
Law, Culture and Identity in Central and Eastern Europe

A Comparative Engagement

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Foreign Law, the Comparatist, and Culture: How It Is

Pierre Legrand

In their quest for the reification of apodictic knowledge through the purported evacuation of all markers of vacillation, law's positivists readily censor the realm of culture. They subtract from the law cues that would interfere with law as law and would detract from law's conceptual merit and practical worthiness as law (as they themselves understand law, merit, and worthiness). And they efface from the comparatist characteristics that would cancel scientificity, objectivity, and integrity (as they themselves understand scientificity, objectivity, and integrity). Positivism wants to be radically bereft of all forms of cultural edification. Importantly, the positivist detachment of law and of the comparatist from their cultural encumbrances through the erection of disciplinary palisades – this exercise in *striation* – is therefore not evidence that culture has been forgotten, but rather that it has persistently been ignored on the ground that, being at once too capacious and too fluid,¹ it would fail the (narrow) analytic or empirical test pertaining to the question of legal/epistemological authority. Culture's existence is known, yet culture is treated as “[u]nknowledge exceeding science itself”, as what “will not be scientifically qualifiable”,² as non-law, as druff. For positivists, culture is “not of good birth, of legitimate birth”.³ Rejecting as wholly unconvincing the intimation that either law or the comparatist would be free from the constraints of place – affirming that it is, in fact, hard to think of anything more susceptible to place than law or the comparatist – I find it convenient, specifically, to use the word ‘culture’ to capture in synthetic fashion the array of traces materially and constitutively informing the law, to which a responsible re-presentation and comparison by an encultured comparatist must perforce

1 Admittedly, the term ‘culture’ features “certain built-in inflationary tendencies”: T. Eagleton, *Culture* (Yale University Press 2015) 3. But these *easily* withstand epistemic disqualification.

2 J. Derrida, *L'Écriture et la différence* (Editions du Seuil 1967) 394. Throughout, translations are mine (and emphases within quotations are original).

3 J. Derrida, *La Dissémination* (Editions du Seuil 1972) 171.

respond differentially (*ex hypothesi*, the comparatist's culture indeed differs from the foreign law's culture).⁴

Consider law. Law, any law, any foreign law, is inevitably in place. Place is not a mere backdrop to legal meaning: it is a dynamic element of it. In other words, place is not simply a physicalist conception: it is also an existential notion. If you will, in a crucial sense, place is a character, an *actant*. Law emerges only in and through place (an assertion that does not entail an essentialist, exclusionary, reactionary, conservative, or immobile understanding of 'place' – one can indeed approach place as source rather than terminus, as that whence something begins in its unfolding, rather than that at which it comes to a stop). Law and place are inextricably enmeshed, which means incidentally that law can be materially constitutive of place in its turn. To be in place is the law's way. It is how law is. It is how law exists. As there is no ungrounded language, there is no ungrounded law. Law cannot be or exist *in der Luft*. For law, any law, any foreign law, to be or to exist as law, it must stand forth in terms of an experience of place. It must *dwell*. It is therefore a propriety of law to be cultural, to exist as culture.

The point is not to anthropomorphize culture and to make it into some superior being – a sort of metaphysical entity – that would somehow have come into existence out of successive interactions within a group and that would now be ruling it. Culture is an instrument permitting comparatists, for example, to capture a phenomenon of aggregation or of cohesion that has become stabilized and standardized through (iterative) reproduction. Culture thus allows for an enhanced understanding of the legal in the manner in which it elicits and confers, or invents, meaningfulness beyond what a literal or an

4 Fine illustrations of research on law-as-culture include L. Rosen, *Law as Culture* (Princeton University Press 2008); P. W. Kahn, *The Cultural Study of Law* (University of Chicago Press 1999). See also N. Mezey, 'Law as Culture' (2001) 13 *Yale J L & Humanities* 35. Predictably, positivism has been activating its immune defences in order to shield itself from culture – a primordially challenging idea that the doxa is determined to marginalize. For an example of the summary expulsion of the law's enculturation (as if one could simply wave one's positivist wand ...), see C. J. Milhaupt and K. Pistor, *Law and Capitalism* (University of Chicago Press 2008) 208, where the co-authors dismiss culture on the ground that it is "[an] open-ended concept" and that its use would "ope[n] a Pandora's box of interpretive nightmares". For another positivist, any account (of foreign law) "must remain within the law without taking recourse to general societal culture, because culture and its relation to the legal rules and institutions are unclear": R. Michaels, 'Two Paradigms of Jurisdiction' (2006) 27 *Michigan J Int'l L* 1003, 1017. Along analogous lines, envisage the equally embarrassing position that "linking law to ... cultural phenomena of a specific country would be impossible": J. M. Smits, 'The Harmonisation of Private Law in Europe: Some Insights from Evolutionary Theory' (2002) 31 *Georgia J Int'l & Comp L* 79, 81. For an implausible (and indeed untheorized) attempt at keeping law pure, culture being safely relegated to the ever-so-convenient 'contexts' [sic], a basic confusion between inheritance and surrounding, see J. Husa, *A New Introduction to Comparative Law* (Hart 2015) 3. For a renewed commitment to law's purity (and to 'contexts'), see J. Husa, *Introduction to Comparative Law* (2nd edn, Hart 2023) 4.

exegetical – a *ready* – interpretation of a foreign law-text would suggest.⁵ For my part, I hold that culture gestures towards frameworks of intangibles within which ascertainable ‘communities’ operate and that have normative force for these ‘communities’, even though not coherently and completely instantiated,⁶ what Gayatri Spivak calls “a package of largely unacknowledged assumptions”.⁷ As is his wont, Ludwig Wittgenstein succinctly captures the gist of the matter, I suggest, when he writes that “[c]ulture is an observance”.⁸ Think, for example, of a set of values and norms, of precepts and precepts, of signifying reminders, of semiotic references, of mytho-symbolic discourses pertaining to the structure and texture of phenomena, of favoured epistemic models, of standards of evaluation, of preferred procedures and rules of validation, of informed intuitions, of reactions to sensate experiences – of an array of immaterial and practical dispositions determining in the first place, in the way that form envelops matter or that a diapason tunes a musical instrument, a certain attitude in life or adequacy to the world, a steadiness or consistency of attention, a horizon of meaning, therefore an engine of formation and a support of appropriation (not excluding refinement and improvisation), a performative equipment for governance, an anchorage, a warrant, too. Having roughly delineated culture, I do not see myself pursuing a ‘hard’ definition, if only because I do not see much utility in ‘hard’ definitions. I do not care for endless analytical refinements as my concern is with a brand of theorization that can helpfully inform practical understanding. After all, as Spivak observes, “every definition or description of culture comes from the cultural assumptions of the investigator”.⁹

Not least on account of a professional itinerary that has taken me to live and work in a number of different countries, on more than one occasion for years at a time, I hold culture, which I understand as a mode of existence, to be a fecund (and, in any event, an unavoidable) heuristic for comparatists-at-law. Indeed, I firmly believe in “the structuring power of culture”, whether

5 Invention: what the comparatist does with the foreign, to the foreign: he finds it, there, and he fashions it, here. Etymologically, ‘to invent’ means ‘to find’ or ‘to fashion’.

6 Bringing ‘my’ two principal languages into play allows me to show that ‘community’ is never other than (and is never more than) an entity looking like a unity, appearing as a unity, a ‘*comme-unity*’ (an ‘as-unity’) – an entity that, strictly speaking, is therefore not a unity. To be ‘as one’, or ‘*comme-un*’, is still not to be ‘one’. It would therefore make sense to write ‘*community*’, the rature inscribing the unsurmountable semantic inadequacy of the term being mobilized (alternatively, and less distractingly, one can put the word in quotation marks, which is the strategy that I adopt).

7 G. C. Spivak, *An Aesthetic Education in the Era of Globalization* (Harvard University Press 2012) 120.

8 L. Wittgenstein, *Vermischte Bemerkungen in Über Gewißheit* (GEM Anscombe ed, Suhrkamp 1984 [1949†]) 568. cf Spivak (n 7) 540n4: “[O]ne acts according to imperatives”.

9 Spivak (n 7) 122.

as regards foreign law or the comparatist.¹⁰ And this is why I advocate for a “strong programme” favouring the integration of culture within the comparative law project with a view to ascribing significant meaning both to foreign law and to the comparatist’s epistemic assumptions as he proceeds to apprehend foreignness.¹¹ Indeed, I earnestly want to move away from the (unexamined) idea that culture is but “a feeble and ambivalent variable”.¹² In other words, my commitment refers to “the primacy of collectivities” as they structure foreign law and as they construct the comparatist.¹³ In this sense, I aim to “illuminate the powerful role that culture plays in shaping [legal] life”.¹⁴ Note that I do not take culture to be an unproblematic expression. I am indeed well aware of the term’s imprecision. I know of the manner in which it features semantic leeway or play. However, I am not doing geometry or physics.¹⁵ And I maintain that no single word can prove to be *ad idem* with the complex world.

Envisage the comparatist, then. Where does one’s legal epistemology originate? Where does one’s legal predilections or presuppositions originate? Where does one’s legal strategies originate? Whether one is a law student, a law professor, a practising lawyer, a judge, or a legislator, where do one’s legal *ways* originate (whether these concern the precedential value that one is willing to attach to an appellate decision, the normative weight that one is prepared to grant to economic analysis of law, the measure of aggregate interest that one is inclined to allow in one’s appreciation of the legitimate reach of human rights, the structure and contents of a ‘good’ law-review article, the rhetorical tactics making for effective oral pleading, or whatever)? To “giv[e] the only answer that can be given – [they] com[e] from the [culture] in which we grow up or any [culture] in which we become deeply immersed”.¹⁶ Enablement simply cannot be detached from what a collectivity has transmitted and will permit:

10 J. C. Alexander, *The Meanings of Social Life* (Oxford University Press 2003) 109. Jeffrey Alexander’s cultural sociology argues in favour of the autonomous status of culture as a factor meaningfully contributing to meaning-making in social life.

