THE NON-DOGMATIC IMAGE OF COMPARATIVE LAW

Harison Citrawan
Badan Riset dan Inovasi Nasional, Jakarta, Indonesia.
hari051@brin.go.id

Abstract

This study discusses the epistemological dimension of critiques of comparative law. It contends that the critiques rest upon what I call mode of differentiation, an epistemology of comparing 'the other than' or 'the different from'. The argument builds upon reexamining some contemporary critical approaches to comparative law from a Deleuzian jurisprudence, a jurisprudential reflection of law as singularity and constant becoming. Particularly, this study makes the case of four modes of differentiation, i.e., distancing, perception, otherness, and movement. These modes of differentiation can be seen as comparativist-at-law's endeavor to differentiate conscious ideas at work and to attend to the concept-creation of law and lawful relations in foreign legal systems. Accordingly, the image of comparative law must be based on three main features: (1) it seeks perceptual rather than conceptual understanding of law; (2) it is non-dogmatic in a sense that it breaks free from the transcendence in comparison, thus mapping the becoming of legal assemblages; and (3) it abandons hierarchization to the extent that comparison is directed at the openness to problematize, experiment and create. This epistemological move can largely be supportive of the interpretive account of comparative law, seen to be one of the fundamentals in advocating the critical dimension of comparative law.

Keywords*: Comparative Law, Image, Difference, Jurisprudence, Perceptual Understanding, Deleuze*

CITRA NON-DOGMATIK DALAM PERBANDINGAN HUKUM

Intisari

Penelitian ini membahas dimensi epistemologis dari kritik terhadap perbandingan hukum. Penelitian ini berpendapat bahwa kritik-kritik tersebut bertumpu pada apa yang saya sebut sebagai modus diferensiasi, yaitu sebuah epistemologi yang membandingkan 'yang lain dari' atau 'yang berbeda dari'. Argumen ini dibangun dengan memeriksa kembali beberapa pendekatan kritis kontemporer terhadap hukum perbandingan dari yurisprudensi Deleuzian, sebuah refleksi yurisprudensial tentang hukum sebagai keunikan dan menjadi konstan. Secara khusus, penelitian ini membahas empat modus diferensiasi, yaitu jarak, persepsi, keanehan, dan pergerakan. Modus-modus diferensiasi ini dapat dilihat sebagai upaya para ahli perbandingan hukum untuk membedakan ide-ide yang disadari di tempat kerja dan untuk memperhatikan penciptaan konsep hukum dan hubungan-hubungan hukum dalam sistem-sistem hukum asing. Oleh karena itu, citra perbandingan hukum harus didasarkan pada tiga fitur utama: (1) mencari pemahaman perseptual daripada pemahaman konseptual tentang hukum; (2) tidak dogmatis dalam arti membebaskan diri dari transendensi dalam perbandingan, dengan demikian memetakan pembentukan kumpulan hukum; dan (3) meninggalkan hirarki sejauh perbandingan diarahkan pada keterbukaan untuk mempermasalahkan, bereksperimen, dan berkreasi. Langkah epistemologis ini sebagian besar dapat mendukung penjelasan interpretatif tentang perbandingan hukum, yang dipandang sebagai salah satu dasar dalam mengadvokasi dimensi kritis dari perbandingan hukum.

Kata Kunci: *Komparasi Hukum, Citra, Perbedaan, Yurisprudensi, Pemahaman Persepsi, Deleuze*

A. Introduction

Critiques have been streaming against the epistemic generalizability of comparative law. It is suggested from these critiques that legal comparativists have been largely trying to objectify foreign laws to the extent that these laws are seen as textual-positive rules. The textualist's suggestion is pretty simple, comparative law compares and explains similarities and differences of laws and legal systems across borders. Against this so-called textualism, the comparative aspect of comparative law has been seemingly pushed to the level of contextualization of law, claiming that foreign legal context is rather dynamic and subject to influence and contingency.[1] The two approaches (of textual and contextual) to comparative law, however, have been claimed to be inadequate in sensitizing law's account for emancipation and transformation.[2] Behind the common logic of legal transplantation and change, a hierarchical paradigm of comparison is always lurking, shrouded by comparative endorsements to the transcendence.[3] Such proclivity to the transcendence is enveloped by the ideas of universal progress, rule of law, humanity, (human) rights, freedom, liberalism, or even democracy, to name a few.

