

REVIEW ESSAY

Law's Gripe

Pierre Legrand

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The law becomes a sort of reality imposed upon the social data, shaping it, and in short becoming in the end more 'real' than the facts. (Jacques Ellul¹)

Consider desire, and imagine that the law would not seek to harness one's *vaga libido*. Kant had no doubt that, given the primordially of sexual impulse, individuals would then take advantage of the law's weakness to indulge their own and enter into diabolical conventions featuring wild quests for unruly pleasure. Such arrangements would show men operating under the sway of their senses and falling prey to sexual madness. They would reveal women behaving like Amazons, these female warriors famous for their bloody flesh marks. In a shared frenzy, one would abandon oneself to the other's ardor. According to this conventional economy, individuals would in effect agree to treat each other as object or thing rather than as human being. In their minds, there "would be a contract to *let* and *hire* (*locatio-conductio*) a member for another's use, in which, because of the inseparable unity of members in a person, [one] would be surrendering [one]self as a thing to the other's choice,"² the reference to "member" being to "sexual organs."³ Specifically, Kant envisaged that if left to itself the human inclination to the enjoyment of the flesh would follow one of two broad strategies, each configuration entailing a particular engagement with time. One would either consent to a *pactum fornicationis* or agree to a *pactum turpe* – the former referring to covenants for "immediate satisfaction,"⁴ for "enjoyment on one occasion,"⁵ such as prostitution bargains, the latter consisting in settlements

for long-term gratification pursuant to which, instead of spending one's time chasing sexual fulfillment within the public sphere, one would decide that it was easier to assuage one's avidity at home.

Either way, in as much as it reduced the person to a "consumable thing (*res fungibilis*),"⁶ Kant held that the predilection for the body was morbid. It relegated human relations to "merely animal intercourse."⁷ And since their cause was in effect sexual slavery, the *pacta* had to be regarded as void. Not only was it impossible for one to abide by a convention pursuant to which one had abdicated one's will (*ex hypothesi* one no longer had any will left to implement the accord), but a state simply could not permit the free manifestation of what was most monstrous in the individual, that is, anthropophagic lust. For Kant, "carnal enjoyment [was] *cannibalistic* in principle (even if not always in its effect)."⁸ While man consumed woman "by mouth and teeth,"⁹ woman "exhaust[ed] [...] [man's] sexual capacity" through her "frequent demands upon it."¹⁰ As the man was predatory, the woman was voracious; one, to refer to Bernard Edelman's formulations in the book under review, "a carnivorous crusher of bones," the other "a semen-greedy vampire"¹¹ – "the difference [being] merely in the manner of enjoyment."¹² Again, "[i]n this sort of use by each of the sexual organs of the other, each [was] actually a *consumable* thing."¹³

Now, Kant could not allow that the state would so countenance the transformation of a person into an object or thing. Though he recognized that human beings were animated at bottom by a complex wish for power *and* servitude, that they longed for authority *and* servility, such that there ultimately arose a shared ecstasy between oppressor and victim, Kant took the firm view that the man or woman of desire was ultimately a being-for-death, an absolute nihilist. For him, the *pacta* effectively prompted one's destruction *qua* human being. "So, according to Kant, someone [could] be his own master (*sui iuris*) but [could] not be the owner of *himself* (*sui dominus*) ([could] not dispose of himself as he please[d]) – still less [could] he dispose of others as he please[d] – since he [was] accountable to the humanity in his own person."¹⁴ And it was because of this accountability that one was unalienable, that to make one into an object or thing "[did] wrong to humanity in [one's] own person" such that "there [were] no limitations or exceptions whatsoever that [could] save [these transgressions of laws] from being repudiated completely."¹⁵ It followed that no reasonable state could avoid framing the human expression of *facultates sexuales*. To concede man and woman's pathological predisposition would be barbaric and unworthy of a civilized nation.

As Kant pondered the state's expropriation/appropriation of desire through the law,¹⁶ it was 1797,¹⁷ and the King of France's execution but four years earlier very much remained on his mind. Reflecting on what he regarded as an unforgivable crime (for him, Louis XVI's decapitation could not be pardoned "either in this world or the next"),¹⁸ musing on a death drive that had then been allowed to flourish freely, wildly, and without any legal control, that had effectively been permitted to jail and guillotine at will, Kant proceeded to link physical and symbolic destruction.

In the same way as savagery could annihilate one physically, it might destroy one symbolically by turning one into an object or thing through a course of instrumentalization animated by an energy not unlike that inspiring the most intransigent revolutionaries. The symbolic situation also involved a death drive, albeit in the guise of desire, so that finally the same devastation would visit the private and the public massacres. Kant reasoned that if the legal validity of the *pacta* were somehow to be acknowledged, one would have to infer a suicide of the law not unlike the auto-destruction of the state that the French constitution of 1793 had so shockingly validated. For Kant, there imperatively followed the need to exigent the individual to a law enclosing the *commercium sexuelle*, more precisely the *copula carnalis*. Law's intervention would aptly conjure man and woman's savage disposition by converting instincts into duties or, if you will, bestiality into respect. In sum, a legislative enactment would confirm the ascendancy of reason over passion. In other terms, Kant thought that the juridicization of desire could organize, indeed civilize, the peaceful cohabitation of individuals. (Incidentally, the legal taming of sexuality would reassuringly show that social savagery could likewise be contained.) While his preferred institutional vehicle was a law of marriage positing a *marital duty* (or *debitum conjugalis*), Kant held idiosyncratic conceptual views concerning the legislative fabric he had in mind.

For Kant, the law of marriage had to assemble two major legal categories traditionally kept separate, that is, the order of things and that of persons. Ever since Roman law, a thing had been understood from a legal standpoint as a neutral structure, a passive object devoid of spirit, a kind of white page over which one wielded one's mastery. To be sure, a thing carried a value, but this value belonged entirely to its owner, who was therefore able to enjoy the full range of the thing's diverse uses. In Hegel's words, "[a] person has the right to place his will in any thing. The thing thereby becomes mine and acquires my will as its substantial end (since it has no such end within itself), its determination, and its soul."¹⁹ The uncompromising character of this right, known as a "real right" (or *jus in rem*), is succinctly captured by the wording of Article 544 of the 1804 French civil code to the effect that "ownership is the right to enjoy and to dispose of things in the most absolute manner" ("[l]a propriété est le droit de jouir et disposer des choses de la manière la plus absolue"). Accordingly, only a thing could be the focus of ownership as it was unimaginable that one would allow another to invade one, such that the other's will would in effect substitute for one's own. Indeed, persons were *extra commercium*, which meant that they could neither be sold nor bought, that they stood beyond confiscation. They enjoyed "personal rights" (or *jus in personam*), which allowed them to assert their entitlement to recognition and respect.

Fascinatingly, Kant developed the idea of "a right to a thing akin to a right against a person and [...] a right to a person akin to a right to a thing"²⁰ – "an implausible category for any coherent jurist," according to Edelman.²¹ In legal parlance, Kant purported to make it possible for a husband to possess one's wife as a

thing while treating her as a *person*.²² Along the way, confidently heralding a “new phenomenon in the juristic sky,”²³ he was revisiting the Roman *summa divisio* in a manner that aimed to establish marriage on a rational legal basis – incidentally anticipating contemporary developments whereby the law, in certain countries at least, has been willing to countenance forms of “objectification” of persons (one has in mind, for example, gene patenting or surrogate motherhood).²⁴

For Kant, what mostly threatened marriage, what risked precipitating the relationship into anarchy and ruin, was the fickle character of the woman, an unstable and irrational being capable of every madness. The most urgent question was therefore how to keep one’s woman at home, to surround her with a protective barrier such that she would not flee. How, then, to get her to accept her confinement, to constrain her to obedience, while preserving her dignity? As Kant saw it, what was needed was for the law to equip the husband with the ability to possess his wife as a thing (say, if she sought to escape like some wild animal), yet to make it possible for him to treat her like a person if she earned his recognition and respect (that is, if she agreed to acquiesce to her role as spouse). The woman, then, would be free provided she conformed strictly to her position. Indeed, Kant opined that the same conditions obtained for the entire household: just as a woman who sought to evade her husband’s surveillance must be regarded “*as if it were a thing*,”²⁵ the children having deviated could be addressed “like domestic animals that have gone astray,”²⁶ and the servants having disobeyed handled by virtue of “a right that is like a right to a thing.”²⁷ The words “as if” notwithstanding, the “real” aspects of the personal right that Kant would have the law bestow on man featured a redoubtable efficacy in so far as they provided him with the legal means fully to rationalize his world.

In effect, pursuant to the Kantian model the private sphere corresponded to the “personal” aspect of the man’s right: within the home, the woman was a person in the eyes of the law and had to be addressed as such. Meanwhile, the “real” dimension pertaining to the man’s right allowed him to approach the woman outside the home in thing-like fashion. Indeed, in the public sphere the woman “lack[ed] civil personality.”²⁸ Within the home, then, the man reigned as an enlightened sovereign over his subjects. Like a monarch, he would grant the woman a measure of freedom allowing her to conduct a social life, for example by attending the salons and joining in charitable work, all the while ensuring that she would not cross the boundaries of decency. In the process, the savagery of desire would find itself definitively tamed for above all, Kant’s law of marriage aimed to enact sexual peace.