11 See P. Legrand, *Negative Comparative Law: A Strong Programme for Weak Thought* (Cambridge University Press 2022) 385–86.

12 Alexander (n 10) 13.

13 H. Collins, *Forms of Life* (MIT Press 2019) 15.

14 Alexander (n 10) 13. I substitute “legal” for Alexander’s “social”.

15 Countries pertaining to what comparatists style the ‘civil-law’ tradition (a long-standing misnomer) have featured a centuries-old *mos geometricus* whereby law’s leading exponents purport to put the legal on a level epistemological footing with the geometrical. A famous example of the drive to mathematize the law, *inter* very many *aliases*, is in Grotius: “Indeed, I truly profess that as mathematicians consider figures diverted from bodies, I, too, in discussing the law, have withdrawn my mind from all particular facts”: H. Grotius, *De iure belli ac pacis* (Buon 1625). I quote from the penultimate page of the ‘Prolegomena’.

16 Collins (n 13) 14. I substitute “culture” for Collins’s “society”.

[A]s a member of the Azande you can divine a witch but you cannot take out a mortgage, whereas as a British person you can take out a mortgage but you cannot divine a witch; divining witches is constitutive of being a member of the Azande but not of being British, and taking out a mortgage is constitutive of being British but not of being an Azande.¹⁷

Like Derek Attridge, therefore:

I need a term that includes, among other things, the artistic, scientific, moral, religious, economic, and political practices, institutions, norms, and beliefs that characterize a particular place and time. ... My particular interest is in the way an individual's grasp on the world is mediated by a changing array of interlocking, overlapping, and often contradictory cultural systems absorbed in the course of his or her previous experience, a complex matrix of habits, cognitive models, representations, beliefs, expectations, prejudices, and preferences that operate intellectually, emotionally, and physically to produce a sense of at least relative continuity, coherence, and significance out of the manifold events of human living.¹⁸

While I would have changed a few words out of this excerpt (I dislike the use of "systems", for instance), I closely follow Attridge's line of reasoning. And like him, I hold that culture is the term that most aptly matches my heuristic needs.

To return to my earlier illustration, it must ensue that a conversation between an Azande and a Briton will take the form not so much of a dialogue, but of two monologues. Jorge Luis Borges's Averroes (Ibn Rushd) thus fails to associate Aristotle's use of 'tragedy' with narrative poems "dealing with sorrowful or disastrous events" (I borrow from the electronic edition of the *Oxford English Dictionary*), and he moves instead incongruously to link the word to panegyrics. Borges's narrator proceeds to justify such peculiar correlation by explaining that theatre was unknown to twelfth-century Islamic Spain and that Averroes therefore did not have at his disposal the epistemological equipment that would have allowed him to make sense of Aristotle's world on Aristotle's terms. Borges's thesis is effectively that given his enculturation Averroes was always-already prevented from having interpretive

17 *ibid* 6–7.

18 D. Attridge, *The Singularity of Literature* (Routledge 2004) 21. As Attridge refers to "a particular place and time", he adds: "How particular a place and time – whether one means what we rather too easily call 'the West', a single self-defined 'people', a nation-state, or a city, and whether one means a century or a decade – depends on the context of the argument. Other determinations have to be factored in as well, such as gender and class": *ibid*. I return to the matter of localization presently: see *infra* n 82.

access to Aristotle's text as it existed before him, that is, before he came to it in order to ascribe meaning to it.¹⁹ In the narrator's words, Averroes's search for Aristotelian significance had to consist in "a defeat" ("*una derrota*").²⁰ To say it with Jacques Derrida's imagery, Averroes and Aristotle's text are "islands" ("*des îles*").²¹ To be sure, then, culture is enabling inasmuch as it equips individuals with a *world-view*. But it is also constraining inasmuch as, well, it equips individuals with *a* world-view. In this latter sense, culture deploys the unlimited sway of the limit. The implications for comparative law ought to be obvious as the comparatist is always-already prevented from making sense on its own terms of a foreignness that, while also cultural, pertains to a culture that differs from his. Think of a double bind: even as the comparatist must access foreign-law-as-culture, his enculturation must deny him such access. It is precisely this incommensurability that comparative law *structurally* and *unceasingly* addresses.

*

While it would not occur to me to contend that law heralds an underlying logic of pure culturalism (any investment in purity, whether descriptively or prescriptively, striking me as intellectually indefensible – *et tant pis pour Kelsen* ...), I deem it very useful for explanatory purposes to be able to discern that law exists as culture, that law harbours traces of culture, that law is haunted by culture, in order to convey in shorthand form the dynamics materializing between law and world – culture in effect expressing law's ineluctable worldliness (what positivists are accordingly prone to regard as "the infective detritus of the world").²² In this regard, I am confident that culture is not primarily an object to be addressed exclusively by a specialist discipline such as cultural studies or anthropology,²³ but the constructed idiom in terms of which the problematization of foreign law by the comparatist must optimally unfold within comparative law. It is not therefore that culture is to be fetched from some realm outside the law and brought into law, but that culture informs law materially and constitutively – *immanently*. Culture is not separable from law: it operates as an irreducible aspect of law. And culture

19 See J. L. Borges, 'La busca de Averroes' in *El Aleph* (Alianza Editorial, 1995 [1947]) 104–17.

20 *ibid* 116.

21 J. Derrida, *La Bête et le souverain*, vol 1 (M. Lisse, M.-L. Mallet, and G. Michaud eds, Galilée 2010 [2003]) 31. Derrida's thesis evokes a Heideggerian philosophical insight that I also endorse. cf M. Heidegger, *Unterwegs zur Sprache* (Neske 1959) 265: "[L]anguage is monologue"; it speaks "lonesomely" [emphasis omitted].

22 A. J. Mitchell, *Heidegger Among the Sculptors* (Stanford University Press 2010) 55–56.

23 I am especially concerned not to confine culture anthropologically given the fact that "[t]he milieu in which the modern anthropological notion of culture was born was class and race conflict": R. J. C. Young, *Colonial Desire* (Routledge 1995) 52.

informs the comparatist materially and constitutively – *immanently*. Culture is not separable from the comparatist: it operates as an irreducible aspect of the comparatist. It is thus that law and the comparatist are always-already cultural (how could they be otherwise?), that law and the comparatist are or exist *as* culture (how could they be or exist otherwise?). As I formulate this claim, I remain aware, still, of how positivists contend that the jurist, acting scientifically, ought to approach law as only that which is legally binding, as that which is binding ... as a matter of law – a tautological understanding of the ‘legal’ that, despite its predominance, remains but an interpretation, that is, a reading without any entitlement whatsoever to the foreclosure of other readings (its circuitousness arguably earmarking it for enhanced epistemic vulnerability).

I have observed how I harbour strong reservations vis-à-vis definitions or analytical considerations of culture. Although abundant, such treatments indeed engender seemingly endless cavils. Yet, I have come to value Giorgio Agamben’s characterization (strictly speaking, a constatation rather than a definition): “Every culture is essentially a process of transmission and of *Nachleben*”.²⁴ In the published English translation of Agamben’s essay, the word “afterlife” is suggested parenthetically next to “*Nachleben*”.²⁵ In the original Italian text, however, Agamben insists upon keeping the term in the German language without offering any complementary insight. Now, “*Nachleben*” heralds a posthumous dimension so that it allows for “*a derivation of ought from was*”.²⁶ More precisely, it connotes the combined ideas of ‘survival’ and ‘influence’ in a manner that perspicuously evokes law-as-culture and culture-as-trace (and trace-as-law), not to mention the comparatist as cultural being.

As I attempt some delineation – and, in fact, a measure of concretization – of the problematics of legal culture, I am keen to emphasize that negative comparative law’s abiding anti-positivist task must remain the ascription of deep or thick meaning to foreign law, which is inherently (hyper) cultural, this process of attribution of meaning manifesting itself all along from the standpoint of a (hyper)cultural comparatist.²⁷ Specifically, I argue

24 G. Agamben, *Stanze* (Einaudi 1977) 131. *Nachleben* was a leading trope in Aby Warburg’s art criticism. For a thorough discussion, see G. Didi-Huberman, *L’Image survivante* (Editions de Minuit 2002) 51–60 and passim. Warburg (1866–1929) was an influential German art historian and cultural theorist.

25 G. Agamben, *Stanzas* (R. L. Martinez tr, University of Minnesota Press 1992) 112.

26 R. Hardin, *How Do You Know?* (Princeton University Press 2011) 171.

27 cf D. Attridge, *The Work of Literature* (Oxford University Press 2015) 182: “To say that [a jurist] works within, and upon, a particular culture, and that the reader reads within a particular culture, is to simplify a highly complex situation: any individual participates in a variety of overlapping cultures, none of which is stable, all of which are themselves internally divided”. I substitute “a jurist” for Attridge’s “an artist”.

that a comparatist reading foreign law culturally cannot not operate differentially and thus assert otherness's singularity, while a comparatist reading foreign law positivistically cannot not erase difference and thus deny otherness's singularity.

