On Fragments and Geometry

The International Legal Order as Metaphor and How It Matters

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Abstract

This article engages the narrative of fragmentation in international law by asserting that legal academics and professionals have failed to probe more deeply into 'fragmentation' as a concept and, more specifically, as a spatial metaphor. The contention here is that however central fragmentation has been to analyses of contemporary international law, this notion has been conceptually assumed, ahistorically accepted and philosophically under-examined. The 'fragment' metaphor is tied historically to a cartographic rationality – and thus 'reality' – of all social space being reducible to a geometric object and, correspondingly, a planimetric map. The purpose of this article is to generate an appreciation among international lawyers that the problem of 'fragmentation' is more deeply rooted in epistemology and conceptual history. This requires an explanation of how the conflation of social space with planimetric reduction came to be constructed historically and used politically, and how that model informs representations of legal practices and perceptions of 'international legal order' as an inherently absolute and geometric. This implies the need to dig up and expose background assumptions that have been working to precondition a 'fragmented' characterization of worldly space. With the metaphor of 'digging' in mind, I draw upon Michel Foucault's 'archaeology of knowledge' and, specifically, his assertion that epochal ideas are grounded by layers of 'obscure knowledge' that initially seem unrelated to a discourse. In the case of the fragmentation narrative, I argue obscure but key layers can be found in the Cartesian paradigm of space as a geometric object and the modern States' imperative to assert (geographic) jurisdiction. To support this claim, I attempt to excavate the fragment metaphor by discussing key developments that led to the production and projection of geometric and planimetric reality since the 16th century.

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Perceptions of space have been integral to the construal of social life, and further a defining preoccupation in modern western thought. The various ways social space has been conceived and represented across time, civilizations and cultures served to precondition and orient historical perceptions of the actual, the possible and the imaginable.[1] In this way, the significance of space extends well beyond the mere cosmological and shapes the very constitution of what we think we know about our social existence. This could explain why considerable significance and anxiety has been attached historically to spatial representations of the known 'community',[2] 'world' or 'universe'.

The field of international law has been no less removed from this historical preoccupation as contemporary scholars and professionals have been similarly engaged with the issue of international law's underlying spatial character. The terms of that engagement depart from a foundational teleology, which asserts international law to be a 'unity',[3] and the proliferation of specialised normative and institutional regimes potentially alter that imperative 'coherence'. Unsurprisingly, voices from the legal world have raised anxiety about this unitary essence being somehow upended, a tension expressed through the now familiar narrative of 'fragmentation'.

The notion of fragmentation in international law débuted as a plot of 'danger'[4] concerned with how the Westphalian order of *ejus regio, cujus religio*, systematised as 'international law' in the 19th and 20th centuries, became threatened by overlapping – and sometimes competing – global 'regimes' (*e.g.* human rights law, trade law) that enjoyed autonomy over their *e.g.* 'fragments', 'islands' or 'particles' of normative and institutional activity. This concern revealed itself to be more than an academic issue as it drew the attention of the International Law Commission (ILC), and precipitated the 2006 Report of the Study Group of the International Law Commission on 'The Fragmentation of International Law' (ILC Report), chaired by Martti Koskennie-

1. *See* R. Koselleck, *The Practice of Conceptual History: Timing History, Spacing Concepts* (2002).
2. *See* B. Anderson, *Imagined Communities: Reflections on the Origins and Spread of Nationalism* (1991).
3. G. Guillaume, 'The Future of International Judicial Institutions', 44 *International and Comparative Law Quarterly* 848, at 849 (1995).
4. Sir Robert Y. Jennings, 'The Role of the International Court of Justice', 68 *British Yearbook of International Law* 1, at 60 (1997).

mi. The ILC Report became a pivotal intervention owing to how it re-framed what 'fragmentation' meant as a disciplinary and vocational term of art. Specifically, the Report's assessment transformed an initial perception of threat into an understanding of fragmentation as consistent with the *relative* coherence of international law:

> …The move from a world fragmented into sovereign States to a world fragmented into specialized 'regimes' may in fact not at all require a fundamental transformation of public international law – though it may call for imaginative uses of its traditional techniques. There were always States that regarded international law as incompatible with their sovereignty. Similarly, there may today exist global regimes or rule-complexes that feel international law an alien intrusion…. If international law is needed as a structure for coordination and cooperation between (sovereign) States, it is no less needed in order to coordinate and organize the cooperation of (autonomous) rule-complexes and institutions.[5]

Thus, with the ILC Report's re-characterisation the notion of fragmentation became repackaged with the trappings of new and old; global 'regimes' moved from a categorisation of counter-teleological to epiphenomenal of international law's underlying spatial rationality. In this new light, fragmentation became less about radical transformation and more a case of trans-historical continuity and spatial reproduction. This did not imply vocational upheaval or require epistemic reflection, but instead re-working a familiar 'structure for coordination and cooperation' inherited from antecedent fragmentation, nominally known as territorial or state sovereignty. In systemic terms, a re-cast fragmentation offered the prospect of renewal for an international legal *status quo*, which otherwise faced a prospect of having to profoundly re-examine its teleological perception of space. The ILC's authoritative intervention reset the terms of the narrative by turning to 'problem-solving'[6]: the task of legal scholars and professionals was to re-invent ways their 'coherent legal-professional technique' could be projected upon fragmentation's latest iteration. Put somewhat differently, the expert scripting of the ILC Report reconstituted change into continuity, polemic into phenomenon, and, finally, presented reification as a remedial substitute for disciplinary and vocational reflexivity.

With that discursive context in mind, this article engages the unity/fragmentation polemic with a markedly different focus from the frame and imperative that the ILC Report established, and which many subsequent works have followed in varying degrees and nuances.[7] The intention is not to further what has become a protracted discussion on fragmentation as an institutional 'phenomenon' or advance a discourse that treats fragmentation as an 'object' for coherence-making, 'regime interaction'[8] or even constitutionalisation.[9] Instead, this article asks the reader to take a step back and direct his or her attention at the curiously forgone aspect of the analysis on fragmentation: how legal academics and professionals have failed to probe more deeply into 'fragmentation' as a concept and, more specifically, as a spatial metaphor.[10]

The contention here is that however central fragmentation has been to analyses of contemporary international law, this notion has been conceptually assumed, ahistorically accepted and philosophically under-examined. The metaphor of the 'fragment' comes with an intellectual and historical baggage to which legal usage is not impervious and in many respects seems predicated upon. Foremost, the manner in which fragments have been used to characterise or map the 'legal world' appears aligned with certain geometric assumptions about space that derive from Cartesian philosophy. Further still, the parallels drawn between territorial and 'regime' fragmentation seem to ignore the legacy of conquest and domination that the former represents. In this way, speaking about international legal space via the metaphor of the fragment implicates the epistemological, geometric and imperial heritage of scientific positivism; and how this together shaped a cartographic rationality – and thus 'reality' – of all social space being reducible to a geometric object and, correspondingly, a planimetric map. This is at best a 17th century Cartesian mindset ill-equipped to cope with the more variable spatial practices and dimensions of contemporary law beyond the state.

