

~~exclude or marginalize research that does not meet the operative criteria
(as understood by the established comparatists-at-law themselves).~~

IV. KÖTZ AS DESCARTES

To explain Kötz's commitments, I suggest that it is illuminating to approach them within a Cartesian framework.⁵⁹ As is well known, Descartes sought to exercise dominion over the universe through thought. But it was soon evident to him that the scope of human comprehension is limited. For example, by virtue of our finitude, we cannot comprehend the universe in the sense of holding it whole within the grasp of the mind. Our finite intelligence will simply not allow for a comprehension of the infinite.⁶⁰ Descartes's control strategy, then, was to move from a "thought of the whole" to "pure thought." For him, "pure thought" demands the disentangling of the various objects of knowledge from the whole.⁶¹ The idea is to beam a light on each object in order to reveal it as it is, in its essential separateness. "Pure thought" thus requires to be free of the distortions of subjectivity. It simply cannot be that there is nothing more epistemologically trustworthy than the power of one's upbringing, that one's cognitive capacity actually turns on whether one was raised with the French, the Germans, the Chinese, or the cannibals.⁶² Accordingly, Descartes's agenda is to deliver man from his state of epistemological fallenness.

Descartes's goal is to provide new epistemological sophistication in order to sustain the idea of cognitive assessments going beyond a mere sense of personal conviction.⁶³ Only if the knower is "purified" of

⁵⁹ Anyone familiar with Susan Bordo's essays on Descartes and Cartesianism will recognize her ideas and her words in the argument that follows. See SUSAN R. BORDO, *THE FLIGHT TO OBJECTIVITY* (1987). Bordo's claims in turn tally with my own, which I wrote and published before I had become aware of her work. See Pierre Legrand, *Perspectives du dehors sur le civilisme français*, in *LE DROIT CIVIL, AVANT TOUT UN STYLE?* 153 (Nicholas Kasirer ed., 2003). Interestingly, Bordo's argument situates Descartes's claims culturally, noting for instance how "experience" found itself discredited after the Ptolemaic universe and the geocentric apprehension that had made it possible had been disproven. See generally I HANS BLUMENBERG, *DIE GENESIS DER KOPERNIKASCHEN WELT* 47-65 (1981). Other important influences include Ramism. See WALTER J. ONG S.J., *RAMUS, METHOD, AND THE DECAY OF DIALOGUE* (1983); ANDRE ROBINET, *AUX SOURCES DE L'ESPRIT CARTESIEN* (1996); Kees Meerhoff, *Ramus et l'université*, in *RAMUS ET L'UNIVERSITE* 89 (2004); NELLY BRUYERE, *METHODE ET DIALECTIQUE DANS L'OEUVRE DE LA RAMEE* (1984).

⁶⁰ See, e.g., Letter from Descartes to Mersenne (May 27, 1630), in *I OEUVRES PHILOSOPHIQUES* 267 (Ferdinand Alquié ed., 1997). Descartes emphasizes that "our soul being finite," it can neither "embrace nor conceive" infinity.

⁶¹ For a sophisticated reflection on Descartes's "pure thought or understanding", see DESMOND M. CLARKE, *DESCARTES'S THEORY OF MIND* 198-206 (2003).

⁶² See I DESCARTES, *Discours de la methode*, in *OEUVRES PHILOSOPHIQUES*, pt II, 583-84 (Ferdinand Alquié ed., 1997) (1637) [hereinafter DESCARTES, *Discours*].

⁶³ Some of his metaphors, as they express Descartes's radical lack of faith in man's

all bias, all perspective, all emotional attachment, and all the bodily distractions and passions that obscure his thinking, can knowledge be grounded in objectivity and provide epistemological security, that is, representations so compelling that they eschew any dissonance with reality such that their accuracy cannot be doubted. The wish to create a realm untouched by uncertainty and risk assumes the designation, at least implicitly, of a contrastingly "impure" domain that can take responsibility for the "messy" or disorderly aspects of life. For Descartes, the role of the unclean is played by the body, which stands to have its warped perception corrected by thought's purifying scrutiny. Descartes's philosophical conception is thus characterized by the discrimination between an "in-here" and an "out-there"—indeed, in the title of the sixth *Méditation*, one finds "the real distinction between the mind and the body of man"⁶⁴—and by the further assumption that thought can be in possession of some neutrally-transcendent matrix that will allow it to perform conceptual cleansing and relocate all threatening elements "outside" the system in a way that makes them "alien" to it.⁶⁵