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Culture is itself cultural in the sense at least that the understanding of the term's semantic extension varies according to place and time. Any appreciation of culture is therefore inevitably approached from a cultural standpoint in the sense at least that whoever purports to analyze a culture is himself situated, in place, somewhere, sometime.²⁸ And then, there is law-as-culture or legal culture (not to mention the less attractive, Latinized, 'jurisculture'), which – culture doing a great deal of work – is “best illustrated by reference to legal language, legal reasoning, legal argument and legal justification”, all signs through which culture manifests itself, all markers having to do with a culture's “ostensivity”.²⁹ More complicatedly, legal culture also includes protean perceptions, inchoate awareness, and unconscious assumptions. In brief, a view of law-as-culture evokes the idea that whatever law there is, there, is in important respects a collective construct, on one hand, and that any comparatist's fashioning of the 'legal' is in significant ways local, on the other. Note that when I refer to the collective, I am talking about social glue rather than a general brain.

Whether one's focus is foreign law or the comparatist, it must be obvious that legal culture as a form of epistemic governance is not to be reduced to a static, linear, totalizing, permanent, and idealized configuration. To speak of legal culture certainly does not automatically privilege coherence, imply reification, entail essentialism, exaggerate distinctness, preclude temporal change, efface individual variations or contestations that can take the form of participation or non-participation in a range of sub-cultures, fetishize identity so that it would lay beyond critique, trivialize agency or individual reasoning, and cast its advocates as blinkered reactionaries.³⁰ In sum, to argue the case for culture is not to fathom some tyrannical force 'ossifying' a 'community' along stereotypical lines and disabling any individual

28 cf R. Wagner, *The Invention of Culture* (University of Chicago Press 1981) 35: “We study culture through culture”. Adde: J. Derrida, *Psyché*, vol 2 (2nd edn, Galilée 2003) 167: “A question about place does not stand outside of place, it is properly *concerned* with place”. See also text at *supra* (n 9).

29 G. Wilson, 'English Legal Scholarship' (1987) 50 *Modern LR* 818, 845. The notion of “ostensivity” is in F. Inglis, *Culture* (Polity 2004) 29.

30 Eg: K. A. Appiah, *The Lies That Bind* (Liveright 2018) 189–211.

from harbouring idiosyncratic behaviour vis-à-vis the group.³¹ In effect, only culture's detractors ascribe such facile implications to culture – the extent of their attempt to disqualify the idea through caricature possibly being a measure of the significance of the threat that culture is seen to pose on the road to the positivism (or is it universalism?) to which such jurists tend to remain largely committed. While on the subject of culture's depreciators, I find it important to add that even though the reference to culture can be exploited by those who wish to resort to it so as to inflate the patterning of human action in the form of more or less autarkic local clusters, such strategy cannot offer a reason to ignore culture. It is not that culture is an intrinsically divisive idea. Indeed, the problem is not distinction (since one also distinguishes between men and women or between Buddhists and Lutherans), but discrimination. And the fact that a progressive idea can be perverted to foster a conservative political project along the lines of nationalist retrenchment is hardly a difficulty specific to culture. To iterate the point, it cannot be that because the 'German Democratic Republic' (*Deutsche Demokratische Republik*) abused the notion of 'democracy' for fifty years or so, the term has now become heuristically unavailable.

Crucially, resort to legal culture does not imply acquiescence to oppressive or repressive demands for conformity, and it certainly does not require anyone to 'accept' fundamentalist Islamic regimes – or rain dances, for that matter. Moreover, even leaving to one side the issue of protest, *a legal culture is not monolithic*. I deliberately emphasize this clause with a view to impressing on my readership that I do *not* hold that my mobilization of 'French legal culture' must entail that I assume all French jurists to be thinking identically in all matters legal – what would prove a remarkably obtuse claim. Envisage comparative law. While I readily argue that there is a discernibly French brand of comparatism, any encounter with foreign law is always that of an individual French comparatist in a specific place, at a specific time, and within the frame of a specific project. In other words, one must be careful not to fall into the naive metaphysics of the collective as a unitary self-presence. Individuals do not act within a precisely identical cognitive framework in response to typical circumstances and events (nor, incidentally, are individual world-views internally consistent), and there is ascertainable diversity in behaviour and beliefs. Moreover, legal culture need not be subordinated to the idea of nativism.

Indeed, a legal culture is not a windowless monad allowing neither for cross-cultural interaction nor for cultural overlap. It is permeable and,

31 cf Eagleton (n 1) 7: "There are no 'whole' societies, in the sense of societies absolved from conflict and contradiction". For thoughtful arguments on sites of contestation, see A. Swidler, *Talk of Love: How Culture Matters* (University of Chicago Press 2001) 181–87; M. Sunder, 'Cultural Dissent' (2001) 54 *Stanford LR* 495.

instead of firm edges or limits, it features an “endless multiplication of folds, unfoldings, foldouts, foldures, folders, and manifolds”: *the framework is not framed*.³² Accordingly, legal culture cannot be understood as assuming a number of discrete heritages organically tied to specific homelands and considered best kept separate (like the laboratory specimens in petri dishes that one also calls ‘cultures’) – what James Tully stigmatizes as the “billiard-ball” conception of culture.³³ Cultures are not monads (and cultural thought is not monadic thought). And legal culture is not to be reduced to solipsism. Indeed, a legal culture is multilayered and polyvocal, decentred and fractured, pervious and *liquid*, to harness Zygmunt Bauman’s metaphor.³⁴ Thus, Derrida does well to remind one that “what is peculiar to a culture is not to be identical to itself”.³⁵ A culture operates as a (loose) *assemblage*.³⁶ Striking its “nomadic path”,³⁷ culture is ever-becoming – and the comparatist-at-law’s re-presentations of foreignness, although always-already situated, are ever-mobile (not least because he is, too). What I proclaim of French legal culture today is not necessarily what I shall be contending in five years from now.

Yet, a legal culture’s porosity is restricted, which means that it is only “finitely elastic”.³⁸ Because culture operates as an ongoing integrative process, what one encounters by way of alternative experience is made to make sense against the backdrop of existing patterns within which such experience is ultimately incorporated even at the cost of a measure of dissonance reduction (if psychoanalysis is to be credited with any insights, a key advance is surely that one’s psychological state, one’s past practice, and one’s memories curtail one’s field of action so that one enjoys but interstitial freedom to think away from oneself).³⁹ If you will, the matter involves the contrivance of epistemological safeguards whereby external perturbations are coded as information in the culture’s pre-defined terms, which entails that change tends to be

32 Derrida (n 3) 301. See Attridge (n 18) 82: “There is no such thing as ‘a culture’ in the sense of a homogeneous entity with clear and fixed boundaries”.

33 J. Tully, *Strange Multiplicity* (Cambridge University Press 1995) 10.

34 Eg: Z. Bauman, *Culture in a Liquid Modern World* (L. Bauman tr from Polish, Polity 2011).

35 J. Derrida, *L’Autre cap* (Editions de Minuit 1991) 16 [emphasis omitted]. Still, as Nikolas Kompridis perceptively observes, “[a] culture that is strictly nonidentical with itself would be a culture without a past”. In other words, if a culture is to remain a culture, if it is ascertainably to endure as that culture rather than this other culture, it cannot be “deeply discontinuous with itself”: N. Kompridis, ‘Normativizing Hybridity/Neutralizing Culture’ (2005) 33 *Political Theory* 318, 340 [emphasis omitted].

36 Eg: T. Bennett and C. Healy (eds), *Assembling Culture* (Routledge 2011).

37 M. Engelke, *How to Think Like an Anthropologist* (Princeton University Press 2018) 8.

38 P. Bohannan, *How Culture Works* (Free Press 1995) 167. See also Z. Bauman, *Postmodern Ethics* (Blackwell 1993) 13: “If there is anything in relation to which today’s culture plays the role of a homeostat, it is ... the overwhelming demand for constant change”.

39 cf R. Barthes, *Leçon* (Editions du Seuil 1978) 45: “[M]y own body [is] historical” [emphasis omitted].

marginal and incremental. Like other organisms, a legal culture strives to maintain a state of equilibrium in connection with its environment and indeed to perpetuate itself: it thus aims to overcome transgressions.⁴⁰ To this end, it is “backed by a body of knowledge that, in a sense, has a boundary around it, a boundary that is more or less secure against the easy entry of contrary new knowledge”.⁴¹ As has been observed, “legal cultures, like languages, can absorb huge amounts of foreign material while preserving a distinctive structure and flavor”.⁴² Whereas over the last twenty years or so French legal culture has integrated plea bargaining (2004), constitutional review (2010), and class actions (2014), for instance, no participant in the French legal scene – or no percipient observer thereof – is suggesting that there has been a discernible loss of ‘Frenchness’ along the merry way.⁴³ Quite to the contrary, any detailed study of any of these reforms would show how they have been co-opted, so to speak, with a view to *reinforcing* the French model. By way of illustration, the institutional operation whereby the constitutionality of legislative dispositions can now be scrutinized at a litigant’s behest is emphatically not a judicial process. In a country where the deep distrust into which judges are held harks back to pre-revolutionary days, it would have been unthinkable to allow a judge to cancel any official expression of the general will (think Rousseauian ‘*volonté générale*’) such as a statute.⁴⁴ On account of

40 Adjustment patterns differ across cultures or languages. Thus, ‘Johann Sebastian Bach’ is ‘Johann Sebastian Bach’ in English and ‘*Jean-Sébastien Bach*’ in French. Likewise, ‘Galileo’ and ‘Julius Caesar’ are ‘Galileo’ and ‘Julius Caesar’ for anglophones and ‘*Galilée*’ and ‘*Jules César*’ for francophones. See D. R. Hofstadter, *Le Ton beau de Marot* (Bloomsbury 1997) 320–23.

