

# What Is That, To Read Foreign Law?

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‘Only in the word, in the language, things become and are’.

—Heidegger<sup>1</sup>

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

—Lacan<sup>2</sup>

‘[N]o continent named America existed to be discovered’.

—Mignolo<sup>3</sup>

What is it like for a comparatist to read a foreign law-text? *What is that, to read a text, a law-text, a foreign law-text?* Instead of bracketing the practice through which foreign law is read (the question of what one is doing when reading foreignness has not even registered as an ancillary or transient concern on the part of comparatists-at-law), I want to attend to it, to foreground it. I aim to show how the foreign law-text comes into meaningful existence through the practice on account of which it is read. In other terms, I purport to offer my reading of a reader’s reading of a foreign law-text. As I contemplate the situation that I seek to address — that I do not propose to simplify, but to clarify — I hold that texts are the basic intellectual and disciplinary medium within comparative law. The reading of texts — not of facial expressions, tea leaves, or computer games — is thus the activity that conditions all of the comparatist’s knowledge and belief. Not only are comparative law’s principal materials texts, but the results of the comparatist’s investigations and analyses — the outcome of his textual critique — are themselves recorded textually. It follows that the reading of texts within comparative law is as elementary as it is frequent (every comparison depends on readings, and within comparison readings are incessant). I have

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<sup>1</sup> Heidegger, M (1958) *Einführung in die Metaphysik* Niemeyer at 11 [‘Im Wort, in der Sprache werden und sind erst die Dinge’].

<sup>2</sup> Lacan, J (1966 [1953]) *Ecrits* Editions du Seuil at 276 [‘C’est le monde des mots qui crée le monde des choses’].

<sup>3</sup> Mignolo, WD (2018) ‘The Decolonial Option’ in Mignolo, WD and Walsh, CE (eds) *On Decoloniality* Duke University Press at 144.

in mind the most usual artefacts: I am therefore thinking of a comparatist reading a foreign statute, a foreign judicial decision, a foreign law-book, or a foreign law-review article. I regard each occurrence as an intervention, because 'to read' is to do something; it is a deed, an act-in-the-world — it is a performance.<sup>4</sup> And it is this interpretive undertaking that I want to unravel, to dismantle, to deconstruct, in order lucidly to try and ascertain what is effectively happening when a comparatist proceeds to read a foreign law-text. I aim to bring comparatists-at-law into a state of heightened awareness vis-à-vis their own textual *modus operandi*. Of course, the reader of foreign law is involved in the reading of foreign law and, perforce, in the foreign law being read. Now, I want to get this reader to see himself as being so implicated. Call my essay an exercise in the phenomenology of reading (not, then, a neurological or neuropsychological inquiry concerning endorphins, opiate receptors, or the sensory cortex).<sup>5</sup> In fairness, I ought to declare forthwith that my argument runs squarely against common sense as I understand most comparatists-at-law to be currently appreciating it — against the sense commonly prevailing within comparative law's orthodoxy, as I discern it. But I contend that the received view regarding what unfolds when a comparatist engages in the reading of a foreign law-text, albeit always-already taken for granted, suffers from being unexamined, so much so, in fact, that once it has been (conscientiously) researched, it becomes unsustainable.

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Before I turn to law, I find it helpful to set the stage, so to speak, by drawing attention to two other configurations raising closely analogous issues to those pertaining to the reading of foreign law-texts. These other applications are not, of course, identical to the ones that most interest me, but they afford, in my opinion, enough analogical relevance to justify serious consideration. There are, in fact, two main reasons why I want to mention such non-law situations. First, I am keen to show that the reading of foreign law-texts implements a dynamics that, far from being unique, is actually exemplary. If you will, the reading of foreign law-texts illustrates a wider interpretive problematic. The two non-law illustrations that I propose to discuss help me to sustain this point of view. Secondly, I hope that non-law will illuminate law. Given that my argument about the reading of foreign law-texts is challenging the position that typical comparatists-at-law reflexively assume to be the case, I find any and all additional light valuable. Still, I face a difficulty, and it is that the two non-law cases that I want to deploy lead to conclusions that also purport to call into question widely held, if unexamined, preconceptions.

### *Act I, Scene 1*

My threshold interpretive problematic mobilizes a physician and her patient. In this regard, I base my analysis on the work of Annemarie Mol, an anthropologist who, at this writing, is affiliated with the University of Amsterdam. In addition to her training in anthropology, Mol holds degrees in medicine and philosophy. In 2002, Mol released *The Body Multiple* with Duke University Press. In effect, her book takes the form of an

<sup>4</sup> Cf Barthes, R (2002 [1970]) *S/Z* in *Œuvres complètes* (2nd ed) Marty, E (ed) vol III Editions du Seuil at 127: 'It is work [...]. To read, indeed, is a work of language' [*C'est un travail (...). Lire, en effet, est un travail de langage*].

<sup>5</sup> Eg: Willingham, DT (2017) *The Reading Mind* Jossey-Bass; Elfenbein, A (2017) *The Gist of Reading* Stanford University Press.

ethnographic account of the four years during which she visited a Dutch hospital once or twice a week to observe the medical process with reference to one particular disease, atherosclerosis (that I will henceforth abbreviate to AS). Briefly, AS is a disease in which plaque builds inside one's arteries. Let me say a little more. Arteries are vessels that carry oxygen-rich blood to one's heart and to other parts of one's body. Now, plaque consists of fat, cholesterol, and other residue substances found in the blood. Over time, plaque hardens and narrows one's arteries, a complication that may lead to blood clots. If AS affects the lower limbs, it can make walking painful or impossible, and it may indeed necessitate amputation. To give one a sense of the magnitude of the predicament, blocked arteries generated by the accumulation of plaque and blood clots are reported to be a primary cardiovascular affliction, often called 'coronary heart disease' — heart disease being the leading cause of death in the United States for both women and men, with 'coronary heart disease' the most common type of heart complication.<sup>6</sup>

Imagine a patient making his way to the hospital to meet a vascular surgeon in her consulting room. This is the patient's third visit to the hospital. On the occasion of the first two visits, the vascular surgeon interviewed the patient at length and carefully listened to his symptoms. The surgeon also performed a physical examination on the patient. In addition, the vascular surgeon ordered various medical tests such as a Doppler ultrasound (to measure blood flow), an angiogram (to take X-rays of blood vessels), and an electrocardiogram or ECG (to monitor the electrical activity of the heart — in effect, to assess how well the heart is functioning). For the patient's third visit, the vascular surgeon has a complete file before her. And, at this juncture, the surgeon finds herself in a position to inform the patient that he is suffering from AS.

The counter-intuitive, against-received-opinion claim that Mol develops at length in her work — an argument that strikes me as wholly persuasive — is that AS did not exist until the vascular surgeon pronounced that it was there, within the patient's body. Let me, at once, urge caution and straight thinking! Mol is not saying — and I am not claiming — that the patient was not suffering pain, or that he was not having calcified arteries, when he first entered the consulting room at the hospital. Of course, the pain was there, and it was real. And, to be sure, the calcification was there, too, and it was real also (indeed, the calcification showed on the angiogram). So, neither Mol nor I are denying reality. But AS was not there — it simply could not have been there — until the vascular surgeon, the reader of the human body, if you will, asserted it to be present. I can say the same thing in different language. Before the vascular surgeon's pronouncement, there was pain and calcification. After the vascular surgeon's intervention, after her reading of her patient's body (with the help of the medical examinations' results), there was AS. Mol's claim, which I readily adopt, is that the vascular surgeon herself injects the disease into the human body. Without her, there is 'meaningless' pain and calcification, while with her, there is AS, a 'meaningful' condition, a fully-fledged disease. Note that the act of ascription is the vascular surgeon's, who is an outsider to the patient's body: the disease is thus coming to the patient from the outside. For the patient, the disease is happening from the outside in.

As I have been indicating, received opinion assumes differently, and, if surveyed, people could reliably be expected to hold that the disease pre-existed to the vascular surgeon's intervention, that it was there, in the patient's body, even before the surgeon

<sup>6</sup> Eg: <https://www.cdc.gov/heartdisease/facts.htm> [on file].

arrived on the scene, and that the surgeon's subsequent role was simply to acknowledge this pre-existing disease. Mol's argument — and, again, I fully support her appreciation of this interpretive problematic — is that such thinking is either naive or confused, and that the role of the vascular surgeon is vastly more important than is commonly understood, that the vascular surgeon indeed *enacts* the disease. 'To enact' is Mol's verb, which she uses throughout her monograph. I find this word to be an inspired choice because, according to the electronic edition of the *Oxford English Dictionary* (*OED*), 'to enact' is 'to ordain, [to] decree', '[t]o declare officially and with authority', 'to constitute'. Moreover, the *OED* informs me, it is also '[t]o work in'. And these various terms or expressions capture precisely what the vascular surgeon is doing in her hospital consulting room: she is ordaining, decreeing, or declaring the disease, officially and with authority, and she is working it in her patient's body. No matter how counter-intuitive this statement may appear, the surgeon is constituting the disease. Again, the vascular surgeon is an outsider vis-à-vis the patient's body, and it is this outsider who is declaring the disease, who is pronouncing on the existence of the disease bringing to bear her expert ascendancy. In effect, from the patient's standpoint — if I may be allowed to gloss Mol's work — the surgeon is 'diseasing in'. 'To disease', the *OED* apprises me, carries a range of meanings, and it can, aptly, signify 'to cause [...] disease in', thus, to cause disease in the patient's body.

What I am saying, after Mol, is that for AS to exist, pain and calcification are not enough. It also requires that a vascular surgeon should be reading, affirming, the disease into existence. In my formulation, for AS to accede to existence demands that the vascular surgeon ought to be 'causing' the disease through an act of naming — and this is one more reason why the verb 'to enact' proves adequate to the task of describing what is effectively taking place in the consulting room. Appositely, 'to enact' contains the suffix 'act', which heralds the active role being played by the vascular surgeon who, once more, is not simply acknowledging a pre-existing disease, but is actively fashioning one into existence. Because of the vascular surgeon, pain and calcification now acquire a meaning: they henceforth mean AS.

