

Chapter 13

Word/World

(of Primordial Issues for Comparative Legal Studies)

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‘[W]hat is the word? What the wrong word?’ – Beckett¹

One, everyone, lives in world. No one lives anywhere else.

Although not reducible to any articulation (of it), world is articulable and is indeed articulated through the mediation of language. World cannot be approached other than through language. Any attempt to articulate a view of world can only manifest itself within language (as is the case with any attempt to articulate a view of law).

From Aristotle to Kant, there has prevailed a model whereby the workings of language have been explained in terms of the designation of objects, of the assignment of names to objects.² According to this predilection, language is a tool for re-presenting objects that exist independently from it. This is to say that language’s role is to designate what are assumed to be extralinguistic entities. As such, language is apprehended as an instrument of communication remaining external to thought – which means, *inter alia*, that what ‘there is’ or what is ‘present’ or what ‘signifies’ precedes the ‘system’ of signification. The *Cratylus* is exemplary of the position holding that one must begin with world: ‘[I]t is far better to investigate [the things that are] and learn

* I am indebted to Dr Anne Lise Kjær for kindly inviting my participation to the colloquium that inspired this contribution. As I researched and wrote my text, I thought of Casimir and Imogene who may yet get to appreciate the difference between word (what they are told about how things are) and world (how things ‘are’). Unless attributed, translations are mine.

1 Samuel Beckett, *Ill seen ill said*, in *The Grove Centenary Edition*, ed. by Paul Auster, vol. III (New York: Grove Press, 2006), p. 455 [1981]. The re-writing from the French is Beckett’s own.

2 For a historical overview, see Peter T. Geach, *Reference and Generality* (Ithaca, NY: Cornell University Press, 1962).

about them through themselves than to do so through their names.³ The word's burden is thus to say world adequately, faithfully – to achieve what Schleiermacher famously calls a '*Dolmetschung*'.⁴ On the view of language as an instrument for fixing and communicating world, linguistic diversity cannot be an objection against the unity of world and the universality of reason. Here, the unity of world resists the multiplicity of languages. Such is Hilary Putnam's claim: '[O]ur conceptual schemes are just different "descriptions" of what are in some sense "the same facts"', that is, 'two descriptions are descriptions of *one and the same world*'.⁵

But one can move from a paradigm of perception to a paradigm of understanding. Instead of a view of language as world-disclosure based on the model of designation of an object by means of a name, one can adopt a model whereby a property is attributed to an entity through which this entity is interpreted 'as something'. In other terms, the designation of entities by means of a name is no longer to be understood in the sense that something already known beforehand is given a name but in the sense that only through that meaning is it established that that entity is: 'Language is charged with the task of making beings manifest.'⁶

Thus, one can say with Heidegger that '[o]nly where there is language, is there world'.⁷ Indeed, Novalis stigmatized the habitual 'logology' ('*Logologi[e]*'): 'The ridiculous error of people who imagine speaking for the things themselves is quite simply astonishing. But they all ignore the unique feature of language, which is that it is only occupied with itself.'⁸ Already Gorgias, the expounder of what is perhaps the first theory of language in the Western tradition, had argued that word (what he called '*λόγος*' or '*logos*') is 'a powerful ruler [whose] substance is minute

3 Plato, *Cratylus*, in *Complete Works*, ed. by John M. Cooper and transl. by C.D.C. Reeve (Indianapolis, IN: Hackett, 1997), p. 154. Although the matter has become controversial, this text is habitually assigned to Plato's 'middle period' (c. 387 – c. 367 B.C.E.).

4 Friedrich Schleiermacher, *Über die verschiedenen Methoden des Uebersetzens*, in *Sämmtliche Werke*, vol. III/2 (Berlin: G. Reimer, 1838), pp. 209–10 [1813].

5 Hilary Putnam, *Renewing Philosophy* (Cambridge, MA: Harvard University Press, 1995), pp. 110 and 122, respectively [emphasis original].

6 Martin Heidegger, *Elucidations of Hölderlin's Poetry*, transl. by Keith Hoeller (Amherst, NY: Humanity Books, 2000), p. 55 [hereinafter *Elucidations*]. For the original text, see *Erläuterungen zu Hölderlins Dichtung*, in *Gesamtausgabe*, vol. IV (Frankfurt: Vittorio Klostermann, 1981), p. 37 ['*Der Sprache ist aufgegeben, das Seiende als solches im Werk offenbar zu machen*'] (hereinafter *Erläuterungen*).

7 Heidegger, *Elucidations, supra*, note 6, p. 56. For the original text, see *Erläuterungen, supra*, note 6, p. 38 ['*Nur wo Sprache, da ist Welt*'].

8 Novalis, 'Monolog', in *Schriften*, ed. by Richard Samuel, vol. II (Stuttgart: W. Kohlhammer, 1981), p. 672 ['*Der lächerliche Irrthum ist nur zu bewundern, daß die Leute meinen – sie sprächen um der Dinge willen. Gerade das Eigenthümliche der Sprache, daß sie sich blos um sich selbst bekümmert, weiß keiner*'] (1799).

and indivisible, but [whose] achievements are superhuman'.⁹ For him, to begin with word rather than world is to uphold another regime of governance. Ceasing to operate under the aegis of ontology, no longer aiming to say what is as is, one works under the auspices of performance, which, through intertwined semantic and syntactic word-effects, makes world be. Word is no longer only a means, but a genuine force: it makes world come to language (apprehended as a sign-system). In his (lost) treatise, *On What Is Not, or On Nature*, Gorgias's critique of ontology shows how entities are not always-already there, how they are effectively but an effect of word.¹⁰

Here, the idea of language as designating objects, somehow already existing in themselves, is 'disconfirmed': 'Man lives primarily with objects, indeed, since feeling and acting in him depend on his presentations, he actually does so exclusively, *as language presents them to him*.'¹¹ And if word is a copy of anything, 'it is a copy, not of the object in itself, but of the image thereof produced in consciousness'.¹²

Contrary to the instrumentalist perspective, then, the role of language here begins long before any communication in the strict sense takes place – which means, *inter alia*, that the 'system' of signification precedes what 'there is' or what is 'present'

9 Gorgias, *Encomium of Helen*, ed. and transl. by D.M. MacDowell (London: Duckworth, 1982), § 8, p. 23 [c. 414 B.C.E.].

10 For a discussion of this work, see G.B. Kerferd, *The Sophistic Movement* (Cambridge: Cambridge University Press, 2001), pp. 93–100. What we know of Gorgias's text, written in 444–441 B.C.E., is attributable to detailed commentaries by Aristotle and Sextus Empiricus.

11 Wilhelm von Humboldt, *On Language*, ed. by Michael Losonsky and transl. by Peter Heath (Cambridge: Cambridge University Press, 1999), pp. 59–60 [my emphasis] (†1836) [hereinafter *Language*]. For the original text, see *Über die Verschiedenheit des menschlichen Sprachbaues und ihren Einfluß auf die geistige Entwicklung des Menschengeschlechts*, in *Gesammelte Schriften*, ed. by Albert Leitzmann, vol. VII/1 (Berlin: B. Behr, 1907), pp. 59–60 ['nicht bestätigt']/'Der Mensch lebt mit den Gegenständen hauptsächlich, ja, da Empfinden und Handeln in ihm von seinen Vorstellungen abhängen, sogar ausschliesslich so, wie die Sprache sie ihm zuführt'] (hereinafter *Kawiwerk*). Since Humboldt had intended this text to form the introduction to a multi-volume work on the Kawi language on the island of Java, it is commonly known, in German at least, as the '*Kawiwerk*'.

12 Humboldt, *Language*, supra, note 11, p. 59. For the original text, see *Kawiwerk*, supra, note 11, pp. 59–60 ['(das Wort) ist nicht ein Abdruck des Gegenstandes an sich, sondern des von diesem in der Seele erzeugten Bildes']. Cf. Ludwig Wittgenstein, *Zettel*, ed. by G.E.M. Anscombe and G.H. von Wright and transl. by G.E.M. Anscombe (Oxford: Blackwell, 1967), § 191, p. 33: 'The words are not a translation of something else that was there before they were' ['Die Worte sind keine Übersetzung eines Anders, welches vor ihnen da war'] (1929–48). This bilingual edition has the German text facing the English translation.

or what ‘signifies’.¹³ Such is Richard Rorty’s point: ‘[T]he world does not speak. Only we do.’¹⁴

On this conception, one must reject ‘referential semantics’ to explain the working of language (that is, the idea that language is related to world as name to object). Language does not have a passive character. Indeed, it asserts power – in Nietzsche’s blazing assertion, ‘[i]t is the powerful who made the names of things into law’.¹⁵ Consider the following illustrations of the performative character of word: ‘They are seen as *black*, therefore they *are* black; they are seen as *women*, therefore, they *are* women.’¹⁶ To be sure, ‘what things *are called* is incomparably more important than what they are’.¹⁷ Thus is Jacques Derrida vindicated: textuality, as it institutes through the word and in the word, is intrinsic ‘to the world, to reality, to being’.¹⁸ And ‘[l]anguage is [seen] not [to be] about description, but about *commitment*’.¹⁹

13 This is one of Derrida’s main post-phenomenological arguments. For example, see Jacques Derrida, *La voix et le phénomène* (Paris: Presses Universitaires de France, 1967).

14 Richard Rorty, *Contingency, Irony, and Solidarity* (Cambridge: Cambridge University Press, 1989), p. 6.

15 Friedrich Nietzsche, *The Will to Power*, ed. by Walter Kaufmann and transl. by Walter Kaufmann and R.J. Hollingdale (New York: Vintage, 1967), III, § 513, p. 277 [†1901] (hereinafter *Will to Power*). For the original text, see *Der Wille zur Macht* [III–IV], in *Gesammelte Werke* [Musarionausgabe], vol. XIX (Munich: Musarion, 1926), p. 26 [‘*Die Mächtigen sind es, welche die Namen der Dinge zum Gesetz gemacht haben*’] (hereinafter *Wille zur Macht*).

16 Monique Wittig, *The Straight Mind* (Boston, MA: Beacon Press, 1992), p. 12 [1981]. Cf. Friedrich Nietzsche, *Human, All Too Human*, transl. by Marion Faber and Stephen Lehmann (London: Penguin, 1994), I, § 11, p. 19: ‘The shaper of language was not so modest as to think that he was only giving things labels; rather, he imagined that he was expressing the highest knowledge of things with words’ [1878]. For the original text, see *Menschliches, Allzumenschliches*, in *Werke*, ed. by Giorgio Colli and Mazzino Montinari, vol. IV/2 (Berlin: Walter de Gruyter, 1967), pp. 26–7 [‘*Der Sprachbildner war nicht so bescheiden, zu glauben, dass er den Dingen eben nur Bezeichnungen gebe, er drückte vielmehr, wie er wähnte, das höchste Wissen über die Dinge mit den Worten aus*’].

17 Friedrich Nietzsche, *The Gay Science*, transl. by Walter Kaufmann (New York: Vintage, 1974), II, § 58, p. 121 [emphasis original in English] (1882) [hereinafter *Gay Science*]. For the original text, see *Die fröhliche Wissenschaft*, in *Werke*, ed. by Giorgio Colli and Mazzino Montinari, vol. V/2 (Berlin: Walter de Gruyter, 1973), p. 98 [‘*dass unsäglich mehr daran liegt, wie die Dinge heissen, als was sie sind*’] [1882] (hereinafter *Fröhliche Wissenschaft*).

18 Jacques Derrida, *Limited Inc.*, ed. by Elisabeth Weber (Paris: Galilée, 1990), p. 253 [‘*au monde, à la réalité, à l’être*’].

19 Donna J. Haraway, *Simians, Cyborgs, and Women* (New York: Routledge, 1991), p. 214 [my emphasis]. Cf. Novalis, ‘Poëticisismen’, in *Schriften*, ed. by Richard Samuel, vol. II (Stuttgart: W. Kohlhammer, 1981), p. 558: ‘The entire language is a *postulate*’ [‘*Die ganze Sprache ist ein Postulat*’] (emphasis original) [1797].

Observe that ‘[t]o bring [world] to language is not to change it into something else, but, in articulating and developing it, to make it become itself.’²⁰

‘No thing is where the word is lacking.’²¹

As bearer of a totality of meanings, language fixes the categorical framework of everything that can be talked about.

That ‘there resides in every language a characteristic *world-view*’ is Humboldt’s principal insight.²²

As bearer of a world-view that circumscribes one’s understanding, as constitutive of meaning, language partakes in the activity of thinking (rather than being incidental to it): ‘Thought and language are therefore one and inseparable from each other.’²³ Language is the condition of possibility of all experience of world. *Pace* Hilary Putnam (*supra*), identity of referent can only be guaranteed indirectly through identity of meaning (which means that it cannot be guaranteed at all). What one experiences in world is actually *constituted* by language.

If language is constitutive of the understanding of that about which understanding must be reached, it cannot be envisaged as a mere instrument for achieving understanding about something that would exist independently of it.

20 Paul Ricoeur, ‘Phenomenology and Hermeneutics’, in *Hermeneutics and the Human Sciences*, ed. and transl. by John B. Thompson (Cambridge: Cambridge University Press, 1981), p. 115. This text was initially published in French in Germany.

21 Martin Heidegger, *On the Way to Language*, transl. by Peter D. Hertz (New York: Harper Collins, 1971), p. 60 [1959] (hereinafter *On the Way*). For the original text, see *Unterwegs zur Sprache* (Stuttgart: Günther Neske, 1959), p. 163 [‘*Kein Ding ist, wo das Wort gebricht*’] (hereinafter *Unterwegs*).

22 Humboldt, *Language*, *supra*, note 11, p. 60 [emphasis original in English]. For the original text, see *Kawiwerk*, *supra*, note 11, p. 60 [‘*in jeder Sprache (liegt) eine eigenthümliche Weltansicht*’]. But this idea can be found already in the theory of ‘point of view’ (‘*Sehe-Punct*’) developed in Johann Martin Chladenius’s *Einleitung zur richtigen Auslegung vernünftiger Reden und Schrifften* (Leipzig: 1742), § 308, p. 185. For an extensive discussion of Chladenius’s work, see Peter Szondi, *Introduction to Literary Hermeneutics*, transl. by Martha Woodmansee (Cambridge: Cambridge University Press, 1995), pp. 14–66. More recently, the notion of ‘world-view’ has been claimed by Benjamin L. Whorf, *Language, Thought, and Reality*, ed. by John B. Carroll (Cambridge, MA: MIT Press, 1956), pp. 212–13.

23 Humboldt, *Language*, *supra*, note 11, p. 54. For the original text, see *Kawiwerk*, *supra*, note 11, p. 53 [‘*(Die intellektuelle Thätigkeit) und die Sprache sind daher Eins und unzertrennlich von einander*’].

That language should be the condition of possibility of ascription of meaning entails that meaning can only be generated after acquisition of language and that meaning is always-already linguistically realized.

‘It is the world of words that creates the world of things.’²⁴

Language thus competes with the individual for authorship of the synthesis through which world is constituted. Not only does language ‘restrai[n] [one] when [one] speak[s]’,²⁵ but it claims against one, as a ‘beyond-one’, the authorship of operations constituting the individual’s world-view.

(Utterances, thus, are no longer to be regarded as the most basic ‘hermeneutic’ unit. Rather, one must begin with the background of shared presuppositions, which involves an undifferentiated state of knowledge of both language and world – this is because one learns to look at world through the eyes of one’s father-tongue and because, conversely, the development of one’s linguistic capacity becomes articulated on the basis of world as it surrounds one. Otherwise, sentences would lack ‘literal’ meaning, that is, a speaker would not achieve illocutionary success. One understands an utterance when one knows what makes it acceptable. But knowledge of acceptability conditions depends on contingent background knowledge, which is implicit – hence not entirely expressible in propositional knowledge and not capable of being thematized at will – and ultimately predetermines the validity of the utterance itself.)

The self is a they-self: there is something like ‘absorption in the world’ in effect.²⁶ One’s pre-ontological but existential way of being-in-the-world is of being-with-others, which is very much being like everyone else: such an inauthentic form of being-in-the-world is not an accident but a primordial phenomenon.²⁷

24 Jacques Lacan, *Ecrits* (Paris: Le Seuil, 1966), p. 276 [‘C’est le monde des mots qui crée le monde des choses’] (1956). Note that the thesis that meaning determines reference not only underlies the so-called ‘linguistic turn’ but also serves as a basis for the analytic tradition initiated by Frege and Russell. For example, see John Searle, ‘Proper Names’, (1958) 67 *Mind* 166.

25 Humboldt, *Language*, *supra*, note 11, p. 63. For the original text, see *Kawiwerk*, *supra*, note 11, p. 64 [‘es (ist) die Sprache selbst, von der ich dabei Einschränkung erfahre’].

26 Martin Heidegger, *Being and Time*, transl. by Joan Stambaugh (Albany, NY: State University of New York Press, 1996), p. 121 [1927] (hereinafter *Being and Time*). For the original text, see *Sein und Zeit*, 18th edn (Tübingen: Max Niemeyer, 2001), p. 130 [‘Aufgehen in der Welt’] (hereinafter *Sein und Zeit*).

27 Heidegger, *Being and Time*, *supra*, note 26, pp. 118–22.

‘We do not merely speak *the* language – we speak *by way of* it.’²⁸ To speak implies ‘letting something be said to us’.²⁹

‘[L]anguage speaks’ (although its voice can be inaudible).³⁰ There is a ‘speaking-to-us’ (‘*Zuspruch*’) at work.³¹

Linguistic world-disclosure has priority over any conversation, which is why ‘[s]peaking is a listening not *while* but *before* we are speaking. This listening to language also comes before all other kinds of listening that we know, in a most inconspicuous manner.’³²

This is (in part) what Jacques Derrida means when he suggests a move from ‘ontology’ to ‘otology’ pursuant to which one would be open (to language and to law-as-language), attentive, listening, receptive, hearkening, *lending an ear* to the claims of the text.³³

28 Heidegger, *On the Way*, *supra*, note 21, p. 124. For the original text, see *Unterwegs*, *supra*, note 21, p. 254 [‘*Wir sprechen nicht nur die Sprache, wir sprechen aus ihr*’] (emphasis original).

