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Letters on LEGAL ARCHITECTURE

Lucy Finchett-Maddock
and *Léopold Lambert*

NEW YORK, JULY 12, 2012

Dear Lucy,

I have read your essay "Archiving Burroughs: Interzone, Law, Self-Medication" with attention and appreciated, as usual, the way you manage to link fiction, law, and space together. I do think, however, that we should keep this text for a little bit further in our conversation, since its specificity might make us skip over the foundations of the discussion we would like to have about architecture and law. I would like to ingenuously start by stating some obvious facts.

Law, understood as a human artifact, constitutes an ensemble of regulations that have been explicitly stated in order to sort behaviors into two categories: legal and illegal. In order to do so, law expects full knowledge of its content by every individual subject to its application, into order to moralize and to hold accountable attitudes that are deemed either respectful or transgressive.

Law is undeniably related to space, as a given territory with precise borders is required for it to be implemented. Nothing is easier to understand than the space where one is allowed to smoke or not. Law also includes within this territory smaller zones of exclusion, from the corners of the classroom to the penitentiary, where another form of law—supposedly a more restrictive one—is applied. These spaces are reserved for individuals who, through an active refusal to obey specific parts of the law, are to be separated from the rest of society. Individuals, when captured by law enforcement forces, are brought into these zones of exclusion and are held in them for a given period of time provisioned *a priori* by law itself.

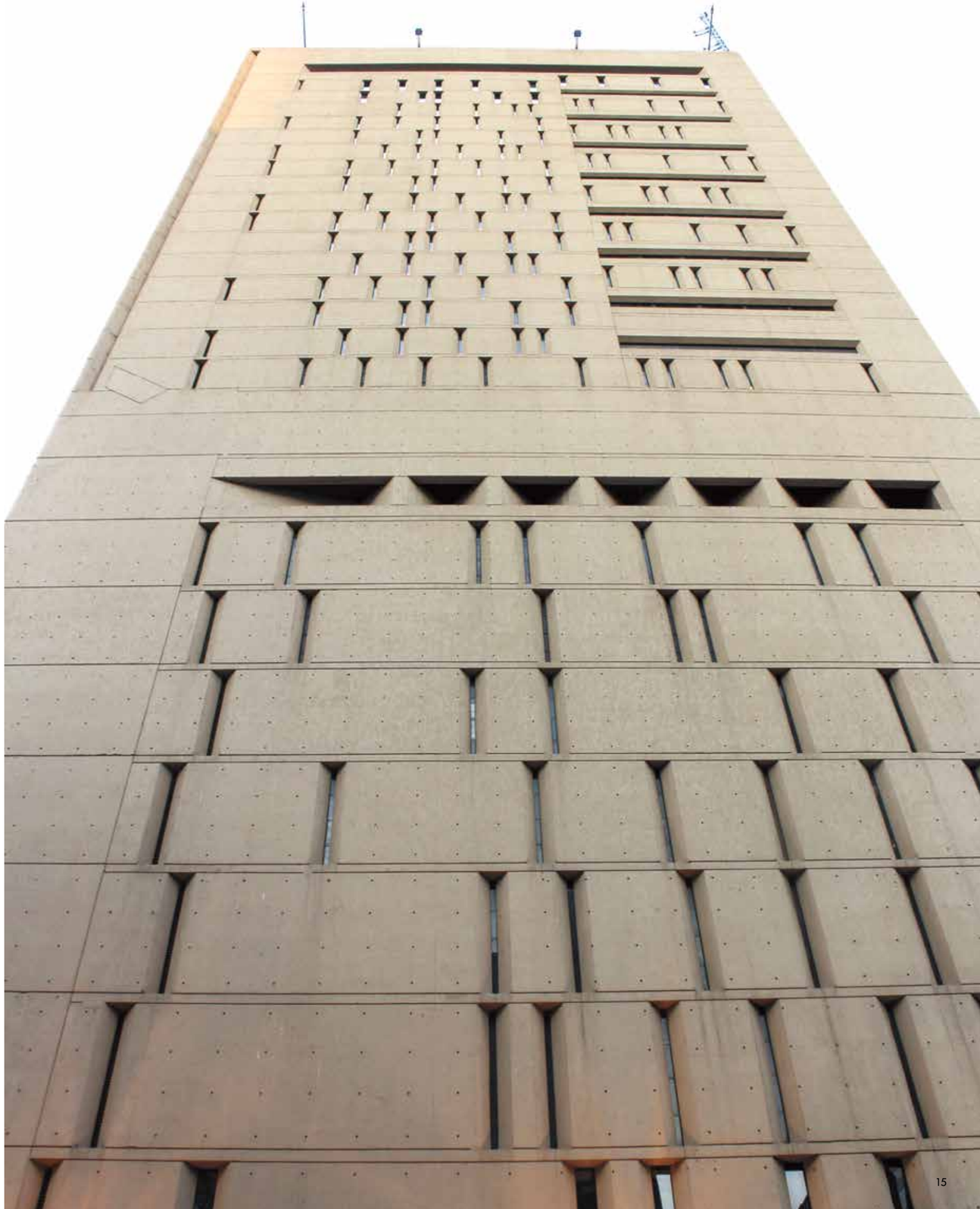
Many other spaces constitute territories where law is also different, but composed of layers of laws that do not contradict each other. Spaces like schools, offices, factories, or hospitals apply a legal superimposition over the prevailing territorial law, complementing it with sets of rules specifically formulated to optimize their institutional function.

