

## Law's translation, imperial predilections and the endurance of the self

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This article examines how the assemblage between translation and imperialism can assume two radically different guises. For each of the two motifs under consideration, a parallel is drawn with another discourse – philosophical in one instance, literary in the other – with a view to enhancing appreciation of the relevant cultural models. The four cases epitomise one abiding trope, that of the self's refusal to accommodate alterity, to yield to difference, that of the self's insistence.

**Keywords:** epistemology; language; politics; self (sovereignty of); other (effacement of)

To sovereign desire and sovereign thinking, translatability was once deemed indispensable, so that nineteenth-century colonial emissaries, for example, would not countenance the idea that local texts could resist translation into their own language. Although the epistemological predicament affecting translatability would have been familiar, semantic intelligibility had to accompany the exercise of political authority. There is compelling evidence that the imperial enforcement of commensurability is now being revisited. It is not that translation no longer pertains to power relations, but that a politics of untranslatability has emerged as an expression of cultural retrenchment in contrast to the precedent instrumentalisation of the foreign meant to favour imperialist expansion. I consider in turn both the appropriating and exclusionary approaches – two scenes of the self, a homecoming through otherness and a staying-at-home.

First, I address the arrogant strategy, that is, the manner in which one can be speaking to oneself *through* the other. By way of casestudy, I refer to the politics of translation that the British coloniser visited on India. Besides the obvious asymmetrical scenario in which translation then operated, thus making local knowledge available to the coloniser on the coloniser's own terms, it also unfolded in more insidious fashion, for instance by offering the educated Indian, now aspiring to live in English on account of the language's symbolic preponderance, discursive access to his own culture through colonial re-presentations (I use the hyphen advisedly to inscribe the fact that the coloniser's translative mediation was hardly apolitical). In this crucial sense, the colonised individual and his self-understanding found themselves being produced or reconstructed through the violent implementation of a technology of power/knowledge resting in significant respects in what was ultimately a 'willing' participation in the dominant colonial order. But before examining British design, I set the theoretical tone, so to speak, by introducing a text of Martin Heidegger's. This philosophical essay aptly reminds one how confiscation of alterity is liable to intervene within less overtly political configurations too. Even as regards a purportedly philosophical claim, imperialism can be seen to be unfolding its assimilative grip on account of the language being deployed. Heidegger's words, in as

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much as they reveal an emphatic cancellation of alterity at work, illustrate the ubiquity of *arraisonnement* (a French term capturing the idea of reasoned pre-emption).

Secondly, I envisage the separative design whereby one speaks to oneself *without* the other. The illustration I have in mind concerns judicial references to foreign law in the United States, whose hegemony on the world stage – whether political, economic or cultural – cannot reasonably be questioned and warrants being cast in imperial terms, thus allowing for a revealing juxtaposition with the British project in India (observe that I use the adjective ‘imperial’ to connote the idea of ‘commanding authority’ without pejorative overtones). For the past 15 years or so, prominent US judges and academics, cutting across the usual political lines, have been vocally inveighing against references to foreign law in US judicial opinions. Ultimately a variation on the theme of US exceptionalism, the basic argument is that translative tactics would be in vain since transference of foreign signification across languages and cultures cannot meaningfully be achieved. Being untransportable to the United States in any way that would prove useful, the foreign cannot have anything to tell a US judge, lawyer or law professor. The most recent manifestation of this specific understanding of the self/other dynamics pursuant to which ‘they are they’ and ‘we are we’ takes the form of state legislation barring state judges from considering foreign law in their decisions. By way of preamble to my appreciation of US resistance to the relevance of foreign law, I discuss Philip Larkin’s poem, ‘The Importance of Elsewhere’. In particular, I analyse the last verse, where Larkin in effect argues the impertinence of the foreign: ‘Here no elsewhere underwrites my existence’.

### **Appropriative Heidegger**

In his work, Heidegger addresses what can be regarded as three major models of interaction: where two interlocutors claim to share a common understanding which their conversation serves to consolidate; where two interlocutors do not share a common understanding until their conversation establishes one; and where two interlocutors do not share a common understanding, their conversation proving them to be dwelling within two different worlds. The third case raises the problem of interworldly communication (cf. McCumber 1989, 142–144), one of Heidegger’s lasting preoccupations. For example, he devoted many of his lectures and some of his books to restoring the thought of ancient Greek philosophers like Anaximander, Heraclitus and Parmenides and of modern thinkers such as Descartes, Kant, Hegel and Nietzsche. Indeed, he also penned important writings on the poetic thought of Hölderlin, Trakl and Rilke. And he took much interest in Asia (see Ma 2009; Zhang 2006). Each time, he aimed for the preservation of originary meaning. But many of these people lived long before Heidegger or were available to him only through their writings. In the exchange that interests me here, Heidegger is engaging with a living person actually present in front of him. However, the basic structure of this dialogue remains the same that governed his conversations with the dead: it is that of the *way* (McCumber 1989, 145).

The significance of the ‘way’ for Heidegger is not in doubt. Quite apart from the consistent presence of the theme in his writings, four of his well-known German texts feature the word ‘*Weg*’ (way) in their title. And Heidegger himself inscribed ‘*Wege, nicht Werke*’ (‘Ways, not Works’) as the epigraph to his collected works. Now, a way, according to Heidegger, is not a method ‘in the sense of a procedure aimed to bring about intended results’ (McCumber 1989, 145). Indeed, Heidegger holds that ‘method follows what is in fact the utmost corruption and degeneration of a way’ (Heidegger 1959, 91). What then? Envisage a mode of thinking, a *Denkweg* (see Pöggeler 1994). Crucially, a way neither begins nor leads anywhere in

particular. It has no origin in the sense that from the moment one dwells on earth, one is always already underway (Heidegger 1927, 78). And it has no point of arrival in as much as thought, which must be incessant questioning, eschews solutions. To be sure, '[a] way allows us to reach something' (Heidegger 1959, 126), though 'not as a final goal to be possessed, but as an ongoing reaching' (Stambaugh 1987, 82; emphasis original). In other words, the insistence on the way as a mode of thinking expresses 'the fact that thinking is thoroughly and essentially questioning, a questioning not to be stilled or "solved" by any answer' (*ibid.*, 80). For Heidegger, '[t]he lasting element in thinking is the way' (Heidegger 1959, 12). What matters is the movement, the 'waying' (*Bewegung*). In terms of the conversation that I analyse here, that is, as regards the conversation's response to the matter of interworldliness with a view to ensuring the preservation of significance across different worlds, its waying consists in 'a series of meditations on individual words' (*ibid.*, 149). I now turn to this exchange, a text published as 'Aus einem Gespräch von der Sprache' or 'A Dialogue on Language' (Heidegger 1959) – one of the best-known sources accounting for Heidegger's philosophy of language.<sup>1</sup>

Situating itself within a philosophical tradition of working through questions that harks back to Socrates, the text features a conversation between an Inquirer and a Japanese interlocutor (Heidegger 1959, 1–56).<sup>2</sup> While the Inquirer is evidently Heidegger himself (the conversation features many first-person references disclosing the rhetorical technique on display),<sup>3</sup> the Japanese is Tomio Tezuka, a professor of German literature at the university of Tokyo and a translator of some of Heidegger's writing.<sup>4</sup> Although the encounter between Heidegger and Tezuka genuinely took place in Freiburg (Germany) in March 1954, the written rendition of this exchange is, strictly speaking, 'invented' and 'the text represents exclusively Heidegger's own work' (May 1989, 13; emphasis original). Towards the end of the discussion, the Inquirer insists yet one more time that his converser produce a Japanese equivalent to 'what ... Europeans call "language"'. Though touched by the Inquirer's listening disposition, the Japanese has been reluctant to answer the question as stated, suspecting that there is at work an unbecoming process of capture – or, as one might say after Edward Said, of Orientalism (Said 1978). After further reticence, he nevertheless gives way. Having acknowledged his challenge on account of the European inclination for conceptualisation, he tries to convey a sense of local knowledge to his collocutor. The relevant excerpt reads as follows (Heidegger 1959, 45; emphasis original):

- J:* The fact that you give ear to me, or better, to the probing intimations I propose, awakens in me the confidence to drop my hesitations which have so far kept me from answering your question.
- I:* You mean the question which word in your language speaks for what we Europeans call 'language'.
- J:* Up to this moment I have shied away from that word, because I must give a translation which makes our word for language look like a mere pictograph, to wit, something that belongs within the precincts of conceptual ideas; for European science and its philosophy try to grasp the nature of language only by way of concepts.
- I:* What is the Japanese word for 'language'?
- J:* (after further hesitation) It is 'Koto ba'.
- I:* And what does that say?
- J:* *ba* means leaves, including and especially the leaves of a blossom – petals. Think of cherry blossoms or plum blossoms.
- I:* And what does *Koto* say?

