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Derring Literarity: The Case of *Negative Comparative Law*

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Abstract, To dare is to risk, and to err is to blunder. I suggest that the neologism “to derr” can helpfully refer to the audacious inscription of deliberately erroneous and therefore fictitious information, which is the literary strategy that I discreetly pursued in my *Negative Comparative Law: A Strong Programme for Weak Thought* (Cambridge: Cambridge University Press, 2022). In this way, I sought to enhance the literarity and the correlative depositivization of the comparative enterprise in law. This essay probes this initiative and explains how it must withstand disqualification as mere whimsy.

Keywords, comparative law, legal theory, critique, literarity, negative dialectics

“Imperfections, too, have their means to recommend themselves”.
–Montaigne¹

In reaction to the epistemological endarkenment tenaciously afflicting the orthodoxy and the orthopraxy of comparative law, I have sought to articulate a contrarian theory and practice that I eventually named “negative comparative law”, an agenda saying no, repeatedly, to the established strategy’s unexamined and unsustainable propensities (the bulk of them readily traceable to German affirmants and their scopious scotomas) and, crucially, saying no to the very possibility of an identity between word and world, between what the comparatist asserts about foreign law and foreign law itself – the shibboleths of representation, objectivity, truth, and subjectivity (or agentivity) notwithstanding.² After two articles,³ I produced a monograph, *Negative Comparative Law: A Strong Programme for Weak Thought* (NCL), which Cambridge University Press released on 9 June 2022.⁴

Comparative law is a misnomered field that advances a jurisdictional claim over the inclusion of foreign law within a given research purview. This discipline embraces situations where, for whatever reason, a jurist is purporting to make

sense of foreign law – to make foreign law make sense – and indeed to assign a measure of normativity to foreignness, evidently not as binding law but as persuasive authority. Now, one of the many formulations available to me to articulate the tenor of the epistemic differend that separates me from mainstream comparatists-at-law is to claim how I regard the comparatist's account of foreign law as structurally partaking of literarity, such characterization proving anathema to the hegemonic model according to whose obsidional obsessions the comparative report must (and can) feature “scientific exactitude and objectivity”,⁵ the parallel being expressly drawn with “physics”, “molecular biology”, and “geology”.⁶ In particular, descriptions of foreign law must (and can) deploy “neutral” concepts.⁷ They must (and can) unfold “above all without critical evaluation”,⁸ as befits “the pure and at the outset purposeless research”.⁹ I dispute the epistemic investment in protocols like scientificity, objectivity, neutrality, purity, and a comparison devoid of a “purpose-calibrated view” of foreign law.¹⁰ Not only are these epistemic ambitions assuredly unachievable, but they are thoroughly undesirable because of the dehumanization that they herald even as comparative law, like law *tout court*, must remain a profoundly humanist endeavour.

My commitment to literarity – to the comparative record inevitably standing as narrative inscription – warrants further precision. Before all else, what is literarity? Given that there is no literary essence,¹¹ that literarity sits on a ridge where (personal) intention and (communal) reception intersect,¹² there are bound to exist as many definitions as there are definers, an indeterminacy that arguably entails the ultimate undefinability of the term. I shall therefore confine myself to the definitional “meremost minimum”,¹³ to the “[u]nnullable least”.¹⁴ In terms of this Beckettian irreduction, I more than somewhat serenely defer to John Guillory, who observes that “[t]he domain of what is called ‘literature’ has steadily contracted over the centuries”.¹⁵ One is nowadays limited to “genres of writing” embracing “notions of the ‘imaginative’ or the ‘fictional’”.¹⁶ It was not always thus, and Guillory recalls an era when Isaac Newton’s writing was literature for his contemporaries because a text did not then need to be a work of literature in order to exhibit “literarity”.¹⁷ As regards the contemporary configuration, though, the following postulate holds: no literarity without fiction.¹⁸

The meaning of “fiction” ranges widely. Perhaps the two most pertinent senses out of the electronic *Oxford English Dictionary*’s rich list are as follows: “proceeding from mere invention” and “concerned with the narration of imaginary events”. Suppose an English comparatist writing a 5,000-word exposition in English on the French law of religious attire at school, a typical comparative-law exercise. To quote the *OED*, how can this comparatist’s text ever consist of “mere invention”? How can it ever be about “the narration of imaginary events”?

Otherwise said, how can the comparative report properly be styled “fictitious” and consequently be considered literary? In order to support my stance – which, again, frontally opposes the dominant view obtaining amongst comparatists-at-law – I shall consider in turn the themes of “invention”, “imaginary events”, and “narration”.

How is the comparatist’s intervention into foreign law an invention of foreign law? Researching foreign law, the comparatist implements an undertaking consisting of two principal motions whose deployment, as the elaboration of the comparison proceeds apace, “distributes its two essential values between the two poles of the constative (to discover or to disclose [...]) and the performative (to produce, to institute, to transform)”,¹⁹ ultimately to feature an “infinitely rapid oscillation” from one to the other, a method-defying intertwinement eventually so tight that the two operational steps prove for all intents and purposes inseparable.²⁰ First, the comparatist finds foreign law in the library (or elsewhere). It is there, in the statutes and judicial decisions, in the textbooks and law reviews. It pre-exists him. It faces him. It is there *before* him – right there, on the shelves (or in the databases that one’s computer can access), it is there in its stubbornly incorrigible existence. Secondly, once the comparatist has the foreign law in front of him, whether in the form of paper or electronic documents, he proceeds to contrive it for reporting purposes. For example, he chooses to emphasize this statutory provision rather than that, he decides to insist on this judgment rather than that, he elects to include this quotation from this law-review article rather than that quotation from that law-review article, the frame thus limned aiming to provide neither too much nor too little information to attain the ambitions at hand. Over time the comparatist flits ever more indiscernibly between the revelation of the foreign law-text and his inscription of it, all the while engaging in a vigorous torsion of irreconcilables, a nondialectical dynamics of the contraries, a double bind, within which, as comparatist-at-law, one is forced to live and which one must therefore acknowledge as what is the case. Observe how the complicated interplay of elicitation/ascription of textual meaning, displaying an enmeshment such as to obviate any creditable argument that the two processes could be meaningfully dissociated, overcomes the traditional Cartesian opposition between object and subject. As the construction of the comparison unfolds ever more spontaneously across constataion and performance, as it moves ever more briskly athwart finding and designing, the idea that a prescriptive list of patly sequential or methodical steps could be devised to account for the interaction featuring foreignness and the comparatist must partake of sheer fantasy.²¹

The verb fittingly capturing the two gestures that I address is “to invent”. Indeed, the comparatist’s intervention is an invention. Yes. Etymologically and historically, “to find” is one meaning of the verb “to invent”, an admittedly

forgotten signification (*in-*, *venire*: to come in or to come to [in the sense of “to fall upon”]; *inventio*: a discovery, a finding [that to which one comes, that on which one “falls upon”]; *inventor*: he who comes to something, who discovers, who finds, he who “falls upon” something) – and, according to Julian Wolfreys, “[a] sense [...] far more radical than our more conventional use”.²² “To invent” is therefore “to find”, thus the reputed finding of the Holy Cross by Saint Helena, mother of Emperor Constantine, in 326 CE, an occurrence known to Christians as the “Invention of the Holy Cross” (“*Inventio Sancta Crucis*”).²³ For its part, Roman law featured a doctrine of “*thesauri inventio*”, or treasure trove, whereby if someone found something on one’s land, the trove went to the finder; however, if the trove was found on the land of another, half went to the finder and half to the landowner. (According to the French *Code du patrimoine* at article L541–3, when an archaeological discovery generates revenue the earner must indemnify the “*inventeur*”/“*inventor*” or arrange for a sharing of the profits.) But the verb “to invent” carries a second meaning and, in a more familiar key, “to invent” is “to create” (as in “to invent gunpowder” or “to invent the iPad”). Here, “invention [...] produces what [...] was certainly not to be found there but is still not created, in the strong sense of the word, only assembled starting with a stock of existing and available elements, within a given configuration”.²⁴ While the comparatist, out of fidelity to the foreign law-text, accounts for the words that he finds, there, he inevitably proceeds in an interpretive or speculative key, that is, he enacts his interpretive or speculative resolutions drawing on his sense-making resources – on his prejudicial fore-structure or enculturation – not least because of the surfeit of available meaning that the foreign law-text carries, a priming situation forcing the comparison into a prioritization of the information that it wishes to convey about the text (and a simultaneous identification of the information that it prefers to exclude).

