Negative Comparative Law and Its Theses

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Addressing the salient controversies that occupy the theory and practice of comparative law, committing to resolutions that seek to deploy primordial wisdom regarding the foreign and purport to do justice to foreignness, this Article offers a critical reading of the disciplinary matrix whose superlations, although woefully under-theorized, have long been exercising aggressive epistemic governance over comparative legal studies. An exercise in counter-writing challenging the imposture of concepts like objectivity, truth, and method, also activating such tropes as the cultural singularity of foreign law and the encultured corporeality of foreign law's interpreter, this Article wants to provide comparatists-at-law — whether they work in Australia, Brazil, China, or Denmark and whether they are interested in animal rights, breach of contract, CEDAW, or digital securitization — the transformative analytical equipment that must allow them to produce an optimized appreciation of other legal cultures and of other laws with a view to their reports generating a considerably enriched interpretive yield. Not a final vocabulary, the argument stands as the current precipitate of many years of oppositional reading, thinking, teaching, and writing comparative law and of engaging in a struggle for epistemic change — hence negative comparative law, the comparative law that says no to comparative law's extant orthodoxy. The text is formulated as a multiplicity of elementary propositions or clusters of propositions, each of them logically simple, many epistemically inevitable, some key tenets of the programme. Inescapably featuring occasional iterations, this fragmentary approach wants to enhance readability, promote understanding, and (*sans illusion*) foster adhesion.

'I think that it is precisely the role of the intellectual in our society
to have a conduct essentially particularistic and partialistic at the same time.
If you will, I think that the world presents itself in the eyes of the critic
as full of positive, full of positivity, and that critique has precisely
the function of operating a kind of trauma, of shock of the negative, of negativity.
In sum, the role of the critic would be unceasingly to make room
within the fullness of the world, but not necessarily to make it empty'.

—Barthes[1]

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[1] Barthes, R (27 May 1957) Interview with Lalou, E broadcast on the radio programme *Le Goût des livres* (RTF). At this writing, the complete sound archive has not been released, and there exists no published transcript. The excerpt I quote, which is my own record, is from Sloterdijk, P (11 June

'Everything comes down actually to thinking rigorously the negative'.

—Merleau-Ponty[2]

1. (Conclusions are necessarily incomplete and provisional, ephemeral even.)

2. In advance of empirical study, it is reasonable to assert that within every ascertainable law-world the paradigmatic or governing legal ideology adopts the form of a brand of positivism (from the Latin *positivus*, what is imposed, the reference being to the law in force).

3. In advance of empirical study, it is reasonable to assert that all brands of positivism consider the law in force as the local law that is normatively binding and therefore assume an epistemic focus on local-law-as-normatively-binding-law.

4. In advance of empirical study, it is reasonable to assert that for all brands of positivism an epistemic focus on local-law-as-normatively-binding-law means an interpretive strategy making exclusive or principal reference to legislative texts, appellate judicial decisions, and (orthodox) doctrinal scholarship.

5. For some extreme brands of positivism, law is deemed a science and the learning of law is deemed a scientific endeavour — these ontologic and epistemic claims an impudent display of scholarly arrogance, all the more troubling given how positivism's understanding of scientificity demonstrably turns on an impoverished and contestable appreciation of science, which it confuses with technique.

6. Positivism heralds a solipsistic closure of the legal mind. It consigns one to a safe, settled life-in-the-law. For its part, comparative research into law emphatically rejects such confinement and commits to the local intellectual and normative relevance of what is not local law, of what is and exists as foreign law.[3]

7. (In important ways, the 'foreign' is one of local law's 'own' productions. Indeed, it is local law that legally constitutes its externality on account of the distinction it draws between what it deems internal and what it excludes as non-internal. Foreign law is the law that local law holds not to be binding locally.)

2021) Interview with Van Reeth, A broadcast on the radio programme *Les Chemins de la philosophie* (France Culture) <https://www.franceculture.fr/emissions/les-chemins-de-la-philosophie/cours-particulier-1180-peter-sloterdijk-lorigine-de-la-philosophie-ce-nest-pas-letonnement-cest-le> at 13min41sec ['Je pense que c'est précisément le rôle de l'intellectuel dans notre société que d'avoir une conduite essentiellement partielle et partiale, en même temps. Si vous voulez, je pense que le monde se présente aux yeux du critique comme plein de positif, plein de positivité, et que la critique a précisément pour fonction d'opérer une sorte de traumatisme, de choc du négatif, de la négativité. En somme, le rôle du critique serait sans cesse de faire de l'air dans le plein du monde, mais non pas forcément de faire du vide']. English cannot capture Barthes's word-play between 'partielle' and 'partiale'.

[2] Merleau-Ponty, M (2010 [1964†]) *Le Visible et l'invisible* in *Œuvres* Lefort, C (ed) Gallimard at 1695 ['Tout se ramène vraiment à penser rigoureusement le négatif'].

[3] Cf Hutchinson, B (2018) *Comparative Literature* Oxford University Press at 21: 'To examine comparatively [...] is to range [...] from Rousseau to Wordsworth, from Goethe to Leopardi. It is not, at least in the disciplinary sense of the term, to compare Wordsworth to Coleridge'.

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8. '[C]omparison [i]s an indispensable instrument of human thought that most often goes seriously astray'.[4]

9. '[I]f the specific properties of oranges and apples could retain their significance without dissolving into the generalities of fruit the comparison would achieve its full utility, i.e., when the Many are complemented and complicated, rather than simplified and displaced by the One'.[5]

10. 'Like all categories, the one named "fruit" can be misleading, particularly if mistaken for something extant in nature, rather than an artificial construct generated through acts of comparison'.[6]

11. '[C]omparatism has repeatedly — and rightly — fallen into discredit'.[7]

12. 'All too often, comparative reprocessing makes different fruits look and taste alike while none of them tastes very good. In effect, they have been de-fruited: distanced from the soil in which they grew, deprived of the specifics that gave them flavor, converted into cheap, homogenized goods for undiscriminating consumers'.[8]

13. 'If comparison is to have a viable future, we can begin by identifying and reining in its most exploitative tendencies. Inter alia, we need to resist the impulse to subordinate the particular to the general, to privilege similarity over difference [...]. We also need to avoid superficial engagement with any of the materials we treat, giving serious attention to their full content, not just such aspects as strike our fancy, serve our interests, and make our point. Finally, we need to avoid striking pretentious postures, claiming to know more than we do'.[9]

14. We require 'inquiries that are modest in scope, but intensive in scrutiny'.[10] In effect, '[t]he more examples compared, the more superficial and peremptory is the analysis of each'.[11]

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15. Comparative research into law assumes the surpassing of local law as one's exclusive frame of normative legal reference — the surmounting of the seemingly insurmountable.

[4] Lincoln, B (2018) *Apples and Oranges* University of Chicago Press at 3.

[5] Id at 4.

[6] Id at 5.

[7] Id at 9 [emphasis omitted].

[8] Ibid [emphasis omitted].

[9] Id at 11.

[10] Ibid.

[11] Id at 26.

16. Comparative research into law, whether implicitly or explicitly, argues a theoretical lack — and theoretical cracks, fissures ('Risse und Schründe') — in the positivist fortress. It contests positivism's reductionist approach to matters legal; it favours a resolute strategy of *irreduction*.

17. Comparative research into law seeks an emancipation of the legal mind from the epistemic loop of local self-sufficiency and redundancy.

18. Comparative research into law depends upon a primordial reconfiguration of the law that ought to matter normatively.

19. By way of its strategy of irreduction, comparative research into law postulates a geographical deterritorialization, a displacement, and an expansion beyond the local law-space where positivism situates the normatively relevant.

20. For comparative research into law, the law that matters normatively is and exists in more than one place. (Indeed, from the standpoint of comparative research into law, one-place normativity heralds a normativity deficit.)

21. An individual who conducts scholarly research into a foreign law-world has long styled himself a 'comparatist' — or, in the United States, for example, a 'comparativist'. (There are also comparatists in other fields such as anatomy, literature, or religious studies — hence, comparatist-at-law.)

22. *In aliore loco* can be the comparatist-at-law's motto.

23. (*In illo tempore* can be the historian-at-law's motto.)

24. As comparative research into law assumes the surpassing of an epistemic focus on local-law-as-normatively-binding-law, it must overcome the positivist limitations arising from exclusive or principal reference being made to legislative texts, appellate judicial decisions, and (orthodox) doctrinal scholarship.

25. By way of its strategy of irreduction, comparative research into law postulates an intellectual deterritorialization, a displacement, and an expansion beyond what the local law-mind positivistically situates as the normatively relevant.

26. Comparative research into law, perforce, eschews the exiguity characterizing the local law-mind's positivism.

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27. While comparative research into law has long styled itself 'comparative law', there is (evidently) no law that is comparative.

28. In its Eurocentric guise, comparative law ascertainably emerged institutionally or disciplinarily in the 1820s.

29. Comparative law is the product of an array of individual scholarly initiatives, many of them German, arising against the backdrop of the official French nationalization and vernacularization of the law that interrupted the era of the so-called *jus commune* on 21 March 1804. In its institutional and disciplinary mode, comparative law is a reaction to French political and linguistic retrenchment and to French law, an alternative epistemic project.

30. (There was, of course, comparative law *avant la lettre* — consider Montesquieu — and, after comparative law had emerged institutionally and disciplinarily, there remained comparative law *à côté de la lettre* — remember Tocqueville.)

31. Comparative law, as it delineates an academic field, has long featured all the disciplinary accoutrements that mark any academic field such as journals, chairs, specialized courses, postgraduate programmes, research institutes, professional associations, and the caravanserai of workshops, seminars, colloquia, symposia, and conferences.

32. The disciplinary accoutrements that mark any academic field include an epistemic orthodoxy.

33. Typically bringing to bear a commanding or hortatory disposition, an epistemic orthodoxy asserts good usage — good scholarly manners — through all available institutional channels such as the editorship of a journal, the holding of a chair, the teaching of a specialized course, the directorship of a postgraduate programme, the headship of a research institute, the management of a professional association, or the organization of a workshop, seminar, colloquium, symposium, and conference.

34. (There are fields where the orthodoxy constitutes a prohibitive epistemic problem; for instance, it can prove to be inert, philistine, or reactionary as it serves its soothing epistemic narrative to the eager-to-be-credulous craving peer recognition. In certain fields, the orthodoxy can also have abdicated scholarly responsibility until becoming but a species of unremarkable technological expertise.)

35. Comparative law features an epistemic orthodoxy.

36. Within comparative law, where the cost of entry into the field is very low, the orthodoxy — it has long adopted the form of a German template, after it had long been a French model — constitutes a prohibitive epistemic problem (quite apart from the fact that it has become but a species of unremarkable technological expertise).

37. '[W]here there is power, there is resistance'.[12] No matter how deeply entrenched, an epistemic orthodoxy will be resisted by heterodox agents who are committed to overcoming the prohibitive epistemic problem that they were socialized and institutionalized and epistemologized into, the exorbitant intellectual difficulty that they found as they entered the field. The orthodoxy will be contested by agents who, whether implicitly or explicitly, argue a theoretical lack — and theoretical cracks, fissures ('Risse und Schründe') — in the orthodox fortress.

38. Comparative law's epistemic orthodoxy is contested by heterodox comparatists-at-law, who say no to orthodox comparative law, who, in effect, theorize and practice *negative comparative law*.[13]

[12] Foucault, M (1976) *Histoire de la sexualité* vol I Gallimard at 125 ['(L)à où il y a pouvoir, il y a résistance'].

[13] Eg: Legrand, P (2015) 'Negative Comparative Law' (10/2) *Journal of Comparative Law* 405.

39. Negative comparative law postulates that — whether legislatively, judicially, or doctrinally — law is and exists as culture so that serious and creditable research into a foreign law-world and into a foreign legal culture and into a foreign law-text must effectively assume research into law as law-as-culture. (The expression 'legal culture' appears preferable to the arcane term 'jurisculture'.)

40. Comparative research into law as law-as-culture depends upon a primordial reconfiguration of the law, a re-signification of the law, acknowledging that law is always-already cultural, that it is inherently cultural 'all the way down'. *There is and there exists law-as-culture*. This resolution pertains to negative comparative law's key epistemic tenets.

41. (Comparative law, quite apart from being a long-standing misnomer, is an almost infinitely malleable designation. But negative comparative law holds that one cannot defend as serious and creditable an interpretation of comparative law relegating culture to insignificance.)

42. (A culture can express itself, say, architecturally, culinarily, or literarily. It can also express itself legally. The architectural, the culinary, the literary, and the legal are cultural forms. Specifically, they are cultural discourses.)

43. (For example, there is French legal culture. French legal culture exists. Law-texts issuing from the French legislative assembly and enacted by French deputies and French senators; judicial decisions hailing from the French courts and written by French judges, all of whom hold a basic French state law degree from a French state law faculty; and scholarship emanating from French law faculties and fashioned by French law professors, all of whom hold a basic French state law degree from a French state law faculty and a French state law doctorate from a French state law faculty and all of whom have been accredited as law professors by the French state pursuant to a French state examination, these law-texts, then, are not an aleatory aggregation of dispersed materials haphazardly or incoherently standing next to one another over a random territory. Rather, these law-texts — instantiations of French-law-as-culture all — are *epitomes*.)

44. For negative comparative law, serious and creditable research into foreign law must readily involve, by way of its strategy of irreduction and as supplement to the posited law, an investigation into foreign legal culture. (It is not therefore that foreign posited law is cancelled, but that it is supplemented.)

45. Negative comparative law considers that the seriousness and creditability of research into foreign law must depend on the inclusion of an investigation into foreign legal culture.

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46. By way of its strategy of irreduction, negative comparative law stands for the operationalization of *cosmopolitism* within serious and creditable comparative research into law.

47. Legal cosmopolitism relies on an intellectual commitment to the normative relevance of foreign law-worlds, foreign legal cultures, and foreign law-texts as a matter of local law.

48. Legal cosmopolitism emancipates foreign law-worlds, foreign legal cultures, and foreign law-texts from their local circumstances and allows them another normative life elsewhere. It thus mobilizes the law's inherent potentiality for (transformative) delocalization and relocalization. In this sense, the legal does not differ from, say, the literary or the religious, other potentially peripatetic arrays of inscribed signs.

49. Legal cosmopolitism accepts the possibility that foreign law-worlds, foreign legal cultures, and foreign law-texts should bring one's local law under self-scrutiny, derange one's assumptions about the merits of one's law, and beget the repudiation of ordinary semblance or expectation informing one's being-in-the-law — a certain discomfort not implying that one must suddenly become wholly scornful or wholeheartedly dismissive vis-à-vis one's law and its achievements, but entailing that one must engage in the relativization of one's law and its achievements, in particular, that one must accept how local law does not exhaust the range of (legitimate) normative possibilities.

50. Legal cosmopolitism accepts the possibility that the investigation of foreign law-worlds, foreign legal cultures, and foreign law-texts should plead for the transformation of local law — which suggests that one is willing to endow foreignness with creative and redemptive power in another location than where it is and where it exists as local law.