41 Hardin (n 26) 166.

42 M. Galanter, ‘Predators and Parasites: Lawyer-Bashing and Civil Justice’ (1994) 28 *Georgia LR* 633, 680. cf S. Fish, *Doing What Comes Naturally* (Duke University Press 1989) 150: “[An interpretive community] is an engine of change because its assumptions are not a mechanism for shutting out the world but for organizing it, for seeing phenomena as already related to the interests and goals that make the community what it is. The community, in other words, is always engaged in doing work, the work of transforming the landscape into material for its own project; but that project is then itself transformed by the very work it does”. See also C. King, *The Reinvention of Humanity* (Bodley Head 2019) 274: “Cultures are cunning tailors”.

43 I am well aware that this essay is being released as part of a book named *Law, Culture and Identity in Central and Eastern Europe: A Comparative Engagement*. Yet, my exemplification draws on France. I can offer three principal reasons to justify this seemingly discontinuous state of affairs. First, illustrations matter, and I am not prepared to forgo them. Secondly, the comparatist’s cases can prove creditable only if they address the foreign laws that he can discuss authoritatively. Thirdly, the law of many countries in Central and Eastern Europe can be traced to France. Think Bulgaria, Poland, and Romania, for instance.

44 Perhaps the defiance towards judges can be shown through a 2021 appointment to the relevant body, the *Conseil constitutionnel*, of a minor minister who spent her career as a high-school teacher in history and geography and is unable to boast any prior legal expertise whatsoever.

the incorporation of constitutional review into the French body legal as not-a-judicial-process, the prejudice against the judiciary characteristic of French legal culture finds itself being consolidated.⁴⁵ Thus Gary Watt's perspicuous (and pithy) insight: "Culture grows law grows culture".⁴⁶

I do not disclaim that the workings of culture are intricate, not least because culture does not feature a 'hard' existence. Indeed, while culture evokes a collective understanding, all that there is, strictly speaking, is a collection of individual understandings inside any number of individual minds. Otherwise said, culture is clearly sited in individual minds, and only individuals can therefore express and instantiate it. However, since there is no neurological ability for anyone to access anyone else's mind (even when I wince as I see my wife hurting herself, I am only imagining her pain, and there is no way for me to access her embodied cognitive-affective processes), the interrogation arises as to how there emerges the trans-individual patterning that one associates with culture. (Because one's inability to access someone else's brain is a matter of neurological impossibility, it is not a cultural issue. It follows that I can argue how there must be failure of communication always and everywhere – a physiological conclusion – and still hold to the cultural claim that there are no universals.) A useful line of analysis is to say that an individual behaves in ways that he confidently expects to be appropriate within the normative circle within which he is acting and to which he has a desire to belong or feels a duty to belong (say, his legal 'community'). He experiences these expectations as existing, that is, he proceeds as if they had a physical existence, ascribes meaning to them (only an individual can engage in ascription of meaning), and seeks to move in line with them.⁴⁷ In other words, the individual feels that what he is doing is what other individuals are doing and, if asked, what they would expect him to be doing.

Interestingly, while nothing could be more evanescent than culture, the individual, perhaps unbeknownst to him, very much treats it as something 'solid', as something that is *there*. Again, it is not that one can see culture, but that one is in a position to interpret, say, an initiative or a reaction (like a foreign law-text) as cultural – that is, as being in line with what one assumes to be the collective understanding of apt regulation (say, the 2004 French statute prohibiting ostensible religious attire in public primary and secondary schools). Although there is no question of fully cancelling agency, it must be

45 The three reforms that I mention are amply documented on the Internet, whether in French or English, and there seems little point in cluttering this note with the rehearsal of lengthy statutory references.

46 G. Watt, 'Comparison as Deep Appreciation' in P. G. Monateri (ed), *Methods of Comparative Law* (Elgar 2012) 88.

47 See generally D. B. Kronenfeld, *Culture as a System* (Routledge 2017).

clear that the individual is not in charge.⁴⁸ To be sure, agency may be improvised but it is devised through the structuring principles that constitute one's culture. It is not that an individual's motion will be identical to the pattern as he imagines it or that it will be identical to someone else's gesture, but it purports to be 'identical enough' on both counts. And it is this 'identical-enough' identity – this 'equivalent-enough' equivalence or 'common-enough' commonality – that will reinforce the imagined pattern in its turn (interestingly, what is being thus stabilized is 'something' that does not have a 'hard' existence).⁴⁹

To account for the cultural governance and sustenance of predilections and practices, it is important to grasp culture as effect instead of cause. Rather than manifest itself as a hidden controlling ruler that would justify one in saying 'culture made me do it', culture exists as a *result* of there being a range of cognitive and affective dispositions within the individual, which are iterated over time across a number of individuals engaging in sustained social interaction with one another in ways that are 'equivalent enough' or 'common enough'. Indeed, it is because of actions being replicated by individuals that a culture holds together. Rather than stand in opposition to culture, the individual is thus "one of its forms of existence".⁵⁰ Noting that a culture comprises "the inventory of procedures for the formation of the self",⁵¹ Peter Sloterdijk accordingly refers to cultures as "systems of self-care".⁵² (I would be more comfortable with terms like 'articulations' or 'configurations' instead of "systems", but the general idea of models is insightful.) Culture as "anthropotechnics" – the word is Sloterdijk's, too⁵³ – allows me to enter a precision regarding the arcane topic of causal attribution: the only sense

48 In Konrad Zweigert and Hein Kötz's version of comparative agency, culture is a hindrance on the way to honourable comparative research, and it requires to be jettisoned in favour of fully fledged autonomy. See K. Zweigert and H. Kötz, *Einführung in die Rechtsvergleichung*, 3rd edn (Mohr Siebeck 1996) 43: "The solutions of the investigated legal orders are to be ... unfastened out of their solely-national dogmatic incrustations". Moreover, for Zweigert and Kötz, "the comparatist must unfasten himself from his own juridical-dogmatic pre-conceptions and his own cultural context": *ibid* 11. Zweigert and Kötz do not understand culture: it simply cannot be dismissed at will, whether as it pertains to foreign law or to the comparatist.

49 I am largely summarizing the argument in V. C. de Munck and G. Bennardo, 'Disciplining Culture' (2019) 60 *Current Anthropology* 174.

50 P. Bourdieu, *Questions de sociologie* (Editions de Minuit 1984) 29. See also R. A. Makkreel, *Orientation and Judgment in Hermeneutics* (University of Chicago Press 2015) 123: "Elementary understanding is oriented by the normative authority of a local commonality". Rudolf Makkreel specifies that "[f]or elementary understanding, *everything* is from the we-perspective of commonality": *ibid* 196 [my emphasis]. For his part, Stanley Fish refers to the self as "a moving extension" of culture: Fish (n 42) 13.

51 P. Sloterdijk, *Nicht gerettet* (Suhrkamp 2001) 201.

52 *ibid* 193.

53 *ibid* 202.

in which culture *can* be said to play a causal role is not on account of the fact that it would have causal efficacy in itself, intervening as some sort of supra-individual, supra-organic, or supra-physical invisible force, but inasmuch as its influence on human behaviour is relayed by physical entities such as dopamine-sensitive neurons in the brain's frontal lobe. It is indeed through the brain that culture is effectuated via the actions of organic individuals. *In this sense*, these actions can intelligibly be said to be causally related to culture.⁵⁴ Other than that, culture very much concerns the realm of interpretive understanding (*Verstehen*) rather than that of general causal explanation (*Erklären*).

*

Law having classically operated principally as a national phenomenon and largely continuing to do so despite so-called 'globalization' processes, more sophisticatedly understood as 'glocal' assemblages,⁵⁵ legal culture refers to features that have tended to correlate with the nation-state. (This observation is emphatically not to suggest that I am harnessing legal culture in defence of anything along the lines of Westphalian nationalism, a structure that comparative law purports to overcome in any event through its earnest strategies of deterritorialization.⁵⁶) A heuristic, then, legal culture acts as interpretive enabler to assist description – it is not a thing or an object that is being described. (The perspective lines on a canvas are there to help the painter as he seeks to give an impression of depth. But they are not the object that is

54 Eg: G. Lakoff and M. Johnson, *Philosophy in the Flesh* (Basic Books 1999) 555, where the co-authors maintain that "[o]ur conceptual system is grounded in, neurally makes use of, and is crucially shaped by our perceptual and motor system". See also J. R. Searle, *The Construction of Social Reality* (Free Press 1995) 228: "[T]here is a continuum from the chemistry of neurotransmitters such as serotonin and norepinephrine to the content of such mental states as believing that Proust is a better novelist than Balzac". (I confine my reference to Searle to this specific point and do not embrace his wider theory of meaning.) For arguments to the effect that culture and biology are inextricably intertwined, see eg L. J. Kirmayer, *Culture, Mind, and Brain* (Cambridge University Press 2020); D. H. Lende and G. Downey (eds), *The Encultured Brain* (MIT Press 2012); B. E. Wexler, *Brain and Culture* (MIT Press 2006).

55 See generally V. Roudometof, *Glocalization* (Routledge 2016). For my own discussion of glocalization with specific reference to comparative law, see Legrand (n 11) 120–28.

