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BOOK REVIEW ESSAY

Critique of comparative law: to *compierre*

Negative Comparative Law: A Strong Programme for Weak Thought
By Pierre Legrand, Cambridge: Cambridge University Press, 2022, 352 pp., £95.00

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Impeccable scholarship, inimitable style, and relentless critique are the hallmarks of nigh-on three decades of work that culminate in Pierre Legrand's unique and remarkable syntagm *Negative Comparative Law*. Part author biography, part treatise on method, part satire, and part harangue, the 15 essays comprising the volume cohere lucently and vividly around a critical desire to preserve the ethical sensibility of the foreign, and a crescendo of negative analyses of the addiction to similarity that marks the orthodoxy in comparative legal scholarship. For Legrand, the epithet implying scholarly exposition is onomastically incorrect and would be better replaced by 'studies' as an accurately weaker term for an academic imperialism that seeks endlessly to reduce the foreign to the domestic and to capture the other through imprisonment in the same. It is a narrative of epistemicide, of the shellac of positivism, of colonialist mind games, of exterminist thought play that inculcates error in students and circulates ideological placebos or rank inaccuracies among academic colleagues.

Starting with the most intimate, insightful, and candid dimension of the work, Legrand's author biography plays an unsettling role in the theory of the foreign that lies at the heart of any rigorous and intellectually honest comparative legal studies. To write on foreign law is to invent it, to create an account through translation and interpretation of an other that will ever remain other, which is to say irreducible and inassimilable to the vernacular tradition and local law to which it is putatively compared and conjoined. Such, of course, is also true of the domestic law, which is necessarily equally translated in secondary academic reporting, analysis, exposition, and interpretation, but Legrand's project is big enough already to encourage a certain boundary in focus, for exemplificatory reasons, upon the foreign. It is here that the author biography plays a vital and creative heuristic role. One may not be able to explain the work through the life, but 'one

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certainly cannot explain it apart from the life' (p. 317). To create, invent, interpret, and write of and on another law is necessarily to embed oneself in a hermeneutics of choice, in personal experience, in the anecdata that define what is foreign and what is familiar. It is in its entirety an engagement of the self that must begin, as Freud warranted, with the author's journey, the patterns established in childhood, the *domus* and doom that define the unfamiliar and non-native, and so the sensibility of the foreign and of things said and done other-wise and other-where. It is here, for *petit* Legrand, a matter of lack and of drive, a desire for what is missing, the will to escape a childhood home without books or culture, and the shame of what he terms a 'sub-intellectual environment' (p. 336), the *honte culturelle* or social shame of being a heavily accented, Francophone, suburban *Québécois*. This haunting background – such wounds are always relative – generates a dual drive: to escape the tainted vernacular vestrydom of the provincial and to build an unimpugnable intellectual armoury, a pristine epistemic method that could withstand the attacks that will inevitably arrive.

Flight, and here in classical style one might cite the warring theologians: *fugiendum ad montes, ad montes scriptuararum*, meaning that for the young Legrand escape is to texts, to intellectual endeavour, to libraries, to Oxford University.[1] Departure is both literal – geographical and chorographical – and intellectual, in the search for rigour, for meaning, for the poetics of legitimacy that will veil and perhaps erase the past, the unwanted childhood. It is a journey across cultures, to the medieval, green-sward-swaddled collegiate university, and then later to France, to the Netherlands, and to a diversity of other jurisdictions across the globe, only finally to be based in Paris and currently, at the time of publication, visiting in the United States (US). The sense of the foreign, of being an other, persists indefinitely in the unique and crystalline character of his prose, in the idiosyncratic adhesion to difference that combines in the remarkable novelty of style, the percussive insistence on detail, and the lacerating critical vision, or, as he puts it himself, 'a taste for difficulty and effort, in-depth and wide-ranging probing, for meticulous argumentation and writing (one of my abiding preoccupations being to hide the inferiority of the place whence I hail)' (p. 367).

An eccentric, erudite, both harsh and generous supervisor, Bernard Rudden, who appears to have lived in the Oxford law library, provides a model of scholarly excellence, though not without its weaknesses, not without improvement being possible, and generates an enduring intellectual and amicable relationship that continued through France, Canada, the US, and of course England, where this inaugural scholastic figure now lies buried, haunting not only the law library but also the author biography and the book under dissection. The good father models earnestness, effort, and an intellective erudition so extensive that Legrand can, in one long and superb citation from an unpublished paper of Rudden's, trace the rule in *Hadley* v. *Baxendale*[2] from the Victorian Judge Baron Alderson, to a US treatise by Sedgwick on the measure of damages, and thence to the *Code Napoleon*, to the seventeenth-century jurists Pothier and Domat, to the early modern Gallic jurist Dumoulin, to the post-glossator Cynus, who in turn was using the *Glossa Ordinaria* of Accursius, which is based upon the Florentine manuscript of the *Corpus Juris Civilis*, itself reflecting debates in Constantinople on both remedies and the views of the Roman lawyers of the Republic. Rudden concludes this marvel of philological tracing with the constricted view that 'the modern rule in *Hadley* v. *Baxendale* is a distant, but direct, product of their opinions. And of nothing more' (p. 333).

[1] J. Favour, *Antiquitie Triumphing over Noveltie: Whereby It Is Proved that Antiquitie Is a True and Certaine Note of the Christian Catholicke Church and Verity, against All New and Upstart Heresies* (1618) 141.