After I had written my argument, my colleague, Dr Alexandra Mercescu, brought the text to the attention of Dr Bogdan Enache, a cardiologist at the Princess Grace Hospital in Monaco. Dr Enache kindly read and graciously concurred in my claim. He also thoughtfully suggested enhanced support by way of a further revealing example. In conversation, Dr Enache therefore mentioned that in late 2017 the American College of Cardiology (ACC) and the American Heart Association (AHA) had lowered the threshold for hypertension from 140/90 mm Hg to 130/80 mm Hg.<sup>7</sup> At a stroke, over 31 million additional US women and men were deemed to suffer from hypertension.<sup>8</sup> While the bodily circumstances of these 31 million individuals remained unchanged, cardiologists had enacted that these women and men were now afflicted with hypertension. Consider John. In June 2017, before the new definition had applied, John's hypertension reading had been 140/90 mm Hg, so that he had been said by his Chicago cardiologist to be disease-free and had therefore been

<sup>7</sup> Eg: <https://www.acc.org/latest-in-cardiology/articles/2017/11/08/11/47/mon-5pm-bp-guideline-aha-2017> [on file].

<sup>8</sup> Eg: <https://www.healio.com/cardiology/vascular-medicine/news/online/%7B11efb029-2475-4a29-9bb3-4d882fc37272%7D/new-guidelines-broaden-definition-of-hypertension> [on file].

pronounced to be requiring no medical treatment. In June 2018, exactly one year later, John's hypertension reading was still 140/90 mm Hg, but he was now diagnosed by the self-same Chicago cardiologist to be suffering from hypertension and accordingly to be requiring a course of medical treatment.

What had changed? John? John's body? No, John's hypertension reading was identical on the two occasions that I mention. What had changed is a matter outside John's body: that is, the decision on the part of his cardiologist, basing herself on the new ACC and AHA definition and on her sphygmomanometer's results, to conclude to the existence of hypertension, to disease hypertension in John's body. To consolidate this contention, Dr Enache, my helpful Monaco cardiologist, generously shared a further hypothetical. Imagine John to be relocating to Paris for five years on account of professional circumstances. In France, hypertension continues to be understood to demand a minimum reading of 140/90 mm Hg. What happens to John, then, on board his Air France flight as it enters French air space? According to French cardiology, John will not be understood to be suffering from hypertension and, presumably, will not be prescribed a medical treatment. In other words, as they examine John, French cardiologists will refrain from 'enacting' the disease. In the meantime, John's body remains very much what it was before he left Chicago.

While he had literature rather than cardiology in mind, Stanley Fish conveys the 'enactment' stakes very well, it seems to me, as he writes that '[i]nterpretation is not the art of construing but the art of constructing'.<sup>9</sup> Even more radically, but no less perspicuously, Fish also observes that '[i]nterpreters do not decode poems; they make them'.<sup>10</sup> (Fish's references to 'interpretation' and 'interpreters' attend to 'reading' and 'readers'.) To terminate the scene on a medical note, let me offer yet another example supporting my claim by making cursory reference to tuberculosis. In 1839, Johann Schönlein was first to name 'tuberculosis'. It must follow that in 1838, one could not have been suffering from tuberculosis. Later, on 24 March 1882, Robert Koch was first to name the cause of tuberculosis, '*mycobacterium tuberculosis*'. It must ensue that in February 1882, one's tuberculosis could not have been caused by '*mycobacterium tuberculosis*'. In other terms, it must be clear that language is that by way of which one thinks the world, that into which the world is translated as the starting-point of obviousness. One cannot form any sense of the world that is not always-already presupposed in language. Language is one's existential anchor. Language is that through which one sees. (Of course, the mountain exists, but when one sees the mountain one sees it in words. In one's head, one says: it is huge, it is beautiful, it is white, there is snow. Without words, one cannot *see* the mountain.) *Language is originary*.<sup>11</sup>

<sup>9</sup> Fish, S (1980) *Is There a Text in This Class?* Harvard University Press at 327.

<sup>10</sup> *Ibid.*

<sup>11</sup> Cf Derrida, J (1967) *De la grammatologie* Editions de Minuit at 313: 'There is no social institution before language, this is not one element of culture among others, it is the element of the institution in general; it comprises and constructs all of the social structure' ['Il n'y a pas d'institution sociale avant la langue, celle-ci n'est pas un élément de la culture parmi d'autres, elle est l'élément de l'institution en général; elle comprend et construit toute la structure sociale']. Adde: Gadamer, H-G (1986 [1960]) *Wahrheit und Methode* (5th ed) Mohr Siebeck at 457: 'Who has language "has" the world' ['Wer Sprache hat, "hat" die Welt'].

*Act I, Scene 2*

I want to use my second illustration, which concerns the ontology of colour, in order to reinforce both my overall argument and my specific (and forthcoming) claim about comparative law. Here, I rely on Mazviita Chirimuuta's MIT Press 2015 monograph, *Outside Color*. Chirimuuta holds degrees in philosophy, psychology, and physiology, with especial reference to cognitive neuroscience. As I write, she teaches in the Department of History and Philosophy of Science at the University of Pittsburgh.

Consider a photographer looking at a red geranium. Chirimuuta's basic interpretive problematics can be framed in this way: where is the colour of the geranium to be found? Where is red? Is red 'out there' in the world — which would make red exist as a nonrelational property of the geranium — or is it inside the photographer's mind?

From the standpoint of received opinion, it is fair to say that colour is largely taken to be a property of the thing that it is seen to qualify. To put the matter in slightly more sophisticated terms, the accepted view makes a spontaneous commitment to colour as a perceiver-independent property. If you will, there is the reality of what one sees, there, and there is no split at all between reality and appearance: the red of the geranium is there, in the petals, just as it appears to the photographer. It follows that the perceptual system, if it is operating properly, will register and deliver a correspondence between colour as external stimulus (the reality) and the mind's inner state.

Now, Chirimuuta's argument, which strikes me as thoroughly persuasive, is that what neurophysiologists call 'colour vision' cannot be characterized as involving the detection or perception of colour 'out there'. Only at a naive or confused glance does colour seem to be located in the relevant object. In effect, neurophysiological investigations show that colour is created somewhere in one's brain, as the result of complex interactions between physical light in the environment and one's visual nervous system. It ensues — and this dimension of the photographic scenery that I have configured is the one that I am particularly keen to emphasize — that the brain therefore has an active role in reading colour by governing how chromatic properties are perceptually manifest. To restate the point more bluntly, in line with the latest neurophysiological research on which she is in a position to base her argument, Chirimuuta maintains that there is no colour that can exist independently of an observer or interpreter.

For Chirimuuta, colour cannot simply be out in the world. But it cannot exist only in the mind either. Rather, colour must be envisaged as a feature of the activity of perceiving. It is the interaction itself that is the bearer of chromatic properties. In other words, it is not that colours are only out in the world or only in the mind, but that in order to understand colour, one must consider the interplay between, say, the geranium and the photographer's brain. Colour, then, is a psychological property of one's visual experience when one is looking at an object, certainly not a physical property of that object itself.

To return to my hypothetical photographer, Chirimuuta's conclusions entail that he is not seeing the geranium as being red, but that he is seeing the geranium redly. Rather than being a property of the geranium, redness therefore qualifies the experience, the event of perception. Otherwise said, redness manifests itself as a property of the perceptual interaction — hence, the odd adverb 'redly', which Chirimuuta is coining in order to move away from 'red' as an empirical fact, with a view to depicting the relevant interpretive



problematics as precisely as language permits.<sup>12</sup> Moreover, Chirimuuta refers to what she calls an ‘enactive’ approach to perception.<sup>13</sup> I find it interesting that Chirimuuta should be using the very term that Mol is deploying as regards AS — perhaps even more intriguingly, that she should be doing so without referring to Mol, which appears to suggest that the two researchers have seized on the identical word independently from each other. They both adopt an ‘enactivist’ understanding of the world — of the human body or of flora.<sup>14</sup>

Let me briefly pursue the analogy with AS. Chirimuuta does not in the least deny the reality of colour, just like Mol does not at all reject the reality of pain and calcification. Instead, Chirimuuta’s point is that red is not perceiver-independent. For her part, Mol holds that AS is not perceiver-independent either. Just like the perceiver of the patient’s body (the vascular surgeon), operating as an outsider to the patient, is ‘diseasing in’, the perceiver of the geranium (the photographer), as an outsider to the flower, is ‘redding in’. Yes, the OED *does* feature ‘red’ as a verb: ‘to red’ means ‘[t]o make red’ — which proves to be, once more, a term pertinently insisting on the perceiver’s input. As with pain and calcification, colour can only make sense through a reader of it, who is ascribing meaning to it. Of course, the pain and calcification or the colour exist, in reality, irrespective of any reader. But they cannot carry significance, they cannot make sense, they cannot *mean*, without input from a reader. It is the reader, literally, who brings pain and calcification or colour to meaning by bringing meaning to pain and calcification or meaning to colour. After the reader, pain and calcification mean AS, and colour means red.

### Act I, Scene 3

I announced *two* case-studies before turning to law! And I want to uphold my commitment, which is why I shall not be discussing music, except to contend that a clarinetist playing a Mozart concerto is interacting with the notes much in the way the vascular surgeon is involved with the human body or the photographer implicated with the geranium. The concerto features notes, which are a reality — like pain and calcification or colour. But the concerto’s notes — like the patient’s pain and calcification or the geranium’s colour — require a clarinetist reading them in order for them ‘meaningfully’ to exist as music, that is, for the notes to be brought to musical significance. Taken on their own, the notes cannot qualify as music: they cannot mean. For them to exist meaningfully, they require an outside intervention, specifically, a reading, which is also a performance (an activity, a deed). Just like the vascular surgeon as an outsider to the patient’s pain and calcification must be ‘diseasing in’ and the photographer as an outsider to the geranium and its colouring must be ‘redding in’, the clarinetist, as an outsider to the notes, must be ‘musicking in’. To ‘music’ is, I claim, a most apposite term since — so the OED advises one — the verb means ‘[t]o perform [...] music’.