Space itself is not necessarily an artifact, although the designation of borders that delimit it certainly constitutes a human intervention. This act of delimiting is probably the first legal gesture. Let us consider architecture as the ensemble of human physical modifications of the environment, whether they be agricultural, urban, or infrastructural. It would probably be useless to wonder whether law invented architecture or whether it is precisely the opposite. What we can affirm, however, is that architecture, through its physicality, embodies the immaterial law. This is clear in the case of the zones of exclusion evoked above. The fundamental element of the law of exception applied in them consists in prohibiting their subjects from exiting their space. In order to implement such a prohibition, an impermeable architecture had to be created: this is the invention of prison as an architectural program.

Prisons are the extreme examples of how architecture embodies the law. We are nevertheless surrounded by more domestic cases of architectural enforcement of the law. During a curfew or quarantine, your own house, supposedly so neutral and innocent, can become your own prison. But was this house so innocent to begin with? Isn't the house the material embodiment of a law that integrates private property as one of its components? How can we better enforce property than to build impermeable walls on the lines abstractly constructed by the law? By using the universal "laws" of physics—nobody can cross a wall without tools, for example—architecture renders explicit the law which otherwise would need to be discursively enunciated in order to be acknowledged by its subjects.

This vision is, however, centered on architecture, and I am wondering how a legal theorist like yourself interprets this relationship. Do you think that there can be a law with no architecture and/or a lawless architecture? If architecture is really the embodiment of the law, can we think of an architecture of illegality?

Cordially yours,
Léopold



Metropolitan Correctional Center, Paris

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Legal Architecture

EXETER, UK, AUGUST 17, 2012

Dear Léopold,

I apologise for my tardy reply but I have been away, as you know, in India—India, of course, being a great example for the themes of architecture and law of which you speak, whereby not only are there plural legal levels of law as a result of the genealogies of colonialism, but so too there are those very clear architectures of law that reveal legal dichotomies, the insides and the outsides, those included and excluded (and the wrath of the common law in particular). Nowhere else has there been such a use of law as a mechanism of legitimated dispossession than in colonial India, with the decentralised despotism of the Raj and its opulent palaces as reminders of their decentralised British power; the acceptance of customary law into a plural legal hierarchy of state law that placed the common law as the pinnacle of all might.