In the marital bedroom – at the heart of the private sphere – the husband would renounce his rapacious behavior and the wife the submissive attitude of the woman craving a conqueror. There would be nothing left of the concupiscence that had driven man and woman towards one another, of this animal desire that would have prompted them to devour each other if juridicization had not intervened. Within the law of marriage, the transgressive inclinations that had vanquished one’s senses and were destined to cast a debilitating spell on one’s mind would

forever vanish as husband and wife experienced the legal ordering of their vesperal lives. I have already indicated “marital duty” as the central vehicle through which the law of marriage would deploy its nocturnal jurisprudence. For Kant, no spouse could refuse oneself to the other; thus, no one could decide “not to engage in sexual union.”²⁹ Indeed, the spouses had “lifelong possession of each other’s sexual attributes.”³⁰ Kant insisted that the spouses’ relationship was one of “equality of possession.”³¹ Now, through the idea of “marital duty” the law would countenance the abiding victory of virtue over libertinage.

Instead of aspiring to scandalous circumstances, licentious looks, salacious words, audacious whispers, and lascivious positions, in the marital bed husband and wife would accomplish, scrupulously and honorably, their *duty-at-law* – a characterization of the *copula carnalis* that must exclude any lingering role for voluptu. No longer a locus of debauchery, the body would become an *instrumentum*, that is, something like the material support over which a notary drafts official documents. Over the contractual body of one’s spouse, as legal wills would meet, one would inscribe the meticulous performance of one’s matrimonial deed. This transformation of the act of copulation into a legal imperative would seal the fate of desire over time *as a matter of law*.

As they continued to discharge their legal duty through the years, husband and wife would be doomed to watch each other’s bodies age and progressively fall into decrepitude, fated to see each other’s bodies become ever weaker and ever more pathetic, destined to witness each other’s bodies wrinkle and wither. In time, the rumpled carcasses would find it hard to attract the dispensation of even the least suggestive caress. On account of its intervention, the law would thus ultimately have succeeded in turning desire into disgust through the mutation of the evanescent time of exciting sexual reunions into the monotonous and melancholy unfolding of the continuous, durable marital relationship. Elation would have developed into disenchantment, trepidation faded into disillusionment. Because he saw immense merit in this transmogrification, Kant uncompromisingly foreclosed any exit from the situation: the marriage contract demanded “marital cohabitation.”³² *Ex abundantia cautela*, he added that the bond between husband and wife was “lifelong.”³³ In sum, *il n’y aurait pas de hors-mariage* – though one can observe that in his obsession with the elimination of transgression, Kant failed to see that the institution of a legal regime pertaining to rule over man and woman’s sex drives depended on having them violate what can imperfectly be styled “the law of nature.” (Schlegel argued that the infinite permutations of sexual pleasure in excess of any procreative purpose did indeed pertain to “nature.” It was “nature” which ensured that “sensible and respectable people could repeat this petty game and repeat it again in an eternally recurring cycle, performing it with untiring energy and enormous seriousness.”³⁴)

In the end, the only way for one to overcome one’s dire marital circumstances was for one to invest oneself in work. Kant’s injunction was clear: “[G]et fond of

work.”³⁵ (Note that while Kant rejected what he regarded as the commodification of the body at home by way of sex, he seemed unconcerned with its commodification at the workplace through labor.) Making specific reference to the motif of sexuality in the 19th century, Michel Foucault has noted “the need to form a ‘labor force’ (hence to avoid any useless ‘expenditure,’ any wasted energy, so that all forces were reduced to labor capacity alone) and to ensure its reproduction (conjugal, the regulated fabrication of children).”³⁶ Along converging lines, Kevin Floyd observes how “few forms of energy caused the nineteenth-century middle class more concern about its potential for ‘waste’ than the peculiar form of sexual energy [. . .] attributed to the male body.”³⁷ Indeed, “[a]dvice manuals for young men that urged them to restrict sexual activity to procreative activity, and to preserve the rest of their energy for productive work, became pervasive as early as the 1830s.”³⁸ In sum, the male body was “a body scientifically understood in terms of a temporality of immaturity, destructive sexual instincts with the capacity to enervate that body, and the mature containing of those instincts necessary to its health and productivity.”³⁹ Though the governing idea here was that the combined experience of the death of desire and of the decay of the body would lead the husband to find consolation in work, the case of the wife proved more problematic. Despite the fact that she gave birth and looked after the household, she did not produce economic value. Given the time at her disposal, because of the lack of “ethical transcendence” that work would have afforded her,⁴⁰ she therefore remained more liable to succumb to frivolity, laziness, and indeed licentious behavior.

Not unlike other legal configurations aiming to exercise control over the human body, Kant’s law of marriage – an audacious recognition of the governance of genitalia and a bold endeavor *in* the governance of genitalia – sought to address an array of social anxieties regarding sexuality and ultimately aimed to calm society’s fears over its ever-possible moral disintegration. Kant’s normative scheme can thus be seen as an attempt by society to immunize itself against what it perceives as the risk of degenerescence. In as much as it held that human behavior could be tamed through legal intervention, Kant’s law of marriage also stood as the conjuration of the threats to society that the French Revolution had failed to contain. As it would become law, as it would turn into marital duty, as there would take place this arraignment, copulation would find itself deployed as other than itself. It would be supplementing itself or, more accurately, it would find its reality being supplemented by another reality. To be sure, this repetition had to consist in a variation, since anything can only be repeated by being varied, by being made to be other than itself, that is, by being iterated: the same has always already become different. Paradoxically, though, Kant’s composition, even as it purported to de-dramatize sexuality – as it wished to extirpate its subversive edge – arguably heightened its significance through a movement of legalization which, at the very minimum, showed sex as being worthy of the state’s attention. If you will, in apprehending sex as a threat, law already confronted it as “the law” – albeit as a manifestation of

arbitrary power. Another tension arose as genitalia became epistemologically decor-porealized (or “othered”) in favor of a normalizing and disciplinary regime of legal knowledge. Assuming, of course, that law enjoyed any performative capacity, that it could make happen what it said, law’s violent prohibition of *jouissance* through copulation left open the possibility of a fully fledged eroticization of the body as it existed beyond the sex organs, what Herbert Marcuse would later call “a decline of genital supremacy,”⁴¹ that is, a “*genitofugal*” process.⁴²

Kant’s construction readily evokes the French civil code. As the first modern exercise in mature codification,⁴³ the French legislative text enshrined the contents of a marital duty as it was proclaimed into force on 21 March 1804, but a few weeks after Kant’s death.⁴⁴ (In short order, more codes would emerge across continental Europe and, not least on account of colonial dissemination, throughout the world.⁴⁵) The time had come, in Foucault’s arresting words, for “the order of the state [to] outla[w] the disorder of the heart.”⁴⁶ As “[m]orality allow[ed] itself to be administered like commerce or the economy,”⁴⁷ one thus witnessed the unfolding of “the great bourgeois [. . .] idea” that “virtue too is an affair of state” and that “one can enact decrees in order to make it rule.”⁴⁸ According to Algirdas Greimas, the state’s intervention sought “the institution and the upholding of a certain legal culture, that is, of ‘good legal manners’ (in the way there are table or conversation ‘manners,’ etc.). The order instituted by the law [was], in a certain way, the rule of the suitable.”⁴⁹ The perception of codification “as an act of the deliberate and unfettered will of the ruler,”⁵⁰ an act of power, has indeed led some authors to assert that “codification is nothing but a means for the state to assert its domination by shaping and controlling the law.”⁵¹ Fernand Mallieux would have concurred, he who presented the 1804 French code as “a collection of orders given by the master of the state.”⁵²

In addition to Kant’s composition, which it addresses at length,⁵³ Edelman’s *Quand les juristes* visits a large array of instances showing how the law has been led to conduct an unceasing subjection of the world to its rationality (the French language helpfully features the word “*arraisonnement*”), a process which, on every occasion, was fated to be reductionist if only because no language can be fully disclosive of what lies beyond it, as a Borges one-paragraph story aptly illustrates. (There was an empire where the art of cartography had been developed to such perfection that the map of a single province occupied a whole town and the map of the empire covered a whole province. In time, though, even these enormous maps no longer satisfied, and the college of cartographers established a map of the empire which was the size of the empire and coincided with it point for point. Subsequent generations reflected that this inflated map was useless and abandoned it. One lesson must be that for a representation to prove of any use *qua* representation, it must be smaller than what it represents.⁵⁴) Making almost exclusive reference to French law (Edelman’s work is emphatically not informed by a comparative sensibility), indeed seemingly assuming that other legal models cannot be expected substantially to

differ from French law,⁵⁵ the book under review therefore surveys the law's "faculty to state reality according to its own decrees."⁵⁶ It examines the law's "self-sufficiency" as it orders the world according to its own definitions and categorizations.⁵⁷ Edelman thus notes how, as a matter of law, the deceased continues to live through his heirs;⁵⁸ how the author survives in perpetuity on account of his moral right;⁵⁹ how a plot of land comes to be regarded as "immovable property;"⁶⁰ how the violence of striking workers is finally harnessed as a peaceful dispute-resolution mechanism;⁶¹ and how (ascribed) features of existence like dignity become "human rights."⁶²

For Edelman, it is crucial to observe the way in which the law is "its own reality unto itself,"⁶³ that is, the manner in which it "fabricate[s] [. . .] its own reality."⁶⁴ Such is also Ellul's point in my epigraph to this review. It is not only that the law frames the world according to its narrative schemes, but that it will then concern itself strictly with those. On the understanding that "every social action of human beings must always be visualized as either an 'application' or 'execution' of legal propositions, or as an 'infringement' thereof,"⁶⁵ the legal model becomes the law's world, the law's *only* world.⁶⁶ It is, in effect, its own systematic collection of cohesive and closed categories that the law proceeds to call "reality" and that it treats as such to the exclusion of any other competing "reality," including the world of facticity, which is therefore condemned to exist under erasure.⁶⁷ Upon the 1804 civil code's intervention, Kant's despised "spermatic economy" was fated to be replaced by a formal legal knowledge which would evacuate facticity *qua* material and historical substratum and, "the mere idea of outsideness [being] the very source of fear,"⁶⁸ would proceed to focus solely on *its* internal and isolated protocols.⁶⁹

As Edelman has it, "[w]hat the jurist (he means, of course, the French jurist) hates above all is 'the fact', the empire of fact."⁷⁰ Incidentally, the facticity that is excluded from legal consideration includes emotion: "In the law, one does not suffer, one is not anguished."⁷¹ Rather, one is "a cold, calculating being,"⁷² that is, "[w]ithin the legal sphere, passions, frenzies, human follies are tamed, mastered, chastened."⁷³ In other words, since "the fact [has] becom[e] null and void,"⁷⁴ the law is devoid of affects.⁷⁵ "To be sure, Edelman notes, [*homo juridicus*] loves, he suffers, he is sometimes seized by madness – but then it is the 'private' man who acts, and the law ignores him haughtily."⁷⁶ (Now, it is hard to think of a legal culture featuring a more rigid delineation between the private and public spheres than France's, which out-Ulpian Ulpian in spectacular – and, at times, comical – fashion. Once more, Edelman's emphasis, this time on the private/public distinction, cannot but be taken to feature a not insignificant dose of ethnocentrism or juricentrism.)