Otherwise said, the ascription of interpretive salience must reveal that every understanding is interested and that “[t]o understand a topic involves knowing how to wield one’s commitments to further one’s epistemic ends”.²⁵ Because all understanding, no matter how formalized, relies on personal (and encultured) commitments,²⁶ it follows that understanding a text involves an interjection in the sense of an operation or an activity, which implies that “[u]nderstanding is not mirroring”²⁷ – and, further, that “failures of mirroring need not be failures of understanding”.²⁸ (As he interprets foreign law out of his prejudicial fore-structure or enculturation, the comparatist is inevitably introducing autobiographical elements into his reading of foreignness that are inextricably woven into the foreign law that he is re-presenting and that, given their primordality, cannot be dissociated from that foreign-law-as-re-presented. Even as the positivist foray into foreign law earnestly wants to conceal its ties to comparatists’ lives, the epistemic fact of the matter is that as he researches foreign law, as he assembles the details that

he has harvested into a new formulation, the authorial self textualizes itself: it inscribes itself – it writes itself – into the foreign law-text, it disseminates itself throughout the text and therefore into the foreign-law-as-re-presented, if often in barely discernible ways although, I maintain, the orientational features of the self's intervention, as they structurally issue from the place of enunciation, carry effects that are in principle ultimately disclosable. *Selfness haunts foreignness, the very being of foreignness*: the hauntological pertains to the ontological. To deploy a salient example, consider the comparatist's linguistic or cultural proficiency, which cannot leave foreign law intact, that is, untouched. And the autobiographical extends to personality traits such as perfunctoriness or meticulousity, impatience or tenacity, reserve or assurance. Affect effects foreignness. Yes.)

To be sure, the comparatist-at-law is unable to frame his account irrespective of the law-text in front of him, there. And he cannot deliberately transgress it. As a matter of justice, he owes fidelity to the text: there is the law of the text (and of the law-text), its injunction, so that “the reading [...] cannot legitimately transgress the text towards something other than itself”.²⁹ There is thus the force of the text, its retortion, its resistance to epistemic subsumption, its preponderance: *there is what the law-text wants*. For the comparatist, there ensues an ineluctable submission, a being-made-hostage to the materiality of the law-text (meaning must contend with *these* words, there) that prevents the text from coming under the totalizing epistemology of the self. Along the way, this semantic recalcitrance saves the comparatist from connecting only and endlessly with his own thought, which would then become, pointlessly, the exclusive focus of his theorization. And the materiality of the law-text and the bounded understanding that such materiality generates, the textual economy of the text, thus acts as a modulator of interpretation inasmuch as it preserves the comparatist from uncreditably asserting of the French statute on religious attire at school that it concerns, for instance, ratemaking in international air transport.³⁰ In effect, what the comparatist names in his report “The English Law of X” or “The Brazilian Law of Y” is what he himself elucidates and inscribes, in words that he himself chooses out of his language and through sentences that he himself crafts, having garnered information from his selection out of the published documentation that he has had available to him, before him, in the time at his disposal – his inevitably partial appreciation of the amassed material and his understanding, inescapably different from the text itself (whatever this expression may actually mean) and from other possible understandings thereof,³¹ arising out of the passages that he has elected to analyze and possibly quote (instead of others). I find particularly insightful Derrida's formulation of the matter to the effect that not only is interpretation a performance of the (comparing) self, but that the singularity of the foreign law-text cannot be registered by way of the supposedly unmediated insights assumed by Cartesian intuition (and must not be):

My law, the one to which I try to surrender or to respond, is *the text of the other*, its very singularity, its idiom, its appeal that precedes me. But I can only respond to it in a responsible way [...] by putting into play, and into pledge, my singularity, by signing, with another signature.³²

“Invention” therefore encapsulates, economically and optimally, the complexity attendant upon comparative research.³³ It allows one to move beyond Geertzian, Ryle-inspired thick description – “description” being an epistemic impostor that rests on the credulous trust in the metaphysical division between depiction and commentary – towards the idea of an (enactive) thick *construction*.³⁴ In effect, one must therefore revisit the meaning of “invention” and enhance its contemporary interpretive yield so that one appreciates how the comparatist’s intervention is properly speaking an invention, so that one accepts the statement “the comparatist invents foreign law” therefore to be making very good sense indeed.³⁵ The comparatist does not describe foreign law and cannot describe foreign law. He *invents* it. Invention? The comparatist *inventing* foreign law? Precisely. Yes. *The comparative is comparative*.

How can research into foreign law involve an “imaginary even[t]”, which is the second *OED* sense whereby the comparative endeavour would entail fiction? I contend that the foreign within “foreign law” is structurally *selfed*. In point of fact, foreignness escapes the comparatist’s gaze very much in the way Eurydice does Orpheus’s: the moment the comparatist considers foreign law, it hurriedly disappears from his view *as foreign law*. The foreign thus lies beyond the comparatist’s continued perception, an epistemic predicament that is unsurmountable. It follows that whatever the comparatist styles “foreign law” in his account cannot be *foreign* law. Instead, since “the link between [the comparatist’s] words and the [foreign] world is not direct”,³⁶ “foreign law” must be foreign law *sans* foreignness – a configuration that demands to be carefully distinguished analytically from foreign law *simpliciter*. What is epistemologically possible, and all that is epistemologically achievable, is for the comparatist to apprehend and to inscribe *his* understanding of foreign law, that is, ultimately, *his* sense of foreign law or, to frame the matter economically, *his* foreign law. *Ex hypothesi*, though, the comparatist’s foreign law, since it is *his*, cannot be *foreign* law: the self cannot be the other.³⁷ At best, the self can only *imagine* what it is like for the other to be the other.