When thinking of the role of land and law, and the wall as the boundary, the legal space in which all of the divisions and structures of hierarchy are analogised (or not even analogised, but actualised), there is a reason why one is so struck by architecture as the architect of law—or law as the architect of architecture. Western individual property rights are based on a presumption that "ownership" of land, the right to design land as one sees fit (or hire a draftsman to follow design instructions), is the right to have exclusive access to and possession of that particular geography of land. Thus, and this is taking from the highly influential German jurist Carl Schmitt, law starts and ends with the earth, and is determined through the categorisation and enclosure of the earth, where all other phenomenology resides. This intrinsic link between law and architecture is the design of property rights, it is the manipulation of space that acts as a way of keeping something in, keeping a population out. Therefore, architecture lends itself specifically to being the embodiment of law; it is the dividing line, the juncture of liminality that is so easily described, and yet the most elusive thing in the world, that which is all order and chaos. It comes together in one coordinate, the coordinate of legal design; the sketchings of the architect.

What struck me recently when I was away in India was how obviously the past, and indeed the future, was expressed within the buildings—and more so within the constant construction going on inside the megacityscape, where each new wood and cement fixture became another limb of the great living organism that was growing and gurgling as I would veer past in my auto-rickshaw. These were buildings that were not completed yet, that would most probably always remain incomplete, as the years of bureaucratic procrastination and judicial protest halt the creation of flyovers and office blocks.

What I would like to throw in here is a consideration of the role of entropy within law and architecture, and how this can offer a framework through which we can understand the role of law within architecture and architecture within law—and what you might think of this in relation to property, aesthetics as a whole, and so too law.

Take the seething urban mass of Bangalore, a city that only 30 years ago was a quaint retirement destination for local Karnatakan residents and residents of its surrounding states, which in the meantime has grown to the size of London, with no public transport infrastructure, and is still growing, with an air of todderishness that hints the city is only a tenth of its potential size. The population has matured its foundations, but the job of producing new living spaces and working spaces has not kept up. There are two types of design, those of the massive land acquisitions and re-mappings, which allow for colossal new speedways and airports; and then there are the designs of the slums. Both of these architectures of law rely on unplanning, as opposed to planning, and are reactive and emergent in their convergences. This, I would argue, is the entropy of architecture, and therefore entropy of law.

Advertisement for one of India's leading real estate developers in the *Hindustan Times*

Specifically in relation to land law, there is little in the way of actual planning law, and when there is, it is planned with a certain group of elites in mind. The majority of those who live in Bangalore cannot afford to buy cars or motorcycles, and yet there are apparently 1,000 vehicles added to the road every day in the city. These are the upwardly mobile Bangalorians who work within IT and are making the most of the burgeoning city and it being known as the "Singapore of the South." Huge land acquisitions are undertaken in order to build in the name of the swelling bourgeoisie. Land acquisition is a common law inheritance and is known in India as "eminent domain." It exists as a stop valve for the state to acquire land for "public purposes," without the permission of those who already live on the land and have rights and attachments to the land. Those who are moved aside are, by and large, the architects of law from below, the slum-dwellers and impoverished who have little or no legal rights to the land on which they reside. A complex web of common law legacy gives way to a situation whereby land is acquired and new building schemes begin, whilst at the same time architects from below utilise the notoriously slow, but most certainly relevant litigation processes of the courts to try and halt the taking of their homes and the construction of new hegemonies.

These two unplanned movements of law and architecture, the state land acquisition and the litigious rigor of Bangalore's civil society, operate in an emergent coagulation—one that is realised in the half-built pillars and cement-covered children on the roadside. These are not complete spaces, but half spaces, spaces unaware of how they will end up as a result of the intersection of law and design. So what does this have to do with entropy? At a very basic level, and one that takes off from a traditional thermodynamic view, entropy is the amount of usable energy within a system. The more complex a system becomes, the more energy it uses; and the more it strives toward order, the more disordered it becomes simultaneously. Entropy exists in all systems, those that are alive and those that are not, as long as they possess enough energy to do work, and even theories on entropy themselves are part of the emergent systems of burgeoning theories on thermodynamism and complexity. Entropy is thus the contradictory premise that the world is rapidly becoming more intricate, requiring more energy to be used within its systemic bounds, marching onwards on a treadmill of Darwinian perfection and evolution, whilst at the same time, the more complex it becomes, the quicker it moves towards a finality of heat-death. Entropy is therefore the juxtapositioning of order and chaos, which arguably conjures an aesthetics of symmetry, dissymmetry, design and architecture.