<sup>12</sup> Chirimuuta, M (2015) *Outside Color* MIT Press at 169 and 177-78.

<sup>13</sup> Id at 145.

<sup>14</sup> From a linguistic standpoint, Mol and Chirimuuta thus respond to Andrzej Warminski’s challenge: ‘[H]ow to think language differently — differently enough so that it cannot be taken as a mere object and content of consciousness’: Warminski, A (2013) *Material Inscriptions* Edinburgh University Press at 178.

## Act II

I have been arguing that the body's disease, the geranium's colour, and the concerto's notes need a reader (I use the word in the broadest sense) to make them signify or mean as AS, as red, and as music. Now, I want to contend that a foreign law-text raises an interpretive problematic that operates in a closely analogous way. As I have indicated, I am not suggesting that the situations are identical. But a foreign law-text and its words also need an outside intervention in order to exist meaningfully. Within the disciplinary configuration of comparative law, they require a comparatist to be 'meaning in'.<sup>15</sup> Before the comparatist's intervention, there is, say, a foreign statute, that is, there is an assemblage of words that do not, and cannot, mean.<sup>16</sup> After the comparatist's involvement as a reader, this foreign statute, these words can, and do, acquire meaning. It is like the earlier scenes that I rehearsed. For example, it is tantamount to the vascular surgeon and her patient. Before the surgeon's reading, the pain and calcification do not, and cannot, mean. After the surgeon's reading, the pain and calcification can, and do, acquire meaning — and they

<sup>15</sup> Arguably, this claim operates locally, too, and thus applies to a US reader of US law, for example. Consider *District of Columbia v Heller*, 554 US 570 (2008). When Justice Antonin Scalia, or Justice John Paul Stevens, or Justice Stephen Breyer, holds that the Second Amendment to the US Constitution carries a certain significance, he is 'meaning in'.

<sup>16</sup> I reject the idea that words could be always-already invested with meaning, so to speak, on account of the intention of the writer of the text. Although I remain sceptical as to whether words can even 'carry' intentions, so that they could be perfectly homogeneous vis-à-vis what wanted to be expressed, so that the deed could match the wish, and although I doubt, even if there should be such correlation, whether this expression of intention could ever become reliably 'known' to a reader, and although I query whether such expression of intention could then ever be loyally constructed or reconstructed by a reader operating in his own words, I do not want — and do not need — to dismiss the text as a volitional product in the sense, at least, that it exists as the outcome of a range of lexicographical choices and, indeed, as a form of communication. Cf Spivak, GC (2014) *Readings* Seagull Books at 136: 'All texts lay out desires'. But to refute the idea of an intentionless text does not suggest that intention ought to govern ascription of meaning. My thesis is that intention, even assuming its expressibility and knowability and constructibility through the reader's words, cannot govern the reading of texts. Intentionalism supposes that the past can be ascertained 'as it really was', that one can transcend one's readerly horizon and somehow return to the moment of creation of meaning by the author of a text. Now, this premise can only pertain to fantasy, and the benchmark of the author's intent can only supply but illusory normativity. In the celebrated words of William Wimsatt and Monroe Beardsley, 'the design or intention of the author is neither desirable nor available' (Wimsatt, WK and Beardsley, MC [1946] 'The Intentional Fallacy' [54] *Sewanee Review* 468 at 468). Likewise, in Derek Attridge's decisive formulation, 'there is no possibility of a recourse to anything like an intention "itself"': Attridge, D (2004) *The Singularity of Literature* Routledge at 101. And Edward Hirsch reminds one that 'we have no direct access to the author's mind': Hirsch, ED (1967) *Validity in Interpretation* Yale University Press at 99. Hence, Northrop Frye's dispiritment as he famously called intention '[o]ne of the many slovenly illiteracies that the absence of systematic criticism has allowed to grow up': Frye, N (1957) *Anatomy of Criticism* Princeton University Press at 57. Quite simply, 'one [cannot] think of the [text] as wholly encompassed by an author's intentions': Shillingsburg, P (2017) *Textuality and Knowledge* Penn State University Press at 44. For one thing, '[n]ot only occasionally but always, the meaning of a text surpasses its author': Gadamer, H-G *Wahrheit und Methode* supra note 11 at 301 ['(n)icht nur gelegentlich, sondern immer übertrifft der Sinn eines Textes seinen Autor']. In the end, then, I accept that meaning must be found in the text that was intended to be written as distinguished from meaning having to be found in line with the text as it was intended to be written. Intentionalism cannot support the idea that there would be an identity of the text, a text-in-itself, objectively awaiting confirmation and withstanding every reading at variance from its selfhood. It follows that one can only ever hope to win the persuasion game if one can convincingly point to the text, not to intention. Intention simply cannot supply the touchstone of reading, and it cannot act as a limit to reading either. For me to claim, as author, that what my reader is making me say is not what I intended to say cannot prove interpretively decisive. Attridge nonetheless takes the view that '[t]he question "What did the author mean by writing this?" is not a question that will go away, despite all our sophistication about fallacies of intentionalism': Attridge, D *The Singularity of Literature* supra at 105.



mean AS. And just as red cannot be found only in the photographer's mind, meaning cannot be located exclusively in the reader's mind either. To recall Hilary Putnam's memorable exclamation: 'Cut the pie any way you like, "meanings" just ain't in the *head!*'.<sup>17</sup>

To illustrate my contention about law, about foreign law-texts, let me refer to the French statute on religious attire at school that came into force on 15 July 2004. This legislative statement, now consolidated into the Code of Education (or *Code de l'éducation*), includes a key article that, in my English translation, states as follows: 'In public primary and secondary schools, the wearing of signs or attire whereby students conspicuously demonstrate a religious allegiance is prohibited'.<sup>18</sup> Feature a US comparatist coming to this statute with a view to bringing it to significance. Assume further — and this shall be my case-study — that this comparatist is concerned to ascertain whether the statute extends to secular items of clothing that an individual privately invests with a religious connotation. Think of a bandana looking just like an ordinary bandana to everyone, but that a student is wearing, for himself or herself, as a Sikh turban or a Muslim headscarf. Do the statute's words, then, extend to a prohibition of private investment of religiosity?

In my experience, the common-sense view prevailing amongst comparatists-at-law is to the effect that the meaning of words is to be found in the words themselves (like AS would be in the patient, the colour red in the geranium, and the music in the notes); that the statute's words always-already mean whatever they mean even before any comparatist takes an interest — just like received opinion holds that the patient always-already has AS before the vascular surgeon's pronouncement, that the geranium is always-already red before the photographer's session, and that the concerto is always-already music before the clarinettist's performance. In other terms, the common-sense view within comparative law, as I understand it, is that the comparatist is coming *to* the statute, and that the statute's meaning is there, within the statute, in the statute's words themselves, awaiting the reader, who will effectively proceed to collect or harvest it, so to speak. Because the meaning is assumed to be there, within the statute's words, the comparatist's task is thus taken to be to elucidate the statute's words through an apt reading strategy. According to this view, crucially, whether the French statute prohibits private investment of religiosity must depend on the contents of the law-text itself, as it exists, there. This position entails that the French statute prohibits private investment of religiosity — or not — before any US comparatist, for instance, sits to study the law-text's words in the Sorbonne law library and independently of any such reading on the comparatist's part.

To be sure, the common-sense view allows that different comparatists may suggest different readings of the French statute, that they may produce different versions of that self-same text. From the standpoint of the prevailing orthodoxy, however, it remains that, whatever various comparatists may assert, there is the text of the statute, there. Accordingly, the statute ultimately says what it says, means what it means, irrespective of any reading

<sup>17</sup> Putnam, H (1975) 'The Meaning of "Meaning"' in *Philosophical Papers* vol II Cambridge University Press at 227 [emphasis original].

<sup>18</sup> Statute no 2004-228 of 15 March 2004 enframing, in application of the principle of laicity, the wearing of signs or attire demonstrating a religious allegiance in public primary and secondary schools' [*Loi no 2004-228 du 15 mars 2004 encadrant, en application du principe de laïcité, le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics*'], Art. 1 [*Dans les écoles, les collèges et les lycées publics, le port de signes ou tenues par lesquels les élèves manifestent ostensiblement une appartenance religieuse est interdit*'].

whose aim, once again, must be strictly one of retrieval.<sup>19</sup> Either the French statute's words, then, prohibit private investment of religiosity, or they do not — which entails, effectively, that the various readings that various comparatists will offer of the statute can, and must, be verified against the statute itself; can, and must, be checked against the statute's very words, so that some readings will be shown to be true or veridical, while others can be seen to be false or falsidical.

As is the case with AS, or with red, or with music, I claim that the so-called 'common-sensical' view of the foreign law-text is, in fact, naive or confused. Specifically, I argue that while the statute and its words are a (grammatical) reality, the statute and its words do not, and cannot, exist as having a meaning, any meaning — say, 'the prohibition of private investment of religiosity' — without a reader to make them mean, without a reader reading them to make them mean thus. The words of the statute cannot mean 'the prohibition of private investment of religiosity' or anything else — they cannot mean anything at all — without a reader 'meaning in'.<sup>20</sup> If you will, 'the reader's response is not *to* the meaning; it *is* the meaning'.<sup>21</sup> Likewise, pain and calcification do not, and cannot, exist as AS; or colour does not, and cannot, exist as red; or the notes do not, and cannot, exist as music, *without a reader*. In each case, an outsider to the reality that there is, to what is really there, is needed for that reality to exist in a *meaningful* capacity.<sup>22</sup> Meaning is ascribed; it comes from the outside in: 'What a text says is actually what some actor on the text says it should say'.<sup>23</sup> To frame the matter philosophically — and paradoxically — 'reading inevitably draws the Other to the Self'.<sup>24</sup> The tension that this observation purports to encapsulate arises because the ascriber of meaning comes to the text always-already equipped with an extensive array of preconceptions, predispositions, and predilections that constitute his very being, which means that as he assigns meaning he does so according to his reading — this motion taking place in his language — which entails that the other is necessarily recast in the self's terms.<sup>25</sup> Paul Valéry's perspicacity enabled him to discern the crucial role played by the reader's ordering mind within the relevant interpretive problematics (and to accept this situation with equanimity): 'My verses have the meaning that one lends them'.<sup>26</sup>

<sup>19</sup> Eg: French *Conseil d'Etat*, 5 December 2007, *Mr and Mrs Ghazal*, claim no 295671, *Recueil Lebon* at 464.