The ascendancy of the law's systematization over the world's nomady is especially striking in a country like France – which, at the risk of belaboring the point, is very much Edelman's (unacknowledged) focus throughout his book – where one is constantly reminded that Descartes, asserting how grateful he was to be "untroubled by any passion,"⁷⁷ proceeded to "shut [his] eyes," "close [his] ears,"

“divert all [his] senses,” “even erase from [his] thought all images of corporeal things.”⁷⁸ For a French jurist, it is still emphatically the case that facts are to be apprehended with the utmost suspicion. They are what is “swarming, obscure, incoherent and polymorphic,” what “by nature escapes the categories of our thought.”⁷⁹ Meanwhile, within the law “nothing else [must] happen other than what has already happened” (recall Kant’s ever-iterating instantiations of marital duty).⁸⁰ In sum, law consists in “an account absolutely closed upon itself.”⁸¹ And it earnestly strives for such “closure.”⁸² In effect, observes Edelman, law implements the most preposterous of Western man’s dreams in as much as it has the individual not only mastering the world (which would be remarkable enough) but implementing his own representation of the world – and then engaging with his own representation of the world *only*.⁸³ One is reminded of Heidegger: “Man sets up the world toward himself, and delivers Nature over to himself. [. . .] Where Nature is not satisfactory to man’s representation, he reframes or redispes it. [. . .] By multifarious producing, the world is brought to stand and into position. [. . .] Over against the world as the object, man stations himself and sets himself up as the one who deliberately pushes through all this producing.”⁸⁴

This epistemic motion is, of course, facilitated as the symbolic ascendancy of the code finds itself amplified given that codification involves the homologation through publicization of a permanent form privileging the representation of concrete situations in a language of specific legal consequence that purports to be at the same time a language of general coherence. In this sense, the rhetorical strength, or “*vis formae*,”⁸⁵ of a code, formalized and abstracted (and formally abstracted) is potent. One must also mention the reification of knowledge that writing makes possible. The fact is that “words assume a different relationship to action and to object when they are on paper”; indeed, “[t]hey are no longer bound up directly with ‘reality’: the written word becomes a separate ‘thing’ [. . .] shedding its close entailment with action.”⁸⁶ Such formalization of knowledge “separates the knower from the known.”⁸⁷ If you will, “the written law achieves a kind of autonomy of its own.”⁸⁸ The text thus intervenes like “a material object detached from man.”⁸⁹ It relegates the world to a place that would be located behind a (textual) screen. It acts, to return once more to my epigraph to this review, as a *sui generis* reality. And a code, that is, this specific textual form, “encourages [. . .] a sense that what is found in a text has been finalized, has reached a state of completion.”⁹⁰

At this stage, it appears relevant to mention that in France Edelman has taught at two elite institutions, the Ecole Normale Supérieure and the Institut d’études politiques de Paris, or Sciences Po, instead of at a law school within the hapless university system. He is better known to the local legal community as the author of a Marxist analysis situated at the intersection of photography and law,⁹¹ of an essay on law and the proletariat,⁹² and of studies on the sociology of art,⁹³ rather than as a textbook writer, that is, as someone “positively living, in an intellectual sense, on sawdust, which ha[s] moreover, already been chewed for [one] in thousands of other

people's mouths."⁹⁴ As such, Edelman's prolific scholarship is most uncharacteristic of the habitual output of French law professors behaving as docile civil servants and "conniving" with the state (or with the law firms where they spend most of their professional time in order to supplement their civil-service pittance) with a view to disseminating the law in strictly expository rather than critical fashion (the standard conceptual tinkering on offer pertaining firmly to the former strategy),⁹⁵ earnestly committed as they are to the drudgery of what one can style "[t]he infinite rippling of commentary."⁹⁶ (Because the formulation of legal norms within the civil code monopolizes legal discourse in ways that arbitrarily, but effectively, exclude alternative views of justice, it has never been acknowledged within the French legal community that a critic can accomplish opportune and important acts beyond acceptance of the articles of the code as *articles of faith*, that is, as provisions establishing the Truth of the law – and of law-in-the-world. While the goal of the French jurist is to capitalize on the phenomenon of institutionalization that favors collective adherence to the legislative text, exegetical loyalty denies that critique can perform a dynamic contrapuntal function in the face of established dogma. It thus confines the field of legitimate interpretation to a "re-working [of] the material of others,"⁹⁷ so that a French law professor's abiding professional ambition is seemingly to say what has already been said – to abide by this "controlled consensus on meaning"⁹⁸ – and yet to purport to be saying it for the first time, what Foucault identifies as "the dream of masked repetition."⁹⁹)

In a manner which can only confirm his marginal status vis-à-vis established law professors in established law schools, Edelman refers throughout the book under review to the law's system-building ability in terms of its "fabulating strength."¹⁰⁰ In other words, Edelman unhesitatingly recognizes the fictitious dimension of the fabrication exercise to which the law is wedded – though he insists that unlike literature's or philosophy's, the law's fables are "useful, efficient,"¹⁰¹ an ascertainable goal being "to put society in good marching order."¹⁰² Edelman further observes that the law creates in effect "an imaginary space,"¹⁰³ that it "incorporates the imaginary within its reality."¹⁰⁴ Formulating the matter in different language, Edelman notes the law's "extraordinary inventiveness."¹⁰⁵

The word "invention" is key as its etymology suggests both a finding of what there is, there, *before* one (thus, the finder of a treasure trove is literally its "inventor," and one refers to the reputed finding of the Holy Cross by Helena, mother of Emperor Constantine, in 326 CE as the "Invention of the Cross") and a contrivance (say, the invention of gunpowder).¹⁰⁶ Likewise, the law simultaneously finds what there is, there, *before* it – for instance, the plot of land – and contrives to narrativize it as "immovable property." However, while French law professors would endorse the view that law generates its own reality – a strategy which they would indeed defend on the ground that legal discourse must work itself scientific – they would strongly resist Edelman's rendition of law as the great fabulator, a claim which their unabashed "science envy" would deem, well, demeaning. In France, a singular

mélange of Kelsen's "Pure Theory of Law,"¹⁰⁷ Roman-inherited *scientia juris*,¹⁰⁸ a centuries-old *mos geometricus* whereby law's leading exponents have been aiming to put it on an epistemological par with geometry,¹⁰⁹ not to mention a fixation on Ramist methodology,¹¹⁰ is still the only configuration of the legal deemed worthy of consideration. Accordingly, "[t]he text [of the law] offers itself to jurists not as a historical fragment, connected to given circumstances, but on an intemporal and mathematical mode"¹¹¹ – no matter how much this supposedly informed view of law can be said to consist, in effect, of scraps of technical or conceptual information locked in ancestral analytical dichotomies whose intellectual authority seems largely indebted to endurance through an age-old and self-perpetuating recycling process involving academics, their disciples, their disciples' disciples, and so forth.¹¹²

More than two centuries after the enactment of the civil code, French academics, making reference to "the fashionable terminology [which] opposes the *hard* sciences (formerly called exact) to the human sciences," maintain that "[t]he law, as it has been built by a long French tradition, might be an inexact science, but a hard one."¹¹³ In a country where there are no judicial dissenters, and hardly any legal dissenters at all, Edelman begs to differ. Extraordinarily – and, needless to add, most peculiarly from a French law professor's standpoint – Edelman thus refers to Sade over many pages in the book under review,¹¹⁴ as if to underline the fact that even as Kant was completing his *Doctrine of Right*, an exact contemporary of his, writing precisely at the same time, was offering his counter-signature to the effect that "[o]ur laws wish in vain to restore order and bring men back to virtue. Too unjust to achieve this, too inadequate to succeed, they will take people off the beaten track for a moment, but they will never get them to leave it."¹¹⁵ Indeed, Sade had no qualms about exclaiming: "Who doubts [. . .] that the passions are in morals precisely what motion is in physics? 'Tis to strong passions alone invention and artistic wonders are due; the passions should be regarded [. . .] as the fertilizing germ of the mind and the puissant spring to great deeds."¹¹⁶

Perhaps because *Quand les juristes* reveals itself largely to consist in an assemblage of excerpts from its author's earlier work – whether on Kant, photography, or human rights – and to have been prepared for publication with less than considerate care (were the proofs ever read by anyone? Were the references ever checked?), there is little in the book by way of probing of its central and, in France at least, highly provocative assertion regarding law-as-fable. Though Edelman repeatedly makes his point, he fails to explore the epistemological issue at any length. I wish to supplement his book by way of two or three clusters of observations.