Seemingly, order is something that is necessary for the human mind to understand anything. There are those systems that appear ordered, and yet they rely on the dismemberedness of their interior, their genealogy, to exist and continue. Consider Michael Butor's depiction of the structure of New York in the 1950s:

> … marvellous walls of glass with their delicate screens of horizontals and verticals, in which the sky reflects itself; but inside those buildings all the scraps of Europe are piled up in confusion …The magnificent grid is artificially imposed upon a continent that has not produced it; it is a law one endures.[1]

What does this description of the underbelly of New York tell us of how law affects architecture, and the same in reverse? What can entropy tell us about the seemingly out-of-control cityscape of Bangalore, the planned unplanning and unplanned planning of the architects of law from below and those of the law from above? What is the role of property in this, and indeed aesthetics itself?

Yours,

Lucy

NEW YORK, MAY 2, 2013

Dear Lucy,

In your last letter, you were reflecting on the strange collision of the Indian policy of eminent domain with the slums—or what I would slyly call "immanent domain." You were talking about this collision in Bangalore; I happen to know Mumbai better, as I lived in that city for a few months in 2009, but I assume that the two situations are relatively similar. Eminent and immanent domains constitute a form of violence towards the law, as they both "break" a traditional understanding of property. In the first case, the municipality or the state expropriates a group of people, while in the second case, a group of people claims a piece of territory that does not belong to them in order to build their dwelling. Two things ought to be noted. The first is that, contrary to immanent domain, eminent domain somehow registers within the legal system, even though it seems to contradict the law at first sight. The second is that, while eminent domain unfolds itself on an inhabited territory/building, immanent domain exists on a land/structure that is either the object of estate speculation or that has not received enough financial funds to be developed. I know that you are very interested in how the various squats of the world are questioning the legitimacy of our definition of property.

It is interesting to observe how eminent domain implements itself in a country like India, as it reproduces part of the process of colonization: something from the outside that imposes itself as the new law upon the bodies that are present within the concerned territory. The reminiscence of the colonial era is something that really struck me when I was living there. Many of the administrative buildings of Mumbai are the same as when they were used by the British. I wonder if the continuity this creates is strictly symbolic, or if it actively shapes the way administration operates. Take, for example, Rashtrapati Bhavan in New Delhi, formerly known as the Viceroy Palace. Gandhi wanted to transform it into a hospital and Nehru made it into the presidential palace of the newly independent India. I suppose that, similarly, there are a multitude of laws elaborated during the colonial era that remained operative afterward. You are interested in the entropy of law; I suppose that we could remain in the field of physics and address its resilience.

What interests us, however, is not so much architecture and law considered separately, even when they are implicated in similar processes of existence, but rather as part of the same strategy in the organization of a society. I want therefore to go back to the notion of immanent domain. Its relationship to law might be more complex than what I was describing earlier. In Turkey, for example, I have read that the police cannot immediately destroy an unauthorized dwelling whose construction has been completed: this kind of dispute has to be settled in court. Because this involves the administrative inertia that a court settlement implies, this scenario is likely to take enough time for the dwelling's inhabitants to use it for a substantial length of time. There are, therefore, strategies to build a home in one night, which will allow one to avoid a potential destruction the following day if the construction hasn't been completed. I find this example fascinating, as it interprets the practice of law in a different way than we traditionally do. It is a form of negotiation with the inertia of the system, rather than a strict reading of the law that would indubitably assign a given behavior to one of two categories, legal and illegal.

