1-1-2022

Journeys Through Space and Time While Reading International Law and the Politics of History, Found on a Palimpsest, Translated for You, the Reader

Harlan G. Cohen
Gabriel M. Wilner/UGA Foundation Professor in International Law & Faculty Co-Director of the Dean Rusk International Law Center *University of Georgia School of Law*, hcohen@uga.edu

University of Georgia School of Law
Research Paper Series
Paper No. 2022-06

JOURNEYS THROUGH SPACE AND TIME WHILE READING *INTERNATIONAL LAW AND THE POLITICS OF HISTORY*, FOUND ON A PALIMPSEST, TRANSLATED FOR YOU, THE READER

*Harlan Grant Cohen**

****

The magistrate called me forward. Haltingly, trying to hide a trepidatious tremor, I shuffled to the front. As I moved closer, I could see the community leaning in to examine me. Off to my right, I glimpsed the historian and the legal scholar, each of whom had already testified.

"You witnessed the fight between the historian and the legal scholar?," the magistrate asked. "Yes," I mumbled. "Tell us what happened. This is your chance to share your story."

"Alright," I said, steeling myself. "I am an aspiring scholar, an eager reader of both the historian and the legal scholar. Spotting the two together, I felt compelled to follow them into the woods, to gather any morsels of wisdom they might drop along the way. As they started to fight, I leaned in to listen from behind the trees. Suddenly though, I felt something. A sharp pain. I had been hit. I doubled over."

"What about the fight between the historian and the legal scholar? What happened next? Who was responsible? Who was to blame?"

"I don't know. All I could feel after that was pain and shame."

****

"That's it. That's all there is."

"What do you mean."

---

* Gabriel M. Wilner/UGA Foundation Professor in International Law. This unorthodox approach to thinking through and with Anne Orford's book, ANNE ORFORD, INTERNATIONAL LAW AND THE POLITICS OF HISTORY (2021), is dedicated to the memory of Karen Knop, who, perhaps more than anyone, inspired, encouraged, and appreciated it. M.J. Durkee, Mona Pinchis-Paulsen, and Logan Sawyer also helpfully egged me on. If you're wondering who to blame for letting me do this, it's them. Thank you also to Jeffrey Dunoff and the editors of the *Temple International and Comparative Law Journal* for allowing me to engage in these dialogues.

"That's all that remains. Just that extract."

"What do you think it means?"

"Aside from being a hackneyed appropriation of a Japanese cinematic classic?[1] Well . . . I *think* it's a story about identity and knowledge. We have these characters—the reader, the historian, the legal scholar, the judge. Each seems to represent a different type of knowledge: the historian searches for understanding in the facts of the past; the legal scholar searches for meaning and value in our narratives; the judge seeks resolution, an answer for action. And the reader, feeling pressure from the community to choose between them, weakly balks."

"Yeah, I found the reader quite weaselly—pretty self-centered."

"Yes, but we can relate though, no? In our own quests, we are always essentially alone inside our heads—craving mentors, fearing judgment, but in the end, alone? 'Cogito, ergo sum'[2] is a pretty lonely thought, no? Choosing a path, following certain scholarly norms can provide a sense of belonging and an aura of acceptance. But, in our heads, we know they are false—ill-fitting boxes for the misshapen ideas we wish to share? We feel compelled to choose an identity, but false in our choice. We chafe at the discipline of our disciplines.[3]"

"Well, that's bleak . . . I'm not sure these are really identities though. Sure, we inhabit professional communities with norms about writing, arguing, publishing. We print business cards and introduce ourselves at cocktail parties. But at another level, historian and lawyer are less identities than modes of reasoning, labels we attach to

---

1. *See generally* RASHOMON (Daiei Film 1950). For the uninitiated, the classic Japanese film by acclaimed director Akira Kurosawa tells the story of an incident in a grove involving a woman, her Samurai husband, and a Bandit through the conflicting testimony of each—including the now-dead husband through a medium—and a less than trustworthy woodcutter witness. *Id.* The film famously leaves the contradictions in the stories unresolved.