29 Heidegger, *On the Way*, *supra*, note 21, p. 124. For the original text, see *Unterwegs*, *supra*, note 21, p. 255 [‘*Sichsagenlassen*’] (emphasis omitted).

30 Heidegger, *On the Way*, *supra*, note 21, p. 124. For the original text, see *Unterwegs*, *supra*, note 21, p. 254 [‘*die Sprache spricht*’] (emphasis original).

31 For this translation from Heidegger’s philosophical vocabulary, see James K. Lyon, *Paul Celan and Martin Heidegger* (Baltimore, MD: Johns Hopkins University Press, 2006), p. 223, note 14. The reference is to Martin Heidegger, *Holzwege*, in *Gesamtausgabe*, vol. V (Frankfurt: Vittorio Klostermann, 1977), p. 369 [1950].

32 Heidegger, *On the Way*, *supra*, note 21, pp. 123–4. For the original text, see *Unterwegs*, *supra*, note 21, p. 254 [‘*das Sprechen nicht zugleich, sondern zuvor ein Hören. Dieses Hören auf die Sprache geht auch allem sonst vorkommenden Hören in der unscheinbarsten Weise voraus*’] (emphasis original).

33 For example, see Jacques Derrida, *Politiques de l’amitié* (Paris: Galilée, 1994), p. 410 [‘*otologie*’]. Bultmann likewise advocates ‘listening to the claims of the text’: Rudolf Bultmann, ‘Das Problem der Hermeneutik’, in *Glauben und Verstehen*, vol. II (Tübingen: J.C.B. Mohr, 1952), p. 228 [‘*(den) Anspruch (des Texts) zu hören*’] (1950). See also Martin Heidegger, *What Is Called Thinking* transl. by J. Glenn Gray (New York: Harper Collins, 1968), p. 128: ‘[W]e are compelled, as soon as we set out upon a way of thought, to give specific attention to what the word says’ [1954]. For the original text, see *Was heisst Denken?* (Tübingen: Max Niemeyer, 1984), p. 88 [‘*sobald wir uns auf einen Weg des Denkens begeben, (sind wir) schon daran gehalten, eigens auf das Sagen des Wortes zu achten*’].

(To say, like Humboldt, that thinking is ‘inseparable’ from language means that it is ‘inseparable’ from each specific language for ‘language manifests itself in reality only as a multiplicity’.³⁴)

Note that one cannot (unlike Humboldt, for example) ground the constitution of linguistic world-disclosure in the activity of talking as such, that is, a world-view cannot be interpreted as the ‘product’ of the activity of the speaker. Rather, that activity is (unconsciously) dominated by the world-disclosing function of language. In other words, language as medium of understanding is subordinated to language as world-disclosure: it cannot be apprehended as the result of an individual activity, but as a necessary condition of possibility of that activity.

(Accordingly, any attempt to find a foundation prior to language is doomed as this would deny language’s role of world-disclosure.)

(To say that one’s language is one’s world-view does not mean, *pace* Donald Davidson, that one cannot identify a radically different language – and engage comparatively with it, for instance by purporting to ‘translate’ it – inevitably approximatively – into one’s ‘own’ language.³⁵)

The grasp of language as constitutive of thought amounts to a detranscendentalization of reason since it locates reason in the plurality of languages: reason is language. This means that there is no pure reason that exists independently of language, that reason cannot be separated from the actual, cultural conditions of its existence, that reason cannot be envisaged as alingual (or acultural).

34 Wilhelm von Humboldt, *Über die Verschiedenheiten des menschlichen Sprachbaues*, in *Gesammelte Schriften*, ed. by Albert Leitzmann, vol. VI/1 (Berlin: B. Behr, 1907), p. 240 [*‘Die Sprache erscheint in der Wirklichkeit nur als ein Vielfaches’*] (1829). For Humboldt’s statement on inseparability, see *supra* at text accompanying note 23. Cf. Gilles Deleuze and Félix Guattari, *Mille plateaux* (Paris: Editions de Minuit, 1980), p. 14: ‘There is no language as such, nor a universality of language, but a concourse of dialects, of patois, of jargons, of special languages’ [*‘il n’y a pas de langue en soi, ni d’universalité du langage, mais un concours de dialectes, de patois, d’argots, de langues spéciales’*].

35 For a detailed and compelling refutation of Davidson’s claim to the effect that one cannot be in a position to judge that others hold to a radically different conceptual scheme from one’s own, see Michael N. Forster, ‘On the Very Idea of Denying the Existence of Radically Different Conceptual Schemes’, 41 *Inquiry* 133 (1998). For Donald Davidson’s position, see his *Inquiries into Truth and Interpretation* (Oxford: Oxford University Press, 1984), pp. 183–98.

‘[T]he idea of an absolute reason is not a possibility for historical humanity. Reason exists for us only in concrete, historical terms – i.e., it is not its own master but remains constantly dependent on the given circumstances in which it operates.’³⁶

(Indeed, not only is language central to the capacity to think about world, but it is also the centre of reason’s misunderstandings about itself.³⁷)

Now, the only ‘there is’ is that of plurality of words (not unity of world).³⁸ To translate is no longer a ‘*Dolmetschung*’ but an ‘*Übertragen*’ – and the translator emerges as a ‘*Fahrensmann*’.³⁹ In Jacques Derrida’s words, ‘for the notion of translation, one must substitute a notion of *transformation*: the regulated transformation of a language by another, of a text by another.’⁴⁰ He adds: ‘We will never have been involved and never have been involved in fact in the “transportation” of pure signifieds which the signifying instrument – or the “vehicle” – would leave intact and untouched, from one language to another.’⁴¹ Instead of translation, there is *resignification* (apprehended as a performative move that is epistemically positive).⁴²

36 Hans-Georg Gadamer, *Truth and Method*, 2nd edn transl. by Joel Weinsheimer and Donald G. Marshall (London: Sheed & Ward, 1989), p. 276 [1960] (hereinafter *Truth and Method*). For the original text, see *Wahrheit und Methode*, 6th edn (Tübingen: J.C.B. Mohr, 1990), pp. 280–81 [‘*die Idee einer absoluten Vernunft überhaupt keine Möglichkeit des geschichtlichen Menschentums. Vernunft ist für uns nur als reale geschichtliche, d. h. schlechthin: sie ist nicht ihrer selbst Herr, sondern bleibt stets auf die Gegebenheiten angewiesen, an denen sie sich betätigt*’] (hereinafter *Wahrheit und Methode*). Cf. Nietzsche, *Will to Power*, *supra*, note 15, III, § 522, p. 283: ‘Rational thought is interpretation according to a scheme that we cannot throw off’ [emphasis omitted]. For the original text, see *Wille zur Macht*, *supra*, note 15, p. 522 [‘*Das vernünftige Denken ist ein Interpretieren nach einem Schema, welches wir nicht abwerfen können*’] (emphasis omitted).

37 See J.G. Hamann, ‘Metakritik über den Purismus der reinen Vernunft’, in *Vom Magus im Norden und der Verwegenheit des Geistes*, ed. by Stefan Majetschak (Munich: Deutscher Taschenbuch, 1988), p. 208 [1784].

38 Cf. Humboldt at text accompanying note 34, *supra*.

39 Celan coined this ‘nonexistent word that resides somewhere between a “traveling man” and a “ferryman”’: Lyon, *supra*, note 31, p. 40.

40 Jacques Derrida, *Positions* (Paris: Editions de Minuit, 1972), p. 31 [‘*à la notion de traduction, il faudra substituer une notion de transformation: transformation réglée d’une langue par une autre, d’un texte par un autre*’] (emphasis original).

41 Derrida, *supra*, note 40, p. 31 [‘*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*’].

42 I borrow the notion of ‘resignification’ from the work of Judith Butler. Marshalling the inherent instability of linguistic meaning, ‘resignification’ allows for the alteration or redirection of a meaning having sedimented within a term on account of its pre-existing relationships. For example, see Judith Butler, *Bodies That Matter* (London: Routledge, 1993), p. 191.

‘[W]hat Richard Rorty calls the “moral vocabulary” of Saint Paul and the “moral vocabulary” of Freud should be understood precisely as differences in vocabulary. We shouldn’t [...] think of Saint Paul and Freud as holding competing “descriptions of the world,” for then we should be moved to think of one of them as right and the other as wrong. Instead, we must think of them as playing what (following Wittgenstein) Rorty calls “alternative language games,” in which case saying that Freud’s beliefs are more true than Saint Paul makes as little sense as saying that German is more true than Hebrew.’⁴³

In Heidegger’s words, ‘[interpretation] is always based on a *fore-having*.’ The ‘unveil[ing]’ is ‘always done under the guidance of a perspective which fixes that with regard to which what has been understood is to be interpreted’. ‘The interpretation is grounded in a *foresight* that “approaches” what has been taken in fore-having with a definite interpretation in view.’ ‘[T]he interpretation has always already decided, finally or provisionally, upon a definite conceptuality; it is grounded in a *fore-conception*.’⁴⁴

The Heideggerian notions of ‘*Vorhabe*’ (‘fore-having’), ‘*Vorsicht*’ (‘foresight’), and ‘*Vorgriff*’ (‘fore-conception’), as they foreground the Bultmannian idea of ‘pre-understanding’ (‘*Vorverständnis*’) and the Gadamerian conception of ‘prejudice’ or ‘prejudgment’ (‘*Vorurteil*’), suggest that only within the pregiven sign-system within which one is framed does one understand, does one ascribe meaning, does one experience what one may want to seize as ‘truth’. In other words, there is a preliminary structure of understanding that is inherently constitutive of any understanding and, as such, that is a *condition* of understanding: how could one understand anything against a ‘no-background’ situation?⁴⁵

43 Walter Benn Michaels, *The Shape of the Signifier* (Princeton, NJ: Princeton University Press, 2004), p. 43, referring to Rorty, *supra*, note 14, p. 5.

44 Heidegger, *Being and Time*, *supra*, note 26, pp. 140–41. For the original text, see *Sein und Zeit*, *supra*, note 26, p. 150 [‘(Die Auslegung) gründet jeweils in einer Vorhabe. (...) Die Zueignung des Verstandenen, aber noch Eingehüllten vollzieht die Enthüllung immer unter der Führung einer Hinsicht, die das fixiert, im Hinblick worauf das Verstandene ausgelegt werden soll. Die Auslegung gründet jeweils in einer Vorsicht (...). (...) Wie immer – die Auslegung hat sich je schon endgültig oder vorbehaltlich für eine bestimmte Begrifflichkeit entschieden; sie gründet in einem Vorgriff’] (emphasis original).

45 Bultmann, *supra*, note 33, p. 216; Gadamer, *Truth and Method*, *supra*, note 36, pp. 277–307 (‘Prejudices as Conditions of Understanding’). For the original text, see *Wahrheit und Methode*, *supra*, note 36, pp. 281–95 [‘*Vorurteile als Bedingungen des Verstehens*’]. Cf. Wittgenstein, *supra*, note 12, § 234, p. 43: ‘What happens is not that this symbol cannot be further interpreted, but: I do not interpret, because I feel at home in the present picture’ [‘*Nicht das findet statt, daß sich dieses Symbol nicht mehr deuten läßt, sondern: ich deute nicht. Ich deute nicht, weil ich mich in dem gegenwärtigen Bild heimisch fühle*’].

(To write ‘like’ Heidegger, one could refer to a constellation of fore-constraints or *Vorzwänge*.)

Because thinking is inextricably linked to an always-already-existing language that makes it possible, there cannot be a presuppositionless starting-point.

‘[T]he essential link of thought to language [...] will never dispense with idioms.’⁴⁶

There is the ‘screen of words’.⁴⁷

There is, then, ‘the prisonhouse of language’.⁴⁸

Law-thought is inextricably linked to an always-already-existing law-language that makes it possible, which means that there cannot be a presuppositionless starting-point.

There is, then, the prisonhouse of law (comparatists-at-law beware!).

There is no (scrutable) world-as-such (or ‘is-ness’) that would guarantee something like the ‘objectivity’ of knowledge about it. Since anything about which an agreement must be reached is not accessible as an entity in itself but is linguistically prestructured,⁴⁹ any understanding of it is unavoidably subject to interpretation.⁵⁰

46 Jacques Derrida, *Donner le temps*, vol. I: *La fausse monnaie* (Paris: Galilée, 1991), p. 76 [‘le lien essentiel de la pensée (...) au langage (...) ne fera jamais l’économie des idiomes’]. Derrida further reflects on the ‘impossib[ility] to bring out a concept of essence [...] that would transcend idiomatic difference’: *ibid.* [‘impossib(ilité) de dégager un concept de l’essence (...) qui transcende la différence idiomatique’].

47 Pierre Legendre, *Ce que l’Occident ne voit pas de l’Occident* (Paris: Fayard, 2004), p. 75 [‘l’écran des mots’].

48 J. Hillis Miller, ‘The Critic as Host’, in Harold Bloom et al., *Deconstruction and Criticism* (New York: Continuum, 1979), p. 230. In its complete form, this (famous) Nietzschean formulation reads as follows: ‘The most heroic effort to escape from the prisonhouse of language only builds the walls higher.’

49 Cf. Friedrich Nietzsche, ‘On Truth and Lies in a Nonmoral Sense’, in *Philosophy and Truth*, ed. and transl. by Daniel Breazeale (Atlantic Highlands, NJ: Humanities Press, 1979), p. 82: ‘The “thing-in-itself” [...] is [...] something quite incomprehensible to the creator of language and something not in the least worth striving for’ [1873]. For the original text, see ‘Ueber Wahrheit und Lüge im aussermoralischen Sinne’, in *Gesammelte Werke [Musarionausgabe]*, vol. VI (Munich: Musarion, 1922), p. 79 [‘Das “Ding an sich” (...) ist auch dem Sprachbildner ganz unfasslich und ganz und gar nicht erstrebenswerth’].

50 This is an opportunity to draw a crucial distinction. It is not that interpretation allows one to ‘grasp’ or ‘get hold of’ understanding. Interpretation is not an activity through

Because meaning (or the mode of re-presentation of the *designatum*) is a condition of access to ‘any-referent-there-is’, a ‘referent’ is understood through meaning – which is also fore-meaning.

‘The only “objectivity” here is the confirmation of a fore-meaning in its being worked out.’⁵¹

The constitution of meaning must escape any attempt at objectification. Interpretation does not demonstrate ‘the’ meaning of what would be ‘objectively’ present, but rather clarifies what is ‘always already’ relevant.

The symbolically mediated character of one’s relation with world prohibits the possibility of postulating a world-as-such that would be accessible through perception to all interpreters in an identical way. However, it does not prevent postulating a world-in-itself that would simply not be accessible. Assuming one wants to retain the possibility of objective experience (but why would one?), one must turn to the conditions of possibility of communication. The idea is that speakers who share a language would share a knowledge of meanings that constitutes the unitary framework for everything that can appear as world. Thus, the identity of meanings shared by speakers would guarantee the identity of reference of the signs they use. Even allowing for this highly problematic set of assumptions (why would the fact that two individuals speak French to one another ensure identity of meaning and identity of reference?),⁵² how to generate the unity of the world

which one can enter into possession of understanding. Rather, interpretation channels understanding and thus is constitutive of understanding, such that each understanding must assume an interpretation, whether consciously or not. Through interpretation, ‘understanding appropriates what it has understood in an understanding way’: Heidegger, *Being and Time*, *supra*, note 26, p. 139 (for the original text, see *Sein und Zeit*, *supra*, note 26, p. 148: ‘das Verstehen [eignet sich] sein Verstandenes verstehend zu’). For example, speaking another language than one’s ‘own’ always involves translation no matter how well one speaks it and no matter, therefore, how sub-consciously this process operates. Indeed, this is the case within one’s ‘own’ language also, for example when a twenty-first-century reader considers a sixteenth-century text. Although one tacitly apprehends the sixteenth-century ‘rose’ as a twenty-first-century ‘rose’ and thus fails to detect the ways in which ‘the’ text has changed on account of the ‘foreignness’ that temporality has introduced into it, the reader’s blindness does not detract from the fact that a process of translation is effectively taking place.

51 Gadamer, *Truth and Method*, *supra*, note 36, p. 267. For the original text, see *Wahrheit und Methode*, *supra*, note 36, p. 272 [‘Es gibt hier keine andere “Objektivität” als die Bewährung, die eine Vormeinung durch ihre Ausarbeitung findet’].

52 Cf. Friedrich Nietzsche, *Thus Spoke Zarathustra*, transl. by Graham Sparkes (Oxford: Oxford University Press, 2005), I, § 15, p. 5: ‘Never did one neighbour understand the other’ [1883]. For the original text, see *Also sprach Zarathustra*, in *Werke*, ed. by Giorgio Colli and Mazzino Montinari, vol. VI/1 (Berlin: Walter de Gruyter, 1968), p. 70 [‘Nie verstand ein Nachbar den andern’].

linguistically disclosed through the plurality of historically-contingent world disclosures? The idea that identity of meaning could be guaranteed within the limits of a given linguistic world-disclosure means that at best reference (and truth) are turned into intralinguistic notions dependent on a prior and contingent constitution of meaning such that one must, here also, address the incommensurability of linguistic world-disclosures.

