

# Derrida and Legal Philosophy

Edited by

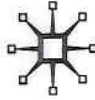
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# 8

## “Il n’y a pas de hors-texte:” Intimations of Jacques Derrida as Comparatist-at-Law

Pierre Legrand\*

The fine ear is an ear that hears finely,  
that perceives differences [...].  
To perceive differences is to convey, precisely,  
the distinction between apparently similar things.  
—Jacques Derrida<sup>1</sup>

Relations within the field of comparative legal studies (not unlike those in other fields) display two simultaneous and adversarial strategies: the one, pursued by those who enjoy the use of the (limited) intellectual capital, aiming to preserve it; the other, promoted by those who cannot assert authority, seeking to acquire it.<sup>2</sup> If one imagines the field of comparative legal studies and its constellation of courses, programs of studies, chairs, institutes, conferences, and journals as a figure, as any figure, perhaps even as an open figure with nothing ever lying outside of it, it becomes easier to situate the protagonists that occupy this contested terrain armed with either a dominant/impositional or a marginal/oppositional discourse.

Assume, then, a center (admittedly a problematic notion in the case of an open-ended figure).<sup>3</sup> This supposed center would be occupied by the censors, the legitimators, the chronophobic regiments holding firm to their classical conception of comparative research about law, by the editors of the *American Journal of Comparative Law*, the directors of the *Max-Planck-Institut für ausländisches und internationales Privatrecht* in Hamburg, the convenors of the next congress of the International Academy of Comparative Law, and other such established figures and their squadrons of disciples. Reports, papers, studies, and writings of all kinds emanating from this hypothetical center—most prominently Hein Kötz’s book and its impeccable institutional credentials correlating with a very high degree of symbolic efficacy within the field<sup>4</sup>—could legitimately be regarded as manifestations of the comparative orthodoxy and, in that capacity, as promoting, subtly and invisibly even, an epistemological policing aimed at the institutionalization of a textual paradigm organizing the way comparative research is designed, conducted, and

accredited. Indeed, a text like Kötz's structures a disciplinarity; that is, a fully reticulated intellectual *Ordnung* allowing to distinguish between "good" and "bad" comparisons in a way, for instance, that centralizes newcomers to the field or refuses to accommodate them.

Two of the various strategies having prevailed over the design by Kötz of his structure of authoritative articulation and over the production of his array of directive statements deserve to be outlined. First, he adopts a writing style (still) conventionally regarded by those who engage in doctrinal exposition about the law as what it means *to write like a lawyer*. Specifically, Kötz yearns for "scientific exactitude" (and aspires to be deemed "scientifically" exact by his readership),<sup>5</sup> an approach which favors crisp conclusiveness and thus circumvents anything in the nature of hesitations, ambivalences, and equivocations, which insists on an apodictic (that is, affirmative, demonstrative, and authoritative), "official" tone inscribing, for instance, a lofty removal from the sphere of contact with alternative views, those critical standpoints that Derrida calls "counter-signatures."<sup>6</sup> Second—in a gesture that can be regarded as a hypostatization of the first tactic of static self-confirmation (and that could be associated with a kind of conservative morbidity)—Kötz transmutes the anxiety that attends every encounter with a previously unknown datum by ensuring that a new edition of his book should restate precisely the text of the previous one.<sup>7</sup> This (somewhat truculent) fetishization of his own word allows Kötz to stand forth as a model of self-knowledge and self-control.<sup>8</sup> He can properly assume the role of "guide" in the field, a fact which has prompted a commentator to refer to his credentialed book as the "*Baedeker*" of comparative legal studies.<sup>9</sup> As comparatists-at-law, then, "we are governed by texts"—and, specifically, by the established text within the field, which "normalize[s], ... anticipate[s] on any answer by decreeing in advance what is the best discourse, the best attitude, the best research to conduct, etc., given the standpoint of a power and according to its demands which are, as a matter of principle, legitimate."<sup>10</sup>

Even as they argue in favor of the deterritorialization of the study of law and claim that comparative legal studies can be understood as a model site for the critique of local-legal rationalization, established comparatists adopt a rigidly formalistic approach to legal discourse. For them, deterritorialization means, ultimately, the incorporation within their frame of analysis of posited law outside of the national territory. I certainly do not mean to belittle this "move" since the conferment of normative authority (of whatever sort) to foreign law is hardly banal. To be sure, though, established comparatists are not prepared to countenance deterritorialization at another, more sophisticated level. In particular, they refuse to entertain deterritorialization of thought, the kind of process that would allow thinking about law to move beyond logocentrism, nomocentrism, and (alleged) scientificity. For orthodox comparatists, the comparative process is essentially confined to an interaction between two or more logocentrisms, two or more nomocentrisms, and

two or more (alleged) scientificities. As they attempt a distancing from the strictures of national law, these comparatists remain unwilling to depart from "law" as habitually understood. To them, although the law they study is located elsewhere, "law" is/remains "law"—and to consider the matter any further would serve no purpose. There is, then, a crucial sense in which even as they claim to be situating themselves beyond conformism, established comparatists-at-law simply replicate the conformist attitude. Ultimately, they promote the self-same values being defended by exponents of the local law, these lawyers known as "positivists." Like them, comparatists-at-law are concerned with legal technique and rationalization of legal technique. Like them, they foster "legal dogmatics" in that they aim to organize in the form of an orderly, coherent, and systematic representation the different rules adopted by the state (or by "a" state). Like them, they seek to offer an interpretive commentary of the legal provisions in force that would be judicious and rational—that would explain their reach and their potential, that would eliminate or reduce their apparent flaws, obscurities, gaps, or contradictions. Like them, they pursue fixity of meaning. Like them, they adhere to a brand of writing purporting to offer itself in an unproblematic and unsituated mode, seeking to deny any political commitment or personal investment (thus, wanting to show itself as being simply "there" rather than as having arrived where it is through processes of contestation with alternative practices). In sum, the established comparatists' "exit" in the direction of a comparative practice that would be an antidote to local law is but a "false exit," which in the end reveals "the force and the efficacy of the system."<sup>11</sup> On reflection, this "non-move" is unsurprising. To the extent that established comparatists seek the preservation of their standing as "lawyers" at the local level—which they emphatically *do*—they depend on accreditation by the local legal community and must accordingly partake in the epistemological assumptions prevailing locally within the field of legal studies—not, of course, because these have been demonstrated to have any intrinsic merit, but on account "[of] the social substratum on which dogmatics rest, that is, [of] the horizons of expectation and toleration of a professionalized estate of jurists who have undergone specific training."<sup>12</sup> In effect, the comparatist-at-law pays allegiance to local lawyerly ways rather than to anything like local law's other.

Giving effect to instrumental predilections and conservative inclinations that relay those of local lawyers, established comparatists-at-law thus usually focus on familiar legal artifacts such as statutes and appellate judicial decisions. They apprehend those in line with certain ideological and methodological canons revolving around catalytic notions—some of which incorporate "adjustments" catering to the international dimension characterizing comparative research—like the significance of the distinction between law and politics,<sup>13</sup> the need for the comparatist-at-law to "eradicate [his] preconceptions,"<sup>14</sup> the requirement for the elaboration of "'neutral' concepts,"<sup>15</sup> the demand for reports "free from any critical evaluation,"<sup>16</sup> the call for objectivity,<sup>17</sup>

the insistence on functionalist research,<sup>18</sup> the formulation of a "*praesumptio similitudinis*" positing similarities across laws "even as to detail,"<sup>19</sup> the assertion of the "immaterial[ity] of differences across laws,"<sup>20</sup> the assumption that one can identify a "better" law,<sup>21</sup> the goal of "scientific exactitude,"<sup>22</sup> and the existence of a "unitary sense of justice."<sup>23</sup> Underwritten by a classical subject/object dichotomy whereby the "object" (say, English law) is taken to be *there* and to be adequately *representable* by the interpreting "subject" (that is, the comparatist) if only the correct method is followed, a supposition which itself postulates that understanding (that is, in the case of especial concern to comparative legal studies, understanding across laws and, therefore, across languages and cultures) is possible, these ideas have now been naturalized (in other words, imposed/legitimized/legalized) within the field of comparative legal studies. They constitute the kind of received wisdom that seemingly lies beyond contest. They stand for what evidently defines sound comparative research. They allow established comparatists and their earnest disciples to confer value to research that meets disciplinary standards and to exclude research that fails to match the operative criteria (as understood by the established comparatists themselves), which then "sink[s] back into the murmur of mere prose."<sup>24</sup>

In the way in which an "intellectual" mechanism for regulation and control totalizes comparative research and thus curtails it by refusing to foster alternative possibilities, there can be said to exist *good comparative manners* exerting governance in the same way as there are, for instance, good table or good conversation manners.<sup>25</sup> It seems important to stress the fact that a *doxa* acquires its standing as *doxa* (its doxicity)—that a structure gains its status as structure (its structurality)—only through reiteration, through repeated restatements and reinstatements, which means that there is a substantial measure of performativity at work. Neither "function" nor the "*praesumptio similitudinis*," for example, are static essences. Rather, they are incessantly-reiterated norms which produce, retroactively, as an effect of their incessant repetition and rearticulation by masters and disciples alike, what is in effect a hegemonic form of power (which, arguably, exposes its frailty through its need for reassertion).<sup>26</sup> In other words, what is promptly assumed by comparatists-at-law to be a set of given entities—admittedly, language readily leads one to consider that words have pre-existing referents—is rather something that one *takes to be* in the nature of entities on account of the inherently performative effect of repetition.