The purpose of this article, therefore, is to generate an appreciation among international lawyers that the problem of 'fragmentation' is more deeply rooted in epistemology and conceptualisation than it is a reified 'phenomenon'. To do so, understanding needs to be cultivated, which makes clear that the unity/fragmentation discussion relies on an implicit but no less questionable presumption: social and legal practices are ultimately related and reducible to a geometric area. This requires an explanation of how the conflation of social

5. ILC Study Group, 'Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law', Report of the Study Group of the International Law Commission finalised by Martti Koskenniemi (A/CN.4/L.682 and Corr. 1), at 246 (2006).
6. A social role and restriction well discussed by Martti Koskenniemi, *see From Apology to Utopia: The Structure of International Legal Argument* (1989), at 8-10.
7. *E.g.* C. Binder, 'Stability and Change in Times of Fragmentation: The Limits of *Pacta Sunt Servanda* Revisited', 25 *Leiden Journal of International Law* 4 (2012); S. Schill, 'W(h)ither Fragmentation? On the Literature and Sociology of International Investment Law', 22 *European Journal of International Law* 3 (2011); I. Buffard *et al.* (eds.) *International Law between Universalism and Fragmentation* (2008); M. Koskenniemi, 'The Fate of Public International Law: Between Technique and Politics', 70 *Modern Law Review* 1 (2007); M. Prost, 'All Shouting the Same Slogans: International Law's Unities and the Politics of Fragmentation', 17 *Finnish Yearbook of International Law* 1 (2006).
8. *See* M. Young (ed.), *Regime Interaction in International Law: Facing Fragmentation* (2012).
9. *See* G. Teubner, *Constitutional Fragments* (2012).
10. For valuable discussion on the relationship between metaphors and concepts *see*: N.G. Onuf, 'Fitting Metaphors', in N.G. Onuf (ed.), *Making Sense, Making Worlds* (2013), at 40-50.

space with planimetric reduction came to be constructed historically and used politically, and how that model informs representations of legal practices and perceptions of 'international legal order' as an inherently absolute and geometric. What this implies is the need to dig up and expose background assumptions that have been working to precondition the fragmentation narrative.

With the metaphor of 'digging' in mind, I draw upon Michel Foucault's 'archaeology of knowledge' and, specifically, his assertion that epochal ideas are grounded by layers of 'obscure knowledge' that initially seem unrelated to a discourse. In the case of the fragmentation narrative (or 'discourse' – to use Foucauldian language), I argue obscure but key layers can be found in the Cartesian paradigm of space as a geometric object and the modern States' imperative to establish (geographic) jurisdiction. To support this claim, I try to excavate the fragment metaphor by discussing key developments that led to the production and projection of geometric and planimetric reality since the 16th century. Subsequently, I relate that legacy of scientific thought to the contemporary work of both Gunther Teubner and Martti Koskenniemi, identifying the legacies of geometric science, which may linger in present articulations of international legal practice. To conclude the article, I return to the value of Foucault's 'archaeology' and how it adds to our reading of the fragmentation narrative by uncovering the presumption of geometric space and mapping. Finally, I underline how the problem of 'fragmentation' in international law is more epistemic than initially thought, and how the unquestioned use of a geometric metaphor has discreetly bound the articulation of international legal practices to a cartographic and planimetric legacy that historically served the interests of power and domination.

1. What is a Fragment? Foucault and Excavating Systems of Thought

Michel Foucault was an historian of ideas, but he was explicit in his aim to constitute a different approach to the study of such history.[11] Broadly stated, Foucault's concern was with the history of discourses and specifically the manner in which they sanctioned knowledge-claims and practices in the human sciences.[12] He developed through the various phases of his scholarship distinctive concepts for the analysis of discourses, such as 'archaeology', 'genealogy' and 'problematisation'.[13] For the purposes of this paper it is the first concept that interests us. But before we enter Foucault's archaeological conception, it is important to underline the significance Foucault attached to a discourse and how it constituted a 'system of thought'.[14] Foucault was conscious to emphasise this point in his preface to *The Order of Things*, the monograph that set out his archaeology:

> This book first arose out of a passage of Borges, out of the laughter that shattered, as I read the passage, all the familiar landmarks of my thought – *our* thought, the thought that bears the stamp of our age and our geography – breaking up all the ordered surfaces and all the planes with which we are accustomed to tame the wild profusion of existing things, and continuing long afterwards to disturb and threaten with collapse our age-old distinction between the Same and the Other. This passage quotes a 'certain Chinese encyclopaedia' in which it is written that 'animals are divided into: (a) belonging to the Emperor, (b) embalmed, (c) tame, (d) sucking pigs, (e) sirens, (f) fabulous, (g) stray dogs, (h) included in the present classification, (i) frenzied, (j) innumerable, (k) drawn with a very fine camelhair brush, (l) *et cetera*.... In the wonderment of this taxonomy, the thing we apprehend in one great leap, the thing that, by means of the fable, is demonstrated as the exotic charm of another system of thought, is the limitation of our own, the stark impossibility of thinking *that*.[15]

Thus, for Foucault, the study of discourses was about uncovering the limits of possible knowledge in a given culture and at a given moment through archaeology.[16] Yet, Foucault used the term 'archaeology' at slight variance from its conventional connotation.[17] He did subscribe to archaeology being about digging up and reconstructing the past, but his 'archaeology of knowledge' was more ideational since it sought to reconstitute the buried rules and assumptions that defined the 'conditions of existence' for a system of thought or discourse. As Barry Smart explains:

> The object of archaeological analysis [was] then a description of...literally what may be spoken of in a discourse; what statements survive, disappear, get reused, repressed or censured; which terms are recognized as valid, questionable, invalid; what relations exist between 'the system of present statements' and those of the past....[18]

This latter question of wanting to examine associations between systems of present and past statements proves valuable, I argue, when looking at the fragmentation narrative, as we should expect that how national (western) lawyers conceive space is likely influenced by an intellectual background and specifically international

11. M. Foucault, *The Archaeology of Knowledge* (2002), at 4.
12. M. Philip, 'Michel Foucault', in Q. Skinner (ed.), *The Return of Grand Theory in the Human Sciences* (1985), at 67.
13. T. Flynn, 'Foucault's Mapping of History', in Gary Gutting (ed.), *The Cambridge Companion to Foucault*, 2nd ed. (2005), at 29.
14. *Ibid.*, at 70.
15. M. Foucault, *The Order of Things* (1994), at xv.
16. *Ibid.*, at 168.
17. Foucault, *supra* n. 11, at 151.
18. B. Smart, *Michel Foucault: Revised Edition* (2002), at 48.