For the comparing mind to apply itself to foreign law, it must cross the distance that separates it from foreignness. As a preliminary to any interpretation of foreign law, the comparing mind must make contact or touch base with the foreign. This connection, even if most fleeting, must have the effect, however, of

immediately triggering the foreign's displacement to the comparing mind's sphere of realization, an epistemic "comfort zone" that is the only location where the comparing mind can ever fathom anything and make sense of anything.³⁸ In other words, a threshold thought-motion must be for the comparing mind to bring foreign law within its epistemic compass, which is to say that it requires to tame the foreign's alienation (even as it primordially recognizes and respects foreign law's otherness and seeks to do justice to foreignness in its inscribed work). Note how the de-alienation or domestication process that I discuss is reflexively activated forthwith as the comparing mind adverts to the foreign law before it. At the very moment at which the comparing mind thus attends to foreign law, its epistemic heeding has foreignness cross, if insensibly, within its epistemic catchment area. However, as the comparing mind proceeds to array the foreign so that foreignness can stand as the focus of its discourse (and possibly find itself at the mercy of its discursive ideology or ignorance), foreign law's passage within its epistemic grasp – "the inevitab[le] [...] analogical remapping"³⁹ – must entail an instantaneous shift to the hither side of foreignness, which implies that for the comparing mind the foreign law has *eo ipso* become but erstwhile foreign law. If you will, so that foreign law could become interpretively accessible to the comparing mind, "the act of comparing [did] something *to* the objec[t] compared and alter[ed] [it] in the process".⁴⁰ It ensues that the comparing mind will "never really [be] in a position to compare what is interpreted and represented before and after the difference that is *made* by [its] interpreting and representing".⁴¹ Whatever it accomplishes, the comparing mind's reprise can only narrate the foreign law-text after foreignness has entered the mind's epistemic zone, which means that the foreign law that the comparing mind is specifying is, from its standpoint, no longer foreign: it then becomes "impossible to distinguish the object of study [...] from the imaginative and discursive organizing patterns on the part of the comparat[ist]".⁴²

As it accedes comparative discursivity, as it proceeds to the comparing mind's language, foreign law must necessarily irrupt in the self or through the self that has gone towards it. In an important part, this is so because the language in which foreign law emerges in the act of re-presentation is that of the self – not in the sense in which it would be owned by the self, but in the way in which it is appropriated by the self as an extension of selfness. Since foreign law is rehearsed, and can only be rehearsed, in the discourse that the self employs as a means of self-expression, foreignness is necessarily subordinated to this particular projection of selfness. And any ethically inflected discourse regarding foreign law must acknowledge the fact that as foreign law is expressed in the self's language, this language, no matter how hospitable it wishes to be, cannot preserve foreignness impeccably: absolute or pure hospitality can never materialize.⁴³ Even while it purports to grant the utmost recognition to foreign law and to

show the utmost respect for foreign law, the self's language, as it brings foreignness into its epistemic ascendancy, enacts the very experience of unrecognizability and disrespect. The self-projection necessarily informing the study of foreign law therefore ensures that whatever the comparing mind presents as "foreign law" is, in effect, its own presentation, in its own language, inevitably different from whatever presentation may have come before where the foreign dwells – a re-presentation, an iteration, a neo-graphism, a structurally singular reprise that can, in fact, more aptly be envisaged as an *invention*.

In sum, the comparing mind is not reporting on A, but on A', that is, on what A has immediately or always-already morphed into from the comparatist's cognitive stance. For instance, the French comparing mind is not plainly reporting on English law's "contract", but on what it can only (and complicatedly) understand of English law's "contract" through the filter of the French word/concept "contrat". However, to say that the other law exists in the self's language must mean that, once it has moved across languages, the other law exists – and is doomed to exist – in distorted discursive form. To use the French "contrat" to discuss, in French, the English "contract" is indeed to assimilate, to appropriate, to import, to arraign, to indigenize, to domesticate, to subsume, and therefore to distort English law, even if the "distortion is experientially undetectable within the received framework of interpretation since [...] [this framework] is capable of accommodating any evidence, textual or otherwise, within itself".⁴⁴ It is to "yok[e] [foreign law] by force into a frame of reference alien to [it]",⁴⁵ to *subjugate* or to *seize* it. The fact is that even as the word "contrat" makes possible the passage of "contract" from (foreign) grammatical structure to (local) meaning, it also, at once, always-already, makes it impossible for this crossing to take place in a way that is epistemologically reliable or stable vis-à-vis the source language. Indeed, "[b]ehind the seeming generosity of comparison, there always lurks the aggression of a thesis": some form of epistemic violence is structurally under perpetration, unavoidably so.⁴⁶ No projection of empathy, no matter how substantial – irrespective of how much the self is willing to be rendered precarious and fragile by allowing the foreign-in-the-law to sit in judgement of selfness, regardless of how much the self is willing to be *compearing* – can allow for a strictly foreign-oriented thinking. Even when the self is attempting to think *as if* it were the foreign, selfhood's self-interest assumes ultimate precedence over foreignness.

Selfness, then, must be seen to be sutured, in effect seamlessly, to whatever foreign law the comparatist generates. In the end, foreign law simply cannot be weaned away from the supremacy of the self. No law-text can exist as foreign law *stricto sensu* for the comparing mind inasmuch as from the time that thought can make any sense of foreignness, that sense is always-already *its* sense, the comparing mind's sense – no matter how disposed the mind is to abandon itself to the experience of otherness, irrespective of the strength of its perceptual faith

also, and indeed regardless of the quality of its insights. I repeat: as soon as the comparing mind even begins to attempt to make sense of the foreign law-text, that text can no longer be foreign to it. The loss is real, for “it is precisely the alien character of a foreign way of thinking and belief system that constitutes its value and relevance”.⁴⁷

Observe that the comparatist’s uncircumventable deforeignization manifests itself at two stages so that it bookends his research into foreign law. Anticipatorily, as he approaches foreign law, the comparatist must resort to his categories, conceptions, and words in order to make his epistemic way. Thus, as the US lawyer comes to French judicial opinions, he inevitably, if perhaps unwittingly, draws on his US legal prejudicial fore-structure or enculturation (what is a court rather than a legislative assembly, what is a judge rather than a priest, what is a judgment rather than a poem). And at the end of the investigation, the comparatist must mobilize his categories, conceptions, and words once more – still the only categories, conceptions, and words that he has at his epistemic disposal – so as to be able to write about foreign law. In other terms, one can say that no inscription of any research output as regards foreign law can be divorced from a self-performance on the part of its inscriber,⁴⁸ which includes at a primordial level the introjection, deliberate or not, of a libidinal force into the process of intervention within foreignness that the comparatist is spearheading. Again, it must follow that “the knowledge [out of foreignness] always has something of self-knowledge about it”.⁴⁹ Note that the integration between foreign law and the comparatist’s self runs deeper than co-extension, which assumes separability, measurability, divisibility, and identifiability. It is not that selfhood and texthood parallel or succeed each other, but that they tessellate each other, that they mingle: there advenes an *enlacement*. There thus takes place a “polimorphic” rather than a “mimeomorphic” understanding of foreignness (that is, an understanding of foreign law responding to the interpreter’s circumstances instead of one mimicking foreign law).⁵⁰

The practical implications attendant upon the theoretical insight that I defend are significant (and call into question basic assumptions long received and long unexamined within the field of comparative law): no comparatist can write about *foreign* law, ever, and no comparative account can feature *foreign* law, ever. The comparing mind simply cannot salvage a Cartesian *clara et distincta perceptio* of the law-text’s foreignness. It is, perforce, thinking and writing about something other than *that*. While texthood and selfhood are notionally identifiable as two discrete entities, there must be an ineliminable trace of selfhood in every indication of texthood (hence, no doubt, pseudonyms).⁵¹ Otherwise said, foreign law, for the comparatist, as the text of the comparatist, can only feature an imaginal presence – comparative law thus not concerning foreign law so much as what is being evinced of foreign law by the comparatist. (Observe that the

persistence of the self, the irreducibility of the self's presence within the comparatist's work on foreign law, must be seen to qualify the critical or emancipatory potential of any foray into foreignness. No investigation of foreign law can therefore be celebrated as the unqualified antidote to parochialism that orthodox comparatists have long claimed to be the case.)