51. Legal cosmopolitism accepts the possibility that one should effectively become to a significant extent (that is, to an extent that signifies, that is meaningful) a stranger to oneself and to oneself-in-the-law, that one should become estranged to oneself and to oneself-in-the-law: '*Man ist sich selbst entfremdet*' — as Hegel might have written.

52. Legal cosmopolitism rests on a willingness to risk an unsettling encounter with foreign law-worlds on the assumption that otherness will permit one to escape the restraint of cultural selfishness, the temptation to moral autarky, that it will allow one to emancipate oneself from indifference to difference, perhaps to access dimensions of the self that tend to vanish in the company of what would be proclaimed as the locally identical or the locally common — ultimately and paradoxically, then, to reinforce one's singularity or difference.

53. Legal cosmopolitism is a cosmopolitics, whose hallmark is refractoriness. And because negative comparative law is refractory, it can attract only those who are willing to have their intellectual assumptions and habits re-organized, who are prepared to become disoriented and reoriented.

54. Legal cosmopolitism rests on an ethical standpoint marked by a primordial striving towards openness vis-à-vis foreign law-worlds and their (cultural) reasons.

55. Legal cosmopolitism is comfortable with the inevitability of pluralism and its attendant epistemic uncomfortability.

56. Comparative research into law must assume a sophisticated *cosmopolitical* attunement.[14] This resolution pertains to negative comparative law's key epistemic tenets.

57. The existence and the reach of any cosmopolitical attunement is specifically ascertainable by reference to a comparatist-at-law's opinions, attitudes, values, concerns, interests, and competences.

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58. Negative comparative law holds that serious and creditable comparative research into law hinges on the co-presence of more than one legal culture having been made to engage with one another.

59. Out of the legal cultures having been made to engage with one another, one must be foreign to the other.

60. Again, the presence of foreignness is comparative law's institutional hallmark *par excellence*.[15]

61. The contours of foreignness in general and of a foreign legal culture in particular are contingent and require to be addressed pragmatically.

62. A foreign legal culture is typically instantiated in the form of law-texts.

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63. Negative comparative law appreciates that, as long as a foreign law-text remains as foreign law, its normative strength in a different locale is always as persuasive authority only — a weaker normativity.

64. Negative comparative law accepts that a foreign law-text is never binding in a different locale unless it is integrated into the different local law through the usual normative vehicles such as a local statute or a local judicial decision.

65. Negative comparative law presumes that serious and creditable research into a foreign legal culture can prove relevant in a different locale, that a foreign legal culture, for instance, through a foreign law-text, can be ascribed a normative role in a different locale.

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[14] Cosmopolitism distinguishes itself from cosmopolitanism as it reclaims the polyphonic deconstruction and reconstruction of the planet through recognition of the heterogeneous cultural entities that inhabit it and by way of an expression of respect towards them. Meanwhile, cosmopolitanism, a variation on the theme of universalism, pursues a policy of one-world convergence and suggests that such integrative formation should be privileged over against a differentialist sociality. Specifically, all human beings are regarded as equal members of a worldwide body politic. Cosmopolitanism is typically associated with Kantianism, because in a famous essay Kant developed this idea as a guiding principle with a view to achieving enduring peace. See Kant, I (1977 [1795]) *Zum ewigen Frieden* in *Werkausgabe* Weischedel, W (ed) vol XI Suhrkamp at 195-205. Making due allowance for the structural inadequacy of binary categorizations, cosmopolitism resonates with negative comparative law, while cosmopolitanism evokes the international-law project.

[15] Supra note 3.

66. Within the practice that is comparative research into law, theory comes first, second, and third. This resolution pertains to negative comparative law's key epistemic tenets.

67. The comparative intervention cannot dispense with an (infinite) theoretical orientation and clarification. (Elementarily, there can never be a surfeit of sophisticated theorization informing comparative research into law.)

68. Within the theory of comparative research into law, epistemology comes first, second, and third. This resolution pertains to negative comparative law's key epistemic tenets.

69. The comparative intervention cannot dispense with an (infinite) epistemic orientation and clarification. (Elementarily, there can never be a surfeit of sophisticated epistemologization informing comparative research into law.)

70. (Comparative law is an episteme. It is the episteme of other laws' epistemes.)

71. We are 'seeing others through the systems that deliver them to us'.[16] One such 'system' is comparative law. (The terms 'model', 'scheme', or 'construction', three words pointing more emphatically to *designer input* — and to its occasionally stochastic processes — appear preferable.) Epistemologically speaking, comparative law takes legal otherness — institutions, rules, practices from a different law-world — and typically imports it into the comparatist-at-law's 'own' law-world, at the very least linguistically so, but in other, substantive ways, too. Counter-intuitively, however, orthodox comparatists-at-law have kept otherness in epistemic check. In order to eschew anything that would prove too menacing, too threatening, or too disturbing, influential comparatists-at-law have used a range of filtering mechanisms (functionalism and the '*præsumptio similitudinis*' readily come to mind) so that only limited otherness would be recordable at the point of arrival — presumably in order not to challenge the abiding stability of the 'receiving' law (which would maintain itself, above and beyond the other, as a perpetually dominant force). The otherness having survived the journey — the otherness that was not erased in the process of dissemination, the heterogeneity that somehow overcame the epistemic attempt at homogenization, that was delivered to one as being ultimately not so unlike one — would have been deemed the 'good', the 'acceptable' otherness, the otherness that did not ultimately appear too different from, say, the comparatist-at-law's 'own' law. Resting on an (unexamined) assumption of commensurability, operating in the guise of doctrines like functionalism and the '*præsumptio similitudinis*', orthodox comparative law has steadfastly countenanced acts of epistemic violence with a view to the machination and imposition of sham-identity or sham-commonality across laws. Negative comparative law wants to interrupt, rigorously and vigorously, such epistemic injustices — such epistemicide — against singularity or difference. Indeed, it seeks to convey otherness across law-worlds while allowing it to remain the otherness that it is, as it exists, in a place that is incommensurably different from the location where it is epistemically being made to travel.

[16] Palumbo-Liu, D (2012) *The Deliverance of Others* Duke University Press at xi.

72. As negative comparative law seeks to convey the other-in-the-law across law-worlds in a form abidingly loyal to its otherness, it must accept the other's singularity or difference and appreciate that the other's singularity or difference has to remain unassimilable or unappropriable or uncolonizable by the encultured reason into which the comparatist-at-law has been *thrown* (no reason is or exists beyond culture — reason is cultural).[17] In other words, 'the rapprochement […] must be accompanied with the greatest distance possible'.[18] This resolution pertains to negative comparative law's key epistemic tenets.

73. (The only matter that laws share identically or have in common is their singularity or difference from one another.[19] This resolution pertains to negative comparative law's key epistemic tenets.)

74. An encounter with foreign law-worlds must resist assimilation or appropriation or colonization of the other by the self, lest otherness should find itself unjustly diluted — suppressed — into selfness. The comparatist-at-law's epistemic responsibility is at stake.

75. An encounter with a foreign law-world must resist the establishment of a relation with the other, because such a connection would instantaneously entail the integration of otherness — the suppression — into selfness that must be avoided. Instead, an encounter with a foreign law-world must favour a determined strategy of *irrelation* with the other. This resolution pertains to negative comparative law's key epistemic tenets.

76. An encounter with a foreign law-world must bring the other into the presence of the self while striving to maintain the gap between the two, otherness thereby

[17] A crucial term accounting for the fact that the comparatist-at-law comes to foreign law neither subjectively (he is encultured) nor objectively (ditto), 'thrownness' ('Geworfenheit') is central to Martin Heidegger's response to Cartesian ontology as he proceeds to articulate one's factical, concrete burden. (Arguably, the suppression of the 'subject' and of the 'object' is the only way to avoid an appropriation or assimilation or colonization of the 'object' by the 'subject'.) Now, Heidegger is emphatic that it is not up to one to determine one's facticity ('Faktizität'), that is, to delineate one's concrete situatedness. For Heidegger, one is fated to be always-already thrown into one's world and into one's life, to be delivered over to one's world and to one's life, neither one's world nor one's life thus being of one's own making and at one's own disposal. One is thrown into being one's self. In John Richardson's words, '[w]e grow up into [...] assignments', which means that '[we] are first *constituted* by being aligned with the concerns and capabilites current in our society': Richardson, J (1986) *Existential Epistemology* Oxford University Press at 131. That certain ways of being a self are possible and that others are inaccessible is therefore not a matter of agency. And the manner in which my experiences get to be endowed with meaning is not an objective process either (I do not face world: I am of world; I am *worldly*). There is, then, embeddedness and indebtedness, these inevitable epistemic features marking the difference with 'all *transcendental* ways of knowing': Heidegger, M (1994 [1936-38]) *Beiträge zur Philosophie* (2nd ed) in *Gesamtausgabe* von Herrmann, F-W (ed) vol LXV Klostermann at 239 ['aller (...) *transzendentalen* Erkenntnisart']. Observe that for Heidegger to state how 'our understanding [...] is something we find ourselves already in, with no possibility of originally producing it', means that thrownness is '"fixed" and settled, impervious to our projecting': Richardson, J *Existential Epistemology* supra at 34. It is one's facticity. To return to the idea of 'burden', '[w]hat is burdensome to us is [...] [t]his thrownness, then, as our incapacity to generate our world or our selves for ourselves': Id at 132.

[18] Bayard, P (2014) 'Pour une nouvelle littérature comparée' in Bayard, P (ed), *Pour Eric Chevillard* Editions de Minuit at 106 ['le rapprochement (…) doit s'accompagner de la plus grande distance possible'].

[19] Cf Derrida, J and Ferraris, M (2018 [1994]) *Le Goût du secret* Bellantone, A and Cohen, A (eds) Hermann at 71: '[W]e know in common that we have nothing in common' ['*(N)ous savons en commun que nous n'avons rien en commun*']. The words are Derrida's.

being recognized and respected as otherness, being allowed to remain as otherness — one accepting as a matter of justice that the other is entitled to be and to exist as other, just like the self is entitled to be and to exist as self. The comparatist-at-law's epistemic responsibility is at stake.

77. An encounter with a foreign law-world must have the self coming as close as possible to the other without impinging upon the other's otherness — and without losing one's selfness along the way: you are not like me, but I am not like you.

78. An encounter with a foreign law-world must have the self coming before the other to be for the other, that is, to take the other seriously. Indeed, even if the ultimate aim of the comparative endeavour is to ameliorate the self, the comparatist-at-law must approach the other *empathetically*, lest he should stand accused of crudely instrumentalizing otherness. This resolution pertains to negative comparative law's key epistemic tenets.

79. An encounter with the other must suggest a willingness on the part of the self to take the other seriously — to credit him with rationality — and a disposition to learn from otherness. The comparatist-at-law must reveal a preparedness to become estranged from some at least of the epistemic markers of selfhood.

80. An encounter with the other takes the self out of the (snare of the) epistemic comfort zone where he is habitually sheltering and compels him to face defamiliarization and destabilization — surprise and astonishment, even.

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81. Negative comparative law must intervene as an exuberant interruption of positivism's epistemic limits. Indeed, positivism has cast a very long shadow over comparative law, and very many comparatists-at-law — orthodox or influential jurists — continue to default to positivism in ways not only intellectually inert, but epistemologically complicit and complacent. Positivism being like a grid whose mesh would protect against all intrusion from what it deems the outside, negative comparative law must rigorously and vigorously stultify the invidious and insidious hold of positivism by way of its strategy of irreduction. This resolution pertains to negative comparative law's key epistemic tenets.

82. Negative comparative law must intervene as a resolute cancellation of positivism's territorial and epistemic limits.

83. Briefly to return to Hegel — without any need to adhere to his philosophical system — there is 'the tremendous power of the negative'; 'it is the energy of thought', which negative comparative law must harness.[20]

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84. Whether he realizes it or not, every comparatist-at-law is equipped with a theory traversing every interpretive intervention into a foreign law-world that

[20] Hegel, GWF (1986 [1807]) *Phänomenologie des Geistes* Moldenhauer, E and Michel, KM (eds) Suhrkamp at 36 ['die ungeheure Macht des Negativen'/'es ist die Energie des Denkens'].

he is pursuing, from the moment of its incipience — a theory spanning every comparison he draws.

85. Whether he appreciates it or not, a comparatist-at-law's theory owes much to those who taught him, to those with whom he conversed, to those whose work he read or heard. A comparatist-at-law's theory is largely a matter of *influence*.

86. (Theory is indebted to others; one received one's theory somewhere. *Quaere*: Who have been, who are, one's interlocutors? What are the circumstances — perhaps from a long time ago — that gave a comparatist-at-law this or that idea, this or that insight, now featuring as part of what he readily calls 'his' theory?)

87. (It is of no consequence whether research into a foreign law-world involves an explicit comparison, often with the comparatist-at-law's 'own' law, or whether this research expressly bears on a foreign law-world only while, say, the comparatist-at-law's 'own' law remains confined to a tacit role in the comparatist-at-law's mind. If a French jurist, who has been socialized and institutionalized and epistemologized into French law in France, proceeds to articulate an essay on originalism in US constitutional thought, such an interpretive account — a writing by a French jurist on US legal culture or US law-texts only without any explicit comparison with French law — *emphatically* qualifies as comparative law. Only the most dogmatic formalism would discard this argument from being properly comparative, because it does not involve an actual sub-section on French constitutional doctrine. No French jurist can ever disconnect oneself from the French law that has been wired into one. And whenever one addresses foreign law, one is incessantly comparing.)

88. The comparatist-at-law is always-already thoroughly culturally encumbered — or encultured. (No one lives outside or beyond culture.) This resolution pertains to negative comparative law's key epistemic tenets.

89. Enculturation is an unsurpassable horizon bearing on the comparatist-at-law's being and existential condition. This resolution pertains to negative comparative law's key epistemic tenets.

90. (Enculturation captures the comparatist-at-law's being-in-the-world and, more specifically, his being-in-the-law-world.)

91. (Enculturation is incorporated, *in-corporated*. Literally, culture is embodied, *em-bodied*: the comparatist-at-law's corpus, his body, is constructed culturally.)

92. The comparatist-at-law's enculturation includes socialization and institutionalization and epistemologization into a legal culture and into law-texts that he envisages as 'his' legal culture and 'his' law-texts. While empowering, socialization and institutionalization and epistemologization are encumbrances.

93. (Legal culture and law-texts, like language, belong in the mode of non-belonging. One says 'my' legal culture or 'my' law even as one has almost no control over legal culture or law, as one finds oneself thrown into legal culture or law, *assigned*.)

94. The comparatist-at-law's enculturation includes an episteme. While empowering, an episteme is also an encumbrance.

95. Through enculturation, including social and institutional and epistemic encumbrances, the comparatist-at-law is haunted.

96. (The comparatist-at-law's haunting is *inevitable*.)