A commentator has referred to a "mauling of the senses."⁶⁶ The "offal of experience" may not be extinguished but it is firmly excluded.⁶⁷ "The principal demand of a full and total certainty pushes experience to the outermost limits of knowledge" and propositional thought;⁶⁸ in sum, "experience can be envisaged only as the continuation of the system carried by method."⁶⁹ "What Descartes calls on us to do is to stop living 'in' or 'through' the experience, to treat it itself as an object, or what is the same thing, as an experience which could just as well have been someone else's."⁷⁰ Otherwise, experience

epistemological processes, indicate that he regards this task as being one of great magnitude. In the *Discours*, he talks about razing buildings to their foundations. *Id.* at pt II, 581. Elsewhere, he mentions wiping bad paintings clean: II DESCARTES, *La recherche de la verité par la lumiere naturelle*, in *OEUVRES PHILOSOPHIQUES* 1116 (Ferdinand Alquié ed., 1999) (1701). In yet another text, he suggests emptying the whole basket of apples: DESCARTES, *Septièmes réponses*, in II *OEUVRES PHILOSOPHIQUES* 982 (Ferdinand Alquié ed., 1999) (1647).

⁶⁴ See II DESCARTES, *Méditation sixième*, in *OEUVRES PHILOSOPHIQUES* 480 (Ferdinand Alquié ed., 1999) (1641).

⁶⁵ Although Descartes deepens the epistemological chasm characteristic of the "mind-body" dualism further than philosophers (including Plato) had done before him, he takes the (contradictory) view that man is a single whole who has at once a mind and a body. See GENEVIEVE RODIS-LEWIS, *L'ANTHROPOLOGIE CARTESIENNE* 19-38 (1990).

⁶⁶ Ann W. Mackenzie, *The Reconfiguration of Sensory Experience*, in *REASON, WILL, AND SENSATION* 253 (John Cottingham ed., 1994).

⁶⁷ SAMUEL BECKETT, *DISJECTA* 19 (Ruby Cohn ed., 1984) (1929). For insightful and well-documented reflections on the repression of facticity—apprehended as having excremental "value"—see Claude Lévesque, *Au nom du réel*, in *CAHIER JACQUES DERRIDA* 215-16 (Marie-Louise Mallet & Ginette Michaud eds., 2004).

⁶⁸ PIERRE GUENANCIA, *DESCARTES ET L'ORDRE POLITIQUE* 67 (1983).

⁶⁹ *Id.* at 60.

⁷⁰ CHARLES TAYLOR, *SOURCES OF THE SELF* 162 (1989).

could lead us to "err."⁷¹ One of the governing ideas is that philosophical thought—"the most important thing in the world"⁷²—occupies a space that is removed from cultural conversation, that it stands detached, at a distance, from unruly experience. Descartes's view is thus marked by its commitment to intellectual separation, demarcation, and order. Strict rules against mixing categories or blurring boundaries must be maintained.⁷³ As one of Descartes's best-known commentators notes, his method emphatically illustrates a "general mathematicization of reality."⁷⁴ Descartes himself refers to his theory as a "*mathesis universalis*."⁷⁵ He leaves no one in doubt that for him mathematical truth reigns supreme.

In sum, Descartes aims for "a grasp at once mathematical and technical of reality."⁷⁶ His is a "technically-oriented thought" for which "order and measure govern in the mind and in the object."⁷⁷ Indeed, Leibniz—hardly an anarchist in matters of method and order—chastised Descartes for having "a rather limited mind," for "having found nothing useful to the life that falls under the senses," and for providing a program that "could almost be declared similar to the protocol of any chemist: take what is required, operate as is required, and you shall get what you want."⁷⁸ There is, however, no doubt that Descartes heralds the idea that "the infinite totality of being in general is as such a rational all-encompassing totality" to be dominated by "a universal science, without anything being excluded." In other words, Descartes inaugurates the *Neuzeit* with a mechanical understanding of the physical world epitomized in "the completely new idea of a mathematical science of nature."⁷⁹

⁷¹ XI DESCARTES, *Description du corps humain*, in *OEUVRES DE DESCARTES* 242 (Charles Adam & Paul Tannery eds., 2d ed. 1986) (1648).