[2] *Hadley* v. *Baxendale* (1854) 9 Exch. 341.

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The continuing, indeed persistent flight from the limits of a culture, the constant sense of being alone, of not being at home, of being a stranger in foreign parts, in alien lands and other laws, generates an extraordinary eye for detail, for the particularities of persons, places, and presentations of selves and laws. The author biography is thus in part an exorcism, a taking leave, which leads Legrand to self-consciously stare across the vacancy that separates him from 'those days' (p. 339). More than that, ceaseless travel, *perpetuum mobile*, is the project necessary to 'eliminate abjection from my life' (p. 341) and a quest to find, borrowing from Beckett, the assassinated being within, and to give it life. It produces, in a fashion not entirely removed from Rudden's originality of gloss (we are dealing, after all, with a comparative lawyer), a strident creativity and a radical novelty of style, subject, and literary form of project. In one chapter, to take an inventive instance, Pierre the protagonist invents a species of parallel intellectual journey, from Canada to Oxford, in the feminine persona of the fictive Imogene, the authorial *animus* shifting to the projection of *anima*.[3] The aptly named Imogene, code for Cymbeline, the virtuous wife of the exiled Posthumus, suggests nicely the importance of ethics to epistemology, a constant theme of integrity and of admission of singularity as well as of a mortality that in writing leaves a trace.[4] She is studying the appositely strange topic of the royal prerogative and so, armed with all of the baggage of gender, education, culture, and personal sensibility, she travels to Oxford, treads the paths and sits in the libraries that the peerless Legrand has travelled before. It is a wonderful exercise in the imaginative genealogy of a text not yet written. Quotidian life, paths traversed, cultures crossed, memories entangled, ghosts inhabiting places, spaces, and scripts, and in sum the journey is ethnographically depicted as prelude and preface to the possibility of any understanding of the strangeness of the distinctly English royal prerogative. By the end of her journey, Imogene has in introspective mode considered the Spanish *prerogativas reales*, problems of language and translation, the epistemological dangers of academic dressage, and the 'otherwhere' of the Bodleian Library, and concludes that she is necessarily inventing the foreign law that she intends to translate and address.

What is past is prelude. We learn nothing directly about the royal prerogative, whether Spanish or English. There is a sense of the range of relevant materials, from the *Case of Proclamations* (1610)[5] to the proroguing of Parliament decision *R (Miller)* v. *The Prime Minister (No. 1)* (2017),[6] and a focus on Englishness as culture, language, and institutional practice. The exercise, the *anima legis* of Imogene's month in Oxford, is one of method. It starts with reverie, in the metaphorical feminine of invention, creation, and writing as individuated activities that break away from the academic tribe, the orthodox hegemony, the blandishments of positivist ethnocentrism, the juridification that stifles thought by means of the fatal imposition of the *præsumptio similitudinis* of all law and the 'farrago of unsubstantiated peremptories – this epistemic mush' (p. 61), this 'orthodox epistemic petrification' (p. 440), that in Legrand's view dominates comparative legal thought. The point of entry to thinking is escape, both geographical and intellective, condensed into the individuating act of asserting 'no' to what is. The methodology of negation is strikingly juristic in the sense of agonistic or self-confessedly fierce, earnest, passionate, and persistently conflictual. It is not just that 'foolishment' is not to be tolerated, and it is much more than incessant controversialism. The positivity of what asserting 'no' can produce and enhance is the building block of

[3] I take the Jungian terms from their usage in G. Bachelard, *Poetics of Reverie* (1969).

[4] On Imogen and Posthumus in Shakespeare's late play *Cymbeline*, see P. Raffield, 'Common Law, *Cymbeline*, and the Jacobean *Aeneid*' (2015) 27 *Law and Literature* 313. The commendable additional 'e' fits with Legrand's propensities; he consistently spells 'add' as 'adde' and 'problematic' as 'problematique'.

[5] *Case of Proclamations* [1610] EWHC KB J22.

[6] *R (Miller)* v. *The Prime Minister (No. 1)* [2017] UKSC 5.

thought. Negation is in part a personal quest, a stubborn assertion of the self in interruption of epistemic sovereignty, an affirmation that allows for the construction of a 'heterogenous intelligibility' (p. 350). More than that, 'it is a form of language carrying epistemic value: for instance, it enables the uncovering or elicitation of what the prior affirmation has hidden or erased' (p. 371). A lengthy list follows, derailing – I was tempted to say 'trashing', but it is inelegant and imprecise – the orthodoxy and advocating radical change. The plea is that there is no defensible nor even articulated epistemological model supporting the discipline, nor any sensible recognition

> that the foreign is not translatable; that the foreign is not representable; that a disciplinary approach cannot disclose the foreign; that a formalistic appreciation of the foreign yields no meaningful information about it; that comparison cannot confine itself to what have long been the usual (occidental) laws; that the differend across laws cannot be ignored or effaced. (pp. 371–372)[7]

It is from the impossibility of method, the unknowability of the alien, that Legrand's minor jurisprudence emerges: 'The fact that one cannot compare … does not mean that one must not compare, quite to the contrary', and then in a negation of his own 'quite to the contrary', the clash of cannot and must not follows (p. 372). The aim – and it is prolegomenal and preliminary – is to build a methodological basis for an esoteric and exotic form of study by reorganizing comparative legal knowledge on a rigorous and specifically encultured basis.