56 In today's glocalised world, as legal polycentricity arguably asserts itself more prominently than ever before, thus constantly re-affirming the fact that there are other normative orders apart from the state's, the view that the foreign must be understood in terms of *that* nation-state as distinguished from *this* nation-state requires to be overcome. Simply put, the foreign can no longer be approached as a bounded or stable form of knowledge (if it ever could). It remains that the current conditions within which economic glocalization is unfolding continue to confer validity to the nation-state as the most powerful form of political and social organization.

being painted.⁵⁷) Accordingly, there is the work of those who make culture work rather than the work of culture *tout court*. In this regard, it must be said that no statement about law-as-culture-as-trace-as-law can be “theory-independent”,⁵⁸ that there is no account of the cultural that does not comport an inherent performative dimension, no report that is not invented (in the etymological sense in which I use the word), no comment that is not *culturally* informed.⁵⁹ It follows that there is simply no possibility for any enunciation to “match ... what is ‘really there’” (whatever *that* is), any such idea of duplication therefore being “illusiv[e] in principle”.⁶⁰ And this observation extends to as basic a comparative intervention as the interpretation of a foreign statute: an encultured comparatist is trying to make sense of a differently encultured text. The “really there” (whatever *that* is) is quite simply beyond a “reconstruct[ion]” here that would not feature any input from the comparatist himself.⁶¹ Any statement is a re-statement, any representation a re-presentation: *and it is always the comparatist’s*. (Note how I am not suggesting that reality is but a projection of thought or that it has a strictly mental instead of physical basis. My claim is epistemological rather than ontological. In brief, my argument is not that there is no mind-independent reality, but that a mind-independent reality is *inconceivable*, which means, literally, that it cannot be conceived. If you will, it is not that there is no ‘in-itself’ and that there is only ‘through-one’, but that any ‘in-itself’ is inconceivable other than through one, because only through one is any conceivability conceivable.⁶²)

Since it can never be totally articulated on the ground of indubitable evidence, legal culture is emphatically not able to generate Gibraltar-firm scientific findings. But the indeterminacy of legal culture, say, the impossibility of distinguishing between culture and non-culture in empirically verifiable ways, ought to be a handicap only for the positivist seeking the kind of clear and determinate guidance usually associated with computer programmes. The malleability surrounding culture does not prevent the enunciation of various characteristics concerning the foreign laws being made into focusses of research by the encultured comparatist and the ascription to them of the brand of determinative efficacy that makes such features of direct relevance as regards the pursuit of comparative analysis. Ultimately, like philosophy, culture allows us “to understand how things in the broadest possible sense of

57 I draw on B. Latour, *Reassembling the Social* (Oxford University Press 2005) 131.

58 T. S. Kuhn, *The Structure of Scientific Revolutions* (2nd edn, University of Chicago Press 1970) 206.

59 Eg: Legrand (n 11) 10–11, 175–76, and 303.

60 Kuhn (n 58) 206.

61 *ibid.*

62 Otherwise said, the fact is that one cannot have reality-without-the-mind in mind without having it in mind, which must mean that one cannot have reality-without-the-mind in mind.

the term hang together in the broadest possible sense of the term”.⁶³ The fact is that everywhere, one finds sets of learned elements that are shared more extensively by people who interact with one another – and who have been interacting with one another over the very long term – and that differ from other sets of learned elements to be found in other people with whom there has not been such a significant level of interaction. Sloterdijk thus analogizes culture to a “symbolic incubator”.⁶⁴ Again, I have in mind recurrences and regularities (not unalloyed homogeneity) emerging on account of predilections and predispositions (not unmitigated determinism). And I certainly do not think of culture in organic terms, as an organic unity, every part being an essential component of the whole within which the part would be fully integrated – very much the way in which the organs of a body operate. Nonetheless, culture can work in rigid, tight, and continuous terms.

At this juncture, I want to harness a practice that would simply not detain positivists, since it does not pertain to law as positivism understands the legal, but that a culturalist brand of comparative law – an ampliative, capacious comparative law – allows to take seriously from the standpoint of epistemic governance, in terms of the workings of the mind as it applies itself to law. My example concerns the organization of legal writing in France. I have been based at the Sorbonne for the past twenty-five years or so, and during these two and a half decades all of my French law students have systematically been organizing their essays into two parts and four sub-parts of roughly equal length (I refer both to the parts *inter se* and to the sub-parts *inter se*). I insist that my French students have all been following this structured and structuring pattern. And it is not only my students, but law students all over France who meticulously operate in this way. All French law students – *all of them* – methodically articulate their essays – *all of them* – into two parts and four sub-parts of roughly equal length (both as regards parts and sub-parts). Let me emphasize my claim: whether he is writing the briefest of case-notes or a full-length doctoral dissertation, a French law student, whether from Marseille or Brest, from Bordeaux or Strasbourg, *always* organizes his text into two parts and four sub-parts of roughly equal length. French law students have been uniformly instructed to proceed in this uniform way by their teachers, in the same manner as these teachers had themselves been uniformly instructed to operate in this uniform way by their own teachers, in the same manner as those teachers ... (because the matter is regarded as pertaining to elementariness, primary training responsibility in fact lies with first-year teaching assistants.) This practice could presumably be traced to epistemic influences having made themselves felt over the very long term that, although they would in all likelihood include Ramism (a sixteenth-century,

63 W. Sellars, *Science, Perception and Reality* (Routledge & Kegan Paul 1963) 1.

64 Sloterdijk (n 51) 200.

pre-Cartesian, school of thought requiring to be interpreted in its turn),⁶⁵ would have to be specific enough to distinguish the law outline (*'plan'*) that I am discussing from the model obtaining in French departments of literature or economics, where the prevailing pattern is not binary.

Observe the normative role that power plays in the inculcation of the structure I address. In effect, each generation is robustly controlling (and therefore maintaining) the socialization and institutionalization processes – including the formative epistemic influences (the epistemologization) – to which the next generation is exposed and, indeed, subjected. Such a reproductive unfolding of enculturation readily recalls Agamben's "*Nachleben*" (supra). In any event, the empirically verifiable fact that French law students feel the uncircumventable obligation to abide by the bipartite and quadripartite framework and the no less empirically verifiable fact that all of them actually follow this model (every student's commitment being confirmed by every other student's commitment), along with the equally empirically verifiable fact that Australian, Brazilian, Chinese, Danish, English, Finnish, German, Hungarian, Italian, or ... US law students – to tap into my personal teaching experience – do not conform to this arrangement, must be well enough for me, as a comparatist-at-law, legitimately to be able to maintain that 'French law students' divide their essays into two parts and four sub-parts of roughly equal length and that this practice is an attribute of what can helpfully be called 'French legal culture' (as distinguished, say, from French law in the positivist, narrow sense of the term or, say, from Brazilian legal culture). To be sure, I accept that there may well have been a student in Clermont-Ferrand who, in 1956 or 2009, in 1978 or 2017, submitted an essay featuring a third part (although I will simply not allow the possibility that a single French law student this side of the Paris Commune would have filed an essay in five parts). And I suspect that there may have been a 2L at the University of San Diego who once submitted a final examination into two parts and four sub-parts in Professor Maimon Schwarzschild's 'Public International Law' course. But these hypothetical 'Clermont-Ferrand' or 'San Diego' moments are unusual enough, and noticeable enough when they manifest themselves, for my general statement about 'French legal culture' – and for my abiding investment in the ideas of culture and legal culture – to hold in a way that allows resistance to any accusation that my epistemic assumptions would consist of hegemonic formulations devoid of heuristic value.

And the reason why what I style the hypothetical 'Clermont-Ferrand' or 'San Diego' moments would remain isolated is because the existence

65 For an account of the work of Ramus (Pierre de la Ramée, 1515–72) and of his influential epistemic argument for clarity, measure, and order, see N. Bruyère, *Méthode et dialectique dans l'œuvre de La Ramée* (Vrin 1984). See also W. J. Ong, *Ramus, Method, and the Decay of Dialogue* (Harvard University Press 1983 [1958]).

of institutional authorities, of introductory books on legal writing, and of organized practice sessions with teaching assistants during the first-year programme of legal studies, not to mention the presence around one of other law students who are assumed to share an equivalent or common (that is, an 'equivalent enough' or 'common enough') understanding of how a '*plan*' is to be devised, all of these forces (and no doubt a few more) tend to generate a convergence between the various writers of law-'*plans*' in France making it plausible to each student that '*plan*'-writing is a real entity that somehow exists outside of him and to which he has to pay allegiance. Strictly speaking, of course, there is no collective representation but rather a very effectively co-ordinated set of individual representations (open to inspection) that orient personal behaviour as if there was a real entity that somehow existed outside of one and to which one had to adhere. Of course, even such a fully integrated system as French '*plan*'-writing at French law faculties will not operate mechanically and will therefore feature expressions of non-conformity, whether voluntary or not. For example, there will be those who misunderstand the model (say, the novice students), and there may be others who will want to tinker with the model at the margin, perhaps in the hope that their '*plan*' will strike the law teacher as being more rhetorically agile than other '*plans*' in the class. No culture is ever fully achieved.⁶⁶ Still, the legal culture of the '*plan*' in French law faculties is sufficiently embedded so that if a student submitted a seven-part '*plan*' with the fifth part featuring three sub-parts, all that the teacher would have to do is look the student in the eye and say '*Monsieur, votre plan ...*' ('Sir, your outline ...'). The teacher's utterance would indeed not require to be any longer, since it would be stated on the basis of an assumption that the pattern of '*plan*'-writing is well known, that it is readily ascertainable, and that one can therefore draw on its normativity in the most immediate terms. The teacher's admonition would, of course, also reveal his own embrace of the cultural model of '*plan*'-writing and his firm determination to vindicate it.

Although French law students may well eschew thinking of their *plan* in cultural terms to approach it rather as what is right (for them? for law students all over the planet?) – the exact point at which facticity would have veered into morality being debatable – it remains that to reject legal culture as a beneficial interpretive device would be to accept that ascertainable ways of feeling, of thinking, and of acting 'equivalently' or 'commonly' (that is, 'equivalently enough' or 'commonly enough') as regards legal writing, or to allow that specific patterns of production or regularities governing the fabrication of legal information, are randomly distributed across individuals or strictly determined by biological heredity – both suppositions having been repeatedly disproved by anthropological research. I agree with Michael

66 I draw closely on D. Elder-Vass, ['Comment'] (2019) 60 *Current Anthropology* 184, 185.

Forster's observations: "[I]t does not seem plausible to hold that th[e] concept [of culture] ... should be dispensed with. ... Or is one by parity of reasoning also to deny the propriety of using such a concept as 'German' or 'French' (language) ...?"⁶⁷ To those who do not like legal culture and would (expediently) leave unnamed and untheorized the scheme of legal-equivalence or legal-commonality formation that a practice such as the French approach to legal writing instantiates, I ask: what is your competing model of epistemic cohesion in law? Or do you not like the idea of epistemic cohesion either?