At this point, I wish to mobilize a paper devoted to abortion in francophone jurisdictions as it attests to the prevailing "atmospherics" within comparative legal studies, a resolutely "anti-intellectual" ambiance indebted in significant respects to Kötz's commanding injunctions that assume—no matter what the fields of philosophy, sociology, anthropology, history, literary criticism, comparative literature, translation studies, and science studies have to teach us—that apodicticity is desirable, that logocentrism is achievable, that

nomocentrism is commendable, that scientificity is implementable, that apoliticity is attainable, and that objectivity is reachable.<sup>27</sup> In all these respects, the article under consideration is typical.<sup>28</sup> The co-authors address French law—which they regard as the cornerstone of their thesis—in one and a half pages. Luxembourg is explored in one paragraph and Belgium in just over a page. “Other Francophone Countries” are discussed in 16 lines while “Hybrid Francophone States” are treated in slightly less than a page. I reckon that there are references to at least 29 countries in the course of the 33-page article. This congeries of dryly affirmative “reports” (largely in the form of a heap of tidbits) is almost exclusively concerned with extant legislated texts (usually not quoted), although three Belgian decisions are briefly summarized. These accounts segue into a 22-page “comparative” survey, which is organized around topics such as “definition [of abortion],” “grounds for abortion,” “procedural conditions,” and so forth. This panorama also consists in a description of the posited law as understood by the co-authors, including frequent, if cursory, reference to legislative materials and occasional insertion (without discussion) of judicial decisions. Some mention of scholarly commentary deemed apposite completes the summary. The sub-section on “[p]roof of [p]regnancy” is illustrative of the co-authors’ approach: “Most of the countries under study stipulate in their legislation that pregnancy, if not proven, will be presumed. There are, however, a number of countries which do not include the presumption of pregnancy in the law and therefore require proof that the woman was pregnant. This requirement was embodied in the [French] law of 1810 and carried over into these jurisdictions, which have incorporated the original wording. Finally, there are those jurisdictions which do not refer to pregnancy at all.”<sup>29</sup>

While it bears repeating that the particulars of this article are in no way exceptional, the developments under review prove especially revealing of the extent of comparison-at-law’s disciplinary commitment to sepia-toned positivism. Ultimately, what is on offer is a study that doxically/docilely limits itself strictly to doxic “legal” materials like statutes, judicial decisions, and expository commentary doxically/docilely deemed doxically “authoritative,” that doxically/docilely embraces the law of nearly three dozen jurisdictions over as many pages, that doxically/docilely limits the range of its references to each law to a sprinkle of epigrammatic statements (at the very best, that is, for most countries get even *less* attention) seemingly reflecting the holdings in the co-authors’ local law libraries more than the actual state of play within the law under consideration, and that doxically/docilely follows upon this “study” with a brief conclusion on what is doxically/docilely apprehended as the “better” law (in this instance, the relevant law being very loosely framed as “internationally protected human rights”).<sup>30</sup>

One would have thought that abortion, the topic under examination, readily lent itself to problematization from the perspective of academic inquiry, critical practice, humanistic scholarship, interdisciplinary interpretation, and,

specifically, *cultural analysis*. In particular, one would have assumed that the postcolonial dimension—practically all the countries featured in the paper are former French colonies—called for a probe into the matter of cultural dissemination and an examination of the manner in which the assertion by the colonizing country of a totalizing and arguably identity-destroying power possibly distorted local experience and inscribed its deemed inferiority, the colonial authority having constructed a legal culture operating in a relation of disfunctionality with local knowledge (although the relevant law-texts may have undermined the French presence in certain respects). Here, though, such narrative is negated/silenced, the “argument” being confined to the making of a point about the state of the posited law, the lawyer’s only “reality,” and about the state of the posited law in various countries, the orthodox comparatist-at-law’s only “reality.” The interdiscursive complexity of the matter is insistently kept under erasure. Neither liminal bromides purporting to reveal awareness of a disciplinary “beyond”—I have in mind a sentence acknowledging that “[r]eligious, sociological and scientific factors together influence both the process of sanctioning or restricting abortion as well as the actual form of the legislative texts”<sup>31</sup>—nor decorative allusions claiming to show sensitivity to the violent intercultural scene—I think of the briefest of references to “French colonial history” or, much more problematically, to “Franco-African countries”<sup>32</sup>—can qualify in any way as *cultural analysis*. Rather, culture is forced to renounce any claim to epistemic legitimacy and recast itself as a mere set of instrumental/technical preoccupations.

For the co-authors, the actual words of the law-texts (what linguists call the “signifier”) are the only matter that warrants their interest. According to these comparatists-at-law, and to the extent that they have considered the matter at all, these law-texts are present through the words that inscribe them and these words are their full presence. But they have not envisaged the idea that the notion of “presence” could be more complicated than what they superficially assume, that it could be said, for instance, that “‘writing’ or the ‘[law-]text’ are not reducible... to the sensible or visible presence of the graphic or the ‘literal,’”<sup>33</sup> that “[w]hether in the order of spoken discourse or written discourse, no element can function as a sign without referring to another element which itself is not simply present,”<sup>34</sup> that “[t]his sequence means that each ‘element’... constitutes itself from the trace within it of the other elements of the sequence or system.”<sup>35</sup> For example, the co-authors have not considered that there is an inherent, constitutive dimension of the law-text, a “structural necessity inscribed in the [law-]text,”<sup>36</sup> that operates tacitly or at least in a manner that cannot be graphically visualized in the way words on a page can be (what linguists call the “signified”). That “operator”—let us refer to it as “culture”—while not as readily apprehensible as expressed words, leaves a range of constitutive traces within the law-text: historical, epistemological, social, political, and \_\_\_\_\_ [fill in the blank], each of them a *singular* trace, a *different* trace, all of them *ascertainable* traces showing that

the law-text is not/cannot be autarkic or “[m]onogenealog[ical],”<sup>37</sup> that meaning is never present as an original unity, that meaning is irrepressibly fugitive, something that the interpreter must chase.

Because yet *another* trace can always be located—“there is no atom,” says Derrida<sup>38</sup>—ascription of meaning is inevitably delayed. Since it is traces “all the way down,” so to speak, because “[e]verything begins before it begins,”<sup>39</sup> and given that any seeming immediacy is inevitably a matter of interpretation without reserve,<sup>40</sup> the site of a law-text reveals proliferating intertextual linkages and polysemous possibilities that can be activated in an infinite variety of ways. Every trace is porous: not only does it glance sideways at other traces, but it bears the mark of other traces within itself (such that the political is historical, and so forth). It is thus constituted by its relation to otherness: “each ‘term’ allegedly ‘simple’ is marked by the trace of another.”<sup>41</sup> And since the semantic density of a trace saturates it with *ever more* significance, at times manifesting itself beneath the reach of concepts and categories but impinging on experience nonetheless, it emerges as an extension that is not bounded, that is not closed by a frontier, that occupies a zone of incompleteness. There is an inherent unfinishedness to the trace. Because its mode of existence is thus open-ended, even within a minimal law-text “can be gathered the greatest potentiality of historical, theoretical, linguistic, philosophical culture.”<sup>42</sup> This means that any imputation of meaning is necessarily inadequate: the trace always exists in excess of what can be appropriated to a narrative about it. Indeed, the proliferation of (possibly impossible) re-presentations of the law-text do not constitute a more complete and coherent representation. Rather than becoming more fixed and determined, the picture begins to move. What manifests itself as presence is what happens in the ebb and flow among specific re-presentations. The tension between the different perspectives is what there is. In brief, anything like the snaring of that elusive prey, meaning, is always deferred (the demand for happy endings notwithstanding). Rather than be a matter of cognition and representation, the relation to the trace is thus one of proximity, of responsiveness, an ethical relation of recognition and respect.

It is important to appreciate that the situatable/non-locatable space occupied by the trace cannot be relegated to a “context” in the sense in which the word is usually understood; that is, as that which ascertainably and limitingly surrounds the law-text and which therefore would exist apart from it. The (irresistible) claim is that “one cannot proceed to make the habitual [law-]text/context distinction unless one has already taken the [law-]text in itself, out of ‘its’ context.”<sup>43</sup> As Derrida shows, however, there is no “law-text-in-itself” for “the thing itself always escapes”—this is precisely the point about meaning being nomadic, being a matter of the fissiparous trace.<sup>44</sup> Rather, “the context is already remarked in the [law-]text.”<sup>45</sup> “Culture” thus partakes in the presence of a law-text at least as much as any word which inscribes a law-text. It is also, literally, “inscribed in the meaning of the present”

and of the presence of a law-text.<sup>46</sup> It is therefore the case that “[t]his sequence, this fabric, is the [law-]text.”<sup>47</sup> In other words, there is “the non-legal or pre-legal origin of the legal,”<sup>48</sup> which, as trace, is part of “the legal,” is “the legal” (which is certainly not to say that cultural meaning ever finds itself translated *transparently* into legal doctrine). Even though the traces and their discursive worlds are incommensurate with the law-text, they do not exist simply as the other of the law-text, but as the structures against which the law-text persists as that which precisely has no other, no exterior, except that which it lets unfold from within itself.<sup>49</sup>