‘The prejudices and fore-meanings that occupy the interpreter’s consciousness are not at his free disposal.’⁵³

‘That is why the prejudices of the individual, far more than his judgments, constitute the historical reality of his being.’⁵⁴

‘In fact history does not belong to us; we belong to it.’⁵⁵

(‘[I]t is literally more correct to say that language speaks us, rather than that we speak it.’⁵⁶)

In fact, language does not belong to us; we belong to it. (In Derrida’s words, ‘a language does not belong.’⁵⁷)

53 Gadamer, *Truth and Method*, *supra*, note 36, p. 295. For the original text, see *Wahrheit und Methode*, *supra*, note 36, p. 301 [‘Die Vorurteile und Vormeinungen, die das Bewußtsein des Interpreten besetzt halten, sind ihm als solche nicht zu freier Verfügung’].

54 Gadamer, *Truth and Method*, *supra*, note 36, pp. 276–7. For the original text, see *Wahrheit und Methode*, *supra*, note 36, p. 281 [‘die Vorurteile des einzelnen (sind) weit mehr als seine Urteile die geschichtliche Wirklichkeit seines Seins’] (emphasis omitted).

55 Gadamer, *Truth and Method*, *supra*, note 36, p. 276. For the original text, see *Wahrheit und Methode*, *supra*, note 36, p. 281 [‘In Wahrheit gehört die Geschichte nicht uns, sondern wir gehören ihr’]. Cf. Ludwig Wittgenstein, *On Certainty*, ed. by G.E.M. Anscombe and G.H. von Wright and transl. by Dennis Paul and G.E.M. Anscombe (New York: Harper and Row, 1972), § 94, p. 15: ‘But I did not get my picture of the world by satisfying myself of its correctness; nor do I have it because I am satisfied of its correctness. No: it is the inherited background against which I distinguish between true and false’ [‘Aber mein Weltbild habe ich nicht, weil ich mich von seiner Richtigkeit überzeugt habe; auch nicht weil ich von seiner Richtigkeit überzeugt bin. Sondern es ist der überkommene Hintergrund, auf welchem ich zwischen wahr und falsch unterscheide’] (1950–51). This bilingual edition has the German text facing the English translation.

56 Gadamer, *Truth and Method*, *supra*, note 36, p. 463. For the original text, see *Wahrheit und Methode*, *supra*, note 36, p. 467 [‘insoweit ist es buchstäblich richtiger zu sagen, daß die Sprache uns spricht, als daß wir sie sprechen’].

57 Jacques Derrida, *Apprendre à vivre enfin*, ed. by Jean Birnbaum (Paris: Galilée, 2005), p. 39 [‘une langue, ça n’appartient pas’].

(‘There is no mother tongue, but a seizure of power by a dominant language within a political multiplicity.’⁵⁸)

In fact, law does not belong to us; we belong to it. (This is why ‘any comparison is, at the outset, defective’.⁵⁹)

There is no extrawordly observer who could stand over against world. Rather, one finds oneself within a symbolically prestructured world within which one finds oneself always-already thrown.

The preclusion of an appeal to an extrawordly standpoint makes facticity into the obligatory (non-presuppositionless) starting-point: disclosedness is essentially factual.⁶⁰

Language is at once arbitrary/contingent (it cannot be deduced as cultural reality since there is no *a priori* dimension to it) and necessary/indispensable (it is impossible to speak without speaking a language – and without speaking a language that is always-already structured).⁶¹ Even the enrichment of language (say, through Heidegger’s philosophical neologisms) takes place in/through language. It is conditioned by language.

Language is insurmountable.

The insurmountability of language is not only factual. It is also normative.

(There is, again, ‘the prisonhouse of language’ [*supra*].)

‘Understanding is to be thought of less as a subjective act than as participating in an event of tradition, a process of transmission in which past and present are constantly mediated.’⁶²

58 Deleuze and Guattari, *supra*, note 34, p. 14 [‘*Il n’y a pas de langue-mère, mais prise de pouvoir par une langue dominante dans une multiplicité politique*’].

59 Stéphane Mallarmé, ‘Quelques médaillons et portraits en pied’, in *Oeuvres complètes*, ed. by Henri Mondor and G. Jean-Aubry (Paris: Gallimard, 1945), p. 528 [‘*Toute comparaison est, préalablement, défectueuse*’] (1892). This text appeared on the occasion of the death of Tennyson.

60 Heidegger, *Being and Time*, *supra*, note 26, pp. 203–4. For the original text, see *Sein und Zeit*, *supra*, note 26, p. 221.

61 Hamann, *supra*, note 37, p. 211.

62 Gadamer, *Truth and Method*, *supra*, note 36, p. 290. For the original text, see *Wahrheit und Methode*, *supra*, note 36, p. 295 [‘*Das Verstehen ist selber nicht so sehr als eine Handlung der Subjektivität zu denken, sondern als Einrücken in ein Überlieferungsgeschehen, in dem sich Vergangenheit und Gegenwart beständig vermitteln*’] (emphasis omitted).

‘Understanding is, essentially, a historically effected event.’⁶³

‘[W]e should learn to understand ourselves better and recognize that in all understanding, whether we are expressly aware of it or not, the efficacy of history is at work.’⁶⁴

There is something like a ‘history of effects’ (*Wirkungsgeschichte*) being ‘refracted through language’ such that ‘[t]here are no contexts of human understanding that are not constituted in terms of some linguistic framework and [that] when we understand the world, ourselves, or others, we do so in terms of that framework’.⁶⁵

‘[W]e are always already involved in an understanding of being.’⁶⁶

‘Whatever and however we may try to think, we think within the sphere of tradition.’⁶⁷

Observe how saying that all understanding is prejudiced in that it is circumscribed by the light that the historical situation sheds on the interpreter himself, and indeed on that which the interpreter is trying to understand, is not necessarily negative. The work of prejudice can, in fact, prove empowering.⁶⁸ Thus, one can understand Marcel Duchamp’s readymades as art because one belongs to a culture

63 Gadamer, *Truth and Method*, *supra*, note 36, p. 300 [emphasis omitted]. For the original text, see *Wahrheit und Methode*, *supra*, note 36, p. 305 [‘*Verstehen ist seinem Wesen nach ein wirkungsgeschichtlicher Vorgang*’].

64 Gadamer, *Truth and Method*, *supra*, note 36, p. 301. For the original text, see *Wahrheit und Methode*, *supra*, note 36, p. 306 [‘*daß man sich selber richtiger verstehen lerne und anerkenne, daß in allem Verstehen, ob man sich dessen ausdrücklich bewußt ist oder nicht, die Wirkung dieser Wirkungsgeschichte am Werke ist*’].

65 Brice Wachterhauser, ‘Getting it Right: Relativism, Realism and Truth’, in *The Cambridge Companion to Gadamer*, ed. by Robert Dostal (Cambridge: Cambridge University Press, 2002), p. 66.

66 Heidegger, *Being and Time*, *supra*, note 26, p. 4. For the original text, see *Sein und Zeit*, *supra*, note 26, p. 5 [‘*(W)ir bewegen uns immer schon in einem Seinsverständnis*’].

67 Martin Heidegger, *Identity and Difference*, transl. by Joan Stambaugh (Chicago, IL: University of Chicago Press, 2002), p. 41 [1957]. For the original text, see *Identität und Differenz*, in *Gesamtausgabe*, vol. XI (Frankfurt: Vittorio Klostermann, 2006), p. 50 [‘*Was immer und wie immer wir zu denken versuchen, wir denken im Spielraum der Überlieferung*’].

68 For a ‘positive concept of prejudice’, see Hans-Georg Gadamer, *Philosophical Hermeneutics*, ed. and transl. by David E. Linge (Berkeley, CA: University of California Press, 1976), p. 9 [1966]. For the original text, see ‘Die Universalität des hermeneutischen Problems’, in *Gesammelte Werke*, vol. II (Tübingen: J.C.B. Mohr, 1986), p. 224 [‘*einen positiven Begriff des Vorurteils*’].

that envisages art in a certain manner, that has an idea of what art is and of what art can be. Or, '[w]e can understand a certain text as a novel, for example, because we belong to a history and culture that knows what a novel is.'⁶⁹

Not even anything like 'literal' meaning can be assessed 'as such'. Consider the four following statements by John Searle: 'the notion of the literal meaning of a sentence only has application relative to a set of background assumptions'; 'these background assumptions are not all and could not all be realized in the semantic structure of the sentence'; '[these assumptions] are not fixed and definite in number and content'; 'each specification of an assumption tends to bring in other assumptions, those that determine the applicability of the literal meaning of the sentence used in the specification.'⁷⁰

If 'meaning' and 'truth' are never given independently of language, if they are epistemically constrained, they cannot be conceived as existing outside the limitations of a particular culture (or tradition) in a specific time and place. If there is something like '*Vorgriff*', there is a historical specificity to every act of understanding (whether because it reflects institutional conditions or resists forms of institutional appropriation).⁷¹ If there is no account of truth not dependent at all upon the particular way in which it is experienced, there is, then, no sense

69 Georgia Warnke, 'Literature, Law, and Morality', in *Gadamer's Repercussions*, ed. by Bruce Krajewski (Berkeley, CA: University of California Press, 2004), p. 92. This argument does not exclude the possibility that one can develop an idiosyncratic view of the novel or of art. Indeed, I readily admit that there is a basic ability to deviate from an ingrained cognitive pattern in ways that are creative. Cf. William R. Everdell, *The First Moderns* (Chicago, IL: University of Chicago Press, 1997), where the author, focusing on the period from 1899 to 1913, illustrates the emergence of notions like recursion, radical subjectivity, multi-perspectivism, contingency and ontological discontinuity through narratives devoted to individuals who, although socialized into a particular constellation of ideas, became able to think in a different way than the one presented to them. Examples of persons offering what Everdell regards as disjunctive thought include Freud, Husserl, Strindberg, Kandinsky, Bohr and dozens of other such luminaries. *Adde*: Rorty, *supra*, note 14, p. 50: '[Human beings can] manipulate the tensions within their own epoch in order to produce the beginnings of the next epoch.' This, however, is '[t]he most they can do'.

70 John R. Searle, *Expression and Meaning* (Cambridge: Cambridge University Press, 1979), pp. 120, 120, 126, and 126, respectively. Cf. Wittgenstein, *supra*, note 12, § 716, pp. 123–4: 'What about these two sentences: "This sheet is red" and "this sheet is the colour called "red" in English"? Do they both say *the same*?' [emphasis original] ('*Wie ist es mit den beiden Sätzen: "dieses Blatt ist rot" und "dieses Blatt hat die Farbe, die auf Deutsch "rot" heißt"?* Sagen beide dasselbe?').

71 Indeed, Heidegger himself acknowledges that 'even the ontological investigation that [he] is now conducting is determined by its historical situation': Martin Heidegger, *The Basic Problems of Phenomenology*, transl. by Albert Hofstadter (Bloomington, IN: Indiana University Press, 1982), p. 22. For the original text, see *Die Grundprobleme der Phänomenologie*, in *Gesamtausgabe*, vol. XXIV (Frankfurt: Vittorio Klostermann, 1975),

in keeping truth as a heuristic goal.⁷² In the words of Richard Rorty, ‘how [can] ontological knowledge [...] be more than knowledge of a particular historical position?’⁷³

The effort to convince others of the truth of one’s interpretations must be redescribed as the effort to make them speak one’s language.⁷⁴

(‘The conviction that others are mistaken must be redescribed as dislike of the fact that they are different, and the desire to convince them of the truth must be redescribed as the desire to get them to be the same.’⁷⁵)

(‘Truth’ is, ultimately, an artificial – and, often, not-so-innocent – attempt to confine contingency and creativity within set limits. It operates as an *exclusionary* tool.)

Different languages are in fact different world-views, strictly contingent and plural.

(‘Hebrew and German do not contradict each other, and insofar as Saint Paul’s and Freud’s moral vocabularies are like Hebrew and German, they don’t contradict each other either [...]: they aren’t disagreeing, they’re just speaking different languages.’⁷⁶)

(The claim that ‘in any language it is possible to express any series of ideas’⁷⁷ – which Humboldt also defends – cancels the specific sense of any assumption about

p. 31 [‘*die ontologische Untersuchung, die wir jetzt vollziehen, ist durch ihre geschichtliche Lage bestimmt*’].

72 *Contra*: Karl-Otto Apel, ‘Universal Principles and Particular Decisions and Forms of Life’, in *Value and Understanding*, ed. by Raimond Gaita (London: Routledge, 1990), p. 81: ‘[T]he notion of a serious argumentative discourse implies the *regulative idea* of a universal consensus to be reached about all controversial validity-claims, as for example, those involving meaning, truth and even the rightness of norms’ [emphasis original]. Along converging lines, see Jürgen Habermas, *Between Facts and Norms*, transl. by William Rehg (Cambridge, MA: MIT Press, 1996), p. 282: ‘The law of a concrete legal community must, if it is to be legitimate, at least be compatible with moral standards that claim universal validity beyond the legal community’ [1992].

73 Richard Rorty, *Essays on Heidegger and Others* (Cambridge: Cambridge University Press, 1991), p. 40.

74 See Haraway, *supra*, note 19, p. 173, who equates the ‘dream of a common language’ with the dream of ‘a perfectly true language’.

75 Michaels, *supra*, note 43, p. 61.

76 Michaels, *supra*, note 43, pp. 45–6, referring to Rorty, *supra*, note 14, p. 5.

77 Wilhelm von Humboldt, *Ueber das vergleichende Sprachstudium in Beziehung auf die verschiedenen Epochen der Sprachentwicklung*, in *Gesammelte Schriften*, ed. by Albert Leitzmann (Berlin: B. Behr, 1905), vol. IV, p. 16 [‘*in jeder (Sprache lässt sich*

languages and world-views and shows that Humboldt's intellectual construction is not genuinely a theory.⁷⁸)

Different laws are in fact different world-views, strictly contingent and plural.

Specific languages (Babel's babblings!) – historically transmitted and irreducibly plural – prejudice one's experience through the world-views that they provide: '[T]he object of knowledge and statements is always already *enclosed* within the world horizon of language.'⁷⁹

Specific laws – historically transmitted and irreducibly plural – prejudice one's experience through the world-views that they provide. Making Mallarmé's point again, this is why 'any comparison is, at the outset, defective' [*supra*].

To learn a new language is to adopt a new world-view. 'But because we always carry over, more or less, our own world-view, and even our own language-view, this outcome is not purely and completely experienced.'⁸⁰

(Can a francophone ever see or hear the word 'onerous' without the word '*onéreux*' intruding?)

('Of all the stumbling blocks inherent in learning [French], the greatest for me is the principle that each noun has a corresponding sex that affects both its articles and its adjectives. [...] *Vagina* is masculine [...], while the word *masculinity* is feminine. Forced by the grammar to take a stand one way or the other, *hermaphrodite* is male and *indecisiveness* female.'⁸¹)

jede Ideenreihe ausdrücken'] (1820). Cf. Roman Jakobson, 'On Linguistic Aspects of Translation', in *Language in Literature*, ed. by Krystyna Pomorka and Stephen Rudy (Cambridge, MA: Harvard University Press, 1987), p. 431: 'All cognitive experience and its classification is conveyable in any existing language.'

78 Cristina Lafont, *The Linguistic Turn in Hermeneutic Philosophy*, transl. by José Medina (Cambridge, MA: MIT Press, 1999), p. 37.

79 Gadamer, *Truth and Method*, *supra*, note 36, p. 450 [my emphasis]. For the original text, see *Wahrheit und Methode*, *supra*, note 36, p. 454 ['*Was Gegenstand der Erkenntnis und der Aussage ist, ist vielmehr immer schon von dem Welthorizont der Sprache umschlossen*'].

80 Humboldt, *Language*, *supra*, note 11, p. 60. For the original text, see *Kaviwerk*, *supra*, note 11, p. 60 ['*Nur weil man in eine fremde Sprache immer, mehr oder weniger, seine eigne Welt-, ja seine eigne Sprachansicht hinüberträgt, so wird dieser Erfolg nicht rein und vollständig empfunden*'].

81 David Sedaris, *Me Talk Pretty One Day* (New York: Little, Brown, 2000), p. 188 [emphasis original]. I am grateful to Dr Andreas Philippopoulos-Mihalopoulos for generously taking the time to contribute this quotation. Cf. Humboldt, *Kaviwerk*, *supra*, note 11, p. 621: 'Every language places definite boundaries upon the spirit of those who

(Research on neural mechanisms regulating the activities of different languages in bilinguals with specific reference to the inhibitory processes enabling the activation of the target language and the concurrent suppression of interaction from the language not then in use demonstrate that there is interference from the language not in use as regards the production of the target word both ‘at the levels of lexical selection and phonological representation’.⁸²)

To learn a new law is to adopt a new world-view. Since one always carries over one’s own law-view, the new standpoint is never fully experienced. Consider Montesquieu: ‘If triangles created a god, they would give it three sides.’⁸³

‘It is enough to say that we understand in a *different* way, *if we understand at all*.’⁸⁴

(In terms of word *vis-à-vis* world, there is always an ‘excess’ or a ‘deficit’ of meaning in the sign: whatever one refers to cannot be what one refers to, no matter how sophisticated one’s language proves to be.⁸⁵ Consider Hannah Arendt: ‘That the object that is there to underwrite the presentation of things can just as well be called “Tisch” or “table” means that there is something of the real essence of the things that we fabricate and name that escapes us.’⁸⁶)

speak it, and insofar as it provides a determinate orientation, excludes others’ [*Jede Sprache setzt dem Geiste derjenigen, welche sie sprechen, gewisse Gränzen, schliesst, insofern sie eine gewisse Richtung giebt, andre aus*].

82 A. Rodriguez-Fornells, R. De Diego Balaguer, and T.F. Münte, ‘Executive Control in Bilingual Language Processing’, in *The Cognitive Neuroscience of Second Language Acquisition*, ed. by Marianne Gullberg and Peter Indefrey (Oxford: Blackwell, 2006), p. 139.