There is also a dimension of illegality that I would like to address. When can an illegal behavior be legitimately considered what Henry David Thoreau called civil disobedience? I intuit that we have the right to disobey a law when, through this action, we are primarily questioning the legitimacy of the law itself. I will use a comparison I made in the past: when someone assassinates someone else, chances are that this first person is not contesting the fact that one is prevented by law to kill another person. However, when Rosa Parks refused to give up her seat to a white person in the bus in 1955 in Montgomery, she wanted to contest the very essence of the segregationist legal system. There might be some more complex and less extreme examples, but this distinction allows us to distinguish selfish disobedience of the law from political disobedience. I suppose that the slums we were talking about constitute a mix of these two dimensions, as they opportunistically claim a territory in order not to be relegated to the outskirts of the city—but they also do so as a manifestation of their existence and, by extension, of their right to the city.

Yours,

Léopold

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Legal Architecture

EXETER, UK, ON A RAINY TUESDAY, MAY 14, 2013

Dearest Léopold,

Not only has it been a while since writing to you, dear Léopold, but it has been a while since writing full stop. The almost robotic practices of teaching—reading, reformulating, copying, altering, presenting, speaking, reproducing, shaking—are almost the inside-out of writing, the catharsis of mind that allows for ponderings on an aesthetics of law. But I am sure my six months of vocal, unwritten engagement will be contributing to and inspiring my thoughts nevertheless.

I am back in India with your immanent domain, quite a metaphor for the emergent and by no means inert scientific allegories we are sharing in relation to property—both the kind requisitioned by the state, and the kind performed by the slums. The immanence of the Indian geography speaks to this kinetic energy, cities in flux through their response to legal and illegal planning regimes. It is interesting that you refer to the dichotomy of legal and illegal, as what has always been of interest to me has in fact been this space in between, the point and threshold at which a constituent creates the constitution, the resistance becomes law. This is the immanency of law and resistance, the energy and metabolism whereby from one heartbeat to the next there is something that resembles a juridical formulation. Locating this moment is akin to imposing a rigid grammar of prescription on a work of art; to the ephemeral that resides as a sapphire in coal dust, because it does just that. But this liminal space in between the non-institutional and institutional still fascinates, and allows for what is legal and what is illegal, within and external to law, like a Kafkaesque gatekeeper, patrolling the door to the stomach of the law. By trying to understand these movements, the idea is to understand any foundation of law.

I also want to draw on your mentioning of disobedience, as this is something that I have been working on of late (sadly more confined within the academy than branching outside these days!) in relation to the concept and practice of "naughtiness." Thoreau places the justification for disobeying law as that which rests as a duty: "If (an injustice) is of such a nature that it requires you to be the agent of injustice to another, then, I say, break the law. Let your body be a counter friction to stop the machine." Arendt would say this is "testing the statute," whereby to be civilly disobedient is to counter a law in order to change a law. The institutional character and limits of law come up again in Arendt's understanding of civil disobedience and its role in constitutionalism, whereby to be civilly disobedient is to effect and affect law through extra-legal action: "The law can indeed stabilise and legalise change once it has occurred, but the change itself is always the result of extra-legal action." Thus, this division between the exterior and interior of law assumes the foundation of law, as therefore being innovated from an outside source. The legal, illegal, alegal, extra-legal, or infra-legal even, are all a motion of legitimation and structuration—and where can it be better expressed than in architecture itself, in a seething urbanity, in a reconfiguration of law whereby slums rest on the grid of colonial property rights in a stasis of illegitimacy. And yet without them, property itself would not exist, nor indeed the pre-eminence of the common law. Slums are the extra-legal to the right to exclude.

As you know, I have focused my research for the last few years on squatting, a way of performing architecture in both an appearance and legal loophole of transiency, and yet the performance can last in a temporality much longer than that anticipated by either the squatter or the state. This inertia in which you wonderfully place our discussion of bureaucracy and the techné of law is, as you say, both a source of frustration and also a procrastination that results in the expedient reappropriation of land. Returning to physics here allows for the role of time, or space-time more precisely, to be understood as a motor for resistance, as a means of testing the statute, whether we disrupt it and change its course or otherwise. Entropy is the arrow of time, and so in this inertia is an aesthetics of dilapidation and decomposition, an inevitability that the half-built speedway or giant-like pillar of a flyover will eventually shift from being built to becoming ruins. That plateau of architecture and law—between construction and destruction—is where entropy curlicues.