It is this intertextuality, this weaving, that Derrida has in mind when he invites us—in line with the very etymology of the word “text,” which connotes the ideas of “spinning” and “weaving”<sup>50</sup>—to commit to a “thought of the *thread* and of the *interlacing*,”<sup>51</sup> which, as it suggests something other than mere sedimentation (there is the paratactic or nonlinear character of the trace), does not purport to untie the knots as much as to complexify the interlacements. If you will, a law-text is haunted. Yes. There is a “logic of haunting” at work when it comes to a law-text.<sup>52</sup> Because “it ghosts,”<sup>53</sup> because “it is spectral structure that makes the law here,”<sup>54</sup> comparatists-at-law have to turn themselves into “hauntologists.”<sup>55</sup> They have to be able to say: “We have not stopped at any word.”<sup>56</sup> They have to be able to say: a trace “inscribes in itself the reference to the specter of something else.”<sup>57</sup> It bears emphasizing that this account of the comparative practice being promoted belies any skeptical view to the effect that there would no longer be analytical room for statutes and judicial decisions within the comparative framework, and reminds the reader that the epistemological break being advocated in the prevailing mode of thought is to the effect that while the logos of the law-texts can continue as a point of departure for the interpreter, it can no longer serve also as a point of arrival: “*all is not to be thought in one go.*”<sup>58</sup>

As ascribers of meaning, comparatists-at-law thus intervene according to a differential logic. Quite apart from the differences as between the traces themselves, there is always a gap between the trace and that to which the trace refers. In other words, what is left as trace is a vestige or a remainder of what happened. It is not *what* happened. There is more, for there is also a difference between the trace and what the interpreter says of it: not only does the comparatist-at-law speak from an “elsewhere” (the trace is there; the comparatist is looking at it from here), but he also speaks from a “thereafter” (the trace was then; the comparatist is speaking about it now).<sup>59</sup> Those spatial and temporal *interstices* partake in the structural necessity of the act of interpretation, which means that any purported representation is, in effect, but a *re-presentation*; that is, another presentation, a presentation which, because it occurs over there and later, inevitably differs from that which is being reiterated.<sup>60</sup> As traces are organized within the discursive space of the law-text, the process of integration thus maintains the fissures, the caesuras, the fracturedness, so that the singular trace is never made to disappear into

a purportedly harmonious "whole." Yes: "[W]ithout a trace retaining the other as other in the same, ... no meaning would appear,"<sup>61</sup> "what one calls 'meaning' ... [being] already, through and through, constituted of a fabric of differences."<sup>62</sup>

Still, there is no attempt to "ideali[ze]" the law-text,<sup>63</sup> no "theology" of the law-text.<sup>64</sup> The goal is not "to extend the reassuring notion of the [law-]text to a whole out-of-text and to transform the world into a library by erasing all limits, all sharp edges ... but on the contrary [to] redevelop from top to bottom the ... 'theoretical-and-practical-system' of these margins."<sup>65</sup> To be sure, "one can always inscribe in [law] something which was not originally destined to be [legal]."<sup>66</sup> Again, though, "it [is] not about destroying anything: only, and out of fidelity, trying to think how [the law-text] came about, how something that is not natural is made ... And then trying to analyze it through an act of memory."<sup>67</sup> The comparatist-at-law engages in an *anamnesis*.

The law-text, therefore, is apprehended as an archive, a notion which etymologically connects with the ideas of "home," of "place," and, therefore, of "embeddedness."<sup>68</sup> But to draw attention to the archival dimension of the law-text provides an opportunity to note the "institutive" character of the archive.<sup>69</sup> The process of archivization which an account of the trace demands is also evaluative and productive in the sense that the interpreter, even as he undertakes his speleological work, actively contributes to the disclosedness and thus to the shaping of the traces, which simply cannot be understood independently from him and from his intervention. It is those traces and not others that are elicited and deployed, that are then understood in this mode rather than in that other manner, and that are ultimately re-presented in this way rather than in that other fashion. The comparatist-at-law *invents* traces; that is, he discovers *and* creates them, both ideas being simultaneously sustained by the etymon (although it is habitually forgotten that "to invent" also connotes "to find"). To the extent that the comparatist-at-law is implicated in the construction of the traces, that he engages them in a strategy of citationality or "re-inscription" (which is necessarily differential since, once again, he approaches them from a particular vantage point that is located elsewhere than their locus and that happens subsequently to their occurrence) as part of his comparative work on the law-text, archivization implements a form of violence vis-à-vis the law-text. Indeed, the word "archive," in its later and better-known meaning, refers to the "archon," or "ruler,"<sup>70</sup> and in particular to the chief magistrate in many Greek cities; that is, to "those who commanded."<sup>71</sup> But "[a] speech that would produce itself without the least violence ... would say nothing."<sup>72</sup> From the moment there is an "*articulation*,"<sup>73</sup> there cannot be non-violence. Consonant with his interpretive project seeking to exceed the explicit law-text and, in the name of "thoughtful and responsible reflection and reception,"<sup>74</sup> to integrate into his analysis the traces that inhabit the law-text, that the law-text houses, in order to hear the answers to such (anthropomorphic) interrogations as "who are you?,"

"what are you saying?," "what do you mean?," the comparatist can/must choose a lesser violence than that wrought on the "legal" by established positivists determined to fit the square peg of formalism into the round hole of comparison. By edging his way toward what is the case—the law-text is constituted out of a proliferation of discursive traces or remains<sup>75</sup>—the comparatist-at-law implements, if you will, a *negative* violence. As he attests to "the wild desire to preserve everything, ... even that which disseminates,"<sup>76</sup> as he writes in the wake of the trace, he asserts a brand of violence aiming to resist the institutionalized violence insistently seeking to deny the polyvocality that inheres to law-texts. In this way, while he must still fall short of no-violence "as such," the comparatist-at-law ameliorates injustice.

Because the economy of the law-text is its inscription in a potentially unlimited range of determinate discursive economies, it has become impossible to maintain the strategy whereby "one tries to determine a meaning through a [law-]text, to decide it, to decide that it is a meaning and that it is meaning, posited meaning, positable and transposable as such."<sup>77</sup> Rather than have "absolute univocity [which] would ... sterilize or paralyze [law] in the indigence of an infinite iteration,"<sup>78</sup> the interruption or disruption of established thought within comparative legal studies affirms the availability of the law-text to new readings. It gives the law-text new life by opening it up to everything that it has excluded and that has been excluded from it: it re-invents the law-text's identity. Indeed, "[a] thousand possibilities will always remain open even as one understands something of that sentence which makes sense."<sup>79</sup> It encourages "an adventure of vision, a conversion of the way of examining any object posed before us."<sup>80</sup> In the process, it wants to orient itself toward the incalculable dignity of the other rather than align itself with the calculable order of the market. This contradictory interpretation requiring dissociation of reason from power, and specifically from power-over, and especially from power over the other (I have in mind the whole logistics of sovereignty, including the sovereignty of sameness) is deeply futural, open to a future of new configurations, opening to an otherness of the future where otherness—including the trace as otherness vis-à-vis the law-text as classically understood—is acknowledged. Notwithstanding these interpretive opportunities, however, the comparatist-at-law must always accept the fact that it is this particular text featuring this specific theme developed according to these given resources that he is reading. For Derrida, it is clear that "[reading] cannot legitimately transgress the [law-]text toward something other than it."<sup>81</sup> Arguably, "[t]o resist this paradox in the name of so-called reason or of a logic of common sense is the very figure of a supposed enlightenment as the form of modern obscurantism."<sup>82</sup>

To return, then, to the comparative study on abortion, one observes that despite what the subject-matter evidently invited, in disregard of the fact that law is an irreducibly cultural phenomenon,<sup>83</sup> irrespective of the epistemic distortion that emerges between the "object" that is being discussed and

what is being said about it once the complete range of exclusionary moves has been made and it has been reduced to a particular kind of knowledge, this article resolutely confines itself to the “graphosphere.”<sup>84</sup> It epitomizes the unexamined sovereignty of the word. As for the rest, as for culture, it is not that it has been forgotten. It was never “gotten” in the first place. It has been ignored. Its existence is known, but it is treated as “unknowledge exceeding science itself,” as what “[does] not have scientific qualification.”<sup>85</sup> It is “outside of the law”: it is “not of good birth, of legitimate birth.”<sup>86</sup> It is “the as yet unnamable which is proclaiming itself and which can do so... only under the species of the nonspecies, in the formless, mute, infant, and terrifying form of monstrosity.”<sup>87</sup> Yes. It is, in fact, the monstrous. The seemingly “legal” matter at issue is *monstro simile*, a “heterogeneous collag[e];”<sup>88</sup> that is, a creature that is “large and frightening,” “made up of incongruous elements.”<sup>89</sup> These characteristics accurately describe the subject of abortion. The point, though, is that any so-called legal matter is likewise a “monster.” But because the co-authors of the paper under scrutiny cannot envisage law as an imbroglio in the sense that it would consist of an intricate assemblage of “other” matters which are ultimately inseparable from one another and which run across a whole sheaf of disciplines, there is no attempt on their part to address the matter of the trace, no acknowledgement of discourses that are other than the law-text-as-words although they are constitutive of it, no acceptance of the relevance of different discourses cutting into the law-text-as-words “in the service of presence, at work for (the) history of (meaning).”<sup>90</sup> Failing this “incision of difference” within the alleged semantic plenitude of the word,<sup>91</sup> in the absence of the drawing of a relation between words and world, between texts and facticity, the law-texts are left “[to] han[g] in mid-air, without support.”<sup>92</sup>