law's embeddedness within modern western thought.[19] International law has never been a social island, but rather its constitution as a discipline, vocation and even project was intertwined with the development of modern European thought. One need only think of a few authors as examples of that intersection, such as Vitoria, Grotius, Pufendorf, Rousseau, Locke, Kant or Bentham; and failing the appropriation of a strict functionalist optic it proves a frustrating exercise to try and convincingly separate one from the other. As Martti Koskenniemi observed in his study of early international law historiographies, even the first formal 19th century texts which emerged on the history of international law flatly assumed that 'the history of international law simply *was* the history of humanity'.[20]

It is this re-situating of international law and the fragmentation narrative within – metaphorically speaking – the deeper terrain and heritage of modern thought, which, I contend, makes Foucault's archaeology a relevant perspective of analysis. It opens us to thinking about the unity/fragmentation dichotomy both in terms of excavation and, crucially, to the value of uncovering discursive antecedents that sit as layers beneath this apparent problematic. In other words, re-conceptualising the fragmentation narrative as a site for excavation engenders us, much like material archaeologists, to exhume those discursive artefacts, which could tell us more about how things came to be conceptually built and perceived over time and through to the present. In particular, what were the conditions that enabled the 'international legal order' to be expressed with the metaphors and language of 'fragments' and wholes? Or, to draw from Foucault's phrasing in the earlier quoted preface: how did it become possible to think of the fragment as a 'familiar landmark' rather than as an 'exotic' criterion from an unfamiliar 'Chinese' taxonomy?

One of the explanations why the term 'fragment' eludes conceptual probing might pertain to the resonant materiality it conveys to a disciplinary/vocational audience convinced by its own concreteness. There are two steps to this point. The first relates to what social constructivists refer to as the mutual constitution of the subject and object: what we believe to be the world 'out there' is in no small measure defined by our social beliefs and constructs, rather than simply given by 'nature'.[21] This, in turn, feeds into a related observation that international lawyers have claimed epistemological and ontological certainty through a kind of 'common sense' empiricism: the concreteness of their disciplinary/vocational world is demonstrated by pointing to the materiality of treaties, cases, courts and clients.[22] In this light, the use of the term 'fragment' becomes a quaint fit for a disciplinary and vocational identity assured by images of the tangible.

However, there is something greater taking place when the term 'fragment' is adopted by international legal vocabulary and it becomes clearer the more we 'dig' into the idea of a fragment as Foucault's archaeology tells us to. What am I getting at? Let us start to excavate by asking the simple but no less overlooked question of 'what is a fragment?' Our first impulse is to survey regular and technical dictionaries for a definition and perhaps an etymology. As with most trips to the dictionary, the quest for epistemological and ontological certainty is never successfully found. A fragment is generally defined as a piece or component separated from an original whole,[23] and derives from the Latin root *frangere*, which means 'to break into pieces'. For many, the inquiry stops there because the spatial explanation appears both 'natural' and every day; no doubt facilitated by dictionary examples that use an exploding bomb to illustrate what a 'fragment' is.[24] Yet, for others, this apparent naturalness, as presented through the binary of component and whole, is actually a linguistic marker of how the concept and meaning of a fragment derivates from a more profound conceptual heritage and in fact a scientific legacy.

2. The Transcendental (Sense) of Fragmentation?

This shift toward conceptual excavation is not an intuitive move for many (international) lawyers, and especially in light of how conventional legal education has worked to form a professional ethos[25] firmly grounded and focused upon 'solving problems'. In this way, the identity of working with and thinking about the law has not typically involved an examination of conceptual histories in any profound sense, but rather dealing with reified 'phenomena' that are taken – on the basis of asserted relevance – to constitute an autonomous present.[26]

19. Considerable scholarship has emerged on the contribution of Foucault's work toward the analysis of international law, *see*: B. Golder, P. Fitzpatrick, *Foucault's Law* (2009); A. Orford, 'In Praise of Description', 25 *Leiden Journal of International Law* 609 (2012).
20. M. Koskenniemi, 'Law, Teleology and International Relations: An Essay in Counterdisciplinarity', 26 *International Relations* 1, at 4 (2012).
21. *See* F. Kratochwil, 'Constructivism: what it is (not) and how it matters', in D. Della Porta and M. Keating (eds.), *Approaches and Methodologies in the Social Sciences: A Pluralist Perspective* (2008), at 82. *See also*: J.W. Davis, *Terms of Inquiry: On the Theory and Practice of Political Science* (2005), at 10-60.
22. M. Koskenniemi, 'The Fate of Public International Law: Between Technique and Politics', 70 *Modern Law Review* 1, at 1-2 (2007).
23. A "fragment" is defined by *The New Oxford Dictionary of English* as: "A small part broken or separated off something."
24. A "fragment" is defined by the *McGraw-Hill Dictionary of Scientific and Technical Terms* as: "A piece of an exploding or exploded bomb, projectile, or the like."
25. *See* M. Koskenniemi, 'Constitutionalism, Managerialism and the Ethos of Legal Education', 1 *European Journal of Legal Studies* 1, at 14-18 (2007).
26. Koskenniemi has discussed this in the relation between "crude pragmatism" and "indeterminate theorizing". *See*: *From Apology to Utopia*, at XV-XVI. The perspective of historical sociology in International Relations also provides a valuable discussion of problem-solving in an "autonomous present". *See* S. Hobden and J. Hobson (eds.), *Historical Sociology of International Relations* (2002).

Yet, it would be misleading to say that conceptual scrutiny has been absent from the legal academy. This would ignore, for one, the sizable heritage and contribution of legal realist scholarship that made its mark in the early 20th century. While not a systemic jurisprudence, legal realism amounted to a conceptual awakening that challenged the presentation of legal doctrines and assumptions as being natural, pre-existing and thus distinguishable from the social and political worlds.[27] As Felix S. Cohen aptly reminded his contemporaries and those that followed:

> [...] When the vivid fictions and metaphors of traditional jurisprudence are thought of as reasons for decisions, rather than poetical or mnemonic devices for formulating decisions reached on other grounds, then the author, as well as the reader, of the opinion or argument, is apt to forget the social forces which mold the law and the social ideals by which the law is to be judged. [...][28]

Curiously, the conceptual acumen that Cohen exemplified as a hallmark of contemporary legal thought seems missing when observing an international legal scholarship entwined with the vocabulary of fragmentation. The list of journal articles and edited volumes dedicated to the term grow, and fragmentation has reached such acceptance that its use transcends across 'methodological lines' in international legal academia.[29] It even extends into the regular parlance of critical legal scholarship,[30] a branch of legal studies that many identify as being a derivative of the very legal realist tradition that Cohen reflected. Yet, to borrow from Cohen's words, 'nobody has ever seen' or touched an international legal fragment since its 'verifiable existence' does not extend beyond the mind of legal scholars. This leaves us to ask: if not from nature or empirical observation, where does such a belief or faith come from? How can one explain the force of a spatial metaphor that has commanded the recent conceptualisation of international legal space?