The contention that the characteristic French *plan* deployed in French law faculties and not elsewhere pertains to French legal culture (and the further claim that such structure can be traced to Ramism – not to mention, along the tracing way, Descartes's authoritative predilection for method) can readily be extended to more technical aspects of the law.⁶⁸ Again, such ampliative, capacious appreciation of the legal is precisely what positivism relegates outside the law, what it *outlaws*. To get a sense of how a focus on legal culture changes the parameters governing comparative research – to appreciate that the argument in favour of a culturalist perspective is not merely theoretical, but carries the most practical ramifications inasmuch as it leads to the construction of a different understanding of foreign law, prompts the acquisition of different information concerning foreign law, and ultimately generates *the formulation of a different foreign law* (no less) – consider article 1184(3) of the 1804 French civil code.⁶⁹

Before it was redrafted and renumbered pursuant to a 2016 comprehensive legislative reform, this provision featured an injunction to the effect that 'termination' (*résolution*) of contract had to be requested in a court of law. I have no doubt whatsoever that comparatists-at-law of positivist observance having taken an interest in this specification would have spontaneously confined their examination of the article to its exegetical features (more or less strictly understood) and would therefore have strived to ascertain how the courts (and, I suspect, the leading writers of textbooks or law-review articles) had interpreted the relevant keywords. Arguably, this exercise into ascription of meaning would have rapidly found itself trapped within a circular and ultimately superficial understanding of the requirement's significance. For all intents and purposes, such comparative research would effectively have embraced the view that the law (the civil code) meant this or that, because

67 M. N. Forster, *Herder's Philosophy* (Oxford University Press 2018) 175.

68 My specific concern is law. For some of the questions that inevitably arise if one pursues the matter of culture further and asks oneself, for instance, whether there is a French 'accent' in music or whether US drivers show an 'American' touch, see Hofstadter (n 40) 40–41 and 284.

69 For another illustration demonstrating how a culturalist argument can lead to the ascertainment of certain information *qua* legal information even as positivism would roundly exclude it from the 'law-box', see Legrand (n 11) 389–422.

the law (the judge) said that it meant this or that, and it would have sought the views of academics on whether they thought the legislator or the judge meant this or that and, no doubt, on whether the legislator or the judge ought to have meant this or that.

For a culturalist, however, the law-text, much more rewardingly from the standpoint of its interpretive *yield*, is seen to conceal materially constitutive ideas or jurimorphs, which inform it and have indeed generated it – all of them manifestations of long-standing ways of living and working together, which one can aggregately and helpfully style ‘French culture’ and specifically ‘French legal culture’. The term “jurimorph”, which I borrow from Kyle McGee’s, conveniently – though no doubt imperfectly – refers to the array of discernible traces of a historical configuration, of a political rationality, of a social logic, of a philosophical postulate, of an ideological precept, of a linguistic order, of an economic prescription, of an epistemic assumption, and so forth, all traces that, through a practice of linguistic encryption, of enciphering, of *engrainment* (traces are engrained into words and sentences), innervate the law-text into which they have morphed to the point where they now materialize or exist *as* the law-text itself and make it, in sum, a polytext (an account whose realism incidentally stands diametrically opposed to the dangerous Kelsenian fantasy of purity).⁷⁰

For instance, article 1184(3) of the 1804 French civil code featured, between the lines so to speak, at the very least, an articulation of the deep distrust into which the individual is readily held in France; a time-honoured aversion for the unfettered play of the market; a well-honed social demand for state interventionism; an assumption that only the state can optimally bring to bear the appropriate dose of ‘*solidarité*’ that must pertain to a French contractual relationship on account of a deeply-rooted concern for formal equality; and the deployment of a strongly assertive state.⁷¹ I claim that an interpretive view of law-as-culture *yields* these various dimensions of the law-text as being key elaborative facets of the rule compelling the principled demand for judicial authorization before a contract can be ‘terminated’, and I maintain that it is such ideas that explain why the French law-text refused until the 2016 reform to allow a party unilaterally to declare the contract at an end subject to the payment of damages in case of subsequent retaliatory litigation – which is, in a nutshell, the standard position obtaining in the common-law tradition (not to mention Germany). Observe that,

70 K. McGee, ‘On Devices and Logics of Legal Sense: Toward Socio-Technical Legal Analysis’ in K. McGee (ed), *Latour and the Passage of Law* (Edinburgh University Press 2015) 61–92. See also B. Latour, ‘The Strange Entanglement of Jurimorphs’ in McGee, 331–53. Latour credits McGee. Contemplate further the image of seamless suturing.

71 For a leading scholarly treatment probing the intellectual depths of French anti-individualism, see L. Jaume, *L’Individu effacé* (Fayard 1997).

in the wake of a 1998 decision of the *Cour de cassation*, French courts had occasionally appeared willing to ignore the civil code and showed themselves prepared to validate a unilateral ‘termination’ of contract although within strict limits involving an assessment of the ‘seriousness’ of the misbehaviour of the party allegedly in breach (the relevant French word, arguably setting a higher threshold, is “*gravité*”).⁷² The presence of dissenters, a feature of every legal culture, can assist, as was the case here over a number of years, in confirming the strength of the governing pattern. In this instance, dissent also accounted in time for the relaxation of the rule, if within a stringent framework, under the 2016 reform.⁷³ To those who (still) do not like legal culture and would leave untheorized the contractual scheme to which article 1184(3) of the 1804 French civil code gave effect for over two centuries, I repeat my questions: what is your competing model of epistemic cohesion in (French) law? Or do you not like the idea of epistemic cohesion in (French) law either?

In order to generate the sort of *interpretive yield* that, alone, can permit a meaningful or profound understanding of the foreign law-text, a comparatist must be prepared to approach law *as culture* (that is, to treat law as law-as-culture) and to ascribe epistemic relevance to the law-text’s materially constitutive features – to its traces or jurimorphs – in appreciation of the fact that these form an integral part of the law-text, that these exist *as* the law-text that therefore exists *as* culture. (I find it opportune to quote Gary Watt once more: “Culture grows law grows culture”.⁷⁴) In other terms, the comparatist writing on article 1184(3) of the 1804 French civil code must be disposed to be *writing culture*. This close-reading, meaning-making strategy stands opposed to the positivist’s stubbornly closed reading. For a positivist, the ideas of ‘suspicion of the individual’, ‘market-aversion’, ‘*solidarité*’, or ‘state activism’ ought perhaps to concern sociologists, economists, or political theorists but certainly not jurists – a disciplinary reaction that resolutely and disappointingly rides roughshod over the question ‘why’ (as in ‘*Why* was the French provision formulated as it was?’, ‘*Why* the historical demand for legislation compelling judicial intervention to the exclusion of any other process?’).⁷⁵ Culturalism thus unsettles positivism’s dominant epistemology by seriously engaging with otherness-in-the-law, indeed with otherness-as-

72 Eg: Civ 1st 9 July 2002 Bull I no 187, 145; Civ 1st 28 October 2003 Bull I no 211, 166.

73 For an authoritative discussion of the new provision (now article 1226), see O. Deshayes, T. Genicon, and Y.-M. Laithier, *Réforme du droit des contrats, du régime général et de la preuve des obligations* (2nd edn, Lexis Nexis 2018) 573–79.

74 Supra (n 46).

75 To the extent that Duncan Kennedy argues that law, even so-called ‘technical’ law, is not apolitical – and that the claim that law is apolitical is itself political – I discern congruence between his views and mine. See D. Kennedy, ‘The Political Stakes in “Merely Technical” Issues of Contract Law’ (2002) 10 Euro R Private L 7. Adde: P. Legendre, *Dogma: instituer l’animal humain* (Fayard 2017) 156: “[T]echnique is not *neutralizable*”.

the-law. A transgressive or inventive comparative project, culturalism disagrees with positivism regarding what there is to be seen when a comparatist investigates a foreign law-text. Withstanding the reductionism that constricts comparison to a skeletal understanding of the legal, thinking the foreignly legal by englobing positivism's excluded discourses, law-as-culture wishes to fissure and interrupt a totalizing cognitive agenda that vehemently purports to invalidate difference through the cancellation of the singularity that (inevitably) pertains to the (unavoidably) local traces that are the concrete expression of another way of ascribing another meaning in another law-world.