As one reads the article on abortion law, there is, then, no meaningful sign of any radicalization of the disciplinary disruption that comparative legal studies wishes to perform vis-à-vis the array of specializations in local law. There is no insurgency. There is no indiscipline. There is no disobedience, no *dérogeance*. Specifically, any logic of cultural supplementation—again, culture being understood here not as opposed to law, but as always-already constitutive of law—is denied in the name of a rigorous retreat into (not-always-so-rigorous) positivism. Correlatively, this research contributes in important ways to the sacralization of posited law. What is fundamental here is how, in the context of a general devaluation of humanistic knowledge, the taking of any step asserting transgressive epistemic authority and exposing the co-authors as subversive comparatists-at-law through the cultural inscription of the “legal”—for example, via the notion of “trace”—is safely avoided. The law-text’s status as an “effector” of culture, as a performative, as a kind of “speech act,” is made to yield before the instrumental activity of data accumulation—a gesture that is anything but ideologically innocent. (Is institutional organization of knowledge *ever* benign? Does it *ever* arise from an Archimedean point of disinterested potency?) On account of its reductionist

inclinations aiming to circumscribe the "legal" to a repository of potentially "objective" knowledge impartially describing what "there is" through a language that would eschew any violence to "reality" (which, incidentally, is meant to absolve comparatists-at-law of any personal involvement and responsibility in the socio-genesis of their "object"), the comparative frame that is fashioned fails to attend to embeddedness, to singularity, and to difference (let us recall the co-authors' proclivity for "internationally protected human rights"). Ultimately, even as they claim to be interested in the other and in other laws, these orthodox comparatists ignore alterity: "difference cannot be thought without the *trace*."<sup>93</sup> They opt for cultural erasure; that is, for "a subtraction or devaluation."<sup>94</sup> The productive force of this article, then, is largely confined to the stabilization of crude information about raw law. In the process, the co-authors' argument denies the other and the other-in-the-law the justice that is due them given that *recognition of local specificity and respect for the preeminent manner in which laws come to be present, come to be actualized, is the condition for justice*. Yes. Whether he wants to affirm it or not, the comparatist-at-law is hostage to the trace. I claim that he must respond to it, that he must address it *respons-ibly*, and that he must do so by "dislocat[ing]" the opposition between law and non-law.<sup>95</sup> Yes. The comparatist-at-law must be faithful to the other law-text: there is "the law of the other [law-]text, its injunction, its signature."<sup>96</sup>

I argue that my critique of the article on abortion law shows how comparative legal studies is not something that needs to be preserved, but rather something that requires to be *achieved*, something *yet to come*.<sup>97</sup> Indeed, the goal must be *transformation* rather than reform: "a shift toward the reason of the plural, the indeterminate, the random, the irregular, the formless, the paralogistic."<sup>98</sup> But who would undertake to challenge the established comparison-at-law, that which opts to eschew cultural consciousness, that which wishes to pretend that there is an "as-it-isness" of the law that makes any consideration of the trace superfluous? Who would implement a contrarian comparatism? Who would promote comparative legal studies other-wise; that is, a theoreticized practice of comparison that would differ from what it has been in that it would accept that the words that are visibly present in the law-text must not be privileged over the words that are invisibly present in it, that would admit that the self-interpellation that claims to speak for oneself only, that attempts to leave space for the other, must not "discourag[e] [one] from...engaging the problem of thinking and feeling ourselves into the position of the other,"<sup>99</sup> that would therefore attend to the other's law and to the other-in-the-law—that is, be "attentive to [the other's] presuppositions, [its] assumptions, [its] exclusions, [its] naiveties and [its] knaveries, [its] regimes of vision and [its] spots of blindness"<sup>100</sup>—that would "wise up" to otherness? Who would defend a politics of immanence that would commit itself to a rhetorics of persuasion such that it would militantly engage the other-in-the-law in negotiations about what he thinks and about what he

takes for granted on the understanding that law-claims, though ineliminably inscribed, are not inscribed once and for all in static structures or enclosed systems, that they are indeed contaminable, deconstructible, and, ultimately, destructible? (Incidentally, this approach would indicate that comparatists-at-law have not relinquished consequential strategy, that they do not simply aspire to tranquility.) Of course, as the *doxa* constitutes its disciplinary "matter," it also constitutes the discipline's "agents." Under pretensions of abstractness, it enjoins comparatists-at-law to devote themselves obediently to their disciplinary tasks by making it clear that attribution of merit by established comparatists is at stake. Unsurprisingly, the article on abortion law thus compliantly follows the disciplinary line: the law-text is treated as already possessing a strictly posited meaning that is fully determinate or at least fully determinable.

Yet, despite the effectiveness of such disciplinary pressure, I claim that there are comparative interventions electing to resist this agential dynamics, texts opposing the discipline that made them, comparatists-at-law "saying no to what [they] inhabit."<sup>101</sup> These comparatists-at-law relate to law-texts and recount them *differently*. As they engage in the pursuit of cultural analysis (literally, as they have law-texts undergo an analysis), such comparatists resolutely commit to an exercise in negative dialectics (in the sense at least of an anti-Hegelian or anti-*Aufhebung* dialectics) since they aim to develop a cultural argument meant to negate the positivistic—that is, propositional, methodological—enterprise that (establishment-minded) comparative legal studies has wanted to be. One such comparatist is based in the US and researches Chinese law and the law governing sexual minorities. Still in the US, one is on the West Coast and writes on culture (although she might not think of herself as a "comparatist") and one works from a department of anthropology on the East Coast. One emigrated from England to Italy. One emigrated from Italy to England. One studies systems theory and contributes comparative analyses only episodically. One has recently released a book on law, culture, and society. One wrote a book on epistemology a few years ago. There are others, indeed a not insubstantial number of others. For all of those critical comparatists-at-law, negative dialectics, in the expression made famous by Theodor Adorno, refers to a mode of reflection which at crucial moments—those moments in the production of knowledge that call upon one to take positions that determine how one gets from one step to the next, from one statement to the next, from one sentence to the next—negates what disciplinary discourse affirms.<sup>102</sup> Negativity, far from suggesting a "mood"—one need not be an unhappy or despairing person in order to foster negative dialectics—is a de-position or a dis-position, a distrust in positing and in positivity and in positivists and in the positivistic *Zeitgeist*, which must be *ex-posed* as the wearisome infatuation suppressing the cultural dimension within comparative legal studies. In this sense, negativity epitomizes the transformative role of theory as counter-discourse. It effectuates a politics of

resistance.<sup>103</sup> It is transgressive not strictly in a cathartic sense (although it would be unfair to obfuscate the constructive value that the purgative dimension may hold), but in an ecstatic mode, in other terms, in the way it is “critically promot[ing] progressive social transformation.”<sup>104</sup> It is, literally, an *undisciplined* gesture.<sup>105</sup> It is *contrarian*—which is precisely how, in Derrida’s words, “negativity is a *resource*.”<sup>106</sup> But, contradictorily perhaps, this exercise in negative dialectics aims to foster a positive theory for comparative legal studies. Specifically, it wishes to stress difference’s *vis affirmativa*. It asks “how can alterity be separated from negativity?”<sup>107</sup> As it contemplates the poly-discursivity that is required by an apprehension of the trace, it wants to insist on the value of difference as non-negativity or complementarity (in the sense, for example, in which different languages concur in the quest for an understanding of world). Such is how, according to Derrida, “[i]l y va d’un certain pas.”<sup>108</sup> This phrase can refer to three ideas at least. Not only does it mean to say that one is walking at a certain pace (suggesting, for example, forward movement), but it also connotes the taking of a step (“pas” in French means “step”), again an assertive gesture. Enigmatically, though, it simultaneously conveys that negation is at stake (“pas” in French also means “not”). *The negation is the affirmation.*

Still contemplating the field of comparative legal studies, suppose, then, a periphery, a location which, while not fully heteronomous vis-à-vis the staged center (is a periphery ever *exterior*? Is being at the margin ever assuming a condition of *alterity*?), lies beyond it, in excess of it. Surmise that comparatists operating at the margin are lawyers who appreciate that the manner in which foreign laws come to be present cannot exclude culture, that these laws are always-already situated, that that situation identifies them as the laws that they are. Suppose that these ex-centric comparatists are scholars who take the view that any comparison made without considerable strife will have highly underwhelming results and that short of falling for unacceptable epistemic violence vis-à-vis what there is, comparative legal studies must exist as *differential analysis of juriscultures*. Imagine that these marginal comparatists are such as would adopt and adapt a passage from Heidegger: “And our task: to bring this [alterity] into view, have a look at it, and understand it in such a manner that in it itself basic characteristics of its being are able to be brought into relief.”<sup>109</sup> Suppose that these comparatists are aware that comparison is inevitably in defeat, that it must fail, that it is but the possibility of an impossibility (how could one ever *understand* another law, an other’s law?), and that they are after all comparing, that they nonetheless, obstinately and combatively, advocate comparison as a kind of *comparatisme malgré tout* or Beckettian “comparing on,”<sup>110</sup> favoring the type of comparison that allows one to fail but to fail better as it moves beyond parochialism (it would be unacceptably easy to say that since no full transcultural understanding can be had, one might as well remain confined to one’s own world) while eschewing the deleterious utopia of one-law (it would be unacceptably easy to repress and exclude

pertinent differences located in the matrix within which any manifestation of posited law is inevitably ensconced), defending the brand of comparison that *individuates*, such that the relationality across laws becomes one of singularities.<sup>111</sup> Envisage comparatists who, in a meaningful sense compare because the alternative is worse, because, well, *how could they not?* Assume that these renegade comparatists blur any boundaries between comparison of laws and life itself in the sense that, not content to act as technicians, *they live as comparatists* in an exquisitely painful in-between of laws, languages, and cultures. While their differential thinking attests to “a gnawing sense of unfulfilledness, [an] endemic dissatisfaction with itself,” it is “haunted by the suspicion” that it is never differential *enough*.<sup>112</sup>

Viewed from the conjectured center that I introduced earlier, such exuberantly disruptive and critical work would be cutting itself loose from any criteria that could attest to its scientificity, would be withdrawing from sound methodological preoccupations, would be removing itself from any concern for the disinterested search for truth, and would be retracting from any preoccupation with the practicalities of the law. For those who are (that is, who regard themselves as being and who are regarded as being) within this center, such subversive work would be losing its direction. It would be in the nature of an aberration. It would be irresponsible. Indeed, “every discord or every tonal disorder, everything that detones and becomes unacceptable in the general collocation, everything that is no longer identifiable starting from established codes ... will necessarily pass as mystagogic, obscurantistic, and apocalyptic. *It will be made to pass as such.*”<sup>113</sup> Meanwhile, clearly, those operating from their non-center, who remain unprepared to allow the center’s signifying practices to seize hold of them, would not regard themselves as having lost anything at all—except, of course, such “losses” as an invitation to write for the “leading” journals or a solicitation to participate in the “major” congresses, which only matter in as much as marginal comparatists-at-law value being normalized, being accredited by established comparatists-at-law as good comparatists-at-law *like them*, which, ultimately, they do not.