The above quoted passage from Cohen provides both an important sociological clue and a methodological bridge into the significance of Foucault's archaeology: social forces have always worked to shape our perception of the law and, more specifically, our spatial understandings and representations of it. Translated into a Foucauldian framework, the way in which fragmentation presents international legal space rests upon a heritage of deeper social assumptions and rules regarding the nature of worldly space itself. Such assumptions and rules require uncovering so as to more fully comprehend how it is that the metaphorical fragment has penetrated so ordinarily into the conceptual vocabulary and spatial imaginations of lawyers. The poetry of Oliver Wendell Holmes provides a lucid illustration:

> The life of an individual is in many respects like a child's dissected map. If I could live a hundred years, keeping my intelligence to the last, I feel as if I could put the pieces together until they made a properly connected whole. As it is, I, like all others, find a certain number of connected fragments, and a larger number of disjointed pieces, which I in time place in their natural connection. Many of these pieces seem fragmentary, but would in time show themselves as essential parts of the whole. What strikes me very forcibly is the arbitrary and as it were accidental way in which the lines of junction appear to run irregularly among the fragments. With every decade I find some new pieces coming into place. Blanks which have been left in former years find their complement among the undisturbed fragments. If I could look back on the whole, as we look at the child's map when it is put together, I feel that I should have my whole life intelligently laid out before me.[31]

3. Excavating the Fragment: Cosmography, Absolute Space and the Geometric Conquest

For something to be thought or institutionalised as knowledge, Foucault asserted, certain conditions for that type of thought must already be in place.[32] Put differently, our conceptualisations of 'the world' at any historical moment have always been defined by what Foucault referred to as a pre-existing field of 'the thinkable' or an 'episteme'[33]; which comprised unconscious rules that made certain forms or structures of 'order' possible – or powerfully intuitive – in a given cultural period and at a given moment.[34] What became crucial for Foucault, thus, was the recognition that the types of thought we produce are limited by underlying epistemological rules of the *thinkable*.

This emphasis on rules of the thinkable becomes pertinent when excavating the fragment as a dominant spatial

27. M.J. Horowitz, *The Transformation of American Law: The Crisis of Legal Orthodoxy, 1870-1960* (1992), at 169.
28. F.S. Cohen, 'Transcendental Nonsense and the Functional Approach', 35 *Columbia Law Review* 809 (1935). D. Kennedy and W.W. Fisher III, *The Canon of American Legal Thought* (2006), at 176.
29. *See* Young, *supra* n. 8; A. Fisher-Lescano and G. Teubner, 'Regime-Collisions: The Vain Search for Legal Unity in the Fragmentation of Global Law', 25 *Michigan Journal of International Law* 999 (2004); J.P. Trachtman, 'The International Law of Financial Crisis: Spillovers, Subsidiarity, Fragmentation and Cooperation', 13 *Journal of International Economic Law* 719 (2010); W.A. Schabas, 'Synergy or Fragmentation? International Criminal Law and the European Convention on Human Rights', 9 *Journal of International Criminal Justice* 609 (2011).
30. M. Koskenniemi and P. Leino, 'Fragmentation of International Law: Postmodern Anxieties'? 15 *Leiden Journal of International Law* 553 (2002).
31. Produced as the opening quotation to G. Greene, *Journey Without Maps* (1980).
32. L. Downing, *The Cambridge Introduction to Michel Foucault* (2009), at 39.
33. Foucault, *supra* n. 15, at xxii.
34. *Ibid.*, at xxi-xxiii.

metaphor for law beyond the state. Notice how I did not mention in the preceding sentence the terms international, world or global? This omission is deliberate since it is the metaphor of 'the world' or the globe as a whole that constitutes a key underlying condition in both western modernity's and, later, international law's construal of space. Specifically, I refer to western thought's most profound reification: the globalisation of space or, in other words, the attachment of spatial comprehension to an absolute and geometric globe. There are many layers to the story of how western thought came to reduce the notion of space to a geometric object. Since it is beyond the confines of this present article to analyze each historical layer in detail, I shall limit myself to summarise key developments that I take as crucial for understanding how a spatial view of fragments and wholes became not only eminently 'thinkable' but also 'natural' for much legal scholarship.

For many even in this postmodern time it remains difficult to conceive of space without reference to a geometric area. For instance, discussion on the impact of the digital revolution, *e.g.* the internet, information technology and high-speed transportation, despite lofty references to infinite spatial possibilities or 'de-territorialisation,'[35] often loops back to the absolute metaphor of the virtual 'world'. Further, social comprehension of space has not only been tied to a geometric representation but also as something requiring translation and projection onto the measurability of a planimetric map. Thus, whether explicit or implicit, an underlying but no less governing epistemology seems to be working to subtly influence the presumed 'order' of what we think space 'looks like' in the absolute. Put within a Foucauldian perspective, the intuition to reduce social space to a geometric and planimetric 'reality', to figuratively 'lay out the world before us' *a la* Holmes, appears to resemble this subterranean condition for the 'thinkable'. How could this be so?

One way to better appreciate the contingent and culturally situated character of geometric and planimetric 'reality' is to consider alternate perceptions of space both historically and conceptually. For instance, despite the fact that modern accounts credit the Ancient Greeks, and specifically Euclid, for a geometric understanding and representation of 'space', it is important to underline that the Greeks in fact had no word that equated to the modern term 'space'.[36] Further, we should not fall into the common habit of forgetting the sizable period of European Medieval history that preceded both the Renaissance and Modernity. Heretofore, as Camille notes, "there [was] no such thing as 'space' for medieval people"[37] as understood in the modern 'global' abstraction. Rather, the Medieval conceptualisation of space, as Jens Bartelson explains, could be loosely translated as a graphic and didactic 'cosmography' involving combinations of the infinite and finite and, particularly, both a bi-spherical cosmos and earth:

> Medieval cosmology was based on a variety of sources, most of which distinguished between a celestial and a terrestrial region. While the former embraced everything from the moon to the limits of the universe, the latter included everything below the moon to the centre of the earth.... According to Genesis I, 9, the terrestrial region was in turn divided into two different zones, those of earth and water respectively. These zones were mutually exclusive, so where there was water, there could be no earth, and conversely. From a biblical perspective, the ocean literally marked the end of the known and inhabitable world.[38]

This is where the juxtaposition of the pre-modern and modern becomes useful so as to underline the transformation that the latter made in the modern construal of space: the equating of space and, consequently, spatial representation with an object, or specifically a 'single sphere with one common centre of gravity'.[39] The social effect of this cosmological revolution cannot be overstated. Copernicus' assertion of the *rotunditate absoluta* not only established that the earth was one perfectly shaped sphere, accessible to and appropriable for all European powers, but also, by virtue of there being *one* solid geographical mass, implied that there could be an inherent – *i.e.* divine – order to social space, which was similarly unitary and absolute.[40] Lost in this epochal transformation became the pre-modern appreciation of traditional metaphysics and, in particular, the possibility of thinking about space(s) in terms of varied dimensions of interrelated but no less categorically different images and meanings of reality.