How is the comparatist's report on foreign law a "narration", the third sense in which the comparative enterprise would concern fiction? It is easy to forget that every account – including, then, every comparatist's report on foreign law – is an attempt at communication. And while the comparatist cannot administer his readership's reaction, he typically seeks to generate an endorsement of the framework of intelligibility that he has imposed on foreign law in order to ascribe meaning to it and that he has subsequently deployed in his written exposition. Indeed, the drive to adhesion is programmed into any writing on foreign law, which means that even a text presented as a strictly descriptive statement does not eschew rhetorical stratagems. Even the most purportedly mimetic statement on foreign law effectively aims to orient, to guide, to entreat, to influence, *to persuade* – hence the unfurling of words variously admonishing, cajoling, advising, requesting, or warning the reader. Whether considered or unconsidered, every comparative text is constructed so as to meet with a favourable reception – hence the selection of this foreign information rather than that, because of its perceived pertinency, and the adoption of this presentation of the information rather than that, by reference to its assumed propensity towards the optimization of readerly conviction. To be sure, the determinations structuring the gathering of information and its subsequent textual staging must relate to the comparatist's prejudicial fore-structure or enculturation, specifically to his appreciation of what array of references, quotations, and explanations – what details, clues, or connections – must be prioritized (in contrast to those that demand to be marginalized or avoided) in order to constitute a sound argument bearing in mind that the merit of an assertion simply cannot have to do with objectivity or truth.

In other words, there is a narrative inevitability to the comparatist's endeavour as he strives to make sense of foreign law.⁵² Indeed, Robert Cover memorably remarks on "the indispensability of narrative to the quest for meaning".⁵³ Narrative as a form of cognition and speech (the research and the report on the research) is "the instrument [that the comparatist] use[s] when [...] putting together [...] particulars into a meaningful sequence".⁵⁴ And such storification being hardwired into every explanatory form, the comparatist-at-law can properly be regarded as a species of *Homo narrans*. Crucially, I am not claiming that the comparatist's report is only a story, which would be excessive, but I hold that his account is storied and necessarily so and in a way that justifies the narrative label, which cannot be confined to Alice in Wonderland or to *L'Etranger*. Now,

orthodox comparative law's complacent blindness to its (unsettling) narrative fabric – to the fact that foreign law can only live on storiedly – changes nothing to the ostensivity of the phenomenon. Since narrative is a “cognitive instrument”,⁵⁵ the challenge remains for the comparatist to pursue his narrating epistemology with the utmost probity.

Epistemic vigilance therefore suggests the following insight: comparative law deals in fiction, since at the very least the comparatist writing foreign law is narrating the invention of what he imagines.

To return to *NCL*, I was keen to emphasize the contrast between my brand of indisciplined or irreverent comparativism and the indigent epistemological peddling that animates the orthodoxy insistently commanding the field of comparative law.⁵⁶ While it has been observed that I “irritat[e]” the mainstream,⁵⁷ my ambition as I wrote *NCL* was not so much to draw an incensed reaction from the Gatekeepers (*épater le bourgeois* never appealed to me), but to magnify the stark irreconcilability between the established model and my own, to assert the difference and to proclaim my difference, my firm refusal to play along.⁵⁸ I simply cannot accept that comparative law would be governed “*like that*, by them, in the name of these principles, with a view to such objectives and by the means of such processes” – no, “not like that, not for that, not by them”.⁵⁹ It occurred to me that one specific strategy I could mobilize in order to foreground this contrast and resolutely promote “the art of not being governed like that and at that price” was precisely to heighten the literarity of my rebuttal, of what I style my “strong programme”.⁶⁰ Indeed, for comparative law's entrenched positivists, for the field's oh-so-confident doxa, the literary only ever makes an appearance on the black-letter screen as a named and identified other, in effect as a devalued other (within positivism generally and within comparative law in particular, there prevails a hierarchical arrangement that is structurally biased so that law operates uncontestably as the privileged disciplinary term).⁶¹ It is not, of course, that I was willing to concede the scientificity of German comparative-law scholarship. Indeed, it is obvious to me that Konrad Zweigert and Hein Kötz's textbook or Uwe Kischel's treatise implicate literarity as much as *NCL* does. Even for German doctrinalists or dogmatists, there is no description without interpretation and no interpretation without fictionality, that is, without literarity. Like me, these comparatists *make* sense of foreign law. In this regard, I am reminded of Derrida's challenge to Claude Lévi-Strauss.

In his 1962 book, *La Pensée sauvage*, Lévi-Strauss distinguishes between two modes of thought. He thus designates the *bricoleur* – he who operates with “the means at hand”,⁶² for whom “the composition of the assemblage [...] is the contingent result of all the occasions that presented themselves” to him.⁶³ Of course, despite these “disparate” elements,⁶⁴ the *bricoleur* must accept that “[h]is

possibilities always remain limited by the particular history of each part and by what subsists in it that is predetermined due to [its] original use”.⁶⁵ If you will, there can be no *bricolage* that is not mediated by the history of its own genesis. In other words, “the elements that the *bricoleur* collects and uses are ‘preconstrained’”.⁶⁶ By contrast, Lévi-Strauss points to the “engineer” or scientist who,⁶⁷ through the development of concepts that would be “completely transparent to reality”,⁶⁸ pursues truth and does so according to a method. The engineer will not satisfy himself with “odds and ends”.⁶⁹ Stressing the futility of any attempt to excise *bricolage*, rejecting the parsing of a complex reality into a simplistic either/or distinction, a false binary, Derrida forcefully holds that Lévi-Strauss’s scientist is “a myth”.⁷⁰ He adds: “The idea of the engineer who would have broken with all *bricolage* is [...] a theological idea”,⁷¹ a transcendental conceit. According to Derrida, it is imperative “that one ceases to believe in such an engineer [as Lévi-Strauss’s]”,⁷² that one accepts how “the engineer or the scientist are also species of *bricoleurs*”,⁷³ and that one therefore begins to “admit that every finite discourse is compelled to a certain *bricolage*”.⁷⁴ Derrida is emphatic: “[O]ne must say that every discourse is *bricoleur*”.⁷⁵ There is no reason to believe that comparative law should escape this conclusion. The comparatist-at-law is a *bricoleur*, too. Now, substitute the word “*littérateur*” for “*bricoleur*” and reach a converging conclusion: every comparatist-at-law is a *littérateur* – and every German comparatist *auch*.

To augment the factor of literarity informing my contrarian work – and thereby draw the lines between *them* and me with enhanced assertiveness – I resolved to adopt a bold and admittedly idiosyncratic move, what can presumably qualify as a radical literary practice: I would artificially exacerbate the coefficient of fictionality animating my writing. On the understanding that “[l]iterature is an institution that lives by exposing and criticizing its own limits”,⁷⁶ I decided defiantly and cryptically to harness the following scribacious strategy *buissonnière*: for better or for worse (*one is never sure*), I would deliberately inscribe errors into my typescript, preserve them at proof stage, and allow them to make their merry way to press *telles quelles*. Needless to mention, I was fully aware, even as I was assuming in earnest the role of “regulator of fiction” that Michel Foucault ascribes to the author,⁷⁷ that the play, the *serious* play,⁷⁸ whereby I moved the rhetorical cursor away from purportedly referential language towards the committedly fictional – my prepensed faults are numerous and range widely (and wildly), each single one of them constituting a supplementary ascription of literarity to my argument – was audaciously slating itself for outright discredit by comparative law’s epistemic powers that be revelling in “the desiccated linearity of scriptural reason”.⁷⁹ To dare to err (to derr, then) is no doubt an unusual way to register an epistemic claim, and it was not difficult to surmise that my panoplied stratagem – literature as liberature, so to speak –

was fated to sheg positivist haterade, my sprawling machination destined to be derided and derisively resignified by my antagonists as the nidgetty and alogical symptom of a retarded adolescent rebellion, a polrumptious instance of deferred youthful leftism applying itself to resist the behavioural norms that the ruling caste of comparatists-at-law ineluctably brands as self-evident truths (unless the entire machination should be cast along the lines of *der Ungeist* and his unmoored vandalism ...). *Foutre tant pis!*⁸⁰