Although interaction within the field is in constant flux and the hegemonic comparison is incessantly compelled to re-assess itself such that any “place” is always in motion,<sup>114</sup> I find myself located closer to any conceivable perimeter than to any putative center, both on account of my own perception of my research and teaching—of my comparatism—in English and in French, and of the apartness within which others, including my hostile detractors, situate me. “My” place, whence I write—“my” place, which is not mine because this place, like a language, cannot belong, because I belong to this place more than it belongs to me<sup>115</sup>—is thus something like marginal or peripheral comparative legal studies. It is, in any event, a locus that circumvents the orthodoxy, that is, literally, paradoxical.<sup>116</sup> Within the field of comparative legal studies, I write (and act) *paradoxically*.

Only on account of my epistemic specificity—because of my self-fashioning as a *comparatiste de l'empêchement* in a way that cannot be completely foreign to my deep-rooted contrarianism<sup>117</sup>—only since I have been led to understand/have wished to understand comparison-at-law differently, can I have become aware, *après-coup*, of the exemplary character of Derrida's philosophy—or of Derrida's philosophy *as I read it* (there is *my* Derrida). Had I been an established comparatist and had I been driven to theorize comparative interventions (which, however, established comparatists emphatically tend *not* to do), I would undoubtedly have gravitated toward a philosophical system like Jürgen Habermas's, which, in typical Enlightenment fashion, assumes that the individual is a rational decision-maker who is able freely to control his life and to shape societal institutions. Although it must be said that these two sets of arguments vary greatly in terms of their intellectual sophistication, the congruence between Habermas's and Kötz's views on the emancipatory potential of normative reason in a context of pluralism is striking: they both advocate the imposition of a single rationalistic model of subjectivity upon all constituencies. I have in mind specifically Kötz's ideas concerning the existence of a non-political sphere,<sup>118</sup> the feasibility (and the value of) emancipation from embeddedness,<sup>119</sup> the attractiveness of neutrality,<sup>120</sup> the worthiness of objectivity,<sup>121</sup> the necessity of method,<sup>122</sup> the existence of similarities across laws,<sup>123</sup> the irrelevance of differences,<sup>124</sup> the necessary identification of a "better" law,<sup>125</sup> the commitment to the possibility of understanding/representation,<sup>126</sup> and the actuality of a "unitary sense of justice."<sup>127</sup> Whether for Habermas or Kötz, the pragmatic nature of understanding makes it in principle impossible for any radical difference, disagreement, discontinuity, or otherness to manifest itself. But the rationalistic and consensual framework which posits a symmetrical and equal relationship between interlocutors whereby one can reach the ear of the other is deceptive: "comprehension" in the sense of "understanding" is also "comprehension" in the sense of "inclusion" or "appropriation," as in the Latin "cum-prehendere" ("to take with"). Ultimately, then, "[t]he presupposition of a common understanding is... a means of making one's own understanding prevail": through rewriting in consensual terms, the otherness of the other discourse is absorbed in the economy of the self via the very terms of the rewriter's language.<sup>128</sup>

In contrast to Habermas's assertoric rhetoric, Derrida defends a subversive power, a politics of location, an epistemology of place (understood in complex, archeological terms), which attests to the demand made by the other on account of its singularity (consider the exigencies arising from an apprehension of the trace) and to a reconciliation to the trauma or pathos of singularity arising from the inaccessibility of the other, from the fact that the other can only ever be re-presented—in French, one could say that there can only ever be "apprésentation" (recall that the trace always manifests itself *elsewhere* and inevitably arises *beforehand*).<sup>129</sup> Influenced by Heidegger's cosmology, Derrida moves beyond the self-interested individual and away from

overly technological interpretations of rationality, language, and law, with a view to doing justice to the singular, particular, concrete other in the face of the strong universalizing discourse of much contemporary political thought. To be sure, Derrida is acutely aware that “[a]ll the civilised conventions of law, ethics, family life, politics, institutionalised religion, international diplomacy and institutionalised pedagogy may have as one of their main functions to obscure the otherness and singularity of the other.”<sup>130</sup> He knows about “the totalitarianism of the same” and discerns “the ancient complicity between theoretical objectivity and technico-political possession.”<sup>131</sup> Yet, notwithstanding this incessant policing and methodical subjugation, he takes the view that otherness—a term that he does not use lightly<sup>132</sup>—is “irreducible,”<sup>133</sup> that the gap between self and other can never be overcome such that the other must always remain “as other,” that the consensus between self and other that Habermas (and Kötz) consistently deem possible can never occur.<sup>134</sup> For Derrida, “the lines of direct communication are down between [the self] and the other.”<sup>135</sup> There is *incommunication* (after all, a law-text is embodied in a language, which is itself embodiment and materiality and which is, therefore, *monologue*).<sup>136</sup> In the midst of an “unmasterable polytonality, with grafts, intrusions, parasitizations,”<sup>137</sup> *otherness, thus, holds*: “every other is singular, ... every one is a singularity.”<sup>138</sup> Moreover, singularity is primordial.

As it affirms “the possibility for the other tone, or the tone of an other, to come at any time to interrupt a familiar music,”<sup>139</sup> this philosophy of resistance to the univocity of meaning, this thought of polyphony, of heteroglossia, contributes to the conferment of a positive value to Derrida’s philosophy, which is anything but accidie-prone. As it salutes and celebrates a “joyous affirmation of the play of the world,”<sup>140</sup> as it regards “the *possibility* of ... misunderstanding (and) failure of comprehension” as “a chance,”<sup>141</sup> Derrida’s philosophy appears as a thought of affirmation (and certainly not like a withholding gesture).<sup>142</sup> It asserts the other and it asserts the interpreter-as-he-affirms-the-other. Attempting to define his philosophical project—commonly known as “deconstruction”—Derrida writes, in a brief formula meant to capture the basic gesture of heteronomic confidence: “*plus d’une langue*: that is, both more than a language and no more of a language.”<sup>143</sup> Consider the comparison of laws, which is, likewise, more than a law and no more of a law (and no more of a law as “law” has classically been understood by lawyers).

For Derrida, indeed, something like comparison can only materialize as an affirmative (and unlimited) response to the call of the other. In other terms, comparison’s inherent political and ethical vocation can only be as a response to the other. In Derrida’s words, “nothing essential will be done if one does not allow oneself to be summoned by the other.”<sup>144</sup> Drawing extensively on Emmanuel Levinas,<sup>145</sup> Derrida goes further still: not only is there an obligation to the other, but there must also be vigilance *for* the other.<sup>146</sup> It is not enough for comparison to be concerned with the other. Derrida defends a non-totalizing thought, a thought that accepts the other as interlocutor,

that finds its closest grammatical analogue in the vocative, that allows the other (including the other-in-the-law) to signify according to himself and to his own *obviousness*, that accepts that the other is not only a modality of the self, that acknowledges the irreducibility of the other to the self, that is, ultimately and empathically, *for* the other.<sup>147</sup> Such a giving-over-to-the-other requires a certain modesty, not a narcissistic, self-affirming, and ultimately self-confirming reclusiveness, but rather an exposition to the other, a cordiality toward the other that does not seek to attenuate its otherness. Accordingly, any "Hegelian-like" appropriation of the other, any such violence, must be refuted. Even the interpreter's ambition "simply" to understand the other calls for rejection to the extent that it forces the other to fit within the interpreter's frame of thought, in as much as it circumvents the other's specificity through an attempt at "interpretive totalization."<sup>148</sup>

Acknowledging insurpassable alterity, an alterity that lies (and that *must* lie) beyond the interpretive capacity of the self, comparative legal studies "can consist only in opening, disenclosing, destabilizing structures of foreclosure so as to allow for the passage of the other."<sup>149</sup> For Derrida, then, listening to the other requires not a continuity within the relationship of mediation between self and other, since any kind of fusion or integration would entail a measure of appropriation, but an *interruption* of this connection.<sup>150</sup> It is important to note that such interruption does not prevent a relation between self and other. Rather, it prompts the relation to be apprehended as "a crazy relation, a relation without relation, which comprehends the other as other in a certain relation of incomprehension. It is not ignorance or obscurantism, nor resignation before any desire for intelligibility: but it is necessary that at a given moment, the other remains as other. And if he is the other, he is other: at this moment the relation to the other as such is also the relation of interruption."<sup>151</sup> As has been observed by a commentator, "[t]he word *interruption* is carefully attuned to its purpose, to account for a break, a rupture, in the *inter*, the *between* by which we relate to the other."<sup>152</sup> Such a break, such a "disjunction" across discrepant discourses,<sup>153</sup> occurs as a "condition of... understanding,"<sup>154</sup> which operates in the name of the justice that is due to the other: "that disjunction... is... the condition of justice."<sup>155</sup>