⁷² DESCARTES, *Discours*, *supra* note 62, at pt II, 590.

⁷³ Thus, in the *Méditation seconde*, which features the celebrated reflection on a piece of wax, Descartes asserts that philosophy's central question is one of delineation: do any objects exist outside one's mind? See II DESCARTES, *Méditation seconde*, in *OEUVRES PHILOSOPHIQUES* 414-29 (Ferdinand Alquié ed., 1999) (1641).

⁷⁴ ALEXIS PHILONENKO, *RELIRE DESCARTES: LE GÉNIE DE LA PENSÉE FRANÇAISE* 120 (1994).

⁷⁵ X DESCARTES, *Regulae ad directionem ingenii*, in *OEUVRES DE DESCARTES* (Charles Adam & Paul Tannery eds., 2d ed., 1986) (1628) ("*Mathesim universalem nominari*") (rule IV). For the French version, see I DESCARTES, *Regles pour la direction de l'esprit*, in *OEUVRES PHILOSOPHIQUES* 98-9 (Ferdinand Alquié ed. & Jacques Brunschwig trans., 1997) (1628) [hereinafter DESCARTES, *Regles*]. On "*mathesis universalis*" (a notion that long precedes Descartes), see GILLES OLIVO, *DESCARTES ET L'ESSENCE DE LA VERITE* 72-80 (2005).

⁷⁶ FERDINAND ALQUIÉ, *LEÇONS SUR DESCARTES* 81 (2005) (repr. 1955 ed.).

⁷⁷ PHILONENKO, *supra* note 74, at 48, 51.

⁷⁸ IV GOTTFRIED WILHELM LEIBNIZ, *DIE PHILOSOPHISCHEN SCHRIFTEN* 297, 297-98, 329 (C.J. Gerhardt ed., 1978) (1677-1702).

⁷⁹ VI EDMUND HUSSERL, *Die Krisis der europäischen Wissenschaften und die transzendente Phänomenologie*, in *HUSSERLIANA: GESAMMELTE SCHRIFTEN* §§ 8, 20 (Walter Biemel ed., 2d ed. 1976) (1936) [hereinafter HUSSERL, *Krisis*].

Hein Kötz's is comparative legal studies's actualized version of Descartes. Like his philosophical forebear, his principal goals—as notable as they are problematical—are foreclosure and withdrawal. I have already mentioned Kötz's refusal to engage with his critics.⁸⁰ In this respect, Kötz is in effect definitely more Cartesian than Descartes himself who, although he claimed that "anyone who understands [his opinions] correctly will have no occasion to dispute them,"⁸¹ was perfectly happy to include along with the first edition of his *Meditations* (which ran for one-hundred-and-nine pages) fully four-hundred-and-eighty-five pages of "objections" (to his text) and "replies" (by himself).⁸² Perhaps Kötz and Descartes are closer when it comes to their defiance of erudition. For example, Kötz, as we know, is "perfectly unembarrassed about [his] methodology."⁸³ The lack of reference to theoretical studies on comparative methodology is mirrored in the complete absence of any literature being addressed on "objectivity" or "functionalism," for instance. Descartes also despised the idea that he could learn from others and specifically from their books.⁸⁴ Yet, his goal was emphatically to reach "a state of systematic perfection."⁸⁵ It is precisely this brand of "systematic perfection" (one must build a system, says Kötz) that will allow comparatists-at-law to identify "the best solution here and now."⁸⁶

Another basic affinity has to do with the fact that Kötz aims to develop "a universal comparative legal science."⁸⁷ It has indeed been said of Descartes that many of his key texts "bear the mark of the same ambition": "to found a universal science."⁸⁸ One can also find echoes of Descartes's predilection for distinctness and delineation in the way in which Kötz engages in "boundary maintenance" and thus proceeds to belabor the analytical demarcations between comparative legal studies, on the one hand, and "private international law," "public international law," "legal history," "legal ethnology," and "sociology," on the other.⁸⁹ But there are many additional specific resonances to note.

⁸⁰ See *supra* text accompanying notes 11-14.

⁸¹ Letter from Descartes to Regius, i.e., Henri Le Roy (July 1645), in IV OEUVRÉS DE DESCARTES 248 (Charles Adam & Paul Tannery eds., 2d ed. 1976).