It is not a surprise, in view of the fixation on negation, that, borrowing a phrase from the melancholic J. H. Merryman, Legrand returns frequently to the loneliness of the comparative lawyer, to the risks that the imaginary Imogene takes, both as an insistence on detail – the comparatist's strict scrutiny of their own progression and trajectory – and as a methodological desiderium that scholarship recognize, embody, and manifest the encultured character of all legal knowledge. Socio-legal inquiry into another culture's laws has to begin by accounting for who it is that is investigating the foreign, why they are asking the questions that they pose to the other, and how it is that the other became other to begin with. There is a certain resonance or haunting of the text by the questions that ethnomethodology would ask of the sociological imagination, that it cease focusing so much on being 'about' something exterior and recognize its construction of its object in the manner of its own writing.[8] For Legrand, the key inaugural question is of the trigger or catalyst that leads to the desire to rebrand oneself a comparatist. What cultural disposition, linguistic competence, and experience of law propels the desire to approach the foreign, what *mentalité* is being broken down, and in favour of which other?

> Consider the possibilities, an old imperial power, a former colony, a bilingual or bicultural country, and so forth. And while it evidently matters that one was trained as a French or Dutch jurist, how much does it count and in what ways – what difference does it actually make? (p. 317)

[7] One scientific support for such a position can be found in G. Bachelard, *The Philosophy of No* [1940] (1969) 115: '[It does not stem] from a spirit of contradiction, refuting without proof and raising vague quibbles. It does not deny just anything, any time, anyhow.' The spirit of scientific inquiry with which Bachelard identified was that of resistance, of demanding other, and requiring more.

[8] The distinctive texts, liberating forces in the early years of my PhD, were P. McHugh et al., *On the Beginning of Social Inquiry* (1974) – one review starts out, first words for content, 'This is a very unusual book, as difficult to describe as it is irritating to read' (M. H. Ross, 'On the Beginning of Social Inquiry' by Peter McHugh, Stanley Rafel, Daniel C. Foss, and Alan Blum' (1976) 54 *Social Forces* 736, at 736) – and A. Blum, *Socrates: An Original and Its Images* (1978).

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Awareness of one's own enculturation, approach to law, and specialism in, say, contract, property, or crime, in Brazil, Italy, or the US, then have to come to bear upon the thorn of comparison. How is it possible to enter another culture, a different language, extraneous semiotic patterns, other histories and biographies situated at multiple levels abroad, let alone seek within that foreignness something approximating a vernacular discipline, norm, or law? The methodological caution, familiar to socio-legal scholarship, is that the necessity of understanding the cultural framing of law is doubled and doubles back the moment that comparative inquiry is seriously undertaken. If the comparatist is to avoid the superimposition of one regime on another, of one power annexing the difference of the foreign in its full ontographic depth, the law has to be put in question in self and other, and categories such as contract, tort, public, and private suspended both home and away. It is work at the level of the *longue durée*, an intimidating because vast and amorphous adventure, a sinking into and getting lost in diversity, the 'theoretical bomb' that Eduardo de Castro terms 'cannibal metaphysics', the endeavour to decolonize thought. How does one become unrecognizable to oneself?[9]

The contestation of thinking, the conflict of interpretations, the situated experience of coming to know, is that of attending to an atmosphere, space, context, culture, and linguistic habitation, the recognition of one's own haunting and that of the language and culture being studied. Comparison requires resolute attention, sustained integrity, and an equally determined breaking away from presumptions of similitude, global assertions of all law being like all law in some broadly undefined sense that leads a comparatist to deem tort, for example, as presumptively similar in different languages and cultures, or law to mean the same thing in China, Tonga, Russia, Ethopia, and the United Kingdom (UK), and among the Nambikwara, Quirites, and Celts. This means, as expressed by Legrand in the inventive form of a foundational dialogue, that comparative law has to become a site of dissimilarity – a *regio dissimilitudinis* – where saying 'no' is indicative of a 'refusal of consent, opposition, rejection, dissent' (p. 294). To insist upon the differend, to stay true to another culture, means addressing it in its own language, translating for oneself, inscribing one's counter-signature and taking the ever present risk of disturbing the academic community, of irritating, of being dismissed as peripheral, marginal, or indecorous, of being uncomfortable and disapproved of in the manner of those who insist on unsettling the narcoticizing allure of guild solidarity by challenging the assumption of similarity and insisting upon the foreign as the continuing quality of the alien and unfamiliar. The pertinent slogan is *non serviam* (p. 341), an oppositionist view that looks back to the words of Othello, 'I am nothing, if not Criticall' (p. 181).

This methodology of insistently critical comparison – call it 'compierring' – is expounded in terms of epistemic integrity and the rigorous pursuit of both the personal and the social context that generates the foreignness of the law being compared. Enculturation is the beginning point; all law is culture and to understand it when found in another jurisdiction – etymologically another language, another mode of speaking law – requires careful and detailed attention to the cultural and linguistic context that has produced the relevant law. It is not similarity but difference that governs the enterprise, and this means a radically distinct point of entry into the discipline of comparison by means of listening to the variegated contexts, histories, hauntings, desires and anxieties that have produced the relevant legislation or decision. It is a question of developing a method of indiscipline, escaping the rod and discipleship that

[9] E. V. de Castro, *Cannibal Metaphysics: For a Post-Structural Anthropology* (2014). De Castro asks pertinently of Amerindian cultures: 'In other words, what is it that the others "have not" that constitutes them as non-Occidental and nonmodern? Capitalism? Rationality? Individualism and Christianity?' De Castro, id., p. 43.

disciplines demand of members, of *followers*, of those who do not wish to think but simply desire unwittingly to bear the sword and shield of Roman law into an indefinite and indistinct future.[10] Indiscipline is auditory openness, the willingness to attend patiently to the unfamiliar in all of its aspects and the manner of their meaning differently, by decentring the self through the realization that one is not *solus ipse*, themself alone, but that imperium, the past, the history of those that spoke the language before you, all travel inside and alongside as the dialogue in what you do.