Yours,

Lucy

Slums developing around pipe lines that provide Mumbai with water

PARIS, JANUARY 19, 2016

Dear Lucy,

Two-and-a-half years have passed since we last exchanged a letter. Many things happened since, and we've had opportunities to rethink what, back then, we held for certain. In the meantime, my approach to the relationship between law and architecture has become more aggressive. When I re-read my own words from before, I see that I still retained some remnants of a fetishized vision of the law: the law as an immutable, somehow objective set of norms for the "greater good." I am sure that you help your students demystify such an interpretation—an interpretation bordering on the religious.

Back in October 2013, you kindly gave me the opportunity to present another vision at the University of Sussex: one that investigated the weaponization of architecture and law in the context of the Israeli-Palestinian conflict. This research presented various aspects of Israel's structural domination (in particular through the army) over the Palestinian people. Yet whether we talk about the situation of Palestinians living in the West Bank and Gaza, or those living in other parts of Israel, this case is unique, since the legislation, and therefore its architectural implementation, are explicitly conceived to apply differently to two social groups on the basis of an ethnic categorization of bodies.

What we are currently experiencing in France as I write these lines may be more complex, since the legislation purports to apply to all bodies that compose the society, even if this is far from the case. The state of emergency declared by President Hollande after the Paris attacks of November 13, 2015, and voted for (near unanimously) by Parliament on November 19, is supposed to last for three months. It gives exceptional powers to the various figures of the executive branch and, through them, grants the police considerable room to maneuver. The latter has been able to conduct more than 2,000 requisitions in various houses, apartments, restaurants, offices, and mosques to officially search for weapons, explosives, and "clandestine prayer rooms." Of course, the overwhelming majority of these requisitions lead to nothing beyond terrorizing the inhabitants of these places—who are sometimes awoken in the middle of the night by fully

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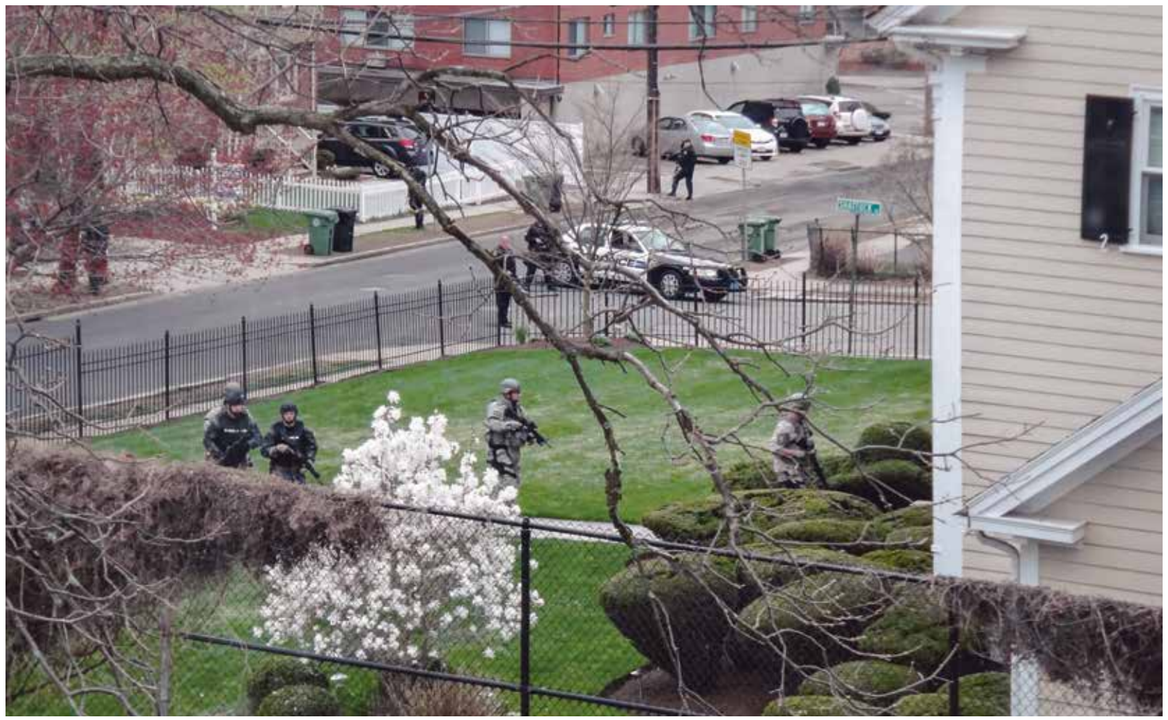