The crux of my reflection addresses the fact that law's fictionalization or invention of the world arises on account of an inevitable discordance between *res* and *intellectus* – an obvious point, no doubt, to many readers of this journal who will be familiar with the age-old distinction between mimesis and poesis, but a claim not so readily persuasive for mainstream lawyers and, indeed, positively repugnant to Edelman's French law colleagues who would earnestly refute the view that, when it

comes to the dialectic between world and law, inevitable failure awaits “all the attempts at passage, at bridge, at isthmus, at communication, at translation, at trope, and at transfer that [one] [...] will try to pose, to impose, to propose, to stabilize.”¹¹⁷ Now, what Edelman chooses to eschew, and what I want to develop further, is precisely that law-as-fiction or law-as-invention emerges not as choice but as *necessity*. Fiction or invention *must* materialize – law *must* be a fabulation – since as the legal purports to come to terms with the world and enact it into its operational language, there takes place, instead of a persistence in the world’s being, an unsurpassable bifurcation of the world into discursivity, very much an irreconcilable mode of existence, which means that the world itself “always slips away” from any law-words aiming to capture it.¹¹⁸ (As I introduce this argument, I wish immediately to add that I shall resist the metaphysics of dualism to the effect that something like the world “over there” would be radically separate from the mind “over here,” if only because the mind is in the world.) The fact that the knowing legal mind’s fiction or invention must entail a discursive move away from the knowable world – an alteration or transformation or othering of it – implies that shibboleths like the law’s objectivity or the law’s truth vis-à-vis the world can be readily exposed for the illusions they are.

There is, then, a necessary discontinuity or interruption between the knowable world, that is, the world that is there, there, the world that is real in the only way that anything is real,¹¹⁹ inviting knowledge to be had of it on account of its there-ness (the world of strife and disappointment, of deception and misadventure, of abuse and confusion), on the one hand, and the knowing legal mind seeking to secure it on the other. I argue that correspondence between the two existents (the knowable world and the knowing legal mind) in the sense of *adæquatio rei et intellectus* is structurally impossible, such that even as it purports ever so faithfully to account for the knowable world, the knowing legal mind inescapably generates its own knowable world – which is bound to be at variance with the one that there is, there. Though the knowing legal mind cannot engage in a reproduction of the world but must be content with an edification of its own world, it is not that there is no correspondence at all between the two worlds in the sense that there would be no resonance whatsoever – for there is, since the knowing legal mind remains tied to the knowable world, if only because it emanates from that world and, as such, it is of it and participates in it (also, traces of the knowable world can be ascertained in the knowing legal mind’s own world, where the knowable world lives on or survives, where it is remaining). But there is no correspondence *adæquatio rei et intellectus*. Rather, what there is reminds one of the correspondence, say, between van Gogh’s painted version of the “*Maison jaune*” and the house itself. Although the painting emanates from the house and traces of the house can be identified in the painting, where the house is remaining, the correspondence across painting and house is necessarily not one of equivalence or duplication, of *adæquatio*.

After Latour, I claim that the knowable world that there is, there, and the knowing legal mind unfold as two different modes of existence, which means that the passage or displacement from the knowable world to the knowing legal mind must involve an alteration or transformation or othering of the knowable world, something which excludes the possible formulation of an equivalence across the two worlds. (To be sure, the knowing legal mind is also transformed along the way.) To put the matter otherwise, the report on the experience cannot be the experience itself but only an *ex post* translation of it, which means that the report exists as a second original – translation being “a practice producing difference out of incommensurability (rather than equivalence out of difference).”¹²⁰ Admittedly, this second original will be “controlled” by the first to a significant extent (one cannot do whatever one wants with the first original), but it will ultimately stand as an entity in its own right and occupy its own “ontological level” vis-à-vis the first original.¹²¹ In this sense, “every repetition is as original as the work itself.”¹²² Though there is a connection or a relation between the knowable world and the knowing legal mind, this connection is in effect a disconnection, this relation a disrelation: “Every instance of continuity is achieved through a discontinuity, a hiatus.”¹²³ The translation from world into law is fated to be “disadjusted” – no matter how “excellen[t]” the translator.¹²⁴ In the absence of a meta-language, indeed given the prevalence of idiomaticity on account of the *impossibility* of a meta-language,¹²⁵ untranslatability cannot be circumvented.¹²⁶

Imagine I stare at a Picasso and am moved to regard it as expressing the painter’s disarray over his relationship with a woman. Though the painting changes me in as much as it adds to my stock of artistic knowledge and emotions, the point I want to emphasize is that I change the painting also by ascribing a certain motif to it. In other words, I make the painting into what I say it is – not unlike the way Kant and the 1804 French civil code made copulation into a marital duty. In the process, I provide the painting with an “*increase in being*,”¹²⁷ that is, I assist it in existing otherwise than as whatever it was existing as before I came along (even as I assist myself in existing otherwise also). Similarly, Kant and the French civil code supplied copulation with an “*increase in being*,” that is, they assisted it in existing otherwise (even as they assisted themselves in existing otherwise also). To return to my impact on the painting, it will be all the more influential if I am able to take my re-presentation (my presentation anew) beyond “occasionality” and somehow *institutionalize* it so that it then becomes a form of coercive action patterning how we talk, think, and conceive – determining our dispositions – which is what the French code did with its re-presentation of copulation.¹²⁸ Yet, on account of the necessary interruption between the knowable world and the knowing legal mind, no representation will ever have a claim to being a correct rendition of what there is, there. Indeed, “[i]n view of the finitude of our historical existence, it would seem that there is something absurd about the whole idea of a unique, correct interpretation.”¹²⁹ The implication is Derrida’s: “A thousand possibilities will always

remain open even as one understands something of [a] sentence that makes sense.”¹³⁰

The discrepancy across the knowable world and the knowing legal mind, prompting “the experience of the jolt,”¹³¹ can neither be avoided nor denied. Ultimately, reliance on the legal institution in order to achieve, or at least so as to give the impression that one is capable of achieving, indisputable conformity to the knowable world – say, what would be an “objective” or “true” rendition of it – is in vain, for not even the most hegemonic gesture could deliver on the promise: there is simply no way for one to approach a *res* that would not be decisively determined by the singularity of one’s own position – and therefore of one’s position vis-à-vis it. The idea that the so-called “scientific” character of the endeavor might make it possible to evade this predicament (whatever may in fact be meant by the word “scientific”) is illusory, if only because “all science involves a hermeneutic component.”¹³² (Incidentally, the expression of a longing for something it imagines another discipline to feature – such as access to objectivity and truth – the enunciation of a desire for the self it wishes to be, “science envy” stands as an implicit acknowledgment by the law of its inconsequence. Science, which would act as a cure for law, would relieve it of its obfuscations and subterfuges, assuage its wounded sense of its indeterminacy, and afford it respectability.)

For exact duplication to be feasible, it would have to be the case that fact (the knowable world) can be radically distinguished from value (the knowing legal mind), so that there would be no overlap whatsoever. Now – and here is the focus of my refutation of metaphysical dualism – there is simply no hope of such a definitive distinction materializing since both modes of existence belong to the same chain of reference. In other words, there is a continuity between the knowable world and the knowing legal mind through the different stages of the strategy of appropriation being deployed (the conduct of empirical research, the reading of books, the interpretation of facts, the formulation of sentences). Yet, even as one can identify the constituent parts of a chain of reference and even as one can show that the knowable world and the knowing legal mind are discrete components of the same chain, such that the two are intertwined as sharing in the same assemblage, it remains that this togetherness does not prevent the emergence of a discrepancy because, once again, the knowable world and the knowing legal mind do not exist in the same way. Think of Latour’s example, a mountain and the map of the mountain: each has its own mode of existence.¹³³ And although a continuous chain of reference can be discerned joining the two into an assemblage (the surveying, the drawing, the captioning, the printing), thus cancelling the idea of straightforward dualism, it seems incontrovertible that the map simply cannot be the mountain. What one does not, and cannot, have is “a *maintenance* of the same on the same.”¹³⁴ Accordingly, there arises the inevitability of what one can style “differential co-presence.” Indeed, the deployment of co-presence is even more complicated since there are many maps of the mountain in existence – large-scale or small-scale, color or black

and white, three-dimensional plastic or paper. Likewise, knowing legal minds, culturally embedded as they are, apprehend the knowable world according to sets of specific phenomenological assumptions and pursuant to particular configurations of analytical abstractions (which postulate exclusions) allowing/leading them to perceive features of the knowable world which in other places, elsewhere, are either secondary or invisible. Incidentally, these processes show “place” not to be a mere static backdrop to legal meaning, but also to act as a dynamic constituent of it;¹³⁵ they also reveal experiential differentiation to be irreducible. What Gadamer asserts of the individual can thus aptly be applied to the knowing legal mind: “It is enough to say that one understands in a *different* way, *if one understands at all*.”¹³⁶ Therefore, though the knowable world is distinguishable from its re-presentations, it cannot be separated from them: the knowable world enjoys a hermeneutic identity rather than an identity *tout court*. Its identity exists only in the differentiation of its re-presentations by the knowing legal mind, in the temporality of the recurrence of its becoming – which means that difference is irreducibly pertinent to identity, that it is irrevocably constitutive of it.