- J: This is the question most difficult to answer. But it is easier now to attempt an answer because we have ventured to explain Iki: the pure delight of the beckoning stillness. The breath of stillness that makes this beckoning delight come into its own is the reign under which that delight is made to come. But *Koto* always also names that which in the event gives delight, itself, that which uniquely in each unrepeatable moment comes to radiance in the fullness of its grace.

As the Inquirer frames his question, he authoritatively brandishes his analytical category ('language') in the expectation that there is bound to exist an equivalence of meaning across the European/Japanese differend. Here, 'language' is used as an overriding, essential notion, revealing that it is simply inconceivable in the eyes of the Inquirer that it would not be found elsewhere. Indeed, the absence of 'language' in Japanese would constitute a lack of such magnitude that the Inquirer is simply unable to conceive of this possibility. In effect, not only is the Inquirer postulating the existence of a Japanese equivalent, but he is also deeming the Japanese notion to be expressible in terms that he can understand; that is, to be translatable in his language. The assumptions of deemed existence and deemed translatability, then, show the Inquirer's investigation falling prey to its cultural embeddedness and encumberment. But it is the Inquirer's reformulation of his colloquist's answer that confirms how this interrogation is mired in ethnocentrism (I use the notion of 'ethnos' beyond ethnicity *stricto sensu*; that is, in the broad sense that has long become familiar and that designates attitudes or practices being visited on others by reference to the self's vantage which is then mobilised as a referent on whose basis the other is judged).

After his Japanese interlocutor has been trying to rephrase the Japanese experience in European terms, the Inquirer purports to capture his explanation in these words: '*Koto*, then, would be the appropriating occurrence of the lightening message of grace' (Heidegger 1959, 45; emphasis original). Anyone at all familiar with Heidegger's philosophy and its idiosyncratic terminology will appreciate how the Inquirer has promptly reformulated the Japanese professor's answer in his own language – thus realising the fears that had been specifically expressed earlier in the conversation. The reply indeed features two key notions, the 'appropriating occurrence' ('*das Ereignis*') and the 'lightening message' ('*[die] lichtend[e] Botschaft*'),<sup>5</sup> which are both central to Heidegger's work. The terms 'occurrence' ('*Ereignis*') and 'lightening' ('*Lichtung*') thus appear prominently in every companion, dictionary or wordbook devoted to Heidegger (on '*Ereignis*': Polt [2005, 375–91]; on '*Lichtung*': Inwood [1999, 238–39]; Schalow and Denker [2010, 82–83]; Dahlstrom [2013, 303]). In other words, there is no doubt that the Inquirer's answer is written 'in patently Heideggerian language' (Parkes 1987, 214).

Now, the Inquirer's response reveals how, in effect, Heidegger has never left his language, that is, how he has not escaped his episteme. In effect, there has been no interaction with the other, except perhaps superficially, such that no translation in the meaningful sense of the term has taken place. Instead, there materialises an imposition of the Inquirer's analytical world. The Japanese, who is meant to be an informant, a knower, is instrumentalised with a view to consolidating the Inquirer's own, pre-existing, philosophical world view. Meanwhile, the singularity of Japanese local knowledge is consumed in the process of appropriation.<sup>6</sup> The Inquirer's act of naming erases alterity. Throughout, the Inquirer remains seemingly impervious to the cultural contingency of his own discourse. In sum, the reader is treated to a fascinating case of 'specularity between the gazer and the object of the gaze' (Liu 1995, 47). There is more, for in this instance the gazer happens to be persuaded of the discursive priority of his language on account of 'the

great depth of the German mind and German uniqueness' (*ibid.*, 47–48). In the published version of his exchange with Heidegger, the Japanese interlocutor, Tezuka, could not help observe, if most politely, that '[h]is explanation seemed to fit well with Heidegger's ideas' and that '[t]here was perhaps an element here of forcing the word into a preconceived idea' (Tezuka 1975, 60). The vectorial line, then, is not in doubt: it is Japanese knowledge that will be spoken in German terms, not the opposite. Though he might have refuted this interpretation, his language provides Heidegger with what is effectively a grammar of truth on the basis of which he engages in a similarisation exercise (which is another way of saying that he refuses any co-presence of the Japanese language as jolt or *Anstoß*, as interruption, as agrammaticality); the Japanese idea will be understood in German philosophical terms – it will be, and it can be. In sum, through an introjection of symbolic violence delegitimising alterity, Heidegger uses the Japanese language as a lever to confirm his own philosophical outlook.<sup>7</sup>

Arguably, Heidegger's trope of equivalence acts as the vehicle for a totalising discourse. To the extent that he shuttles between his world and his Japanese interlocutor's, he does so armed with the performative strength of an allegedly omniscient narrator. As he exercises the power of naming with impunity, as he fails to resist the impulse to tell his own philosophical story, he reveals his act of so-called 'translation' to be profoundly autobiographical. While Heidegger is part of the translation through the character of the Inquirer, he is also present at the site of translation as he asserts what is in effect his allegedly privileged relationship with reality, as he determines his needs as a philosopher, as he purports to show that his philosophy is *working* – and that it is *working* even in Japan. Through this exercise of authority, Heidegger thus commands the negotiating space (and not only because of the reverence shown him by his Japanese interlocutor).<sup>8</sup> As Heidegger frames the conversation (in the sense of structuring it), he frames his Japanese converser (in the sense of enclosing him). It follows that 'this is not a dialogue at all. It is a monologue in which, at the end, Heidegger only encounters himself and no one else' (Marra 2010, 168); thus, '*kotoba*' is but 'Heidegger's philosophical house' (*ibid.*, 169). In effect, 'Heidegger's Other was not totally other; it was simply the other side of sameness' (*ibid.*, 184).

To be sure, '*Kotoba*' did not offer a resolution. It did not allay semantic enigmaticity, and questions remained. Yet, the word was a *hint* capable of orienting Heidegger along several paths of thought (Heidegger 1959, 47; on 'hinting', see *ibid.*, 24–26). Though every translation is maladjusted and justice to language is always to-come (justice never just is), Heidegger's waying failed to preserve his interlocutor's originary significance across languages. As interworldly communication crumbled, the Inquirer did not account for his duty to do justice to the other language, for his *debt*.

A language of apprehension assuming the kind of hegemony that feels able to dispense with other-knowledge, thus masquerading as the provider of epistemic appreciation where there is in fact misrepresentation, cannot but generate significant ethnocentric concerns. The British approach to Indian culture, apprehended as archaic and weak, raises analogous preoccupations in even more acute fashion. In India, too, local knowledge had to submit to forcible linguistic transformation with a view to erasing its singularity.