83 Montesquieu, *Lettres persanes, in Oeuvres complètes*, ed. by Roger Caillois, vol. I (Paris: Gallimard, 1949), LIX, p. 218 [*si les triangles faisoient un Dieu, ils lui donneroient trois côtés*] (1721).

84 Gadamer, *Truth and Method*, *supra*, note 36, p. 297. For the original text, see *Wahrheit und Methode*, *supra*, note 36, p. 302 [*Es genügt zu sagen, daß man anders versteht, wenn man überhaupt versteht*] (emphasis original). Cf. Humboldt, *Language*, *supra*, note 11, p. 63: ‘all understanding is always at the same time a not-understanding.’ For the original text, see *Kawiwerk*, *supra*, note 11, p. 64 [*Alles Verstehen ist daher immer zugleich ein Nicht-Verstehen*].

85 For a compelling expression of the idea that portrayal is betrayal, see José Ortega y Gasset, ‘La reviviscencia de los cuadros’, in *Obras completas*, vol. VIII (Madrid: Alianza Editorial, 1983), p. 493 [1946].

86 Cf. Hannah Arendt, *Denktagebuch*, ed. by Ursula Ludz and Ingeborg Nordmann, vol. I (Munich: Piper, 2002), p. 42 [*Dadurch, dass der Gegenstand, der für das tragende Präsentieren von Dingen da ist, sowohl Tisch wie “table” heissen kann, ist angedeutet, dass uns etwas vom wahren Wesen des von uns selbst Hergestellten und Benannten entgeht*] (1950).

(‘In the seventeenth century, Locke postulated [and condemned] an impossible language in which each individual thing – every stone, every bird, every branch – would have its own name; Funes once contemplated a similar language, but discarded the idea as too general, too ambiguous. [...] Two considerations dissuaded him: the realization that the task was interminable, and the realization that it was pointless. [...] [Yet,] [n]ot only was it difficult for him to see that the generic symbol “dog” took in all the dissimilar individuals of all shapes and sizes, it irritated him that the “dog” of three-fourteen in the afternoon, seen in profile, should be indicated by the same noun as the dog of three-fifteen, seen frontally.’⁸⁷)

Language is constitutive of one’s relationship with world. Even access to individual experience from one’s inner world can only be disclosed through language and propositional knowledge of it can only be had to the extent that the world-disclosing ability of language will allow. This is not to say that linguistic expressions must be held to determine what there is. ‘Referents’ exist independently of meaning and can be treated as being logically independent of any linguistic community’s particular ways of conceiving them – which is to say that no ‘referent’ can be reduced to whatever description we offer of it (and which also means that it might be more productive not to conceptualize our accounts as ‘descriptions’ at all). In this respect, I agree with John Searle: ‘[J]ust as it does not follow from the fact that I see reality always from a point of view and under certain aspects that I never directly perceive reality, so from the fact that I must have a vocabulary in order to state the facts, or a language in order to identify and describe the facts, it simply does not follow that the facts I am describing or identifying have no independent existence.’⁸⁸ In this sense at least, world is logically independent of our ways of

87 Jorge Luis Borges, ‘Funes, his Memory’, in *Collected Fictions*, transl. by Andrew Huxley (New York: Penguin, 1998), p. 136 [1944]. For the original text, see *Ficciones* (Madrid: Alianza Editorial, 1995), pp. 133–4 [‘Locke, en el siglo XVII, postuló (y reprobó) un idioma imposible en el que cada cosa individual, cada piedra, cada pájaro y cada rama tuviera un nombre propio; Funes proyectó alguna vez un idioma análogo, pero lo desechó por parecerle demasiado general, demasiado ambiguo. [...] Lo disuadieron dos consideraciones: la conciencia de que la tarea era interminable, la conciencia de que era inútil. [...] No sólo le costaba comprender que el símbolo genérico perro abarcara tantos individuos dispares de diversos tamaños y diversa forma; le molestaba que el perro de las tres y carorce (visto de perfil) tuviera el mismo nombre que el perro de las tres y cuarto (visto de frente)’] (emphasis original in Spanish).

88 John R. Searle, *Mind, Language, and Society* (New York: Basic Books, 1998), p. 22. Cf. Michael Dummett, *Thought and Reality* (Oxford: Oxford University Press, 2006), p. 92: ‘We do not create the world; we must accept whatever it presents to us.’ Indeed, ‘we have no control over what we find it to be like’. Accordingly, I would disagree with those who contend that ‘reality’ is ‘a reification of our own conceptual and cognitive nature, with no more claim to autonomy than a mirror image’ as reported in Crispin Wright, *Realism, Meaning and Truth*, 2nd edn (Oxford: Blackwell, 1993), p. 2.

conceiving it. (Yet, ‘the distinction between the real and the unreal and the concept of agreement with reality themselves belong to our language.’⁸⁹)

But language identifies what there *can* be for a linguistic community (or, which is another way of putting it, what a community can say that there is): language concerns the possibility of access to an understanding of an entity (and has nothing to say as regards the existence of an entity).

‘[R]eference *is* nonsense except relative to a coordinate system.’⁹⁰

(The practice of ‘reference’ does not presuppose the reality of one world, a single ‘objective’ world about which interpretations would differ. It presupposes the existence of world – which appears reasonable enough – but remains agnostic on whether one’s reference to world is to the same world as other languages’ references. It could very well be, but who would know?)

(Admittedly problematically, assume ‘English law’. There is no way in which a French comparatist’s ‘English law’ could legitimately be said to be referring to an ‘English law’ that would be the same as an Australian comparatist’s ‘English law’, both of which would be apprehended as interpretations of something that can possibly, reasonably be said to exist as ‘English law’.)

If the French language cannot say ‘fairness’, it does not mean that fairness does not exist in France, but that it cannot exist for this linguistic community (or that this community cannot say that fairness exists, that it cannot epistemically access fairness). So, it is not that what is, contingently, linguistically, pre-structured in each historical language determines what entities are, but that it determines what entities can be for a linguistic community, that it delineates the frontiers of scrutability of reference. (So, it is not that what is, contingently, legally, pre-structured in each historical law determines what entities are, but that it determines what entities can be for a legal community, that it delineates the frontiers of scrutability of reference.)

No interpretation of world can make world not-independent of this interpretation (in this sense, world is always constituted by interpretation, exists and can only exist intralinguistically and intratheoretically) and no interpretation of world can

89 Peter Winch, *Ethics and Action* (London: Routledge and Kegan Paul, 1972), p. 12.

90 W.V. Quine, *Ontological Relativity and Other Essays* (New York: Columbia University Press, 1969), p. 48 [hereinafter *Ontological Relativity*]. See also ‘The Elusiveness of Reference’, in *Sprache, Theorie und Wirklichkeit*, ed. by Michael Sukale (Frankfurt: Peter Lang, 1990), p. 22: ‘[M]eaning determines reference within each fixed ontology’; *Word and Object* (Cambridge, MA: MIT Press, 1960), p. 53: ‘[T]erms and reference are local to our conceptual scheme.’

make world not not-independent of this interpretation (world is whatever it is irrespective of whatever one says about it).

(If one wanted to understand another language, one would have to step out of one's 'own'. But, assuming this to be possible – which it is not –, one would no longer have a language with which to do any understanding.)

(Everything that is contributing to experience of world is very much a part of it. As one sees world, where one is, when one is, and who one is affects world: it is part of what world is. It is not just that reading *The Merchant of Venice* in the twenty-first as opposed to the sixteenth century does not mean the same thing. It is also that the meaning of the play varies: the mark that is the play has different meanings (or is made to perform different meanings, what the text means being subsumed by what it does). It is, therefore, that the play varies (and only in a superficial, and therefore inadequate, way is it said to be the same play). In this sense, the play is not an object. And 'objecthood' is defeated even as reading is irreducibly re-presentational: the difference between interpretations becomes a difference between plays and the difference between plays concerns a difference between the individuals who are interpreting the plays. It is not so much that there is disagreement between two individual positions since there is nothing, no fact of the matter, to disagree about (as there would be, say, if two individuals were debating the square root of 625). Rather, there is agreement about differentiation. The difference is a conflict of interpretations around determinacy/indeterminacy of meaning – what Jacques Derrida aptly calls a 'conflic[t] of force': different things are meant by those who hold one position (or speak one language) and those who hold another (or who speak another language).⁹¹ Ultimately, the difference is a difference in what the interpreters are. It is a difference about identity.⁹²)

There is always, then, the *differend* between self and other.⁹³ (If one can only refer to world in an interpretive fashion, this means that world only acquires meaning within a differential process.⁹⁴)

91 Derrida, *supra*, note 18, p. 267 ['*conflicts de force*'].

92 For this argument, see Michaels, *supra*, note 43, pp. 19–81.

93 I borrow the neologism 'differend' from the English translation of Jean-François Lyotard, *Le différend* (Paris: Editions de Minuit, 1983). See *The Differend*, transl. by Georges Van Den Abbeele (Minneapolis, MN: University of Minnesota Press, 1988).

94 See Derrida, *supra*, note 18, p. 273. For an exploration of Derridean difference with specific reference to language and translation, see Kathleen Davis, *Deconstruction and Translation* (Manchester: St. Jerome Publishing, 2001), pp. 10–19.

(The differend continues even as the self purports to subject the other to the rule of his self-identity, for example through an extension of his own way of life.)⁹⁵

(And the differend continues even as I decide that things between us cannot go any further, that your divergent view can remain what it is, for this is a determination that I make on the basis of my own set of assumptions.)

(‘[I]f the Arabs call Mars Qahira and the Japanese call it Kasei, they are not disagreeing. It can only make sense to say that people who give Mars different names are disagreeing if they think that the name they are giving it is not merely its name in their language but its right name – its name for itself. And even if – to imagine an instance of “cultural change” – the people who call Mars Qahira should begin calling it Kasei, it wouldn’t be because they had been argued out of the old name.’⁹⁶ The process is rather one of ‘resignification’: ‘Resignification understands giving things new names as giving them the names you want them to have, rather than as giving them what seem to you the right names.’⁹⁷)

The fact that the meaning of terms used by speakers and hearers do not coincide because of a difference in their background knowledge need not imply that they cannot be referring to the same entity. Assume a statute prohibiting the wearing of conspicuous religious signs or ‘*signes religieux ostensibles*’ at school. The (French) speaker and the (Canadian) hearer may mean something different by ‘*signes religieux ostensibles*’. Let us say one means ‘X’ and the other means ‘Y’. Yet, although no one could possibly know this, it could be that ‘X’ and ‘Y’ overlap point for point. Even the fact that the speaker’s account does not coincide with the hearer’s account does not mean that both accounts do not, in fact, identify overlapping ‘referents’ or, even, an identical ‘referent’ such that both interlocutors could be, strictly speaking, talking about ‘the same thing’ (one way of making this argument is to say that different extensions need not entail different intensions). Again, though, one could never possibly know, and one must be content with a working understanding. The fact that speaker and hearer offer different accounts (the speaker has in mind one meaning of ‘*signes religieux ostensibles*’ and the hearer has in mind another) does not mean that there cannot be negotiation so that one can defer to the other’s meaning not because it is right but as part of a process of resignification. In this sense, epistemologization of reference, that is, the thesis that ‘referring’ means ‘identifying’, is perhaps best understood as ‘identifying provisionally’ or ‘identifying under reserve’ such that any identification of ‘referents’ can be resignified (this seems much more reasonable than denying an

95 For the view that ‘[s]eriously to study another way of life is necessarily to seek to extend our own – not simply to bring the other way within the already existing boundaries of our own’, see Winch, *supra*, note 89, p. 33 [my emphasis].

96 Michaels, *supra*, note 43, p. 120.

97 *Ibid.*

epistemic dimension to reference, than de-epistemologizing reference so as to make it non-epistemic, the point being that linguistic contact with the 'referent' does not necessarily exhaust the matter of epistemic contact with it).

Language being responsible for world-disclosure, that is, for the constitution of entities that can 'appear' to individuals, it predetermines what can/cannot be predicated meaningfully of these entities. Hence, it predetermines beliefs about them rather than their truth or falsity.

The hermeneutical insight into the pre-judgemental structure of understanding is not the ontologization or hypostatization of tradition as truth. For one thing, one is aware that any 'consensus' within tradition can have been achieved through distortion and compulsion. Jacques Derrida refers to 'the colonial structure of every culture' and mentions the 'terror' wrought by culture, whether 'soft, discreet, or screaming'.⁹⁸ In the words of John Caputo, 'tradition is largely the story of the winners while the dissenters have been excommunicated, torched, castrated, exiled, or imprisoned.'⁹⁹

The normative presuppositions underlying the constitutive character of language do not imply the epistemic postulate of immediate access to the entity 'as such'. Rather, the epistemic content concerns the entity 'under a certain account'. One can meaningfully commit oneself to the existence of a 'referent', but not to the particular way in which it is described by other speakers. Consider the word 'law' envisaged as an indexical or implicitly indexical expression. It does not contain any descriptive conditions that must necessarily and sufficiently be satisfied by 'entities' in order to allow reference to them as 'law'. Reference to an 'entity' belonging to 'law' cannot be equated with ascription to it of a determinate property that would be regarded as a criterion for 'membership'. While a green lemon is still a lemon and a three-legged tiger is still a tiger, 'law' is that which bears a certain relation to 'law' *around here at this time* (to paraphrase Wittgenstein, law is what explanation of law explains).¹⁰⁰ In other words, law's extension is partly determined indexically but in important ways, it is fashioned culturally.

⁹⁸ Jacques Derrida, *Le monolinguisme de l'autre* (Paris: Galilée, 1996), pp. 69, 45 and 45, respectively [*'la structure coloniale de toute culture'/'terreur'/'douce, discrète ou criante'*].

⁹⁹ John D. Caputo, 'Gadamer's Closet Essentialism: A Derridean Critique', in *Dialogue and Deconstruction: The Gadamer-Derrida Encounter*, ed. by Diane P. Michelfelder and Richard E. Palmer (Albany, NY: State University of New York Press, 1989), p. 264.

¹⁰⁰ I refer to the definition of 'meaning' propounded by Wittgenstein, who, in this regard, claims that 'what the explanation of meaning is [...] will be the meaning': Ludwig Wittgenstein, *The Blue Book*, in *The Blue and Brown Books* (Oxford: Blackwell, 1958), p. 1 [1933].

Approaching the matter from an intercultural perspective, it is not, then, that there is not the same reality for speakers of different languages but that these speakers can only ‘mean’ it in idiosyncratic ways, which entails that there can be no communication across languages. Let us refer to this implication as the incommensurabilist consequence. Each language having developed through contingent historical, traditional, epistemological, social – that is, cultural – processes, there is no *characteristica universalis*.

(Gorgias’s lost treatise, *On What Is Not*, ‘offered proofs of three propositions: (a) nothing is; (b) even if it is, it is incomprehensible to man; (c) even if it is comprehensible, it is incommunicable to the next man’ – which entails that ‘speech cannot communicate the truth’.¹⁰¹)

In the absence of meta-language, the differend remains immune to the logic of ‘objective’ adjudication and cannot be brought to the bar of some tribunal of universal rationality. The differend is not truth-apt. It is, in fact, an abyss.¹⁰²

I apprehend the articulation of difference as suspended in a spectral dimension between presence – what one sees (for example, the signifier) – and absence – what one does not see, but what is there nonetheless (for example, the *trace*, be it ‘historical’, ‘economic’, ‘sociological’, or whatever, which an archival *analysis* can elucidate).¹⁰³ (Here, ‘analysis’ follows ‘[t]he most ancient usage’, that which, according to Heidegger, can be found in Homer’s *Odyssey* and which refers to ‘what Penelope did night by night, namely, unravel the fabric she had woven during the day’.¹⁰⁴ Cf. ‘comparative *analysis* of law’, that is, comparison-at-law as an unweaving, dismantling, unbinding, emancipating, liberating intervention

101 D.M. MacDowell, ‘Introduction’, in Gorgias, *supra*, note 9, pp. 11 and 14, respectively.

102 The word ‘abyss’ (*Abgrund*) appears in Celan’s correspondence with specific reference to the separation between languages: Lyon, *supra*, note 31, p. 37.

103 For an exploration of ‘difference’ within comparative legal studies, see Pierre Legrand, ‘The Same and the Different’, in *Comparative Legal Studies: Traditions and Transitions*, ed. by Pierre Legrand and Roderick Munday (Cambridge: Cambridge University Press, 2003), pp. 240–311 [hereinafter *Same and Different*]; Pierre Legrand, ‘Sur l’analyse différentielle des juriscultures’, *Revue internationale de droit comparé*, 1999, p. 1053. See also Pierre Legrand, ‘On the Singularity of Law’, 47 *Harvard International Law Journal* 517 (2006) [hereinafter ‘Singularity’]. The notions of ‘spectrality’ and ‘trace’ are, of course, key Derridean motifs.

104 Martin Heidegger, *Zollikon Seminars*, ed. by Medard Boss and transl. by Franz Mayr and Richard Askay (Evanston, IL: Northwestern University Press, 2001), p. 114 [23 November 1965]. For the original text, see *Zollikoner Seminare*, ed. by Medard Boss (Frankfurt: Vittorio Klostermann, 1987), p. 148 [‘(Der älteste Gebrauch des Wortes *Analyse*) wird dort gebraucht für das, was Penelope nächtlich tut, nämlich für ihr Auflösen des Gewebes, das sie tagsüber gewebt hatte’].

– and, therefore, as a risk.) Difference marks relatedness (‘A’ is different *from* ‘B’), which is a connection.¹⁰⁵ Against that background, I approach incommensurability as being primordially a relational concept which concerns the intrinsic flux and tension between differentials of force.

(The comparatist-at-law bears witness to the differend. He acknowledges singularity – although he knows that it must remain opaque to language since no language can account for singularity – and strives to give expression to the discontinuity of experience, thereby revealing an ethical commitment to recognition and respect.)