<sup>20</sup> Eg: Hirsch, ED *Validity in Interpretation* supra note 16 at 4: 'A word sequence means nothing in particular until somebody either means something by it or understands something from it'. See also Hirsch, ED (1984) 'On Justifying Interpretive Norms' (43) *Journal of Aesthetics and Art Criticism* 90 at 91: '[L]anguage does not speak its own meaning'. Adde: Frye, N (1969) *Fearful Symmetry* (2nd ed) Princeton University Press at 427-28: 'It has been said of Boehme that his books are like a picnic to which the author brings the words and the reader the meaning. The remark may have been intended as a sneer at Boehme, but it is an exact description of all works of literary art without exception'. Jakob Böhme (1575-1624) was a German philosopher and theologian.

<sup>21</sup> Fish, S *Is There a Text in This Class?* supra note 9 at 3 [emphasis original].

<sup>22</sup> Cf Attridge, D *The Singularity of Literature* supra note 16 at 91: '[T]he text as text [...] achieves its full existence only in my reading of it'.

<sup>23</sup> Shillingsburg, P *Textuality and Knowledge* supra note 16 at 65. See also Id at 168: 'Readers develop their own meanings without a sure way to determine if their newly constructed meanings are what the author meant'.

<sup>24</sup> Id at 203.

<sup>25</sup> Cf Barthes, R *S/Z* supra note 4 at 126: 'This "self" that approaches the text is already itself a plurality of other texts, of infinite codes, or more exactly: lost (the origin of which is lost) [*Ce "moi" qui s'approche du texte est déjà lui-même une pluralité d'autres textes, de codes infinis, ou plus exactement: perdus (dont l'origine se perd)*]'.

<sup>26</sup> Valéry, P (1957 [1929]) 'Commentaires de *Charmes*' in *Variété* in *Œuvres* Hytier, J (ed) vol I Gallimard at 1509 [*Mes vers ont le sens qu'on leur prête*]. Making specific reference to Valéry and to this excerpt, Gadamer purports to identify the expression of 'an untenable hermeneutic nihilism': Gadamer, H-G *Wahrheit und Methode* supra note 11 at 100 [*ein unhaltbarer hermeneutischer Nihilismus*]. Suffice it to say that in many matters interpretive, Gadamer's reactionism has been condignly acknowledged. Eg: Rorty, R (1986) 'From Logic to Language to Play'

Note that as the reader lends meaning to Valéry's verses, he is not operating subjectively in the sense that he is not in a position to deploy free agency, a strictly imaginary notion.<sup>27</sup> Instead of bringing to bear fully-fledged autonomy to the task of reading, the reader comes to it as a thoroughly socialized, institutionalized, and encultured being. To make the point summarily, '[o]ne remains imprisoned by one's upbringing'.<sup>28</sup>

Therefore, the vascular surgeon 'enacts' calcification as AS; the photographer 'enacts' the colour of the geranium as red; the clarinettist 'enacts' the notes as music; and the comparatist 'enacts' the foreign statute's words as meaning, say, 'the prohibition of private investment of religiosity'. Fascinatingly, Derek Attridge, a noted literary critic closely attuned to philosophy, indeed remarks that '[r]eading a work [...] makes it happen, "enacts" it'.<sup>29</sup> (Needless to add, Attridge's reference to the idea of 'enactment' intervenes without any mention of Mol or Chirimuuta — Attridge's analysis being basically contemporaneous with Mol's and preceding Chirimuuta's by more than ten years.) Observe that it is not, then, that the comparatist is conducting 'the re-awakening of the text's meaning' or anything of the kind (the metaphor is Hans-Georg Gadamer's).<sup>30</sup> The use of this misleading image suggests that meaning would be lying within the text, dormant, waiting for the reader to make it come alive.<sup>31</sup> Such a formulation conveys the simplistic idea of the text as object, 'an illusion and, moreover, a dangerous illusion, because it is so physically convincing' (not unlike, then, the configurations of AS, red, or notes as objects).<sup>32</sup> On reflection, though, '[i]t is patent nonsense to speak of the meaning of the text as if inanimate paper and ink could have meaning', to say that 'the text means so and so' as if 'paper and ink molecules [could]

(59) *Proceedings and Addresses of the American Philosophical Association* 747 at 751. Meanwhile, Valéry emphasizes, coherently, that '[a] literature is worth what the reader is worth': Valéry, P (1960 [1931]) *Regards sur le monde actuel et autres essais* in *Œuvres* Hytier, J (ed), vol II Gallimard at 1054 ['(u)ne littérature vaut ce que vaut le lecteur'].

<sup>27</sup> Cf Derrida, J (1967) *L'Écriture et la différence* Editions du Seuil at 335: "The "subject" [...] does not exist if one means by that some sovereign solitude [...]. The subject [...] is a system of relations between layers: [...] mental, society, world. Within that scene, the punctual simplicity of the classical subject is nowhere to be found" [*"Le "sujet" (...) n'existe pas si l'on entend par là quelque solitude souveraine (...). Le sujet (...) est un système de rapports entre les couches: (...) du psychique, de la société, du monde. A l'intérieur de cette scène, la simplicité ponctuelle du sujet classique est introuvable"*] (emphasis original). Cf Wittgenstein, L (1981 [1922]) *Tractatus Logico-Philosophicus* (German-English ed) Ogden, CK (ed and transl) Routledge §5.631 at 151: 'The thinking, presenting subject; there is no such thing' [*"Das denkende, vorstellende, Subjekt gibt es nicht"*]. I use Ogden's translation.

<sup>28</sup> MacIntyre, A (2013) 'On Having Survived the Academic Moral Philosophy of the Twentieth Century' in O'Rourke, F (ed) *What Happened in and to Moral Philosophy in the Twentieth Century?* University of Notre Dame Press at 31. See also Jameson, F (1972) *The Prison-House of Language* Princeton University Press; Adorno, TW (1998+ [1965]) *Metaphysik* Tiedemann, R (ed) Suhrkamp at 107, who refers to 'the prison of language' [*"Gefängnis der Sprache"*]. Adde: Miller, JH (1979 [1972]) 'The Critic As Host' in Bloom, H et al *Deconstruction and Criticism* Continuum at 188: 'The most heroic effort to escape from the prisonhouse of language only builds the walls higher'.

<sup>29</sup> Attridge, D *The Singularity of Literature* supra note 16 at 87.

<sup>30</sup> Gadamer, H-G *Wahrheit und Methode* supra note 11 at 392 [*"die Wiedererweckung des Textsinnes"*]. The trope of 'dormancy' is also in Wolfgang Iser. Eg: Iser, W (1978) *The Act of Reading* Johns Hopkins University Press at 19: '[I]t is in the reader that the text comes to life'. While Iser thanks David H Wilson for his 'patience and linguistic ingenuity [...] [in] giving an anglicized form to [the] book' (Id at xii), no translator is formally identified. Cf Iser, W (1984) *Der Akt des Lesens* (2nd ed) Fink at 36, where the German text has been modified. Another idea is Umberto Eco's 'actualization'. Eg: Eco, U (2015 [1979]) *Lector in fabula* Bompiani at 50, who writes that the text is an entity 'that must be actualized' [*"che debbono essere attualizzati"*].

<sup>31</sup> Proceeding in consistent — but, in my view, mistaken — fashion, Gadamer refers to the primary focus of understanding as 'the meaning of the text itself': Gadamer, H-G *Wahrheit und Methode* supra note 11 at 378 [*"de(r) Sinn des Textes selbst"*].

<sup>32</sup> Fish, S *Is There a Text in This Class?* supra note 9 at 43.

have independent volition'.<sup>33</sup> The matter of reading is infinitely more complicated than appears to be the case. Indeed, the ascription of meaning, since it is the reader's work (say, the comparatist's), operates a becoming of the text (which, again, is inevitably unfolding on the self's terms).<sup>34</sup>

To focus on law, 'the prohibition of private investment of religiosity' is not an immobile feature of the French statute itself, of its immutable words that would carry an unchangeable meaning for all readers to behold.<sup>35</sup> It is, rather, a possible reading of the French statute as read, say, by a comparatist 'meaning in'. It is not, however, that 'the prohibition of private investment of religiosity' is exclusively in the comparatist's (encultured) mind either, for there are the statute's words — and these words must be recognized and respected without any transgression of them being ethically possible.<sup>36</sup> To be sure, any reading assumes 'violence' being done to the text.<sup>37</sup> But the comparatist's exposition must be deployed 'under the law of the singularity of the other' — that is, there must apply the comparatist's curation of textuality.<sup>38</sup> What is at stake, then, is the interaction, the dynamics, between the comparatist and the words. While it is the comparatist who ascribes meaning to the words of the French statute, the semantic reality of these words frames the comparatist's intervention: in his protracted endeavour to come to terms with the foreign law-text, the comparatist is reading his way into it. A comparatist-at-law who would claim, for instance, that the French statute's words concerned airports or hospitals could therefore not be found credible.<sup>39</sup>

<sup>33</sup> Shillingsburg, P *Textuality and Knowledge* supra note 16 at 168, 129 and 129, respectively. No doubt the argument about ink can be applied, *mutatis mutandis*, to the case of pixels. See also Hirsch, ED *Validity in Interpretation* supra note 16 at 23, who refers to the 'mystical idea' that 'linguistic signs can somehow speak their own meaning'.

<sup>34</sup> Cf Attridge, D *The Singularity of Literature* supra note 16 at 91: '[M]y response to the work is not to the work "itself" but to the work as other in the event of its coming into being in my reading' [emphasis original].