### India, Britishly

Long an array of princely states and territories occupying the Asian subcontinent, for centuries a colony beholden to successive rulers, India – the more familiar of the two constitutional names adopted upon accession to political independence in 1947 –

illustrates a ‘contact zone’, a space where the ‘trajectories’ of peoples ‘previously separated by geography and history’ – for instance, the Indians and the British – ‘intersect[ed]’ so that there developed a situation characterised by ‘co-presence, interaction, interlocking understandings and practices’ under ‘conditions of coercion, radical inequality, and intractable conflict’ (Pratt 2008, 8). As an important aspect of their military, political and economic subjugation of India, which unfolded first under East India Company rule from 1757 to 1858 and then pursuant to a direct exercise of Crown sovereignty from 1858 to 1947, the British sought to apply cultural and, specifically, linguistic control over their most important possession. Indeed, ‘empire was in itself, at least in part, a textual exercise’ (Boehmer 2005, 14). In order to enhance colonial command, the British focused on translation, ‘a highly manipulative activity’ (Bassnett and Trivedi 1999, 2) which, through the organisation, objectification and normalisation of local knowledge, would be used to achieve a hierarchical ‘composition of the other’ (Lefevere 1999, 77) making India *available* to rulership – that is, ultimately, to the assessment and collection of revenue (in more critical terms, it would be part of a strategy ‘to siphon off commercial and economic benefits more efficiently’ [Khilnani 1998, 22]).

As they deployed translation, the British did not simply transfer meaning from Indian culture to the English language in a manner that would somehow have left local signification intact except for the fact that it would now find itself expressed in English. Rather, using their forms of knowing and thinking, they ‘enter[ed] the translation process from a specific location’, the ‘translation terms’ they retained having been ‘made for [a] specific audienc[e]’ pursuing specific goals (Clifford 1997, 182, 11, 11). ‘[E]nmeshed in relations of power’ (*ibid.*, 182), the translative displacement at work was therefore *constitutive* of cultural sense in significant respects – which is to say that the British, in effect, used translation as part of an apparatus designed to *ascribe* meaning to Indian culture (see *ibid.*, 3), not least to what they apprehended and sought to appropriate as Indian law. While they endeavoured to conquer or invade an ‘epistemological space’ (Cohn 1996, 4, 21) by deeming Indian texts to be in need of translation, the British were not so much honouring an ideological commitment to the dissemination of British justice as they were revealing primordial concern with the eminently practical goal of fashioning a clear and efficient legal regime that would be conducive to taxation (see Masani 1988, 18), a pursuit excluding the search for an authentic appreciation of local legal regimes or indeed any concession to local practices – with the exception of wigs, ‘which were judged impractical in the Indian climate’ (*ibid.*, 20).

Examples of ‘submi[ssion] to forcible transformation in the translation process’ are many (Asad 1986, 157–158). There was thus talk of an ‘ancient constitution’ (of *the* Hindu law and of *the* Muslim law in the shape of fixed bodies of precepts established by ancestral lawgivers). Also, there was mention of ‘codes’ – one Hindu, one Muslim. And there were ‘professors’ or ‘lawyers’ instead of ‘pandits’ or ‘maulavis’, ‘judges’ in lieu of ‘qazis’, ‘priests’ rather than ‘Brahmans’ (see Cohn 1996, 27, 53). Through ‘confrontation’ at the site of translation (Spivak 1985, 270), where the irreducible differences across languages would be contested ‘between those who sought to conquer the world and those who struggled to survive under such enormous pressures’ (Liu 1995, 32), Indian law was, in effect, progressively transformed into ‘English law as the law of India’ (*ibid.*, 75).<sup>9</sup>

Whether regarding the Orient in general or India in particular, the idea of translation as ‘an organic component of the colonial machinery’ (Dasgupta 2011, 120) drew inspiration from a tradition of strong intellectual contempt for the Orient – featuring notable philosophers like Montesquieu and Hegel, not to mention Marx – which ‘function[ed] to depict the thoughts and institutions of Indians as distortions of normal and natural (that is,

Western) thoughts and institutions' (Inden 1986, 411). For Montesquieu, 'in Asia there reigns a spirit of servitude that has never left it, and in all the histories of this country it is not possible to find a single trait marking a free soul' (Montesquieu 1748, 284). Hegel's views were much harsher (see Inden 1986, 405–408). With specific reference to India, he observed that 'as soon as he crosses the Indus ... [the European] encounters the most repellent characteristics, pervading every single feature of society' (Hegel 1824, 173), notably 'the most degrading spiritual serfdom' (*ibid.*, 144). Castigating Indian culture as 'dumb, deedless' (*ibid.*, 139), Hegel opined that in India thought is but 'a dreaming condition' (*ibid.*) preventing consciousness of self and indeed understanding as such (see *ibid.*, 140). As Hegel basically argued 'the ontological instability of the Orient' (Spurr 1993, 143), Marx proved no less scathing: 'Indian society has no history at all, at least no known history. What we call its history is but the history of the successive intruders who founded their empires on the passive basis of that unresisting and unchanging society' (Marx 1853, 362). In time, these views would be echoed by British politicians and intellectuals like Charles Grant ('a race of men lamentably degenerate and base' [1792, 71]), James Mill ('dissembling; treacherous, mendacious, to an excess which surpasses even the usual measure of uncultivated society' [1817, 220]) and, of course, the infamous T. B. Macaulay ('a single shelf of a good European library [i]s worth the whole native literature of India and Arabia': 1835, §10).

Arguably, William Jones's translations of Indian law texts remain one of the most visible examples of the construction of the colonial subject through the asymmetrical relations of power that operated between India and Britain. Referring to Jones's work, Said wrote that it aimed 'to gather in, to rope off, to domesticate the Orient and thereby turn it into a province of European learning' (Said 1978, 78). From the time of his arrival as a colonial judge in Calcutta in 1783 – armed with a sound scholarly reputation in history and classics, not to mention a knowledge of Arabic, Hebrew and Persian, to which he would soon add Sanskrit – until his death there 11 years later, Jones's translations proved greatly influential. It was claimed that his work altered the West's 'whole conception of the Eastern world' (Hewitt 1942, 47; see also Arberry 1960, 77–78) and that '[his] translations revolutionized European conceptions of India' (Franklin 2011, 285).<sup>10</sup> Indeed, none other than Goethe exclaimed: 'The merits of this world-famed man have been so widely praised that nothing remains for me but to recognize that I always tried to apply his labors in any way possible' (Goethe 1819, 272).

Jones referred to locals as 'the deluded, besotted, Indians' (1789, 847), the hapless victims of a 'benumbing and debasing [of] all those faculties, which distinguish men from the herd, that grazes' (Jones 1793, 215). He called Indians 'degenerate and abased' (Jones 1786b, 32), 'artful and insincere' (Jones 1772, 359), 'indolen[t], and effimina[te]' (*ibid.*, 348). To him, Indian knowledges were weak and defective. They were knowledges that he 'disqualified as inadequate to their task or insufficiently elaborated: naive knowledges located low down on the hierarchy, beneath the required level of cognition or scientificity' (Foucault 1977, 82). Unsurprisingly, Jones held it 'highly dangerous to employ the natives as interpreters, upon whose fidelity [one] could not depend' (Jones 1771, 173).

For Jones, the solution to the Indian problem was to 'represent[t] the diversity of Indian pasts through a homogenizing narrative of transition from a medieval period to modernity' (Chakrabarty 2000, 32), specifically, 'to see compiled and printed a complete Digest of Hindu and Muslim Laws, on the great subjects of Contracts and Inheritances' (Jones 1786a, 721). Expressly invoking 'the model of Justinian's inestimable Pandects' (Jones 1788, 795), Jones purported to recuperate what he regarded as an indigenous classical past with a view to refashioning India's decadent society.