(Note that there is nothing here to suggest that the differend is immune to critique. The point, though, is that because any understanding is a ‘participating understanding’ [*teilnehmende(s) Verstehen*],¹⁰⁶ whatever critique is brought to bear is *situated*.)

Incommensurability is the unthought of law. As such, the fact of linguistic incommensurability remains unacknowledged,¹⁰⁷ as does the fact of legal incommensurability.¹⁰⁸ But this reaction is complex, for lawyers, just as they overlook linguistic and legal incommensurability, simultaneously register it. Thus, linguistic and legal incommensurability is at once (empirically) present and (ideologically) absent. In other words, lawyers know how languages and laws differ, but act as if they did not know it: knowledge and not-knowledge are, somewhat perversely, operating concurrently. This oscillation between the fact of incommensurability, on the one hand, and the fantasy of translatability/communicability applied like a patch on the fact of incommensurability found to be ideologically objectionable, on the other hand, offers an illustration of what Freud, examining one’s relation to world, called ‘ego-splitting’ (*Ichspaltung*).¹⁰⁹ But why the disavowal of incommensurability? Why the rejection of the differend? Freud

105 See Gilles Deleuze, *Différence et répétition* (Paris: Le Seuil, 1968), p. 154, who observes that ‘difference relates immediately to one another the terms that differ’ [*la différence rapporte immédiatement les uns aux autres les termes qui diffèrent*].

106 Bultmann, *supra*, note 33, p. 221.

107 But see Simone Glanert, ‘Zur Sprache gebracht: Rechtsvereinheitlichung in Europa’, (2006) 14 *European Review of Private Law* 157; ‘La langue en héritage: réflexions sur l’uniformisation des droits en Europe’, *Revue internationale de droit comparé*, 2006, p. 1231.

108 See Pierre Legrand, ‘Comparative Legal Studies and the Matter of Authenticity’, (2006) 1 *Journal of Comparative Law* 365.

109 For example, see Sigmund Freud, ‘Splitting of the Ego in the Process of Defence’, in *The Standard Edition of the Complete Psychological Works of Sigmund Freud*, transl. by James Strachey, vol. XXIII (London: Hogarth Press, 1964), pp. 271–8 [†1940]. For the original text, see *Die Ichspaltung im Abwehrvorgang*, in *Gesammelte Werke*, vol. XVII (Frankfurt: S. Fischer, 1941), pp. 57–62.

famously claimed that the source of this resistance was ‘unknown’.¹¹⁰ I argue that the key to an understanding of the negative apprehension of the differend lies in the fact that what Jacques Derrida terms ‘différance’ (*différance*) – understood here as the force that generates effects of difference – is regarded as strange/uncanny and generates fear and hostility.¹¹¹ Indeed, Nietzsche refers to ‘injury, assault, exploitation, destruction’ being intrinsic to difference.¹¹² The generally defensive response to differentiation must be envisaged in relation to the way in which, on account of the interpellation generated by ‘more-than-one’ meaning, difference as it is brought to the psyche is linked to the tension and pain that are congruent with upheaval (of one’s fixity of meaning) and indeterminacy (of meaning).

An encounter with what is other than oneself (the differentiating other) is primordially uncanny. Since the other is not part of what I consciously consider to be my self and yet since it emerges from within me (*I see it*), it has to provoke the feeling that it is at once ‘not-me’ and ‘me’. It leaves one structurally undecided about whether the other means ‘x’ or ‘not-x’. It leaves one vertiginously undecided in relation to the most basic question: Is it me? Is it not me? *What about me?*

(An elderly gentleman, Uncle Theo, is sitting with his twin niece and nephew while they play on the seashore. The beach is a source of acute discomfort to Uncle Theo. Although the children’s noise and exuberance bother him, what really makes Uncle Theo most anxious is the manifold variety of things. As if twinning was not enough of an ontological disturbance, there are all those pebbles on the beach. Because each pebble is clamouring in its particularity, the totality of them is threatening the intelligibility and the manageability of world. Uncle Theo is a man who can only negotiate the possibility of plurality if the many can be reduced to a few or, best of all, to one. While the twins display a childlike delight in variety, Uncle Theo exhibits a plethoraphobic distaste for multiplicity and randomness. His preoccupation with perceptual and conceptual tidiness shows Uncle Theo as the

110 Sigmund Freud, *Group Psychology and the Analysis of the Ego*, in *The Standard Edition of the Complete Psychological Works of Sigmund Freud*, transl. by James Strachey, vol. XVIII (London: Hogarth Press, 1955), p. 102 [1921]. For the original text, see *Massenpsychologie und Ich-Analyse*, in *Gesammelte Werke*, vol. XVII (Frankfurt: S. Fischer, 1941), p. 111 [*‘unbekannt’*].

111 For a sophisticated investigation of the motifs of ‘difference’ and ‘différance’ in Derrida’s work, see Rodolphe Gasché, *Inventions of Difference* (Cambridge, MA: Harvard University Press, 1994).

112 Friedrich Nietzsche, *On the Genealogy of Morals*, ed. by Walter Kaufmann and transl. by Walter Kaufmann and R.J. Hollingdale (New York: Vintage, 1989), p. 76 [1887] (hereinafter *Genealogy*). For the original text, see *Zur Genealogie der Moral*, in *Werke*, ed. by Giorgio Colli and Mazzino Montinari, vol. VI/2 (Berlin: Walter de Gruyter, 1968), p. 328 [*‘ein Verletzen, Vergewaltigen, Ausbeuten, Vernichten’*] (hereinafter *Genealogie*).

typical lawyer, that is, as someone who is dismayed and disturbed by difference, who *wishes it away*.¹¹³)

‘The law becomes a sort of reality imposed upon the social data, shaping it, and becoming in the end more “real” than the facts.’¹¹⁴

Anchoring themselves firmly in nonrelatedness to world,¹¹⁵ lawyers earnestly seek tranquillization against any differential disruption wrought by the insistent existentiality of languages and laws. Freud refers to ‘Eros’ – or the pleasure principle – as ‘the force that introduces disturbances into the process of life’.¹¹⁶

Specifically, there is (or there must be) one-law, the matter of the language or languages in which this one-law is written somehow, in lawyers’ eyes, not affecting the ‘oneness’ sought by them. It is as if the oneness of law, by virtue of the intellectual and aesthetic authority it is deemed to command, expelled linguistic pluralism from the realm of relevance and conferred upon it a kind of ‘excremental’ value.¹¹⁷ One-law is here revealed as an inherently theological

113 Iris Murdoch, *The Nice and the Good* (London: Vintage, 2000), pp. 152–3 [1968]. I follow closely Elizabeth V. Spelman, *Inessential Woman* (London: Women’s Press, 1988), pp. 1–2.

114 Jacques Ellul, *Histoire des institutions*, 9th edn, 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*’]. Cf. D.50.17.207: ‘A matter judicially decided is treated as true’ [‘*Res iudicata pro veritate accipitur*’]. My quotation is based on *The Digest of Justinian*, ed. by Alan Watson and transl. by various authors, vol. IV (Philadelphia, PA: University of Pennsylvania Press, 1985), p. 969 [533].

115 For example, see Pierre Schlag, *The Enchantment of Reason* (Durham, NC: Duke University Press, 1998), p. 128: ‘Not only must the legal self be severed from its objects of inquiry, but it must also be separated from its formative and environmental contexts.’ See also Theodor W. Adorno, *Negative Dialectics* (London: Routledge, 1973), p. 309: ‘For the sake of an unbroken systematic, the legal norms cut short what is not covered, every specific experience that has not been shaped in advance; and then they raise the instrumental rationality to the rank of a second reality *sui generis*’ [1966]. For the original text, see *Negative Dialektik* (Frankfurt: Suhrkamp, 1966), p. 304 [‘*Die Rechtsnormen schneiden das nicht Gedeckte, jede nicht präformierte Erfahrung des Spezifischen um bruchloser Systematik willen ab und erheben dann die instrumentale Rationalität zu einer zweiten Wirklichkeit sui generis*’].

116 Sigmund Freud, *The Ego and the Id*, in *The Standard Edition of the Complete Psychological Works of Sigmund Freud*, transl. by James Strachey, vol. XIX (London: Hogarth Press, 1961), pp. 46–7 [1923]. For the original text, see *Das Ich und das Es*, in *Gesammelte Werke*, vol. XIII (Frankfurt: S. Fischer, 1940), p. 275 [‘*die Libido (...), die Störungen in den Lebensablauf einführt*’].

117 See Claude Lévesque, ‘Au nom du réel’, in *Jacques Derrida*, ed. by Marie-Louise Mallet and Ginette Michaud (Paris: L’Herne, 2004), pp. 215–16.

enterprise, a religion as closed system basing itself on an axiomatics, expressing itself apodictically, resting on a neo-Kantian distinction between the true and apparent worlds,¹¹⁸ a dogma that cannot question its faith in unity and which, therefore, halts before the factual and renounces the challenge of facticity.¹¹⁹ This commitment to one-law involves a fetishistic process, a kind of compromise with world: it repudiates the registered multiplicity within world and the corollary requirement for interpretation of proliferous meaning (a fact) and substitutes for it willed unity and the corresponding expectation of fixity of meaning (a fantasy). Making a positivistic or formalistic move, lawyers locate truth in translatability (which is a variation on the theme of linguistic monism) and in communicability (which is also a variation on the theme of linguistic identity). One-law thus

118 According to Ugo Mattei, there exists, and there can be discovered, a ‘common core of efficient principles hidden in the different technicalities of [...] legal systems’: *Comparative Law and Economics* (Ann Arbor, MI: University of Michigan Press, 1997), p. 144. *Adde*: Mauro Bussani and Ugo Mattei, ‘The Common Core Approach to European Private Law’, 3 *Columbia Journal of European Law* 339 (1997–98), p. 340: ‘[C]ommon core research is a very promising tool for unearthing deeper analogies hidden by formal differences.’

119 For a formulation of this aspiration to unity which takes the form of a desire to kill proliferation of meaning within local law, see Rodolfo Sacco, *Introduzione al diritto comparato*, 5th edn (Torino: UTET, 1992), p. 47: ‘One tends to see, within a legal order, the will of the legislator, who creates the norm, and scholarship and judicial decisions that interpret and apply this will. In principle, the various rules (legal, scholarly, or judicial) should be identical. If there is a difference, it must be ascribed to an error on the part of the interpreter’ [*si tende a vedere, all’interno di un ordinamento, una volontà del legislatore, che crea la norma, e una dottrina ed una giurisprudenza che interpretano e applicano questa volontà. Le varie regole (legale, dottrinale, giudiziaria) sarebbero, in via di principio, identiche. Se una difformità esiste, ciò si deve imputare ad un errore dell’interprete*]. As Sacco underlines, ‘[t]his course of logic is of no use to the comparatist’ [*Questo iter logico non è fruibile dal comparatista*]. If comparatists-at-law pursue this unitary drive, the deterritorialization that they are claiming becomes strictly territorial (they are indeed looking beyond national law) and not at all intellectual (they are acting like national lawyers). This deterritorialization, then, becomes a ‘false exit’: Jacques Derrida, *Marges – de la philosophie* (Paris: Editions de Minuit, 1972), p. 162 [*‘fausse sortie*’].

decreases the tension and avoids the pain associated with difference.¹²⁰ There is at work a massive tension-reducing pleasure principle.¹²¹

For Lacan, there exists a constitutive antagonism lying at the heart of identity that concerns the Other rather than the other. One may find that the other's contribution is enriching (consider the other's culture or language), while showing, for instance at the political level, a fierce resistance to pluralism. This is because there is the Other, inherently inhuman – and thus unpersonalizable or resolutely abstract – and unerasable. While the individual can achieve an attenuation of the space that divides him from the other, his relation with the Other is insusceptible of this kind of accommodation. It is indeed the irreducibility of the Other that grounds the psychoanalytical conception of the unconscious. In the words of Lacan, 'the unconscious is the discourse of the Other.'¹²² This Other is the symbolic Other that impinges upon the subjectivity of the individual, that deprives him of his pleasure. And this symbolic Other is the order of language, which organizes itself according to its internal articulations in a realm apart from the individual, from which the individual is excluded (although he is represented therein, for instance on account of the pronoun 'I'), but through which the individual constructs himself: 'Symbols embrace the life of man in a network so complete that they join those who will engender him "through bone and flesh" before he comes into the world, that they bring upon his birth with the gifts from the stars, if not with the gifts from the fairies, the design of his destiny.'¹²³ What would be traces of the Other, this pseudo-person who begets language?¹²⁴ Consider how the frustration of desire is located in a primordial impossibility since the perfect coincidence between desire and its

120 Famously, Descartes excluded all facticity in order to sustain the view that a piece of wax that 'has just been taken from the honeycomb' and that has subsequently been put 'by the fire' remains the same wax: 'Any doubt on this issue would clearly be foolish.' I have explored the connection between such anti-heterogeneous scientificization and the adjudicative work of the French *Cour de cassation* in Pierre Legrand, 'Perspectives du dehors sur le civilisme français', in *Le droit civil, avant tout un style?*, ed. by Nicholas Kasirer (Montreal: Thémis, 2003), pp. 153–83. The quotations are borrowed from René Descartes, *Meditations on First Philosophy*, ed. and transl. by John Cottingham (Cambridge: Cambridge University Press, 1996), pp. 20 and 22 [1641]. The text originally appeared in Latin.

121 I have addressed this matter elsewhere: Pierre Legrand, 'The Return of the Repressed: Moving Comparative Legal Studies Beyond Pleasure', 75 *Tulane Law Review* 1033 (2001).

122 Lacan, *supra*, note 24, p. 16 ['*l'inconscient, c'est le discours de l'Autre*'] (emphasis omitted).

123 Lacan, *supra*, note 24, p. 279 ['*Les symboles enveloppent en effet la vie de l'homme d'un réseau si total qu'ils conjoignent avant qu'il vienne au monde ceux qui vont l'engendrer "par l'os et par la chair", qu'ils apportent à sa naissance avec les dons des astres, sinon avec les dons des fées, le dessin de sa destinée*'].

124 Lacan, *supra*, note 24, p. 9.

object can only be a myth: there is the incapacity for the individual to express what he wants to say. Thus, the autonomy of the individual is under threat since all must go ‘through the parades of the signifier’.¹²⁵ It is because the self confuses the Other and the other that he comes to think that it is the other who has deprived him of what he is missing and to feel resentment towards him. While it is language which is in effect depriving him, the individual gets to think that he must blame the other.

As much as the intense anxiety experienced by lawyers may make translatability/communicability feel like a fact, it remains a fantasy. Linguistic incommensurability is actively differentiating and generates a factual fragmentation that lawyers do not want to see. Preferring the flight from the anxiety generated by facticity, choosing to move away from integration with environment, from a bindingness with world that raises tension levels, from relation (again, difference is a force of relation), lawyers refuse to internalize difference (it would cause anguish) and choose to engage in dedifferentiation as a kind of auto-immune response to world, as a counterpoint to the trauma wrought by the life of languages,¹²⁶ as a denial of the vital differences that emerge from the fact of languages in world (again, each difference is a force). In the end, lawyers display a submissive, nihilistic attitude to life: they evince a desire for an ascetic ideal, for a nondifferentiated state of rest or equilibrium, a kind of world-negating principle, a oneness which is also a nothingness, a ‘*degré zéro*’ of complexity.

The lawyers’ ‘no’ to world, or to life, boasts ancient antecedents. Consider the Platonic notion of ideal forms situated in a supersensuous beyond. This philosophical doctrine is at the root of all devaluations of the sensuous, its most important offspring being Christianity.¹²⁷ Now, as soon as a supersensuous beyond

125 Lacan, *supra*, note 24, p. 628 [‘*par les défilés du signifiant*’]. See generally Jacques Lacan, *Le séminaire*, vol. XVI: *D’un Autre à l’autre*, ed. by J-A. Miller (Paris: Le Seuil, 2006).

126 For an excellent illustration of this intellectual and emotional move, see Jean-Paul Sartre, *Nausea*, transl. by Lloyd Alexander (New York: New Directions, 1964), pp. 126–32 [1938]. I address this text in relation to the French *Cour de cassation*’s apodictic strategy in Legrand, *supra*, note 120.

127 For an argument to the effect that the history of philosophy in the West is the history of a philosophy of the same whose hidden purpose has always been to find a means to attenuate the shock of alterity, see Paul Feyerabend, *Farewell to Reason* (London: Verso, 1987), p. 116: ‘Almost all [philosophers] praised oneness (or, to use a better word, monotony) and denounced abundance. Xenophanes rejected the gods of tradition and introduced a single faceless god-monster. Heraclitus heaped scorn on *polymathi’e*, the rich and complex information that had been assembled by commonsense, artisans and his own philosophical predecessors, and insisted that “what is Wise is One”. Parmenides argued against change and qualitative difference and postulated a stable and indivisible block of Being as the foundation of all existence. Empedocles replaced traditional information about

is posited, true value (or the value of truth) finds itself rooted in the beyond. When ultimate value (whether in Platonic or Christian terms) is located in the nonmaterial beyond, life itself, in all its variegated manifestations, becomes the negative fall away from the good – hence, the familiar condemnation of the sensuous, of the body and sexuality, of facticity, of diversity, of difference. Unity becomes the original good lost in the fall into the body and its hunger (showing itself through the drives). Ideals (say, ‘one-law’) appear as a defensive distortion of the drives, that is, they allow the good to be interpreted as a reaction against the bad of the drives (and of the body and of life).¹²⁸ Through the ‘artifice’ of the ideal,¹²⁹ through the oblivion of facticity, life moves away from the ‘yes’ to ‘more-than-oneness’ or difference, which is also a ‘yes’ to pain, as absence of suffering becomes the supreme good.¹³⁰ A ‘yes’ to ideals is a ‘no’ to multiplicity or difference, that is, to pain. It is a ‘no’ to facticity, to all the factual traces that are symptomatic of linguistic incommensurability. It is a move away from the uninterpretability-as-one built into difference. It is also a move away from the encounter with the impossibility or the limit of the interpretation of difference.¹³¹

the nature of diseases by a short, useless but universal definition. Thucydides criticized Herodotus’s stylistic pluralism and insisted on a uniform causal account. Plato opposed the political pluralism of democracy, rejected the view of tragedians such as Sophocles that (ethical) conflicts might be unresolvable by “rational” means, criticized astronomers who tried to explore the heavens in an empirical way and suggested tying all subjects to a single theoretical basis.’ See also Emmanuel Levinas, *En découvrant l’existence avec Husserl et Heidegger*, 3rd edn (Paris: Vrin, 2001), pp. 261–82. Indeed, for all their critical edge, even Heidegger’s ontological analysis of ‘Being’ and Gadamer’s reconciliative hermeneutics ultimately fail to escape this pattern. But see, for a very influential interpretation of Nietzsche as a philosopher of difference, Gilles Deleuze, *Nietzsche et la philosophie*, 3rd edn (Paris: Presses Universitaires de France, 1999) [1962].