⁸² Ferdinand Alquié, *La première édition des Méditations*, in II DESCARTES, OEUVRÉS PHILOSOPHIQUES 377 (Ferdinand Alquié ed., 1999).

⁸³ ZWIEGERT & KÖTZ, INTRODUCTION; see *supra* text accompanying note 14 (emphasis added).

⁸⁴ YVON BELAVAL, *LEIBNIZ CRITIQUE DE DESCARTES* 92-99 (1960); see also THOMAS M. CONLEY, *RHETORIC IN THE EUROPEAN TRADITION* 171-73 (1990).

⁸⁵ HANS BLUMENBERG, *DIE LEGITIMITÄT DER NEUZEIT* 94 (1966).

⁸⁶ See *infra* text accompanying note 100 (on "system"); *supra* text accompanying note 47 (on "better-law").

⁸⁷ ZWIEGERT & KÖTZ, INTRODUCTION, *supra* note 3, at 46. For the German text, see ZWIEGERT & KÖTZ, *EINFÜHRUNG*, *supra* note 3, at 45.

⁸⁸ ALQUIÉ, *supra* note 76, at 18.

⁸⁹ ZWIEGERT & KÖTZ, INTRODUCTION, *supra* note 3, at 6-12. All of this, Kötz explicitly

In the same manner as Descartes "gave to the new scientificity its form and its procedural order,"⁹⁰ Kötz wants to ascribe to comparative legal studies a logical structure. Kötz thus purports to enter into a pure relation with "his" objects of knowledge or, more accurately, with "his" laws understood as objects of knowledge (for Kötz, English law is an "object" that is entirely external to him). The underlying goal is one of commensuration: to get to the "real" data and achieve an exact representation of it through an *adaequatio intellectus et rei*. Indeed, the idea of "purity" figures prominently in Kötz's text; he too is driven by the "purification urge."⁹¹ For him, just as for Descartes, the drive to "purity," which connotes "separation" and "demarcation," seeks "to impose system on an inherently untidy experience."⁹² It reveals "the desire to be all-powerful, to control the meanings of experience before encounter so as not to be overwhelmed."⁹³ Not only does he assert that comparative study must be framed "in purely functional terms,"⁹⁴ that solutions should be seen "purely in the light of their function,"⁹⁵ but he describes comparative legal studies as a "*science pure*,"⁹⁶ observes that comparative investigation may be "*pure and disinterested*,"⁹⁷ and endorses a statement concerning "the *pure* comparison of laws."⁹⁸

Like Descartes, Kötz fashions a world of concepts ("neutral concepts"; "higher concept"; "all the conceptual apparatus for ordering, organizing, and transmitting . . . material").⁹⁹ Like Descartes still, he develops a world of system (the comparatist is told "to build a systematics" and reference is made to "the system of comparative law" and to "new systematic concepts").¹⁰⁰ Incidentally, the mechanics of

informs us, is what comparative legal studies "is *not*." *Id.* at 6 (emphasis original).

⁹⁰ BLUMENBERG, *supra* note 85, at 465.

⁹¹ RICHARD SENNETT, THE USES OF DISORDER: PERSONAL IDENTITY & CITY LIFE 116 (1970).

⁹² MARY DOUGLAS, PURITY AND DANGER 4 (1966).

⁹³ SENNETT, *supra* note 91, at 116.

⁹⁴ See *supra* text accompanying note 34 (emphasis added).

⁹⁵ See *supra* text accompanying note 31 (emphasis added).

⁹⁶ ZWIEGERT & KÖTZ, INTRODUCTION, *supra* note 3, at 6; ZWIEGERT & KÖTZ, EINFÜHRUNG, *supra* note 3, at 6. The formulation appears in French in both the English and German editions. In the same spirit, Kötz refers to "the essence . . . of comparative law." ZWIEGERT & KÖTZ, INTRODUCTION, *supra* note 3, at 3; ZWIEGERT & KÖTZ, EINFÜHRUNG, *supra* note 3, at 1.

⁹⁷ ZWIEGERT & KÖTZ, INTRODUCTION, *supra* note 3, at 34; ZWIEGERT & KÖTZ, EINFÜHRUNG, *supra* note 3, at 33.

⁹⁸ ZWIEGERT & KÖTZ, INTRODUCTION, *supra* note 3, at 47; ZWIEGERT & KÖTZ, EINFÜHRUNG, *supra* note 3, at 46.