Along the way, he would see to it that Indian law appeared ‘in perspicuous English’ (*ibid.*, 799), the idea being that the introduction of English ‘would silently undermine, and at length subvert, the fabric of error’ (Grant 1792, 149). As the duplicitous Indians would be thwarted in their ‘endeavou[r] always to trick and confound their British rulers’ (Teltscher 1995, 197), the British would gratify their own ‘vigorous demand for narrative’ (Bhabha 1994, 140; emphasis original). Also, the recognition of British literary supremacy would ‘break the Indian monopoly of legal knowledge’ (Teltscher 1995, 197). Still, the focus was pragmatic, and Jones did not hesitate to emphasise how ‘eight millions of innocent and useful men’ (1788, 813) could ‘add largely to the wealth of Britain’ (Jones 1794, 89). Not only did Jones aim for the hegemonic consolidation of British expertise, but he proceeded in the typically colonial expectation that the Indians would thank him for his initiative. In one of the nine hymns he composed to Indian deities, Jones thus had the natives sing the praises of their British ruler in a way that ‘ma[de] [the British] part of the natural evolution of subcontinental history’ (Rangarajan 2015, 105):

With lib’ral art and martial grace,  
Wafted from colder isles remote:  
As they preserve our laws, and bid our terror cease,  
So be their darling laws preserv’d in wealth, in joy, in peace!  
(Jones 1785, 333)<sup>11</sup>

Being recast ‘British style’ through ‘an elaborate work of philological assemblage aimed at establishing that Indian culture was “Western” culture’ (Liu 2004, 59), Indian law would find itself at last emancipated from its negative connotations. Meanwhile, the Indians would be seen to be willingly assuming their subject-position vis-à-vis English guidance even on the matter of Hindu law and could be expected to show devotion to laws that would be presented to them as their own and which in time educated or anglicised Indians would internalise as such (not least on account of the authority and symbolic power attaching to the English language). Such respect for Indian law would be particularly welcome from the point of view of the British as, in Jones’s words, the ‘laws of the natives preclude even the idea of political freedom’ (Jones 1793, 216). It would also serve to hide the harsh violence of the colonial encounter (‘is it not the supreme exercise of power to get another or other to have the desires you want them to have – that is, to secure their compliance by controlling their thoughts and desires?’ [Lukes 2004, 27]). Indeed, said Jones, ‘the natives are charmed by the work’ (Jones 1791, 885). Jones’s translation, which he did not live to complete, would thus receive ‘the ultimate stamp of authentication: ... the Other love[d] the self’ (Teltscher 1995, 198). Indeed, on the assumption that ‘the summit of [the Indian people’s] ambition [was], to resemble [the British]’ (Trevelyan 1838, 192), it was expected that ‘the confidence and affection of the people [would] increase in proportion to their knowledge of [the British]’ (*ibid.*, 191). Addressing the ‘affective economy’, Lydia Liu underlines how ‘[I]ove, friendship, and emotional attachment mattered to colonial governance insofar as they matter in all dramas of psychic struggle between ruler and ruled, man and woman, the strong and the weak’ (Liu 2004, 59).

Having legitimised itself locally by ‘going native’ (see Majeed 1992, 22), ‘the British discourse of improvement’ (Niranjana 1992, 19) had squared the circle: it had framed Indian law texts so as to posit an Anglo-Indian identity, and it had done so the British way and in the English language. In sum, it had ‘contain[ed] the threat of otherness ... by

reproducing it in a controlled system' (Makdisi 1998, 107). And, of course, 'translation [had] help[ed] create a market for European merchandise' (*ibid.*, 21).

While Jones, like Heidegger addressing his Japanese interlocutor, approached alterity as a means of expanding and consolidating his own sphere of authority, there is an alternative view that wishes to keep the other away from the self on the assumption that it cannot contribute anything useful to the self. According to this model, hospitality to the foreign does not therefore deserve to be countenanced. Before considering the US legal community's sceptical attitude towards foreign law, I turn to the poetry of Philip Larkin which, I claim, offers a compelling example of resistance to the conferment of any normative value to alterity.

### Larkin's place

Philip Larkin was a foremost English poet and novelist who declined the position of Poet Laureate in 1984 upon John Betjeman's death (Motion 1993, 511). In his late twenties, Larkin left England to hold the post of sub-librarian at Queen's University in Belfast, Northern Ireland, between 1950 and 1955. These years correspond to the 'critical transitional period' (Goodby 1989, 132) of his intellectual itinerary whose unfolding would be marked by 'a conception of ... Englishness as the repository of value and identity' (Corcoran 1993, 92), indeed by an "'English nationalism" ... really very much of a provincial variety' (Crawford 2000, 277). Accounting for the poet's 'internal transformation' (Goodby 1989, 132), the Belfast years would prompt Larkin to deploy 'poetic strategies' that mobilised (and simultaneously justified) 'the insular Englishman, responding to the tones of his own clan, ill at ease when out of his environment' (Heaney 1976, 167). The Belfast 'nurture' (*ibid.*) came as somewhat of a surprise to Larkin himself. In a 1982 interview, he recalled as follows: 'After finishing my first books, say by 1945, I thought I had come to an end. ... Then in 1950 I went to Belfast, and things reawoke somehow' (Larkin 1982, 68). Indeed, Larkin claimed that Belfast provided him with '[t]he best writing conditions [he] ever had' (*ibid.*, 58). Crucially, it also made him a 'poe[t] of the mother culture ... possessed of that defensive love of [his] territory which was once shared only by those poets whom we might call colonial' (Heaney 1976, 150–151; see also Motion 1993; Paulin 1992, 234).

In June 1955, three months after returning to England to occupy the position of librarian at the University of Hull, where he would stay until the end of his life 30 years later, Larkin completed 'The Importance of Elsewhere' (Larkin 1955a), which he would publish nine years hence in *The Whitsun Weddings*, a collection of poetry 'written in or near Hull, Yorkshire, with a succession of Royal Sovereign 2B pencils during the years 1955 to 1963' (Larkin 1964, 83). With these 32 poems, Larkin is widely seen nowadays to have reached 'the pinnacle of his achievement' (Spurr 1988, 62; see also Tolley 1991, 115).

'The Importance of Elsewhere', said to disclose a 'central canon of the Larkinian aesthetic' (Bayley 1976, 171), is a remarkably compact poem featuring three stanzas only. It cannot be assumed that the text is orthonomic unlike, say, 'This Be the Verse' (Larkin 1971a). More plausibly, the narrator is the image of Larkin, his constructed self, another persona then, an heteronym – poems like 'I Remember, I Remember' (Larkin 1954a) and 'Poetry of Departures' (Larkin 1954b) offering analogous illustrations. The narrator begins by disclosing what being abroad has meant to him. He then proceeds to infer lessons for his life in England once he had returned there.

Lonely in Ireland, since it was not home,  
 Strangeness made sense. The salt rebuff of speech,  
 Insisting so on difference, made me welcome:  
 Once that was recognised, we were in touch.

Their draughty streets, end-on to hills, the faint  
 Archaic smell of dockland, like a stable,  
 The herring-hawker's cry, dwindling, went  
 To prove me separate, not unworkable.

Living in England has no such excuse:  
 These are my customs and establishments  
 It would be much more serious to refuse.  
 Here no elsewhere underwrites my existence.

The poet had felt 'uneasy, unwilling' in England (Goodby 1989, 131), 'sensing that his individual talent was being divorced from his tradition' (Heaney 1976, 168), awkwardly trying to 'com[e] to terms with [this] isolation' (Goodby 1989, 132). Now that he was on foreign soil (the name 'Ireland' emphasises the fact of displacement, though Belfast, which is clearly Larkin's referent, is formally British), his feeling of marginalisation was no longer so peculiar. Indeed, one expects solitariness abroad. This is because things are different 'elsewhere', whether it be the local accent ('The salt rebuff of speech') or other sounds ('The herring-hawker's cry'), whether it be sights ('Their draughty streets, end-on to hills') or smells ('the faint/Archaic smell of dockland, like a stable'). While before he had thought that 'strangeness' might cripple him, he now saw – he had 'pro[of]– that his 'separate [ness]' was not 'unworkable'. Belfast thus allowed the poet to 'clarif[y] the nature of his predicament and f[ind] a means by which he might exploit it for artistic ends' (*ibid.*, 133). To be sure, he now realised that 'a selfhood constructed in one episteme cannot easily adjust to a new regime' (Osborne 2008, 224–225). There was no question, then, of identifying with 'Ireland'. Accordingly, Larkin, again '[l]iving in England', would become 'a poet ... of composed and tempered English nationalism' (Heaney 1976, 167).