128 See Paul Ricoeur, *De l’interprétation* (Paris: Le Seuil, 1965), pp. 40–44.

129 Nietzsche, *Genealogy*, *supra*, note 112, p. 120. For the original text, see *Genealogie*, *supra*, note 112, p. 384 [‘ein Kunstgriff’].

130 See Nietzsche, *Genealogy*, *supra*, note 112, pp. 129–34.

131 Historically, laws derived from the Roman model have favoured a monistic framework. On the understanding that if law is interpreted there is differentiation, interpretation (specifically, judicial and scholarly interpretation) has been devalued and denied. Already, the Digest deemed itself uninterpretable. See generally Fritz Pringsheim, ‘Justinian’s Prohibition of Commentaries to the Digest’, in *Gesammelte Abhandlungen*, vol. II (Heidelberg: Carl Winter, 1961), pp. 86–106 [1950]. Other notable statements against interpretation include the injunction of *conseiller d’Etat* Pussort in his 1665 memorandum to Louis XIV: ‘To prohibit the reference to any statute or ordinance other than the new one after its publication; the making of any annotation, commentary or collection of cases, under pain of punishment’ [‘Défendre de citer aucune loi ou ordonnance autre que la nouvelle après sa publication; de faire aucune note, commentaire, ni recueil d’arrests, à peine de punition’]. For a fuller exposition of the memorandum, see Jacques Vanderlinden, *Le concept de code en Europe occidentale du XIIIe au XIXe siècle* (Brussels: Editions de l’Institut de Sociologie de l’Université Libre de Bruxelles, 1967), p. 360. A further opinion

along these lines surfaced in von Cocceji's draft *Corpus Juris Fridericianum* of 1749: *Code Frédéric*, trans. from the German by A.A. de C.[ampagne], vol. I (n.pl.: n.publ., 1751), part I, bk I, tit. II, art. 10: 'We prohibit the making [*sic*] commentaries or dissertations on the whole body of law, or on any part of it. For most commentators, ignorant of the spirit and reason of the law, only occasion useless disputes.' The text is lifted from the English translation which, based on the French text, was published as *The Frederician Code*, vol. I (London: Richardson, 1761). Contempt for interpretation is possibly nowhere more apparent than in a royal cabinet order dated 14 April 1780, where Frederick the Great refers in the same breath to 'learned law' ('*Rechtsgelahrten*') and 'junk full of subtleties' ('*Subtilitätenkram*'): *Corpus Juris Fridericianum* (Berlin: Königlichem Akademie der Wissenschaften, 1781), p. xii. Indeed, the apotheosis of Frederick's casuistic enterprise, the *Allgemeines Landrecht für die preußischen Staaten* of 1794, made it clear that scholarship remained out of favour: 'Of the opinions of scholars, or of the old remarks of judges, no consideration shall be taken for future decisions.' For the original text, see *Allgemeines Landrecht für die preußischen Staaten*, ed. by C.J. Koch, vol. I (Berlin: Guttentag, 1878), 'Einleitung', art. 6 [old art. 8], p. 22 [*Auf Meinungen der Rechtslehrer, oder ältere Aussprüche der Richter soll, bei künftigen Entscheidungen, keine Rücksicht genommen werden*]. Napoleon is reputed, upon the appearance but a few years later of the first scholarly commentary on the French *Code civil*, to have exclaimed, 'My code is lost' ('*Mon code est perdu*'). I have been unable to find any reference to support the claim. What is clear, according to Las Cases, one of Napoleon's companions on St Helena, is that the Emperor was less than enthusiastic toward the whole idea of scholarly commentaries. For views attributed to Napoleon, see [E.] de Las Cases, *Mémorial de Sainte-Hélène: Journal de la vie privée et des conversations de l'empereur Napoléon à Sainte Hélène*, vol. III (London: Colburn/Bossange, 1823), VI, p. 235: 'No sooner had the code appeared that it was followed almost immediately, as if by way of supplement, by commentaries, explanations, developments, interpretations, and what not! And I used to exclaim: Sirs, we have cleansed the Augean stables, in the name of God let us not fill them once again!' [*A peine le code eut paru, qu'il fut suivi presque aussitôt, et comme en supplément, de commentaires, d'explications, de développemens, d'interprétations, que sais-je? Et j'avais coutume de m'écrier: Eh! Messieurs, nous avons nettoyé l'écurie d'Augias, pour Dieu ne l'encombrons pas de nouveau*]. In France, more than two hundred and fifty years after Montesquieu ('the judges of the nation are but the mouthpieces that utter the words of the law, inanimate beings that can modify neither its strength nor its rigour': *De l'esprit des lois*, in *Oeuvres complètes*, ed. by Roger Caillouis, vol. II [Paris: Gallimard, 1951], bk XI, ch. 6, p. 404 [1748] [*les juges de la nation ne sont (...) que la bouche qui prononce les paroles de la loi; des êtres inanimés qui n'en peuvent modérer ni la force ni la rigueur*']), nearly two hundred years after Royer-Collard ('The only true judgments are those that are inscribed in advance in the statutes': [Prosper] de Barante, *La vie politique de M. Royer-Collard*, 2nd edn, vol. I (Paris: Didier, 1863), p. 347 [1817] [*Il n'y a de vrais jugements que ceux qui sont écrits d'avance dans les lois*']), the position remains 'an administrative conception of the judge': Pierre Legendre, 'Qui dit légiste, dit loi et pouvoir', *Politix*, 1995, no. 32, pp. 30–31 [*une conception administrative du juge*']. For a discussion of codification as a means for 'the political power of the state to assert a central will uniformly in the whole of the community', see Csaba Varga, *Codification as a Socio-historical Phenomenon*, transl. by Sándor Eszenyi et al. (Budapest: Akadémiai Kiadó, 1991), p. 334. 'Codification has to do with discipline': Pierre Bourdieu, *Choses dites*

In a very important sense, though, a ‘no’ to difference – that is, to the life of languages – wishes to be transmuted into a ‘yes’ to life itself. In the end, this is why ‘slave morality’ (Nietzsche’s formula) says ‘[n]o to what is “outside”, what is “different”, what is “not itself”’,¹³² why it is opposed to any noble affirmation of difference, that is, of the sensuous, such that any affirmation of difference becomes evil for the slave. Along the way, the ideal purports to cancel hermeneutics – the brand of hermeneutics-as-energetics that cannot be divorced from the drives, since it is required to ascribe meaning to (variegated) world, and that is no longer required in the realm of ideals. (As Paul Ricoeur reminds us, hermeneutics is not only motivated by ‘obedience’ but also by ‘suspicion’, by a desire to challenge meaning – a ‘destructive’ and ‘iconoclastic’ vocation that can only sit uneasily with the proponents of ‘no-difference’.¹³³)

Nietzsche perspicuously observes that ideals have been around for a long time. Given that this is the case, he surmises that there must be a necessity of the first order within life itself promoting this ‘*life-inimical species*’,¹³⁴ prompting life to ‘turn against itself, *deny itself*’.¹³⁵ Nietzsche’s conclusion is that through the ideal, life wishes to protect itself from itself. Thus, the ideal emerges as a conserving or ‘yes’-force of life,¹³⁶ something which assumes a strategy of dedifferentiation.¹³⁷

(Paris: Editions de Minuit, 1987), p. 98 [‘*La codification a partie liée avec la discipline*’]. Most fascinatingly, interpretation is resisted by the interpreters themselves. But see, for a denunciation of the ‘connivance’ (*connivence*) between scholars and the lawmaker and a critique of scholarship’s predilection for a monistic approach to law, Philippe Jestaz and Christophe Jamin, ‘L’entité doctrinale française’, D.1997.Chron.167, p. 172. For a reply, see Laurent Aynès, Pierre-Yves Gautier and François Terré, ‘Antithèse de “l’entité”’, D.1997.Chron.229: *Quod erat demonstrandum*.

132 Nietzsche, *Genealogy*, *supra*, note 112, p. 36. For the original text, see *Genealogie*, *supra*, note 112, p. 284 [‘*Nein zu einem “Ausserhalb”, zu einem “Anders”, zu einem “Nicht-selbst”*’].

133 Ricoeur, *supra*, note 128, p. 36 [‘*obéissance*’/‘*souçon*’/‘*destructeur*’/‘*iconoclaste*’].

134 Nietzsche, *Genealogy*, *supra*, note 112, p. 117 [emphasis original in English]. For the original text, see *Genealogie*, *supra*, note 112, p. 381 [‘*diese lebensfeindliche Species*’].

135 Nietzsche, *Genealogy*, *supra*, note 112, p. 117 [emphasis original in English]. For the original text, see *Genealogie*, *supra*, note 112, p. 380 [‘*es sei denn, dass es sich etwa gegen sich selber wende, sich selbst verneine*’].

136 See Nietzsche, *Genealogy*, *supra*, note 112, pp. 120–21.

137 Indeed, so powerful is this ideal that even comparatists-at-law whose very *raison d’être* lies in diversity, espouse the goal. I illustrate this specific commitment in Legrand, ‘Same and Different’, *supra*, note 103, pp. 245–50. It is still fair to say that within comparative legal studies, registration and repudiation of difference remains the basic unconscious – and not-so-unconscious – process at work, no more so than when a comparatist observes ‘how similar our laws on tort are or, more accurately, how similar they can be made to look with the help of some skilful (and well-meaning) manipulation’: Basil

(Nietzsche adds, though, that on account of the ideal, the individual wish to preserve oneself by avoiding pain simultaneously emerges as ‘a limitation of the really fundamental instinct of life which aims at *the expansion of power*’ – something which, in effect, only *opening oneself to pain, raising tension*, will ultimately allow.¹³⁸)

(Correlatively, the differentialists’ dissatisfaction with idealists aims to be turned against the differentialists themselves: ‘the direction of *ressentiment* is altered.’¹³⁹ In this way, the differentialists’ instincts are kept in check – one is reminded of Freud’s ‘superego’, which features both an opposition to sexuality and the internalized destructiveness of guilt. The way in which the defenders of a Europe of multiple laws are branded as bad Europeans is one example of the manner in which advocates of multiplicity/difference are made to suffer from guilt or bad consciousness.)

Assume a meeting of different forces, say, the force of resistance to pluralism versus the force of what this resistance encounters. How does the law-mind typically react to the differentiating opening of pathways (in Freud’s parlance, ‘*Bahnungen*’)?¹⁴⁰ The abundance of pathways generates an increase of tension, a pain, which itself prompts an automatic unconscious tendency to relieve such tension via the pathway already opened, that is, already familiar to one. Mental energy wishes to travel down the pathway of the experience of satisfaction, which here must mean one-law. As it leaves behind the abundance of pathways and its attendant tension, one-law thus becomes tension-relieving or trauma-relieving law. The conscious association of perception (of one-law) with tension relief becomes a function of the (conscious or unconscious) elimination of the prior, tension-raising opening of differential pathways (that is, other laws). Through one-law, lawyers seek an ‘unbinding’ from world (which must also be understood as a discharge of tension). The ‘bindingness’ with world had raised tension levels. ‘Unbinding’ from world – that is, finding refuge in an ‘artificial’ or utopian one-law – is very

S. Markesinis, ‘Why a Code is Not the Best Way to Advance the Cause of European Legal Unity’, (1997) 5 *European Review of Private Law* 519, p. 520.

138 Nietzsche, *Gay Science*, *supra*, note 17, V, § 349, p. 291 [emphasis original in English]. For the original text, see *Fröhliche Wissenschaft*, *supra*, note 17, p. 267 [‘*einer Einschränkung des eigentlichen Lebens-Grundtriebes, der auf Machterweiterung hinausgeht*’].

139 Nietzsche, *Genealogy*, *supra*, note 112, p. 128 [emphasis original in English]. For the original text, see *Genealogie*, *supra*, note 112, p. 393 [‘*die Richtung des Ressentiment (ist) verändert*’].

140 See Sigmund Freud, *Project for a Scientific Psychology*, in *The Standard Edition of the Complete Psychological Works of Sigmund Freud*, transl. by James Strachey, vol. I (London: Hogarth Press, 1966), pp. 295–343, *passim* [1895/†1950]. For the original text, see *Entwurf einer Psychologie*, in *Gesammelte Werke*, vol. XIX (Frankfurt: S. Fischer, 1987), pp. 373–486, *passim*.

much a discharge of tension. It is a conversion of energetics into unbindingness. The tension-relieving effect depends on perceptual identity in the sense that only perception of 'oneness' can prompt the (sentiment that there has been) elimination of difference. (Observe that the awakening of consciousness about the virtues of one-law, including tension-relief, depends on the very differentiating process that it seeks to eliminate.)

Evidently, there can be no question of leaving local laws to stand in juxtaposition as so many monads for although law is nowhere but in its inscription it cannot be reduced to that inscription. The goal for comparatists-at-law must thus be to 're-inscribe' (or 'deconstruct') the locality of law beyond any spatio-temporal facticity (and to do so at another level than the metaphysical, whether celestial or tellurian) in order to make it amenable to cross-legal/cross-cultural/cross-traditional negotiation. Quite apart from partaking in an inexhaustible quest the outcome of which is marked by the comparatist's exhaustion (or the editor's final deadline), this process of 're-inscription' is, of course, an act of violence. But it is emphatically a 'lesser' violence than that wrought on the 'legal' by the metaphysician masquerading as comparatist-at-law and wielding the sticks of deracination and transcendentalization (or is it panoptic control?) through the invocation of a *praesumptio similitudinis* that is but the dedifferentiating positing of an identification which conceals its own violence-as-concealment (of the traces).

The alternative 'model' thus demands sensitivity to the matter of alterity without renouncing the ambition of knowledge. It must eschew the semblance of understanding that comes with the re-presentation of otherness-in-the-law in familiar, domestic terms, something which – under the guise of 'dialogue' – is an inadvertent invitation to the subjugation of others into a frame of reference that is actually alien to them and that can only result in the distortion of cultural meaning. A key point that must be readily appreciated is that I am not addressing this question in terms of any specific individual's idiosyncratic subjectivity – the kind of subjectivity that could be avoided if one did one's homework properly with a competent dose of fair-mindedness. The understanding into which the other is appropriated is not locked into the consciousness of an individual subject such that it would be of the appropriating individual's own making. When the interpreter comes to the other's law and purports to make sense of it, the anticipation of meaning that he brings to bear to the act of ascription is, in fact, profoundly historical and, in that sense, deeply traditional. The meanings that the interpreter brings to the act of interpretation were internalized by him as he was thrown into a tradition (linguistic, legal, and otherwise) that constituted him as the individual that he is (and as a member of the tradition). The basic point is that the individual's sphere of understanding is, in important ways, inherited and that it arises irrespective of any subjective preferences. One can, in fact, take matters one step further. Understanding does not emerge despite this historical

situatedness or traditionary embeddedness but is made possible because of it. How could any understanding happen without anticipation of meaning? And how could there be anticipation of meaning without belongingness to a tradition or culture? ‘An expectation is embedded in a situation from which it takes its rise.’¹⁴¹ This is, if you like, the work of history. But, of course, the basic question resurfaces. If history works to fashion my understanding of the world, how can I ever make sense of a law having come from ‘elsewhere’ (i.e., from another language, another history, another set of institutions, another array of social practices) other than on perspectival terms? The complication is compounded by the fact that foreign law too partakes in a vantage point that was shaped by a history, a politics, a society, and so forth. How can foreign law, which is situated, be accessible to my understanding which is itself situated, albeit within a different episteme? In other words, how can inter-traditional or inter-cultural understanding happen? ‘The great problem in [...] a hermeneutical approach [when the distance to overcome, needed for any understanding, is not just a distance within one single culture (...) or a temporal one (...), but rather the distance between two (or more) cultures, which have independently developed in different spaces (*topoi*) their own methods of philosophizing and ways of reaching intelligibility along with their proper categories] is the peculiar type of preunderstanding necessary to cross the boundaries of one’s own philosophical world.’¹⁴² Something like this difficulty already exists within a single culture. But, according to my hypothesis, we have something specifically different. Here, comparatists-at-law find themselves operating under a different *mythos* or horizon of intelligibility. Even assuming that understanding is possible while one is operating within one’s hermeneutic circle (that is, intra-hermeneutically), how can one ever understand something that does not belong to one’s circle, how can one ever ascribe meaning to an indigenous declension of the ‘legal’ expressing itself *elsewhere*? The short answer, in my view, is that one simply cannot do so. This is a crucial idea embodied in the notion of ‘incommensurability’ – which wants to fight the received view that there exists a law-text that would present itself in its ontological self-sameness both to those operating locally and to those operating elsewhere, that the same law-text would come to language in different traditions and yet would somehow ‘unite’ traditions

141 Wittgenstein, *supra*, note 12, § 67, p. 14 [‘Eine Erwartung ist in einer Situation eingebettet, aus der sie entspringt’].