97. ('One remains imprisoned by one's upbringing'.[21])

98. Through enculturation, including social and institutional and epistemic encumbrances, the comparatist-at-law reveals his worldliness or facticity.

99. (The comparatist-at-law's worldliness or facticity is *inevitable*.)

100. Through enculturation, the comparatist-at-law's 'I' reveals itself as plural: 'I' is a concatenation of many educators, interlocutors, and authors, for example. Indeed, an 'I''s incorporated or embodied 'othernesses' are innumerable.[22]

101. The comparatist-at-law's enculturation, including his social and institutional and epistemic encumbrances, mediates his 'understanding' of a foreign law-world, foreign legal culture, or foreign law-text, inevitably. This resolution pertains to negative comparative law's key epistemic tenets.

102. The comparatist-at-law's enculturation, including his social and institutional and epistemic encumbrances, *frames* his 'understanding' of a foreign law-world, foreign legal culture, or foreign law-text, inevitably. This resolution pertains to negative comparative law's key epistemic tenets.

103. (The comparatist-at-law's enculturation is *inevitable*.)

104. The comparatist-at-law must strive to become aware of the various facets of his enculturation as he proceeds to undertake serious and creditable research into a foreign law-world.

105. The comparatist-at-law can *never* become aware of the various facets of his enculturation as he proceeds to undertake serious and creditable research into a foreign law-world.

106. (Enculturation is not a fixed and perpetual identity.)

107. (The idea that 'identity' can serve as a compelling justification explaining the meaning of any foreign legal culture or foreign law-text is reductionist.)

108. (It is not that there is a French legal identity, for example, but that French jurists tend to identify to certain epistemic commitments or practices.[23])

[21] MacIntyre, A (2013) 'On Having Survived the Academic Moral Philosophy of the Twentieth Century' in O'Rourke, F (ed) *What Happened in and to Moral Philosophy in the Twentieth Century?* University of Notre Dame Press at 31. Cf Legendre, P (2021) *L'Avant-dernier des jours* Ars dogmatica Editions at 141, who refers to 'the positivist incarceration' ['l'incarcération positiviste'].

[22] The strict practice whereby French law students are prohibited from writing in the first-person singular and compelled to deploy the first-person plural instead — a usage known locally as the 'we of modesty' ('nous de modestie') — may therefore carry a cogent justification after all.

[23] Jacques Derrida draws a useful distinction between 'identity' and 'identification' as he writes that '[a]n identity is never given, received, or attained, no, [one] only endures the interminable, indefinitely phantasmatic, process of identification': Derrida, J (1996) *Le Monolinguisme de l'autre* Galilée at 53 ['(u)ne identité n'est jamais donnée, reçue ou atteinte, non, seul s'endure le processus

109. The (encultured) comparatist-at-law's 'understanding' of foreign law-worlds is not what one understands if one understands that there are foreign law-worlds over there and that there is the mind of the comparatist-at-law over here, without any miscibility whatsoever.

110. The (encultured) comparatist-at-law must accept that, as he engages in serious and creditable research into a foreign law-world, some relevant information will come to his attention by accidence, adventitiously, for example, through serendipity. And he must accept that some relevant information will not come to his attention on incidental grounds also — quite apart from the fact that some relevant information will not come to his attention, because his enculturation generates an array of 'blind spots'.

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111. Again, a foreign legal culture is typically instantiated in the form of law-texts, all of them encultured, all of them existing as law-as-culture. (No law-text exists outside or beyond culture.) This resolution pertains to negative comparative law's key epistemic tenets.

112. A foreign law-text does not have a referent against which its meaning can be gauged.

113. A foreign law-text does not carry any meaning *as such*.

114. Within the framework of his serious and creditable research into a foreign law-world, the (encultured) comparatist-at-law ascribes meaning to a foreign law-text as its interpreter.

115. As a foreign law-text's interpreter, the (encultured) comparatist-at-law is making meaning — making sense — out of the foreign law-text (which does not feature a presently ascertainable and transmissible meaning that would be *the* law-text's meaning). This resolution pertains to negative comparative law's key epistemic tenets.

116. Within the framework of the (encultured) comparatist-at-law's serious and creditable research into a foreign law-world, a foreign law-text's meaning is exclusively as it is channelled through interpretation (typically that of the foreign law-text's local interpreters first and that of the comparatist-at-law secondly).

117. Within the framework of the (encultured) comparatist-at-law's serious and creditable research into a foreign law-world, a foreign law-text only meaningfully exists as interpreted meaning (typically that of the foreign law-text's local interpreters first and that of the comparatist-at-law secondly).

118. Since a foreign law-text acquires its meaning exclusively as it is channelled through interpretation, it cannot be said meaningfully to exist apart from interpretation, which itself cannot be said meaningfully to exist apart from the (encultured) interpreter — including the (encultured) comparatist-at-law — who propounds it. This resolution pertains to negative comparative law's key epistemic tenets.

interminable, indéfiniment phantasmatique, de l'identification'].

119. The (encultured) comparatist-at-law's interpretation of a foreign law-text occurs in the 'space' in which a working assemblage of the encultured world of the foreign law-text (as elicited by the comparatist-at-law-as-interpreter) and the encultured world of the comparatist-at-law-as-interpreter — this miscibility — is operationally, heuristically situated.

120. (The 'inter' of 'interpretation' properly falls between the foreign legal culture or foreign law-text and the comparatist-at-law. It falls into the gap — whether an abyss or a slit.)

121. The (encultured) comparatist-at-law's interpretive account of a foreign law-text appears as an undifferentiated textual mass featuring at once foreignness and the comparatist-at-law's 'own' input. The self/other boundary becomes blurred even as one's archaeological or genealogical analytics can distinguish the entity 'foreign law-text' there from the entity 'the comparatist-at-law' here.

122. Within the (encultured) comparatist-at-law's writing, there is finally no ascertainable distinction between the foreign law-text and the comparatist-at-law's mind, the one that would be an 'object' and the other a 'subject'. Rather, there is enmeshment or intertwinement, a conflation, an assemblage, miscibility, inevitably.

123. There is finally no ascertainable distinction between the (encultured) comparatist-at-law's ontologic position as being-in-the-law and the epistemic coördinates by which he makes sense of foreignness — of enculturation. (Again, he *makes* sense of foreignness.)

124. Every purported denotation or description of a foreign law-text that the (encultured) comparatist-at-law produces is an evaluation ('his' evaluation) of foreignness — of enculturation — inevitably.

125. Every purported denotation or description of a foreign law-text that the (encultured) comparatist-at-law produces is an enactment or a performance — 'his' enactment or 'his' performance, inevitably.

126. Every purported denotation or description of a foreign law-text that the comparatist-at-law produces is informed by his enculturation, inevitably — hence, in all rigour, the need to qualify, say, by way of quotation marks, 'his' denotation or 'his' description. This resolution pertains to negative comparative law's key epistemic tenets.

127. There is no purported denotation or description of a foreign law-text that remains undefiled by the (encultured) comparatist-at-law.

128. Every purported denotation or description of a foreign law-text that the (encultured) comparatist-at-law produces is autobiographical, inevitably — even as every autobiography veils or defaces its autobiographer, inevitably. No denotation or description is a strictly graphological record, ever. Rather, it is always the vehicle for an array of interests, impulses, or desires. Whether consciously, semi-consciously, or unconsciously, there is a *libidinal* charge informing every (encultured) comparatist-at-law's writing.

129. Within the (encultured) comparatist-at-law's purported denotation or description of a foreign law-text, it is impossible to find any string of words that is demonstrably entirely free of the comparatist-at-law's autobiographical input. This resolution pertains to negative comparative law's key epistemic tenets.

130. (Since it must intervene after the fact, autobiography is a modality of fiction, inevitably: there takes place, if you will, a Bartolist-style *fictio circa ficte*. Within the autobiographical, fiction can never be kept totally at bay.)

131. As he exhibits his writing, the (encultured) comparatist-at-law intransigently inhabits 'his' words. And he lives between the lines, too.

132. As the (encultured) comparatist-at-law writes his text, he indulges an exercise in self-exposure, inevitably.

133. Every written text stands as a mirror for the (encultured) comparatist-at-law, a mirror for what he is and for what he is to become on account of his negotiation with the other-in-the-law.

134. The comparatist-at-law's interpretation of a foreign law-text is 'his' interpretation of a foreign law-text — where the reference to 'his' interpretation includes the comparatist-at-law's social and institutional and epistemic encumbrances, his enculturation.

135. The (encultured) comparatist-at-law signs 'his' interpretation of a foreign law-text.

136. The (encultured) comparatist-at-law's signature is effectively a counter-signature as the foreign law-text that he is interpreting already bears a signature, say, that of the foreign legislative assembly, of the foreign judge, or of the foreign scholar. The (encultured) comparatist-at-law's counter-signature thus gives additional sanction to the foreign law-text, even as this counter-mark inscribes a different source of authority, perhaps qualifying or contradicting what was said in the foreign locale.

137. (The comparatist-at-law's counter-signature is, perforce, non-mimetic vis-à-vis a foreign legal culture's or a foreign law-text's signature, no matter how strictly duplicative it purports to be, for *the self cannot be the other*. Even at its most purportedly mimetic, the comparatist-at-law's signature intervenes as an iteration, a repetition-with-a-difference. This resolution pertains to negative comparative law's key epistemic tenets.)

138. The (encultured) comparatist-at-law's interpretation of a foreign legal culture or foreign law-text differs, if ever so slightly, from a foreign legal culture or foreign law-text as it discursively or materially — culturally — is and exists elsewhere, inevitably. Indeed, if there is more than one entity (say, the foreign and the comparatist-at-law's interpretation of it), there must be difference across these entities. There is the *differend*, inevitably. This resolution pertains to negative comparative law's key epistemic tenets.

139. The comparatist-at-law's interpretation of a foreign legal culture or foreign law-text is 'his' interpretation of a foreign legal culture or foreign law-text —

where the reference to 'his' interpretation includes the comparatist-at-law's social and institutional and epistemic encumbrances, his enculturation.

140. The (encultured) comparatist-at-law cannot offer any interpretation of a foreign legal culture or foreign law-text except 'his' interpretation of a foreign legal culture or foreign law-text.

141. (The encultured comparatist-at-law's 'own' continuity orients him in the world. There is one's way of being, one's way of writing, too — one *sounds* like oneself, although one's sounding is in no way exclusively the product of one's choices. Again, one is *assigned*.)

142. The (encultured) comparatist-at-law's interpretation of a foreign legal culture or foreign law-text differs, if ever so slightly, from other (encultured) comparatists-at-law' interpretations of that very foreign legal culture or foreign law-text, inevitably. Indeed, if there is more than one interpretation, there must be difference across these interpretations. There is the *differend*, inevitably. This resolution pertains to negative comparative law's key epistemic tenets.

143. Nothwithstanding the comparatist-at-law's social and institutional and epistemic encumbrances, his enculturation, every comparatist-at-law ultimately experiences a foreign legal culture or foreign law-text singularly or differently.

144. (While the ideas of an objective or true interpretation pertain to authoritarianism — oxymorons notwithstanding — the fact of different interpretations attests to the democratic character of comparative law.)

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145. A foreign law-text consists of words.

146. Words structurally feature semantic lability or lee-way — or 'play'.

147. Every interpretation that the (encultured) comparatist-at-law offers of a foreign legal culture or foreign law-text manifests itself at an angle — it is inherently tangential.

148. Every interpretation that the (encultured) comparatist-at-law offers of a foreign legal culture or foreign law-text manifests itself as an expression of the comparatist-at-law's interpretive power.

149. (Interpretive power is encultured, inevitably.)

150. There are potentially as many interpretations of a foreign legal culture or foreign law-text as there are (encultured) comparatists-at-law taking an interest.

151. Every interpretation that the (encultured) comparatist-at-law offers of a foreign legal culture or foreign law-text effectively stands more as the (encultured) comparatist-at-law's *speculation* than as knowledge. This resolution pertains to negative comparative law's key epistemic tenets.

152. Every expression of the (encultured) comparatist-at-law's interpretive power is political, inevitably.

153. Again, interpretive power *is* enculturated, inevitably. This resolution pertains to negative comparative law's key epistemic tenets.

154. Again, every expression of the (enculturated) comparatist-at-law's interpretive power *is* political, inevitably.

155. Serious and creditable interpretation of a foreign legal culture or foreign law-text must assume access to primary materials in their original language (loose comparative-law practice notwithstanding). This resolution pertains to negative comparative law's key epistemic tenets.

156. Serious and creditable interpretation of a foreign legal culture or foreign law-text must assume fieldwork (loose comparative-law practice notwithstanding). This resolution pertains to negative comparative law's key epistemic tenets.

157. Serious and creditable interpretation of a foreign legal culture or foreign law-text must assume vast amounts of reading of quality writings across disciplines — *indisciplined* reading (loose comparative-law practice notwithstanding). 'Quality writings' variously embrace orthodox and (radically) dissentient or deviating work, the locally normal and the locally anomalous. This resolution pertains to negative comparative law's key epistemic tenets.

158. (The comparatist-at-law must quote at length from foreign law-texts, a necessary act of hospitality allowing a foreign legal culture to speak in its own voice. The comparatist-at-law must supplement his quotations with his translations, a necessary act of hospitality allowing a foreign legal culture to be read or heard by the comparatist-at-law's readership or audience. This resolution pertains to negative comparative law's key epistemic tenets.)

159. (Hospitality regarding a foreign legal culture enhances the integrity of the comparatist-at-law's work.)

160. (Hospitality can happen only within limits. It would self-destruct if it were to prove infinite.)

161. (Serious and creditable interpretation of a foreign legal culture or foreign law-text must assume sensitivity to local ways.)

162. The (enculturated) comparatist-at-law's interpretation of a foreign legal culture or foreign law-text is never exhaustive, no matter how sophisticated or extensive, no matter how *talented*, too.

163. The (enculturated) comparatist-at-law's interpretation of a foreign legal culture or foreign law-text is structurally interrupted before saturation, inevitably. This resolution pertains to negative comparative law's key epistemic tenets.

164. Abridgment of the foreignness — of the enculturation — of a foreign legal culture or foreign law-text in the (enculturated) comparatist-at-law's interpretation is inevitable. (Observe that the abridgment can be conscious — consider a deadline or a word limit — or semi-conscious or unconscious — imagine a 'blind spot'.)

165. The (enculturated) comparatist-at-law's abiding commitment to profusion, satiety, or plenitude — his pledge to an interpretation of a foreign legal

culture's or foreign law-text's smallest details — cannot change anything to the impossibility for him of accessing and telling foreignness — enculturation — fully.

166. The (encultured) comparatist-at-law's interpretation of a foreign legal culture or foreign law-text can never fully account for a foreign legal culture or foreign law-text as it is and as it exists before the (encultured) comparatist-at-law advenes to it. Indeed, the (encultured) comparatist-at-law's interpretation must differ from the foreign legal culture or foreign law-text as it is and as it exists, inevitably.

167. Even as the (encultured) comparatist-at-law must eventually desist from his task for whatever practical reason, interpretation of a foreign legal culture or foreign law-text remains an infinite process.