2. Interestingly, René Descartes's famous conclusion, "I think, therefore, I am," originally appeared in French as "je pense, donc je suis." in RENÉ DESCARTES, DISCOURSE ON THE METHOD OF RIGHTLY CONDUCTING THE REASON, AND SEEKING TRUTH IN THE SCIENCES (1637). *See also René Descartes (1596–1650)*, OXFORD ESSENTIAL QUOTATIONS (Susan Ratcliffe ed., 6th ed. 2018) (quoting RENÉ DESCARTES, LE DISCOURS DE LA MÉTHODE (1637)), https://www.oxfordreference.com/view/10.1093/acref/9780191866692.001.0001/q-oro-ed6-00003567?rskey=AhZfrG&result=1041 (translating phrase into English). A bit odd that we have memorialized and handed down the Latin instead.

3. *Cf.* Stepan Wood, *Commentary: Toward a Counterdisciplinary Agenda for Research in International Law and International Relations, in* THE MEASURE OF INTERNATIONAL LAW: EFFECTIVENESS, FAIRNESS AND VALIDITY 260, 263 (Diane Hiscox & Johanne Levasseur eds., 2004) ("It is no coincidence that the academic and professional disciplines are called *disciplines*. They discipline not only the minds and actions of their students and practitioners but the individuals, populations, institutions, knowledge and behaviour that are the objects of their specialized knowledge to govern themselves and others.").

sets of questions we ask about the world.[4] And choice seems inevitable. We can't investigate the past, or knowledge generally, without a theory of meaning. Why we're asking seems key.[5] For lawyers, the question is always bound up with authority. Facts matter within a theory of authority, not just for their own sake. Historians have implicit theories of meaning too. Your ill-fitting boxes might better be thought of as meaning machines, transforming raw facts into refined meaning. Stuffing stuff in might feel destructively distortive, but perhaps it should be seen as productive and transformational?"

"Yes, that was kind of my point. One has to make choices about the questions they ask, the box-machines they're going to use. It's less clear that they should be defined by them."

"Oh, yeah. I see. Sorry.

"Let me take this in a slightly different direction then. You mentioned judgment. I was taken by the image of the court in the story and these scholars as apparent opponents. It's a reminder, as I was saying, that the quest for knowledge is really a quest for meaning, a quest for answers to questions about what we should do now in our present, what actions we should value or condemn. We don't so much report, as we argue, and we argue in the service of judgment. This reminded me of an insight of Anne Orford's that 'lawyers think about facts and evidence in the register of proof rather than truth.'[6] Law, in particular, 'is a normative discipline.'[7] It cares, at the end of the day, only about what people should or shouldn't do.[8] As Orford describes, lawyers are taught to assemble and reassemble facts into normative narratives,

---

4. For a terrific discussion of the difference between "doing history *of* international law and *using* history *in* international law," see Alonso Gurmendi, *Borderline History at Borderline Jurisprudence: Some Thoughts on Anne Orford's International Law & the Politics of History (Part I)*, OPINIO JURIS (Oct. 21, 2021), http://opiniojuris.org/2021/10/21/borderline-history-at-borderline-jurisprudence-some-thoughts-on-anne-orfords-international-law-the-politics-of-history-part-i/. *See also* Alonso Gurmendi, *Borderline History at Borderline Jurisprudence: Some Thoughts on Anne Orford's International Law & the Politics of History (Part II)*, OPINIO JURIS (Oct. 21, 2021), http://opiniojuris.org/2021/10/21/borderline-history-at-borderline-jurisprudence-some-thoughts-on-anne-orfords-international-law-the-politics-of-history-part-ii/ (suggesting that methodological differences between historians and lawyers are best seen not as an incompatibility but as an interdisciplinary pool of wisdom that may enrich the two fields).

