some moment during the Middle Ages ... then ended for all time.”

<sup>6</sup> *Mapping*, *supra* note 1 at 8.

<sup>7</sup> *Ibid.* at 9.

<sup>8</sup> *Ibid.* at 127.

<sup>9</sup> *Ibid.* at 99.

disarray that there is no such thing as Gitano family law” and that “there is neither a collective systematicity to behaviour nor even a recognizable, integrated community that might serve as a source of law.”<sup>10</sup> Existing notions of legal pluralism, moreover, are seen as unjustifiably “abstract and tidy,” an exercise of “rendered coherencies.”<sup>11</sup> The writings of Weyrauch and Bell, in particular, are seen as compatible with a larger order of state and non-state law: a “bloodless”<sup>12</sup> form of cohabitation in which state law would retain its hierarchical superiority at a cost of simple acknowledgment of compliant sub-orders of normativity, all internally coherent and all mutually reinforcing. The result would be a legal pluralism which “fits well with the modern agenda of state formation similarly striving to clarify jurisdictions through the law”<sup>13</sup> and which “overly systematizes a messy social universe” through the use of “tacit exclusions and spatialized images of insiders and outsiders.”<sup>14</sup>

In place of these agendas of the world’s formal and informal positivists, *Mapping* suggests that recognition of the actual empirical disorder accompanying deterritorialization “might eventually suggest an alternative means of turning the wheels in domestic and international law.”<sup>15</sup> The precise institutional shape of such an alternative is left largely to the reader’s imagination. This is not necessarily a criticism of *Mapping*, since any significant reform of ways of thought requires first, and above all, recognition of the need for reform; this need is best demonstrated through proof of the inadequacy of existing conceptual instruments. Those instruments are manifest in the form of cultural, intellectual, and territorial boundaries; conflict over space and authority; arbitrary forms of separation; exaggerated notions of the need and possibility of coherence; and fear of difference. Integration or exclusion are the two primary concepts of societal organization in contemporary nation-states. There must be alternatives.

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<sup>10</sup> *Ibid.* at 229.

<sup>11</sup> *Ibid.* at 97.

<sup>12</sup> *Ibid.* at 118.

<sup>13</sup> *Ibid.* at 108.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.* at 99.

*Mapping* thus undertakes an essential task. There will be challenges, however, to the messages it provides. Can large conclusions be drawn from a highly selective case study? Is Gitano law as “messy” as the street life of Jerez would indicate? Is it appropriate to record testimony as to Gitano law from a heroin addict?<sup>16</sup> There is no attention given in *Mapping* to the eventual influence of Gitano courts (the *kris*) on the content of family law and there is sufficient coherence of Gitano law in some regards as to constitute “repugnance” with state law.<sup>17</sup> In spite of the empirical disorder, “regularities” emerged<sup>18</sup> and it is possible to conceive of Gitano law and the Gitano community as “loosely organized” as opposed to tightly-knit.<sup>19</sup> Methodological challenges, however, go with the field, and in insisting on the need for recognition of “struggle, contest, and negotiation,”<sup>20</sup> and above all communication, in the relations of different legal orders, *Mapping* provides a fundamental challenge to the positivist and conflictual agendas which have so characterized notions of state law and legal pluralism for the last two centuries.

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<sup>16</sup> *Ibid.* at 101.

<sup>17</sup> Notably with respect to what is considered by the state to be welfare fraud. *Ibid.* at 117.

<sup>18</sup> *Ibid.* at 112.

<sup>19</sup> *Ibid.* at 230.

<sup>20</sup> *Ibid.* at 118.