168. In the face of the structural unsaturability of the foreign, the more the (encultured) comparatist-at-law restricts his analysis to a very limited number of foreign laws the more he is likely to offer serious and creditable research into foreignness — into enculturation. Indeed, there is an inverse correlation between the quality of research into foreign law and the quantity of foreign laws being researched. This resolution pertains to negative comparative law's key epistemic tenets.

169. The re-presentation that the comparatist-at-law makes of the foreign legal culture or foreign law-text instantaneously qualifies the foreign legal culture or foreign law-text's foreignness — its enculturation — vis-à-vis the comparatist-at-law (and vis-à-vis the comparatist-at-law's readership or audience).

170. There are perhaps moments when the (encultured) comparatist-at-law feels that he is on the verge of touching the foreign legal culture or foreign law-text, that this *is* happening.

171. Wishful thinking or irritation notwithstanding, the self always approaches the other at a distance.

172. Even if the gap between the self and the other should be but a slit, there is a severance, a discrepancy, a disjointment. And there must be, inevitably.

173. Again, *the self cannot be the other*, inevitably.[24] Again, this resolution pertains to negative comparative law's key epistemic tenets.

174. ('We ride each day towards, and never reach'.[25])

175. (The self cannot understand the understanding that the other has of his — the other's — world, inevitably. And the self cannot understand the understanding that the other has of his — the self's — world, inevitably.)

[24] Cf Boyers, R (2015) *The Fate of Ideas* Columbia University Press at 137: '[T]he other is always remote from us in at least one sense that matters'.

[25] Larkin, P (1988 [1945]) 'Past Days of Gale' in *Collected Poems* Thwaite, A (ed) Faber & Faber at 310.

176. ('[T]o understand, not that I ever understand'.[26])

177. There can be imagination of understanding the other, not understanding the other.

178. ('I cannot experience your experience. You cannot experience my experience. We are both invisible men. All men are invisible to one another. Experience is man's invisibility to man'.[27])

179. There can be imagination of the other's experience, not the other's experience.

180. (For there to be an encounter between the self and the other and for the self to be able to experience something like otherness, there has to be a difference between the self and the other, inevitably. It must follow, however, that the self and the other cannot be *ad idem*, inevitably.)

181. The self-in-the-law cannot be the other-in-the-law, inevitably.

182. (The self-in-the-law cannot understand the understanding that the other-in-the-law has of his — the other's — law-world, inevitably. And the self-in-the-law cannot understand the understanding that the other-in-the-law has of his — the self's — law-world, inevitably.)

183. (For there to be an encounter between the self-in-the-law and the other-in-the-law and for the self-in-the-law to be able to understand or experience something like otherness-in-the-law, there has to be a difference between the self and the other, inevitably. It must follow, however, that the self-in-the-law and the other-in-the-law cannot be *ad idem*, inevitably.)

184. The (encultured) comparatist-at-law cannot be the foreign legal culture or foreign law-text.

185. As between foreignness — enculturation — and the (encultured) comparatist-at-law, contiguity cannot be overcome. This resolution pertains to negative comparative law's key epistemic tenets.

186. Negative comparative law creates a space — an abyss or a slit — for the expression of the *differend* between the self-in-the-law and the other-in-the-law.

187. Any idea of self-extinction — of *Selbstauslöschung* — on the part of the (encultured) comparatist-at-law that would allow the foreign to be seen 'as it is' stands as an example of epistemic naivety. The (encultured) comparatist-at-law is *in* the comparison. (Observe that the preposition 'in' does not refer to the idea of water in the cup, which indicates material severability, but rather to an all-encompassing situation such as 'being in love', where the love is indissociable from the being.)

188. The (encultured) comparatist-at-law's foreign law is formed in the epistemological interaction taking place between the (encultured) comparative mind's application of power and the (encultured) foreign legal culture or foreign

[26] Beckett, S (2010 [1958]) *The Unnamable* Connor, S (ed) Faber & Faber at 111.

[27] Laing, RD (1967) *The Politics of Experience* Pantheon at 4.

law-text. The (encultured) comparatist-at-law's foreign law is a *transactional* figure, inevitably. This resolution pertains to negative comparative law's key epistemic tenets.

189. All experience of the foreign must be in hereness, inevitably. This resolution pertains to negative comparative law's key epistemic tenets. Meanwhile, positivism adopts the dogmatic (and naive) view that it can adhere to the ontologic reality of the foreign despite the fact that foreignness — enculturation — is occurring in thereness, inevitably.

190. (Observe that once positivism considers the comparative account to be able to adhere to the reality of the foreign, the role of the comparatist-at-law becomes confined to the realm of method rather than construction. Crucially, the comparatist-at-law's construction of what positivism considers to be the reality of the foreign is then sanitizingly and distractingly — if most problematically — effaced.)

191. (While there is an unexamined positivist belief about the continuity that the re-presentation across the self/other line would allow, observe that when the comparatist-at-law writes regarding a French statute, for example, he can only proffer his belief in the reality of the foreign as such, not the reality of the foreign as such.)

192. The other as the self claims to understand it — the self's other — affects, and indeed must affect, the self's self-understanding.

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193. There is more than one world.

194. Each world features innumerable worldly or factical attachments.

195. There is more than one law-world.

196. Each law-world features innumerable worldly or factical attachments.

197. A foreign legal culture or foreign law-text pertains to a law-world that differs from the comparatist-at-law's 'own' law-world, inevitably. (Otherwise, it would not be foreign.)

198. Any wishful thinking or irritation notwithstanding, law-worlds (and, therefore, legal cultures and law-texts) cannot be bridged. This resolution pertains to negative comparative law's key epistemic tenets.

199. 'There is no world, there are only islands'.[28]

200. Law-worlds (and, therefore, legal cultures and law-texts) are incommensurable. (Think monologues, not dialogue.)

201. (Incommensurability is not incomparability, loose comparative-law practice notwithstanding.)

[28] Derrida, J (2010 [2002]) *La Bête et le souverain* Lisse, M; Mallet, M-L and Michaud, G (eds) vol II Galilée at 31 ['Il n'y a pas de monde, il n'y a que des îles'].

202. Law-worlds (and, therefore, legal cultures and law-texts) are comparable. Apples and oranges are comparable, too.

203. There are hosts of reasons why foreign law-worlds must be investigated and why foreign legal cultures or foreign law-texts must be compared.

204. (Reasons for the investigation of foreign law-worlds and for the comparison of legal cultures or foreign law-texts revolve minimally around three ideas: acknowledgment of the existence of legal/cultural otherness and of its intrinsic worth as a focus of intellectual investigation; enhancement of information regarding legal/cultural experience — the other's and the self's — through an investigation of some of its innumerable worldly or factical attachments; acceptance of local legal/cultural experience as being inherently liable to amelioration through normative input from a foreign legal culture or foreign law-text.)

205. (These three ideas ultimately resolve themselves in terms of an endeavour to improve the self.[29])

206. The comparatist-at-law must tell a foreign legal culture or foreign law-text in 'his' language, even as a foreign legal culture or foreign law-text is and exists in a different language from 'his', inevitably. (Otherwise, it would not be foreign.)

207. The comparatist-at-law can tell a foreign legal culture or foreign law-text in 'his' language only, even as a foreign legal culture or foreign law-text is and exists in a different language from 'his' only. There is the *differend*, inevitably. This resolution pertains to negative comparative law's key epistemic tenets.

208. Within a comparative account, a foreign legal culture or foreign law-text means the words that the comparatist-at-law has for it.

209. The comparatist-at-law can never tell a foreign legal culture or foreign law-text fully, no matter what words he selects and how many words he mobilizes.

210. The comparatist-at-law's language cannot coincide with a foreign legal culture or with a foreign law-text: 'his' language, on one hand, and the foreign legal culture or foreign law-text, on the other, cannot be *ad idem*, inevitably. Indeed, the comparatist-at-law's language always differs from a foreign legal culture's or foreign law-text's. There can never be 'onement'. This resolution pertains to negative comparative law's key epistemic tenets.

211. Because all 'understanding' or all experience is always-already located in hereness, the foreign finds itself being transformed into a hereness also (a conditioned, contingent, finite hereness). Ultimately, irrespective of what ought to be the case, there is no thinking like *that*. There cannot be. This resolution pertains to negative comparative law's key epistemic tenets.

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[29] Cf Beckett, S (2009 [10 June 1940]) [Letter to Arnaud, M] in *The Letters of Samuel Beckett* Fehsenfeld, MD and Overbeck, LM (eds) vol I Cambridge University Press at 684: '[I]t is always oneself that one chooses'.

212. A foreign legal culture or foreign law-text is and exists in language, inevitably.

213. A foreign legal culture is and exists in a language, which on account of its foreignness — language correlates with world-experience — differs from the comparatist-at-law's language, inevitably. (Otherwise, it would not be foreign.)

214. A foreign legal culture or foreign law-text is structurally ever untranslatable into the comparatist-at-law's language. This resolution pertains to negative comparative law's key epistemic tenets.

215. (To the extent that he operates as if translation of a foreign legal culture or foreign law-text is possible and to the further extent that he assumes he has succeeded in translating a foreign legal culture or foreign law-text, the comparatist-at-law is giving effect to a fiction; he is engaging in deception.)

216. A foreign legal culture or foreign law-text must be translated into the comparatist-at-law's language.

217. As the comparatist-at-law translates the untranslatable foreign legal culture or foreign law-text into 'his' language, he is making the impossible possible — as impossible. Indeed, the comparatist-at-law must appreciate how the translation that is happening cannot be happening.

218. (Comparative law defies the principle of non-contradiction.)

219. The comparatist-at-law's translation of the untranslatable foreign legal culture or foreign law-text in 'his' language depends on his enculturation, inevitably. This resolution pertains to negative comparative law's key epistemic tenets.

220. Through translation, the comparatist-at-law inscribes his tracing, his interpretation, or his 'understanding' of a foreign legal culture or foreign law-text.

221. Translation meanders.

222. Translation errs.

223. Translation lapses.

224. (Observe that even within one language, two sentences made of different words cannot mean *ad idem*. If there is more than one wording, there must be difference. To be sure, there may be proximity. But there must still be difference, inevitably.)

225. Contiguity cannot be overcome, inevitably.

226. (Again, foreignness — enculturation — always-already demands another interpretation.)

227. To translate is to differentiate, inevitably. Difference is a structural component of every translation and cannot therefore be erased or overcome. No matter how sophisticated or extensive one's translative effort, no matter how

talented, there is the *differend*, inevitably. This resolution pertains to negative comparative law's key epistemic tenets.

228. Untranslatability is the translator's guiding motif. Consider a translation from French into English. Whatever English words the translator chooses, no matter how painstakingly he proceeds, the meaning of the English words in English will deviate from the meaning of the French words in French, if ever so slightly. Failure to translate, however, is an opportunity as the multiplicity of translations affords the occasion for further deliberation (both about the equivocal meaning of the source-text and the semantic extension of the various contingencies on offer in the target-language).

229. Translation features a constant tension between two supremacies, that of the translator over the text and that of the text over the translator. In the end, the text carries. While the translator wields great power over the text being translated, the translator's sovereignty cannot be unconditional, because the text being translated features 'built-in' conventional semantic constraints to cabin how much the translator's assertion of individual consciousness can strike an independent course. This resolution pertains to negative comparative law's key epistemic tenets.

230. A translation is autobiographical, inevitably. A translation is someone's translation, inevitably. (I ignore automated machine translation.)

231. A translation cannot be objective (it is interpretive), and it cannot be subjective (it is encultured).

232. A translation cannot be true (it is interpretive), but it can be false (it can be over-interpretive).

233. Translation is a second original. The optimal way to acknowledge that a translation is an enactment, a performance, and that it does not involve the transfer of an invariant, is to recognize it as a second original (rather than as the first original in a second language).

234. Translation, which does not abide by a method, must track the source-text as closely as possible even if it should make for disruptive reading in the target-language. A politically and ethically sound translation compels the translator to introduce foreignness — enculturation — into the target-language, even if this should entail this language's molestation through formulations straining convention. This resolution pertains to negative comparative law's key epistemic tenets.

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235. 'Representation regularly *replaces* presence',[30] which is to say that the comparatist-at-law's re-presentation of the foreign moves the foreign to another place; it makes foreignness — enculturation — present elsewhere. In the process, re-presentation transforms the foreign, inevitably.

[30] Derrida, J (1990) *Limited Inc* Weber, E (ed) Galilée at 24 ['La représentation *supplée* régulièrement la présence'].

236. (Consider a landscape: how could one deploy the words that would tell the landscape fully? How could one achieve a coincidence or an identity between the words and the landscape? Now, consider a *lawscape*.)

237. (Unless one is willing to falsify cognition rather than explain it, one cannot deny the reality of the gap — whether an abyss or a slit — between world and word, which every attempted connection-across-separation must fail to bridge.[31] This resolution pertains to negative comparative law's key epistemic tenets.)

238. While words make it possible for the comparatist-at-law largely to say what he thinks must be said and largely to say what he wants to say regarding a foreign legal culture or foreign law-text, words make it impossible for him to say all that he must say in order to do justice to foreignness — to enculturation. Indeed, the comparatist-at-law's words always-already differ from a foreign legal culture or foreign law-text as it is and as it exists, inevitably.

239. Words simultaneously enable and disable the comparatist-at-law as he purports interpretively to account for the foreignness — for the enculturation — of a foreign legal culture or foreign law-text.

240. No matter how extravagant the comparatist-at-law's encyclopaedic urge as he approaches a foreign legal culture or foreign law-text, no matter how assertive his Faustian rage to know, his yearning for understanding, his writing must be bounded, contained. Even the neologisms that he can fashion ultimately depend upon 'his' language as it is and as it exists.

241. The comparatist-at-law's writing regarding a foreign legal culture or foreign law-text is never concomitant to the investigation of it. The writing always takes place *later*, after the comparatist-at-law has taken some time, if only a few minutes, to articulate and to inscribe his thoughts, inevitably.

242. The comparatist-at-law's writing regarding a foreign legal culture or foreign law-text is, in effect, the comparatist-at-law's inscription of his experience of a foreign legal culture or foreign law-text — which is also the experience that 'his' social and institutional and epistemic encumbrances, his enculturation, empower him to have and confine him to having. This resolution pertains to negative comparative law's key epistemic tenets.

243. The comparatist-at-law investigates a foreign legal culture or foreign law-text from the outside in, while he writes regarding a foreign legal culture or foreign law-text from the inside out. There *is* this structural asymmetry that is constitutive of comparative law, inevitably.

244. The required boundedness, the inevitable lack of concomitance, and the structural vectorial difference mean that it is inherently impossible for the comparatist-at-law's writing — for his lines, for his lucidities — to duplicate a foreign legal culture or foreign law-text as it is and as it exists before the comparatist-at-law comes to it. In the absence of possible duplication, there is the *differend*, inevitably.