In Heidegger's words, this gesture of interruption is about "opening, liberating our ear,"<sup>156</sup> a formula which recalls Kierkegaard as he enjoins the interpreter to listen: "Hasten, oh! hasten to listen."<sup>157</sup> According to Kierkegaard, indeed, "everything ends with hearing."<sup>158</sup> Derrida, who agrees that "indefatigably at issue is the ear,"<sup>159</sup> thus challenges the relation with the other when it is established compulsively through the act of questioning—oh-so-familiar to orthodox comparatists-at-law obdurately steering their oh-so-familiar questionnaires<sup>160</sup>—since "[c]ommonly, an inquiry aims straight for the answer. It... looks for the answer alone, and sees to it that the answer is obtained."<sup>161</sup> For Derrida, the question marks "an abusive investigation which introduces beforehand what it seeks to find, and does violence to the proper

physiology of a thought."<sup>162</sup> In line with Derrida's philosophy, comparison-at-law thus partakes in an "otology," that is, in a "discourse of the ear."<sup>163</sup> The comparatist-at-law lends an ear to the other's law and to the other-in-the-law. He ensures that other discourses-at-law do not fall on deaf ears: "Not questioning but, first, listening, hearing—akin to reading, responsive gatheredness, commemoration."<sup>164</sup> In Heidegger's resounding words, "[t]hinking is a listening that brings something to view."<sup>165</sup>

Comparison-at-law is thus a *hearkening*—and the comparatist's *responsibility* is to listen in *response* to the other's discourse. Although the ear is "the... most open organ," Derrida reminds us that it can make itself "large or small" according to "the manner in which one... offer[s] or lend[s] an ear."<sup>166</sup> In other words, being aware that only in *deferring* to the non-identical can the claim to *justice* be redeemed,<sup>167</sup> acknowledging that "the act of justice... must always concern singularity,"<sup>168</sup> comparatists-at-law accept being othered by otherness to the extent at least that they are disposed to listen attentively to the other law's authenticity as it expresses its singularity—the ultimate aim being that "[w]e must attempt to hear only what is said there," and all that is said there.<sup>169</sup> If Heidegger's somewhat cryptic formula may be allowed to make the point about the desired derangement of epistemes, comparative legal studies "let[s] that which shows itself be seen from itself in the very way in which it shows itself from itself."<sup>170</sup>

Now, an ethics of comparison is an ethics of obligation to the other not simply because the other law is another law, but because it is a singularity, because it is unique: *every law is every bit another law*.<sup>171</sup> It is, moreover, an ethics of hospitality. As Derrida observes, hospitality is "a manner of being there, the manner in which we relate to ourselves and to others."<sup>172</sup> Likewise, comparison-at-law is emphatically a manner of being-in-the-law, of relating to the other's law. Comparative legal studies *other-wise* wishes to disturb the self-assurance of totalizing discourse and, in the light of the pressures of the postcolonial, multicultural, and global moment, respond scrupulously to the *fragmentary demand* (that is, to the demand made by the fragmentary and, specifically, by the traces as fragments).<sup>173</sup> Any whole that there appears to be is in effect a loose assembly of assemblages, a non-unitary, dislocated whole on account of the event of fragmentation as it emerges locally. It is this inexorable configuration (and the experience of it) that makes a demand, necessary and unavoidable, pragmatic and ethical, on reading and writing, which unfolds as a decision to respond to the "hap" in what is "happening;" that is, to address the element of contingency, the conjectural dimension, which words like "haphazard," "perhaps," and "mishap" capture—no matter how volatile, anecdotic, elliptic, *sparse* the autochthony, no matter how slight the *fold*. Because the fragmentary exceeds the figure of totality, given that any possibility of totality-as-unity has always-already withdrawn, the response to the differend that follows from inscription-in-facticity deploys itself in terms of an insistent account of singularity-as-an-unignorable-being-there

promoting a view of the “cultural” as resistance to instrumentalization and, in the end, as defending the idea of the “cultural” as, still, “political.”<sup>174</sup> In the name of justice, which “imply[s] non-gathering, dissociation, heterogeneity,”<sup>175</sup> comparative legal studies never “reduces the disjunctive difference” between self and other.<sup>176</sup> For instance, it attests, through *l’écriture comparative*, to the singularity of the law-text by striving to relay a strong sense of its unrepresentability. Thus, comparison-at-law other-wise—as “a movement toward the particularity of the Other”<sup>177</sup>—offers itself as a supplement to the field, yet within the field, as an ethos mining and undermining established positivism in comparative legal studies, as a rebellious turbulence prohibiting an enclosed formalization of comparative practice, as a *solicitation*,<sup>178</sup> in any event as “an inexhaustible reserve, the stereographic activity of an entirely other ear.”<sup>179</sup>

In Derrida’s own words, the kind of arguments defended by Habermas and his own strategy are “absolutely irreconcilable.”<sup>180</sup> In this sense, comparison other-wise signifies the death of comparison-at-law: it is what destroys what comparison-at-law has been and has wanted to be. But it is also comparison’s genesis. It launches the comparative legal studies that are yet to come, that allows the other to come, that fosters the primordially of alterity-in-the-law through a narrative or a parable of the trace.<sup>181</sup> It initiates the comparison-at-law which accepts that when one researches the law, one cannot allow oneself to be blinded by the reassuring familiarity of long-standing interpretive practices which fail to recognize that the trace is the life of the law-text, that the law-text is an inherently fluid, mutable, dynamic, unstable force which lives in its orientation to the trace. It inaugurates the realization of the fact that when one reads a statute or a judicial decision with full response—when one asks oneself “what is the statute saying?,” “what is the judicial decision saying?”—one is implicated in a matrix that is just as thoroughly heteroglossic as it is inexhaustibly specific; one is in fact doomed to the pursuit of an interminable process of ascription of meaning, which only the exhaustion of the comparatist-at-law or the editor’s deadline will interrupt. If the issue is “[h]ow d[oes] [the comparatist] live this unlivable discord between worlds, histories, memories, discourses, languages?,”<sup>182</sup> the answer must be that he can only do so through a formation of knowledge that “convey[s] in [its] plurality the sense of an arrangement [that it] entrust[s] to a future of speech[;] [a] new kind of arrangement not entailing harmony, concordance, or conciliation, but that accepts disjunction or divergence as the infinite center from out of which, through speech, relation is to be created: an arrangement that does not compose but juxtaposes; that is to say, leaves each of the terms that come into relation *outside* one another, respecting and preserving this *exteriority* and this distance as the principle—always-already undermined—of all signification. Juxtaposition and interruption here assume an extraordinary force of justice.”<sup>183</sup> Only *then* is the comparatist-at-law *unterwegs zum Hören...*

## Notes

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1. *The Ear of the Other*, ed. McDonald & tr. Ronell, p. 50 (1985 [1984]).
2. The antagonistic character of the field is a key feature of Pierre Bourdieu's theory. For relevant references, see *The Rules of Art*, tr. Emanuel (1996 [1992]); *Pascalian Meditations*, tr. Nice (2000 [1997]). See also JD & Maurizio Ferraris, *A Taste for the Secret*, ed. Denis & Webb, tr. Denis, p. 12 (2001 [1997]).
3. JD thus encourages "irreference to the centre": JD, *Writing and Difference*, tr. Bass (1978 [1967]), p. 297.
4. Konrad Zweigert & Hein Kötz, *An Introduction to Comparative Law*, tr. Weir (3d rev'd Eng. ed., 1998). My quasi-exclusive reference throughout to the English translation of this book acknowledges the fact that its widespread dissemination and commodification is indebted to its release in that language. For the current German edition, see Konrad Zweigert & Hein Kötz, *Einführung in die Rechtsvergleichung* (3d ed., 1996).
5. Zweigert & Kötz, *supra*, note 4, p. 45.
6. The "counter-signature" is a recurrent motif in JD's work. Upon materialization, it assigns a text to a contradictory structure while confirming the text's existence as text in the process.
7. For details, see my "Paradoxically, Derrida: For a Comparative Legal Studies," 27 *Cardozo Law Review* 631: 642 (2005).
8. In this regard, and making specific reference to Kötz's book, I want to insist that language trumps intention. To anyone who would reply to my interpretation that Kötz did not mean *that*, I would say that meaning *can* go from the reader to the text. The fact of the errancy of meaning is what JD's idea of "destinerrance" wishes to capture.
9. This endorsement is Richard Fentiman's and appears on the back cover of the third, current, paper, English edition.
10. Pierre Legendre, *Paroles poétiques échappées du texte*, pp. 114 & 26, respectively (1982).
11. JD, *Margins of Philosophy*, tr. Bass, p. 135 (1982 [1972]).
12. Ralf Dreier, "Zur Problematik und Situation der Verfassungsinterpretation," in: Dreier & Schwegmann (eds), *Probleme der Verfassungsinterpretation*, p. 21 (1976).
13. See Zweigert and Kötz, *supra*, note 4, p. 40.
14. *Id.*, p. 35.
15. *Id.*, p. 10.
16. *Id.*, p. 43.
17. *Ibid.*
18. *Id.*, pp. 34 & 44.
19. *Id.*, pp. 40 & 39 [emphasis original].
20. *Id.*, p. 62.
21. *Id.*, pp. 8, 15, 23 & 47.
22. *Id.*, p. 45.