⁹⁹ ZWIEGERT & KÖTZ, INTRODUCTION, *supra* note 3, at 10, 44, 46 (respectively). For the German text, see ZWIEGERT & KÖTZ, EINFÜHRUNG, *supra* note 3, at 11, 44, 45 (respectively).

¹⁰⁰ ZWIEGERT & KÖTZ, INTRODUCTION, *supra* note 3, at 44, 44, 46 (respectively). For the German text, see ZWIEGERT & KÖTZ, EINFÜHRUNG, *supra* note 3, at 43, 43, 46 (respectively). Interestingly, the German edition also has the comparatist-at-law developing "*eine eigene Systematik und eigene Systembegriffe*." *Id.* at 46 ("a specific systematics and specific systematic concepts"). The English translation does not account for this formulation.

this system must be "functionally coherent").¹⁰¹ Through "concepts" and "system," Kötz, like Descartes, projects an unemotive or ascetic image. He sterilizes the comparative process in thrall to a scientificity that would resolutely erase all experience, all facticity, all libidinal investment from the discursive formation he defends. At the outset, Kötz pronounces comparative research to be "an intellectual activity" and later asks the comparatist-at-law to "proceed with intelligence."¹⁰² Affect or desire—"in legal terms . . . the most undesirable of forces"¹⁰³—remains outside the space defined for comparative legal studies (let us recall Kötz's injunction to "leave aside the topics which are heavily impressed by moral views or values").¹⁰⁴

As he embarks on his reflection, Descartes, subscribing to a hermetic conception of thought purporting to reach "naked knowledge, rid of the affective components that mix with it and obscure it,"¹⁰⁵ asserts how grateful he is to be "untroubled by any passion."¹⁰⁶ He then proceeds to "shut [his] eyes," "close [his] ears," "divert all [his] senses," "even erase from [his] thought all images of corporeal things."¹⁰⁷ In whatever situation, clear and distinct intellection carries over obscure and confused sensuality (thus, for Descartes: "bodies themselves are not properly known by the senses, but only by the mind").¹⁰⁸ There is another important respect in which the drive for certainty is common to philosopher and comparatist-at-law. Descartes expressly rejects all knowledge that is "only probable";¹⁰⁹ indeed, a famous commentator refers to his "radical elimination of the *probable*."¹¹⁰ This strategy immediately reminds one of Kötz's unwillingness to accommodate notions like "tradition" and "culture" in the search for the foreign legal system's rules presumably because, quite apart from partaking in the non-law (an example of the relevance of categorical thinking), they lack the requisite analytical precision.¹¹¹

¹⁰¹ ZWIEGERT & KÖTZ, INTRODUCTION, *supra* note 3, at 45. For the German text, see ZWIEGERT & KÖTZ, EINFÜHRUNG, *supra* note 3, at 44.

¹⁰² ZWIEGERT & KÖTZ, INTRODUCTION, *supra* note 3, at 2, 17 (respectively). For the German formulations, see ZWIEGERT & KÖTZ, EINFÜHRUNG, *supra* note 3, at 1, 16 (respectively).

¹⁰³ Peter Goodrich & David Gray Carlson, *Introduction to LAW AND THE POSTMODERN MIND* 3 (Peter Goodrich & David Gray Carlson eds., 1998).

¹⁰⁴ See *supra* text accompanying note 23.

¹⁰⁵ JEAN LAPORTE, *LE RATIONALISME DE DESCARTES* 472 (1988) (repr. 1945 ed.).

¹⁰⁶ DESCARTES, *Discours*, *supra* note 62, at pt II, 579.

¹⁰⁷ II DESCARTES, *Méditation troisième*, in *OEUVRES PHILOSOPHIQUES* 430 (Ferdinand Alquié ed., 1999) (1641).

¹⁰⁸ II DESCARTES, *Réponses . . . aux secondes objections*, in *OEUVRES PHILOSOPHIQUES* 555 (Ferdinand Alquié ed., 1999) (1647); see generally PIERRE GUENANCIA, *L'INTELLIGENCE DU SENSIBLE* 29-69 (1998).

¹⁰⁹ DESCARTES, *Regles*, *supra* note 75, at 80 (rule II).