From Copernicus onward, space became equated as absolute and whole, and this construction of 'global' space opened up a corresponding possibility for its division or, to use a familiar metaphor, fragmentation.[41] The Copernican revolution provided a new epistemological and ontological security via its 'discovery' of the terraqueous globe, but this produced a different social insecurity and thus imperative to order this newly constituted space no longer bounded by cosmologically-imposed barriers. Since the human 'globe' had unseated the sublime cosmos, this now enabled a making of 'the world' in the imagination of prevailing political agency.

35. G. Handl, 'Extra-Territoriality and Transnational Legal Authority', in G. Handl, J. Zekoll and P. Zumbansen (eds.), *Beyond Territoriality: Transnational Legal Authoriy in an Age of Globalization* (2012), at 3-4.
36. S. Elden, 'Missing the Point: Globalization, Deterritorialization and the Space of the World', 30 *Transactions of the Institute of British Geographers, New Series* 1 (2005), at 12.
37. M. Camille, 'Signs of the city: place, power, and public fantasy in medieval Paris', in B.A. Hanawat and M. Kobialka (eds.), *Medieval Practices of Space* (2000), at 9.
38. J. Bartelson, 'The Social Construction of Globality', 4 *International Political Sociology* 3, at 223-224 (2010).
39. *Ibid.*, at 225.
40. J. Klinghoffer, *The Power of Projections: How Maps Reflect Global Politics and History* (2006), at 75.
41. J.R. Short, *Making Space: Revisioning the World, 1475-1600* (2004), 84-85.

As Jerry Brotton explains, the race began to mould the newborn globe via the appearance of appropriation or, in other words, dividing the *rotunditate absoluta* via the perceived 'reality' of cartographic bisection:

> Maps, charts and globes such as the Cantino Planisphere and Behaim's terrestrial globe disseminated vital conceptual information on the changing territorial and commercial shape of the world they depicted. Supplemented by the mass of travel narratives and diplomatic reports which emerged ... such geographical artefacts became prized possessions, not only keeping their owners informed of the latest discoveries and commercial ventures, but also providing them with a sense of security as to their own identity within such an ever-changing world. [...] [This] production of maps and charts ... [became] the practical bedrock for all subsequent printed cartography over much of the globe for the next 200 years....[42]

Yet, the aim of cartographic conquest soon encountered a sizable epistemic problem, which became manifest after the landmark Treaty of Tordesillas in 1494. The Treaty drew a "straight line ... north and south ... from pole to pole ... at a distance three hundred and seventy leagues west of the Cape Verde Islands,"[43] with the aim of granting Portugal the eastern half (Africa) and Spain the west (the Americas). However, it became discovered that South America had an eastward curvature that extended beyond the Tordesillas 'line', granting Portugal the right to establish colonies in South America – most notably what became known as Brazil.[44] The ambition to appropriate an absolute 'globe' exceeded the possibilities of navigation and cartography at the time; but in actuality, the problem had its roots in the limits of an underlying knowledge upon which conquest cartography ultimately rested: Euclidian geometry.

This set the stage for Descartes and his philosophical interventions in the 17th century, which would push the teleology of modern European thought toward a decisively mathematical and analytical imperative. What needs unearthing, therefore, are the epistemological foundations supplied by Descartes' intervention that were to herald the scientific revolution in modern philosophy and geometry; and how analytic geometry came to the service of the modern state's requisite of appropriating the notion of territory to represent its own 'absolute' existence. We briefly excavate each of these complementary developments in turn.

As indicated earlier, the Ancient Greeks, and Euclid in particular, are credited with the origin of geometry, and much of what Euclid developed remains integral today. Yet, Euclid's contribution, however constitutive, had to be reconciled with Copernicus' discovery of an 'absolute' globe. Descartes' philosophical interventions represented, in effect, the vanguard of such process of geometric rejuvenation – a process later contributed to by Spinoza, Leibniz, Newton and Kant.[45] Foremost, Descartes radically altered the 'thinkable' by, first, making a pivotal separation between thought (*res cogitans*) and the material world (*res extensa*),[46] and in this way space acquired a Cartesian identity as material and absolute, independent of human thought and senses.[47] Second, flowing from this assertion, Descartes also held that the material world (Cartesian space) was arithmetically divisible and calculable,[48] and this opened geometry to an algebraic translation (analytical geometry) and appropriation by mathematics. As Stuart Elden describes, Cartesian geometry overturned the age-old adherence to Aristotle's classical separation between geometry and arithmetic:

> For Aristotle, the key thing about the connectivity of units is that they are discrete, separate from each other. A sequence of numbers, for example, has a distance between each of them, we count one after the other, steps along the way. A line, in distinction, while it has points within it, cannot simply be reduced to a string of points. There is more to the line, because the connection of points is different from the sequence of numbers. Points, when they are connected, literally have the end of one as the beginning of the next, there is nothing between them....Descartes [saw] geometry as equivalent of algebra; it is the symbolic version of the world....Descartes [saw] geometrical figures and, by extension, the world of which they are symbols, as numerically calculated.[49]

Thus, what Descartes made possible is what Lefebvre refers to as the geometric 'science of space,'[50] where the purpose and aims behind mapping shifted from the graphics and didactics of cosmography to the mathematical precision needed for locating and asserting claims in a geographic area. The Cartesian coordinates system gave an analytical means to project the spherical globe onto a flat surface and enable 'an exhaustive geographical inventory'[51]; and such a geometric possibility came into conjunction with a further transformation in 17th century Europe: the gradual consolidation of the so-called Westphalian States system.[52] This Westphalian order required that European monarchs demonstrate an effective territorial sovereignty,[53] and that entailed sys-

42. J. Brotton, *Trading Territories: Mapping the Early Modern World* (1997), at 75 and 83.
43. *Treaty of Tordesillas*, 7 June 1494 <www.yale.edu/lawweb/avalon/modeur/mod001.htm>, Clause 1 (accessed 2 November 2012).
44. R. Sack, *Human Territoriality: Its Theory and History* (1986), at 131-132.
45. H. Lefebvre, *The Production of Space* (1984), at 1-2.
46. R. Descartes, *Ouevres de Descartes*, v. VII, C. Adam & P. Tannery (eds.) (1964), at 85-86.
47. G. King, *Mapping Reality: An Exploration of Cultural Cartographies* (1996), at 140.
48. *Ibid.*
49. Elden, *supra* n. 36, at 12.
50. Lefebvre, *supra* n. 45, at 3.
51. M. Escobar, 'Exploration, Cartography and the Modernization of State Power', in N. Brenner *et al.* (eds.) *State/Space: A Reader* (2003), at 35.
52. *See* A. Ossiander, 'Sovereignty, International Relations and the Westphalian Myth', 55 *International Organization* 251 (2001).
53. Escobar, *supra* n. 51.

tematic knowledge and description of Crown lands in order to establish a sovereign claim and taxation. In this way, the confluence of Westphalian prerogative and Cartesian geometry contributed to the construction of geographical jurisdiction and, crucially, state power in terms of measurable ownership of worldly space,[54] which became expressed through the modern and statist code of 'territory'.