142 See Raimundo Panikkar, ‘What Is Comparative Philosophy Comparing?’, in *Interpreting Across Boundaries*, ed. by Gerald J. Larson and Eliot Deutsch (Princeton, NJ: Princeton University Press, 1988), p. 130. For an argument showing the limits of Gadamerian hermeneutics with specific reference to cross-cultural understanding, see Marina Vitkin, ‘The “Fusion of Horizons”: On Knowledge and Alterity’, 21 *Philosophy & Social Criticism* 57 (1995). Cf. Arendt, *supra*, note 86, p. 43: ‘Within a homogeneous human community, the essence of the table is indicated unequivocally by the word “table”, and yet as soon as it arrives at the frontier of the community, it vacillates’ [‘Innerhalb einer homogenen Menschengemeinschaft wird das Wesen des Tisches durch das Wort Tisch vereindeutigt, um doch gleich an der Grenze der Gemeinschaft ins Schwanken zu geraten’] (1950).

even as they bring the law-text to language across cultural boundaries. It is not that there is ‘something’ (a law-text) that the local interpreter would see in one aspect and that the foreign interpreter – let us say, the comparatist – would see in a different aspect as allowed by his own perspective. It is, rather, that there is no ‘unique’ law-text or – which is another way to put the matter – that the law-text is inherently historically and linguistically constituted in the sense that it can only exist from within a historical and linguistic perspective, from within an episteme, and that it cannot be envisaged as existing otherwise. The law-text, and the law *tout court*, cannot transcend perspective. In the words of Alasdair MacIntyre, ‘[t]here is no standing ground, no place for enquiry, no way to engage in the practices of advancing, evaluating, accepting, and rejecting reasoned argument apart from that which is provided by some particular tradition or other.’¹⁴³ What is said of moral philosophy can be said of law, that is, that ‘the evaluative and normative concepts, maxims, arguments and judgments [...] are nowhere to be found except as embodied in the historical lives of particular social groups and so possessing the distinctive characteristics of historical existence: both identity and change through time, expression in institutionalized practice as well as in discourse, interaction and interrelationship with a variety of forms of activity.’¹⁴⁴ Like language, for example, which can only name in such a way, law is tied to what it names. The fact is that ‘[w]e have not got a language which will serve as a permanent neutral matrix for formulating all good explanatory hypotheses, and we have not the foggiest notion how to get one.’¹⁴⁵ And the further fact is that we have not got a neutral law either: any purported metalanguage exists ‘in’ a language. Any claim about law is made in the terms of a law (and of a language): there is the ‘absolute impossibility of a metalanguage’ and the ‘impossibility of an absolute metalanguage’.¹⁴⁶

143 Alasdair MacIntyre, *Whose Justice? Which Rationality?* (Notre Dame, IN: Notre Dame University Press, 1988), p. 350.

144 Alasdair MacIntyre, *After Virtue*, 2nd edn (Notre Dame, IN: University of Notre Dame Press, 1984), p. 265.

145 Richard Rorty, *Philosophy and the Mirror of Nature* (Princeton, NJ: Princeton University Press, 1979), pp. 348–9 [emphasis original].

146 Derrida, *supra*, note 98, p. 43 [‘*impossibilité absolue de métalangage*’/ ‘*Impossibilité d’un métalangage absolu*’]. There is ‘[n]o historical metalanguage [that can] bear witness in the transparent element of some absolute knowledge’: Jacques Derrida, *Fichus* (Paris: Galilée, 2002), p. 57 [‘*Nul métalangage historique pour en témoigner dans l’élément transparent de quelque savoir absolu*’]. I have explored the matter of idiomaticity in Pierre Legrand, ‘Issues in the Translatability of Law’, in *Nation, Language, and the Ethics of Translation*, ed. by Sandra Bermann and Michael Wood (Princeton, NJ: Princeton University Press, 2005), pp. 30–50; Legrand, ‘Singularity’, *supra*, note 103. Like Derrida, ‘I never cease to decapitate metalanguage or rather to plunge its head back into the text’: Jacques Derrida, *Glas* (Paris: Galilée, 1974), p. 132 [‘*je ne cesse de décapiter le métalangage ou plutôt de lui replonger la tête dans le texte*’].

How far can a comparatist who has assimilated the epistemological assumptions of a legal tradition as actively forged and reinforced through a legal-cultural system of schooling within which he has been immersed come to edge understanding – in the strong sense of the term – closer to the experience of another legal culture and away from mere ventriloquism about that culture? Such is Dan Sperber's argument: '[Y]our understanding of what I am saying is not a reproduction in your mind of my thoughts, but the construction of thoughts of your own which are more or less closely related to mine.'¹⁴⁷ As Laurence Thomas observes, '[n]o amount of imagination in the world can make it the case that one has the subjective imprimatur of the experiences and memories of another.'¹⁴⁸ In effect, 'there is [...] *always* a remainder, much that I do not understand about the other person's experience and perspective.'¹⁴⁹ Acquired knowledge, then, is inevitably derivative or contingent, which is why linguistics teaches that 'the phonetic boundaries of bilingual speakers are never exactly the same as those for corresponding monolinguals'; in other words, the bilingual 'never reaches the ideal goal of a new phonological norm'.¹⁵⁰ Clearly, idealizing descriptions of extensive commonalities and co-operative mutualities supposedly presupposed by human communication obscure epistemological differences amongst verbal agents not least as regards the significant operation of asymmetrical relations between comparatists-as-observers and their interlocutors-as-observed. Is there then a reconstructive approach that would allow the comparatist to escape the situation in which he has always already been thrown? The answer cannot have much to do with 'contact' – that is, with anything like 'immersion'. The hermeneutic difficulty lies elsewhere for the issue concerns the absence of shared episteme. No quantity or intensity of contact can change anything to that dissonance: the law under scrutiny by the comparatist will continue to have been produced by a tradition and a culture that differ from the tradition and the culture having constituted the comparatist and within which he continues, perhaps unwittingly, to dwell. Both traditions and cultures still do not share an object.

147 Dan Sperber, *Explaining Culture* (Oxford: Blackwell, 1996), p. 58. This formulation reminds one of Homi K. Bhabha, *The Location of Culture* (London: Routledge, 1994), p. 31: 'the Other text is forever the exegetical horizon of difference, never the active agent of articulation.'

148 Laurence Thomas, 'Moral Deference', 24 *Philosophical Forum* 233 (1992), p. 235.

149 Iris Marion Young, 'Asymmetrical Reciprocity: On Moral Respect, Wonder, and Enlarged Thought', 3 *Constellations* 340 (1997), pp. 354–5 [my emphasis].

150 Ellen Bialystok and Kenji Hakuta, *In Other Words: The Science and Psychology of Second-Language Acquisition* (New York: Basic Books, 1994), p. 16. A fascinating study on the limits of acculturation is James P. Lantolf, 'Second Culture Acquisition', in *Culture in Second Language Teaching and Learning*, ed. by Eli Hinkel (Cambridge: Cambridge University Press, 1999), pp. 28–46. See generally Rod Ellis, *The Study of Second Language Acquisition* (Oxford: Oxford University Press, 1994), pp. 299–345. See also *supra*, note 82 and accompanying text.

(‘[T]here are limits to the degree of ultimate disagreement that can exist within a society (for without some degree of moral homogeneity it would not be a society); but there are no limits [...] on disagreement between societies.’¹⁵¹)

The very notion of ‘dialogue’ – which assumes that two interlocutors are speaking the same language – makes Jacques Derrida uncomfortable and prompts him to assert that he prefers the idea of *negotiation*.¹⁵² For him, the language that one hears is always another language. (One is unaccountably reminded of Beckett referring to ‘the simple and necessary and yet so unattainable proposition that their way of being we, [is] not our way and that our way of being they, [is] not their way’.¹⁵³) Of course, this is not to deny the intersections that unite Jacques Derrida and Hans-Georg Gadamer around an anti-positivist stance.¹⁵⁴ Derrida agrees with Gadamer that when it comes to language, the individual is *not in charge* and that, if anything, it is rather the other way around.¹⁵⁵ Yet, ultimately, Gadamer impels one ‘[t]o recognize one’s own in the alien’ and claims that ‘to become at home in [the alien] is the basic movement of spirit, whose being consists only in returning to itself from what is other’.¹⁵⁶ It is precisely this projection of self into the other, which means that knowledge of the other ultimately constitutes a way of achieving a deeper knowledge of self, that Derrida rejects. For him, such a Hegelian manifestation of the will to appropriate and assimilate the other to self, such symbolic violence being visited on the other, is inadmissible: ‘the same is the same only by being

151 Bernard Williams, *Morality* (Cambridge: Cambridge University Press, 1972), p. 19. In my view, it would be more helpful to refer to ‘differentiation’ across societies than to ‘disagreement’: *supra*, note 92 and accompanying text.

152 Jacques Derrida (with Pierre-Jean Labarrière), *Altérités* (Paris: Osiris, 1986), p. 85. Cf. Pierre Legendre, *Le désir politique de Dieu* (Paris: Fayard, 1988), p. 183: ‘dogmatic systems as such do not dialogue, [...] they can only negotiate’ [‘*les systèmes dogmatiques comme tels ne dialoguent pas, (...) ils ne peuvent que négocier*’] (emphasis omitted). *Adde*: Novalis, *supra*, note 8, p. 672: ‘Authentic dialogue is naked word-play’ [‘*das rechte Gespräch ist ein bloßes Wortspiel*’].

153 Samuel Beckett, ‘The Capital of the Ruins’, in *The Complete Short Prose*, ed. by S.E. Gontarski (New York: Grove Press, 1995), p. 277 [1946]. Cf. Heidegger, *Being and Time*, *supra*, note 26, p. 222: ‘we are at best always just “there” too.’ For the original text, see *Sein und Zeit*, *supra*, note 26, p. 239 [‘*Wir (...) sind höchstens immer nur dabei*’].

154 It is no doubt such commonalities that have allowed Derrida to praise hermeneutics as a form of deconstruction. See Derrida, *supra*, note 119, pp. 162–3.

155 Diane Michelfelder and Richard Palmer, ‘Introduction’, in Michelfelder and Palmer, *supra*, note 99, p. 2.

156 Gadamer, *Truth and Method*, *supra*, note 36, p. 14. For the original text, see *Wahrheit und Methode*, *supra*, note 36, pp. 19–20 [‘*Im Fremden das Eigene zu erkennen, in ihm heimisch zu werden, ist die Grundbewegung des Geistes, dessen Sein nur Rückkehr zu sich selbst aus dem Anderssein ist*’].

sensitive to the other.¹⁵⁷ According to Derrida, I do not hear the other when I claim to understand him since ‘the will to understand [constrains] the other to yield, to conform himself to the schemes of thought that I inflict on him and that bypass *his* specificity’.¹⁵⁸ Since understanding is always, despite itself, structurally so to speak, a prisoner of schemes and signs, ‘to understand’ is inevitably to integrate the other *nolens volens* into one’s system. To the extent that it claims an ‘interpretive totalization’,¹⁵⁹ hermeneutics must therefore be resisted. Indeed, Derrida opines that ‘*Verstehen*’ must concern not so much a continuous relation of mediation, but rather the *interruption* of such relation.¹⁶⁰ This interruption must manifest itself as ‘the condition of understanding’.¹⁶¹ For Derrida, the Gadamerian thesis of ‘understanding’ and his own claim of ‘non-understanding’ are ‘absolutely irreconcilable’.¹⁶² Consider the two positions. According to Gadamer, ‘[o]ne must look for the word that can reach another person. And it is possible for one to find it; one can even learn the language of the other person. One can cross over into the language of the other in order to reach the other. All this is possible for language as language.’¹⁶³ But Derrida objects to this brand of consensualism, this Gadamerian/Hegelian ‘fusion of horizons’ (*Horizontverschmelzung*),¹⁶⁴ which happens even if the other is remarkably different. The Gadamerian ‘*Aufhebung*’ suggests that the differentiation of horizons is merely a transitory phase destined to ‘sublate’ itself in a consensus or fusion.¹⁶⁵ For his part, Derrida asserts that sameness between *interpretans* and *interpretandum* cannot be envisaged: there is

157 Derrida, *supra*, note 13, p. 95 [‘*le même n’est le même qu’en s’affectant de l’autre*’].

158 Jean Grondin, *L’herméneutique* (Paris: Presses Universitaires de France, 2006), p. 103 [‘*la volonté de comprendre (contraint) l’autre à se plier, à se conformer aux schèmes de pensée que je lui impose et qui passent, par le fait même, à côté de sa spécificité*’] (emphasis original).

159 Jacques Derrida, *Schibboleth* (Paris: Galilée, 1986), p. 50 [‘*totalisation interprétative*’]. In 1986, in a note added to *Truth and Method*, *supra*, note 36, p. 299 (for the original text, see *supra*, note 36, p. 305), Gadamer showed sensitivity to this argument. Grondin, who was a close disciple of Gadamer, discerns here the possible influence of Derrida: *supra*, note 159, pp. 104–5.

160 Jacques Derrida, ‘Three Questions to Hans-Georg Gadamer’, transl. by Diane Michelfelder and Richard Palmer, in Michelfelder and Palmer, *supra*, note 99, p. 53.

161 Jacques Derrida, *Béliers* (Paris: Galilée, 2003), p. 21 [‘*la condition de la compréhension*’].

162 Jacques Derrida, *L’écriture et la différence* (Paris: Le Seuil, 1967), p. 427 [‘*absolument inconciliables*’].

163 Hans-Georg Gadamer, ‘Destruktion and Deconstruction’, transl. by Geoff Waite and Richard Palmer, in Michelfelder and Palmer, *supra*, note 99, p. 106.

164 For Gadamer’s recognition of a Hegelian influence on his thought, see *Wahrheit und Methode*, *supra*, note 36, p. 312. This reference is lost in the English translation: *Truth and Method*, *supra*, note 36, p. 307.

165 See generally Jean Grondin, ‘La fusion des horizons’, *Archives de philosophie*, 2005, pp. 401–18.

only ‘iterability’ (even what is repeated is never the same) and ‘différance’ (even what signifies never has a fixed or fixable meaning) – two idiosyncratic notions that allow one to open oneself to the idea of the singularity of the text and to the further idea of the strangeness of the text, that is, to the decolonization of difference coercitively assimilated to sameness. For Derrida, ‘equivocity is in fact always irreducible’: ‘words and language in general are not and can never be absolute *objects*.’¹⁶⁶ There is more, for according to Derrida ‘we cannot – and *must* not – exclude, when someone is speaking, privately or publicly, when he teaches, publishes, preaches, orders, promises, or prophesizes, informs or communicates, that some force within him also efforces itself *not* to be understood, approved, accepted within the consensus.’¹⁶⁷ While Gadamer in the end seeks to eliminate everything having to do with specificity, that is, with difference – according to him, ‘whatever is alienating in a text, whatever makes the text unintelligible, is to be overcome and thereby cancelled out by the interpreter’,¹⁶⁸ which means that ‘understanding is, in the end, always possible’.¹⁶⁹ When Gadamer asserts that understanding must seek to fashion itself in conformity with the things themselves, for example, with ‘the *matter* of the text’, that is, with ‘that which the formal arrangement of the text mediates’,¹⁷⁰ and when he claims that understanding must therefore ‘keep something at a distance [...] as soon as it is rejected by the sense of the text itself’,¹⁷¹ Derrida, although also concerned with the idea of fidelity (he writes that ‘reading cannot legitimately transgress the text toward something else

166 Jacques Derrida, ‘Introduction’, in Edmund Husserl, *L’origine de la géométrie*, transl. by Jacques Derrida (Paris: Presses Universitaires de France, 1962), p. 106 [‘l’équivocité est en fait toujours irréductible’/‘les mots et le langage en général ne sont et ne peuvent jamais être des objets absolus’] (emphasis original) [1954].

167 Derrida, *supra*, note 33, p. 246 [‘nous ne pouvons – ni ne devons – exclure, quand quelqu’un parle, en privé ou en public, quand il enseigne, publie, prêche, ordonne, promet ou prophétise, informe ou communique, que quelque force en lui s’efforce aussi de ne pas être compris, approuvé, accepté dans le consensus’] (emphasis original).

168 Hans-Georg Gadamer, ‘Text and Interpretation’, transl. by Dennis J. Schmidt and Richard Palmer, in Michelfelder and Palmer, *supra*, note 99, p. 41 [1983]. For the original text, see ‘Text und Interpretation’, in *Gesammelte Werke*, vol. II (Tübingen: J.C.B. Mohr, 1986), p. 350 [‘Das Befremdende, das einen Text unverstündlich macht, soll durch den Interpreten aufgehoben werden’].

169 Gadamer, *Truth and Method*, *supra*, note 36, p. 217. For the original text, see *Wahrheit und Methode*, *supra*, note 36, p. 221 [‘am Ende (gelingt) immer wieder das Verstehen’].

170 Paul Ricoeur, *Du texte à l’action* (Paris: Le Seuil, 1986), p. 368 [‘(l) a chose du texte’/ ‘ce que l’agencement formel du texte médiatise’]. Gadamer refers to ‘the meaning of the text’ as ‘the thing itself’: *Truth and Method*, *supra*, note 36, p. 465. For the original text, see *Wahrheit und Methode*, *supra*, note 36, p. 469 [‘der Sinn des Textes’/ ‘die Sache selbst’].