[31] Cf Beckett, S (2016 [7 January 1983]) [Letter to Shainberg, L] in *The Letters of Samuel Beckett* Craig, G et al (eds) vol IV Cambridge University Press at 604: 'There must be words for it. I don't expect ever to find them'.

245. The comparatist-at-law's writing can never offer a strict graphological record of a foreign legal culture or foreign law-text; through nothing more than choice of noun, adjective, or adverb, it features inherent disintegrating and dispersing effects — it is, and it remains, *exploratory*.

246. Between the foreign legal culture or foreign law-text and the comparatist-at-law's writing regarding it, there is always a discontinuity, a disjuncture, an interruption — a hiatus. There is the *differend*, inevitably. This resolution pertains to negative comparative law's key epistemic tenets.

247. (While the necessary distance between the comparatist-at-law and the foreign legal culture or foreign law-text stands for structural spatial heterogeneity within any approach of foreignness, the comparatist-at-law's inevitably delayed inscription regarding a foreign legal culture or foreign law-text stands for structural temporal heterogeneity.)

248. The comparatist-at-law can never offer a pure denotation or description of a foreign legal culture or foreign law-text — nor can he offer a disinterested one, since he compares *for a reason*, inevitably.

249. In the absence of total connectivity, the interpretive dynamics arising between the comparatist-at-law and the foreign legal culture or foreign law-text is effectively that of a disrelation, a 'not-relation', a 'relation-without-relation' — an *irrelation*.

250. The comparatist-at-law's writing can never propound an interpretation of a foreign legal culture or foreign law-text that does not leave a remainder — that is, an aspect of the foreign legal culture or foreign law-text that must await further interpretation.

251. (There is no writing regarding a foreign legal culture or foreign law-text that is not *agonistic*: again, there is always a remainder. It follows, once more, that there must be a difference between a comparatist-at-law's writing and the foreign legal culture or foreign law-text that the writing addresses. There is the *differend*, inevitably.)

252. A foreign legal culture or foreign law-text always resists exhaustive interpretation by the comparatist-at-law; it never fully surrenders.

253. A foreign legal culture or foreign law-text always keeps a secret from the comparatist-at-law, inevitably.

254. (The foreign is always-already autoimmune: it protects its foreignness — its enculturation — and refuses to let it be fully assimilated or appropriated or colonized.)

255. A foreign legal culture or foreign law-text always-already features the unknown — and the unknowable, too.

256. Within the interpretive struggle that takes place between a foreign legal culture or foreign law-text and the comparatist-at-law, foreignness carries: the foreign's pliancy and compliancy is limited so that the comparatist-at-law will not have *knowledge* of it — complete or perfect cognizance of it — ever.

257. The comparatist-at-law's *knowledge* of a foreign legal culture or foreign law-text is ever deferred. This deferment is structural.

258. The comparatist-at-law is ever at the penultimate stage of *knowing* foreignness — enculturation — forever *not-yet-knowing* foreignness.

259. (There is a foreign legal culture's or foreign law-text's obdurate strangeness.)

260. Unlike traditional dialectics, within comparative law the thesis carries over the synthesis, which means that the tension between a foreign legal culture or foreign law-text and the comparatist-at-law as its interpreter remains unresolved. There takes place a counter-dialectics, a negative dialectics — a *negative comparative law*.

261. (A foreign legal culture or foreign law-text is armoured, disarmingly so.)

262. (The comparatist-at-law can never have the last word.)

263. If only because the comparatist-at-law's *knowledge* of a foreign legal culture or foreign law-text is ever deferred, he can never advocate an interpretation of a foreign legal culture or foreign law-text that is right, correct, or exact — optimal perceptual acuity and utter undistractability, thorough straightness, unusual excellence or talent notwithstanding.

264. (The comparatist-at-law is always-already unjust to a foreign legal culture or foreign law-text.)

265. (Once more, foreignness — enculturation — always-already demands yet another interpretation.)

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266. No matter how much ardency he brings to his interpretive intervention, how deftly his interpretation addresses the foreign legal culture's slippages or the foreign law-text's equivocations, how sensitive his reading of foreignness — of enculturation — proves to be, the comparatist-at-law can never produce an interpretation of a foreign legal culture or foreign law-text that would be objective. A comparatist-at-law who claims objectivity, even as his comparative research is thoroughly the product of his intellectual labour, is overlooking the fact that it is 'his' own cultural input into the writing of the foreignly legal that is somehow being reflected back to him as an objective characteristic that would be inherent to 'his' words, very much a process of misleading reification.

267. Again, any interpretation of a foreign legal culture or foreign law-text is necessarily partial: it rests on an incomplete interpretation of the worldliness or facticity of foreignness — of enculturation — and it is encultured.

268. A partial and encultured interpretation is inherently incompatible with any reasonable understanding of 'objectivity'.

269. Any alleged 'objectivity' must refer to the comparatist-at-law's interpretation, which fails to qualify as 'objective', inevitably.

270. The comparatist-at-law's alleged 'objectivity' can never be objectivity. This resolution pertains to negative comparative law's key epistemic tenets.

271. ('Objective impartiality [...] is inhuman. To be human is rather to be partial'.[32])

272. 'Objectivity' is never present within comparative interpretation.

273. Any comparative interpretation that makes a claim to objectivity fatally compromises itself, not least because it falls prey to dogmatic (and theocentric) authoritarianism.

274. Objectification cannot be the comparatist-at-law's goal. This resolution pertains to negative comparative law's key epistemic tenets.

275. No matter how much ardency he brings to his interpretive intervention, how deftly his interpretation addresses the foreign legal culture's slippages or the foreign law-text's equivocations, how sensitive his reading of foreignness — of enculturation — proves to be, the comparatist-at-law can never produce an interpretation of a foreign legal culture or foreign law-text that would be true. A comparatist-at-law who claims truth, even as his comparative research is thoroughly the product of his intellectual labour, is overlooking the fact that it is 'his' own cultural input into the writing of the foreignly legal that is somehow being reflected back to him as a truthful characteristic that would be inherent to 'his' words, very much a process of misleading reification.

276. Any interpretation of a foreign legal culture or foreign law-text is necessarily partial: it rests on an incomplete interpretation of the worldliness or facticity of foreignness — of enculturation — and it is encultured.

277. A partial, an encultured interpretation is inherently incompatible with any reasonable understanding of 'truth'.

278. Any alleged 'truth' must refer to the comparatist-at-law's interpretation, which means that it fails to qualify as 'truth', inevitably.

279. The comparatist-at-law's alleged interpretive 'truth' can never be truth. This resolution pertains to negative comparative law's key epistemic tenets.

280. (Interpretive 'truth' must assume a meta-language. There is no meta-language.)

281. 'Truth' is never present within comparative interpretation.

282. ('[I]nterpretation does not have to be more true than false. It has to be just'.[33])

283. Any comparative interpretation that makes a claim to truth fatally compromises itself, not least because it falls prey to dogmatic (and theocentric) authoritarianism.

[32] Droysen, JG (1977 [1857]) *Historik* Leyh, P (ed) Fromann-Holzboog at 236 ['Die objektive Unparteilichkeit (...) ist unmenschlich. Menschlich ist es viehlmehr, parteilich zu sein']. Johann Gustav Droysen (1808-84) was a historian and a theorist of history.

[33] Lacan, J (1977) 'C'est à la lecture de Freud...' (3) Cahiers Cistre 9 at 15-16 ['(L)'interprétation n'a pas plus à être vraie que fausse. Elle a à être juste'].

284. (There is nothing in these statements having anything whatsoever to do with so-called 'post-truth', which concerns wilful ignorance, lies, or deliberate falsification.)

285. Veridiction cannot be the comparatist-at-law's goal.[34] This resolution pertains to negative comparative law's key epistemic tenets.

286. (In French, the anagram of '*vérité*' is 'avoid'.)

287. (The comparatist-at-law's interpretation of a foreign legal culture or foreign law-text can be shown to be false. Indeed, no foreign legal culture or foreign law-text can harbour every meaning.)

288. No matter how much ardency he brings to his interpretive intervention, how deftly his interpretation addresses the foreign legal culture's slippages or the foreign law-text's equivocations, how sensitive his reading of foreignness — of enculturation — proves to be, the comparatist-at-law can never produce an interpretation of a foreign legal culture or foreign law-text that would be subjective. A comparatist-at-law who claims subjectivity, because his comparative research would be thoroughly the product of his intellectual labour, is overlooking the fact that it is 'his' own cultural input into the writing of the foreignly legal that is somehow being reflected back to him as a subjective characteristic that would be inherent to 'his' words, very much a process of misleading deculturation.

289. Any interpretation of a foreign legal culture or foreign law-text is necessarily encultured — it rests on a socialized and institutionalized and epistemologized perspective, that is, on a worldly or factical perspective. A socialized and institutionalized and epistemologized — an encultured — 'subjectivity' can never be subjective.

290. An encultured interpretation is inherently incompatible with any reasonable understanding of 'subjectivity'.

291. Any alleged 'subjectivity' refers to the comparatist-at-law's interpretation, which fails to qualify as 'subjective', inevitably.

292. The comparatist-at-law's alleged 'subjectivity' can never be subjective. This resolution pertains to negative comparative law's key epistemic tenets.

293. 'Subjectivity' is never present within comparative interpretation.

294. Any comparative interpretation that makes a claim to subjectivity fatally compromises itself, not least because it falls prey to dogmatic (and theocentric) authoritarianism.

295. Subjectivization cannot be the comparatist-at-law's goal. This resolution pertains to negative comparative law's key epistemic tenets.

[34] Cf Goodrich, P (1990) *Languages of Law* Cambridge University Press at 1-2: '[T]he patronising dogmas of the truth [...] [must] give way to critical theories of the particular'.

296. Quite apart from being non-objective, comparative law is at once non-true and non-subjective, inevitably. (Neither the square peg of objectivity, truth, or subjectivity can fit the round hole of comparison.)

297. There is no method — irrespective of any ingenuity in the confection of it or of any virtuosity in the mobilization of it — that would allow the comparatist-at-law to achieve an objective, true, or subjective interpretation of a foreign legal culture or foreign law-text. This resolution pertains to negative comparative law's key epistemic tenets.

298. There is no method — irrespective of any stringency in one's thinking categories, of how *categorical* one's thinking — that would allow the comparatist-at-law to produce an exhaustive analysis of a foreign legal culture or foreign law-text; or to prompt a desocialization and de-institutionalization and de-epistemologization of the comparing self, to generate a deculturation of the comparing self.

299. The idea that a method would secure the comparative interpretation of a foreign legal culture or foreign law-text, that it would warrant the comparatist-at-law's interpretive results, that it would make these results 'objective' or 'true', is an illusion pertaining to misplaced scientism.

300. The idea that a method would secure an epistemically disencumbered comparative research and lead to a disinterested interpretation of foreignness — of enculturation — is an illusion pertaining to misplaced scientism.

301. 'Comparison is never innocent, but is always interested, and the interests of the researcher (which are never arbitrary, exclusively intellectual, or fully conscious) inevitably condition (a) definition of the issues and categories to be considered, (b) selection of the examples judged relevant, (c) evaluation of these data (including the relative dignity and importance accorded to each), and (d) the ultimate conclusions'.[35]

302. (Again, no comparative research is *atelic*, and there is no *uninvolved* comparison. There is no alleged detachment that completely masks the genuine interpretive attachments at stake.)

303. For comparative law, method is devoid of heuristic value.

304. Any investment in a search for any method or in the pursuit of any method is a waste of the comparatist-at-law's precious time. Even if it were convincingly shown to be desirable (*concessio* vehemently *non dato*), an epistemic ideal that is uneffectible is futile: '*Man trägt nicht gern Eulen nach Athen*'.

305. Any investment in any method is misleading inasmuch as it promotes a false sense of security in the comparatist-at-law's interpretive results.

306. Any investment in any method is debasing inasmuch as it allows the comparatist-at-law to eschew personal responsibility for his results.

[35] Lincoln, B supra note 4 at 25.

307. The vacuity of method does not dispense the comparatist-at-law from adhering diligently to certain research protocols designed to hold him and his comparative investigation to high scholarly standards.

308. (There is no question of disposing of the baby of rigour with the dirty bathwater of method.)

309. (Negative comparative law pleads for a thorough *immanentization* of comparative law, that is, for an integral elimination of the mystical, the transcendental, the metaphysical, and all other faded theological ideas.)

310. Given a foreign legal culture or foreign law-text's affordances, the interpretive yield that the comparatist-at-law's interpretation can engender is strictly dependent upon his experience — upon his attunement to the foreign, which is a mode of the comparatist-at-law's epistemology. The existence and the reach of any attunement to the foreign is specifically ascertainable by reference to a comparatist-at-law's opinions, attitudes, values, concerns, interests, and competences.

311. (In addition to the uncircumventable exigency and brilliance that it demands, not to mention the healthy suspicion that it requires, a rich comparative experience can advantageously accommodate a touch of idioyncrasy or a dash of eccentricity inasmuch as it proves conducive to the elaboration of bold or audacious insights into otherness and into otherness-in-the-law.)

312. Comparative law at its lowest ebb is about method. Comparative law at its highest ebb is about *flair*. This resolution pertains to negative comparative law's key epistemic tenets.

313. The responsibility for any interpretation of a foreign legal culture or foreign law-text is exclusively the (encultured) comparatist-at-law's. (Observe that enculturation cannot absolve the comparatist-at-law from taking responsibility for his interpretation.)

314. No matter how purportedly assertive, how strongly worded, how seemingly confident, any comparative interpretation of a foreign legal culture or foreign law-text is structurally ambivalent or ambiguous — it is contingent.

315. To say that the interpretive tension between the foreign legal culture or foreign law-text and the comparatist-at-law remains unresolved means that no comparatist-at-law is in a position to supply any interpretive guarantee regarding the meaning of the foreign legal culture or foreign law-text, ever. This resolution pertains to negative comparative law's key epistemic tenets.

316. (The absence of an interpretive warrant regarding the meaning of the foreign legal culture or foreign law-text — the absence of the very *possibility* of an interpretive warrant — structures the contemporary epistemological condition obtaining within comparative law, inevitably.)

317. The structural contingency of the comparatist-at-law's interpretation of a foreign legal culture or foreign law-text means that his interpretive yield is inherently open to negotiation.

318. (Unlike an objective or true analysis, which would foreclose any further exchange of views, negotiation means discussion, which can reasonably be expected to lead to emendation or modification, to clarification or amelioration — that is, to enhanced comparative 'understanding' of the foreign.)

319. (While objectivity and truth are epistemic irrelevances within comparative law, what matters is what the comparatist-at-law's interpretation does — how it exposes a foreign legal culture or foreign law-text.)

320. The structural character of its contingency — which stands, for example, as the outcome of the impossibility of an exhaustive interpretation, of a desocialization and de-institutionalization and de-epistemologization of the self, of a deculturation of the self — means that no matter how purportedly assertive, how strongly worded, how seemingly confident, any comparative interpretation of a foreign legal culture or foreign law-text must be a failure, inevitably.