For a comparatist who is willing to offer an overture *to* the language of the foreign law-text, which is also an overture *of* the language of the law-text, there can be nothing that is quintessentially 'legal' or automatically outside the 'legal'. Because there is no algorithm to determine the vectors of cultural extension, the quality of 'legality' (if this be the apt word) is thus conferred to heterogeneous elements – say, the beliefs, the desires, the commitments – that the comparatist connects or assembles, that he collocates, that he understands or interprets as pertaining to the 'legal', that he ascribes to 'legality', and that he thus names 'the French law of "termination" of contract' while meaning, in effect, 'the French law-as-culture of "termination" of contract' (I leave to one side the not insignificant fact that the French themselves would refer to '*résolution*').⁷⁶

I argue that what positivism has deemed superfluous – positivism's unthought – can be said to matter, interpretively speaking, even more than what it has held to count: the ideas permeating the words and sentences of the law-text, visible to the comparatist willing to read between the lines, can be appreciated as revealing more about the law than a purportedly purely 'legal' exegesis of these words themselves could ever do, irrespective of how much seeming 'legal' analyticity one could bring to their reading. Consider Geoffrey Wilson:

It would be unwise ... to regard anything in Japanese society as *prima facie* irrelevant to the understanding of Japanese law on first setting out to get to grips with it. The links between law and language, law and the political or social and economic order, law and the history and traditions of the country, its codes of morality, its senses of justice and the relationship between the legal profession and other professions and

76 For reflections on (structural) untranslatability, see S. Glanert, *De la traductibilité du droit* (Daloz 2011); S. Glanert (ed), *Comparative Law – Engaging Translation* (Routledge 2014); S. Glanert and P. Legrand, 'Foreign Law in Translation: If Truth Be Told ...' in M. Freeman and F. Smith (eds), *Law and Language* (Oxford University Press 2013) 513–32; P. Legrand, 'Mind the Gap! Translation of Foreign Law Is Not What You Think' (2021) 8 *Revista de Investigações Constitucionais*/J Constitutional Research 601.

between legal scholarship and other forms of scholarship, the relative standing of different actors in and around the legal system, all have their impact on law and its administration and the definition of law and legal scholarship.⁷⁷

In more succinct language, Thomas Bernhard, whose literary talent saved him from the law, exclaims how, potentially, “[t]he world is utterly, thoroughly legal”.⁷⁸ Note that, as is the case with any research endeavour, while information-making will owe much to the dependence of the information-production exercise upon the comparatist-at-law’s enculturation and on the insights that his singularity will allow him to contribute (or not) to the interpretive task at hand, it will also, pragmatically speaking, have something to do with temporally emergent contingency (I have in mind, for example, the serendipity of one’s readings – a rare book may have become permanently missing in the library by the time of one’s research visit, not least in France – and the existential randomness dictating one’s encounters and conversations with members of the local legal ‘community’).

Crucially, enculturation, singularity, and serendipity are enough to ensure that no two understandings of a foreign legal culture will ever be identical – another application of Leibniz’s Law to the effect that if there is more than one, there is difference.⁷⁹ Each understanding – to the extent that an appreciation deserves to be qualified as such – will differ from all other understandings, since each understanding will be the result of the comparatist’s encultured and singular assemblage and deployment of some cultural traits in preference to others, out of all the cultural traits that he will have ascertained as the foreign law-text, out of all the cultural traits that will have been available to him to ascertain.⁸⁰ Moreover, the meaning of each understanding – what a given understanding will be taken to signify – will depend on the readers’ or listeners’ adhesion as they receive the comparatist-at-law’s cultural claims, the readers and listeners themselves being encultured also. As adhesion – the comparatist’s to the foreign and the comparatist’s interlocutor

77 Wilson (n 29) 831.

78 T. Bernhard, ‘Ist es eine Komödie? Ist es eine Tragödie?’ in *Erzählungen* (Suhrkamp 2001 [1967]) 74.

79 Eg: G. W. Leibniz, *Nouveaux essais sur l’entendement* in *Die philosophischen Schriften von Gottfried Wilhelm Leibniz*, vol 5 (C. I. Gerhardt ed, Olms 1965 [1764†]) 49: “[B]y virtue of imperceptible variations, two individual things cannot be perfectly similar, and ... they must always differ”. I address the overlooked way in which sameness or similarity entail difference in Legrand (n 11) 231–37.

80 While writing from a theoretical vantage point that claims the merits of interpretive consensualism – whose feasibility and suitability I dispute – Gadamer, in an oft-quoted passage, argues the very contention that I hold in the body text: “[O]ne understands differently, when one understands at all”: H.-G. Gadamer, *Wahrheit und Methode* (5th edn, Mohr Siebeck 1986) 302.

to the comparison – emerges as an extraordinarily complex arrangement, it is clear from a culturalist standpoint that the process of ascription of meaning through a valorization of law-as-culture is incompatible with the idea of the legal ever being structurally closed: one never reaches the stages at which a foreign law-text can convincingly be said precisely to ‘begin’ or ‘end’, definitely. Far from there being anything like the certainty that positivism craves as regards the ascertainment of foreign law, a culturalist appreciation of the legal, which is a differentialist apprehension of it, shows how law-texts cannot be secured against pervasive semantic movement, how within interpretation there must prevail equivocation or *play*.⁸¹ In brief, the comparatist-at-law could have discerned further traces beyond the ones that he made into the focus of his study, and he could have uttered something different from what he asserted about the traces that he addressed (which he would have done, for example, if his stock of references had been more extensive or if he had brought to bear a more sophisticated handling of the language in which the primary materials are written, if he had had more time at his disposal or if he could have indulged a higher word limit).

Quite apart from the fact that reference to culture shows how the individual exists as a primordially encultured being, for comparative law to validate law-as-culture attests to the valorization of a unit of analysis that no longer regards the technical aspects of the posited law as a controlling centre of the interpretive action and that resolutely includes law-in-situation within its interpretive frame.⁸² In no way, however, must a differencing analysis of legal cultures dispense with the usual legal artefacts like statutes and judicial decisions. Indeed, my contention is emphatically that cultures are to be found at work, so to speak, *as* statutes and *as* judicial decisions, which must therefore remain one of the principal focusses of research for comparative law. But the posited law cannot be where comparison stops. Rather, it must be where comparison begins its *presencing*; it must act as the comparison’s starting-point (I say ‘starting-point’ in order to write succinctly: as any tracing reveals, the statute or judicial decision is a construction that is necessarily the outcome of a historical development, a political process, a social

81 For a discussion of the inevitability of play with respect to the interpretation of texts in comparative law, see P. Legrand, ‘Jameses at Play: A Tractation on the Comparison of Laws’ (2017) 65 Am J Comp L [Special Issue] 1, 110–20.

82 The contours of the ‘unit’ will vary according to the comparative intervention. In other terms, the location of culture will depend on the specific question that the comparatist is addressing and certainly need not always correspond to the national territory. For example, the legal culture at issue might be that of Corsica, of commercial courts in France, or of labour lawyers in Poitiers. See also *supra* (n 18). Moving from the infranational to the supranational, the relevant legal culture can also consist of France-and-Germany. Eg: J. Q. Whitman, ‘The Two Western Cultures of Privacy: Dignity Versus Liberty’ (2004) 113 Yale LJ 1151.

compromise, or whatever – that is inherently mired in *subsequence*.) For the comparatist, then, the aim is to refuse to take statutes or judicial decisions as so many givens (as so many posits) and, through an unceasing movement of oscillation towards and away from the posited, very much like a Heideggerian “*Verwindung*”,⁸³ to elicit how these law-texts are conditioned by contingent epistemic patterns implementing cultural commitments – and also to probe how the posited in action sustains and amplifies these cultural commitments in its own guise.

To return to the French civil code on ‘termination’ of contract, a comparatist favouring a culturalist appreciation of foreign law in pursuit of a meaningful, that is, a profound or thick understanding, can therefore be expected to maintain that state activism or distrust of the individual prove to be more significant dimensions of the law-text – thus deserving to be traced at length – than whatever the courts may have been saying about the semantic extension of ‘termination’ (or ‘*résolution*’) as a matter of posited law, these judicial pronouncements accordingly losing the analytical focality that they have traditionally been maintaining for positivists. Incidentally, I argue that there is nothing in the tracing of the civil code provision to the social demand for a strong state, or to discomfort in the face of an unregulated market, to suggest anything like reification, totalization, or stereotypification of foreignness. While the comparatist’s tracing remains the best answer that he can offer in order to make meaningful sense of the singular foreign law as it dwells locally, any tracing is ever provisional – thus, when the comparatist, after some time away, returns to the foreign law-texts envisaged as repositories of traces, something different is bound to catch his eye – and ever unsaturable in the sense that supplementary tracing is always possible.⁸⁴ Once more, not only are traces materially constitutive of the law-text, but their unconcealment cannot be extraneous to the comparatist’s intervention. Increased familiarity with French history or French society or the French civil code, for example, could lead the comparatist, in due course, to revisit his tracing or to invent new traces with a view to enhancing his understanding of the French law of ‘termination’ of contract further still.⁸⁵

83 For a thoughtful appreciation of Heidegger’s emancipatory idea, see T. Küchler, *Postmodern Gaming* (Lang 1994) 1–18 and passim.

84 It follows that tracing must adopt the form of the necessarily unfinished, the inevitable to-be-abandoned, to-be-interrupted, to-be-left-in-ruins. Think of an aesthetic – or a counter-aesthetic – of dissonance, dispersion, and disjointure. Envisage an exercise in disjunctive prose: always a containment, tracing can never duplicate the traceable. Otherwise said, no matter how tracing makes foreign law more realistic, it can never be realistic enough. To the extent that it must omit a component part of the foreign law-text, any unfolding of it is, in effect, structurally de-realizing.

85 There appears no creditable way in which such an improved awareness of the foreignness of foreign law can be denigrated as “a position of ‘hyperparticularity’”, and there seems

Again, it is not a matter for comparatists of ridding themselves of posited law (which would be silly), but of coming to it *obliquely*, of relativizing its interpretive pertinence. The fact is that all formulations of the posited law can beneficially be envisaged as cultural expressions and that no formulation of the posited law can therefore safely escape a cultural interpretation. In the words of Lawrence Rosen speaking of law, “one cannot fail to see it as part of culture”.⁸⁶ I insist that, as I make these various claims, I am not arguing that law exists only as culture, or that the legal can be confined exclusively to the cultural. What I do contend, however, is that such legal artefacts as statutes or judicial decisions exist *as* incorporative cultural forms, irrespective of what other existences they may also harbour. Thus, statutes and judicial decisions exist as the articulators or vectors of a cultural sensibility that is actually inscribed in the textual fragments themselves and that can be traced to arrays of historical, political, economic, social, philosophical, ideological, linguistic, and other cultural formations having undergone a process of jurimorphing – of transformation *as* statute or *as* judicial decision.