5. *Cf.* JOHN LEWIS GADDIS, THE LANDSCAPE OF HISTORY: HOW HISTORIANS MAP THE PAST 34 (2002) ("Cartographic verification is, therefore, entirely relative: it depends upon how well the mapmaker achieves a *fit* between the landscape that's being mapped and the requirements of those for whom the map is being made.").

6. ANNE ORFORD, INTERNATIONAL LAW AND THE POLITICS OF HISTORY 220 (2021).

7. Natasha Wheatley, *Law and the Time of Angels: International Law's Method Wars and the Affective Life of Disciplines*, 60 HIST. & THEORY 311, 312 (2021) (quoting Martti Koskenniemi, *Vitoria and Us: Thoughts on Critical Histories of International Law*, 22 RECHTSGESCHICHTE 119, 129 (2014)).

8. *See id.* at 324 (observing that "[a] legal norm" is "neither a 'must' nor an 'is' but an 'ought.'").

whose persuasive authority is tested in the field of arguments.[9] Arguments about historical contingency battle it out with arguments for timeless principles, with various facts arrayed in service of each.[10] Victory belongs not to the one with 'better' facts, but to the one with better arguments for the authority of those facts.[11] Knowledge exists only as authority and in the service of value judgments.[12]

"But the conflict framing of the courtroom echoes another we often see—one of the battlefield.[13] Knowledge is framed as a spoil of war, terrain to be controlled, patrolled, and guarded following a battle over meaning. Sometimes, heroes are designated to fight for each side; other times, emissaries are sent to collect allies for a great battle between hosts. Natasha Wheatley sniffs something of this metaphor in Orford's framing, evoking images of World War I to describe the battle between critical legal scholars and contextual historians Orford describes.[14] And although Orford disclaims a 'call to the barricades,'[15] it may be inevitable that two metaphors will bleed into each other, particularly in international law where arguments are often proffered at the tip of a sword.

"Given the stakes of the law, perhaps this image is appropriate—knowledge and meaning aren't simply scholastic exercises; they are political drivers and determinants of power.[16] Shared meaning has constructed and justified the edifice of power in the world in which we live—who's on top, who's on the bottom—and shared meaning can bring it down, shattering the foundations on which it stands.

"But the reader seems to be battling this adversarial framing and the aura of conflict it spreads over the reader's quest. The buildup to World War I is often treated as a tragic mistake.[17] The reader seems to feel the same anxiety watching the battle between the historian and the legal scholar."

"But what's the alternative?"

"Well, there are other metaphors that are more collaborative—the workshop, the conference table, the revelrous symposium. But for me, the reader's plight brings to mind another, very different image of the quest for knowledge. I once read a story

---

9. ORFORD, *supra* note 6, at 220–23.

10. *See id.* at 220 (discussing interaction of history, theory, and facts in legal considerations).

11. *See id.* (illustrating key role of persuasion in legal considerations).

12. *See id.* (discussing how legal determination of truth depends on which facts are most persuasive).

13. *See, e.g.*, Wheatley, *supra* note 7, at 314–15 (comparing a theoretical battle of historians and legal scholars to the cascading effects that started World War I).

14. *See id.*

15. ORFORD, *supra* note 6, at 10.

16. *See id.* at 11–12 (arguing that lawyers should increase their awareness of political stakes).

17. *See* Wheatley, *supra* note 7, at 314–15.

in which the entire earth was designed as a computer meant to ask questions about the meaning of life.[42] In that story, each human, clothed in a bathrobe and sipping their tea, is not an outside observer, but one tiny factor run through the algorithm of their life—an algorithm that itself is but one tiny subprocess within an infinitely large program.[18] From their vantage point within the program, the whole is always tantalizingly, but frustratingly, out of frame. Only with a god's-eye view from above (or perhaps, a mouse's-eye view from below)[19] is true knowledge of the program or its meaning possible. Knowledge becomes this daunting, almost comically impossible thing, approachable only with ironic disenchantment.