¹¹⁰ ÉTIENNE GILSON, *ÉTUDES SUR LE RÔLE DE LA PENSÉE MÉDIÉVALE DANS LA FORMATION DU SYSTÈME CARTÉSIEN* 235 (1984) (repr. 1930 ed.) (emphasis original).

¹¹¹ For a tepid reaction to an open-textured conception of "the legal", see, e.g., ZWIEGERT &

Just as Descartes had sought to "reduce the knowable world to the unity of a homogeneous matter,"¹¹² to simplify,¹¹³ Kötz confines the comparatist's object of study to what is classically, recognizably, "the legal"—"whatever the lawyers . . . would treat as a source of law."¹¹⁴ And, one could add, just as Descartes's *mos geometricus* has compelled him "to replace the real world with an imaginary world" and "the living man, the real man, with an imaginary man,"¹¹⁵ Kötz has replaced the student of law with "*der Jurist als solcher*," the "jurist-as-such."¹¹⁶ Arguably, though, Kötz is more Cartesian than Descartes, for the philosopher valued the idea of interconnectedness of knowledge. For Descartes, although his "view of reason as most pure and solid when it was free of corruption by the world's confusions implied nothing less than the attempt to break free of all social and cultural experience,"¹¹⁷ one must not confine one's attention to one branch of knowledge to the exclusion of others.¹¹⁸

Now, like Descartes also, Kötz accepts perception's ability to overwhelm us and to render us passive in the face of its strength: our passivity in the face of a clear and distinct idea is a mark of its truth, a mark of epistemological reassurance.¹¹⁹ When Kötz, concluding his comparative analysis, writes that "the critic is *forced* to conclude" to the superiority of German law on the question at issue, he is resorting to a formulation that eschews even the minimally requisite sensitivity for opening the possibility of dialogical relations within comparative legal studies and with respect to which the comment directed at Descartes concerning "the dogmatism of clear and distinct ideas" could well be applied.¹²⁰ The aim is that the comparatist-at-law may be pacified by the purity and authority of the object—in this instance, of the better law. The goal is for fixity to rule. The underlying themes of submissiveness

KÖTZ, INTRODUCTION, *supra* note 3, at 36, where the comparatist-at-law is enjoined to "make every effort to learn and remember as much as he can about foreign civilizations."

¹¹² ALQUIÉ, *supra* note 76, at 77.

¹¹³ This preoccupation is, in fact, presented as Descartes's "first concern." ALQUIÉ, *supra* note 76, at 46.

¹¹⁴ ZWEIGERT & KÖTZ, INTRODUCTION, *supra* note 3, at 35-6.

¹¹⁵ ALQUIÉ, *supra* note 76, at 66-7.

¹¹⁶ The expression is used by Bernhard Windscheid, *Die Aufgaben der Rechtswissenschaft*, in BERNHARD WINDSCHEID, GESAMMELTE REDEN UND ABHANDLUNGEN 111 (1904) (1884). Windscheid's "jurist-as-such" ignores "ethical, political, [or] economic considerations": *id.* at 112.

¹¹⁷ JERROLD SEIGEL, THE IDEA OF THE SELF 62 (2005).

¹¹⁸ See, e.g., DANIEL GARBER, DESCARTES' METAPHYSICAL PHYSICS 1-62 (1992).

¹¹⁹ For illustrations of Descartes's expressed views on this question, see, e.g., Letter from Descartes to Regius (May 24, 1640), in III OEUVRÉS DE DESCARTES 64 (Charles Adam & Paul Tannery eds., 2d ed. 1988). "Our mind is of such a nature that it cannot help assenting to what it clearly conceives"; Letter from Descartes to Mesland (May 2, 1644), in DESCARTES, IV OEUVRÉS DE DESCARTES 115-16 (Charles Adam & Paul Tannery eds., 2d ed. 1976); II DESCARTES, *Méditation quatrième*, in OEUVRÉS PHILOSOPHIQUES 463 (Ferdinand Alquié ed., 1999) (1641).