By misspelling English or German words, by missplitting a Portuguese term, I was writing fictitious English, German, or Portuguese. By misquoting or mistranslating a source, I was inscribing a fictitious statement. By misreferencing a work, I was enunciating fictitious bibliographical information. Through my deformation, my dislocation, my deflection, my deviation, I was determinedly contesting lazy and shallow positivist expectations, not least as they channel the wifty tropes of objectivity or truth, of authoritativeness or exactitude. Let me repeat: my abiding wager was to affirm yet again *the play of the comparison* – and to allow my ingenuity to operate extensively and intensively. I later learned – some time after *NCL* had been published – that the likes of Ezra Pound, James Joyce, Samuel Beckett, and Salman Rushdie had also advocated for an aesthetic of error (I have been assured that Shakespeare did too) – evidently not my writerly league, but excellent company in support of my axiologically encumbered resistance motion nonetheless, of my *trouvaille*.⁸¹

Even as they exhibit vulnerability, errata attest to an assertion of authorial sovereignty in the face of various systems purporting to constrain one (including the systems that one has built for oneself over the many years and into which one has effectively ensnared oneself). “Personne ne fait ça” (“No one does that”) exclaimed a confident to whom I revealed my approach. In advance of empirical study, this assessment is in all likelihood confirmable, which means that I would be standing as an exception within comparative law in my self-reflexive exploration and expression of a radically subversive literary practice, a calculated and productive exercise in unrepression – in experimentation too – as I sought to conceive my disruptive inscriptions and make them visible through projection into ostensivity.⁸²

What, then, did I do? I hasten to indicate that the scattering of my miswriting, my destabilization of textuality, did not incise anything that would destroy the coherence of the text or impede its legibility. I remained well within the (ultimately narrow) horizon of the publishable within comparative law. I did not attack the bookness of the book. In characteristically negative mood – long of the view that “[r]ien ne me sera jamais assez contre”⁸³ – I sought to combat the tyranny of three systems and of a fourth one also. To maintain that I proceeded resolutely would be an exaggeration. Never before had I deliberately left errors

in a typescript, and I found that withstanding the instinctual urge to correct – I am nothing if not a perfectionist – proved exceedingly difficult. While I did ultimately exhibit the firmness of mind that allowed the errors to stay, I cannot claim that I acted serenely. And once *NCL* had been released in the late spring of 2022, I initially found it awkward to bring myself to explain my decision even to close friends, and I heard myself more than once circling around the issue out of embarrassment. Norms do weigh on one, not least such an age-old prescription as the flawlessness of the printed text – an excellent instance of Heideggerian “Geworfenheit”. So, even as I strived to move further away from positivism’s grim grooves, I willingly confess to some lingering indecision, perhaps of the (Duchampian) infrathin sort.

The first system – the first structure, the first set of solid rules – that I elected to challenge is grammatical codification, whether in English, German, or Portuguese. Grammar, I want to suggest, can legitimately be regarded as an oppressive order that editors and publishers readily seek to enforce notwithstanding authorial desire for liberty: one must write English, German, or Portuguese *as it is done*. Over against such manifestation of “thereness”, I opted to retain the entitlement to choose the path of “agrammaticality”.⁸⁴ Quite apart from repeatedly coining neologisms that suited what I thought I wanted to express – in effect, then, deploying inexistent or fictitious words – I occasionally and purposefully deviated from the grammatical edict, for example, through misspelling or missyllabizing (!). Otherwise said, I willingly inserted discontinuities or hiatuses in my typescript so as to rebuff the seamlessness that System, Structure, Rules, and Order – relayed by a detailed and hermetic set of editorial instructions meant to corral any and all manifestations of singularity – forcefully sought to prescribe.

If anything, the second system that I decided to oppose applies even more compellingly and concedes even less deflective leeway. I refer to the regimen of citation that – whether as regards abbreviature, punctuation, capitalization, italicization, signalization, or spaciousity – commands, most intransigently so, unthinkingly to comply with the appointed model. In striking fashion, the prevailing template – which, as in the case of the “Bluebook”, can run to hundreds of pages replete with stupefyingly pernicky injunctions as technical as they are arcane⁸⁵ – throws one into a pattern that one must slavishly implement lest one’s references be castigated as incoherent and one be presumed to have been satisfied with the sloppy inscription of one’s research (if not with sloppy research altogether). In the fervent urge to display blind conformity to the applicable framework, the fact that the contents of the prescribed configuration are thoroughly contingent (no italic character or em dash is *necessary*) tends to be rapidly overlooked. Once more, I perturbed the pressure wrought in the name of citational prepollency by interjecting a small array of derogations with a view to

asserting my dissentient authorial voice even as I realized that I had to project the image of an author obediently operating within the limits of flood-lit and dog-patrolled formalistic and formulistic boundaries.

The third system that I wanted to dispute concerns the typesetting. Yet again, the by-word is obedient uniformity *quoiqu'il en coûte*. For my part, I thought it suitable to permit some disunity to inform the work. Accordingly, I allowed a handful of typesetting “howlers” to survive *in extremis*.

But there is a fourth system that I felt warranted defiance. Arguably, this fourth model – I refer to my own confirmed writerly procedures – demanded to be questioned even more resolutely than the other three. In particular, I felt it important to undermine a key commitment that suffuses my writing and to which my devotion has long been reflexive (that is, without reflexion). Thus, I took the view that an exercise in the relativization of my absolute allegiance to non-repetitive wording deserved to partake of *NCL*. In the event, this “travail de soi sur soi” proved the most difficult task. To stare at a repetition within two consecutive paragraphs or pages and to allow this restatement to live on, to go to press unemended, proved excruciatingly painful – which is, of course, precisely why such contrapuntal endeavour was so timely. (In effect, I see a direct correlation between the intensity of my felt torment and the indispensability of my initiative.)

In these four ways, I said no to four orthodoxies, not least to a self-developed peremptoriness, thus credibilizing further the overarching theme of contestation inspiring my book – which is the sense in which my four ruptures also register an epistemic continuity with my renegade negative comparatism. But my destabilization tactics carry two further consequences at least, both of which I welcome. First, the presence of these hiatuses – there are dozens of them, more or less adroit – is liable to interrupt the readerly monotony that might otherwise be threatening to install itself in a text running to nearly 500 pages. My convulsions keep the argument vital and sustain the highest level of alertness in my reader. Secondly, through my “pensive and suspensive interruption[s]”,⁸⁶ by way of my intempestive intrusions into the Realm of Propriety, I instil an advantageous measure of indeterminacy within the reading process. Any reader coming across any error – whether of the grammatical, citational, typographical, or repetitional ilk – will henceforth find himself mired in undecidability: is the incongruous inscription deliberate or not? Paradoxically, then, even as I challenged control I was cultivating the illusion that I could maintain my typescript under control: I was exiting *Ordnung* so as to enter into my ordered disorder. Thus did I manage my terror of the error, even as I appreciate that I must accept the statistical incompressibility of imperfection.