I have mentioned translation and untranslatability. One mistake that the proponents of a hiatus-free, “scientific” seamlessness between the knowable world and the knowing legal mind appear frequently to indulge concerns the role of language. Indeed, those who assume that the knowing legal mind can accurately or exactly – objectively and truthfully – duplicate the knowable world seem to think that language comes after the fact, that it can survey facticity and from its vantage of subsequence convey the knowable world as such, *comme tel, als Welt*. But this configuration misunderstands the operation of language whose working is rather one of *obsequence*. It is not, then, that language intervenes once the facts are clearly *in situ* and that the only question outstanding is the issue of formulation. Rather, language acts at a much earlier stage *qua* condition of apprehension of the knowable world. In other words, language is an intrinsic part of any act of apprehension of the world by the knowing legal mind. It is always already present within the appreciation or appropriation, which means that it is impossible to imagine understanding of the world other than through and as language. Consider Heidegger’s formulation: “[W]e do not say what we see, but on the contrary we see what one says about the matter.”¹³⁷ Language, being indexical and performative, is what opens the knowable world to intelligibility before all else, *thus* making possible appropriation by the knowing legal mind. It follows that the knowable world comes to the knowing legal mind through language and as language, which must entail the need to revisit any appreciation of language as emphasizing representation over signification – or, if you will, denomination over differentiation.

The fact is that the *res*, when it is processed into the *intellectus* through and as language, finds itself being transformed there and then (the *intellectus*, as I have mentioned, also being changed as it meets the *res*). A (by now hackneyed?) analogy may perhaps be drawn with Heisenberg’s findings, *pace* Alan Sokal, to the effect

that the photon, *qua* measurement tool, alters the electron in the very process of measurement (and finds its own frequency modified because of the encounter). From the standpoint of the knowing legal mind, the knowable world, being available to it only through and as language, is inherently heterogeneous and ambiguous – any Cartesian or neo-Cartesian idea of evidence thus being found to be unsustainable. Indeed, from the moment it comes to cognizance linguistically, the knowable world's autonomy is compromised because the linguistic input, photon-like, changes it so that it is no longer "itself." Once more, the knowable world "always slips away."¹³⁸ There is undeniably an agonistic dimension to the matter – which is why, after Derrida, it makes sense to talk of a *negotiation* taking place (between the knowing legal mind and the knowable world).¹³⁹ To be sure, the knowing legal mind and its language are tied to the knowable world. Again, though, because "mythology has entered into the profane,"¹⁴⁰ since fiction or invention has been occupying the law, given that the imagination must pertain to the realizing value of law's language, "this bond can have no fixed criterion."¹⁴¹ There is, then, the certainty of this uncertainty, of the *play*.

1. Jacques Ellul, *Histoire des institutions*, 9th ed., vol. III (Paris: Presses Universitaires de France, 1982), p. 27: "Le droit devient une sorte de réalité imposée au donné social, le mettant en forme, et finissant en somme par devenir plus 'vrai' que les faits."
2. Immanuel Kant, *The Metaphysics of Morals*, ed. and trans. Mary Gregor (Cambridge: Cambridge University Press, 1996 [1797]), 63 (pt I, ch. II, s. III, tit. I, § 26, [Remark]) (emphasis supplied in translation): "[würde] ein Kontrakt der Verdingung (locatio-conductio) sein [. . .], und zwar eines Gliedmaßes zum Gebrauch eines anderen, mithin wegen der unzertrennlichen Einheit der Glieder an einer Person diese sich selbst als Sache der Willkür des anderen hingeben würde." Unless otherwise indicated, all subsequent advertences to this book are to the first part entitled "Metaphysical First Principles of the Doctrine of Right" ("Metaphysische Anfangsgründe der Rechtslehre") (hereinafter Kant, "Doctrine of Right"). For the original text in German, I have used Immanuel Kant, *Die Metaphysik der Sitten*, ed. Wilhelm Weischedel (Frankfurt: Suhrkamp, 1977), being vol. VIII of the *Werkausgabe*.
3. Kant, "Doctrine of Right," *supra* note 2, at 62 (pt I, ch. II, s. III, tit. I, § 25) ("Geschlechtsorgan(e)").
4. *Id* at 127 (App. § 3) ("unmittelbares Vergnügen").
5. *Id* at 63 (pt I, ch. II, s. III, tit. I, § 26, [Remark]) ("zum einmaligen Genuß").
6. *Id* at 128 (App. § 3) (emphasis supplied in translation) ("verbrauchbare Sache (res fungibilis)").
7. *Id* at 127 ("bloß tierischen Gemeinschaft").
8. *Id* (emphasis supplied in translation): "der fleischliche Genuß [ist] dem Grundsatz (wenn gleich nicht immer der Wirkung nach) kannibalisch."
9. *Id* ("mit Maul und Zähnen").
10. *Id*: "der männliche aber durch, von öfteren Ansprüchen des Weibes an das Geschlechtsvermögen des Mannes herrührende Erschöpfungen aufgezehrt wird."
11. Bernard Edelman, *Quand les juristes inventent le réel* (Paris: Hermann, 2007), 65–6 (hereinafter *Quand les juristes*) ("broyeur d'os et carnivore"/"vampire, friande de semence").
12. Kant, "Doctrine of Right," *supra* note 2, at 127 (App. § 3): "ist bloß in der Manier zu genießen unterschieden."
13. *Id* at 127–8 (emphasis supplied in translation): "ein Teil ist in Ansehung des anderen, bei diesem wechselseitigen Gebrauche der Geschlechtsorganen, wirklich eine verbrauchbare Sache."
14. *Id* at 56 (pt I, ch. II, s. I, § 17): "daher (kann) ein Mensch sein eigener Herr (sui iuris), aber nicht Eigentümer von sich selbst (sui dominus) (übersich nach Belieben disponieren zu können) geschweige denn von anderen Menschen sein [. . .], weil er der Menschheit in seiner eigenen Person verantwortlich ist."

15. *Id* at 62 (pt I, ch. II, s. III, tit. I, § 24): "Läsion der Menschheit in unserer eigenen Person"/"durch gar keine Einschränkungen und Ausnahmen wider die gänzliche Verwerfung gerettet werden können."
16. I am tempted to capture the simultaneity of the two motions through the neologism "exappropriation," but Jacques Derrida has preempted the use of this term. For example, see Jacques Derrida, *Penser à ne pas voir*, ed. Ginette Michaud, Joana Masó and Javier Bassas (Paris: Editions de la Différence, 2013 [2002]), 94–5.
17. While Kant claimed to have been working on his book as early as 1768, he did not publish it until 1797: Roger J. Sullivan, "Introduction," in Kant, *supra* note 2, at vii.
18. Kant, "Doctrine of Right," *supra* note 2, at 97 (pt II, s. I, General Remark A, not. *)("weder in dieser noch in jener Welt").
19. G. W. F. Hegel, *Elements of the Philosophy of Right*, ed. Allen W. Wood, trans. H. B. Nisbet (Cambridge: Cambridge University Press, 1991 [1820]), 75 (§ 44): "Die Person hat das Recht, in jede Sache ihren Willen zu legen, welche dadurch die *meinige* ist, zu ihrem substantiellen Zwecke, da sie einen solchen nicht in sich selbst hat, ihrer Bestimmung und Seele meinen Willen erhält" (emphasis omitted in translation).
20. For example, see Kant, "Doctrine of Right," *supra* note 2, at 126 (App. § 1)("der eines auf persönliche Art dinglichen, imgleichen der eines auf dingliche Art persönlichen Rechts"). Elsewhere, Kant refers to "a right to a person akin to a right to a thing": *id* at 126 (App. § 2)("des auf dingliche Art persönlichen Rechts"). See also *id* at 61 (pt I, ch. II, s. III): "Rights to persons akin to rights to things" ("Von dem auf dingliche Art persönlichen Recht"), where these words appear as a heading both in the English translation and in the German original (I have omitted much of the capitalization).
21. Edelman, *Quand les juristes*, *supra* note 11, at 69 ("une catégorie improbable pour tout juriste conséquent").
22. Kant, "Doctrine of Right," *supra* note 2, at 61 (pt I, ch. II, s. III, § 22): "This right is that of possession of an external object as a *thing* and use of it as a *person*" (emphasis supplied in translation): "Dieses Recht ist das des Besitzes eines äußeren Gegenstandes als einer Sache und des Gebrauchs desselben als einer Person."
23. *Id* at 127 (App. § 2)("neues Phänomen am juristischen Himmel").
24. For a more detailed analysis with specific reference to this categorization, see Bernard Edelman, *Ni chose ni personne* (Paris: Hermann, 2009).
25. Kant, "Doctrine of Right," *supra* note 2, at 62 (pt I, ch. II, s. III, tit. I, § 25) (emphasis supplied in translation) ("gleich als eine Sache").
26. *Id* at 65 (pt I, ch. II, s. III, tit. II, § 29)("als (verlaufen(e) Haustiere)").
27. *Id* at 66 (pt I, ch. II, s. III, tit. III, § 30)("gleich als nach einem Sachenrecht").
28. *Id* at 92 (pt II, s. I, § 46, [Remark])("entbehrt der bürgerlichen Persönlichkeit").
29. *Id* at 64 (pt I, ch. II, s. III, tit. I, § 27)("sich der fleischlichen Gemeinschaft zu enthalten").
30. *Id* at 62 (pt I, ch. II, s. III, tit. I, § 24)("lebenswierigen wechselseitigen Besitz ihrer Geschlechtseigenschaften").
31. *Id* at 63 (pt I, ch. II, s. III, tit. I, § 26) (emphasis supplied in translation)("Gleichheit des Besitzes").
32. *Id* at 63 (pt I, ch. II, s. III, tit. I, § 27)("eheliche Beiwohnung"). I have modified the translation.
33. *Id* at 62 (pt I, ch. II, s. III, tit. I, § 24)("lebenswieri(g)").
34. Friedrich Schlegel, *Lucinde*, in *Friedrich Schlegel's Lucinde and the Fragments*, trans. Peter Firchow (Minneapolis: University of Minnesota Press, 1971 [1799]), 119 and 118 respectively: "die Natur"/"verständige und würdige Menschen mit nie ermüdender Industrie und mit so großem Ernst das kleine Spiel in ewigem Kreislauf immer von neuem wiederholen können."
35. Immanuel Kant, *Anthropology from a Pragmatic Point of View*, ed. and trans. Robert B. Loudon (Cambridge: Cambridge University Press, 2006 [1798]), pt I, s. II, A, § 63, p. 133: "gewinne die Arbeit lieb".
36. Michel Foucault, *The History of Sexuality*, trans. Robert Hurley, vol. I: *An Introduction* (New York: Vintage, 1990 [1976]), 114: "la nécessité de constituer une 'force de travail' (donc pas de 'dépense' inutile, pas d'énergie gaspillée, toutes les forces rabattues sur le seul travail) et d'assurer sa reproduction (conjugalité, fabrication réglée d'enfants)."
37. Kevin Floyd, *The Reification of Desire* (Minneapolis: University of Minnesota Press, 2009), 57.
38. *Id* at 59.
39. *Id* at 60.
40. Michel Foucault, *History of Madness*, ed. Jean Khalfa, trans. Jonathan Murphy and Jean Khalfa (London: Routledge, 2006 [1972]), 71 ("une transcendance éthique").
41. Herbert Marcuse, *Eros and Civilization* (Boston: Beacon Press, 1974), 201.
42. *Id* at 208 (emphasis original).
43. One is struck by the contrast with the 1794 *Allgemeines Landrecht für die Preußischen Staaten* (ALR), one of the last codes of the pre-modern era. An ineffectual compilation of approximately 19,000