Acknowledging that, at home, marginality is 'much more serious', that in the vicinity of '[one's] customs and establishments' there is 'no such excuse' to 'refuse' to conform as there was abroad, that it is no longer possible to warrant or reinforce one's attitude by invoking the fact of 'elsewhereness', the narrator states unequivocally: 'Here no elsewhere underwrites my existence'. Being 'elsewhere' or being from 'elsewhere' would not provide any insurance anymore. Observe that this last verse of the poem unfolds as smoothly as it resonates vigorously. Indeed, '[t]he description of a particular experience in the first stanza is followed by an elaboration based on sensory details in the second .... The final stanza offers a more general and abstract speculation on the difference between living at home and abroad, which grew out of the preceding particulars' (Stojkovic 2006, 127). Now, '[b]ecause ... of this logical development of ideas, the very last thought, which has the form and the tone of a precept or a stereotypical saying, fits in naturally and powerfully' (*ibid.*, 125). Incidentally, the impact of the last verse is enhanced through the use of the word 'here' which places the reader in the same place as the poet, the suggestion being that the reader, too, is bound to have experienced, or to be destined to experience, what the narrator describes. This is what literary critic John Bayley has called, with admiration for Larkin, another form of the division between Art and Life, a solidarity which 'keeps [readers] continuously interested in [the poet], always wanting to hear more about him' (Bayley 1976, 182).

From now on, therefore, Larkin would write 'always knowing [his] proper place to be back home' (Bayley 1976, 172). He would indeed defend the view that 'poets write for

people with the same background and experiences as themselves, which might be taken as a compelling argument in support of provincialism' (Larkin 1982, 69). On account of what even his friendly critics were to call 'a drastic and gratuitous contraction of experience' (Davie 1982, 123), there would no longer be time for elsewhere in Larkin's life:

Radio rubs its legs,  
Telling me of elsewhere:  
.....  
Keep it all off!  
(Larkin 1971b, 187)

At home, 'involve[ment] with the world beyond' was of no realistic avail (*ibid.*). Indeed, Larkin's career shows an incessant 'refusal to go for experience outside England' (Davie 1982, 123).

For Larkin, '[t]he renunciation of what is outside England ... takes two main forms. First, there is his refusal of foreign travel and of poetry about places and people outside England. ... Secondly, he has published no translations' (Robinson 1990, 1; see also Ingelbien 2006).<sup>12</sup> As if to reinforce the claim, *The Whitsun Weddings* opens with a strong poem entitled 'Here' (Larkin 1961). As one critic remarked, 'there is ample evidence of Larkin's resistance to the multiplied views of the world that an interest in languages will likely encourage' (Robinson 2010, 11). In fact, Larkin, perhaps a bit provocatively, referred to his 'hatred of abroad', where he was 'not ... able to talk to anyone, or read anything' (Larkin, 1979, 47). In slightly less uncompromising language, he exclaimed: 'Generally speaking, the further one gets from home the greater the misery. I'm not proud of this, but I'm singularly incurious about other places' (*ibid.*, 55). In fact, when he delivered a speech in Hamburg in 1976 on the occasion of being awarded a literary prize there, Larkin recalled how much of a 'stay-at-home' he had become (Robinson 1990, 1): '[T]his is only the second time since 1945 that I have been abroad' (Larkin 1976, 90).

According to Larkin, '[a] writer can have only one language, if language is going to mean anything to him' (Larkin 1982, 69). Unsurprisingly, then, Larkin could exclaim as follows in the course of an interview: '[D]EEP down I think foreign languages irrelevant'. He added: 'If that glass thing over there is a window, then it isn't a *Fenster* or a *fenêtre* or whatever' (Larkin 1982, 69). And in another interview, he would confess: 'It's a language thing with me: I can't learn foreign languages, I just don't believe in them. As for cultural identities, that sounds a bit pretentious, but I think people do get pallid if they change countries' (Larkin 1981, 54). To return to 'The Importance of Elsewhere' and to the last verse in particular, 'a clos[e] analysis of the structure of language in the text reveals a positive implication that rises out of the apparently negative terms' (Chatterjee 2006, 21). In other words, though '[h]ere no elsewhere underwrites [his] existence', Larkin is happy in England and is content to behave as an insular Englishman, revealing 'an obstinate insistence that the poet is ... a real man in a real place' (Heaney 1976, 164).<sup>13</sup> Consider this joyous verse from 'The Old Fools': '[T]he million-petalled flower/Of being here' (Larkin 1973a, 196).<sup>14</sup>

But 'the tonic effect of experiencing oneself as foreign' in Ireland prompted Larkin to develop a 'double consciousness' (Osborne 2008, 232). Not only would he eschew the other's alterity, but he would embrace his own alterity within. In other words, while he would focus exclusively on England, he would engage in this narrative exercise from a situation of firm embeddedness in England's provincial margins, an onlooker's perspective confidently narrated in poems like 'Here' (Larkin 1961; see Rowe 2011, 7–47) or 'Show Saturday' (Larkin 1973b). Specifically, as 'Here' makes clear, he would adopt a 'defiantly

“provincial” stance [in] Hull’ (Crawford 2000, 274). Ultimately, as regards England, Larkin would be assuming the role of an ‘insider-outsider’ (Crawford 2000, 276). Indeed, ‘The Importance of Elsewhere’ does not shut the door completely to the mobilisation of a singular voice at home, though it acknowledges that such ‘refus[al]’ of the social consensus will be ‘much more serious’ than what would have been the case abroad, where no one would have paid much attention to a foreigner’s remarks. At home, ‘enabling the individual voice’ will have negative repercussions (Goodby 1989, 133). Still, Larkin will rail against a ‘witless crapulous people, delivered over gagged and bound to TV, motoring and Mackeson’s stout’ (Larkin 1955b, 245), and will chastise the ‘cut-price crowd’ (Larkin 1961, 136). While he is able to show himself unapologetically reverential, as in ‘At Grass’ (Larkin 1950) or ‘An Arundel Tomb’ (Larkin 1956), he can be scathing in attacking what he perceives as British national decline, as in ‘Homage to a Government’ (Larkin 1969) or ‘Going, Going’ (Larkin 1972).

A poem like ‘The Importance of Elsewhere’ can be read to suggest that ‘one’s home defines one’s identity’, and ‘the presence of this idea in his poetry explains Larkin’s appeal to his readers’ as ‘[he] shows the connection between England in the abstract and daily life in the concrete’ while ‘celebrating quintessentially English scenes and discerning a nation’s character’ (Rossen 1990, 65). Because Larkin’s poetry was anything but eccentric, it was widely felt by his critics that ‘the England in his poems is the England we have inhabited’ (Davie 1972, 64). One of his biographers could thus conclude that Larkin’s voice became ‘one of the means by which his country recognized itself’ (Motion 1993, 343). And a commentator was able to observe that ‘there has been the widest possible agreement ... that Philip Larkin is for good or ill the effective unofficial laureate of post-1945 England’ (Davie 1972, 64). In fact, statistical evidence supports this view. Larkin was chosen in a 2003 Poetry Book Society survey, almost two decades after his death, as Britain’s best-loved poet of the previous 50 years (*The Whitsun Weddings* was also elected as the favourite collection of poems),<sup>15</sup> and in 2008 *The Times* named him Britain’s greatest post-war writer.<sup>16</sup> Betjeman had already sensed that Larkin had ‘closed the gap between poetry and the public’ (Bradford 2005, 202),<sup>17</sup> while literary critic S. K. Chatterjee noted how his poetry responded strongly to changing ‘economic, socio-political, literary and cultural factors’ (Chatterjee 2006, 18).