As a result, a 'scientific' cartography did emerge in the 17th and 18th centuries, under the eager patronage of Baroque dynastic States, which advanced a range of cadastral mapping, military surveys and longitude measurement techniques[55] to consolidate an absolute stake in this evolving geographical world. Yet, despite the professed and even apparent validity of such methods, the genesis of this cartographic 'science' was foremost directed at bringing under control the geographical reality of the globe through geometric representation,[56] reduction and the perfection of planimetric frontiers.[57] In this manner, a reduction of the globe to a geometric area enabled the production of a state's territory and thus secured a state's geographic claim – including prized 'possessions' – upon the *rotunditate absoluta*. Hence, geometric representation and calculation had not only tamed the prospects of yet another Tordesillas-like blunder but in fact ushered a grander geometrisation of the globe.[58] It offered to replace the professed crudity of 'natural' boundaries for the symmetry and elegance of linear borders and gridlines.

A 'geometrically perfect world' could now be constructed as the Renaissance had once made 'geometrically perfect towns', 'reflecting perfections of the universe and the autonomy of intellect'.[59] A view no doubt supported by the establishment in 1659 of Europe's first modern and geometrically derived border through the Pyrenees. The implications would become even more visible and profound through time as planimetric reduction caught up with the new colonial frontiers;[60] foremost expressed by the gridlines of latitude and longitude that parcelled indigenous domains[61] in both the continental United States[62] and Africa.[63] In this way, modern geography came to institute the stated perfection of geometric spatiality and, simultaneously, exercise a symbolic – and often ecological, physical and social – violence as dictated by the yardstick's edge.

It was in this context of geographic conquest, territorial control and spatial reductionism that the 'science' of geometric and planimetric reality was born and nurtured, and from which 'representational mapping' derives to 'intelligently lay before us' the known world as whole and constituent fragments. This brings us to an important observation that flows from our attempted archaeology: centuries of modern thought came to reify a geometric language and 'reality' of worldly space, and establish the planimetric map as a seemly iconic and autonomous mode of representation which simply 'mirrored nature'.[64] By excavating various epistemological and ontological layers that have constituted the geometric globe and space, the underside of that geometric idea came into view with its historic attachment to the epistemic, imperial and political motivations of both 'the discovery'[65] and modern state consolidation. This deeper purview exposed the naturalness of the geometric world as a cultural and political production and, most crucially, the legacy of power, conquest and domination it came to encode and make obscure. To summarise with the words of constructivist cartographer Brian Harley, geometric space becomes laid before us in a different light as the product 'not only of the rules of the order of geometry and reason but also of the norms and of ... the social forces that have structured...all map knowledge'.[66]

4. Fragmentation Revisited: A Legal Metaphor and an Epistemic Legacy

This excavation has produced a fuller view of the history and thought that encompasses international law's recent entanglement with geometric space as symbolised through reference to the metaphorical fragment. Our attempted archaeology of that geometric enterprise has made possible an appreciation of how the fragment metaphor and narrative is rooted in and emerges from an epochal history that international law is itself connected to as a social outgrowth of modernity. Further, Foucauldian archaeology becomes instructive for cautioning us on how the embedding of geometric reality within the rules of the epistemologically 'thinkable' generate a seemingly passé and obscure heritage that falls from contemporary legal view. In other words, after successive centuries of Cartesian conditioning, a 'geometrically perfect world' appears simply a quaint and familiar way of imagining and articulating 'the world' as it 'is' and 'should be'.

It comes as no surprise, therefore, that the metaphorical fragment has slipped so seamlessly into the mindset of the contemporary discipline and profession, extending even to those with a stated intention to overhaul the

54. J. Black, *Maps and History: Constructing Images of the Past* (1997), at 15.
55. *Ibid.*, 14-16.
56. P. Virilio, *L'Insecurite de Territoire* (1975), at 120.
57. Black, *supra* n. 54, at 16-17.
58. King, *supra* n. 47, at 142.
59. A. Akkerman, 'Urban Planning in the founding of Cartesian Thought', 4 *Philosophy and Geography* 141, at 161 (2001).
60. Klinghoffer, *supra* n. 40, at 78-79.
61. We should not forget that part of the social violence of the colonial and later imperial conquests was the imposition of colonial mapping over indigenous mapping. *See* King, *supra* n. 47, at 142-144.
62. Sack, *supra* 44, at 127-168.
63. *See* M.W. Mutua, 'Why Redraw the Map of Africa: A Moral and Legal Inquiry', 16 *Michigan Journal of International Law* 1113 (1995).
64. Escobar, *supra* n. 51, at 47.
65. *See also* A. Anghie, *Imperialism, Sovereignty and the Making of International Law* (2004), at 13-31.
66. B. Harley, 'Deconstructing the Map', 26 *Cartographica* 1, at 2 (1989).

'gravity' of (international) law beyond the state. Here, Gunther Teubner's pioneering piece on the 'Global Bukowina'[67] becomes a salient example, where a forceful argument on 'global law' as a 'lived', plural and *sui generis* legal order became flattened by its tie to a planimetric metaphor (Bukowina) emanating from conquests of the Hapsburg Empire.[68] Further still, in Teubner's later collaboration with Fischer-Lescano,[69] what began with a strong caution against 'legal reductionisms' of global law shifted to a narrative that invoked frames of turf-like 'conflicts', 'collisions' and 'combat'; where in the same breathe 'fragmentation' emerged as seemingly *descriptive* language for the new *mapping* of:

> Global legal pluralism… [which]…is not simply a result of political pluralism, but is instead the expression of deep contradictions between colliding sectors of a global society. At core, the fragmentation of global law is not simply about legal norm collisions or policy-conflicts, but rather has its origin in contradictions between society-wide institutionalized rationalities, which law cannot solve, but which demand a new legal approach to colliding norms.[70]

Immediately, this focus on Teubner should be understood as anything but capricious; rather it is insightful for the profound tension it manifests between ontological ambition versus epistemological heritage and scholarly agency versus epistemic structure. In fact, how the above quote ends encapsulates what can be seen as an irony: a 'new approach' is demanded for a problem precast to fit the *ancien* logic and mapping of fragmentation. In other words, the push for a new legal ontology vis-à-vis 'global law', distinguished from the 'international', became converted into a new geometric rationality involving turf contests not between States but now 'regimes'. Thus, while Teubner asserted the need for a watershed articulation of an emerging 'global law', geometric 'reality' translated and reprocessed that aspiration into a familiar struggle over how to re-fragment worldly space. Further, since the role of power and domination had long been obscured from the notion of 'representational mapping', this shift from pluralism to fragmentation could be understood as simply *grounding* in the inherent geometry required of an absolute and appropriable globe.