The specific politics, economics, ethics, aesthetics, allegiances, and faiths that surround an issue are as much part of legal conflict and regulation, order and dispute, as the purportedly distinct juridical norms. Each excursion into comparison requires thickness of description, weight of context, and a genealogy of the cultural roots of any specific law, an archaeology of its socio-historical strata, that Legrand terms 'tracing' (p. 210 and passim). Thus, substantive examples are explicated at length in distinct cultural contexts, according to a plethora of orientations and dispositions that trigger legislation or the judicial sense of the appropriateness of a judgment. The French requirement of 'faith in the state' and in the *mission civilisatrice* of French culture, the norm of laicity, seek aggressively, for example, to assimilate the Muslim, while in the UK more covert norms dominate in the more tacit style of the unwritten constitution. Upholding a school's decision to exclude a Muslim student for wearing a jilbāb (جِلْبَاب), a covering of the body and not even of the face, the court in dramatically British style sidesteps any contextual inquiry, let alone tracing, in stipulating that '[i]t is important to stress at the outset that this case concerns a particular pupil and a particular school in a particular place at a particular time' (p. 402).[11] The insular or idiographic annihilation of comparison could hardly be more exaggerated than in such an extreme statement of exclusivity. Taking it further, English, French, and Canadian laws, for example, on students wearing Islamic dress can only be compared by distinguishing the juristic context, the cultural history and patterns, the institutional and linguistic modalities of decisions, and the theological norms and juristic constraints within different jurisdictions. For Legrand, the cultural embeddeness of covering laws, of veiling legislation and case law, inevitably raises questions of politics, religion, and gender, and one can note that even though there have been calls for restraint, judges in the UK remain able to deem witnesses' failure or refusal to remove the niqab to be contempt of court and as invalidating of their testimony and so also, by extension, their oath.[12] It is a matter of comparing mythologies, juridical and theological in exquisite disharmony, as two regimes of credibility collide in dissonance over sumptuary and sartorial integuments covering too little and too much. That a purportedly secular legal system should require a Muslim woman to unveil *haec imago*, His face, the Christian visage, is not only paradoxical, but also begs comparative scholarship on faith, patristics, empire, gender, and fashion. Much is left open by Legrand, and more could indeed be done in relation to the case law in his own Canadian domicile of origin, were he able to face the pain of returning. It would have been interesting to see the discussion move from French case law to the Canadian decisions on requiring witnesses in court to remove their niqab when giving evidence, but such an extension simply reinforces the requisite scope of

[10] F. M. Cornford, *Microcosmographia Academica: Being a Guide for the Young Academic Politician* (1908) 7: 'The Roman sword would never have conquered the world if the grand fabric of Roman Law had not been elaborated to save the man behind the sword from having to think for himself.' Legrand's question of law is: 'Are we never to be done with conquest?'

[11] *R (SB)* v. *Governors of Denbigh High School* [2007] 1 AC 100 (HL).

[12] Judicial College, *Equal Treatment Bench Book: February 2021 Edition, with April 2023 Revisions* (2023) 276–277, at <https://www.judiciary.uk/wp-content/uploads/2023/06/Equal-Treatment-Bench-Book-April-2023-revision.pdf>.

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indiscipline as the rigour of method necessary to trace, track, and attend to a social and political reality that itself lacks any formal discipline.[13]

An advocate of indiscipline since the mid-1990s, the later Legrand suggests in his present work a comedic toolkit, the *serio ludere* of daily work equipment that will sound out the hollowness of the textbooks, the neophobia and mysophobia of the juridicial establishment, 'the black letter recrement' (p. 64) of juriscentrism.[14] Legrand spends most of his days in comparing, in his *mania comparativa*, and to do this he takes with him the necessary tools: a high-end-model multi-tasking differentiator and indisciplinator, a heavy-duty charitabler, a negator (of course), an inventor ('which works like a spell checker and searches my report on foreign law to detect all textual manifestations of allegedly impersonal, impartial, neutral, objective, or true formulations' (pp. 424–425)), a Swiss Army knife for cutting through epistemic nonsense, a whistle and an umbrella as apotropaic instruments. It is important, in other words, to recognize the role of play in the desire for the foreign and the lure of the other. The ghosts can be made to dance in the irreducible singularity of authorial decision, and a sense of humour will ground the Beckettian style of the corrective epistemic enterprise, the finding of the assassinated self, the dousing of the Oedipal flames, overcoming the 'vacancy between me and those days' (p. 339), and overall the sense of failure, but one that fails better. This necessarily involves both trauma and desire, the affects of comparison, the play of writing, the push and pull of amity and enmity, distance from the community of comparatists, the forging of a consistent conceptual recognition of the *irrelation* between vernacular and foreign, self and other, and of course the rift between Legrand and *les grandes écoles*.