<sup>35</sup> For an (extraordinary) argument that the meaning of a text never changes, see Hirsch, ED *Validity in Interpretation* supra note 16 at 6-10. One, of course, is readily reminded of 'originalism', a strategy of constitutional interpretation that has become increasingly prominent in the United States since the 1980s. Justice David Brewer, an originalist well *avant la lettre*, appears to have captured the gist of originalism in a 1905 opinion in which he wrote as follows: 'The Constitution is a written instrument. As such its meaning does not alter. That which it meant when adopted it means now': *South Carolina v United States*, 199 US 437 (1905) at 438. Studies on originalism are nothing short of plethoric. For exemplary endorsement of the doctrine, see McGinnis, JO and Rappaport, MB (2013) *Originalism and the Good Constitution* Harvard University Press. For spirited critique, see Segall, EJ (2018) *Originalism As Faith* Cambridge University Press.

<sup>36</sup> Eg: Derrida, J *De la grammatologie* supra note 11 at 227: '[R]eading [...] cannot legitimately transgress the text towards something other than itself' ['(L)a lecture (...) ne peut légitimement transgresser le texte vers autre chose que lui']. For his part, Jonathan Culler enjoins 'respect for the stubbornness of texts': Culler, J (2010) 'The Closeness of Close Reading' (149) *ADE Bulletin* 20 at 22. Observe that Derrida and Culler focus on interpretive offenses against the text. Meanwhile, it remains the case that the author's intention cannot govern reading, and '[t]here is, of course, no law requiring readers to understand what authors wanted or expected them to understand': Shillingsburg, P *Textuality and Knowledge* supra note 16 at 203.

<sup>37</sup> Heidegger, M (2010 [1929]) *Kant und das Problem der Metaphysik* F-W von Herrmann (ed) Klostermann (2010 [1929]) at 202 ['Gewalt']. Famously, Heidegger entered this observation with respect to his controversial interpretation of Kant in the context of his 1929 debate with Ernst Cassirer in Davos (Switzerland), a watershed disputation in the history of Continental philosophy. Bearing in mind that no edition expresses the final word, ever, the definitive text on this *Auseinandersetzung* has to be Gordon, PE (2010) *Continental Divide* Harvard University Press.

<sup>38</sup> Derrida, J and Ferraris, M (2018 [1994]) *Le Goût du secret* Bellantone, A and Cohen, A (eds) Hermann at 73 ['sous la loi de la singularité de l'autre']. The words are Derrida's.

<sup>39</sup> Nothing I say about there not being anything like *the* meaning of the text lying in wait within *the* text refutes the possibility that a conventionally-agreed meaning of a text can be established. In this regard, the credibility of any interpretation will have much to do with how specific interlocutors have been trained to think with

Proceeding in epigrammatic (and ampliative) form, I recognize twelve salient implications arising out of the analysis of the reading of foreign law-texts that I am defending.

1. '[T]he nature of a text is to have no meaning except that which an interpreter wills into existence. We, not our texts, are the makers of the meanings we understand'.<sup>40</sup> A foreign-law text does not contain a meaning, embedded or encoded therein, awaiting its reader, who would then come to identify it through reading. A text never pre-exists completely to its reading. While '[s]killed reading is usually thought to be a matter of discerning what is there', it is rather 'a matter of knowing how to produce what can thereafter be said to be there'.<sup>41</sup> As it is read, a text is being *effectuated*. And if a reader shifts his reading lenses a little — if he moves sideways a bit — he promptly tells a different text. Instead of operating denotatively, a reading is thus performative — it offers an 'epistemological performance'<sup>42</sup> — as it 'transforms that itself that it interprets'.<sup>43</sup> In addition to different situations, there are different readers, and no two readers will read the text into meaningful existence in identical ways. As regards the resulting polyphony, Gadamer offers an important observation: 'It is enough to say that we understand in a *different way, if we understand at all*'.<sup>44</sup>
2. It is the comparatist who brings the foreign law-text to meaning through a reading intervention that takes the form of 'meaning in'. In other terms, it is the comparatist who fabricates or manufactures — who *invents* — the meaning of the foreign law-text.

respect to the question of credibility itself, and in particular to what counts as being credible. I must enter two precisions, both indebted to Fish and each complementing the other. First, '[we can have] a situation in which for all competent members of a community the utterance of certain words will be understood in an absolutely uniform way. That *does* happen. It is a possible historical contingent experience. [...] The mistake is to think that it is the property of the words that produces this rather than a set of uniform interpretive assumptions that so fill the minds and consciousness of members that they will, upon receiving a certain set of words, immediately hear them in a certain way': Fish, S (1994) *There's No Such Thing As Free Speech* Oxford University Press at 301 [emphasis original]. Secondly, '[a] meaning that seems to leap off the page, propelled by its own self-sufficiency, is a meaning that flows from interpretive assumptions so deeply embedded that they have become invisible': Fish, S (1989) *Doing What Comes Naturally* Duke University Press at 359.

<sup>40</sup> Hirsch, ED (1976) *The Aims of Interpretation* University of Chicago Press at 75-76.

<sup>41</sup> Fish, S *Is There a Text in This Class?* supra note 9 at 327 [emphasis original].

<sup>42</sup> Spivak, GC *Readings* supra note 16 at 79-80. Cf Attridge, D *The Singularity of Literature* supra note 16 at 87: '[A] reading is a performance of the singularity and otherness of the writing that constitutes the work as it comes into being for a particular reader in a particular context'. For a far-reaching and thought-provoking view of reading's performativity, see Goodman, N (1984) *Of Mind and Other Matters* Harvard University Press at 39-44. Famously, Nelson Goodman argued that we make the stars. '[W]e do not make stars as we make bricks; not all making is a matter of molding mud. The worldmaking mainly in question here is making not with hands but with minds, or rather with languages or other symbol systems': Id at 42. To move from stars to planets, it is not that how many planets there are in the solar system depends on how many planets one thinks there are. But how many planets there are in the solar system does depend on what one understands as a planet.

<sup>43</sup> Derrida, J (1993) *Spectres de Marx* Galilée at 89 [*transforme cela même qu'elle interprète*].

<sup>44</sup> Gadamer, H-G *Wahrheit und Methode* supra note 11 at 302 [*Es genügt zu sagen, daß man anders versteht, wenn man überhaupt versteht*] (emphasis original). I suggest that this statement must be read independently of Gadamer's support for an ultimate, metaphysical, 'fusion of horizons' (*Horizontschmelzung*) between the text and its reader. Eg: Gadamer, H-G (1986 [1983]) 'Text und Interpretation' in *Gesammelte Werke* vol II Mohr Siebeck at 351. It must also be envisaged apart from Gadamer's repeated reference to the moment of understanding in terms of a 'miracle' (*Wunder*). Eg: Gadamer, H-G *Wahrheit und Methode* supra note 11 at 297, 316 and 347. For an exploration of hermeneutics around this metaphor, see Lessing, H-U and Liggieri, K (eds) (2018), *Das Wunder des Verstehens* Alber. I find that such theologico-transcendental allusions are well enough to disqualify Gadamer's explication (which founders for other reasons, in any event).



'Invention' refers, at once, to 'finding' — think of the Christian liturgical calendar observing a feast of the cross on 14 September to commemorate the Invention of the Holy Cross — and to the more habitual 'contriving'. The comparatist finds the foreign law-text before him in the law library as it is inscribed, there, and, reading it, proceeds to contrive its meaning through innumerable micro-decisions, many of them unconscious, tracing textuality within its inscription to the threads of its cultural fabric with a view to eliciting, through an archaeological deployment, the makings of the text — or the text's jurimorphs.<sup>45</sup> The comparatist's choices concern, say, his selection of references, quotations, and vocabulary; they also involve his style and his tone, the rhythm of his thought. Again, no meaning of a foreign law-text can fully antecede the comparatist's readerly foray within the text.

3. There can be nothing like *the* meaning of a foreign law-text existing as an objective or true fact. Rather, there are potentially at least as many meanings of the foreign law-text as there are comparatists 'meaning in'. In Jacques Derrida's words, 'there are as many readings as readers'.<sup>46</sup> There is, then, no meaning of a text that would be naturally present as *the* meaning of the text. Such a metaphysical conceit must be rejected. Take any text, whether the French statute on religious attire at school or *King Lear*. Importantly, it is not that there can be different readings of 'the one text'. Instead, it is that there are different texts — and it is an untenable idea to behold that there would be one text, and one text only, that would somehow meaningfully exist prior to, and independently from, the first reading of it, for no text can exist meaningfully outside of reading. Indeed, the idea of an 'original' text featuring an original meaning for everyone to countenance — the assumption that there would exist a (theogonic) text and its meaning having emerged before the time of any reading — can only pertain to *belief*.<sup>47</sup>

The US comparatist reading the French statute from his computer at Berkeley arguably sees a law-text concerning civil rights. Meanwhile, the Australian anthropologist spending time in Paris and Marseille suburbs to conduct interviews with young Muslim women, school principals, and local politicians, reads in all likelihood a cultural statement. And to the French jurist working on the French statute in the Sorbonne law library, the law-text spontaneously reads as *droit des religions*. The different disciplinary outlooks, the different locations, the different individuals, the different documentary assemblages entail that on each occasion a different text is coming into meaningful texthood through the act of reading. Again, it is not that

<sup>45</sup> The reference is to cultural manifestations such as the social, the political, the economic, the philosophical, and so forth assembling as law (say, as a statute or a judicial decision). The term is Kyle McGee's. It is also deployed by Bruno Latour, who credits McGee. See McGee, K (2015) 'On Devices and Logics of Legal Sense: Toward Socio-Technical Legal Analysis' in McGee, K (ed) *Latour and the Passage of Law* Edinburgh University Press at 61-92; Latour, B (2015) 'The Strange Entanglement of Jurimorphs' in McGee, K (ed) *Latour and the Passage of Law* Edinburgh University Press 2015 at 331-53.

<sup>46</sup> Derrida, J (1998) *Demeure Galilée* at 126 ['il y a autant de lectures que de lecteurs et de lectrices'].