Yet, one should not lose sight of the epistemic consequences that arise from this seemingly innocuous shuffle of vocabularies. By virtue of an underlying geometric epistemology, the plural, amorphous, and asymmetrical legal practices that sparked Teubner's drive to articulate global law 'in its own right'[71] was compressed ontologically into a spatial scheme of fragmentation. It is important to remember that this flowed less from design than the unconscious role geometric coding has played in (post)modern spatial comprehension, whether political or legal. In this way, Teubner's global legal pluralism required, as a rite of epistemic passage, some kind of legal cartography – *e.g.* a 'Bukowina', where this 'new world' of contradicting regimes and colliding sectors could be 'intelligently mapped before us' like other 'newfound' worlds were before. This irrespective of the fact that the contemporary instance of pluralism and multiplicity could bring into question the very idea that such loosely aligned worlds of diverse legal practices, specialised institutions, varied practitioners, plural norms and competing arguments were appropriately reducible to something resembling a planimetric reality.

What emerges, therefore, is a lesser acknowledged but nonetheless significant issue for disciplinary international law: the extent to which the discourse of fragmentation is an under scrutinised reification of the international legal academy and profession. Such that those which have adopted the seemingly neutral and descriptive narrative of fragmentation – as 'phenomenon' – could well be engaging, and unwittingly, in a normative projection of 'the way things are', as James Boyle reminds us:

> [O]ne would have to ignore the central insight that 'social constructs', such as law, do not have some pre-existing shape prior to human intervention. The idea of finding the essence or the real sources of law distracts us from the reality that, in a very important sense, it is being created by our categories and definitions rather than being described by them.[72]

I want to pursue briefly two explanations that help us parse the spectre of reification, which hangs over this fragmentation narrative in international law. The first, which is readily acknowledged by leading scholars, is that reification is an actual and intentional part of the politics of jostling international legal agendas. Potentially rival international 'regimes', which Fischer-Lescano and Teubner illustrate with reference to *e.g.* international human rights versus trade law tribunals,[73] are foreseeably engaged in a struggle to assert and extend their jurisdictional and substantive boundaries over as wide a geometric area as possible, *i.e.* turf. In this way, our earlier discussion of the geometric conquest provides a suitable background on how the imagery of fragmentation translates the symbolic struggle to stake a perceived (geometric) jurisdiction over an absolute globe. Thus, reification becomes understood as an explicit or implicit strategy of competing actors and regimes in their attempt to 'naturalise' and thus extend preferred practices of 'global' authority.

Yet, we now arrive at the second and more critical explanation vis-à-vis reification: the extent to which the

67. G. Teubner, '"Global Bukowina": Legal Pluralism in the World Society', in G. Teubner (ed.), *Global Law without a State* (1997), at 3.
68. For further discussion on the problem with the Bukowina metaphor, *see*: F. Kratochwil, 'Of Maps, Law, and Politics: An Inquiry into the Changing Meaning of Territoriality', *DIIS Working Paper* 2011:03.
69. Fischer-Lescano and Teubner, *supra* n. 29.
70. *Ibid.*, 1004.
71. Teubner, *supra* n. 67, at 4.
72. J. Boyle, 'Ideals and Things: International Legal Scholarship and the Prison-house of Language', 26 *Harvard International Law Journal* 327, at 331-332 (1985).
73. Fischer-Lescano and Teubner, *supra* n. 29, at 1000-1001.

international legal world inhabits and operates an autonomous practice relative to the pretentions of science. Here, we need to bring back a central contributor in the fragmentation narrative, Martti Koskeniemmi, and his recent argument, which attempts to demarcate international law versus the *other* of the 'theoretical sciences':

> Interdisciplinary vocabularies of 'scholarship' and 'science' miss what for most international lawyers is the most obvious aspect of our trade: namely, its craft-likeness, its being above all a practice. International law is not a social science. It is not a (theoretical) science at all – that is to say, it does not operate on the basis of demonstrable, even less empirical truths, nor with ideas about moral goodness. Legal 'truth' or 'goodness' is concerned with...the correctness of the legal decision. This is a product of legal practice, argument, persuasion, not its precondition. Even as lawyers may use empirical arguments from 'theory' and sometimes invoke moral sentiments, the practical reasoning – *phronesis* – that best characterizes what lawyers do cannot be reduced to either one or the other.[74]

Koskenniemi's attempt to distinguish international law from the social sciences is cause for both applause and criticism. Regarding the former, his focus on what international lawyers *do* in relation to understanding rhetorical practice, legal *praxis* and *phronesis* (practical reason) injects sorely needed legal realism into social scientific perspectives of what law 'is'.[75] Nonetheless, a concern emerges on what appears to be a dichotomy Koskenniemi draws – at least implicitly – between law as 'a practice' and science as 'theory'. At face value, the argument is enticing because Koskenniemi buttresses the distinction by elevating a useful but often forgotten Aristotelian metaphysics.[76] However, the catch is that Koskenniemi frames Aristotle's *phronesis* in a suggestively Cartesian and geometric manner, because he subtly positions the *phronesis* of international law in diametric contrast to 'theoretical science' – what Aristotle called *episteme*.[77] Should his distinction between law and science indeed rely upon Aristotle, it needs to be cautioned that Aristotle had several 'intellectual virtues', including practical reason, epistemic theory but also context, common sense and intuition as well, and it is difficult to relate these virtues in any persuasive symmetry. Thus, Aristotle's *phronesis* is a questionable foundation for an argument, which positions law (*phronesis*) and science (*episteme*) with binary-like difference, since Aristotle's 'virtues' had a more complex relationship.

However, this does not mean that Aristotelian metaphysics is a spent flirtation for disciplinary international law. Rather, the point is that reading *phronesis* with a potential geometric impulse undermines the profundity of what Aristotle actually imparted: an epistemic awareness of there being a *complex* of different types of knowledge. This insight is of significance vis-à-vis understanding how law and science are entwined via this complex, and how the discourse of fragmentation in international law is illustrative of that multifarious interaction. In sum, Koskeniemmi makes the astute point that practical reasoning, interpretation, argument and persuasion are all features which locate international law at some distance from the more epistemic and universalising orientations of many – but not all[78] – social science perspectives.[79] However, there should be a caution against construing such *spacing* with a geometry that demarcates and fragments international law as a *craft-like* 'rhetorical practice' versus 'theoretical science' as a database for empirical truths. This is not a pedantic concern in light of our discussion on how geometric science and, specifically, how the 'mapping' of worldly space as a fragmentary ensemble have come to naturalise planimetric borders as being inherent for modern spatial comprehension.