"And yet we still strive for it. But where is a tree to find knowledge of the forest? The only choice is to ask other trees—to try, painstakingly, to piece together each boring account of one tree's problems with bark mites with another's astonishment at the birds who fly overhead. Knowledge and meaning are only possible as part of a cooperative exercise in sharing and sifting individual viewpoints. It is an essentially communal act. Each of us fulfills our programming—historians explore contingency and agency to understand human choice; lawyers debate normativity and value to shape human choices—but only in conversation can knowledge be sought.[20]"

"I can't decide if that's beautiful and profound, or pompous and silly."

"Both, probably."

"It's like Borges's famed map the size of the earth,[21] but interactive!"

"I fear it's more like his Library of Babel.[22] That's the dark side of my story, right?

---

[42] *See* DOUGLAS ADAMS, THE HITCHHIKER'S GUIDE TO THE GALAXY 156–205 (1979) (satirizing Earth as a giant experiment run by mice to explore existential questions). Adam's story also usefully highlights the point that answers without questions are pretty much useless. *Id.* at 182–84.

18. *See id.* at 166–92 (explaining how Earth was created to be a giant supercomputer with humans as part of its program).

19. *Id.*

20. Perhaps this is a way out of the "genealogical anxiety" referenced by Kostia Gorobets in Borderline Jurisprudence, *Episode 10: Anne Orford on International Law and History*, PHIL. INT'L L. PODCAST, at 20:24 (Oct. 15, 2021), https://anchor.fm/borderline-jurisprudence/episodes/Episode-10-Anne-Orford-on-International-Law-and-History-e18k6j8. *See also* Amia Srinivasan, *Genealogical Anxiety*, ALL SOULS COLLEGE, https://www.asc.ox.ac.uk/genealogical-anxiety (last visited Jan. 5, 2022).

21. *See* JORGE LUIS BORGES, *On Exactitude in Science*, *in* JORGE LUIS BORGES: COLLECTED FICTIONS 325 (Andrew Hurley trans., 1998) ("[T]he Cartographers Guilds struck a Map of the Empire whose size was that of the Empire, and which coincided point for point with it. The following Generations, who were not so fond of the Study of Cartography as their Forebears had been, saw that that vast Map was Useless . . . ."). Perhaps we should not be surprised that Lewis Carroll played with the same idea. *See* LEWIS CARROLL, SYLVIE AND BRUNO CONCLUDED 169 (1893) (satirizing experiments in mapmaking, including a country-sized map that had never been spread out because people objected to the obstruction).

22. A story about a library with every single book—including all true things and all untrue

Borges's map is meant to be absurd. It captures a darker reality: that all 'real' maps, while perhaps 'right' in a sense, are doomed to be wrong in many others. So too with our accounts of history or human relations. If we cannot figure out what happened to three people in the woods, what hope do we have of telling true stories involving hundreds, millions, even billions of people, each living their own complex lives?[23] Even if we could somehow understand such infinite truth, how would we share it? Our language is finite and linear. Our grammar requires that sentences exist in past, present, or future—limited to one discrete idea. In the corner of our minds, we catch glimpses of the awesome, many-tentacled enormity of reality, stretching out in every direction. But the only way we know how to share it is to slice it and dice it into bite-sized pieces of oil-drenched idea-calamari. All our ideas are doomed to be wrong. We are driven forward not by the triumphant rightness of ideas, but the longing shame of their ever-present wrongness."

"That took an emotional turn—farce to horror."

"I'm a bundle of contradictory feelings."