- articles, the ALR made provision for anything from breastfeeding, wills in times of plague and proselytism, not to mention the use of rivers by cattle for bathing and drinking: *Allgemeines Landrecht für die Preußischen Staaten*, ed. C. J. Koch (Berlin: Guttentag, 1878), vol. III (1879), bk II, tit. II, art. 67, at 305: "A healthy mother is obliged to breastfeed her child herself": "Eine gesunde Mutter ist ihr Kind selbst zu säugen verpflichtet"; vol. II (1879), bk I, tit. XII, art. 198, at 48–9 (subsequently deleted); vol. IV (1880), bk II, tit. XI, art. 43, at 171, which states that proselytism is prohibited "through force or cunning persuasion" ("durch Zwang oder listige Überredungen"); vol. IV (1880), bk II, tit. XV, art. 44, at 814, respectively.
44. The key provisions were Articles 212–14, Article 212 specifically stating a duty of "fidelity" ("fidélité"), thus restricting the spouses' sexual lives to their marital relationship. The courts would later supplement these legislative texts through ampliative interpretation, for instance by recognizing that the marital duty entailed an obligation to have sexual intercourse. For example, see Cour d'appel, Lyon, May 28, 1956, D.1956.J.546. The current version of Article 215, introduced in 1966, posits that "the spouses mutually obligate themselves to a community of living": "Les époux s'obligent mutuellement à une communauté de vie". That the expression "community of living" ("communauté de vie") must involve sexual relations continues to be confirmed by the courts. For example, see Cour d'appel, Aix-en-Provence, May 3, 2011, D.2011.2105.
45. The contents of the typical civil code have been admirably described by Professor Bernard Rudden: "Essentially there are the same four things which have been pondered, debated and refined for the last 2,000 years: persons, property, obligations and liability. Private law recognizes human beings as bearers of rights, assists them to create other 'juridical' persons such as companies, and deals with the relations between them. These persons may own property either for its own sake (to occupy, use, sell and so on) or as investment. They may create obligations by their agreements (and the legislator provides a handy stock of nominate contracts which they may use if they wish) and are obliged to make good any damage unlawfully caused to others. The whole system is completed by provisions for liability under which these persons' property may be taken to discharge their obligations." Such are, in Rudden's words, the "elements [that] lie at the heart of all modern [civil law] systems": Bernard Rudden, "From Customs to Civil Codes," *Times Literary Supplement* (July 10, 1992), 27. Little wonder that Jean Carbonnier, a French legal scholar generally held in high esteem in France, once opined that the civil code is "France's genuine constitution": Jean Carbonnier, "Le Code civil," in *Les Lieux de mémoire*, vol. II/2, ed. Pierre Nora (Paris: Gallimard, 1986), 308–09 ("(l)a véritable constitution (de la France)"). Along with other omissions, this entry fails to appear in the English version of Nora's book: Pierre Nora and Lawrence D. Kritzman, ed., *Realms of Memory*, vol. II, trans. Arthur Goldhammer (New York: Columbia University Press, 1997).
46. Foucault, *supra* note 40, at 74: "L'ordre des Etats ne souffre plus le désordre des cœurs."
47. *Id.*: "La morale se laisse administrer comme le commerce ou l'économie." I have modified the translation.
48. *Id.*: "la grande idée bourgeoise"/"la vertu, elle aussi, est une affaire d'Etat"/"on peut prendre des décrets pour la faire régner." I have modified the translation.
49. A. J. Greimas, *Sémiotique et sciences sociales* (Paris: Le Seuil, 1976), 111: "l'instauration et le maintien d'une certaine culture juridique, c'est-à-dire, de 'bonnes manières juridiques' (comme il existe des 'manières' de table, de conversation, etc.). L'ordre instauré par le droit est, d'une certaine façon, le règne du convenable."
50. F. A. Hayek, *Law, Legislation and Liberty*, vol. I: *Rules and Order* (London: Routledge & Kegan Paul, 1982), 84.
51. Csaba Varga, *Codification as a Socio-Historical Phenomenon* (Budapest: Akadémiai Kiadó, 1991), 334.
52. Fernand Mallieux, *L'Exégèse des codes et la nature du raisonnement juridique* (Paris: Giard & Brière, 1908), 9: "un recueil d'ordres donnés par le maître de l'Etat."
53. In fact, Edelman has previously devoted a short book to Kant's arrangement: Bernard Edelman, *La Maison de Kant*, 2nd ed. (Paris: Payot, 2006).
54. See Jorge Luis Borges, "Of Exactitude in Science," in *A Universal History of Infamy*, trans. Norman T. di Giovanni (New York: Dutton, 1972 [1946]), 141. From the standpoint of science studies, Bruno Latour makes a theoretical claim along converging lines: Bruno Latour, *An Inquiry into Modes of Existence*, trans. Catherine Porter (Cambridge, MA: Harvard University Press, 2013), 78: "It is through loss of resemblance that the formidable effectiveness of chains of reference is won" (emphasis original) ("C'est par la perte de ressemblance que se gagne la formidable efficacité des chaînes de

- référence.”) But the idea can be traced at least to Lewis Carroll, *Sylvie and Bruno Concluded* (n. pl.: Ulan, 2012 [1893]), 163: “And then came the grandest idea of all! We actually made a map of the country, on the scale of a mile to the mile! [...] [T]he farmers objected: they said it would cover the whole country, and shut out the sunlight! So we now use the country itself, as its own map, and I assure you it does nearly as well” (emphasis original).
55. Ethnocentric (or, rather, juricentric) statements abound. By way of example, I offer four incautious epistemological pronouncements: “From the bottom of his heart, though unbeknown to him, every jurist is ‘Roman.’ He dreams of the great city of the ‘jus civile,’ an unperishable, eternal city, which has survived the centuries without aging at all”: “Au fond du cœur, fût-ce à son insu, tout juriste est ‘Romain.’ Il rêve de la grande cité du ‘jus civile,’ cité impérissable, éternelle, qui a traversé les siècles sans prendre une seule ride”: Edelman, *Quand les juristes*, *supra* note 11, at 127. “For modern jurists, logic has become the new mystique of the law”: “Chez les juristes modernes, la logique est devenue la nouvelle mystique du droit”: *id* at 130. “And the more the law [...] becomes abstract by enacting general norms, the more it becomes efficient and accurate”: “Et plus le droit [...] devient abstrait en édictant des normes générales, plus il devient efficace et précis”: *id* at 134. Jurists are driven by “a craving for universalization” (“fringale d’universalisation”): *id* at 199. Anyone in the least familiar with the epistemological postulates obtaining within the common-law tradition will be aware that common-law lawyers hardly dream of Romanization, refuse to venerate logic, refrain from gauging the efficiency of the law by reference to its generality, and fail to be driven by the universalization impulse.
56. *Id* at 286 (“faculté à déclarer la réalité, selon ses propres décrets”).
57. *Id* (“autosuffisance”).
58. Edelman, *Quand les juristes*, *supra* note 11, at 15.
59. *Id*.
60. *Id* at 133.
61. *Id* at 146–58.
62. *Id* at 206–16, 263–83.
63. *Id* at 286 (“à lui-même sa propre réalité”).
64. *Id* at 285: “fabriqu(e) [...] sa propre réalité.”
65. Max Weber, *Economy and Society*, vol. II, ed. Guenther Roth and Claus Wittich (Berkeley: University of California Press, 1978 [1922]), 657–8: “das Gemeinschaftshandeln der Menschen (müsse) durchweg als ‘Anwendung’ oder ‘Ausführung’ von Rechtssätzen oder umgekehrt (als) ‘Verstoß’ gegen Rechtssätze gedeutet werden.”
66. For an insightful account of this process with specific reference to the common-law tradition, see Pierre Schlag, *The Enchantment of Reason* (Durham: Duke University Press, 1998).
67. Edelman, *Quand les juristes*, *supra* note 11, at 286.
68. Theodor W. Adorno and Max Horkheimer, *Dialectic of Enlightenment*, trans. John Cumming (London: Verso, 1997 [1944]), 16: “die bloße Vorstellung des Draußen (ist) die eigentliche Quelle der Angst.”
69. The expression is in G. J. Barker-Benfield, *The Horrors of the Half-Known Life* (London: Routledge, 2000), 167–80.
70. Edelman, *Quand les juristes*, *supra* note 11, at 140: “Ce qu(e) (le juriste) hait par dessus tout, c’est le ‘fait,’ l’empire du fait.” I have qualified the quotation since it must be obvious that common-law lawyers would find it hard to relate to this statement, which again reveals Edelman’s decidedly Francocentric perspective.
71. *Id* at 14: “Dans le droit, on ne souffre pas, on ne s’angoisse pas.”
72. *Id* at 16 (“un être froid, calculateur”).
73. *Id*: “Dans l’espace juridique, les passions, les délires, les folies humaines sont apprivoisées, maîtrisées, assagies.”
74. Adorno and Horkheimer, *supra* note 68, at 12: “die Tatsache wird nichtig.”
75. Edelman, *Quand les juristes*, *supra* note 11, at 14.
76. *Id* at 16: “Certes, (*homo juridicus*) aime, il souffre, il est parfois saisi par la folie — mais alors c’est l’homme ‘privé’ qui agit, et le droit l’ignore superbement.”
77. [René] Descartes, *Discours de la méthode*, in *Œuvres philosophiques*, vol. I, ed. Ferdinand Alquié (Paris: Garnier, 1997 [1637]), 579: “aucuns soins ni passions qui me troublassent.”
78. [René] Descartes, *Méditation troisième*, in *Œuvres philosophiques*, vol. II, ed. Ferdinand Alquié (Paris: Garnier, 1999 [1641]), 430: “I will now shut my eyes, I will close my ears, I will divert all my senses, I will even erase from my thought all images of corporeal things”: “Je fermerai maintenant les yeux, je boucherai mes oreilles, je détournerai tous mes sens, j’effacerai même de ma pensée toutes les images des choses corporelles”.
79. Théodore Ivainier, *L’Interprétation des faits en droit* (Paris: L.G.D.J., 1988), no. 4, at 9: “grouillant, obscur, incohérent et polymorphe”/“par sa nature, se dérobe aux catégories de notre pensée.”