Have I taken agitation to silly extremes, especially in the later texts that appear to disclose more dissentience than the earlier ones (but who, except me,

knows the chronology I actually followed ...)? Have I exaggerated the angling or diffraction that I must inescapably bring to bear upon foreign law as I engage in my comparative work (*my comparative work ...*)?⁸⁷ I can fully rely on my detractors to contend that my norm-breaking, my production of deviance, stands as a form of moral dereliction bereft of any pedagogical credit, devoid of any assumption of responsibility whatsoever – a caprice utterly lacking in scholarly interest. But my refusal to bind myself, my rebuff, is neither a vacuous posture nor an empty pose. And it is not abdication of duty or abrogation of responsibility either. Rather, the fact that the exigent meanderings of my mind are at odds with the habitual standards of academic communalism befits a difficult, non-conclusive critical inquiry into the (im)possibility of comparison. Here, the counter-intuitive allies with the critical; indeed, it re-emphasizes critique. Accordingly, I claim my indisciplined and unmethodical ways to be contributing, if unconventionally (and unpretentiously), to the power to think and to write differently. Yes. My experiment in the epistemology of fallacy, my exploration of the aesthetic of error, deserved making, and I remain grateful that I could secure the complicitous assistance I needed for these supplemental forays into negativity to materialize. (While relevant correspondence is on file, I cannot make these communications available, not even in a redacted format. To sustain the blur: another anti-positivist tactic!) A further form of abetment must now come from my readership. (Quaere: do I owe anyone an apology?)

Minute acts of resistance, modest quotidian derogations from what are seemingly inexorable and effectively stultifying authoritarianisms (including, I dare say, a self-authoritarianism) deserve better than an indolent and glib positivist dismissal as so many aberrations.⁸⁸ Think authenticity or integrity, think contrariness or intrepidity, too. As long as there are stirrings still,⁸⁹ what *they* would brand “cacodoxy” matters and indeed remains of the utmost significance. Yes. Nonetheless, as Albert Camus observed, “[a]t the end of every liberty, there is a verdict”.⁹⁰ What, then, will be the verdict passed upon my self-accredited licence? What will my reader think of my deed as I expose my manufactured *manufatures* in the set arrays of grammar, reference, and citation to his gaze and to his judgment? Although I cannot ultimately bring myself to be concerned, I am curious. *On verra bien.*

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1. Michel de Montaigne, *Les Essais*, ed. Jean Balsamo, Michel Magnien, and Catherine Magnien-Simonin (Paris: Gallimard, 2007 [1595†]), bk III, ch 9, 1009 [“Les imperfections mesme ont leur moyen de se recommander”].
2. I draw on Theodor Adorno’s negative dialectics, which thoroughly informs my comparative epistemology. Adorno defends the idea that no thing or entity can be equalled either by way of words or through the mobilization of a concept, that every thing or entity is other than what it is said or conceptualized to be. Adorno refers to an “unreconciled condition” (“unversöhnte[r] Stand”) between world and word: Theodor W. Adorno, *Negative Dialektik* (Frankfurt: Suhrkamp, 1966), 41. Cf. Samuel Beckett, “Closed Place” in *Fizzles in Texts for Nothing and Other Short Prose, 1950-1976*, ed. Mark Nixon (London: Faber & Faber, 2010 [1976]), 147: “[N]o two ever meet”. Adorno’s admiration for Beckett, whom he saw and with whom he corresponded, is well documented. Note that according to Adorno the impossibility of consensuality is not in the least a predicament but rather an opportunity since it allows for the kind of interpretive deepening that disagreement fosters. It ensues that “to keep alive the capacity for experience of the nonidentical” is crucial: Susan Buck-Morss, *The Origin of Negative Dialectics* (New York: Free Press, 1977), 189. See also Jacques Derrida, *Papier machine* (Paris: Galilée, 2001) 306: “The risk of misunderstanding, the wandering of an answer beside the question, there is what must always remain possible [...]. There would be no [...] ethic of discussion otherwise” [“Le risque du malentendu, l’errance d’une réponse à côté de la question, voilà ce qui doit toujours rester possible (...). Il n’y aurait pas (...) d’éthique de la discussion autrement”].
3. Pierre Legrand, “Negative Comparative Law,” *Journal of Comparative Law* 10, no. 2 (2015): 405–54; Pierre Legrand, “Negative Comparative Law and Its Theses,” *Journal of Comparative Law* 16, no. 2 (2021): 641–91.
4. See also Pierre Legrand, *Comparative Law and the Task of Negative Critique* (New York: Routledge, 2023); Pierre Legrand, *The Negative Turn in Comparative Law* (New York: Routledge, 2024).
5. Konrad Zweigert and Hein Kötz, *Einführung in die Rechtsvergleichung*, 3rd ed. (Tübingen: Mohr Siebeck, 1996), 44 [“wissenschaftliche Exaktheit und Objektivität”]. For a further (disciplined) contention emphasizing the need for comparatists-at-law to acquire an “objective comprehending”, see Uwe Kischel, *Rechtsvergleichung* (Munich: C.H. Beck, 2015), 169 [“objektiv nachvollziehen”]. The German verb “nachvollziehen” suggests an apprehension more all-encompassing than the straightforward “Verständnis” (“understanding”).
6. Zweigert and Kötz (note 5), 13 [“Physik”/“Molekularbiologie”/“Geologie”]. In Kischel (note 5), 173, one finds this matter-of-fact assertion: “Comparative law is a part of legal science” [“Die Rechtsvergleichung ist ein Teil der Rechtswissenschaft”].
7. Zweigert and Kötz (note 5), 11 [“neutraler”]. In Kischel (note 5), 99, the author alleges that it

- can be “easy” to form a “neutral standpoint” on such topics as contract law [“einfach”/“neutraler Standpunkt”].
8. Zweigert and Kötz (note 5), 42 [“vor allem ohne kritische Wertung”].
 9. *Ibid.*, 33 [“das reine und zunächst zweckfreie Forschen”].
 10. N.J. Enfield, *Language vs. Reality* (Cambridge, MA: MIT Press, 2022), 2.
 11. E.g., Jacques Derrida (with Derek Attridge), “‘Cette étrange institution qu’on appelle la littérature’,” in *Derrida d’ici, Derrida de là*, ed. Thomas Dutoit and Philippe Romanski (Paris: Galilée, 2009 [1989]), 263: “Literarity is not a natural essence” [“La littérarité n’est pas une essence naturelle”]. The words are Derrida’s. Cf. Andrew Benjamin, *Philosophy’s Literature* (Manchester: Clinamen Press, 2001), 151: “In the place of transcendence, [...] there is the materiality of language”.
 12. See Derrida (note 11), 264.
 13. Samuel Beckett, *Worstward Ho* in *Company/III Seen III Said/Worstward Ho/Stirrings Still*, ed. Dirk Van Hulle (London: Faber & Faber, 2009 [1983]), 82.
 14. *Ibid.*, 95.
 15. John Guillory, *Professing Criticism* (Chicago: University of Chicago Press, 2022), 343.
 16. *Ibid.*
 17. See *Ibid.*, 202n5.
 18. E.g., Peter Lamarque, *The Philosophy of Literature* (Oxford: Blackwell, 2009), 174: “Fictionality is a characteristic feature of literary works”. See also Michel Foucault, *Le Discours philosophique*, ed. Orazio Irrera and Daniele Lorenzini (Paris: Gallimard, 2023 [1966]), 24, where Foucault characterizes literary discourse as “fictive” discourse [“fictif”].
 19. Jacques Derrida, *Psyché*, vol. 1, 2nd ed. (Paris: Galilée, 1998), 23 [“distribue ses deux valeurs essentielles entre les deux pôles du constatif (découvrir ou dévoiler [...]) et du performatif (produire, instituer, transformer)”].
 20. *Ibid.*, 25 [“oscillation infiniment rapide”].
 21. Instead of having anything to do with method, comparative law depends on experience or “flair”. I quote from Jacques Derrida, *De la grammatologie* (Paris: Editions de Minuit, 1967), 233 [“flair”]. See Simone Glanert, “Method?” in *Methods of Comparative Law*, ed. Pier Giuseppe Monateri (Cheltenham, UK: Edward Elgar 2012), 61–81; Günter Frankenberg, “The Innocence of Method – Unveiled: Comparison as an Ethical and Political Act,” *Journal of Comparative Law* 9, no. 2 (2014): 222–58. Cf. T.S. Eliot, “The Perfect Critic,” *Athenæum*, no. 4708 (23 July 1920): 102, 103: “[T]here is no method except to be very intelligent”.
 22. Julian Wolfreys, *Literature, in Theory* (New York: Continuum, 2010), 225.
 23. According to the Roman liturgical rite, this feast used to take place on 3 May until it was abolished by Pope John XXIII in 1960. However, it remains a major moment for the Church of the East, which celebrates it on 13 September.
 24. Derrida (note 19), 35–6 [“l’invention (...) produit ce qui (...) ne se trouvait certes pas là mais n’est pas pour autant créé, au sens fort du mot, seulement agencé à partir d’une réserve d’éléments existants et disponibles, dans une configuration donnée”].
 25. C.Z. Elgin, *True Enough* (Cambridge, MA: MIT Press, 2017), 3.
 26. Is authority wanted? Consider Michael Polanyi, *Personal Knowledge* (Chicago: University of Chicago Press, 2015 [1958]).
 27. Elgin (note 25), 3.
 28. *Ibid.*, 250.
 29. Derrida (note 21), 227 [“(la lecture) ne peut légitimement transgresser le texte vers autre chose que lui”].
 30. Rodolphe Gasché, *The Wild Card of Reading* (Cambridge, MA: Harvard University Press, 1998), 13: “[A] performative act, itself no longer referential[,] [...] can include within itself, as part of itself, an act of reference”. Meanwhile, I accept that “there are no [...] constraints on interpretation that are not themselves interpretive”: Stanley Fish, *Doing What Comes Naturally* (Durham, NC: Duke University Press, 1989), 8. In other words, even the contention that I defend opposing the illimitability of interpretation with a view to excluding perverse ramblings, is itself interpretive.
 31. Cf. Hans-Georg Gadamer, *Wahrheit und Methode*, 5th ed. (Tübingen: Mohr Siebeck, 1986), 302: “It suffices to say that one understands *differently*, when one understands at all” [“Es genügt zu sagen, daß man *anders* versteht, wenn man *überhaupt* versteht”].
 32. Derrida (note 11), 285 [“Ma loi, celle à laquelle j’essaie de me rendre ou de répondre, c’est le *texte de l’autre*, sa singularité même, son idiome, son appel qui me précède. Mais je ne peux y