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The Militarized City I: Manhunt in the city of Watertown, MA, on April 19, 2013, four days after Boston Marathon bombing

armed police officers shouting insults in their faces. Although a few victims of these police operations include ecological activists who protested at the COP21 summit, you will not be surprised to read that the majority of the victims number among the five million members of the Muslim community in France.

Many of their families use to live in France's former colonies, which makes these current events the most recent instance within a long history of colonial and racist violence. This violence is also founded upon the combination of law and architecture, as we described in the case of the Raj in India. A significant proportion of the Muslim population in France lives in the *banlieues* (suburbs) in high-density housing situated in low-density neighborhoods, often poorly connected to the city center in terms of public transportation. Architecture is thus accomplishing its segregationist and exclusionary effects at the territorial level. I certainly have much to say on this subject, but since I would like our exchange to focus on law, I will instead try to propose a vision of the state of emergency to which you might react.

The suspension of rights allowed for by the state of emergency tends to make us regard it as a suspension of the law, or an anti-law. Yet what we're currently seeing might very well be the apex of legal construction. After all, don't we call police officers *law enforcement*? This says it all, doesn't it? President Hollande and his bellicose Prime Minister, Manuel Valls, are currently trying to inscribe the state of emergency into the constitution, which demonstrates well how the suspension of rights is not some sort of return to a lawless state but, rather, that it is a legal construction. The irony is that the state of emergency technically prevents the modification of constitutional texts while it's in force—which is perhaps "a good idea," but demonstrates aptly the absolute crystallization of the law that takes place during this time.

In my first letter to you, I wrote about the state of exception, and the potential for the walls that protect you to become the walls that imprison you under the legal regimes of curfew or quarantine. In the case of the current state of emergency in France, the walls of your house may not imprison you—although many people have indeed been placed under house arrest—but the legal sanctity we thought they incarnated may be compromised, if not disintegrated, at any moment by armed police officers. The many photographs of broken doors that we have seen over the last two months are a good representation of such disintegration.

I apologize that this letter is so oriented around me and the country where I reside, but it is simply difficult to think of anything else these days, and I am very much interested in how my thoughts might resonate with your work—in particular with regard to what this last paragraph says about property, a legal notion you have been researching in great depth.

Yours from wintery Paris,
Léopold

BRIGHTON, FEBRUARY 15, 2016

Dear Léopold,

Despite the fact that times have changed and history has flowed onward since our last engagement, I believe the same trenchant aesthetics of legally enforced properties and elements engulf us today—in fact even more so.