Put differently, we need to acknowledge 'fragmentation' for the imperial ambitions it has historically facilitated *vis-à-vis* legitimating one's geometric turf and domination; whether through tracts of earth claimed as 'our territory', a family of notions asserted as under 'our discipline', or an expanse of population enrolled into the values and norms of 'our jurisdiction'. Geometrisation has supplied not only an epistemic approach but also teleology for modernity's construal of the physical and social world; slicing and dicing all manner of life ever since Copernicus' image of a finite globe seized social or, more significantly, sovereign imaginations. This is the story behind the fragment metaphor which inconspicuously ties international law to the legacies and tragedies of modern social geometry, and which needs telling to contemporary international lawyers immersed in a fragmentation discourse with little epistemic notice or excavation of that darker heritage.

74. Koskenniemi, *supra* n. 20, at 19.
75. *See also* the valuable discussion of K. Sideri: *Law's Practical Wisdom: The Theory and Practice of Law Making in New Governance Structures in the European Union* (2007).
76. Aristotle, *The Nicomachean Ethics* (1976).
77. For further discussion of the relationship between *phronesis* and *episteme*, *see* N.M. Rajkovic, *The Politics of International Law and Compliance* (2012), at 26-27; B. Flyvbjerg, *Making Social Science Matter* (2001).
78. *See* D. Della Porta and M. Keating (eds.), *Approaches and Methodologies in the Social Sciences: A Pluralist Perspective* (2008). The recent "practice" turn in disciplinary International Relations is one specific example, *see* E. Adler and V. Pouliot (eds.), *International Practices* (2011). *See also* F. Kratochwil, 'Ten points to ponder about pragmatism: Some critical reflections on knowledge generation in the social sciences', in F. Kratochwil, *The Puzzles of Politics: Inquiries into the Genesis and Transformation of International Relations* (2011), at 200-216.
79. For a discussion of science as a rhetorical practice, *see* B. Latour, *Science in Action: How to Follow Scientists and Engineers through Society* (1987).

5. Conclusion: The Fragment as the Metaphor of Domain and not Deliberation

This brings us to concluding observations and questions which emerge from our summary archaeology of the fragment metaphor, and how they place a new light on the established narrative of international law's fragmentation. Foremost, the metaphor should be seen for the clever duality of meaning which it manifests. On the surface, it engages an affective sense that suggests a random breaking apart but, in deeper epistemological terms, the metaphor is embedded within a layered legacy of geometric, imperial and planimetric thought that made 'thinkable' a carving up of an absolute globe in the name of 'science' and at the service of power. Thus, when lawyers articulate international law with reference to fragmentation this must be attuned to the teleology and conquest of geometrisation which has influenced modern perceptions of what the political and legal world should 'look like'. What is more, the weight and force of that geometric teleology cannot simply be effaced with the nominal declaration of a new 'postmodern' and counter-imperial mindset, which proclaims global 'regimes' to be the reproduction of a familiar fragmentation but only this time finessed by a 'coherent legal-professional technique' into fragmentation *light*.

Further still, there is the mentality of this geometric 'system of thought' and how it conditions the way agents (*e.g.* legal scholars, policy-makers) encounter, translate and act upon perceived social space. Specifically, the cultural embedding of geometric 'reality' has taught us the productive power of compressing the social 'world' into a preferred 'representational map' and, correspondingly, the immense social power exercised by those that can 'fragment' its imagined geometric area. When applied to expanding indeterminacies of this latest[80] instance of 'globalisation' and its subsequent epistemic 'crises' provoked, lest we forget that the geometric rationality behind fragmentation has always expressed security and salvation as derivative of the lines we draw to form quaint domains and borders. Thus, a postmodern context characterised by assertions of borderless 'migration', 'hyper-connectivity', 'interdisciplinarity', 'trans-nationalism', 'global contagion', 'network terrorism' and 'cyber-criminality' all seem to trigger appeal for new 'frontiers' – some enforced by 'unmanned' drones[81] – that retain their salience as indispensable rationalities for distinguishing between 'principled' forms of *us* versus *them*.

This perpetuation of the asymmetry of power and welfare is in fact the historic legacy and pathology of fragmentation; which makes it is difficult to speak of a legally fragmented world now tameable[82] by 'debate and evidence' or to be resolved on the 'merits'.[83] It requires a lens which sees how one billion 'cyberfolk' can appear united in watching 'Gangnam Style' on *YouTube* while at the same time pitted against one another in virtual 'regime' clashes over 'fundamental' rights and priorities which produce – the lesser announced – impoverishment or death of subset millions each year.[84] In these circumstances, the question of 'who decides'[85] increasingly becomes a postscript when the cutting edge of juridical techniques are focused upon defeating meaningful jurisdiction that can be exerted to challenge the geometric extension and influence of one's normative agenda and intended hegemony.[86] To return back to our introductory discussion, this is what makes the ILC Report's innocuous association between territorial and 'regime' fragmentation a pivotal turning point in the narrative of fragmentation but no less contestable storytelling; as it ignored the geometry of domination, which has been a historical facet of the practice of fragmentation in international law and politics. It confused form and substance and, more importantly, combined narrative optimism with *faith* in juridical professionalism. This repackages a legal pathology to adhere with what arguably are subterranean attachments that some international lawyers have for the modern 'grand narrative' of enlightened progress, and it is lesser discussed but equally affiliated conquests of geometric reason.

80. *See* N. Chanda, "Runaway Globalization Without Governance", 14 *Global Governance* 119 (2008).
81. *See* F. Sauer and N. Schornig, "Killer Drones: The 'Silver Bullet' of Democratic Warfare?", 43 *Security Dialogue* 363 (2012).
82. *See* F. Kratochwil, "Has the 'rule of law' become a 'rule of lawyers'"? An inquiry into the use and abuse of an ancient topos in contemporary debates", in Kratochwil, *supra* n. 78, at 126-150.
83. Koskenniemi and Leino, *supra* n. 30, at 578.
84. *See* T. Pogge, "Divided against Itself: Aspiration and reality of international law", in J. Crawford and M. Koskenniemi (eds.) *The Cambridge Companion to International Law* (2012), at 373-398.
85. Koskenniemi, *supra* n. 20, at 20-21.
86. One example is the exploding number of bilateral investment treaties, their subsequent inclusion into Free Trade Agreements, and how this curtails possible interventions by national or even international adjudication. *See* J.W. Salacuse, "The Emerging Global Regime for Investment", 51 *Harvard International Law Journal* 427 (2010); Asha Kaushal, "Revisiting History: How the Past Matters for the Present Backlash Against the Foreign Investment Regime," 50 *Harvard International Law Journal* 491 (2009). Further, we cannot ignore the way in which "Status of Forces Agreements" web together with an ever elaborating doctrine of self-defense to obscure jurisdiction over growing transnational drone strikes. *See* J.J. Paust, "Civilian Casualties in Modern Warfare: The Death of the Collateral Damage Rule", 18 *International and Comparative Law Quarterly* 565 (2012); John Morrissey, "Liberal Lawfare and Biopolitics: US Juridical Warfare in the War on Terror", 16 *Geopolitics* 280 (2011).