Larkin’s motion stands diametrically opposed to Heidegger’s attitude towards his Japanese colleague and to the British comportment vis-à-vis India. While the philosopher uses the Japanese answer to underwrite his own philosophy, just as the colonisers seize (and change) Indian culture to warrant their own agenda, Larkin expressly refutes the idea that what is taking place ‘elsewhere’ can usefully affirm whatever is happening ‘here’ and further refuses to show interest in any modification of the foreign along the way. In a key sense, a theory of ‘hereness’ indistinguishable from Larkin’s in salient respects informs the reaction of a substantial and influential contingent of the US legal community as regards the relevance of foreign law to US adjudication. In turn, this sceptical position stands in stark contrast to the conquering strategy shown by Heidegger or the British in India and illustrates an insularity or a reserve which very much operates as an alternative way of deploying governance. For US jurists opposed to the mobilisation of foreign information to justify the outcome of US legal processes, other laws are unentitled to play a vindicative role.

### Constitutionalism enisled

‘[F]oreign legal materials can *never* be relevant to an interpretation of – to the *meaning* of – the US Constitution’ (Scalia 2004, 307; emphasis original). Speaking these words

extrajudicially before the American Society of International Law on 31 March 2004, Justice Antonin Scalia was but reiterating a view he had already stated in US Supreme Court opinions such as *Lawrence v. Texas*, 539 US 558, 598 (2004), where he had dissented regarding the ascription of rights to sexual minorities and written that the references to foreign law by the majority in order to consolidate the recognition of those claims were at once ‘meaningless dicta’ and ‘[d]angerous dicta’. Earlier, in *Thompson v. Oklahoma*, 487 US 815, 868 (1988), a decision holding that the imposition of the death sentence on convicted capital offenders below the age of 16 violated the Eighth Amendment’s protection against ‘cruel and unusual punishments’ (as applied to the states through the incorporation doctrine of the Fourteenth Amendment), Justice Scalia, dissenting, had insisted that ‘reliance upon ... what [i]s pronounce[d] to be civilized standards of decency in other countries ... is totally inappropriate as a means of establishing the fundamental beliefs of this Nation’. Addressing his fellow justices, he had forcefully stated: ‘We must never forget that it is a Constitution for the United States of America that we are expounding’.<sup>18</sup>

In *Stanford v. Kentucky*, 492 US 361, 369 (1989), writing for a majority of the Supreme Court confirming the imposition of a death sentence on an individual who was 17 at the time of the criminal offence, Justice Scalia had sought to ‘emphasize that it is *American* conceptions of decency that are dispositive’ and ‘reject[ed] the contention ... that the sentencing practices of other countries are relevant’ (emphasis original). On the understanding that foreign ‘notions of justice are (thankfully) not always those of [the US] people’, as he would observe in dissent in *Atkins v. Virginia*, 536 US 304, 347–48 (2002), Justice Scalia, writing on behalf of a majority of the court in *Printz v. United States*, 521 US 898, 921 (1997), had also rejected as irrelevant Justice Stephen Breyer’s assertion, in dissent, that Switzerland, Germany and the European Union all provided relevant information to the resolution of the litigation at hand bearing on the workings of US federalism. Electing to formulate the matter in propositional language, he had held as follows: ‘We think such comparative analysis inappropriate to the task of interpreting a constitution’. After his American Society of International Law speech, Justice Scalia specified, in *Schriro v. Summerlin*, 542 US 348, 346 (2004), that foreign law remains ‘irrelevant to the meaning and continued existence of th[e] right [to jury trial] under the [US] Constitution’. In a dissent in *Roper v. Simmons*, 543 US 551, 628 (2005), disagreeing with the view that the execution of minors violates the prohibition of ‘cruel and unusual punishments’, Justice Scalia would again adopt the firm view that ‘“[a]cknowledgment” of foreign approval has no place in the legal opinion of this Court’.

Though Justice Scalia is a particularly prominent upholder of the interpretive irrelevance of foreign law in US constitutional adjudication, he is far from being alone in championing this stance. For leading appellate judge Richard Posner, ‘[t]he judges of foreign countries, however democratic those countries may be, have no democratic legitimacy in the United States’ (2008, 353). Accordingly, Judge Posner claims that ‘the Supreme Court would be making not only a juridical but also a political error by asking the American people (as one justice did in an opinion) to accept that decisions by the Supreme Court of Zimbabwe should influence decisions by our Supreme Court’ (2004, 42). In Judge Posner’s words, ‘most Americans would think it outrageous that Zimbabwean judges, however distinguished they may be, were making law for us’ (*ibid.*).<sup>19</sup> Interestingly, in *United States v. Windsor*, 570 US \_\_\_ (2013) and *Hollingsworth v. Perry*, 570 US \_\_\_ (2013), the two decisions effectively constitutionalising homosexual unions, the Supreme Court chose not to incorporate foreign law in its reasoning in a context where justices favouring the liberalisation of marriage could readily have buttressed their opinions by resorting to foreign legal sources as persuasive authority.<sup>20</sup>

Beyond the judiciary, leading conservative scholars like Eric Posner (2008, 120–122), Steven Calabresi and Michael Ramsey also contest the accommodation of foreign law as a normative argument in matters of constitutional interpretation. Calabresi thus defends what he styles a ‘positive’ version of US exceptionalism which ‘call[s] into question the practicality and wisdom of our Supreme Court imposing foreign ideas about law on us’ (2006, 1337). He notes how ‘Americans think ... that the United States is an exceptional country that differs sharply from the rest of the world and that must therefore have its own laws and Constitution’ (*ibid.*). Indeed, ‘this idea – that America is an exceptional nation, with an exceptional people and an exceptional role to play in the world – is deeply rooted in American history’ (*ibid.*). In fact,

not only do Americans think of the United States as an exceptional country, but it has actually become an exceptional country as it has attracted immigrants with a unique constellation of ideological beliefs. Americans are more individualistic, more religious, more patriotic, more egalitarian, and more hostile to unions and Marxism than are the people of any other advanced democracy. (*Ibid.*)

For his part, Ramsey remarks that ‘as a matter of legal interpretation, there is no obvious connection between the US Constitution and foreign court opinions, which address the interpretation of different documents, written in different times and different countries (and sometimes different languages)’ (2004, 73).

On the whole, the proponents of a measure of normative value for foreign law – not, to be sure, as binding law, but as persuasive authority – tend to fall in the so-called ‘liberal’ camp (see Jackson 2010; Waldron 2012). The invocation of comparative materials has indeed been shown to accord with political preferences (see Epstein and Knight 2003, 206–209). As Ramsey notes, those who advocate recourse to foreign law usually do so with a view to ameliorating the human rights on offer as a matter of US constitutional law, for instance through the amplification of the ‘cruel and unusual punishments’ doctrine (see Ramsey 2004, 81). A typical pronouncement is Justice Ruth Ginsburg’s to the effect that ‘comparative analysis is relevant to the task of interpreting constitutions and enforcing human rights’ (Ginsburg and Merritt 1999, 282; underlining original). Foreign law has also been solicited to sustain the controversial doctrine of ‘substantive due process’, for example in *Roper v. Simmons*, 543 US 551, 554 (2005), where Justice Anthony Kennedy, writing for a majority of the Supreme Court, held that foreign law, ‘while not controlling our outcome, does provide respected and significant confirmation for our own conclusions’. But it is perhaps Justice Stephen Breyer’s views that have been most widely aired. In an address to the American Society of International Law on 4 April 2003, Justice Breyer boldly referred to ‘the global legal enterprise that is now upon us’ (2003, 268). For him, ‘[j]udges in different countries increasingly apply somewhat similar legal phrases to somewhat similar circumstances’ (*ibid.*, 266). Consequently, there are to be found ‘cross-country results that resemble each other more and more, exhibiting common, if not universal, principles in a variety of legal areas’ (*ibid.*, 267). In Justice Breyer’s view, these ‘growing institutional and substantive similarities ... reflect ... a near-universal desire for judicial institutions that, through guarantees of fair treatment, help to provide the security necessary for investment and, in turn, economic prosperity’ (*ibid.*).<sup>21</sup> Implausibly (Judge Posner says ‘fantastically’ [2008, 351]), some academics have taken the claim in favour of a universal or transnational constitutionalism to posit the existence of a ‘generic constitutional law’ (Law 2005) or a ‘global constitutional gene pool’ (Saunders 2009).