80. Edelman, *Quand les juristes*, *supra* note 11, at 19: "rien d'autre n'arrivera que ce qui est déjà arrivé."
81. *Id* at 29: "un récit parfaitement clos sur lui-même."
82. *Id* at 19 ("clôture").
83. See *id* at 162.
84. Martin Heidegger, "What Are Poets For?", in *Poetry, Language, Thought*, trans. Albert Hofstadter (New York: Harper Collins, 1971 [1964]), 107–08: "Der Mensch stellt die Welt als das Gegenständige im Ganzen vor sich und sich vor die Welt. [...] Der Mensch bestellt die Natur, wo sie seinem Vorstellen nicht genügt. [...] Im vielfältigen Herstellen wird die Welt zum Stehen und in dem Stand gebraucht. [...] Der Welt als dem Gegenstand gegenüber stellt sich der Mensch selbst heraus und stellt sich als denjenigen auf, der all dieses Herstellen vorsätzlich durchsetzt."
85. Pierre Bourdieu, *In Other Words*, trans. Matthew Adamson (Stanford: Stanford University Press, 1990 [1986]), 85.
86. Jack Goody, *The Domestication of the Savage Mind* (Cambridge: Cambridge University Press, 1977), 46.
87. Walter J. Ong, *Orality and Literacy* (London: Routledge, 1982), 43.
88. Jack Goody, *The Logic of Writing and the Organization of Society* (Cambridge: Cambridge University Press, 1986), 143.
89. *Id* at 129.
90. Ong, *supra* note 87, at 129. I am transposing the author's observation with respect to print.
91. Bernard Edelman, *Le Droit saisi par la photographie* (Paris: Flammarion, 2001 [1973]).
92. Bernard Edelman, *La Législation de la classe ouvrière* (Paris: Christian Bourgois, 1978).
93. Bernard Edelman, *Tous artistes en droit* (Paris: Hermann, 2012); Bernard Edelman, *L'Adieu aux arts: rapport sur l'affaire Brancusi* (Paris: L'Herne, 2011); Bernard Edelman and Nathalie Heinich, *L'Art en conflits* (Paris: La Découverte, 2002).
94. F[rantz] Kafka, *Letter to His Father/Brief an den Vater*, trans. Ernst Kaiser and Eithne Wilkins (New York: Schocken, 1953 [1919]), 95: "geistig förmlich von Holzmehl nährte, das mir überdies schon von tau-senden Mäulern vorgekaut war."
95. Even Bernard Edelman, *La Propriété littéraire et artistique*, 4th ed. (Paris: Presses Universitaires de France, 2013), offers an in habitual statement of the law, not least on account of the series in which it is published. For the argument that law professors "connive" with the state, see Philippe Jestaz and Christophe Jamin, "L'entité doctrinale française," *D.1997.Chron.*167, 172. To my knowledge, such a critique of French legal scholarship by two prominent French legal scholars remains unusual. Having been deemed to fall foul of local standards of obsequious collegiality, it was immediately dismissed in vitriolic terms which included the predictable *ad hominem* attack: Laurent Aynès, Pierre-Yves Gautier and François Terré, "Antithèse de 'l'entité,'" *D.1997.Chron.*229. This expression of dissent is, in fact, so rare that even Jestaz and Jamin's subsequent publications fail to sustain it. For example, see Philippe Jestaz and Christophe Jamin, *La Doctrine* (Paris: Dalloz, 2004) (hereinafter *Doctrine*). For an earlier example of an expression of concern regarding the prevailing approach to legal discourse in France, see Henri Batiffol, *Problèmes de base de philosophie du droit* (Paris: L.G.D.J., 1979), 292, where the author identifies amongst judges and commentators "a preoccupation of loyalism toward the legislator" ("un souci de loyalisme à l'égard du législateur").
96. Michel Foucault, "The Discourse on Language," in *The Archaeology of Knowledge*, trans. Rupert Swyer (New York: Pantheon, 1972 [1971]), 221 ("(l)e moutonnement indéfini des commentaires"). Note that the English translation fails to capture one sense at least of "moutonnement," which, through "mouton" ("sheep"), evokes the unquestioning following of the flock.
97. Goody, *supra* note 86, at 117.
98. Bourdieu, *supra* note 85, at 82 ("un consensus contrôlé sur le sens").
99. Foucault, *supra* note 96, at 221 ("le rêve d'une répétition masquée").
100. Edelman, *Quand les juristes*, *supra* note 11, at 286 ("force fabulatrice").
101. *Id* at 285 ("utiles, efficaces").
102. *Id*: "mettre la société en bon ordre de marche."
103. *Id* ("un espace imaginaire").
104. *Id* at 13: "incorporer l'imaginaire dans sa réalité."
105. *Id* at 285 ("l'extraordinaire inventivité").
106. "Invention" is therefore a word that is "suspended undecidably," "it *hesitates perhaps* between creative invention, the production of what is not — or was not earlier — and *revelatory* invention, the discovery and unveiling of what *already* is or finds itself to be there"; Jacques Derrida, *Without Alibi*, ed. and trans. Peggy Kamuf (Stanford: Stanford University Press, 2002 [2002]), 168 (emphasis original).
107. The first German edition of Kelsen's book appeared in 1934. For the English version, see Hans Kelsen, *Introduction to the Problems of Legal Theory*, trans. Bonnie L. Paulson and Stanley L. Paulson (Oxford: Oxford University Press, 1992). The French