Thank you for your most recent letter reminding us of the divisive nature of law through segregation, through the state of exception, through the "yes" and the "no" of law, or just through the naming process which alone suffices to create the *haves* and the *have-nots*. I recently have been tracing similar capital-infused examples of the inevitable relationship that obtains between law and individual property—a most successful coupling considering how long it has withstood time and space—and the effect of this cushy alliance on the lives of those left out of the property/law liaison in the UK housing market. That is, I have been tracing this alliance between law and property from, for instance, the cash-drenched expression of law's power on the opaque facades of central city office blocks that seem to have appeared out of nowhere each time you revisit London, to the leveled deadlands of "sink estates" and "Brownfield" sites (high-yield land designated for commercial development) that these create. From the crane necks that arch above the new "affordable housing" and gawkily populate urban skylines, to the ground they are pawing at to raise new investment opportunities at the expense of peoples' right to live and reside in the communities where they were raised. You only have to walk a few meters down the road in Brighton, and suddenly you're struck by the *lack* of architecture, the *shape left by the absence*—as what once was a quirky, if slightly disheveled corrugated-steel market, with graffiti and street art strewn across its paint-chipped walls, a market that accommodated a wide array of community events and was, no less significantly, a space for exchange and local produce, is effaced from existence. All that is left now are the temporary gates and boards that delineate the edges of a building site, trying to pretend that, shrouded within, new affordable homes are being birthed; when in fact the gates and boards are covered with etchings and street tags that, likely as not, were reappropriated and commissioned by the developers to convince passers-by of the edgy spirit of the construction project—a gesture toward authenticity and authorship that really just reasserts the reexpropriation and reenclosure of time, space, property, and architecture itself.

Previously, we conversed about the inert nature of the architect's design, the drawing that exists within the space of division. It's here that we notice how even barricades and forms of security are striving to be cool, how they are being sold back to us as a gift to the community and an expression of the vibrant culture of Brighton's people. The same process has transpired outside the high-paneled barricades of the "i-360" viewing tower along Brighton's seafront, making the rest of the city feel like it drew the short straw, a small man seated behind the tall man of the tower, where even the boards are graffitied in a far too organised manner *not* to have been commissioned by the developers.

Funnily enough, both examples in Brighton result from a piece of planning legislation that confirms the congenital relationship between individual property and capital within architecture, at the behest of variants of democracy that we relinquish to planning regulations to promote. Section 106 of the Town and Country Planning Act 1990 allows property developers to entice cash-strapped councils with propositions for new roads and facilities, so long as the developers can have their way—that is, so long as they can reexpropriate public space and have their planning applications pushed through. High-yield land in central locations such as Brighton and especially London is mutating, transforming from its former nature as swaths of social housing that support the needs of local communities, into these new *non-spaces*, emergent zones of machines, billboards, bricks and mortar, that at once dispossesses residents, demolishes old housing stock, and recommodifies the area to a level of exclusivity in land ownership never seen before. The bigger the project, the bigger the planning gain, the louder the voice of capital becomes, drowning out the disempowered and the vulnerable. If the Housing and Planning Bill 2016 is pushed through, Brownfield sites will be designated as "permission in principle" planning (chapter 4, clauses 102–106; schedule 12), meaning that local communities will have no say in planning applications (which could include businesses seeking licenses for shale gas exploration and fracking, and, of course, the knocking down of social housing in order to recommodify the land). All decisions will thus be made centrally and not locally—automatically, rendering the already disproportionately overvalued land even more unfit for habitation.

I am rambling, no doubt, but this "*was there but no longer*" attitude of legally sanctioned capitalisation of property sees no problem with the sudden and violent destruction of buildings and the communities that surround them. It sees no problem with the emergence of ersatz, reexpropriated forms. This invisible expression of private property—the empty skyline—is so brief; the structures go on to be built and new, polished, *proper* architectures appear as if by some act of magic (more of the black variety than any other).

The dividing line of the architect, as you always say, Léopold, is where it all happens, and more and more we can see the expression of reenclosure in the sketches and etches of neoliberal design—not just of buildings, but in the ergonomics of capital, its bland commercial aesthetic hiding a program of eugenics—in the way in which we come to live our lives.

Wishing you well from a bighting cold Brighton,
Lucy

The Militarized City II: Soldiers in the Paris subway following the November 2015 terrorist attacks

These letters were first published in 2013 at www.criticallegalthinking.com. The version reprinted here with permission of the authors includes two additional letters and minor revisions to the original text.

All images by Léopold Lambert, unless otherwise indicated

1 Michel Butor, *Repertoire III* (Paris: Editions de Minuit, 1968).