171 Gadamer, *Truth and Method*, *supra*, note 36, p. 465. For the original text, see *Wahrheit und Methode*, *supra*, note 36, p. 469 [‘etwas fernzuhalten (...), sobald es von dem Sinn des Textes selbst verweigert wird’].

than itself'¹⁷²), defends the view that the 'real' and, specifically, the 'reality' of the text is out of reach and inappropriable and, indeed, that it cannot be shown 'as such' or 'in and of itself'.¹⁷³ Reading, for Derrida, must 'produce' a 'signifying structure', that is, '[it] must always aim toward a certain relation, overlooked by the writer, between what he masters and what he does not master of the schemes of the language he is using.'¹⁷⁴ 'What guides me', observes Derrida, 'is always untranslatability.'¹⁷⁵

'Peter' is not a translation of 'Pierre'.¹⁷⁶

'Law' is not a translation of 'droit' (how *could* 'law', which emerges in an idiographic legal culture such as England's, be a translation of 'droit', which is the product of a nomothetic legal culture like that governing in France?).

('And there stand those stupid languages, helpless as two bridges that go over the same river side by side but are separated from each other by an abyss. It is a mere bagatelle, an accident, and yet it separates.'¹⁷⁷)

In other words, 'X is translatable as Y' does not relate to the idea of sameness or synonymy of meaning. (The point is reminiscent of Quine's indeterminacy argument: it is not that no translation can ever be achieved but that no translation

172 Jacques Derrida, *De la grammatologie* (Paris: Editions de Minuit, 1967), p. 227 ['(la lecture) ne peut légitimement transgresser le texte vers autre chose que lui'].

173 Jacques Derrida, *Voyous* (Paris: Galilée, 2003), p. 198 ['comme tel'/'tel qu'en lui-même'].

174 Derrida, *supra*, note 172, p. 227 ['produire'/'structure signifiante'/'toujours viser un certain rapport, inaperçu de l'écrivain, entre ce qu'il commande et ce qu'il ne commande pas des schémas de la langue dont il fait usage'] (emphasis original).

175 Jacques Derrida, in Aliette Armel, 'Du mot à la vie: un dialogue entre Jacques Derrida et Hélène Cixous', *Magazine littéraire*, April 2004, p. 26 ['Ce qui me guide, c'est toujours l'intraductibilité'].

176 Jacques Derrida, *Psyché*, 2nd edn (Paris: Galilée, 1998), p. 209. Cf. Wilhelm von Humboldt, 'Aeschylus Agamemnon', in *Gesammelte Schriften*, ed. by Albert Leitzmann, vol. VIII (Berlin: B. Behr, 1909), p. 130, who makes the point that languages 'necessarily feature differences' ['Es muss nothwendig Verschiedenheiten darbieten'] (1816).

177 *Rilke Briefe*, ed. by the Rilke-Archiv in Weimar, vol. I (Frankfurt: Insel, 1950), p. 41 ['Und da stehen nun diese dummen Sprachen hilflos wie zwei Brücken, die nebeneinander über denselben Fluß gehen, aber durch einen Abgrund voneinander getrennt sind. Es ist nur eine Bagatelle, ein Zufall, und es trennt doch ...']. Rainer Maria Rilke's letter to Clara Rilke is dated 2 September 1902 and written from Paris. In it, the poet comments on the difficulty of communicating with Rodin on the occasion of his visit to him. Note that the word 'abyss' ('Abgrund') is also found in Celan, *supra*, note 102.

can ever be correct – and one reason for this has to do with the fact of inscrutability of reference, another Quinean thesis).¹⁷⁸

Jacques Derrida's deconstruction refutes the normalizing procedure that organizes a unique 'logos' of communication and preserves the idea of 'conversation'.¹⁷⁹ Derrida does not believe in the fusional understanding that animates Hans-Georg Gadamer. He does not believe in an exchange that would be finite and definite, in an agreement: 'I am not convinced that we ever really do have this experience that Professor Gadamer describes, of knowing in a dialogue that one has been perfectly understood or experiencing the success of confirmation.'¹⁸⁰ Alterity is insurmountable. In the midst of 'an unmasterable polytonality, with grafts, intrusions, interferences',¹⁸¹ 'a thousand possibilities will always remain open even as one understands something of this sentence that makes sense.'¹⁸² Paradoxically, it is this hermeneutics of resistance to univocity of meaning – this hermeneutics of polyphony, of heteroglossia, of dissemination, of 'destinerrance'¹⁸³ – which assists in conferring to deconstruction its affirmative dimension in that it asserts 'the possibility, for the other tone or for the tone of another, to come at any time to interrupt a familiar music'.¹⁸⁴ Deconstruction, as a gesture of heteronomic confidence, of Deleuzian deterritorialization, is 'more

178 See Quine, *Ontological Relativity*, *supra*, note 90, pp. 26–68. Two significant contributions introducing Quine's ideas are Peter Hylton, 'Quine on Reference and Ontology' and Robert Kirk, 'Indeterminacy of Translation', in *The Cambridge Companion to Quine*, ed. by Roger F. Gibson (Cambridge: Cambridge University Press, 2004), pp. 115–50 and 151–80, respectively. See also Hans-Johann Glock, *Quine and Davidson on Language, Thought and Reality* (Cambridge: Cambridge University Press, 2003).

179 Cf. Martin Heidegger, *Nietzsche*, transl. by David F. Krell, vol. II (New York: Harper & Row, 1984), p. 181: 'Yet we must guard against the presumption that we now belong among those who really understand. Perhaps we too are mere onlookers' [1961]. For the original text, see *Nietzsche*, vol. I (Pfullingen: Günther Neske, 1961), p. 445 ['*Doch hüten wir uns zu meinen, wir seien damit schon Verstehende; vielleicht schauen wir nur zu*'].

180 Derrida, in Michelfelder and Palmer, *supra*, note 99, p. 54.

181 Jacques Derrida, *D'un ton apocalyptique adopté naguère en philosophie* (Paris: Galilée, 1983), p. 67 ['*une polytonalité immaîtrisable, avec greffes, intrusions, parasitages*'].

182 Derrida, *supra*, note 18, p. 122 ['*Mille possibilités resteront toujours ouvertes, alors même qu'on comprend quelque chose de cette phrase qui fait sens*'].

183 This neologism is frequent in the work of Derrida. It wishes to convey the idea, intrinsically aporetic, according to which a meaning, although destined for an addressee, errs – which means, for instance, that it sometimes travels from the addressee to the addressor.

184 Derrida, *supra*, note 181, pp. 67–8 ['*la possibilité pour l'autre ton ou le ton d'un autre, de venir à n'importe quel moment interrompre une musique familière*']. The idea of 'deterritorialization' occurs frequently in the work of Deleuze. For example, see Gilles Deleuze and Félix Guattari, *L'anti-Oedipe* (Paris: Editions de Minuit, 1972); Deleuze and Guattari, *supra*, note 34.

than one language'.¹⁸⁵ And comparison, as a gesture of heteronomic confidence, of Deleuzian deterritorialization, is more than one law.

(As it allows for ethical space, that is, for the other's point of view, incommensurability enhances agency. It forces one to select one's 'truths'.¹⁸⁶)

What strategy, then? I claim that one or two (major) correctives to established comparative research about laws can be implemented. They will not solve the conundrum of incommensurability, which to my mind is insoluble. But they will significantly alleviate its impact. Accepting that the absence of epistemological commensurability cannot be taken to imply the lack of all referential interface (even though there can be no question of an identity of referents in terms of their extension or of an ascertainable identity of 'referents' in terms of their intension), any movement across different frames of references must avoid any ascription of truth-in-the-law. It must also eschew any attempt at synthesis – which, as it implements the synthesizer's standard of rationality, entails an (undue) appropriation and assimilation of the other's law and of the other-in-the-law. Indeed, any synthesis can only be achieved from within one (anticipatory) frame of reference and will inevitably lead to a partial dissolution of the other, that is, to an annexation.¹⁸⁷ A synthesis is, ultimately, a *thesis*. Rather, a relationship to what is meant, to what is being spoken of, must be arranged in the light of the determinative-disclosive function of (non-neutral) language. This must mean keeping the interference with the activity performed by the *interpretandum* itself to the minimum. I argue that the optimal way to achieve this limited-intrusion policy is to trace the *interpretandum* to the episteme whose construct it is. Note that, in this respect, the idea is not to restore 'the' meaning of a law-text but to pay attention to its constitution, that is, to recover the range of 'things' of which the law-text speaks. Only then can the comparatist avoid the worst implications of reductionism (cabining, domesticating and distorting the other's voice) and dogmatism (elevating one's position to measure the other's). Only then can one eschew, to an extent at least, receptivity to the other as already-imported, as already-and-irrevocably reduced to self. Only

185 Jacques Derrida, *Mémoires pour Paul de Man* (Paris: Galilée, 1988), p. 38 ['plus d'une langue'] (emphasis original).

186 See Joan C. Williams, 'Rorty, Radicalism, Romanticism: The Politics of the Gaze', [1992] *Wisconsin L.R.* 131.

187 Cf. Alasdair MacIntyre, *Three Rival Versions of Moral Enquiry* (Notre Dame, IN: Notre Dame University Press, 1990), p. 117: 'It is not that the adherent of one particular standpoint cannot on occasion understand some rival point of view both intellectually and imaginatively, in such a way and to such a degree that he or she is able to provide a presentation of it of just the kind that one of its own adherents would give. It is that even in so doing the mode of presentation will inescapably be framed within and directed by the beliefs and purposes of one's own point of view.'

then is comparison attuned to the voice of the other. Only then does comparison *listen*. Only then is comparison *other-wise*.

Although incommensurability is necessary to understand world as the relatedness of differentials of force, one can read the history of comparative legal studies as the forgetting of incommensurability of languages and of laws. Not to understand this forgetting is to remain mired in positivism despite claims to be going beyond it. It is to confine oneself to a Derridean ‘false exit’ (*supra*).

In a text devoted to Virginia Woolf’s *To the Lighthouse*, Gayatri Spivak writes at the outset that ‘[her] essay is not necessarily an attempt to illuminate *To the Lighthouse* and lead us to a correct reading’.¹⁸⁸ When will comparisons-at-law, finally mocking the illusory security that referential fixity of meaning would provide, defend the cause of another textuality by beginning their research on, say, the English law of estoppel with a sentence that could look like this: ‘This essay relating to the English law of estoppel is not necessarily an attempt to illuminate the English law of estoppel and lead us to a correct reading of it.’ When will comparatists-at-law finally admit that there cannot be inscription of law irrespective of them?

‘[F]rom time to time I have the consolation [...] of sinning willy-nilly against a foreign language, as I should love to do with full knowledge and intent against my own.’¹⁸⁹

When will comparatists-at-law learn to sin against foreign law and against their ‘own’ law or, more accurately, when will they learn to accept that they have always-already been sinning against law?

Untranslatability is not so much the fact of no-translation as it is that of the incessant not-translation.

One can say of laws what Humboldt said of languages: that the genuine significance of their study lies in their participation ‘in the formation of representation’.¹⁹⁰

Comparison is the incessant not-comparison. As such, it addresses – and must address – the endless exploration of *differends*. It must address legal cultures as constellations of radically different singularities-in-the-law, as sites for the

188 Gayatri Chakravorty Spivak, *In Other Worlds* (London: Routledge, 2006), p. 41 [1987].

189 Samuel Beckett, *Disjecta*, ed. by Ruby Cohn (New York: Grove Press, 1984), p. 173. This is Martin Esslin’s English translation of a letter written in German by Beckett on 9 July 1937. For the original text, see *id.*, p. 54.

190 Humboldt, *supra*, note 34, p. 119 [‘*an der Bildung der Vorstellungen*’].

exploration of incommensurable dissensus (across cultures) and of indomitable dissent (within cultures).

Individuals socialized in the law ‘have long been accustomed to think of law as something apart’: ‘The grand ideals of justice, of impartiality and fairness, have seemed to remove law from the ordinary, disordered paths of life.’¹⁹¹ The habitual, unexamined assumption is that if one has culture, one cannot have justice (or reason). In other words, the claim is that cultural erasure is a pre-requisite to *justice* (justice cannot emerge from localism, which is deemed to be prejudiced or biased – ‘prejudice’, of course, being considered a bad thing). But, if there is eradication or annihilation, how can there really be justice? The first order of business for comparatists trained as lawyers must be to value a justice that is neither eradicating nor annihilating and to appreciate that ‘[t]o say that the law is cultural does not by itself dismantle the force of the idea of justice’.¹⁹² On the contrary, as Emmanuel Levinas has observed, ‘justice is impossible unless he who renders it finds himself within proximity.’¹⁹³ For lawyers, to turn to culture is to acknowledge that *recognition of local specificity is the condition for justice*, the justice that is due to the other’s law and to the other-in-the-law.¹⁹⁴ This is not to say, of course, that comparative interventions purporting to elucidate difference across laws do not also imply a measure of violence. After all, the comparatist-at-law is implicated in the construction of difference: he works on the laws and engages them in a process of differential ‘re-inscription’. This is, of course, an act of violence – and, to this extent, violence permeates every comparison. But ‘a word that would manifest itself without any violence would be saying nothing.’¹⁹⁵ From the moment there is an ‘*articulation*’,¹⁹⁶ there cannot be non-violence. As he ceaselessly questions violence as part of his aspiration to justice, what the comparatist can/must do is to choose a lesser violence than that wrought on the ‘legal’ by positivists and formalists, those who claim to bear the authority of a justice already attained. By edging his way toward what there is – there *are* laws – the comparatist, while he may still fall short of anything like justice ‘as such’, ameliorates injustice.

191 Robert Post, ‘The Relatively Autonomous Discourse of Law’, in *Law and the Order of Culture*, ed. by Robert Post (Berkeley, CA: University of California Press, 1991), p. vii.

192 Carol J. Greenhouse, ‘Just in Time: Temporality and the Cultural Legitimation of Law’, 98 *Yale L.J.* 1650 (1989), p. 1650.

193 Emmanuel Levinas, *Autrement qu’être ou au-delà de l’essence* (Paris: Livre de Poche, 2001), p. 202 [‘*La justice est impossible sans que celui qui la rend se trouve lui-même dans la proximité*’] (1974).

194 For a challenging exploration of the irreducible connections between ‘justice’ and ‘singularity’, see Jacques Derrida, *Force de loi* (Paris: Galilée, 1994), pp. 11–63.

195 Derrida, *supra*, note 162, p. 218 [‘*Une parole qui se produirait sans la moindre violence (...) ne dirait rien*’].

196 Derrida, *supra*, note 162, p. 219 [‘*articulation*’] (emphasis original).

(Any comparison that restricted itself to understanding law ‘objectively’ would be engaged in the dedifferentiating, tranquillizing flight from pain or the uncanny into the realm of narcotizing ascetic ideals – such as truth. Theories which only view comparison as being concerned with ‘objects’ – say, representations as opposed to re-presentations – remain mired in sterile debates about the ‘objectivity’ of their practice. They constantly purport to escape from the inescapable tie to the comparatist as *interpretans* and to the diverse law as *interpretandum*: they cannot think of interpretation as differential relating.)

Yet, bearing in mind the difficulties associated with the production of a fully-fledged presence of the law, which must feature even what is seemingly absent from it but which haunts it nonetheless and, therefore, inhabits it – in other words, which must allow for the *spectrality* of the ‘legal’¹⁹⁷ – one must be content with something like comparative minimalism, a kind of *comparatisme malgré tout* or Beckettian ‘comparing *on*’ that allows one to move beyond parochialism and yet preserve a sound measure of epistemic modesty.¹⁹⁸ In an important sense, one compares because the alternative is worse. On the one hand, it would be unacceptably easy to say that since no full transcultural understanding can be had, one might as well remain confined to one’s own world. On the other hand, it would be oh-so-facile to fall for the utopia of one-law. The comparatist’s contrarian challenge is thus to recognize and to respect alterity. It is to foster a relationality across laws/languages as singularities. It is to develop knowledge that heralds ‘[a] new kind of arrangement which will not be that of a harmony, a concordance, or a conciliation, but which will accept disjunction or divergence as the infinite centre from which, through speech, a relation must be created – an arrangement which does not compose but juxtaposes, that is, leaves *outside* one another the terms coming into relation, respecting and preserving this *exteriority* and this distance as the principle – always already undermined of all meaning[:] [j]uxtaposition

197 Derrida refers to ‘a quasi-logic of the ghost that one ought to substitute, because it is stronger, to an ontological logic of the presence’: Derrida, *supra*, note 194, p. 68 [‘*une quasi-logique du fantôme qu’il faudrait substituer, parce qu’elle est plus forte qu’elle, à une logique ontologique de la présence*’].

198 The preposition ‘on’ is one of the most important motifs in Beckett’s work. For an exploration of this theme, see *The Grove Companion to Samuel Beckett*, ed. by C.J. Ackerley and S.E. Gontarski (New York: Grove Press, 2004), p. 421.

and interruption here assume an extraordinary force of justice'.¹⁹⁹ One compares because, well, how could one not?²⁰⁰

199 Maurice Blanchot, *L'entretien infini* (Paris: Gallimard, 1969), p. 453 [*'Un arrangement d'une sorte nouvelle, qui ne sera pas celui d'une harmonie, d'une concorde ou d'une conciliation, mais qui acceptera la disjonction ou la divergence comme le centre infini à partir duquel, par la parole, un rapport doit s'établir: un arrangement qui ne compose pas, mais juxtapose, c'est-à-dire laisse en dehors les uns des autres les termes qui viennent en relation, respectant et préservant cette extériorité et cette distance comme le principe – toujours déjà destitué – de toute signification. La juxtaposition et l'interruption se chargent ici d'une force de justice extraordinaire'*] (emphasis original). Blanchot was referring to René Char's verse.

200 In his well-known paper on world literature, Moretti claims that there is 'no other justification for the study of world literature [...] but [...] to be [...] a permanent intellectual challenge to national literatures': Franco Moretti, 'Conjectures on World Literature', *New Left Review*, Jan.–Feb. 2000, p. 68. In other words, the point of comparativism is to refute nationalism.