"Well, all your talk of doom, and forests, and the dauntingness of knowledge reminds me of a different story—an old story, recorded in a number of places, including the Talmud—of the Pardes.[24] Pardes is itself an interesting word. Derived from Persian, it's usually translated from Hebrew as 'orchard'[25] but is also, interestingly, the origin of our English word 'paradise,' borrowed from Persian by way of Greek and Latin.[26] In this story though, the orchard is generally understood as a metaphorical site of esoteric knowledge—the truth of the universe—an image seemingly evoking the tree of knowledge itself. As the story goes, through intense study, four famous Rabbis entered the Pardes.[27] One was killed; one went mad; another became a heretic; and the last, Rabbi Akivah, perhaps the greatest and most revered of all the sages, returned unscathed.[28]"

---

things—randomly organized and driving its librarians to madness. You may feel that way about this piece. *See* JORGE LUIS BORGES, *The Library of Babel*, *in* JORGE LUIS BORGES: COLLECTED FICTIONS 112 (Andrew Hurley trans., 1998).

23. As Gaddis writes, "the past, in another sense, is something we can never have . . . we cannot relive, retrieve, or rerun it . . . . We can only represent it." GADDIS, *supra* note 5, at 3.

24. *E.g.*, Babylonian Talmud, *Chagigah 14b*, https://www.sefaria.org/Chagigah.14b.9?lang=bi; Jerusalem Talmud, *Chagigah 9a*, https://www.sefaria.org/Jerusalem_Talmud_Chagigah.9a.1?lang=bi.

25. *See* Philologos, *A Slice of Paradise*, FORWARD (June 19, 2008), https://forward.com/culture/13599/a-slice-of-paradise-02036/ ("*Pardes* in the Hebrew of the Bible and the Talmud indeed means a park, garden or orchard, and can be traced back to ancient Persian *paeri daiza*, meaning an enclosure or a fenced plot.").

26. *See Paradise*, ONLINE ETYMOLOGY DICTIONARY, https://www.etymonline.com/word/paradise (last visited Jan. 5, 2022) (tracing origin of English word "paradise" back to Modern Persian and Arabic roots).

27. *See, e.g.*, Babylonian Talmud, Chagigah 14b (recounting story of the four Rabbis).

28. *Id.*

"That's a hell of a metaphor, but what does it mean?"

"Well, the Talmudic text itself is, as usual, a conversation among later Rabbis about the meaning of an earlier story-extract, and as you can imagine, the story has been the subject of nearly endless commentary since.[29] Within Jewish Mysticism, it has been noted that the Hebrew letters of Pardes, PRDS, include all the major forms of interpretation: Pshat, direct or literal meaning; Remez, hinted allegorical meaning; D'rash, metaphorical meaning; and Sod, secret or hidden meaning.[30] And it should be no surprise that all these methods are reflected in interpretations of the story.

"Some, for example, seek to understand the historical context for the story, situating it within a Hellenizing world[31] in which the quest for knowledge might present highly politicized choices between the methods of the colonized and conquerors. Akivah was famously part of the Bar Kokhbah rebellion against the Romans.[32] The

---

29. To unpack a bit more, the structure of the Talmud follows a general pattern in which an excerpt from an earlier text—usually the Mishnah, but sometimes other stories from the same period—is discussed as part of a conversation constructed from the views of Rabbis living over a few-hundred-year period. The Talmudic text reads as if it were the transcript of a workshop that never actually happened. *See* Yehuda Shurpin, *What Is the Talmud? Definition and Comprehensive Guide*, https://www.chabad.org/library/article_cdo/aid/3347866/jewish/What-Is-the-Talmud-Definition-and-Comprehensive-Guide.htm (last visited Feb. 6, 2022) (describing the Talmud and its origins).

30. Philologos, *supra* note 25; *see* Rahmiel-Hayyim Drizin, PaRDeS HaBahir, *Introduction*, KABBALAH ONLINE, https://www.chabad.org/kabbalah/article_cdo/aid/1270231/jewish/Introduction.htm (last visited Jan. 5, 2022) (discussing PaRDeS as acronym formed from first four letter of the four levels of Torah interpretation); OU Staff, *Pardes*, ORTHODOX UNION (June 20, 2006), https://www.ou.org/judaism-101/glossary/pardes (noting acronym for four branches of Torah study and its relation to Hebrew word "pardes").