¹²⁰ PHILONENKO, *supra* note 74, at 359.

and receptivity—the mind as “inert receptacle”¹²¹—suggest spectatorship rather than participation.¹²² Of course, for the process to operate some method of purification must be supplied. And here one meets Descartes again for whom clear and distinct perception—which he expressly connects with truth¹²³—can only be achieved through rules that will direct understanding and overcome the legacy of prejudice that leads to the inability properly to distinguish between subject and object. One must “remove prejudices” for they are an obstacle to discernment.¹²⁴ Through rules, one can conquer all physical processes whatsoever: if sufficient industry is applied, the possibility for a complete intellectual transcendence of the body is at hand. For Kötz too, “prejudices” and “constraints” must be surmounted.¹²⁵ For him too, subjective evaluation will be *corrected*.¹²⁶

Evidently, Kötz envisages transcendence as the cardinal goal. As is the case with Descartes, whose thesis is “profoundly transcendental,”¹²⁷ only a guarantee “from above” can alleviate Kötz’s epistemological anxiety. Acts of “pure understanding” must be phenomenologically independent of the comparatists themselves, of their data, and of their reports on that data. The comparatists must be cleansed of their embeddedness. The data must be delivered from its embeddedness. The reports must be liberated from their embeddedness. If circumspection (or the atraditional or acultural attitude) is thus maintained (with, for instance, the right topics being excluded from the range of comparative research),¹²⁸ if prejudices are thus methodically toppled, comparative legal studies will overcome the need for any place.¹²⁹ As such, comparative research will naturally be apprehended as being coextensive with uniformization of law: *Rechtsvergleichung als Rechtsvereinheitlichung*.¹³⁰

¹²¹ *Id.* at 215.

¹²² Indeed, Descartes revels in his role as “spectator rather than actor”: DESCARTES, *Discours*, *supra* note 62, at pt IV, at 599.

¹²³ II DESCARTES, *Méditation troisième*, in *OEUVRES PHILOSOPHIQUES* 431 (Ferdinand Alquié ed., 1999) (1641). For an important examination of the connection Descartes draws between “certainty” and “truth,” see LAPORTE, *supra* note 105, at 139-72.

¹²⁴ II DESCARTES, *Réponses . . . aux cinquièmes objections*, in *OEUVRES PHILOSOPHIQUES* 804 (Ferdinand Alquié ed., 1999) (1647).

¹²⁵ ZWIEGERT & KÖTZ, INTRODUCTION, *supra* note 3, at 46; ZWIEGERT & KÖTZ, EINFÜHRUNG, *supra* note 3, at 46.

¹²⁶ ZWIEGERT & KÖTZ, INTRODUCTION, *supra* note 3, at 47; ZWIEGERT & KÖTZ, EINFÜHRUNG, *supra* note 3, at 47.

¹²⁷ PHILONENKO, *supra* note 74, at 63.

¹²⁸ ZWIEGERT & KÖTZ, INTRODUCTION, *supra* note 3, at 40 (“leave aside the topics which are heavily impressed by moral views or values.”) This delineation appears to exclude the whole of “public law.”

¹²⁹ Descartes explicitly asserts that his proposed grounding of conviction has “no need of any place.” DESCARTES, *Discours*, *supra* note 62, at pt IV, at 604.

¹³⁰ A uniform law, as Kötz reminds his readership, “makes international legal business easier”: ZWIEGERT & KÖTZ, INTRODUCTION, *supra* note 3, at 25. Judging from this passage, uniformization

Envisaging method as science and as system, Descartes tells us that "one cannot do without a method on the way to one's quest for the truth of things" and that "all method consists in the order and arrangement of objects towards which one must turn the gaze of the mind so as to discover some truth."¹³¹ Thus, correct methodology will allow comparatists-at-law to relate with absolute neutrality to the laws they survey, unfettered by the perspectival and located character of embodied vision. For Kötz, there is one correct method and one correct method only (no *Methodenstreit* here!): "The basic methodological principle of all comparative law is that of functionality."¹³² And, in the same way as Descartes's method will lead him to truth, Kötz's method—the gold standard in comparative legal studies—will "giv[e] the right results."¹³³

Another connection concerns the matter of sequentiality. Contrary to what is often assumed, Descartes's *Discours* came long after the enunciation of the method itself; it came, so to speak, after the methodological fact.¹³⁴ In the word of literary critic Pascal Quignard, "method is the road after one has traveled it."¹³⁵ I have never been able quite to overcome the feeling that a similar reversal is at work with Kötz. He would have us accept that the method—functionalism—is enunciated before anything else and that irrespective of any preordained ideological agenda, it is on the basis of this method that one is then led to similarities across laws and ultimately to uniform law. But is it not possible that the goal to be reached—uniform law—was identified first and that a method conducive to that goal—functionalism—was *then* fashioned? Given a proper methodological protocol (which, for Descartes as for Kötz, must mean "certain and easy rules" since ambiguity and complexity are the avowed enemies of methodology),¹³⁶ given "a permanent framework for inquiry,"¹³⁷ tradition and culture are no longer determinants of cognitive experience. In this way, the specter of subjectivity or inwardness or locatedness is laid to rest. Indeed, impersonality is turned to advantage as it becomes the mark of the truth of the known (which is now immune to every effort on the part of the knower to make it what he would want it to be rather than what it is).