23. Id., p. 3.
24. Edward W. Said, "Opponents, Audiences, Constituencies, and Community," 9 *Critical Inquiry* 1: 25–26 (1982).
25. I adopt and adapt Algirdas J. Greimas, *The Social Sciences: A Semiotic View*, tr. Perron & Collins, p. 126 (1990 [1976]), who refers to "the reign of the acceptable."
26. I closely follow Judith Butler, "Further Reflections on Conversations of Our Time," 27 *Diacritics* 13: 13–14 (1997/1). JD addresses the matter of institutionalization from another angle: "[H]ow can an autobiographical writing, in the abyss of an unfinished self-analysis, give its birth to an institution on a world scale?": *The Post Card*, tr. Bass, p. 395 (1987 [1980]).
27. Bartha M. Knoppers *et al.*, "Abortion Law in Francophone Countries," 38 *Am. J. Comp. L.* 889 (1990).
28. For a recent defense of this approach to comparative research, see Michael Bogdan, "On the Value and Method of Rule-Comparison in Comparative Law," in: Mansel *et al.* (eds), *Festschrift für Erik Jayme*, pp. 1233–1242 (2004).
29. Knoppers *et al.*, *supra*, note 27, p. 900. There are three footnotes supporting the text. Each one consists in an enumeration of countries and relevant legislative provisions. The third note also features a reference to a commentary.
30. Id., p. 922.
31. Id., p. 889.
32. Id., pp. 892 & 894, respectively.
33. JD, *Positions*, tr. Bass, p. 55 (2d Eng. ed., 2002 [1972]).
34. Id., pp. 23–24. The notion of "trace" is indebted to Emmanuel Levinas: JD, *Speech and Phenomena*, tr. Allison, p. 152 (1973 [1967]).
35. JD, *Positions*, *supra*, note 33, p. 24.
36. JD, *Dissemination*, tr. Johnson, p. 223 (1981 [1972]).
37. JD, *The Other Heading*, tr. Naas, p. 10 (1992 [1991]).
38. JD, *Points...*, ed. Weber & tr. Kamuf *et al.*, p. 137 (1995 [1992]).
39. JD, *Specters of Marx*, tr. Kamuf, p. 202 (1994 [1993]).
40. Cf. JD, *Of Grammatology*, tr. Spivak, p. 157 (rev'd Eng. ed., 1997 [1967]): "Immediacy is derived."
41. JD, *Positions*, *supra*, note 33, p. 28.
42. JD, "This Strange Institution Called Literature," in: Attridge (ed.), *Acts of Literature*, tr. Bennington & Bowlby, p. 43 (1992 [1989]).
43. Geoffrey Bennington, in: Geoffrey Bennington & JD, *Jacques Derrida*, p. 90 (1993 [1991]).
44. JD, *Speech and Phenomena*, *supra*, note 34, p. 104.
45. Bennington, *supra*, note 43, p. 93.
46. JD, *Of Grammatology*, *supra*, note 40, p. 71.
47. JD, *Positions*, *supra*, note 33, p. 24 [emphasis original].
48. JD, *The Politics of Friendship*, tr. Collins (1997 [1994]), p. 153.
49. I adopt and adapt Rodolphe Gasché, "Postmodernism and Rationality," 85 *J. Phil.* 528: 536 (1988).
50. In Latin, a "textor" is a weaver: *Shorter Oxford English Dictionary*, 5th ed. Trumble & Stevenson, II (2002), *vbo* textorial.
51. JD, *The Truth in Painting*, tr. Bennington & McLeod (1987 [1978]), p. 24 [emphasis original in Eng.].
52. JD, *Specters of Marx*, *supra*, note 39, p. 10.
53. JD attempts a translation from the German "es spukt": Id., p. 216.
54. JD, *Paper Machine*, p. 89 (2005 [2001]).

55. The word "hauntology" is JD's: *Specters of Marx*, *supra*, note 39, p. 10.
56. JD, *Writing and Difference*, *supra*, note 3, p. 274.
57. JD, *Paper Machine*, *supra*, note 54, p. 151.
58. JD, *Of Grammatology*, *supra*, note 40, p. 23 [emphasis original].
59. Thus, when the comparatist-at-law speaks, death speaks in him.
60. Using the lemma "iter," which he derives from the Sanskrit "itara" meaning "other," JD coins the word "iterability," a neologism connoting both "reiteration" and "alterity;" that is, repeatability with a difference, which means that it does not contradict singularity: *Margins of Philosophy*, *supra*, note 11, pp. 314–321.
61. JD, *Of Grammatology*, *supra*, note 40, p. 62.
62. JD, *Positions*, *supra*, note 33, p. 28.
63. *Id.*, p. 56.
64. JD, *Dissemination*, *supra*, note 36, p. 258.
65. JD, "Living On: Border Lines," in Harold Bloom *et al.*, *Deconstruction and Criticism*, p. 84 (1979). For example, this reappraisal disputes the idea of "systemic closure" (whether autopoietic or not) pursuant to which there is "law" and there are other discourses to be understood as external disturbances of law affecting its highly-valued coherence. After JD, the only meaningful sense in which "context" can be retained is to refer to that which *constitutes the law-text*.
66. JD, "This Strange Institution Called Literature," *supra*, note 42, p. 46.
67. JD, *Paper Machine*, *supra*, note 54, p. 115.
68. JD, *Archive Fever*, tr. Prenowitz, p. 2 (1996 [1995]).
69. *Id.*, p. 7.
70. "Anarchy" means, literally, the absence of "archon."
71. JD, *Archive Fever*, *supra*, note 68, p. 2.
72. JD, *Writing and Difference*, *supra*, note 3, p. 147.
73. *Id.*, p. 148 [emphasis original].
74. Michael Naas, "'Alors, qui êtes-vous?': Jacques Derrida and the Question of Hospitality," 34 *SubStance* 6: 11 (2005/1).
75. The idea of "remains" leads JD to address the "experience" of the "trace" as "cinder" or "ashes": JD, *Given Time*, tr. Kamuf, I: *Counterfeit Money*, p. 17 (1992 [1991]) [emphasis original].
76. JD & Ferraris, *A Taste for the Secret*, *supra*, note 2, p. 41. The words are JD's.
77. JD, *Dissemination*, *supra*, note 36, p. 245.
78. JD, *Edmund Husserl's Origin of Geometry: An Introduction*, tr. Leavey, p. 102 (1989 [1962]).
79. JD, *Limited Inc*, tr. Weber, p. 63 (1988 [1990]).
80. JD, *Writing and Difference*, *supra*, note 3, p. 3.
81. JD, *Of Grammatology*, *supra*, note 40, p. 158.
82. JD, "This Strange Institution Called Literature," *supra*, note 42, p. 43.
83. For a detailed discussion of law-as-culture, see my "Comparative Legal Studies and the Matter of Authenticity," 1 *J. Comp. L.* 365: 374–393 (2006).
84. JD, *Paper Machine*, *supra*, note 54, p. 53.
85. JD, *Writing and Difference*, *supra*, note 3, p. 268. Cf. Legendre, *supra*, note 10, p. 19, who refers to "the terrifying knowledge of the *not-known*" [emphasis original].
86. JD, *Dissemination*, *supra*, note 36, p. 148.
87. JD, *Writing and Difference*, *supra*, note 3, p. 293.
88. John Law, "Introduction: Monsters, Machines and Sociotechnical Relations," in: Law (ed.), *A Sociology of Monsters: Essays on Power, Technology and Domination*, p. 18 (1991).

89. *Shorter Oxford English Dictionary*, *supra*, note 50, I, *vbo* monster.
90. JD, *Writing and Difference*, *supra*, note 3, p. 263.
91. *Ibid.*
92. Edmund Husserl, *The Crisis of European Sciences and Transcendental Phenomenology*, tr. Carr, p. 141 (1970 [1937]).
93. JD, *Of Grammatology*, *supra*, note 40, p. 57 [emphasis original].
94. JD, *Edmund Husserl's Origin of Geometry: An Introduction*, *supra*, note 78, p. 119.
95. JD, *Dissemination*, *supra*, note 36, p. 233.
96. JD, "Fidélité à plus d'un," *Cahiers Intersignes* 221: 262 (1998/13).
97. The "to-come" ("à-venir") is a leading theme in the later JD.
98. Gasché, *supra*, note 49, p. 532.
99. David Simpson, *Situatedness*, p. 43 (2002).
100. Nikolas Rose, *Powers of Freedom*, p. 19 (1999).
101. Gayatri Spivak, *Outside in the Teaching Machine*, p. 281 (1993).
102. See generally Theodor W. Adorno, *Negative Dialectics*, tr. Ashton (1973 [1966]).
103. It is worth emphasizing that "negativity" has nothing whatsoever to do with a foul disposition and is very much to be envisaged as an ethic of possibility. For a case in favor of negativity as an energizing and liberating philosophy, see Joshua F. Dienstag, *Pessimism* (2006).
104. See Patricia J. Huntington, *Ecstatic Subjects, Utopia, and Recognition*, pp. 10–11 & *passim* (1998). See also Johannes Fabian, *Anthropology with an Attitude*, pp. 7, 100 & 93 (2001).
105. According to Adorno, this brand of intervention will be "punish[ed]": *supra*, note 102, p. 56. For a narrative vindicating Adorno's insight, see my "Comparative Contraventions," 50 *McGill L.J.* 669 (2005).
106. JD, *Writing and Difference*, *supra*, note 3, p. 259 [emphasis original].
107. *Id.*, p. 119.
108. JD, *Apories*, p. 23 (1996) [emphasis original].
109. Martin Heidegger, *Ontology—The Hermeneutics of Facticity*, tr. van Buren, p. 37 (1999 [1923]).
110. The preposition "on" is a central motif in Beckett's work. See generally C.J. Ackerley & S.E. Gontarski (eds), *The Grove Companion to Samuel Beckett*, p. 421 (2004).
111. *Cf.* Samuel Beckett, *Worstward Ho*, in: Auster (ed.), *The Grove Centenary Edition*, IV, p. 471: "Fail better" (2006 [1983]).
112. I adopt and adapt Zygmunt Bauman, *Postmodern Ethics*, p. 80 (1993). *Cf.* JD, *Resistances of Psychoanalysis*, tr. Kamuf *et al.*, p. 33 (1998 [1996]).
113. JD, "On a Newly Arisen Apocalyptic Tone in Philosophy," in: *Raising the Tone of Philosophy*, Fenves (ed.), tr. Leavey, p. 160 (1993 [1983]) [my emphasis].
114. For example, consider the reception of H. Patrick Glenn, *Legal Traditions of the World*, 3d ed. (2007). While praised by reviewers upon publication—a selection of compliments is conveniently made available on the back cover of the paper edition—this book was subsequently read closely by a group consisting of 13 expert scholars. The devastating assessments that followed are collected as "A Fresh Start for Comparative Legal Studies?," 1 *J. Comp. L.* 100–176 (2006).
115. For a compelling reflection on language, see JD, *Monolingualism of the Other; or, The Prosthesis of Origin*, tr. Mensah (1998 [1996]).
116. For those who stand at the centre, this paradoxical text is very much envisaged as an elsewhere, as an outlying site, as a para-site and, yes, as a *parasite*.
117. I draw on the title of one of Beckett's essays: Samuel Beckett, *Disjecta*, Cohn (ed.), pp. 133–137 (1983 [1948]).