31. *See Hellenistic Age*, BRITANNICA, https://www.britannica.com/event/Hellenistic-Age (last visited Feb. 28, 2022) (describing spread of Hellenic culture across eastern Mediterranean and Middle East regions between 323 BCE and 30 BCE).

32. The Bar Kokhbah revolt, from 132–135 CE, was the last of a series of Jewish rebellions against Roman rule. THE HIGH HOLIDAY PRAYERBOOK: ROSH HASHANAH AND YOM KIPPUR 430–33 (Ben Zion Bokser trans., 1959) [hereinafter HIGH HOLIDAY PRAYERBOOK]. Rabbi Akivah apparently believed the revolt's leader could be the Messiah prophesized in Jewish scripture and gave him the name "Bar Kokhbah," or "son of the star" in Aramaic. *Bar Kokhba*, BRITANNICA, https://www.britannica.com/biography/Bar-Kokhba-Jewish-leader (last visited Feb. 28, 2022). Jewish lore attributes Akivah's death to his involvement in the rebellion. *See Akiva ben Yosef*, BRITANNICA, https://www.britannica.com/biography/Akiva-ben-Yoseph (last visited Feb. 28, 2022) (discussing Akiva's role in the rebellion and noting that he was martyred circa 135 CE by the Romans). On Yom Kippur, Jews traditionally read of the "Ten Martyrs," stories of ten great Rabbis tortured and killed for their faith by the Romans after the rebellion is quashed. Yosef Eisen, *The Ten Martyrs*, CHABAD.ORG, https://www.chabad.org/library/article_cdo/aid/2713682/jewish/The-Ten-Martyrs.htm. The liturgy describes the deaths as if they all took place at the same time, though that was apparently not the case. *Id.* Intriguingly, the liturgy does not entirely paper over that fact. *Id.* The prayer book itself records the mythic version of the story as the common narrative of prayer—from which religious and moral meaning is derived—above the line and describes the historical reality in the

story is also part of a genre of esoteric, semi-forbidden 'Merkavah' literature of the period obsessed with Ezekiel's vision of God's multi-faced, multi-beast, Voltron-like chariot and the apocryphal Book of Enoch.[33] Still others have sought the doctrinal meaning of the story, parsing Akivah's teachings afterward.[34] The heretic, Elisha ben Abuya, is a source of endless speculation, including differing accounts of his vision in the Jerusalem and Babylonian Talmud,[35] and historical fiction.[36] And Borges mentions Shimon ben Azzai's death in a short story.[37] In other words, the story has been repurposed and reinterpreted depending on time and need."

"Ah, yes, Moses becomes Superman;[38] Superman becomes the guru Lord Khusro.[39]"

"Right, exactly! As you said before, it all depends on the question you ask, the meaning you seek.

"What then do *I* take from it? Well, I can't say whether this is an orthodox interpretation, but one reading might go back to PRDS. Perhaps the lesson is that true knowledge comes in recognizing the simultaneous truth of each of these, sometimes contradictory methods, at the same time. Each requires mastery, but each is also limited. Pursuit of one alone leads to disaster.[40]Akivah, the great sage and stand-in for Torah-learning in general, embodies the ability to see the value in all these truths at the same time—to see the world as an ongoing, never-ending conversation across these methods, rather than the choice of just one.[41]

---

notes below. HIGH HOLIDAY PRAYERBOOK, *supra*. Neither is rejected. Each has its place.

33. *See, e.g.*, Alon Goshen Gottstein, *Four Entered Paradise Revisited*, 88 HARV. THEOLOGICAL REV. 69 (1995) (discussing interpretation of the story of the pardes as pivotal in the study of ancient Jewish mysticism).

34. *See id.* at 69–74 (discussing various approaches to scholarship interpreting the story of the pardes).

35. *See Elisha ben Abuyah*, NEW WORLD ENCYC., https://www.newworldencyclopedia.org/entry/Elisha_ben_Abuyah (last visited Jan. 5, 2022) (discussing Elisha ben Abuyah and his role in the story of the four Rabbis).