<sup>47</sup> See Derrida, J (1977) 'Scribble' in Warburton, W *Essai sur les hiéroglyphes des Egyptiens* L. des Malpeines (transl [1744]) Aubier at 13: 'To believe to be accessing by way of scraping to a first writing, to the *princeps* at last delivered through interpretation, from there to the true meaning living under the sedimentary cloak, it is indeed to believe: it is a belief, the lure of a reading' ['Croire accéder par décapage à une première écriture, au texte princeps enfin délivré par l'interprétation, de là au sens vrai vivant sous la chape sédimentaire, c'est croire en effet: c'est une croyance, le leurre d'une lecture'] (emphasis original).



there is the one text being shaped to mean differently, but that there are different texts meaning differently.<sup>48</sup> A text is thus more-than-one, which does not mean that it is fragmented into being many (this tension is Mol's leitmotiv in her *The Body Multiple*). It is more than one, and it is less than many. To my mind, Mol's point evokes Jean-Luc Nancy's 'singular plural': from the standpoint of meaning, a text is singular plural, that is, it is *more-than-one-and-less-than-many*.<sup>49</sup> For a comparatist wanting concretely and usefully to answer the question 'what is that, to read foreign law?', this (complicating) appreciation strikes me as being crucial.

4. The idea of 'reading', of 'meaning in', is structurally incompatible with veridiction. 'Meaning in' has nothing to do with truth, and everything to do with interpretation. All that the comparatist can ever offer concerning the foreign law-texts that he is reading as he 'means in' is an interpretation of them — and Attridge is correct as he asserts that 'there is no single "correct" reading'.<sup>50</sup> Once more, Valéry, a writer hardly indifferent to rigour or precision, proves most judicious: '[T]here is no true meaning of a text'.<sup>51</sup> Indeed, as regards the reading of texts, '[t]ruth is fantasy itself'.<sup>52</sup> Reading, then, is what there is, and there will be many such, not all harmonious or consensual, some more plausible or more just than others to certain comparatists-at-law (although not to others). And then, there will be the readership's readings of the comparatist's report. As someone who has been on the receiving end of the most egregious readings of one's work (not least in the francophone world), I am as keen as the next author (well, possibly not *as keen...*) to confute what I regard as unjust readings. But I cannot mobilize the idea of 'truth' in order to achieve my goal (just as I cannot marshal my intention). I cannot harness 'truth' with a view to coercing my reader into reading my comparative account my way. What I can do — all I can do — is to try and counter his reading with my counter-reading, his counter-signature with my signature.

<sup>48</sup> Eg: Chaudhuri, S (2010) *The Metaphysics of Text* Cambridge University Press at 174: '[T]he text a reader reads is not the text that the author wrote, nor that read by any other reader'. Cf Wartofsky, MW (1974) 'Art, Action and Ambiguity' (58) *The Monist* 327 at 332: '[O]n the usual account, a given picture or drawing is seen either as a picture of a duck or as a picture of a rabbit, with *no change in the picture itself*. [...] [C]ertainly, a duck-picture is not a rabbit-picture, so that when the "gestalt-switch" takes place, one picture [sic] is, in fact, *replaced* by another. It is not the "same picture" in both cases, and the picture itself doesn't "change", but is simply replaced by another. [...] [W]e do not have one picture with two readings, but rather two pictures. What we do have is one inscription which may be read as either one of two pictures'. In other words, what we do not have is 'the same inscription or mark [being] "interpreted" or "seen as" first a duck and then a rabbit' [emphasis original]. Mario Blaser offers an even more astute reading to the effect that '[t]here is a bird and a rabbit, and yet they are not two units; and while the traces overlap, there is not just one drawing': Blaser, M (2016) 'Is Another Cosmopolitics Possible?' (31) *Cultural Anthropology* 545 at 557-58. Blaser holds, in effect, that there is more-than-one picture, but less-than-two — a formulation that converges with my expression, 'more-than-one-and-less-than-many'. Indeed, Blaser also uses 'more than one less than many': Id at 557.

<sup>49</sup> See Nancy, J-L (1996) *Etre singulier pluriel* Galilée. Cf Levinas, E (1983 [1948]) *Le Temps et l'autre* Presses universitaires de France at 20: 'It is [...] towards a pluralism that does not merge into a unity that we would want to make our way' ['C'est (...) vers un pluralisme qui ne fusionne pas en unité que nous voudrions nous acheminer']. Derrida quotes this excerpt from Levinas's in Derrida, J (1967) *L'Écriture et la différence* Editions du Seuil at 132.

<sup>50</sup> Attridge, D *The Singularity of Literature* supra note 16 at 80. *Contra*: Gadamer, H-G *Wahrheit und Methode* supra note 11 at 296, who refers to 'the correctness of understanding' ['die Richtigkeit des Verstehens'].

<sup>51</sup> Valéry, P (1957 [1933]) 'Au sujet du Cimetière marin' in *Variété* in *Œuvres* Hytier, J (ed) vol I Gallimard at 1507 ['(I) n'y a pas de vrai sens d'un texte'] (emphasis omitted).

<sup>52</sup> Derrida, J (1974) *Glas* Galilée at 251 ['(I) la vérité est le phantasme même'].

5. The comparatist is bound to his readers, and writing is, in fact, a joint venture. Like comparatists, readers are performers: they, too, are engaged in world-making in the sense that they performatively constitute the text that is the focus of their address and action (a readership features both addressivity and activity). How one reading manages to assert itself in competition with other readings has to do, in important respects, with how much authority the comparatist defending a particular meaning is in a position to wield vis-à-vis a given readership — and the question of authority is one which, in important respects, is overdetermined (one's writing is susceptible to institutional valorization, *irrespective of the tenor of the claim being propounded*, by way of the comparatist's professional affiliation — think of a prestigious university — or through the argument's editorial venue — consider an insidious journal or imprint). Still on the subject of the interpretive struggle, note that the impression that one meaning makes on a given readership is also overdetermined in terms of that readership's socialization and institutionalization. In the face of a virtuoso display of indiscipline or a meticulous deployment of analytical rigour, it matters that one's reader has been encultured into the law in Berkeley or Berlin. To formulate the argument from a different angle, there is a given readership's resistance to certain forms of comparative scholarship.<sup>53</sup> And it is this resistance itself that is also the readership's power.<sup>54</sup>
6. No reading is innocent of motivations or goals, which is why I always want to know: who is this reader, and what does he want from foreign law? Ultimately, this is another way of asking: what does he want from life-in-the-law — and, perhaps, what does he want from life *tout court*. Now, the comparatist's reading of the foreign law-text must not be seen as subjective. His reading is not an expression of his free agency. Rather, the comparatist's interpretation has very much to do with processes of interpretive overdetermination into the law such as socialization and institutionalization — in sum, enculturation. Ascription of meaning from outside of the foreign law-text is not attribution from nowhere, and a view from the outside of the foreign law-text is not a perspective from nowhere. The comparatist-at-law is encumbered, and there is no unalienated individualism. The comparatist-at-law is never autonomous.<sup>55</sup> Attridge's

<sup>53</sup> Maurice Blanchot's warning is thus sound: 'What threatens reading the most: the reality of the reader, his personality, his immodesty, the relentlessness in wanting to remain himself in the face of what he is reading': Blanchot, M (1955) *L'Espace littéraire* Gallimard at 263 [*Ce qui menace le plus la lecture: la réalité du lecteur, sa personnalité, son immodestie, l'acharnement à vouloir demeurer lui-même en face de ce qu'il lit*]. The creative or innovative streak in an account — say, the audacity of a US comparative report on French law — may therefore escape one's readership. I can offer two famous literary analogies to help sustain this claim. Consider the way in which more than forty publishers missed the originality of Beckett's *Murphy* before Routledge agreed to publish the novel in December 1937. See Cohn, R (2001) *A Beckett Canon* University of Michigan Press at 72-73. I refer, of course, to the self-same Beckett who would be awarded a world-famous literary distinction but thirty-two years later. And then, there is the case of Pessoa, whose seventy heteronyms reveal an incessant process of reinvention that had to wait many years after the writer's death to be recognized as an important literary innovation. See generally Ciuraru, C (2011) *Nom de plume* Harper Collins at 119-35.

<sup>54</sup> Observe that the first manifestation of the readership's power lies in its decision to read. Cf Attridge, D (2011) 'Context, Idioculture, Invention' (42) *New Literary History* 681 at 689: '[T]he choice of the work to be read is not just a matter of personal preference but possesses wider cultural importance: it serves to endorse the work (unless it is being dismissed as worthless) and contribute to its continuing life within the culture'.

<sup>55</sup> Cf Lacan [1955] *supra* note 2 at 421: 'He is autonomous! That is quite a good one' [*Il est autonome! Celle-là est bien bonne*]. With specific reference to reading, see Gadamer, H-G (1986 [1972]) 'Nachwort zur 3. Auflage' in *Gesammelte Werke* vol II Mohr Siebeck at 453: '[A] hermeneutic pre-understanding is always in play'

formulation is typically as insightful as it is crisp: '[W]e do not simply *choose* to read in a certain way'.<sup>56</sup> Culture 'has' us. Culture 'has' one.