Once weaponized with knife and whistle, differentiator and indisciplinator, Legrand systematically mirrors and playfully pillories positivist purity with epistemic impurity, monolingualism with plurilingualism, ipsative monomania with diversified polysemy. There is no free-standing, autonomous, haecceity of law, either vernacular or foreign, that can act as the subject of comparison, but only the variable expressions of a culture that finds formal inscription in juridical instruments whose *arbor jurisdictionis* or genealogy of enculturation has to be drawn out, traced, exposed, scrutinized, and hermeneutically developed so far as is critically possible, which is to the limits of the scholar's capacities and to the end of their working life. Orthodox inquiry in comparative legal studies singularly fails to retain the foreign in foreign law, slipping far too swiftly and easily to the second term, *au jus* as Horace put it, and so in effect abandoning the project of comparison in favour of an epistemicidal, colonizing subjection of the other law to Western cultural terms, exterminist presuppositions, and juridical formulae. Patrick Glenn's *Legal Traditions of the World* is singled out as a prime example of the 'abysmally deficient … addiction to similarity' (p. 233) that erases the differend of foreignness in furtherance of the *præsumptio similitudinis*. Take a single sentence, a characteristic assertion in the field, found commonly throughout the domain: 'If you are a western [sic] lawyer with no previous experience of Soviet or socialist law, there are no major conceptual problems in understanding it' (p. 413). With this sentence and sentiment, Legrand 'profoundly disagrees', characterizing it as not only jejune but also

[13] For example, compare the Canadian case *R*. v. *N. S*. [2012] 3 SCR 726 to the English cases *R* v. *D (R)* [2014] 1 LRC 629, or *AAN* (Veil) [2014] UKUT 00102 (IAC). The most recent judicial guidelines on assessing witness demeanour in the UK can be found in *SS (Sri Lanka)* v. *Sec. of State for the Home Department* [2018] EWCA Civ. 1391 and *A Local Authority* v. *The Mother and Others* [2020] EWHC 1233 (Fam).

[14] 'Indisciplined' appears in P. Legrand, 'Comparative Legal Studies and the Commitment to Theory' (1995) 58 *Modern Law Rev*. 262, at 272. I took up the theme, unaware or perhaps having forgotten this earlier reference, in P. Goodrich, 'Intellection and Indiscipline' (2009) 36 *J. of Law and Society* 460.

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> the pathological, irrational and ultimately paralyzing illusion of mastery or control over otherness, which can only be assumed because a comparatist is prepared to elide, smother, reject or disavow any limits on the epistemological reach of the self's understanding – an arrogance that effectively harbours the makings of an imperial or colonial mindset. (p. 414)

Glenn, we are told, is not fluent in Russian, and the failure of his comparisons, his obliteration of the differend, is extreme – an extremity reflected in Legrand's critique, which continues delightfully in a lengthy footnote where reference is made to a book 'replete with such foolish observations' (p. 413), superficialities, flippancy, poor execution, and self-indulgences. In an anecdotal flourish on the ackamarackus and rhodomontade, or flaws and failings, of the work, we are informed that Legrand had been asked by Oxford University Press (OUP) to review the original book proposal, or more specifically to provide the clearance review where the other two reviewers were at loggerheads. He responded that Glenn's project was 'fundamentally misguided and epistemologically flawed … doomed to be derivative and superficial' (p. 414). OUP replied by asking if publishing the book as a student text rather than under the more prestigious Clarendon Press imprint would address his concerns. We are not told how he responded, but the book was published and this 'proved a good marketing decision' as it went through five editions, and 'at the end of the day, a publisher is not the Red Cross' (p. 414).

There is a welcome relief in the final quip that it is not the role of OUP to provide epistemic triage, but at the same time it is also a surprising evasion. The alleviating role of play, *ludus* and *jocus*, reveal a self-effacing moment, a shrug of the shoulders, an admission that the world moves on. The stranger point, however, is that the very purpose of peer review – and the function of the third reviewer in particular – for a reputed academic press, is precisely to make a scholarly determination, to decide on the grounds of epistemic fitness for purpose and here, on Legrand's account, OUP demitted its role and yielded, he implies, to venal motivations quite improper to the determination of the content of student textbooks. It is an intriguing slip, the joke always being, as Freud puts it, the contribution of the unconscious to discourse. The fire and fulmination of extended critical intervention collides here with the very purpose of *Negative Comparative Law*, which is expressly directed at postgraduate students (p. 39), and aimed at freeing youth eager for legal indiscipline from silo thinking, the death's-head tedium of the classical juridical *procedere ad similia* extended to the realm of the other. Five editions of pabulum, paraffle, placebo, and putative panacea, 'quack' scholarship by a 'pretender', an 'impostor' (p. 233), is a quintuple wrong and harm to the scholarly project. The future, in short and sum, is being despoiled; the foreign is being closed off, screened off from the next cohort and generation of comparative law scholars, who are instead being deflected and inducted into a damaged and damaging paradigm. Why, then, does Legrand drop out of his critical role and revert to a merely administrative dictat and joke?