36. *See, e.g.*, MILTON STEINBERG, AS A DRIVEN LEAF (1939) (exploring Elisha ben Abuyah's personal struggle between his faith and Roman culture).

37. JORGE LUIS BORGES, *Three Versions of Judas*, *in* JORGE LUIS BORGES: COLLECTED FICTIONS 163, 167 (Andrew Hurley trans., 1998).

38. I'm sure you see it: hero-baby sent away in a vessel by his parents—hopefully to safety—adopted by others, and eventually forced to choose between his adopted and alien identities. *See, e.g.*, *Shemot* 2:2–2:22 (recounting Moses's origin story); Umberto Eco & Natalie Chilton, *The Myth of Superman*, 2 JOHNS HOPKINS U. PRESS 14, 14–15 (1972) (describing Superman's origin story).

39. *See* SALMAN RUSHDIE, MIDNIGHT'S CHILDREN 260–63 (1980) (describing how Superman's comic-book origins inspired the mythology supporting India's wealthiest guru).

40. Interestingly, one author has imagined this as the downfall of the heretic Elisha ben Abuya, who, unlike the great sages, could not reconcile Greek science with teachings of the Torah. *See* STEINBERG, *supra* note 36, at 477.

41. For a discussion of the ways the Talmud itself incorporates multiple interpretations, from the historical to the doctrinal to the philosophical to the spiritual, without really resolving them (even when mutually contradictory), see CHAIM SAIMAN, HALAKHAH: THE RABBINIC IDEA OF LAW 29–142 (2018).

"Or perhaps, we might ask ourselves, which Rabbi am I?"

"Ah, identity, again . . ."

"Maybe, though with a twist. Perhaps the lesson of the story is that in the search for knowledge, we embody all four Rabbis at the same time. Learning, becoming the great sage Akivah, changes us: as we learn, our old selves die; we become heretics to our prior knowledge and understanding; to others, we may seem a bit mad. In this sense, it's a reminder that meaning and knowledge are always made, not found,[42] as prior events and prior teachings are refracted through our present day's understandings.

"Traditional Jewish texts are often printed with concentric circles of commentaries surrounding the original text.[43] I've always been struck by the pride of place given to Targum Onkelos, a circa second-century Aramaic translation.[44] Aramaic was once the common tongue, but now? The answer is that Targum Onkelos is treated as commentary in its own right—recognition that translation can never simply unveil original meaning, but always requires interpretation.[45] All attempts to recover what once was result in the creation of something new."

"Fascinating tangent. Have you totally forgotten the text *we're* talking about?"

"Yes. Probably. OK, let me try something else. I might put the Pardes story[46] in a broader context. On the one hand, the story portrays the pursuit of knowledge as a dangerous, perhaps hubristic act. This dovetails with the story of the tree of knowledge.[47] One commentator, Nachmanides, explains that Adam and Eve had perfect knowledge of good and evil before eating from the tree; eating from the tree muddied that understanding, requiring a system of rules.[48]"

---

42. *See* ORFORD, *supra* note 6, at 252 (describing attitude inspired by legal realism: treating the law as made—or created—rather than found in empirical principles).

43. The structure of the page itself conjures an image of the various commentators in conversation with one another as if sitting around a table. This out-of-time conversation (all these commentators lived in different periods) echoes the structure of the Talmud, which is presented as a dialogue even as it's based on statements of Rabbis who are acknowledged to have lived at different times. *E.g.*, Babylonian Talmud, Chagigah 16a, https://www.sefaria.org/Chagigah.16a?lang=bi.

44. For a picture of such a page, see *Mikra'ot Gedolot*, U. CALGARY, https://people.ucalgary.ca/~elsegal/TalmudMap/MG.html (last visited Jan. 5, 2022).