321. Failure is the only interpretive guarantee that the comparatist-at-law is in a position to supply, inevitably. This resolution pertains to negative comparative law's key epistemic tenets.

322. (Borges's apt epistemic term is '*derrota*', a defeat.[36])

323. (This deflationary view of what the comparatist-at-law can achieve does not mean that his effort is not worthy or that his attempt is not to be taken seriously and creditably. Rather, this realization of the comparative intervention's limits speaks to the stubborn integrity that must visit comparative law, always.)

324. The comparatist-at-law's disposition as regards his proffered interpretation of a foreign legal culture or foreign law-text must be inherently humble and anxious.

325. The honest comparatist-at-law cannot be comfortable in the mirror.

326. (Comparative law is mired in mood. And negative comparative law is wary of the mood of dogmatic authoritarianism pertaining to positivism and to comparative law's orthodoxy.)

327. The comparatist-at-law's disposition as regards his interpretation of a foreign legal culture or foreign law-text must reveal a tenacious undertaking to take his failure to an enhanced degree of sophistication, to aim for a Beckettian better-failure, always.

328. No interpretation of a foreign legal culture or of a foreign law-text is definitive, ever. Provisionality, ephemerality even, is uncircumventable.

329. Every interpretation of a foreign legal culture or foreign law-text is an ever unfolding, incessant, restless inquiry.

330. The comparatist-at-law can never consider his interpretive work regarding a foreign legal culture or foreign law-text as finished.

[36] Borges, JL (1995 [1947]) 'La busca de Averroes' in *El Aleph* Alianza Editorial at 116.

331. Every comparison-at-law is ever under way; there is, always, a *comparing on*. This resolution pertains to negative comparative law's key epistemic tenets.

332. (While the comparatist-at-law can never harbour a tranquil disposition regarding his interpretation of a foreign legal culture or foreign law-text, he may perhaps tame his anxiety by reminding himself that during his lifetime no writing is irrevocable.)

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333. The legal culture that the comparatist-at-law styles as 'foreign' is located somewhere.

334. The law-text that the comparatist-at-law styles as 'foreign' is thoroughly encultured.

335. The legal culture or law-text that the comparatist-at-law styles as 'foreign' features traces of a history, a politics, an ideology; it harbours traces of an episteme, an economy, and a sociality, too. (Traces pertain to irreduction.)

336. A foreign law-text is characterized by its existential density.

337. A foreign law-text is a fabric.

338. (Etymologically, every text is a fabric — consider the word 'textile'. Observe that when I refer to etymology, I do not intend to convey any idea of 'truth' even if etymology connotes truth, etymologically.)

339. A foreign law-text as fabric is constituted of interlacing threads (or fibers).

340. Each constitutive thread effectively consists of a discursive or material trace having found its way to partake of the textual amalgam that constitutes the foreign law-text; the threads have been woven into the textual fabric, which can be traced to them. This resolution pertains to negative comparative law's key epistemic tenets.

341. Traces are discursive or material elements that live on as the fabric of the foreign law-text.

342. Traces stand as so many dimensions of the foreign law-text's worldly or factical attachments.

343. Traces stand as so many dimensions of the foreign law-text's enculturation.

344. Traces are *jurimorphs*. They are the vestiges of discursive or material elements that have morphed into the fabric of the law-text.

345. A foreign law-text is haunted, in its very fabric, by an array of discursive or material traces that live on within it and as it.

346. Through the traces that constitute it, the foreign law-text incorporates or embodies innumerable 'othernesses': it is other in and of itself, as itself — that is, its very textual selfness effectively consists in an amalgam of othernesses.

347. (The presence of traces within the foreign law-text and as the foreign law-text establishes the non-isolability of anything that the comparatist-at-law might be minded to delineate as 'the purely legal' for investigatory purposes. Traces show the poverty of positivism — its lack of *capacitation* — as an analytical model.)

348. Ascription of meaning to the foreign law-text involves an elucidation of textual spectres.

349. Interpretation of a foreign law-text is spectral interpretation. This resolution pertains to negative comparative law's key epistemic tenets.

350. (The foreign law-text that the comparatist-at-law is presenting through his interpretation has already been presented within its own legal culture, which means that the comparatist-at-law is therefore presenting it anew. As he inscribes the foreign law-text that has already been addressed elsewhere, the comparatist-at-law is *re-presenting* it — he is re-prising or re-staging it. Now, a re-presentation is much more than a rendering in words. It is a *reality*.)

351. In order to do justice to the foreign law-text that he purports to be interpreting and re-presenting, the comparatist-at-law must avise its traces.

352. To avise the foreign law-text's traces means to hearken to the text's foreignness — to its enculturation.

353. To hearken to the text's foreignness — to its enculturation — means for the comparatist-at-law to move away from any assumption that the foreign law-text might be identical or common to any other law-text. This resolution pertains to negative comparative law's key epistemic tenets.

354. Every foreign law-text is singular or different.

355. (Every foreign legal culture is singular or different.)

356. The more probing the comparatist-at-law's investigation of the foreign law-text, the more the foreign law-text will (be made to) deploy its singularity or difference. (While one cannot circumvent provisionality, ephemerality even, one can eschew thinness.)

357. (The more superficial the comparatist-at-law's investigation of the foreign law-text, the more the foreign law-text will appear to be identical or common to another law-text.)

358. (Very many comparatists-at-law — including orthodox or influential jurists — have been abusively acting as underwriters, enlargers, and enforcers of sham-identity or sham-commonality across laws in order to consolidate a political agenda in favour of legal unification in every declension. The identity or commonality across laws that these legal homogenizers claim to have 'found' is identity or commonality across laws that they had been determined to 'find', so much so, in fact, that they were willing to reify laws in order to deem them interchangeable or replaceable by one another. It is identity or commonality *imputed*. 'No names, no pack drill', as goes the military saying.

359. (Properly understood, the claim of identity or commonality across laws — or, a fortiori, of sameness, similarity, resemblance, equivalence, or *vel sim* — must stand as a statement of difference across laws.)

360. (Two laws cannot be identical.)

361. (From the moment there is more than one law in co-presence, identity is forfeited, inevitably.)

362. (Two laws cannot be common.)

363. (From the moment there is more than one law in co-presence, commonality is forfeited, inevitably.)

364. The discerning comparatist-at-law concurs with Gertrude Stein: 'The difference is spreading'.[37]

365. (No singularity or difference is absolute; otherwise, it could not be understood as a singularity or difference.)

366. The comparatist-at-law must resist any appropriation or assimilation or colonization of a foreign legal culture or foreign law-text to any other legal culture or law-text.

367. (Again, a foreign legal culture or foreign law-text must resist full appropriation or assimilation or colonization by the comparatist-at-law.)

368. As a matter of the justice that he owes the foreign legal culture or foreign law-text that he is presuming to interpret and re-present, for the sake of this indebtedness, the comparatist-at-law cannot allow himself any transgression or distortion of the foreign legal culture or foreign law-text. This resolution pertains to negative comparative law's key epistemic tenets.

369. As a matter of the justice that he owes the foreign legal culture or foreign law-text that he is presuming to interpret and re-present, for the sake of this indebtedness, the comparatist-at-law must behave honestly and treat a foreign legal culture or foreign law-text with the utmost integrity. He must strive faithfully to account for the foreign legal culture or foreign law-text's singular or different foreignness — for its enculturation. (Again, the comparatist-at-law cannot faithfully *account* for the foreign legal culture or foreign law-text's singular or different foreignness.)

370. The comparatist-at-law cannot surpass his ethnocentrism — which means that he cannot jettison his juricentrism. Specifically, his approach regarding the foreign is informed by an ascertainable and encultured epistemic matrix, inevitably.

371. The comparatist-at-law must mobilize his ethnocentrism — which means that he must marshall his juricentrism — to bring to bear, through it and despite it, an edifying critical and differential perspective on a foreign legal culture or foreign law-text.

[37] Stein, G (1998 [1914]) 'A carafe, that is a blind glass' in *Tender Buttons* in *Writings 1903-1932* Stimpson, CR and Chessman, H (eds) Library of America at 313.

372. The comparatist-at-law must keep his juricentrism in check, lest he should find himself desingularizing or dedifferentiating a foreign legal culture or foreign law-text.

373. For the comparatist-at-law, the acknowledgement of the foreign law-text's singular or differential existence from that of other law-texts must lie at the very heart of any strategy of discernment being implemented on his part.

374. The comparatist-at-law's hearkening to a foreign law-text must involve the tracing of a foreign law-text to the constitutive elements of its encultured fabric with a view to yielding a profound 'understanding' of foreignness — of enculturation.

375. Tracing involves an archaeology or a genealogy.

376. (Tracing involves an *archiveology*. As it inholds a rhizomatous array of traces, a text is an archive. Etymologically, an archive is a house. A text houses traces.)

377. (The connection between 'tracing' and 'investigation' appears clearly from the German language, where a trace is 'Spur' and an investigation is 'Nachspüren'.)

378. Tracing asks why, why, why. (Tracing says no to a foreignness-without-why.)

379. Tracing purports to elicit the foreign legal culture or foreign law-text's worldly or factical attachments — to show the foreign legal culture or foreign law-text in its living condition, to attest to its sappiness, its vivacity. This resolution pertains to negative comparative law's key epistemic tenets.

380. As it heralds how the foreign legal culture or foreign law-text has been constructed over time, tracing shows foreignness's inherent temporality.

381. Tracing engages in an open traffic with the past, which is present within and as the foreign legal culture or foreign law-text as it is and as it exists, inevitably.

382. Tracing permits enhanced access to the foreign legal culture or foreign law-text's otherwise unattainable 'reality'.

383. Tracing involves the acknowledgement of the occurring.

384. (The comparatist-at-law is not in the least at liberty to inject into the foreign legal culture or foreign law-text traces that are not there.)

385. As the foreign legal culture or foreign law-text is a being-in-the-world existing somewhere, the comparatist-at-law must unconceal the foreign legal culture or foreign law-text's worldly or factical attachments in order to be able to ascribe meaningful sense to foreignness — to enculturation.

386. (A foreign legal culture or foreign law-text solicits attribution of meaning, interpretation — and interpreting it is for the comparatist-at-law the apt thing to do with it.)

387. Tracing assumes close reading in the sense of an immediate or direct focus on the detail of the foreign legal culture or foreign law-text with a view to making

sense of foreignness — of enculturation. Close reading suggests attention being paid, inter alia, to 'ambiguous words, undecidable syntax, incompatibilities between what a text says and what it does, incompatibilities between the literal and the figurative, incompatibilities between explicitly foregrounded assertions and illustrative examples'.[38]

388. (Observe that no matter how close it gets to the foreign legal culture or foreign law-text, the comparatist-at-law's close reading is fated to remain a distant reading, this distance marking at once an inevitable limitation of comparative interpretation and an inscription of the comparative advantage — who would not want the interpretation to prove insightfully different from what it interprets? This resolution pertains to negative comparative law's key epistemic tenets.)

389. (For a comparatist-at-law researching a foreign legal culture or foreign law-text, there is 'one thing that is crucial to the practice of close reading: a respect for the stubbornness of [cultures or] texts'.[39])

390. (Critique wants distance. There must be critical and differential distance.)

391. (There must be '[d]istance as value', 'an ethics […] of distance'.[40])

392. Tracing is a modality of perspicuity.

393. Tracing demands deconstructive work — a dismantling, an unravelling.

394. Tracing is intrinsically indisciplined. It must be. (Indiscipline pertains to irreduction.)

395. The comparatist-at-law's tracing does not skirt a painstaking consideration of the positivist sources — legislative texts, appellate judicial decisions, and doctrinal scholarship. (There is no reason for the comparatist-at-law to renounce attempts at description of foreign law.[41]) But these documents now intervene only as the point of departure of the comparatist-at-law's interpretive foray into foreignness. While he may legitimately commence his analysis with the usual,

[38] Culler, J (2010) 'The Closeness of Close Reading' (149) ADE Bulletin 20 at 23.

[39] Id at 22.

[40] Barthes, R (2002 [1976-77]) *Comment vivre ensemble* Coste, C (ed) Editions du Seuil at 179 and 110 ['(l)a distance comme valeur'/'une éthique (…) de la distance']. This text is the transcript of Roland Barthes's lectures at the Collège de France. For an excellent discussion of Barthes's appreciation of 'distance', see Rabaté, J-M (2016) *The Pathos of Distance* Bloomsbury at 15-35. Meanwhile, I am aware of Franco Moretti's argument in Moretti, F (2013) *Distant Reading* Verso. However, to borrow from Joseph North's critique, Moretti's title is 'something of a misnomer, since the method it describes is not reading at all', his idea being 'to give up reading and do something else instead', specifically 'data analysis': North, J (2017) *Literary Criticism* Harvard University Press at 110, 110, and 112. See also Culler, J supra note 38 at 20: 'Moretti's "distant reading" […] is scarcely reading at all'.

[41] I am reminded of George Eliot's famous exclamation to the effect that '[a]ttempts at description are stupid': Eliot, G (2014 [1876]) *Daniel Deronda* (2nd ed) Handley, G (ed) Oxford University Press at 90. I read Eliot to be saying that any descriptive striving is doomed to fail, indeed that it is silly for anyone to be hoping to produce an actual description. But I address a different configuration, which involves the comparatist-at-law being fully aware that his purported description will fail to describe and yet taking the view that the descriptive pursuit is nonetheless worth undertaking — that there is epistemic merit to the exercise even if it must fail. It can be like chess, then: one knows one will be defeated, but one keeps playing.

posited law-texts, the comparatist-at-law cannot stop there. Rather, he must move to another, more profound level of inquiry and ask himself why, why, why — an interrogation that he can only meaningfully begin to answer through tracing.

396. Tracing elicits supplementary pertinent information regarding foreignness.

397. (The traces are the opposite of the trivial, the superfluous, the merely decorative, the ornemental — of the excrescent.)

398. (Tracing is not but an attractive garnish for the strong meat of legal interpretation. It is legal interpretation itself. Indeed, in the way it delves into the legal and presses interpretation, tracing is at once *hyperlegal* and *hyperinterpretive*. This resolution pertains to negative comparative law's key epistemic tenets.)

399. Tracing allows negative comparative law to resist the (positivist) claim that culture would pertain to the law's context, to the law's periphery, that it would lie outside the law — and that it could be legitimately abjected from legal interpretation on that contextual, peripheral, or outlier score. In the process, tracing thus validates the law's authenticity that positivism has so eagerly sought to repress. This resolution pertains to negative comparative law's key epistemic tenets.

400. (Tracing is programmatic; it installs a new comparative paradigm.)

401. Every tracing is singular or different.

402. The comparatist-at-law cannot trace everything. Having assessed the operation of the salient traces, as he discerns them to have been constitutive of the foreign law-text's textuality, he proceeds to investigate certain traces rather than others. As the comparatist-at-law casts light on the traces that he chooses to summon, a manifold of inclination, tendency, or tropism will have been a decisive factor in his operationalization.