The answer is that the purpose of *Negative Comparative Law* is not to succeed but to fail. This is not martyrdom, but the scrupulously pedagogical admixed with the poetics of theory. Diversity affects us all and the work is aimed at expanding the concept, integrating the insight, and opening both the ear and the discipline to the wealth, the irreducible otherness, and the wonder of the foreign. That is the journey, the author biography, that is traversed in such lucid detail in these essays. To fail better is to reveal more – of the self, of the foreign, of the other. Glenn, of course, in his package tour of foreign legal systems provides an element of that, an introduction to the commensal possibilities of comparative law. So too the other authors lambasted in the volume, from the fine scholar James Gordley, to the prolific Romanist Alan Watson, to Konrad Zweigert and Hein Kötz, whose work of enduring influence, translated into English by no less a figure than

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Tony Weir as *Introduction to Comparative Law*, is the *bête* of the instant treatise and returned to frequently.[15] What we learn is that the *Introduction* is 'shallow and unconvincing', irremediably marked by concludency, yet also incites an expansive credencive following, 'disciples and their incessant acts of faith' (p. 59). Their work is disappointing and yet very present. They represent the regnant orthodoxy in comparative legal studies, the hyperpositivism of an institutionally anxious and didactically precarious disciplinary venture. They are the negative, the object of *non serviam*, against whom the critic must start their lucubrations. These must build attentively, creatively, and inventively, but nonetheless it has to be acknowledged that it is upon this foundation that Legrand must construct his house. As he freely admits, '[c]omparative law is something I do every day for many hours a day, not unlike the professional pianist who plays the piano quotidianly for hours on end' (p. 46).[16] The scales, the harmonics, the movements, and the rhythms are there to be reworked. So, note that in the criticism of Glenn's assertion that Soviet law is easily understood, Legrand adds, in parentheses, 'I so easily imagine how the late Bernard Rudden, whose expertise lay precisely in Soviet or Russian law, would have responded to such a jejune declaration' (pp. 413–414). The use of parentheses, the return of the supervisor, the inheritance of seriousness, and the Protestant work ethic can also be analysed as symptoms. Pride of place in this regard should go to a footnote. The supervisor again, when Legrand informed him that he planned on taking a two-week holiday, had responded dismissively 'I thought you wanted to be an academic', and to this Legrand adds a footnote that this was not the worst moment that he had experienced: 'This distinction must go to the time when Rudden, muttering "Is that it?", contemptuously and irascibly threw my weekly essay on the floor' (p. 329). Legrand's swingeing critiques do feel at times like exercises in dropping considerably lengthier efforts by colleagues on the concrete floor of unpublication, as academic detritus, as an ironically undesirable other that Legrand has paradoxically ceased trying to understand.

It is in a similar vein somewhat ironic that there is a tradition of comparative legal scholarship that Legrand wants to preserve, a sub-discipline that needs saving, a status that requires shoring up, as well as a world of the foreign that needs to be invented as a dangerous supplement to the tawdry scholarship and benighted efforts of the best-selling primers in the field. It has then and finally to be acceded that it is on the Glenn of early work, the Gordley's and Zweigert's, their curiosities and their failures, that the critic builds. They are the stepping stones, the staircase, the echelons and ladders up which he climbs and on which he stands, and such could be acknowledged with a degree of generosity that his humour seems to preclude. It would be salutary to recall Didacus Stella and the humble admission that '[i]f I have seen farther, it is by standing on the shoulders of giants'.[17] Yet in a sense, no matter, for what is distinctive, Legrandian, candid,

[15] With respect to Gordley (who is also the subject of P. Legrand, 'Jameses at Play: A Tractation on the Comparison of Laws' (2017) 65 *Am. J. of Comparative Law* 1), Legrand recognizes his scholarship fleetingly at various points but arguably does not accord him the same latitude as is generously dispensed to his supervisor Rudden. J. Gordley, *The Philosophical Origins of Modern Contract Doctrine* (1991) is a major work in the comparative philosophy and philology of contract, and acknowledgement of that erudition and contribution might also allow for a corrective recognition of the fact that flawed assumptions do not entirely undermine the desire for comparison or the inventive historical and doctrinal contribution that such efforts make to the expansion of legal dialogue across cultures and epistemes. A. Watson, *The Making of the Civil Law* (1981) was an important corrective historical work of erudition and stipulates, first lines, that it will look at law in its context.

[16] Elsewhere, in even stronger formulation: 'I had a very serious dissertation supervisor! Of course, I take it very seriously! I do it every day. I do it many hours a day. I am like a professional violinist, if you will. I need to practice daily, for hours on end. I see no other way' (p. 304).

[17] This aphorism is traced in the wonderful R. Merton, *On the Shoulders of Giants: A Shandean Postscript* (1965).

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and refreshing is the negative verve, the unalloyed critical spirit, the apperceptive darts to the core of comparison that fly off every page, and let the wounds and the wounded lie where they fall. A prick, a jolt, a shove in a critical direction, a little ego trauma to prompt thinking again: these are now somewhat rare in the self-defensive academy, and Legrand's crinanthropic verve and xenomania are no bad thing. Pierre, however, must also admit that he is part of the target discipline, a most hesitant comparatist, and a waspish member of the guild, yet nonetheless belonging, howsoever oppositional his stance.