7. No matter how excellent one's reading of a foreign law-text, no matter how talented a wordsmith the reader happens to be, the words always have more meaning to yield than can ever be ascribed to them. Because a text consistently exceeds the limits of any rational reporting, 'there is no total reading, no reading of the whole' that is ever possible.<sup>57</sup> Indeed, since not all its interpretive potential can be released — there is always more that a reading can make words say<sup>58</sup> — the foreign law-text will inevitably feature an interpretive remainder, which shows how a text is a writhing, living force, how the text is ever in the process of *becoming* — a text is not, it *becomes*. No textual understanding reaches closure, ever: a text continues to mean, and indeed continues to change its meaning, as it encounters new ways of being-read and as, through these different readings, it is made to interact with other texts, perhaps subsequent ones. As the text is left with unheeded energies, even as it is channeled through the most sophisticated of readings, it will, in effect, be keeping an interpretive secret: there is necessarily an aspect of foreign law that will stay inaccessible, intractable, ineffable, inexpressible, indescribable, hidden, encrypted, engrammed — *secret* — both for the comparatist himself and (therefore) for his readership.<sup>59</sup> (The structural inevitability of this meaningful remainder or secret is one further reason why a reading, not being able to saturate meaning, can never be said to be objective or true,<sup>60</sup> why 'there is always a gap between a text and its meaning'.<sup>61</sup> Rather, meaning is, perforce, partial:

[ '(E)in hermeneutisches Vorverständnis immer im Spiele ist'. See also Gadamer, H-G (1986 [1959]) 'Vom Zirkel des Verstehens' in *Gesammelte Werke* vol II Mohr Siebeck at 62: 'To understand is primarily: to understand the self in the matter, and only secondarily: to detach and understand the opinion of the other as such' [*Verstehen heißt primär: sich in der Sache verstehen, und erst sekundär: die Meinung des Anderen als solche abheben und verstehen*].

<sup>56</sup> Attridge, D *The Singularity of Literature* supra note 16 at 81 [emphasis original]. See also Attridge, D 'Context, Idioculture, Invention' supra note 54 at 687: 'How I go about reading — my choices of what to read, my assumptions about the purpose of reading, the habits I draw on when I read — are all imbibed from the culture, or cultures, which have formed me'. For instance, as it comes to the comparative report on foreign law, a readership cannot banish whatever information it already possesses about the foreign law, which may include 'knowledge' that is less than sophisticated, less than current, and, well, less than faithful (I deliberately refrain from writing 'accurate') — and it cannot prevent this information from colouring its reading of the comparatist's reading of foreign law, even if it remains unaware of the intrusion of this 'pre-information'. It does not follow that the readership must be reduced to its enculturation, and Attridge's reminder is apt: '[One] will be responding not only as a cultural representative but as a singularity not exhausted by [one's] culture's determinations': Id at 91.

<sup>57</sup> Lisse, M (2001) *L'Expérience de la lecture* vol II Galilée at 84 [*il n'y a pas de lecture totale, pas de lecture du tout*].

<sup>58</sup> Cf Derrida, J (1990) *Limited Inc* Galilée at 122: 'A thousand possibilities will always remain open even as one understands something of that sentence that makes sense' [*Mille possibilités resteront toujours ouvertes, alors même qu'on comprend quelque chose de cette phrase qui fait sens*]. Elsewhere, Derrida refers to the fact of the text featuring a 'performative supplementarity': Derrida, J (1978) *La Vérité en peinture* Flammarion at 7 [*supplémentarité performative*]. For Barthes, to read is 'to affirm the being of the plurality [of the text]': Barthes, R *S/Z* supra note 4 at 123 [*affirmer l'être de la pluralité (du texte)*]. Adde: Huppert, H (1988) "'Spirituell": Ein Gespräch mit Paul Celan' in Hamacher, W and Menninghaus, W (eds) *Paul Celan* Suhrkamp at 321: 'I endeavour, at least linguistically, to reproduce clippings from the spectral analysis of things [...], because I am unfortunately not in a position to show things all round' [*Ich trachte sprachlich wenigstens Ausschnitte aus der Spektral-Analyse der Dinge wiederzugeben (...), (w)eil ich leider außerstande bin, die Dinge allseitig zu zeigen*]. The conversation with Huppert, an Austrian writer, took place in December 1966. The words are Celan's.

<sup>59</sup> Eg: Derrida, J and Ferraris, M *Le Goût du secret* supra note 38 at 69-72. The passage is Derrida's.

<sup>60</sup> Derrida emphasizes that the matter is intrinsic to the reading of texts. He refers to 'structural non-saturation': Derrida, J *Limited Inc* supra note 58 at 20 [*non-saturation structurelle*].

<sup>61</sup> Jameson, F *The Prison-House of Language* supra note 27 at 176.

there is what the reader emphasizes — what he can identify, what he chooses to accentuate, what evidence to which he elects to commit that slights other focusses — and that is necessarily not the whole.<sup>62</sup> It ensues that '[t]he concept of reading must [...] be completely distinguished from what one calls reproduction'.<sup>63</sup> There is, instead, *production*. In Roland Barthes's language, 'in accumulating the decodings, [...] the reader is caught in a dialectical reversal: in the end, he does not decode, he over-codes; he does not decipher, he produces'.<sup>64</sup>

8. Because it is uncircumventable, the deployment of the comparatist's autobiographical input into his reading of a foreign law-text is a known known; the extent of this input and its impact on the comparatist's (re-)formulation of foreign law, however, is a known unknown.<sup>65</sup> Not only can the comparative mind not obtain certain knowledge of foreign law, but it cannot secure certain knowledge of its own comparative operations. To acknowledge these facts is not to make a case for fideistic mysticism or darkness, for fanaticism or obscurantism. It is, rather, to accept that uncertainty is endemic to the reader's condition, not least to his cognitive circumstances.
9. The unavoidable partiality of reading (as one constructs, one constricts) entails that misunderstanding is inevitable — or, if you will, that every reading is a failed reading. In Derrida's words, instead of a (Gadamerian) shared horizon, the distance between the reader and the text, between the self and the other, 'the difference from one world to another', remains, rigorously speaking, 'always insurmountable'.<sup>66</sup> Derrida's acuity thus allows deconstruction creditably to distinguish itself from hermeneutics, and from the hermeneutic conviction that there exists the 'miracle' of understanding.<sup>67</sup> While hermeneutics regards its task as 'to make coincide the understanding of the other [...] with the understanding of the self',<sup>68</sup> deconstruction accepts the epistemic gap between self and other, and in fact underscores two principal virtues of the inexorable misapprehension that must follow from this discontinuity. First, the impossibility for the self to reach the other means that otherness can resist assimilation to the self or appropriation by the self — that it can indeed maintain its otherness. Secondly, as

<sup>62</sup> Attridge thus wisely advises 'a reading [...] that involves both active engagement and a letting-go': Attridge, D *The Singularity of Literature* supra note 16 at 130.

<sup>63</sup> Gadamer, H-G (1993 [1992]) 'Wort und Bild' in *Gesammelte Werke* vol VIII Mohr Siebeck at 394 ['(d)er Begriff des Lesens muß (...) von dem, was man Reproduktion nennt, ganz unterschieden werden'].

<sup>64</sup> Barthes, R (1984† [1976]) 'Sur la lecture' in *Le Bruissement de la langue* Wahl, F (ed) Editions du Seuil at 47 ['en accumulant les décodages, (...) le lecteur est pris dans un renversement dialectique: finalement, il ne décode pas, il sur-code; il ne déchiffre pas, il produit'].

<sup>65</sup> Eg: Shillingsburg, P *Textuality and Knowledge* supra note 16 at 168-69: 'Each person's engagement with a [...] text has a conceptual and temporal existence that is difficult to pin down'. See generally Legrand, P (2017) 'Foreign Law As Self-Fashioning' (12/2) *Journal of Comparative Law* 7.

<sup>66</sup> Derrida, J (2010† [2002]) *La Bête et le souverain* Lisse, M, Mallet, M-L and Michaud, G (eds) vol II Galilée at 31 ['la différence d'un monde à l'autre' / 'toujours infranchissable']. For a more detailed analysis of the later Derrida's appreciation of the dynamics between self and other, which is at significant variance with Heidegger's approach holding that the individual primordially exists as a 'being-with' (or 'Mitsein'), see Legrand, P (2011) 'Jacques in the Book (On Apophasis)' (23) *Law & Literature* 282.

<sup>67</sup> Supra note 44. For a general discussion of deconstruction's advantage over hermeneutics as a strategy of interpretation, see Legrand, P (2017) 'Derrida's Gadamer' in Glanert, S and Girard, F (eds), *Law's Hermeneutics: Other Investigations* Routledge at 144-67.

<sup>68</sup> Ricœur, P (2013 [1969]) *Le Conflit des interprétations* Editions du Seuil at 84 ['faire coïncider la compréhension de l'autre (...) avec la compréhension de soi'].

the unbridgeable distance, the ineliminable hiatus, spawns unavoidable interpretive slippage — or *play* — the necessary misunderstanding that ensues must be regarded as felicitous in as much as misreading is the pre-requisite to the very ethics of negotiation — and to enhanced readerly sophistication — that a self (a reader) and an other (a text) that would be *ad idem* would promptly cancel.<sup>69</sup>

10. Since the matter of the foreign law-text's semantic reach depends on the comparatist 'meaning in', the comparatist holds much more control over the interpretive problematics than is commonly assumed (or than may be wanted, say, by positivists advocating their much-vaunted, if illusory, readerly detachment). The comparatist actively fashions the meaning of the foreign law-text, which is one key feature of the process of invention that he applies. Literally, he makes sense of the foreign law-text. Consider the interventionism that the expression 'to make sense' actually conveys: to make... sense, that is, to fabricate sense.<sup>70</sup> Observe that as the comparatist invents the text, the text changes the comparatist. To read is 'to expose oneself to the text and to receive from it a larger self'; there is the constitutive impact of the foreign law-text — a variation on the theme of the *Fremderfahrung*, the experience of the other — in the becoming of the comparatist's selfhood.<sup>71</sup> While the comparatist invents the text, the text transforms the comparatist. It *others* him.
11. The readerly control that the comparatist is in a position to exercise is not unlimited, because he must contend with the foreign law-text's words. The comparatist's readerly sovereignty is therefore not an unconditional sovereignty, since the 'meaning-in' is *of* the text being read. If you will, there is a 'going-along-in-understanding' that is involved in the process of reading a text.<sup>72</sup> When it comes to meaning, and because — conventionally, at least — the foreign law-text can only mean within a bounded semantic framework, it is the words of the foreign law-text that have the last word.<sup>73</sup> For instance, the term '*tenués*' in the French statute on religious attire at school will resist an assignment of meaning that would have it signify as 'nuclear rockets'. Although such textual preponderance allows for the deflection of assumptions of full interpretive sovereignty on the part of any reader, this resilience has to do neither with anything like the essence of the inscribed words nor with any form of transcendental withstanding capturing the text. Rather, it concerns the way in which a given linguistic

<sup>69</sup> See Derrida, J (2001) *Papier machine* Galilée at 306-07.