45. *See* Avigail Rock, *Targum Onkelos as Commentator*, TORAT HAR ETZION (Sept. 21, 2014) https://etzion.org.il/en/tanakh/studies-tanakh/biblical-commentaries/targum-onkelos-commentator (explaining that translation is inherently commentary because words can have multiple possible meanings but a translator must select only one, which inevitably imputes his own view into the translation).

46. For a discussion of the Pardes story, see *supra* notes 25–38 and accompanying text.

47. *See Bereishit* 2:9–3:24 (recounting story of Adam, Eve, and the forbidden fruit).

48. *Ramban on Genesis 2:9*, SEFARIA,

"Hmm . . . Pursuing knowledge into the woods . . . I'm rethinking the meaning of our extract (and any number of fairy tales)."

"Yes, maybe. I think so. Back to my point though, despite its danger, we are commanded to learn and to teach. As the exalted status of Akivah suggests, learning is treated as among the greatest endeavours, one of the most important commandments. Other activities, including sleep, are seen as necessary exceptions within a life defined by learning.[49] The orchard, after all, isn't merely a forest; it's a place of nourishment, where we grow the things we need. You mentioned Anne Orford before—the relationship between forest and orchard, fear and nourishment, brings to mind her distinction between paranoid and nourishing scholarship and her appeal for the latter.[50]

"Within the rabbinic literature, what cuts between those two trends, danger and sustenance, is a constant reminder to learn with a sense of humility—a reminder that even the smartest sages see only part of the picture. And returning to your point about collaborative learning, rabbinic tradition teaches us to study in pairs. Rather than entering the orchard alone, we go together with a partner, a Hevrutah. Knowledge and understanding are pursued not through solitary readings of texts, but through debate, questioning, and argumentation, not with an enemy or adversary, but with a trusted friend."

"Feels a bit naïve, but I like this interpretation. We argue, but we are partners. Perhaps our mistake is leaving the reader in our extract standing alone, feeling judged rather than supported.

"I get the 'shame.' The reader knows you can't just be a bystander, a mere consumer. But speaking out, sharing what you've learned, criticizing those who came before,

---

https://www.sefaria.org/Ramban_on_Genesis.2.9.1?lang=bi (last visited Jan. 5, 2022). Ramban is the name commonly used in Hebrew, derived from his initials, of Rabbeinu Moshe ben Nachman, aka Nachmanides. *Id.* Interestingly, Nachmanides was famously forced to defend his faith in a debate before the King of Aragon and was forced into exile for getting the better of the argument—"Stop winning," the Jews of Barcelona told him. *See* Joseph Jacobs et al., *Moses Ben Naḥman Gerondi*, JEWISH ENCYC., https://www.jewishencyclopedia.com/articles/11129-moses-ben-nahman-gerondi (last visited Jan. 5, 2022) (describing Ramban's arguments and subsequent exile from Aragon). An interesting twist on the trial of ideas.

49. The story told of the Vilna Gaon, one of the most exalted of modern Jewish sages, is that he only slept for four 30-minute periods each day. *See, e.g.*, Lawrence Kaplan, *Was the Gaon a Genius?*, TABLET (Apr. 3, 2013), https://www.tabletmag.com/sections/arts-letters/articles/was-the-gaon-a-genius (noting connections between Vilna Gaon's eccentric lifestyle and his genius).

50. Anne Orford draws her distinction from Eve Kosofsky Sedgwick, *Paranoid Reading and Reparative Reading: Or, You're So Paranoid: You Probably Think This Essay Is About You*, *in* TOUCHING FEELING 123, at 149–50 (Eve Kosofsky Sedgwick et al., eds. 2002) and elaborates her appeal to "nourishing" readings over paranoid ones in her Borderline Jurisprudence interview. Borderline Jurisprudence, *supra* note 20, at 53:32.

takes some courage. We will be judged. We deserve to be judged. But we still shouldn't have to go it alone."

"A nice way to end."

"More tomorrow?"

"More tomorrow."