The point is that the recognition of the earlier work – Rudden's, for instance, with its flaws but also its virtues – entails an acknowledgement of a desire for comparison, an affective affinity for the foreign, a will to explore and expose that also drives the academic community that haunts Pierre's text as the poltergeist in residence. One can make the point by returning to the last lines of Rudden's brilliant morphology of the rule in *Hadley* v. *Baxendale* quoted earlier. The final words, recall, after the review of modern, early modern, medieval, and then classical sources, are 'the modern rule in *Hadley* v. *Baxendale* is a distant, but direct, product of their opinions. And of nothing more.' The exemplum stated (and the erudition is without question both instructive and distinctive, a stellar display), the exclusion of any other sources seems a peculiar conclusion with which to concur. 'Nothing more' is straightforward Oxonian hauteur, upper-class high tableness, patristic fiat and *fuit*. Of course there is more, and particularly according to Legrand's theory of law as culture, the corrective erudition is simply the opening of a pathway to analysis of the local, historical, economic, moral, and political norms that impact this judicial decision, as any other. Baron Alderson may have plucked a rule that had venerable forebears, the hermeneutic morphology that Rudden so dazzlingly displays, but he was also inventing the rule for the novel occasion and circumstances, inclusive of course of his history, culture, and the turbulent influence of the times. At the height of the Industrial Revolution, it would have been hard to argue that the judge's perception of the moral and economic impact of a carrier's breach of contract was extrinsic to the decision to immunize the defendant from the major portion of the costs of the loss that their neglect occasioned. Compare this accession to Rudden's esotericism to Legrand's critique of the House of Lords decision in *Cambridge Water Authority* v. *Eastern Counties Leather*.[18] The case was concerned with toxic chemicals escaping a plant and polluting the water supply. Critically parsing the judgment, Legrand points out that in addition to the technical legal question of no-fault tort liability, it also involves an economic pronouncement, philosophical questions of distributive justice, an ecological issue, and a cultural adjudication. Overall, taking into account the social impact of the judgment, the conclusion is that the House of Lords decision in the case 'is a monster' (p. 191). It manages to place responsibility for the costs of remedying a commercial enterprise's pollution upon those injured by it: the community and ratepayers in the affected vicinity. The outrage needs exposition and every year, we are told, Legrand teaches the case as an exemplum of how a culture secretes and disguises socio-political and here economic and environmental prejudices in the abstract verbal concoctions of abstruse normative decisions. It is, let us simply say, peculiar that Legrand takes a positive view of Rudden's 'compelling' analysis, yet regards tracing of these self-same cultural and contextual factors merely 'callid' (crafty) and possibly fellifluous when applied to the reasoning in *Hadley* v. *Baxendale*. A plethora of positions, assumptions, and predictions of consequence – economic, political, and social entailments – are implicit in the arbitral mood and pronouncement in both cases. The judgment of Baron Alderson is not simply or only a technical exercise, a revival of a philological relic; it is also an act of selection, and it is a consequential determination, because finding that the carrier is not liable

[18] *Cambridge Water Authority Co. Ltd* v. *Eastern Counties Leather plc* [1994] 2 AC 264.

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for special loss, because it had not actually been communicated at the time of bargain, frees the economic actor to carry goods with a degree of impunity as to harms caused, and privileges a literal free flow of goods, the careless carriage of things, as preferable in market-optimizing terms to any more specific attribution of responsibility that liability for this putatively and surprisingly unforseeasable loss would have occasioned. The rule supports entrepreneurship and so facilitates exchange and the transactional optimization of the market, rather than recognizing harms done or injuries incurred through breach, as conceived in the highly speculative elaborations of the judge.[19]

There is always more, and in this instance it is the question of style and that dimension of the essays that is repetitious, that manifests an *idée fixe*, that 'compears' (p. 73) to a harangue in the oratorical sense of *verba facere*, as brabble, a mix of quarrel, bamblusteration, and *ars bablativa*. Some will undoubtedly read the book like that, defensively, woundedly, and self-protectively. Those who inaugurated the discipline, those who worked in the tracks of the glossators, the Renaissance antiquaries, the humanists – all laid foundations and generated a scholarship of comparison that makes Legrand's career possible and upon which he performs his nimble dance of deconstruction and pronounces his epistemic cautels and exhortations, but little more. On his own account, many hours every day, he is comparing, working in and with the texts that so fray his nerves and energize his pen. He walks the same corridors, imbibes the same air, sits in the same libraries, and attends colloquia and meetings with positivists, comparatists, similitudinists, and other jurismaniacs. They receive scant recognition, though occasionally friends declaiming comparative law in mountain villages or entering into dialogue with his ideas merit positive mention. The key point, however, is precisely the unique extremity of style: the biting candour, the tenacity of critique, the willingness – so rare and so exquisite today – to circumvent the complacent conventions of criticism, the norms of guild cliques, and the religiosity of much specialist pedantry. Legrand does not mince words, nor does he write in the timorous style of those who fear what they may lose. His is a blast of the trumpet against the monstrous regiment of academic complacency, a verbal torrefaction of epistemic tricks aimed at exposing the vacuity of comparative legal prose. He is driven thus by the desire for more, and while the book only provides glimpses of the discipline yet to come, it opens the space in which such embrace of foreign regimens as distinct and irreplaceably other is possible.