<sup>70</sup> Cf Attridge, D *The Singularity of Literature* supra note 16 at 90: '[The response] must, clearly, be different from [the work]: a response is not an echo'. See also Attridge, D (2010) *Reading and Responsibility* Edinburgh University Press at 4: 'Responsibility in reading [...] involves a fidelity to the singularity of a work, that which marks it as distinctive and of importance; yet in order to register that singularity one has to respond with an answering singularity, not with a mere extension or copy of what one has before one, and so with a degree of infidelity' [emphasis original]; Id at 135: 'If [my] performative response is to do justice to the singularity of the text, to countersign its signature, it must itself be singular and inventive'.

<sup>71</sup> Ricoeur, P (1986) *Du texte à l'action* Editions du Seuil at 130 [*'s'exposer au texte et recevoir de lui un soi plus vaste'*]. For discussion of this Heideggerian (and anti-Kantian) theme, see Gasché, R (2017) *Persuasion, Reflection, Judgment* Fordham University Press at 68. See also Id at 85-86.

<sup>72</sup> 'To go-along-in-understanding' is in Gadamer, H-G (1995 [1994]) 'Hermeneutik auf der Spur' in *Gesammelte Werke* vol X Mohr Siebeck at 161 [*'im Verstehen mitzugehen'*].

<sup>73</sup> Eg: Hirsch, ED *Validity in Interpretation* supra note 16 at 23: '[A]ll meaning communicated by texts is to some extent language-bound, [...] no textual meaning can transcend the meaning possibilities and the control of the language in which it is expressed'.



community has conventionally invested the relevant word with an accepted meaning or a received semantic extension, often over the *longue* or *très longue durée*.<sup>74</sup> Otherwise said, '[t]he meaning of an utterance [...] is its experience'.<sup>75</sup> The foreign law-text's ascribed meaning depends on the *texture* of the comparatist's experience, too.

12. Reading, then, operates paradoxically. While there can be no true reading, a false one is possible. In my view, it is indeed key that a reading ought to be ascertainable as false, and thus open to fully-fledged interpretive disqualification. Any idea that the interpretive rigour that I defend would imply that 'anything goes' — that 'any reading goes' — or could prompt some readerly 'free-for-all', any idea, then, that the structural interpretive play that there is could somehow become free play, proves unsustainable.<sup>76</sup> The tenability of false interpretations thus deprives positivists and other honorants of fixity of meaning of potentially decedibilizing epistemic ammunition.

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Beckett's *Endgame* allows me to collate the main strands of the claim that I have been unfurling. Consider this excerpt: 'It was an extra-ordinarily bitter day, I remember, zero by the thermometer. [...] It was a glorious bright day, I remember, fifty by the heliometer

<sup>74</sup> Despite being in a position to assign meaning without reference to intention, a reader cannot do whatever he wants with a text, with the language of a text. Cf Derrida, J (2005† [2004]) *Apprendre à vivre enfin* Birnbaum, J (ed) Galilée at 38: 'One does not do anything whatsoever with language' [*On ne fait pas n'importe quoi avec la langue*']. There are the words that there are, there. And in terms of the semantic extension that words have come conventionally to acquire, it cannot be that a Chicago-based interpreter of the sentence 'Intention cannot govern the search for meaning' could reasonably and creditably read these words to mean 'There will be a massive nationalist march in Warsaw today'. There are limits — 'built-in' conventional semantic constraints, if you will — to confine or 'cabin' how much the assertion of individual consciousness can strike an independent course from the social aspect of human understanding. 'The words themselves block the way': Hartman, GH (1981) *Saving the Text* Johns Hopkins University Press at 157. In other terms, there is no unlimited or infinite semiosis. Thus, Paul Ricœur: 'Words have more than one meaning, but do not have an endless meaning': Ricœur, P (2013† [1969]) *Le Conflit des interprétations* Editions du Seuil at 139 [*Les mots ont plus d'un sens, mais n'ont pas un sens infini*']. It follows that a reading can stand as an over-interpretation, at least as a conventionally inadmissible over-interpretation, that is, as an interpretation lying beyond what a text can legitimately be taken to mean at a certain time within an ascertainable 'community' under any intelligible or persuasive view. Cf Collini, S (1992) 'Interpretation Terminable and Interminable' in Eco, E et al *Interpretation and Overinterpretation* Collini, S (ed) Cambridge University Press at 16, who, making reference to Eco, U 'Reply' (1992) in Eco, U et al, *Interpretation and Overinterpretation* Collini, S (ed) Cambridge University Press at 139-51, (approvingly?) writes (of him): 'He does not appear to maintain that there are formal criteria by which these limits can be established in theoretical terms, but he invokes instead a kind of cultural Darwinism: certain readings prove themselves over time to the satisfaction of the relevant community'. Thus, while a text can have more than one meaning it cannot have every meaning. Eco accordingly refers to '*impossible pertinences*' and '*crazy pertinences*': Id at 146 [emphasis original]. And this is so even as I hold that there can be no true reading of a text. Otherwise said, while there cannot be a text's true interpretation, there can be a false one — which means that the interpretive challenge consists in occupying a locus that is out-of-truth without being false. Also, while I reject the idea of an unlimited or infinite semiosis, I am not saying that the text must exhaustively determine the full range of possible interpretive questions since, for example, there can be interesting questions to ask about what the text does *not* say. Eg: Culler, J (1992) 'In Defence of Overinterpretation' in Eco, U et al *Interpretation and Overinterpretation* Collini, S (ed) Cambridge University Press at 114-15.

<sup>75</sup> Fish, S *Is There a Text in This Class?* supra note 9 at 65. Having long (and famously) defended this view, Fish ultimately recanted, a spectacular move pursuant to which he now holds that authorial intention governs meaning. Eg: Fish, S (1999) 'Interpretation Is Not a Theoretical Issue' (11) *Yale Journal of Law & the Humanities* 509 at 509: 'To interpret something is to determine what its author (or authors) intend'. I address intention *supra*, note 16, where I explain why this notion fails to satisfy, *pace* Fish's epiphany.

<sup>76</sup> Cf Wood, S (2014) *Without Mastery: Reading and Other Forces* Edinburgh University Press at 47: 'Rigour asks readers for suppleness and flexibility'.



[...]. [...] It was a howling wild day, I remember, a hundred by the anemometer. [...] It was an exceedingly dry day, I remember, zero by the hygrometer'.<sup>77</sup> Now, none of these statements is objective or true. To call the day 'extra-ordinarily bitter' or 'glorious[ly] bright' or 'howling wild' or 'exceedingly dry' is, each time, to offer a reading of it, which is also an intervention. On every occasion, the narrator is 'meaning in'. The day is not inherently 'howling wild' or 'exceedingly dry' for everyone to harvest this fact and to agree to it. Only a reading, an intervention, can make the day 'howling wild' or 'exceedingly dry', can make sense of it as 'howling wild' or 'exceedingly dry', can invent it as 'howling wild' or 'exceedingly dry'. And other readers might well regard the day as not 'howling wild' or not 'exceedingly dry', that is, they might disagree with the reading that is being submitted to them. Take someone who was raised where the famed *mistral* can blow at very high speed for days on end. For this person, in the light of where she has lived — of where she has been encultured — the day that she is now contemplating might well fall quite short of being a 'howling wild' day. Because fixity of meaning is not an option,<sup>78</sup> there will arise a misunderstanding between, say, two readers of the day, which may well give rise to an enriching conversation about what qualifies as a 'howling wild' day. (One thing is clear, though, and it is that if both readers readily agreed that the day was either 'howling wild' or 'not howling wild', no beneficial conversation would ensue.)

Importantly, it is not that there is 'the day' and different readings of it (say, 'howling wild' or 'not howling wild'). Rather, each reading makes or constitutes the day that there then is; it constructs the day. If you will, there is more than one day (there is, say, the howling-wild day and the not-howling-wild day) although there are not many days (there are not, say, many 10 June 2019). The day is therefore more-than-one-and-less-than-many. Additional statements could be made to construct the day (for example, 'It was a very stable day, I remember, ten ten by the barometer and steady'), and never will there come a point where everything that could have been read about the day will have effectively been read. To be sure, however, the reader cannot do whatever he wants. Conventionally, it would be false to say that the day was 'freezing cold' if the thermometer read 45 degrees on the Celsius scale. And conventionally it would be false to exclaim: 'It was a remarkably cloudy day, I remember, sixty by the bathometer').



When it comes to a foreign law-text, when it is a matter of the reading of textual meaning,<sup>79</sup> it is a mistake to mistake content for content, to mistake content as in 'content awaiting a reader' for content as in 'content produced by a reader'. There is no text-in-itself, there.<sup>80</sup> And reading is not about activating latent and sedimented possibilities of sense lying patiently and textually still. Language constructs meaning. Reading makes sense. There.

<sup>77</sup> Beckett, S (2009 [1958]) *Endgame* McDonald, R (ed) Faber at 31-33.

<sup>78</sup> Observe that in matters textual, fixity of meaning is *never* an option, not even as regards so-called 'sacred' texts, irrespective of how determinedly the text's devotees will want to assert a stable textual foundation. Cf Shillingsburg, P *Textuality and Knowledge* supra note 16 at 194: 'Textual instability is a fact of life and is not, in itself, an error. The error is in assuming that textual stability is either achievable or desirable'.

<sup>79</sup> Eg: Beardsley, MC (1992) 'The Authority of the Text' in Iseminger, G (ed) *Intention and Interpretation* Temple University Press at 33: 'The proper task of the literary interpreter is to interpret textual meaning'.

<sup>80</sup> Cf Shillingsburg, P *Textuality and Knowledge* supra note 16 at 130: 'Locutions such as "the work itself" are empty rhetorical nonentities, for the work exists only in [one's] constructs of it'.