To argue that law exists as culture suggests that a salient feature of legal discourse lies precisely in its *embeddedness*. Indeed, even leaving to one side the matter of time (stabilized information is vulnerable to later destabilization), I maintain that no law-text can ever fully transcend facticity. Whether as regards place or, say, accent (but the extension of the *genius loci* is endless), situatedness is always-already a structural element of law (which means that law cannot even be imagined as otherwise than situated). Law, then, enjoys no standpoint-independent status. It is inherently law-*in-situation* – the preposition ‘in’ aiming to capture the kind of all-encompassing involvement that a sentence like ‘Simone is *in* love’ might suggest. Crucially, to see law as law-*in-situation* allows one to appreciate that no law is ever absolutely right or wrong, but that law is right or wrong for a ‘community’.⁸⁷ To paraphrase Richard Shweder’s shrewd words, “[w]hat is [legally right] is not anything, but it is more than one thing”.⁸⁸ In other terms, the fact that law exists as culture means that the idea of a true law – of a law that would be the right law among all the various laws, that would stand as the correct

to be no reasonable sense in which one can assert that “hyperparticularity is too pessimistic a view of the possibilities of learning”: V. C. Jackson, *Constitutional Engagement in a Transnational Era* (Oxford University Press 2010) 179. Quarrying is querying, and querying is learning.

86 Rosen (n 4) 5.

87 Eg: Legrand (n 11) 263–69. For a thoughtful defence of relativism (as in, say, ‘legal relativism’), see generally M. F. Brown, ‘Cultural Relativism 2.0’ (2008) 49 *Current Anthropology* 363. I advocate for legal relativism in P. Legrand, *Comparative Law and the Task of Negative Critique* (Routledge 2023) 182–249.

88 R. A. Shweder, ‘Ethical Relativism: Is There a Defensible Version?’ (1990) 18 *Ethos* 205, 217.

law across all borders, that would hold forth as the exact law – is unsustainable. Indeed, “[t]ruth can only be universal”, and “‘to each his truth’ is evidently a strict negation of truth itself”,⁸⁹ which must be the implication arising from a cultural understanding of the legal. In his novel probing basic issues around the ideas of reality and identity, David Mitchell has a character offering an insightful reply in this regard: “Truth is singular. Its ‘versions’ are mistruths”.⁹⁰ Only the most egregious positivism, then, could prompt comparatists-at-law to defend the view that comparative law stands as an “*école de vérité*”.⁹¹ What there is, at best, is “a self-representation that [one] believe[s] is true” – otherwise said, a preference.⁹² Not insignificantly, such democratian pluralism avoids the dogmatism that truth inevitably evinces when it professes to act as authoritarian conversation-stopper.⁹³ Yes.

These observations prompt me to insist that law remains law-in-situation even when it purports to have been de-situationalized, whether through an international convention or any other allegedly globalizing process.⁹⁴ The fact is that such panopticons retain a local or, perhaps more sophisticatedly, a *glocal* dimension that simply cannot efface spatial disjuncture. The diversity of what there is in terms of singular manifestations of the law-text – the differend – is ineliminable. And the formulation of the legal into a form that would be ‘the one’ changes little to the actual situation. Not even the positing of formal unity can avoid the persistent manifestation of the manifold. Through uniform law, for example, the many laws, although now increased by one (say, the international convention), do not become one. Whatever the positivist metaphysics of form may want to suggest, such connective synthesis is not in itself enough to define the becoming of law-worlds. Inscribed within the site of the international text, there will take place a disjunctive synthesis of routes and mutations (note, once more, that disjoining multiplic-

89 A. Barrau, *Chaos multiples* (Galilée 2017) 355.

90 D. Mitchell, *Cloud Atlas* (Random House 2004) 185.

91 Zweigert and Kötz (n 48) 14. The hubristic expression appears in French and without italics in the original German text.

92 Spivak (n 7) 168. Gayatri Spivak adds that “what we call culture ... may be shorthand for an unacknowledged system of representations” allowing one to indulge self-representations that one regards as true: *ibid.* It must follow that “when [one] realize[s] that [one’s] deepest beliefs, even those things [one] would die for, are just contingencies of where [one] w[as] born and brought up, then their grip on [one’s] mind is loosened to a dizzying extent”: Collins (n 13) 90. In effect, Collins is describing the passage from the belief that one is defending the truth to the realization that one is promoting a preference within the process of subjugation that is enculturation (observe that there is ‘subjugation’, not ‘subjectivization’). Because, in my experience, the loosening that Collins mentions hardly ever takes place, he should be writing that it ought to be happening instead of simply asserting that it does.

93 As Aurélien Barrau observes, “[t]ruth is not an argument; it places itself upstream so as to neutralize the debate to come”: Barrau (n 89) 380.

94 Eg: Legrand (n 11) 109–32.

ity is not to be understood as implying the existence of monadic entities, but rather as allowing for an intricate web of complex intersections).⁹⁵ To say it like Gunther Teubner, there is “the fragmentation of global law” harking back to “contradictions between society-wide institutionalized rationalities, which [uniform] law cannot solve”.⁹⁶

Importantly, the cultural regime of enunciation that I encourage befits the motif of difference. Indeed, “the analysis of culture starts from and concludes on the idea of difference(s)”.⁹⁷ Difference, in the sense of ‘situated difference’, that is, difference as meaning “something local, embodied, and significant”, constitutes “[t]he most valuable feature of the concept of culture”.⁹⁸

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Although culture emphatically pertains to the worldly, despite the fact that it is the expression of worldliness itself, somehow it would not concern law – which would therefore operate *hors-sol*. Being expelled from law, being deemed not to have to do with law, thus allowing law to understand itself and to be understood as strictly or purely legal, culture would felicitously not obstruct or colour access to ‘what the law is’ – *die Sache selbst*. In other words, ‘what the law is’ would not find itself obscured or tainted on account of any process of enculturation (either of the foreign law or of the foreign law’s interpreter). Indeed, positivism so craves fixity of meaning and the positivist dressage so loathes anything remotely resembling ephemerality or mutability, two intrinsic characteristics of the cultural (which is never identical to itself). Not only does positivism deny culture, then, but positivism is positivism only *in so far as* it denies culture – which is to say that it derives its very force at making decisions, at drawing lines, at stopping the movement of interpretive equivocation or play, at bringing interpretive latitude under house arrest, at producing certainty, and at generating predictability, *from this denial*. (Ironically, positivism fails to see that it also stands as a variation on the overarching theme of culturalism. Indeed, how could positivism and positivists operate beyond culture? Far from consisting in the neutral configuration that it assumes itself to be, positivism operates as a technology of

95 Eg: P. S. Berman, ‘The Inevitable Pluralism Within Universal Harmonization Regimes: The Case of the CISG’ (2016) 21 Uniform LR 23.

96 A. Fischer-Lescano and G. Teubner, ‘Regime-Collisions: The Vain Search for Legal Unity in the Fragmentation of Global Law’ (2004) 25 Michigan J Int’l L 999, 1004.

97 A. A. Yengoyan, ‘On the Issue of Comparison’ in A. A. Yengoyan (ed), *Modes of Comparison* (University of Michigan Press 2006) 6.

98 A. Appadurai, *Modernity at Large* (University of Minnesota Press 1996) 12. For a detailed treatment of difference and differential analysis within comparative law, see Legrand (n 87) *passim*.

power committed to values such as clarity, immaculacy, indisputability, and orderliness – a non-exhaustive, *cultural* enumeration.)⁹⁹

Involving the formulation of critical ideas about the complex connections between a foreign law and the polylogical world that it inhabits, and that inhabits it, the entrenchment of the new practice of comparative law that I recommend wants the comparatist to enhance comparative law's worldliness by accounting for foreignness's worldliness and for interpretive worldliness, too – to ameliorate his reporting's integrity and attendant creditability. In particular, I contend that the comparatist must distance himself from national-positivist moulds and disrupt expected academic roles by humanizing his work and writing different articles and different books espousing forms of speech that have been viewed as unrealistic in the light of the highly conventionalized and seemingly ossified practice of comparative law – the epistemocracy – still enduring in academic discourse. As I deplore how positivism *à la* MPI atrophies comparative reflection, on how a one-dimensional perspective reducing worldliness to empirical givenness is complicit with political and social domination (implausible decolonial gesticulation notwithstanding), I hasten to observe that the refusal to come to terms with foreign law's worldliness does not lead foreign law's worldliness to vanish – nor does the refusal to come to terms with the comparatist's worldliness lead the comparatist's worldliness to vanish. What must be wanted is thus a comparative law whose composure heralds, not positivism's crass complaisance in the upholding of its absurd dissociations (foreign law from culture, the comparatist from culture) and its no less incongruous epistemic commitments (to objectivity or truth), but the implacable weight of the world, allowing it to enter the comparison, and having it find its final form there. Such is the *negative* comparative law that the age demands.

99 Otherwise said, positivism as understood by positivists is “a utopia”: O. Kahn-Freund, ‘Introduction’ in *The Institutions of Private Law by Karl Renner* (O. Kahn-Freund ed, A. Schwarzschild tr, Routledge & Kegan Paul 1949) 8. It is not trite that this verdict should hail from a comparatist-at-law whose insights continue to stand the field of comparative law in excellent stead, if only one is prepared to recall and mobilize them. Eg: O. Kahn-Freund, ‘On Uses and Misuses of Comparative Law’ (1972) 37 *Modern LR* 1.