None of the above is meant to say more than that this extended critique of comparative law, and particularly a work as lucidly focused and singular in its rigour of purpose as *Negative Comparative Thought*, must limit the arguments that it excoriates and the positions that it traverses. The choice is to accentuate the negative, to fill the largely empty space of radical self-criticism of the discipline. What this work achieves, with singular dexterity, consummate rhetorical skill, and an enviable linguistic arsenal, is to provide both research students and scholars with a fiercely critical methodology for approaching the foreign in other laws. The impossible task of translation – which must always remain what the Renaissance termed *veritas falsa*, an image of a language traduced – and the exploratory inquiry into the foreign are to be kept saliently free

[19] Baron Alderson speculates rather wildly on what can reasonably be assumed to be the usual course of ordinary loss that would flow from a broken mill shaft. His reasoning is that lost production is not within the usual scope of contemplation because the mill might have another shaft, or the mill might have stopped working because of other defects, or the mill might be turned to other productive endeavours while the shaft is out of action. This leads to the strangely confident, and empirically unhinged, conclusion that 'it is obvious that, in the great multitude of cases of millers sending off broken shafts to third persons by a carrier under ordinary circumstances, such consequences would not, in all probability, have occurred'.

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of the perniciously positivistic *præsumptio similitudinis*, which is the precise antithesis of any open approach to the differend of the foreign and the irreducibility of the other. To compare is to *compear*, to take responsibility for one's appearance, to acknowledge the internal difference, the haunting, the ghosts, the desires and drives, that measure themselves against the exterior differences. All that is possible, all that is desirable, is attention to and recognition of the other so as to instigate negotiations of meaning, interlocution, conversation, modes of dialogue that can facilitate interpretation and generate productively misaligned exchanges.

The student armed with the methods and epistemic quiver that Legrand fashions as aids to staying true to difference will play a productive role in the existential and anthropological task of thinking independently, in inventing what is law in the particular circumstances, occasions, and institutions through which the neophyte scholar moves. Also of great value is the playful inventiveness of style, the espousing and enactment of different modes of thought in distinctive creative fluencies. The ethnography of Imogene's trip to Oxford, the frankly candid and exposing author biography, an interview with the author or dialogue with himself, the blistering narrative of enmities and amities, the clear-eyed and remorseless epistemic judgements of failed efforts, culminate in a remarkable supplement, a chapter written and added while Legrand was correcting the proofs. Thought does not break off, thinking does not stop because the publisher's bell rings, and Legrand keeps going and adds an addendum, an appendix, further words open to the future. And then, finally, the task is comparison, the unavoidable reduction of the unique and dissimilar into the vernacular and familiar. That moment of exposure, that instance of compliance, that joining the mob must inevitably arrive, for Imogene, for Pierre, for any comparatist alone with their pen of mirth and ink of melancholy. They cannot but fail, so fail pleasurably, thoughtfully, inventively, attentively, zetetically. Learn, in short, to *compierre* – or, in my case, to *competer*.

In a vein of adamancy and inventiveness of both lexicon and style that is increasingly unusual in academic polemics, Legrand's crinanthropic approach offers a scythe-like negation of what came before. To negate is also, however, to incorporate, to make use of, and to depend upon. What the critique of comparative law aims to do – after the missiles of negative evaluation, the mustard gas of epistemic ground clearance, the cautels of method, and the clang and dong of a rebarbative style have settled – is to further the laudable aspiration and impossible goal of both going native, joining the other culture, and simultaneously remaining in the vernacular habitus, so as to return and report to it. The project has a certain pataphysical hue, proffering a science of impossible solutions that will sometimes – by intuition, felicity of circumstance, adroitness of prediction, or passage of time – come true. What Legrand offers is what the Roman lawyers termed *casus fortuitus*, an unexpected supervening blizzard of corrective lucubrations, a critical seismology at the lower end of the piano scale that he daily plays. It might not have hurt to have recognized some more of the critical work that takes place under the rubric of comparison, as well as under other banners – such as international legal theory, anthropology of law, intersectionality, and critical race theory – to have gained support from fellow travellers, to have dropped some of the loneliness or single-handedness of endeavour. How that would help is another essay. What remains is an exorbitantly erudite, psychoanalytically intriguing, aesthetically inventive, and above all epistemically salutary work of high scholarship. The pointillist method of comparison expounded at great and insistent length in the book is the art of tracing the cultural roots that both produce and constitute a legal sensibility, the affective contours and perceptual apprehensions of discipline and norm that form the juristic *genius loci* of the given subject of comparison. The decolonizing of comparative thought is the urgently necessary predicate of being able to understand the possibility, both the law, if it be such, and the brilliance of difference.

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Negative Comparative Law will have a variably intimidating and inspiring, even liberating, effect upon its intended audience, the next generation eager for comparative law. There is a growing contingent of graduate students who cross cultural divides and languages, who face a lesser or different sense of trauma of origin, and who play more easily across the spectrum of the differend. Some will still be terrified by their lack of the qualities that Legrand demands: the command of other languages, the ease and play of etymological and philological morphologies, the vast store of lexical archaisms and eruditions, the *scintillae iuris* that the artist of comparative tracing is required to accrue. They may tire too of the deferral of substantive analysis in favour of methodological barouche and barb. For others, the advocacy of indiscipline, the candour of critique, the contrarian disagreeability, the intimate admissions of wound and shame, the virtuoso style, the irrevence and eccentric wit, the willingness to fail, to fail again and fail better, will be vitalizing. They will recognize that to choose to be a comparative lawyer comes close to a monastic vocation, and here it is propounded in the fashion of a cenobitic creed. One has to go all in. Fail successfully. That is an art. That is a project, and it is a life, a living law.

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