Yet it is important to observe that the reluctance to refer to foreign data in US constitutional adjudication cuts across political lines. Bruce Ackerman and Cass Sunstein, two foremost liberal academics, thus make a case for exceptionalism that is not ultimately dissimilar from Calabresi's. Ackerman formulates his contention thus:

America is a world power, but does it have the strength to understand itself? Is it content, even now, to remain an intellectual colony, borrowing European categories to decode the meaning of its national identity? ... To discover the meaning of the Constitution, we must approach it without the assistance of guides imported from another time and place. Neither Aristotle nor Cicero, Montesquieu nor Locke, Harrington nor Hume, Kant nor Weber will provide the key. Americans have borrowed much from such thinkers, but they have also built a genuinely distinctive pattern of constitutional thought and practice. (Ackerman 1991, 3)

He adds:

The Constitution presupposes a citizenry with a sound grasp of the distinctive ideals that inspire its political practice. As we lose sight of these ideals, the organizing patterns of our political life unravel. If 'sophisticated' constitutionalists blind themselves to the distinctively American aspects of the American Constitution, this must be a cause for more general concern. (*Ibid.*, 3–4).

Ackerman further criticises those who 'have been unable to escape the predictable consequences of the Europeanization of constitutional theory' (*ibid.*, 4). For his part, Sunstein writes that 'it is not worthwhile, all things considered, [for American constitutional law] to consult foreign practices', given that it boasts 'a large stock of precedents on which to draw' and that 'its traditions are both developed and distinctive' (2009, 209).

After it had expressly made positive reference to the role of foreign law in *Roper*, the Supreme Court's avoidance of any foreign sources in support of its decisions in *Windsor* and *Perry* illustrates a restraint which can be said to be attributable to the strength and the depth of the opposition, whether from within the legal community or from society at large, to the enjoyment of the brand of expanded judicial discretion that would allow US courts credibly to insist on endowing legal pronouncements from abroad with local authority. To be sure, the case in favour of the relevance of foreign law has suffered from being poorly argued, the main claim in support of this position pertaining to the commonalities that would have the world's laws exist as variations on the theme of sameness when it is so obviously the case that every law features an irreducible singularity. Consider the contention that US judges ought to be incorporating references to French constitutional law in their opinions because French law would now be similar to US law on account of an important reform that took place in France in 2010 – when the French would for all intents and purposes have imported the US model of judicial review (see Jackson 2010, 1). Not only does this argument simply fail to do justice to a range of significant local characteristics (Hunter-Hénin 2011), some of which deliberately aim to distinguish the French model from its US counterpart, but it ultimately gives references to foreign law a bad name because it purports to situate them under the auspices of an epistemic nostalgia for something like a universal or natural law, an idea that has been, rightly, 'philosophically disreputable for quite some time' (Posner 2009, 120). Unsurprisingly, a friendly critic, reflecting upon the Supreme Court's references to foreign law in *Lawrence v. Texas*, called them 'crude' (Tribe 2004, 1931). The word deserves to qualify all such instances of *similarisation*.

The objections to foreign law enjoying any normative role within the United States now extend to the legislative forum as seven states have passed legislation since 2010 barring state judges from considering foreign law in their decisions, or at least specific aspects of it such as Islamic religious law and customs. As of 1 January 2014, at least 25 other states had introduced analogous measures (Patel, Duss, and Toh 2013; Volokh 2014; Fellmeth 2012). Though the Oklahoma statute, the first such banning initiative, was found to be unconstitutional in *Awad v. Ziriak* (WD Okla., 15 August 2013),<sup>22</sup> and while one can ascertain a long-standing practice of reliance on foreign law by the Supreme Court adjudicating in constitutional matters (Calabresi and Zimdahl 2005), it seems undeniable that a significant strand of legal, political and public opinion in the United States takes the view, to return to Larkin's poem, that foreign law ought not to underwrite US law in any normative sense. If anything, retrenchment vis-à-vis the foreign appears to be expanding as it adopts new forms. Thus, in *Bodum v. La Cafetière*, 621 F.3d 624 (2010), a circuit court, taking advantage of the rules of evidence on a proof of foreign law, elected to ascertain French law – which it had to apply, given the circumstances of the case – by relying exclusively on English-language materials available in the United States, that is, without proceeding in the usual way and seeking assistance from French expert witnesses – a majority of judges indeed expressing the view that expert testimony on foreign law is dispensable as a matter of principle.<sup>23</sup>

### Steps not beyond

By way of four cases, I have wanted to contrast two motifs illustrating the performative enactment of a politics of alterity. In the first pair of examples, both Heidegger and Jones harness the foreign in the service of their self-centred preoccupations. Here, the other is cast as a means of enablement of the self, as a vehicle of self-aggrandisement. Through the incorporation of the foreign, on account of his act of translation, Heidegger thus validates his own philosophical discourse. Indeed, on account of his reference to Japan, Heidegger's assimilative rhetoric makes it possible for him to overcome any suggestion that his philosophy would be but a culturally contingent articulation. An analogous motion animates Jones in India. In a context where one might have expected the British conqueror, faced with an exotic network of meanings and representations, to affirm the distinctiveness of indigenous practices, in effect precisely the opposite scenario is seen to unfold with local patterns being reframed as extensions of the British model. To formulate the matter in general terms, in both instances, whether consciously or not, commonalities across cultures are predicated, therefore making it possible to resolve the differend hegemonically through a process of incorporation into one's power structure. Ultimately, then, there unfolds a paradox to the effect that even as the self affirms its culture (say, the German or the British) as a benchmark, it simultaneously proclaims the fact that its culture is not fully inscribed in local circumstances, so that it may lay claim to acting as a transnational referent.

For its part, the second pair of illustrations tracks the theme of distancing. Accordingly, Larkin's strategy is resolutely to fashion the self as it dwells in the self's location without recourse to alterity. The governing idea to which he subscribes is that the other cannot help the self to be the selfmost self that it wishes to be in the place where the self is existing. Selfness will be achieved not through the aggregation of alterity by means of some sort of assemblage or other, but on account of a deliberate circumvention of the other. Still, the issue is not a lack of recognition and respect for another way of life. Indeed, Larkin acknowledges that while he was in Ireland he appreciated his Irish experience. Once he is back in England, however, he takes the view that the Irish ways

will not help. In other words, Larkin relinquishes all claims in favour of anything resembling universalism, even as a condition that would be latent or potential. It is not, of course, that Larkin assumes his self to have been adequately realised on its own or to be fully realisable in isolation. Indeed, his being-English is animated by serious dissatisfaction. But for Larkin, discontent simply cannot be allayed through an acculturation or re-signification of alterity, that is, the gap between self and other cannot be bridged. Larkin accepts, like Jacques Derrida, that inevitable failure awaits ‘all attempts at passage, at bridge, at isthmus, at communication, at translation, at trope, and at transfer that [one] ... will try to pose, to impose, to propose, to stabilize’ – the implication being that ‘there are only islands’ (Derrida 2002, 9).<sup>24</sup> In the United States, Justice Scalia, Judge Posner and other critics of global legal thinking hold firmly to the view that law-worlds are likewise discrepant, so that, ultimately, US and French or Australian lawyers ‘know in common that [they] have nothing in common’ (Derrida 1994, 58). To put the matter differently, the prevailing view is that any legal/cultural confrontation between the self-in-the-law and the other-in-the-law will manifest itself as inherently agonistic. The only way to avoid this situation would be through a metalanguage that would allow for an interface across laws. For the US opponents to the ascription of normative relevance to foreign law, the fact is, however, that a metalanguage simply does not exist, that there is ultimately but monolingualism: ‘[L]anguage *is* monologue’ (Heidegger 1959, 134; emphasis original). So is law, they maintain.<sup>25</sup>

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In each of the situations discussed, the reasoned account being enunciated is that of the self – whether the German philosopher’s, the British explorer’s, the English poet’s or the US jurist’s – defending a contested epistemic sovereignty in the face of the differend. On every occasion, the self receives alterity’s request for hospitality as an arrainging demand, a discordance from which it must turn away. The expression of a negative answer to the other’s errant presence purporting to interrupt the self’s occupation of the relevant discursive space is thus the manifestation of an epistemic order whose rhetorical force is resolutely ethical and political, an ethico-political exigency in favour of self-assertion rather than self-reserve, of self-affirmation over self-effacement, of *self-perpetuation*. As any pretence of commonality is suspended, Beckett’s perspicuity holds: ‘[I]t is always yourself that you choose’ (1940, 684).