of law appears to be an unmitigated blessing and not to entail any detrimental consequences whatsoever.

¹³¹ DESCARTES, *Regles*, *supra* note 75, at 90, 100 (respectively rules IV & V). Indeed, the long title of the *Discours*, *supra* note 62, is "Discourse on the Method to Conduct Rightly One's Reason and Seek Truth in the Sciences." Martin Jay refers to "a fetish of method." MARTIN JAY, *SONGS OF EXPERIENCE* 32 (2005).

¹³² ZWEIGERT & KÖTZ, *INTRODUCTION*, *supra* note 3, at 34 (I have substituted my emphasis for that of the authors).

¹³³ *Id.* at 34. For the German text, see ZWEIGERT & KÖTZ, *EINFÜHRUNG*, *supra* note 3, at 32.

¹³⁴ The *Discours*, *supra* note 62, dates from 1637; the *Regles*, *supra* note 75, from 1628.

¹³⁵ PACAL QUIGNARD, *ABIMES* 161 (2002).

¹³⁶ DESCARTES, *Regles*, *supra* note 75, at 91 (rule IV).

¹³⁷ RICHARD RORTY, *PHILOSOPHY AND THE MIRROR OF NATURE* 380 (1979).

Interested and ideological assumptions yield to foundations for knowledge and epistemic objectivity.

As he insists on the uniformization of law as a goal for comparative legal studies, Kötz, like Descartes, emphasizes a principle of continuity that transcends the discontinuities of human life experience.¹³⁸ A unified system of absolute knowledge imposed on untidy experience and perfectly mirrored "laws" in the comparatists' representations allows an escape from the contingency of tradition and the vagaries of culture, from the vacillation of anxiety associated with insecurity and uncertainty over the possibility of reaching the law "as it is." Achievement within the field is measured in terms of detachment (of comparatists, of data, of reports) from the world. A clear sense of boundaries between comparison and world is emphasized, even fetishized. As they extol detachment, transcendence, distinctness, and clarity—in other words, rigor—Descartes and Kötz, unwittingly or not, promote an androcentric or phallogocentric model of knowledge in which the more "feminine" elements, that is, the intuitive, connected, empathic, associational dimensions—in sum, knowledge as merging with the object rather than dominating it, understanding as participatory or dependent rather than controlling—are, somewhat disdainfully, excluded.¹³⁹

In this regard, though, Kötz is more Cartesian even than Descartes himself, as in other respects addressed above, for the philosopher, while "[he] has carefully erased and negated the traces of his historical heritage so as to constitute the myth of the radical beginning of reason,"¹⁴⁰ repeatedly refers to his life experience, the assumption being that through the operation of method there occurs an abstraction from self such that a life is transformed into a rational system entrusted with ascription of meaning.¹⁴¹ Kötz, as one knows, engages in a revocation of his own historicity and does not tell us anything about his life apart from his institutional affiliation.

"The texts we are addressing here share [another] common feature: they normalize, they govern, they anticipate 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."¹⁴²

¹³⁸ For Descartes's thought on this issue, see, e.g., DESCARTES, *Méditation troisième*, in II OEUVRES PHILOSOPHIQUES 430-54 (Ferdinand Alquié ed., 1999) (1641).

¹³⁹ For a leading argument regarding the specificity of embodied thought which masculinization ignores, see, e.g., EVELYN FOX KELLER, REFLECTIONS ON GENDER AND SCIENCE 79 (1985).

¹⁴⁰ BLUMENBERG, *supra* note 85, at 210.

¹⁴¹ Indeed, Descartes's project is said to have been "radically first-personal." BERNARD WILLIAMS, DESCARTES: THE PROJECT OF PURE ENQUIRY 52 (1978).

¹⁴² LEGENDRE, *supra* note 18, at 26.