- répondre de façon responsable (...) qu'en mettant en jeu, et en gage, ma singularité, en signant, d'une autre signature"]. The words are Derrida's.
33. "Invention" is therefore a word that is "suspended undecidably": "[I]t *hesitates perhaps* [...] between *creative* invention, the production of what is not – or was not earlier – and *revelatory* invention, the discovery and unveiling of what *already* is or finds itself to be there": Jacques Derrida, "Le parjure, peut-être," *Etudes françaises* 38, no. 1-2 (2002): 15, 23 ["suspend(u) indécidablement"/"Il *hésite peut-être* (...) entre l'invention *créatrice*, la production de ce qui n'est pas – ou n'était pas auparavant – et l'invention *révélatrice*, la découverte ou le dévoilement de ce qui *déjà* se trouve ou se trouve être là"].
34. I refer to Clifford Geertz, *The Interpretation of Cultures* (New York: Basic Books, 2017 [1973]), 5-11. Geertz discusses Gilbert Ryle.
35. Of course, this development would mean that "one must today reinvent invention": Derrida (note 19), 37 ["il faut aujourd'hui réinventer l'invention"]. Indeed, "one would not say today that Christopher Columbus invented America [...]. [...] [U]sage or the system of certain modern, relatively modern, conventions would prohibit us from speaking of an invention whose object would be an existence as such": Ibid., 41 ["on ne dirait plus aujourd'hui que Christophe Colomb a inventé l'Amérique (...). (...) (L)'usage ou le système de certaines conventions modernes, relativement modernes, nous interdiraient de parler d'une invention dont l'objet serait une existence comme telle"].
36. Enfield (note 10), 35.
37. Crucially, it is precisely because the self cannot be the other that the other can protect itself as other, that it can eschew (colonial) assimilation or (imperial) appropriation at the hands of the self – that it can remain other than the self. This key epistémico-existential advantage arising from the irreducibility of otherness is a leitmotiv in Derrida's work.
38. Cf. I.A. Richards, *Coleridge on Imagination*, 3rd ed. (London: Routledge & Kegan Paul, 1962), 56-7: "[N]othing of which we are in any way conscious is *given* to the mind. Into the simplest seeming 'datum' a constructing, forming activity from the mind has entered".
39. Ming Xie, *Conditions of Comparison* (London: Bloomsbury, 2011), 20.
40. Ibid., 48.
41. Ibid., 33.
42. Ibid., 2.
43. Cf. Jacques Derrida, "Pas d'hospitalité" in *De l'hospitalité*, ed. Anne Dufourmantelle (Paris: Calmann-Lévy, 1997), 71-137. Derrida's text appears on the sequence of *impar* pages.
44. Marina Vitkin, "The 'Fusion of Horizons' on Knowledge and Alterity," *Philosophy & Social Criticism* 21, no. 1 (1995): 57, 75n8.
45. Ibid., 58.
46. R. Radhakrishnan, "Why Compare?" in *Comparison*, ed. Rita Felski and Susan S. Friedman (Baltimore: Johns Hopkins University Press, 2013), 16.
47. Xie (note 39), 43.
48. Cf. Jacques Derrida, *Force de loi* (Paris: Galilée, 1994), 59: "Every constative utterance itself rel[ies] on a performative structure at least implicit" ["Tout énoncé constatif repos(e) lui-même sur une structure performative au moins implicite"].
49. Hans-Georg Gadamer, "Wahrheit in den Geisteswissenschaften" in *Gesammelte Werke*, vol. 2 (Tübingen: Mohr Siebeck, 1986 [1953]), 40 ["Geisteswissenschaftliche Erkenntnis hat immer etwas von Selbsterkenntnis an sich"].
50. Harry Collins, *Tacit and Explicit Knowledge* (Chicago: University of Chicago Press, 2010) 55-6.
51. Cf. Walter Benjamin, "Der Erzähler" in *Gesammelte Schriften*, ed. Rolf Tiedemann and Hermann Schweppenhäuser, vol. 2/2 (Frankfurt: Suhrkamp 1991 [1936]), 447: "Thus sticks to the narration the trace of the narrator as the trace of the potter on the claypot" ["So haftet an der Erzählung die Spur des Erzählenden wie die Spur der Töpferhand an der Tonschale"].
52. Note that foreign law can itself be said to constitute a narrative inasmuch as it exists as the legal story of a given "community". I use quotation marks advisedly. In the end, there are only individuals.
53. Robert M. Cover, "Nomos and Narrative," *Harvard Law Review* 97, no. 1 (1983): 1, 4n3. See also Ibid., 4: "No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning". If one inserts the word "foreign" so as to make the statement