## Notes

1. Language uncontroversially features as one of the pre-eminent themes of Heidegger’s mature philosophy (see Ziarek 2013, 13–32 and *passim*) after his thought had undergone a ‘turn’ – what he styled a ‘*Kehre*’ – some years after the 1927 publication of his masterpiece, *Sein und Zeit*, or *Being and Time* (Heidegger 1947, 231–232).
2. This dialogue is the continuation of a previous conversation, many years earlier, between Heidegger and another Japanese, Count Shuzo Kuki, whose name appears in the very first line of the exchange (Heidegger 1959, 1) and on 14 other occasions. As Heidegger acknowledges, that first conversation floundered in various respects (*ibid.*, 4–9).
3. For example, the Inquirer says, ‘Some time ago I called language, clumsily enough, the house of Being’ (Heidegger 1959, 5). The reference is clearly to Heidegger (1947, 217): ‘Language is the house of Being’.
4. Although Heidegger does not mention his dialogist in the ‘Dialogue’ itself, he does so in an appendix elsewhere in the book where the ‘Dialogue’ appears (Heidegger 1959, 199). He then names ‘Professor Tezuka, of the Imperial University, Tokyo’.
5. The English words ‘appropriating occurrence’ expand on the original German text, ‘*das Ereignis*’. I am grateful to an anonymous reviewer for noting this accretion.

6. But for an exploration of 'kotoba', see Parkes (1987, 213–16).
7. A commentator has remarked on Heidegger's 'freely poetic way of dealing with East Asian thought' while noting 'substantive inaccuracy' and indeed 'distortion' (May 1989, 20, 19, 19).
8. The Japanese professor acknowledges that he approached Heidegger with deference: 'I was not in a position to contradict [h]is interpretation' (Tezuka 1975, 60).
9. There is more, of course, to colonial encounter than a binary logic whereby there would simply be the ruthless intruding overlord on one side and the silenced oppressed native on the other. Consider the production of their own domain of sovereignty within Indian colonial society by anti-colonialist nationalists through endotrophic translations in Bengali which, though initially undertaken at the behest of the East India Company, were later pursued in important ways as an instance of colonial mimicry and featured significantly within the so-called 'Bengali Renaissance' of the nineteenth century (see Chatterjee 1992; see also Trivedi 1995; Raj 2007). Still on the topic of productive recombination, Daniel White emphasises how the circulation of people, things and ideas between England and India was recursive and mutually constitutive as it involved co-constructive processes of negotiation between different individuals and groups from (and in) both places, that is, a co-development of knowledge or a development of co-knowledge (see White 2013). Also, the colonial mindset was not strictly an overseas-directed structure of thought but applied to populations located within the English domestic space which were designated as 'other' in specifically Oriental terms (see Makdisi 2014).
10. My reference to Franklin's text must not be taken as an endorsement of a 400-page biographical narrative that basically takes the form of a relentless hagiography. The acknowledgement that 'Jones imported English modes of thought and procedure' coupled with the plea that 'such importations were necessary' (Franklin 2011, 308) or the claim that Jones's 'establish[ment] [of] the universality and impersonality of law on a western model ... was always a labour of love' (*ibid.*, 310), which would have made him into 'a pioneering comparative lawyer' (*ibid.*, 122), must suffice to show the author's lack of critical capacity. For alternative approaches emphasising intellectual patterns that made the colonial world susceptible to certain kinds of management even as one would deny that such shaping of knowledge pertained to a project of power, of domination, of rule, see Breckenridge and van der Veer (1993); Burke and Prochaska (2008).
11. Jones's mimicry of Indian voices was so good as to prompt his readership to mistake his original verse for translations (see Rangarajan 2015, 26–27, 108).
12. Interestingly, though, Larkin himself was translated. Indeed, the French translator of 'Here' wrote of his experience (Nassif 2006).
13. There is one important exception to Larkin's lack of attraction for the unfamiliar, which is his fascination with Black American musicians (see Larkin 1985; see also Booth 1997, 201–204; Palmer 2008, 13–67).
14. Compelling evidence shows that Larkin was conversant with at least one foreign book (which he liked!), though he had read it in English (Mah 2001, 30–33).
15. 'Larkin Is Nation's Top Poet', *BBC News*, October 15, 2003, <http://news.bbc.co.uk/2/hi/entertainment/3193692.stm>. I have a pdf of the text.
16. 'The 50 Greatest British Writers Since 1945', *The Times*, January 5, 2008, [http://web.archive.org/web/20080511204023/http://entertainment.timesonline.co.uk/tol/arts\\_and\\_entertainment/books/article3127837.ece](http://web.archive.org/web/20080511204023/http://entertainment.timesonline.co.uk/tol/arts_and_entertainment/books/article3127837.ece). I have a pdf of the text.
17. Betjeman wrote this appreciation in March 1964 in his review of *The Whitsun Weddings* for *The Listener*.
18. The silent reference is to Chief Justice John Marshall's celebrated opinion in *McCulloch v. Maryland*, 17 US 316, 407 (1819): '[W]e must never forget that it is a *Constitution* we are expounding' (emphasis original).
19. Judge Posner's reference is to Justice Breyer's dissent from the denial of certiorari in *Knight v. Florida*, 528 US 990, 996 (1999).
20. Ironically, the exception is Justice Antonin Scalia who, in *Windsor*, briefly draws on German constitutional law (see slip opinion at 3).
21. Ramsey formulates a challenging rejoinder to liberals making the claim for foreign law. Noting that there are 'substantive due process rights, First Amendment rights, and criminal procedure rights, to name but a few, where the United States is more protective than any other country' (Ramsey 2004, 81), he argues that if foreign law is to be granted normative value within US

constitutional adjudication, if it is allowed to be influential as a matter of US constitutional law, then it should follow that ‘these rights be reduced to accord with worldwide notions of justice’ (*ibid.*). As Ramsey notes: ‘[I]t is quite another matter to argue for international materials where they contradict ... favored rights’ (*ibid.*). Presumably, failure to sacrifice favoured rights inconsistent with foreign laws undermines the integrity of the entire project in favour of the normative relevance of the foreign and suggests but ‘opportunistic advocacy’ – the point being that one will always find a decision in one’s favour somewhere if only one is prepared to pursue one’s search persistently enough (*ibid.*, 69, 80).

22. This decision reprises a circuit court judgment in *Awad v. Ziriox*, 670 F3d 1111 (10th Cir. 2012), which concerned a preliminary injunction.
23. Judge Diane Wood strongly disagreed on this specific issue: *Bodum v. La Cafetière*, 621 F.3d 624, 638–40 (2010).
24. In *The Tale of the Unknown Island*, José Saramago concurs (1997, 32).
25. An anonymous reviewer suggests that the matter of proselytisation features in the work of some US jurists resisting interest in foreign law in a way which might evoke aspects of Heidegger’s or the British explorers’ arrogant approach. Even as I accept that after deconstruction one does well not to claim more for binary distinctions than is warranted, I maintain that, say, Justice Scalia’s standpoint, as distinguished from Heidegger’s, or Judge Posner’s stance, as opposed to the position held by British explorers in India, do not prompt engagement in the construction of the self through overt acts of appropriation of alterity. It may be that neither Justice Scalia nor Judge Posner would lament endorsement of his work by a foreign audience, but neither one nor the other seeks to fashion his self-in-the-law through the earnest re-signification of foreign discourses. I repeat that as they deploy their autarky, Justice Scalia and Judge Posner however resemble Larkin who, like them, did not actively seek to enlist alterity to validate his writing.

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