118. *Supra*, note 13.
119. *Supra*, note 14.
120. *Supra*, note 15.
121. *Supra*, notes 16 & 17.
122. *Supra*, note 18.
123. *Supra*, note 19.
124. *Supra*, note 20.
125. *Supra*, note 21.
126. *Supra*, note 22.
127. *Supra*, note 23.
128. Josef Simon, "Good Will to Understand and the Will to Power: Remarks on an 'Improbable Debate,'" tr. Palmer, in: Michelfelder & Palmer (eds), *Dialogue and Deconstruction: The Gadamer-Derrida Encounter*, p. 165 (1989). A related point is made in David Wood, *Philosophy at the Limit*, p. 125 (1990).
129. For a discussion of "appréhension," see J. Hillis Miller, "Derrida's Others," in: Brannigan et al. (eds), *Applying: To Derrida*, p. 159 (1996).
130. Id., p. 164.
131. JD, *Writing and Difference*, *supra*, note 3, p. 91.
132. See JD, *Sur parole*, p. 63 (1999).
133. JD, *Limited Inc*, *supra*, note 79, p. 137.
134. E.g.: JD, "Three Questions to Hans-Georg Gadamer," tr. Michelfelder & Palmer, in: *Dialogue and Deconstruction: The Gadamer-Derrida Encounter*, *supra*, note 128, p. 54.
135. Miller, *supra*, note 129, p. 153.
136. For a claim asserting the monological nature of language, see Martin Heidegger, *On the Way to Language*, tr. Hertz, p. 134 (1971 [1959]).
137. JD, *On a Newly Arisen Apocalyptic Tone in Philosophy*, *supra*, note 113, p. 150.
138. JD, *The Gift of Death*, tr. Wills, p. 87 (1995 [1992]).
139. JD, *On a Newly Arisen Apocalyptic Tone in Philosophy*, *supra*, note 113, p. 67.
140. JD, *Writing and Difference*, *supra*, note 3, p. 292.
141. JD, *Paper Machine*, *supra*, note 54, p. 89 [emphasis original].
142. JD, *Sur parole*, *supra*, note 132, p. 88.
143. JD, *Memoires for Paul de Man*, tr. Lindsay, p. 15 (1986 [1988]) [emphasis original].
144. JD, "Fidélité à plus d'un," *supra*, note 96, p. 233.
145. E.g.: Emmanuel Levinas, *Totality and Infinity*, tr. Lingis (1969 [1961]).
146. For an introduction to Levinas's philosophy, see Samuel Moyn, *Origins of the Other* (2005).
147. For a reflection on being "for the other," see Bauman, *supra*, note 112, p. 90.
148. JD, *Shibboleth*, in: Dutoit & Pasanen (eds), *Sovereignties in Question*, tr. Wilner & Dutoit, p. 26 (2005 [1986]).
149. JD, *Psyché*, Kamuf & Rottenberg (eds), tr. Porter, I: *Inventions of the Other*, p. 45 (2007 [1984]).
150. See JD, "Three Questions to Hans-Georg Gadamer," *supra*, note 134, p. 53.
151. JD (with Pierre-Jean Labarrière), *Altérités*, p. 82 (1986).
152. Wood, *supra*, note 128, p. 127 [emphasis original].
153. JD & Ferraris, *A Taste for the Secret*, *supra*, note 2, p. 56.
154. JD, *Rams: Uninterrupted Dialogue—Between Two Infinities, the Poem*, in: Dutoit & Pasanen (eds), *Sovereignties in Question*, tr. Dutoit & Romanski, p. 139 (2005 [2003]).
155. JD & Ferraris, *A Taste for the Secret*, *supra*, note 2, p. 56.
156. Martin Heidegger, *Was ist das—die Philosophie?*, p. 34 (1956).
157. Søren Kierkegaard, *Four Upbuilding Discourses*, in: Hong & Hong (eds & trs), *Eighteen Upbuilding Discourses*, p. 138 (1990 [1843]).

158. Søren Kierkegaard's *Journals and Papers*, Hong & Hong (eds & trs), V, p. 74 (1978 [1836]).
159. JD, *Margins of Philosophy*, *supra*, note 11, p. xvii.
160. For up-to-date evidence of the spell that questions continue to cast on established comparatists-at-law and their disciples, see the volumes doggedly being published by Cambridge University Press since 2000 in the "Common Core of European Private Law" series. See also Kötz's express advice to comparatists-at-law to organize comparison around a threshold question, what he calls an "Ausgangsfrage": Zweigert & Kötz, *Einführung in die Rechtsvergleichung*, *supra*, note 4, p. 33.
161. Martin Heidegger, *What Is Called Thinking*, tr. Wieck & Gray, p. 158 (1968 [1954]).
162. JD, *Writing and Difference*, *supra*, note 3, p. 154.
163. JD, "Heidegger's Ear," in: Sallis (ed.), *Reading Heidegger*, tr. Leavey, p. 209 (1993 [1989]).
164. John Sallis, "Introduction," in Sallis, *supra*, note 163, p. 3.
165. Martin Heidegger, *The Principle of Reason*, tr. Lilly, p. 47 (1991 [1957]). For an argument inviting the interpreter "to hear the claim [that the text] makes," see Rudolf Bultmann, "The Problem of Hermeneutics," in: *Essays*, tr. Greig, p. 254 (1955 [1950]). Claims for a philosophy of listening include Gemma C. Fiumara, *The Other Side of Language*, tr. Lambert (1990 [1985]); Jean-Luc Nancy, *Listening*, tr. Mandell (2007 [2002]).
166. JD, *The Ear of the Other*, *supra*, note 1, p. 33.
167. The notion of "deference" is key. An epistemological realization or recognition of otherness does not lead of its own accord to a just politics. Indeed, one can easily mention disastrous political enterprises having turned on perceived or postulated difference.
168. JD, "Force of Law," in: Anidjar (ed.), *Acts of Religion*, p. 245 (2002 [1990]).
169. Martin Heidegger, *Introduction to Metaphysics*, tr. Fried & Polt, p. 155 (2000 [1953]).
170. Martin Heidegger, *Being and Time*, tr. Macquarrie & Robinson, p. 58 (1962 [1927]). Cf. JD, *Writing and Difference*, *supra*, note 3, p. 138, who argues that the self must "let the other be in its existence and essence as other."
171. I paraphrase JD, *The Gift of Death*, *supra*, note 138, p. 87: "every other is every bit an other." Referring to an "essential and abyssal equivocality," JD remarks on the untranslatability of this diaphora: *Ibid.*
172. JD, *On Cosmopolitanism and Forgiveness*, tr. Dooley, p. 17 (2001 [1997]).
173. See Ian James, *The Fragmentary Demand* (2006).
174. Of course, singularity is always-already obviated to a certain extent by language, which operates as a relentless generalizer and abstractor. Thus, a seemingly concrete word such as "book" cannot begin to address the infinite series of particulars which are subsumed under it. Even the "pointing" power which language enjoys through the use of deictics ("this book") fails fully to capture singularity.
175. "The Villanova Roundtable," in: Caputo (ed.), *Deconstruction in a Nutshell*, p. 17 (1996). The words are JD's.
176. JD, *Memoires for Paul de Man*, *supra*, note 143, p. 141.
177. Mariana Valverde, "Derrida's Justice and Foucault's Freedom: Ethics, History, and Social Movements," *24 Law & Soc. Inquiry* 655: 658 (1999).
178. Etymologically, this word connotes "a shaking of the whole:" JD, *Writing and Difference*, *supra*, note 3, p. 6.
179. *Margins of Philosophy*, *supra*, note 11, p. xxiii.

180. JD, *Writing and Difference*, *supra*, note 3, p. 293. For a thoughtful examination of the two philosophical projects, see *The Derrida-Habermas Reader*, Thomassen (ed.) (2006).
181. Etymologically, "parable" is derived from the Greek "paraballein," which means "to compare."
182. I borrow this sentence from JD, "Like the Sound of the Sea Deep Within a Shell: Paul de Man's War," tr. Kamuf, 14 *Critical Inquiry* 590: 594 (1988).
183. Maurice Blanchot, *The Infinite Conversation*, tr. Hanson, p. 308 (1993 [1969]) [emphasis original].