- about "foreign legal institutions or prescriptions", one prompts an enunciation correlating with comparative law's enterprise.
54. Peter Brooks, *Seduced by Story* (New York: New York Review Books, 2022), 17.
 55. Ibid., 52.
 56. It is remarked that Zweigert and Kötz's book has exerted "aggressive" epistemic governance over comparative law since the 1970s: David Kennedy, "New Approaches to Comparative Law: Comparativism and International Governance," *Utah Law Review*, no. 2 (1997): 545, 627n19.
 57. Günther Teubner, "Legal Irritants: Good Faith in British Law or How Unifying Law Ends Up in New Divergences," *Modern Law Review* 61, no. 1 (1998): 11, 14.
 58. I am thinking of what Adorno's aesthetic of negativity names a "Nicht-Mitmachen", a "not-playing-along" or a "non-participation". E.g., Theodor W. Adorno, "Erziehung nach Auschwitz" in *Gesammelte Schriften*, ed. Rolf Tiedemann, vol. 10/2 (Frankfurt: Suhrkamp, 1977 [1966]), 679, where Adorno refers to the "force" ("Kraft") of this oppositional stance.
 59. I quote from the epigraph that I retained in *NCL*, which draws on Foucault: Michel Foucault, "Qu'est-ce que la critique?" in *Qu'est-ce que la critique? – La Culture de soi*, ed. Henri-Paul Fruchaud and Daniele Lorenzini (Paris: Vrin, 2015 [1978]), 37 ["comme cela, par ceux-là, au nom de ces principes-ci, en vue de tels objectifs et par le moyen de tels procédés"/"pas comme ça, pas pour ça, pas par eux"].
 60. Ibid. ["l'art de ne pas être gouverné comme ça et à ce prix"]. I lift the reference to my "strong programme" from the sub-title of *NCL*.
 61. Cf. Jacques Derrida, *Positions* (Paris: Editions de Minuit, 1972), 56–7: "[W]e are not dealing with the peaceful coexistence of a vis-à-vis, but with a violent hierarchy. One of the two terms dominates the other (axiologically, logically, etc.), occupies the upper level" ["(N)ous n'avons pas affaire à la coexistence pacifique d'un vis-à-vis, mais à une hiérarchie violente. Un des deux termes commande l'autre (axiologiquement, logiquement, etc.), occupe la hauteur"].
 62. Claude Lévi-Strauss, *La Pensée sauvage* in *Œuvres*, ed. Vincent Debaene et al. (Paris: Gallimard, 2008 [1962]), 577 ["les moyens du bord"].
 63. Ibid. ["la composition de l'ensemble (...) est le résultat contingent de toutes les occasions qui se sont présentées"].
 64. Ibid., 578 ["hétéroclites"].
 65. Ibid., 579 ["Ses possibilités demeurent toujours limitées par l'histoire particulière de chaque pièce, et par ce qu'il subsiste en elle de prédéterminé, dû à (son) usage originel"].
 66. Ibid. ["les éléments que collectionne et utilise le bricoleur sont 'précontraints'"] (my emphasis).
 67. Ibid. ["ingénieur"].
 68. Ibid., 580 ["intégralement transparent à la réalité"].
 69. Ibid., 582. The expression appears in italicized English in the French text.
 70. Jacques Derrida, *L'Écriture et la différence* (Paris: Editions du Seuil, 1967), 418 ["un mythe"].
 71. Ibid. ["L'idée de l'ingénieur qui aurait rompu avec tout bricolage est (...) une idée théologique"] (my emphasis).
 72. Ibid. ["qu'on cesse de croire à un tel ingénieur"].
 73. Ibid. ["l'ingénieur ou le savant sont aussi des espèces de bricoleurs"] (my emphasis).
 74. Ibid. ["admet(tre) que tout discours fini est astreint à un certain bricolage"] (my emphasis).
 75. Ibid. 418 ["on doit dire que tout discours est bricoleur"] (my emphasis).
 76. Jonathan Culler, *Literary Theory* (Oxford: Oxford University Press, 1997), 40.
 77. Michel Foucault, "Qu'est-ce qu'un auteur?" in *Dits et écrits*, ed. Daniel Defert and François Ewald, vol. 1 (Paris: Gallimard, 1994 [1969]), 811n* ["régulateur de la fiction"].
 78. Indeed, play and seriousness need not be opposites, which is Hans-Georg Gadamer's claim as he observes that "[p]laying has its own [...] seriousness", and as he notes that "seriousness in play lets the play be wholly play": Gadamer (note 31), 107, 108 ["Das Spielen hat einen eigenen (...) Ern(s)t"/"der Ernst beim Spiel läßt das Spiel ganz Spiel sein"]. For an influential argument articulating scholarship as serious play, see Pierre Bourdieu, *Raisons pratiques* (Paris: Editions du Seuil, 1994) 221–36. See also Roland Barthes, *Le Bruissement de la langue* (Paris: Editions du Seuil, 1984), 35, where Barthes remarks that play must not be understood as "distraction", but as "work" ["distraction"/"travail"]. Gadamer, Bourdieu, and Barthes are mobilizing the Renaissance humanist tradition of "serio ludere".

79. Peter Goodrich, *Judicial Uses of Images* (Oxford: Oxford University Press, 2023), 6.
80. I am quoting (if *sans* quotation marks) an expression that belongs to the realm of Beckett's favorite neologisms. See Mathieu Lindon, *Une archive* (Paris: Editions P.O.L, 2023), 73. Lindon is the son of Jérôme Lindon (1925–2001), Beckett's French publisher to whom the playwright was particularly close. As Lindon *fil*s recounts his childhood and teenage years, his autobiography features many reminiscences of Beckett.
81. E.g., Tim Conley, *Joyces Mistakes* (Toronto: University of Toronto Press, 2003); Matthew Creasy, ed., *Errears and Erroribooze: Joyce and Error* (Amsterdam: Rodopi, 2011); Salman Rushdie, "'Errata': or, Unreliable Narration in *Midnight's Children*" in *Imaginary Homelands* (London: Granta, 1991 [1983]), 22–25.
82. Meanwhile, there are many examples of critique of institutional expectations in the literary world. E.g., Annette Gilbert, *Literature's Elsewheres* (Cambridge, MA: MIT Press, 2022).
83. Letter from Samuel Beckett to Georges Duthuit in *The Letters of Samuel Beckett*, ed. George Craig et al., vol. 2 (Cambridge: Cambridge University Press, 2011 [11 August 1948]), 95. An English translation could be: "Nothing to me will ever be against enough". Cf. Jacques Derrida, *Penser, c'est dire non* (Paris: Editions du Seuil, 2022 [1960]).
84. Lorenzo Bonoli, *Lire les cultures* (Paris: Kimé, 2008), 98 ["agrammaticalité"] (emphasis omitted).
85. I have in mind the Harvard system of uniform legal citation. Recent releases have numbered almost 400 pages.
86. Jacques Derrida, *Béliers* (Paris: Galilée, 2003), 36 ["pensive(s) et suspensive(s) interruption(s)"].
87. Cf. Goodrich (note 79), 226: "Every representation is a transformation".
88. Other subversive interventions concern photography, in particular the refusal to be photographed or the decision to be photographed according to certain unconventional modalities. I recall, for instance, Duncan Kennedy's determination, upon his formal installation as Carter Professor of General Jurisprudence at Harvard Law School in 1996 (a position he held until his retirement in 2015), to be officially photographed adopting a certain posture and wearing a certain attire, neither of which one would habitually associate with the formal institutional ways prevailing at a leading US law school. The photograph that I discuss is easily accessible at Bruce A. Kimball and Daniel R. Coquillette, *The Intellectual Sword* (Cambridge, MA: Harvard University Press, 2020), 773. I am grateful to Duncan Kennedy and Daniel Coquillette for helpful correspondence [on file].
89. I refer, of course, to Samuel Beckett, *Stirrings Still in Company/III Seen III Said/Worstward Ho/Stirrings Still*, ed. Dirk Van Hulle (London: Faber & Faber, 2009 [1989]), 105–15.
90. Albert Camus, *La Chute* (Paris: Gallimard, 1956), 139 ["Au bout de toute liberté, il y a une sentence"].

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