403. Given that the comparatist-at-law cannot make himself answerable to every trace within the foreign legal culture or within the foreign law-text, his interpretation will, perforce, sacrifice some traces.

404. The comparatist-at-law cannot do justice fully to the foreign legal culture or foreign law-text.

405. The comparatist-at-law cannot do justice to the foreign legal culture or foreign law-text.

406. (The impossibility of justice cannot be allowed to inhibit the comparatist-at-law's interpretive intervention.)

407. Responsible tracing — a tracing that responds to foreignness as it is and as it exists before the comparatist-at-law advenes to it — must elicit the ways in which a foreign legal culture or foreign law-text is always-already singular or different from other legal cultures or other law-texts; it must reveal the *differend*. This resolution pertains to negative comparative law's key epistemic tenets.

408. (The comparative scrutiny that would fail to elicit a foreign legal culture's or foreign law-text's singularity or difference — to reveal the *differend* — would demand scrutinization.)

409. Tracing meanders.

410. Tracing errs.

411. Tracing lapses.

412. Tracing's repertory is rangy. (Ranginess pertains to irreduction.)

413. (While there is no such thing as the foreign law-text itself autotelically commanding a unique reading of it, the text acts as a 'conventional' charter and disqualifies the kind of grotesque reading — *insensata interpretatio* — that would have a statute on insider trading concern the regulation of whaling. Again, no foreign law-text can harbour every meaning, and interpretive play is not free-play. Any interpretation is *of* a text, inevitably.)

414. Tracing makes it possible for the foreign legal culture or foreign law-text to become what it is and what it exists as, interpretively.

415. An assiduous tracing must proceed slowly; it requires time. (As there is 'slow food', there must be 'slow comparison', or 'slow comp'.)

416. An assiduous tracing makes for *capacitory* and *capacious* comparative law.

417. Tracing is inherently incomplete as the comparatist-at-law could always engage in more tracing of more traces, as he could always trace any trace further, too.

418. Tracing is structurally fragmentary.

419. (There can be no total comparison.)

420. (Foreignness always-already demands another interpretation.)

421. (One of the dangers susceptible of undermining the seriousness and creditability of the comparatist-at-law's research is brevity.)

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422. An analysis of a foreign legal culture or foreign law-text is an interpretive intervention into foreignness, inevitably. It follows that the foreign legal culture or foreign law-text cannot remain intact after the comparatist-at-law's tracing.

423. The comparatist-at-law leaves a remainder in the foreign legal culture or foreign law-text that he is interpreting; after his interpretation, the foreign legal culture or foreign law-text means differently.

424. The comparatist-at-law's writing takes place as an encultured endeavour. Enculturation includes social and institutional and epistemic encumbrances.

425. The comparatist-at-law's writing is a force; it fashions the foreign legal culture or foreign law-text. This resolution pertains to negative comparative law's key epistemic tenets.

426. The writing regarding a foreign legal culture or foreign law-text will always be different from that foreign legal culture or foreign law-text as it is and as it exists before the comparatist-at-law advenes to it. There is the *differend*, inevitably. This resolution pertains to negative comparative law's key epistemic tenets.

427. The comparatist-at-law's writing regarding a foreign legal culture or foreign law-text leaves a remainder within him; after his writing, he is a different comparatist-at-law.

428. Writing regarding a foreign legal culture or foreign law-text makes the comparatist-at-law other than the comparatist-at-law that he had been before his writing.

429. ('The [self] [...] is no longer the [self] after the irruption of the other'.[42])

430. The comparatist-at-law's writing is a force; it fashions him.

431. (There is not only, then, what the comparatist-at-law does to the comparison, but there is also what the comparison does to the comparatist-at-law.)

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432. Any tracing assumes the comparatist-at-law's *invention* of a foreign legal culture or foreign law-text. This resolution pertains to negative comparative law's key epistemic tenets.

433. The comparatist-at-law finds the foreign legal culture or foreign law-text as it is and as it exists. It is there, somewhere, before he advenes to it. Etymologically, the comparatist-at-law is thus the inventor of the foreign in this first sense: he finds it, there.[43]

434. (There is something there that the comparatist-at-law is given to desire before he gets to choose how to articulate it in 'his' language.)

435. The comparatist-at-law fashions the foreign legal culture or foreign law-text into meaningful interpretive existence through his disposition or his selection of source materials and on account of his interpretation of these, which he composes

[42] Attridge, D (2004) *The Singularity of Literature* Routledge at 138.

[43] Derrida is right to claim that 'one would no longer say today that Christopher Columbus has invented America [...]. [...] [U]sage or the system of certain modern, relatively modern conventions would prohibit us from speaking of an invention whose object would be an existence as such': Derrida, J (1998) *Psyché* (2nd ed) vol I Galilée at 41 ['on ne dirait plus aujourd'hui que Christophe Colomb a inventé l'Amérique (...). (...) (L)'usage ou le système de certaines conventions modernes, relativement modernes, nous interdiraient de parler d'une invention dont l'objet serait une existence comme telle']. Yet, in the Roman liturgical rite, there was long celebrated on 3 May the Invention of the Holy Cross (*Inventio Sancta Crucis*), that is, St Helena's *discovery* of the Cross in 326. Having been abolished by Pope John XXIII in 1960, the feast of the *Inventio* remains important for the Church of the East on 13 September. As one applies oneself to repair one's understanding of comparison, 'one must today reinvent invention': Id at 37 ['il faut aujourd'hui réinventer l'invention'].

into a writing featuring a certain intensity, a certain tone, a punctuation, a style. Etymologically, the comparatist-at-law is thus the inventor of the foreign in this second sense: he fashions it, here.

436. The comparatist-at-law's edified narrative will accommodate both what he has found there and how he wants to fashion it here, the fluctuation between the finding and the fashioning of the foreign material — between the 'there' and the 'here' — being potentially as rapid as it is imperceptible.

437. There is no foreign legal culture or foreign law-text inscribed in the comparatist-at-law's writing that he has not invented. This resolution pertains to negative comparative law's key epistemic tenets.

438. (Because the invention of the foreign is the comparatist-at-law's, it must follow that the foreign is invented in a manner non-coincident with the foreignness that the invention is inventing. There is the *differend*, inevitably. This resolution pertains to negative comparative law's key epistemic tenets.)

439. The stronger an invention's interpretive yield, the more persuasive the comparatist-at-law's narrative of a foreign legal culture or foreign law-text may ultimately prove to his readership or audience.

440. There cannot be a dialogue between the comparatist-at-law and the foreign legal culture or foreign law-text as the comparatist-at-law and foreignness do not speak one language. Vis-à-vis foreignness, the comparatist-at-law's language is effectively barbarian — or foreignness's language is effectively barbarian vis-à-vis the comparatist-at-law's.

441. Between the comparatist-at-law and the foreign legal culture or foreign law-text, there takes place a negotiation — and there can only take place a negotiation. This resolution pertains to negative comparative law's key epistemic tenets.

442. The comparatist-at-law's 'understanding' of a foreign legal culture or foreign law-text must steadfastly abide by the virtues of recognition and respect. This resolution pertains to negative comparative law's key epistemic tenets.

443. The comparatist-at-law's 'understanding' of a foreign legal culture or foreign law-text must steadfastly abide by the principle of charitable interpretation: ostensively, the other, the other-in-the-law, is neither mad nor irrational. This resolution pertains to negative comparative law's key epistemic tenets.

444. A foreign legal culture or foreign law-text must be presumed to be sane and rational although it abides by a different encultured sanity or rationality than the comparatist-at-law's.

445. The comparatist-at-law's 'understanding' must inevitably do epistemic violence to a foreign legal culture or foreign law-text as it is articulated, no matter how charitably.

446. The comparatist-at-law's 'understanding' of a foreign legal culture or foreign law-text must always seek to apply the lesser epistemic violence. This resolution pertains to negative comparative law's key epistemic tenets.

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447. Given more than one legal culture or more than one law-text in co-presence, there must be difference between these legal cultures or law-texts. There is the *differend*, inevitably. This resolution pertains to negative comparative law's key epistemic tenets.

448. A foreign legal culture is necessarily different from other foreign legal cultures located elsewhere (including from the comparatist-at-law's 'own' legal culture).

449. A foreign law-text is necessarily different from other foreign law-texts located elsewhere (including from the comparatist-at-law's 'own' law-texts).

450. The foreign legal culture or foreign law-text's difference can only be meaningfully conveyed through the comparatist-at-law's tracing.

451. The foreign legal culture or foreign law-text's difference must be meaningfully conveyed through the comparatist-at-law's tracing.

452. As he traces, the comparatist-at-law must elicit the foreign legal culture's or foreign law-text's singularity or difference — in defiance of the legal homogenizers' *imputation* of totalizing or normalizing meaning across legal cultures or law-texts.

453. The comparatist-at-law who does not account for the foreign legal culture's or foreign law-text's singularity or difference is not honouring his debt towards foreignness — or towards the ethos of comparison.

454. As he undertakes to re-present a foreign legal culture or foreign law-text, the comparatist-at-law must do justice to what he is re-presenting. This resolution pertains to negative comparative law's key epistemic tenets.

455. In order to do justice to a foreign legal culture or foreign law-text, the comparatist-at-law must convey foreignness's singularity or difference, inevitably.

456. As art purports 'to make the stone *stony*',[44] comparative law must seek to make the foreign *foreignly*. This resolution pertains to negative comparative law's key epistemic tenets.

457. As he inscribes his tracing, the comparatist-at-law has a responsibility to insert into his wording asperities or dissonances, hiatuses or jolts, so as to ensure the *estrangement* of his text. These disruptive impediments are meant to compel the comparatist-at-law's readership or audience to remain alert to the fact that they are reading foreignness even though they are doing so within the habituation and the comfort of their own world. Think of Shklovsky's (also Šklovskij's) 'ostraneniye', and consider Brecht's 'Verfremdungseffekt'.[45] 'The

[44] Shklovsky, V (2012 [1917]) 'Art as Technique' in Lemon, LT and Reis, MJ (eds and transl from Russian) *Russian Formalist Criticism* (2nd ed) University of Nebraska Press at 12.

[45] Ibid; Brecht, B (1957 [1935]) 'Verfremdungseffekt in der chinesischen Schauspielkunst' in *Schriften zum Theater* Unseld, S (ed) at 74-89. Inspired by what he calls 'its Russian ancestor (*ostranenia* — a "making strange")', Fredric Jameson suggests translating 'Verfremdungseffekt' as 'estrangement': Jameson, F (1998) *Brecht and Method* Verso at 85n13-86. Concerning Shklovsky's term, Svetlana Boym emphasizes the deployment of 'stran', the root for 'strana', which means

goal is to estrange reading, to give it a different optic'.[46] This resolution pertains to negative comparative law's key epistemic tenets

458. The comparatist-at-law cannot ignore what the foreign legal culture or foreign law-text that he purports to 'understand' affirms as to its own significance (bearing in mind that affirmations of significance can come either from the orthodoxy or dissidents).

459. The comparatist-at-law cannot accede to what the foreign legal culture or foreign law-text that he purports to 'understand' affirms as to its own significance (whether affirmations of significance come from the orthodoxy or dissidents).

460. Charitable interpretation — an interpretation assuming sanity and rationality — cannot exclude critique.

461. An interpretation of a foreign legal culture or foreign law-text must be committedly critical and differential, lest it should contribute no surplus value to the 'understanding' of foreignness.

462. An interpretation of a foreign legal culture or foreign law-text must be made from a particular cultural vantage, lest it should contribute no surplus value to the 'understanding' of foreignness.

463. A foreign legal culture or foreign law-text has no authority over the comparatist-at-law.

464. The comparatist-at-law cannot do whatever he wants with a foreign legal culture or foreign law-text.

465. The comparatist-at-law cannot write or say whatever he wants regarding a foreign legal culture or foreign law-text.

466. A foreign legal culture or foreign law-text does not belong to the comparatist-at-law.

467. (Observe that the very text — for example, the foreign law-text — is liable to change on account of developing circumstances wholly external to it. Consider Jasper Johns's oversized *Flag*, which he painted in 1955, the first in a series now comprising three dozen items or so. Imagine how this painting would have been understood, say, in Paris, in the 1950s, and how it would be appreciated in Paris nowadays. Arguably, the more recent view from Paris would incorporate an ascertainable decline in the United States's economic power, cultural influence, and geopolitical clout. It is not only that the abatement in US primacy or confidence has changed the painting's perception. Rather, it is that the painting itself has changed given the different situation.)

'country' in Russian. It follows that the neologism stands not only for 'making strange', but also for the idea of 'dislocation' or 'dépaysement': Boym, S (1996) 'Estrangement as a Lifesyle: Shklovsky and Brodsky' (17) *Poetics Today* 511 at 515. 'Outlandishness' might be an apt English term. On Shklovsky's more aesthetic and Brecht's more political use of the idea of estrangement, see Mitchell, S (1974) 'From Shklovsky to Brecht: Some Preliminary Remarks Towards a History of the Politicisation of Russian Formalism' (15/2) *Screen* 74.

[46] Culler, J supra note 38 at 24.

468. There is an ethics of interpretation — and there must be as it simply cannot be that 'anything interpretive goes'.

469. The comparatist-at-law must assume full responsibility for his interpretation of a foreign legal culture or foreign law-text.

470. (The comparatist-at-law must be responsible at least four times: to the foreignness being elicited, to the protocols of rigorous argument, to his readership or audience, and to the ethos of comparison.)

471. As he implements negative comparative law, the comparatist-at-law can reasonably expect that in the murmurous backdrop, the usual (positivist) detractors will be making their usual (positivist) detractions. He can proceed safely to ignore this noise.

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472. Every tracing of a foreign legal culture or foreign law-text is inherently defeasible.

473. Every interpretive yield generated by the comparatist-at-law's tracing regarding a foreign legal culture or foreign law-text is inherently defeasible. This resolution pertains to negative comparative law's key epistemic tenets.

474. The comparatist-at-law's 'understanding' of a foreign legal culture or foreign law-text meanders.

475. The comparatist-at-law's 'understanding' of a foreign legal culture or foreign law-text errs.

476. The comparatist-at-law's 'understanding' of a foreign legal culture or foreign law-text lapses.

477. A tracing, an interpretation, or an 'understanding' of a foreign legal culture or foreign law-text, out of the different tracings, interpretations, or 'understandings' of a foreign legal culture or foreign law-text that there are, carries over a different one, because its readership or audience 'understands' it to be generating a more persuasive interpretive yield.

478. The persuasiveness of the comparatist-at-law's inscription of a foreign legal culture or foreign law-text in terms of its interpretive yield is inherently provisional, ephemeral even, and is liable to be displaced by competing inscriptions including a further inscription of his at a different time and under different circumstances.

479. The persuasiveness of the comparatist-at-law's inscription of a foreign legal culture or foreign law-text depends on its reception by the comparatist-at-law's readership or audience.

480. Any reader or auditor is always-already encultured, inevitably.

481. A reader's or auditor's enculturation includes social and institutional and epistemic encumbrances, which have educated — which have empowered and framed — his taste and habits of evaluation, which he incorporates or embodies.