- translation, featuring significant input by Kelsen himself, was published in 1953 as *Théorie pure du droit*, trans. Henri Thévenaz (Neuchâtel: La Baconnière, 1953). The second German edition dated 1960 was released into French in 1962 (the translation having been revised by Kelsen): *Théorie pure du droit*, 2nd ed., trans. Charles Eisenmann (Paris: Dalloz, 1962). There are currently two French versions of Kelsen's second edition in circulation since, in addition to Eisenmann's translation, Thévenaz has published a further translation incorporating a number of Kelsen's post-1960 changes: *Théorie pure du droit*, 2nd ed., trans. Henri Thévenaz (Neuchâtel: La Baconnière, 1988).
108. See generally Fritz Schulz, *History of Roman Legal Science* (Oxford: Oxford University Press, 1946). The contemporary French predilection is epitomized in Jean-Louis Bergel, *Méthodologie juridique* (Paris: Presses Universitaires de France, 2001), 34: "(L)aw is uncontroversially a science": "le droit est incontestablement une science". Indeed, a leading French theoretician observes that "[t]he assertion of the scientificity of [l]aw [. . .] has become a truism": André-Jean Arnaud, *Les Juristes face à la société* (Paris: Presses Universitaires de France, 1975), 195 (emphasis omitted): "(l)'affirmation de la scientificité du Droit [. . .] est devenue un poncif".
109. To quote a famous 16th-century French law professor, "the elements of law, the bases of its maxims and of its fundamental problems are like the points, the lines, and the surfaces in geometry": François Le Douaren, *In primam partem Pandectarum, sive Digestorum, methodica enarratio*, in *Opera omnia*, vol. I (Lucca, 1765), 3: "sed revera haec sunt elementa juris, & fundamenta maximarum, gravissimarumque disputationum: licut in Geometria punctum, linea, superficies, &c.". Precisely the same analogy appears in a late 20th-century French introduction to legal methodology where the author claims that "ideally, of course, the solution to any litigation would be mathematically deduced from clearly defined legal rules": E. S. de la Marnierre, *Éléments de méthodologie juridique* (Paris: Librairie du Journal des notaires et des avocats, 1976), no. 91, at 193–4 (emphasis supplied): "[l]'idéal serait évidemment que la solution de tout litige puisse être mathématiquement déduite de règles juridiques clairement définies."
110. On Ramus, see Nelly Bruyère, *Méthode et dialectique dans l'œuvre de La Ramée* (Paris: Vrin, 1984); *Ramus et l'Université* (Paris: Editions Rue d'Ulm, 2004). See also Walter J. Ong, *Ramus, Method, and the Decay of Dialogue* (Cambridge, MA: Harvard University Press, 1983).
111. Pierre Legendre, *L'Amour du censeur*, 2nd ed. (Paris: Le Seuil, 2005), 91: "(l)e texte (du droit) s'offre aux juristes non comme fragment historique, lié à de telles circonstances, mais sur un mode intemporel et mathématique."
112. The uncontested prevalence of Kelsenism on the French jurisprudential stage can be shown, for example, by the fact that the author of a general introduction to legal theory published in the best-known academic "pocket-book" series in France basically confines himself to a text about Kelsen and Kelsenism without feeling the need to justify this stance as a choice. In fact, my search engine informs me that the inscription "Kelsen" appears 44 times out of the 128 pages that are one of the characteristic features of these short books. Meanwhile, economic analysis of law, critical legal studies, and feminist legal studies are not so much as mentioned. See Michel Troper, *La Philosophie du droit*, 3rd ed. (Paris: Presses Universitaires de France, 2011). If there is one other theory benefiting from any kind of entitlement to serious intellectual consideration on the French scene, it is "natural law" — which, like positivism, applies a paradigm seeking to contain law within a logic of authority. For a French plea in favor of the continued relevance of natural law, see, for example, Christian Atias, *Devenir juriste* (Paris: Lexis Nexis, 2011), 10–12.
113. Jestaz and Jamin, *Doctrine*, *supra* note 95, at 174 (emphasis original): "terminologie à la mode [qui] oppose les sciences dures (jadis qualifiées d'exactes) aux sciences humaines"/"(l)e droit, tel que l'a édifié une longue tradition française, serait peut-être une science inexacte, mais dure." As regards the doctoral dissertation, which is introduced as "the axis of the [hiring] system, crystalliz[ing] the doctrinal conception of the science of law within the university" ("pivot du système (de recrutement), cristallis(ant) la conception doctrinale de la science du droit au sein de l'université"), these writers expressly suggest an analogy with "mathematics" ("mathématiques"): *id* at 194 and 186 respectively.
114. Edelman, *Quand les juristes*, *supra* note 11, at 219–29.
115. Marquis de Sade, *Justine, or the Misfortunes of Virtue*, trans. John Phillips (Oxford: Oxford University Press, 2012 [1791]), 220: "C'est en vain que les lois veulent rétablir l'ordre et ramener les hommes à la vertu; trop prévaricatrices pour l'entreprendre, trop

- insuffisantes pour y réussir, elles écarteront un instant du chemin battu, mais elles ne le feront jamais quitter.”
116. Marquis de Sade, *Juliette*, trans. Austryn Wainhouse (New York: Grove, 1968 [1797]), IV, 731: “qui doute [. . .] que les passions ne soient, dans le moral, ce qu’est le mouvement dans le physique. Ce n’est qu’aux passions fortes que sont dues l’invention et les merveilles des arts; elles doivent être regardées [. . .] comme le germe productif de l’esprit, et le ressort puissant des grandes actions.”
117. Jacques Derrida, *The Beast and the Sovereign*, vol. II, ed. Michel Lisse, Marie-Louise Mallet and Ginette Michaud, trans. Geoffrey Bennington (Chicago: University of Chicago Press, 2011 [2002]), 9: “toutes les tentatives de passage, de pont, d’isthme, de communication, de traduction, de trope et de transfert que (l’on) [. . .] tentera de poser, d’imposer, de proposer, de stabiliser.” I have modified the translation. This text is the transcript of the last annual course of lectures that Derrida delivered in 2002–03 at the Ecole des hautes études en sciences sociales in Paris.
118. Jacques Derrida, *Voice and Phenomenon*, trans. Leonard Lawlor (Evanston: Northwestern University Press, 2011 [1967]), 89: “se dérobe toujours.” I have modified the translation.
119. Cf. Bruno Latour and Steve Woolgar, *Laboratory Life*, 2nd ed. (Princeton: Princeton University Press, 1986), 260, n. 17: “If reality means anything, it is that which ‘resists’ (from the Latin ‘res’ – thing) the pressure of a force. [. . .] It is possible that the following [definition] is sufficient: that which cannot be changed at will is what counts as real.”
120. Meaghan Morris, “Foreword,” in Naoki Sakai, *Translation and Subjectivity* (Minneapolis: University of Minnesota Press, 1997), xiii. Cf. Mario Biagioli, *Galileo, Courtier* (Chicago: University of Chicago Press, 1993), 234: “Bilingualism may make one aware of incommensurability, but does not solve it. Full translation remains impossible.” See also Stephen D. Ross, “Translation as Transgression,” in *Hermeneutics and the Poetic Motion*, ed. Dennis J. Schmidt (Binghamton: SUNY, 1990), 25–42.
121. Hans-Georg Gadamer, *Truth and Method*, 5th ed., rev’d trans. Joel Weinsheimer and Donald G. Marshall (New York: Continuum, 2004 [1986]), 135 (“Seinsrang”).
122. *Id* at 120: “jede Wiederholung (ist) gleich ursprünglich zu dem Werk selbst.”
123. Latour, *supra* note 54, at 100: “Toute continuité s’obtient par une discontinuité, un hiatus.”
124. Jacques Derrida, *Specters of Marx*, trans. Peggy Kamuf (London: Routledge, 1994 [1993]), 21 (“désajustées”/“excellence”).
125. See Jacques Derrida, *Monolingualism of the Other; or, The Prosthesis of Origin*, trans. Patrick Mensah (Stanford: Stanford University Press, 1998 [1996]), 22.
126. Cf. Jacques Derrida, [Interview], *Magazine littéraire* (April 2004), 26: “What guides me is always untranslatable”: “Ce qui me guide, c’est toujours l’intraductibilité.”
127. Gadamer, *supra* note 121, at 135 (emphasis original) (“Zuwachs an Sein”).
128. *Id* at 138 (“Okkasionalität”).
129. *Id* at 118: “Die Idee einer allein richtigen Darstellung hat angesichts der Endlichkeit unseres geschichtlichen Daseins, wie es scheint, überhaupt etwas Widersinniges.”
130. Jacques Derrida, *Limited Inc*, trans. Samuel Weber (Evanston: Northwestern University Press, 1988 [1990]), 63: “Mille possibilités resteront toujours ouvertes, alors même qu’on comprend quelque chose [d’une] phrase qui fait sens.” I have modified the translation.
131. Gadamer, *supra* note 121, at 270, who refers to “the experience of being pulled up short” (“die Erfahrung des Anstoßes”). I find the proposed English translation unfair to the German original. In French, Gadamer’s translators have retained, much more helpfully, “l’expérience du choc”: Hans-Georg Gadamer, *Vérité et méthode*, trans. Pierre Fruchon, Jean Grondin and Gilbert Merlio (Paris: Le Seuil, 1996 [1986]), 289.
132. Gadamer, *supra* note 121, at 563: “alle Wissenschaft (schließt) eine hermeneutische Komponente ein.” Cf. Gaston Bachelard, *The New Scientific Spirit*, trans. Arthur Goldhammer (Boston: Beacon Press, 1984 [1934]), 12: “Scientific observation is always a polemical observation”: “L’observation scientifique est toujours une observation polémique”. I have modified the translation.
133. See Latour, *supra* note 54, *passim*.
134. *Id* at 111 (emphasis original) (“un maintien du même sur le même”).
135. In other words, “place” is not simply a physicalist conception: it is also an existential notion. Law emerges only in and through place, an assertion that does not entail an essentialist, exclusionary, reactionary, conservative, or immobile understanding of “place” for one can, indeed, approach “place” as source rather than terminus, as that from which something begins in its unfolding rather than that

- at which it comes to a stop. Law and place are inextricably enmeshed, which means, incidentally, that law can be constitutive of place in its turn. For law, any law, to be "as law," it must stand forth in terms of an experience of place. It must *dwell* ; there is no ungrounded law.
136. Gadamer, *supra* note 121, at 296 (emphasis original): "*Es genügt zu sagen, daß man anders versteht, wenn man überhaupt versteht.*"
137. Martin Heidegger, *History of the Concept of Time*, trans. Theodore Kisiel (Bloomington: Indiana University Press, 1985 [1925]), 56 (emphasis supplied
- in translation omitted): "Wir [...] sprechen [...] nicht das aus, was wir sehen, sondern umgekehrt, wir sehen, was man über die Sache spricht." I have modified the translation.
138. Derrida, *Voice and Phenomenon*, *supra* note 118, at 89.
139. Jacques Derrida, *Altérités* (Paris: Osiris, 1986), 85.
140. Adorno and Horkheimer, *supra* note 68, at 28: "Mythologie (ist) in die Profanität eingegangen."
141. Gadamer, *supra* note 121, at 118: "die Verbindlichkeit (muß) auf einen festen Maßstab verzichten."

Pierre Legrand Professor of Law and Director of Postgraduate Legal Studies in Globalization and Legal Pluralism at the Sorbonne; Board of Visitors Distinguished Visiting Professor of Law, University of San Diego School of Law; Visiting Professor, Northwestern University School of Law. I refer to published English translations when available.