482. A reader or auditor's 'understanding' of the comparatist-at-law's 'understanding' of a foreign legal culture or foreign law-text is not the comparatist-at-law's 'understanding', inevitably.

483. A reader or auditor's 'understanding' of the comparatist-at-law's 'understanding' of a foreign legal culture or foreign law-text cannot be the comparatist-at-law's 'understanding', inevitably.

484. The reception of the comparatist-at-law's tracing, interpretation, or 'understanding' depends in important respects on the comparatist-at-law's authority.

485. The comparatist-at-law's authority vis-à-vis a reader or auditor depends in important respects on the comparatist-at-law's socialization and institutionalization and epistemologization — on his enculturation.

486. The comparatist-at-law's authority vis-à-vis a reader or auditor depends in important respects on the resolution of the dynamics between the comparatist-at-law's enculturation and his reader's or auditor's enculturation.

487. The significance being ascribed to the comparatist-at-law's socialization and institutionalization and epistemologization — to his enculturation — depends in important respects on his reader's or auditor's enculturation.

488. The comparatist-at-law's authority can be charismatic.

489. The significance being ascribed to the comparatist-at-law's charisma depends in important respects on his reader's or auditor's enculturation.

490. The comparatist-at-law has no authority over his readership or auditorship.

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491. There is no globalization cancelling the singularity or difference of a foreign legal culture or foreign law-text.

492. There is glocalization.[47]

493. Glocalization resists the idea that any global process would dissolve local life-worlds, including local life-worlds-in-the-law.

494. The global and the local assemble locally to produce customized forms of hybridity operating locally that may prompt the emergence or resurgence of enhanced concentrations of local power or local knowledge.

495. The global-in-the-law and the local-in-the-law assemble locally to produce customized forms of hybridity operating locally that may prompt the emergence or resurgence of enhanced concentrations of local power or local knowledge.

496. Because it heralds the displacement of an invariant, the conceptual metaphor of the 'transplant' is analytically reductionist and thoroughly misleading, a fallacious heuristic. Indeed, since it ignores the fact that glocalization is an

[47] Eg: Roudometof, V (2016) *Glocalization* Routledge.

irreducible feature of life-in-the-law, the conceptual metaphor of the 'transplant' is devoid of any meaningful theoretical leverage. It is distortive of what is the case. If there is transportation, there is transformation.[48] *Quaere*: can someone who defends the conceptual metaphor of the 'transplant' legitimately style oneself a comparatist-at-law and teach and write in this quality?

497. Again, the differend is what there is across foreign legal cultures or foreign law-texts. Accordingly, negative comparative law stands to pursue the endless investigation of the differend.

498. No foreign legal culture or foreign law-text is objectively or truly better than another legal culture or another law-text. Accordingly, negative comparative law stands to do better than better-law comparisons — which is why it must resist the hierarchization of differences and avoid any motion evoking orientalism, for example.

499. It is meaningless to rank legal cultures or law-texts in terms of the better and the worse — literally, such a ranking is devoid of meaning: it is *meaning-less*. And the very idea of a table of legal precedence (or is it cultural eminence?) is silly, for words do not translate into numbers (irrespective of how sophisticated and seemingly 'objective' or 'true' the calculations may appear to be). No matter how potentially fascinating, in their crudity numbers cannot reflect a law's *thereness*; they can only deflect it, inevitably.

500. The comparatist-at-law can legitimately ascertain his preferred foreign legal culture or foreign law-text with specific reference to its singularity or difference. The expression of the comparatist-at-law's preference is informed by his enculturation, inevitably.

501. The expression by the comparatist-at-law of his preferred foreign legal culture or foreign law-text with specific reference to its singularity or difference cannot be dissociated from his enculturation.

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502. There is no universal law, and there is nothing universal about law.

503. Irrespective of any expression of wishful thinking or irritation, there cannot be any universal law or anything universal about law — the very idea an utter

[48] Cf Latour, B (1972) *Aramis ou l'amour des techniques* La Découverte at 104: '[N]o transportation without transformation' ['pas de transport sans transformation']. See Derrida, J (1972) *Positions* Editions de Minuit at 31: 'We will not have been and have not been involved ever, in fact, in some 'transportation' of pure signifieds that the signifying instrument — or the "vehicle" — would leave virginal and unbroached, from one language to another' ['Nous n'aurons et n'avons en fait jamais eu affaire à quelque "transport" de signifiés purs que l'instrument — ou le "véhicule" — signifiant laisserait vierge et inentamé, d'une langue à l'autre']. See also Bellos, D and Scheppele, KL (2016) 'Translating Law Across Cultures and Societies: A Conversation with David Bellos and Kim Lane Scheppele' in Mertz, E; Macaulay, S and Mitchell, TW (eds) *The New Legal Realism* vol I Cambridge University Press at 286: 'There is always something that changes in the course of translation because — you changed [the legal institution or legal idea] almost by definition when you moved it to a new place'. The words are Scheppele's. Adde: Legendre, P supra note 21 at 212: '[N]ew forms implant themselves only by becoming an additional sediment in the history of the normative bodies of the civilization being considered' ['(L)es formes neuves ne s'implantent qu'en devenant un sédiment de plus dans l'histoire des corpus normatifs de la civilisation considérée'] (emphasis omitted).

subterfuge as antiquated as it is unserviceable. This resolution pertains to negative comparative law's key epistemic tenets.

504. Any claimed universality in the law purports to elide cultural singularity or difference and thereby obfuscate the production of serious and creditable information regarding foreign legal cultures or foreign law-texts.

505. Any claimed universal law or universal about law is always someone's alleged universality, which means that there cannot be any universality.

506. (Negative comparative law earnestly refuses to truck in universals, not least because the trope of universalism has often proved historically indissociable from a colonial or imperial mindset.)

507. (The claim that a legal proposition would be universal can often be uncannily correlated with the spread of neo-liberal forces in the wider political and economic spheres.[49] Consider the so-called 'rule of law', or think of 'human rights'.)

508. There are only localized laws, and there are only localized comparatists-at-law, inevitably. This resolution pertains to negative comparative law's key epistemic tenets.

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509. The comparatist-at-law's work is not about the foreign for it is closer to it than that. It is not in the foreign either, for it is more distant from it than that. It is *regarding* the foreign (it regards the foreign — and it has regards for it, too). It is *towards* the foreign. This resolution pertains to negative comparative law's key epistemic tenets.

510. Although no *understanding* is possible of a foreign legal culture or foreign law-text as it is and as it exists before the comparatist-at-law advenes to it, there is the possibility of an 'understanding' of a foreign legal culture or foreign law-text.

511. *Understanding* of a foreign legal culture or foreign law-text is ever impossible, inevitably.

512. 'Understanding' of a foreign legal culture or foreign law-text is a tracing or an interpretation of it.

513. 'Understanding' of a foreign legal culture or foreign law-text is an invention of it.

[49] I agree with Daniel Rodgers that 'neo-liberalism' can fairly be envisaged as 'the linguistic omnivore of our times, a neologism that threatens to swallow up all the other words around it': Rodgers, D (2018) 'The Uses and Abuses of "Neoliberalism"' (65/1) *Dissent* 78 at 78. Rodgers argues that 'neo-liberalism' carries at least four different meanings. My usage is probably closest to what Rodgers styles 'Neoliberalism (4)', which refers to 'a cultural regime', in effect, to the prevailing rationality of our times, to 'a governmentality' purporting to spread the model of the market to all domains and activities, that is, to institute a pervasive culture of commodification in society. See Id at 84-85.

514. (Otherness, singularity or difference, and invention must be the inseparable and uneliminable dimensions — the 'meremost minimum'[50] — within any serious and creditable comparative investigation, inevitably.)

515. 'Understanding' of a foreign legal culture or foreign law-text is ever provisional, ephemeral even, notwithstanding any longing that the comparatist-at-law may harbour for permanence.

516. 'Understanding' of a foreign legal culture or foreign law-text is ever unfinished, notwithstanding any longing that the comparatist-at-law may harbour for finality.

517. (To the extent that he operates as if *understanding* of a foreign legal culture or foreign law-text as it is and as it exists is possible and to the further extent that he operates as if he has *understood* a foreign legal culture or foreign law-text as it is and as it exists, the comparatist-at-law is giving effect to a fiction; he is engaging in deception, and in self-deception, too.)

518. 'Understanding' of a foreign legal culture or foreign law-text must always happen.

519. 'Understanding' of a foreign legal culture or foreign law-text happens.

520. What happens as 'understanding' of a foreign legal culture or foreign law-text is ever impossible as *understanding*, inevitably.

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521. Comparative law is emphatically not a pastime destined to fill the idle hours of one's saturnine legal life.

522. Negative comparative law is significantly a power of contestation: contestation of the established cultural and legal order as it expresses itself institutionally and territorially; contestation of the established legal epistemology (and its attendant values) as it expresses itself positivistically; contestation of the established order governing foreign law, too, which is meant *ab initio* not to carry any normative force extra-territorially; and contestation of comparative law's orthodoxy (and its attendant values).

523. Negative comparative law's interpretive intervention cannot content itself with being diagnostic.

524. Negative comparative law's interpretive intervention must manifest a progressive political valence (although not of the blithe kind).

525. (Negative comparative law must eschew quietism.)

526. Negative comparative law's interpretive intervention may take the form of an insistent advocacy for basic structural changes to the existing racial order or militate against colonial oppression or against deforestation.

[50] Beckett, S (2009 [1983]) *Worstward Ho* in *Company/Ill Seen Ill Said/Worstward Ho/Stirrings Still* Van Hulle, D (ed) Faber & Faber at 82.

527. (Intervention is not fulmination.)

528. Mostly, negative comparative law can be progressive by seeking the enhancement of the imaginative faculties of jurists, whether there or here.

529. Mostly, negative comparative law can be progressive by cultivating in jurists new ranges of sensibility and capacities for experience, whether there or here.

530. Negative comparative law must foster a more profound mode of life-in-the-law, whether there or here.

531. Negative comparative law must actively try to make the planet a better place — whatever these words mean to comparatists-at-law existing within various law-worlds and sitting in various places on the spectrum of political views.

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532. A foreign legal culture or foreign law-text does not exist for the comparatist-at-law's benefit.

533. Vis-à-vis a foreign legal culture or foreign law-text, the comparatist-at-law is caught in a double bind (one of negative comparative law's many animating constraints — and compulsions): he must account for the foreign as it is and as it exists, there, even as he cannot account for the foreign as it is and as it exists, there. This resolution pertains to negative comparative law's key epistemic tenets.

534. Again, what is foreign to the comparatist-at-law cannot exist for him.

535. Again, what exists for the comparatist-at-law cannot be foreign to him.

536. (For the comparatist-at-law, *foreign law* cannot exist. The comparatist-at-law operates *as if* foreign law existed for him.)

537. Ultimately, the only approach for the comparatist-at-law is to keep asserting an unquenchable thirst for the ascription of meaningful meaning — of meaning that matters — to a foreign legal culture or foreign law-text, to keep writing meaningful words regarding a foreign legal culture or foreign law-text.

538. (Ultimately, what happens is words, words that are mobilized, words that are inscribed by virtue of the comparatist-at-law's desire in line with his capacity of expression.[51])

539. To foster a deliberative mindset remains one of the abiding advantages of comparison.

540. ('Comparison and analysis [...] are the chief tools of the critic'.[52])

[51] Cf Gessner, N (1957) *Die Unzulänglichkeit der Sprache* Juris at 75: 'What do you want, Sir, it is words, one has nothing else' ['Que voulez-vous, Monsieur, c'est les mots, on n'a rien d'autre']. The quotation is an answer Beckett gave Niklaus Gessner, his interviewer. The transcript reveals that Beckett spoke in French.

[52] Eliot, TS (1932 [1923]) 'The Function of Criticism' in *Selected Essays 1917-1932* Harcourt, Brace at 21.

541. Ultimately, the only resolution for the comparatist-at-law to implement is to continue on the way towards foreign law-worlds, foreign legal cultures, or foreign law-texts — on the way towards comparison — and, even as the far becomes near, not to plot illusory consonance, yet not to allow otherness's singularity or difference to stultify his inventive effort at interpretation or 'understanding'.

542. (As the comparatist-at-law receives awareness through the differend between world and word, he must accept that he can never make sense of the other without himself, so that the negative comparative law he is deploying is, in effect, but negative comparative law *quand même*. This resolution pertains to negative comparative law's key epistemic tenets.)

543. (The absolute comparison does not exist, while haunting every comparison.)

544. (The absolute comparison-at-law does not exist, while haunting every comparison-at-law.)

545. (The absolute comparatist-at-law does not exist, while haunting every comparatist-at-law.)

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546. '[T]he space in which a critic works has been marked out for him by his predecessors'.[53]

547. From an epistemological standpoint, to read an orthodox comparative-law text is to peruse a nosology.

548. Negative comparative law is a response, a reaction.

549. It is understandable that a comparatist-at-law who values comparative law should think of orthodox comparatists as 'musicians without musical ability' ('Musiker ohne musikalische Fähigkeit') and wish their treatises or manuals be relegated to the bargain book-cart awaiting their pulpy fate.

550. Sane comparative law demands to be negative comparative law, the comparative law that says no to an array of infectious and metastasizing diseases such as identity or commonality, objectivity, truth, method, translatability, and so forth — and the comparative law that embraces singularity or difference, enculturation, interpretation, flair, incommensurability, and so forth, the comparative law that stages itself as a space of conflictuality inasmuch as it properly sees foreignness to be enacting the differend.

551. Negative comparative law enacts or performs comparative law 'not as harmony or resolution[,] but as intransigence, difficulty, and unresolved contradiction'.[54] It operates a most significant theoretical and practical

[53] Fish, S (1980) *Is There a Text in This Class?* Harvard University Press at 350.

[54] Said, EW (2007) *On Late Style* Wood, M (ed) Vintage at 7. This book remained unfinished at the time of Said's death and appeared posthumously.

displacement away from positivism's suspiciously carpentered (and self-immolating) tendencies.

552. Negative comparative law is emphatically *not-scientific*. For greater clarity, it is emphatically *nicht-wissenschaftlich*.

553. In the way in which the invention of foreignness is construction, inevitably, negative comparative law can properly be described as an exercise in *witcraft*.

554. One can legitimately hold that negative comparative law involves a *travail de soi sur soi*, a 'permanent critique of [one's] historical being',[55] whose immediate experience in the everyday law-world that every jurist routinely inhabits finds itself transformed and augmented in unanticipated ways, because of foreignness's normative input.

555. To defend one's comparative law — one's negative comparative law — is to defend one's lifestyle; indeed, it is to defend one's *life* (understood as a trial of self-becoming).

[55] Foucault, M (1994 [1984]) 'Qu'est-ce que les Lumières?' in *Dits et écrits* Defert, D and Ewald, F (eds) vol IV Gallimard at 571 ['critique permanente de (son) être historique'].