The challenge against the transcendence has been voiced by several theorists of comparative law. The current emerging plural, decolonial, feminist, and critical approaches to comparative law, for instance, are some of today's prominent critical contenders in the field.[4] Working under such a critical

1 Ratno Lukito, "Compare But Not to Compare': Kajian Perbandingan Hukum di Indonesia," *Undang: Jurnal Hukum* 5, no. 2 (2022): 257–291; Edward J Eberle, "The methodology of comparative law," *Roger Williams UL Rev* 16 (2011), 51.

2 Anne Peters & Heiner Schwenke, "Comparative Law Beyond Post-Modernism," *International & Comparative Law Quarterly* 49, no. 4 (2000), 800–834; Ugo Mattei, "Comparative law and critical legal studies," in *Oxford Handbook of Comparative Law 2nd Ed, ed.*Mathias Reimann and Reinhard Zimmermann (Oxford: Oxford University Press, 2019).

3 Pierre Legrand, "The Impossibility of 'Legal Transplants'" *Maastricht Journal of European and Comparative Law* 4, no. 2 (1997): 111–124; Pierre Legrand, "How to Compare Now," *Legal Studies* 16, no. 2(1996), 232–242; Catherine Valcke, "Comparative law as comparative jurisprudence-The comparability of legal systems," *American Journal of Comparative Law* 52 (2004), 713. For instance, Legrand in "*How to Compare Now*" notes that "*… such 'comparatists' take a very narrow view of the comparative enterprise which they basically reduce to a dry juxtaposition of the rules of one legal culture (or what they regard as such) with those of another. They do not compare, they contrast. In the process, of course, they fail to ask the most fundamental questions about the act of comparison in law*." 234 (emphasis original).

4 Lena Salaymeh & Ralf Michaels, "Decolonial Comparative Law: A Conceptual Beginning," *Rabel Journal of Comparative and International Private Law* 86, Vol 1 (2022) 166–188; Emile Zitzke, "A Decolonial Critique of Private Law and Human Rights," *South African Journal on Human Rights* 34, no. 3 (2018) 492–516; Lena Salaymeh, 'Comparing' Jewish and Islamic Legal Traditions: Between Disciplinarity and Critical Historical Jurisprudence," *Critical Analysis of*

framework, this article is interested in examining the ways comparativists-at-law compare 'the other than' or 'the different from.'[5] Here, I will focus on examining the image of comparing laws at the concept-creation level. It attempts to seek a kind of differentiation that enables the discipline to engender novelty of lawful relations.

This article makes the case of comparative law that *differentiates* the ways lawyers *express*—rather than *represent*—legal encounters across contexts. In understanding such mode of difference, it is claimed that the image of non-dogmatic comparative law has three main features: (1) it seeks perceptual rather than conceptual understanding of law; (2) it is non-dogmatic in a way that escapes from the transcendence while comparing; (3) it maps the becoming of legal assemblages; and (3) it abandons hierarchy to the extent that comparison is directed to the openness to problematize, experiment and create within the law and legal system. This epistemological move can largely be supportive of the interpretive account of comparative law.[6]

In so doing, the argument builds upon some critical views on comparative law and lawyer's epistemic legal reasoning. I approach the issue through what we may call jurisprudence of becoming, that is, a jurisprudential approach inspired by Deleuze's philosophy of difference and becoming.[7] Through this lens, comparative law is later seen as an endeavor of understanding conscious ideas at work in foreign legal system(s), which include the principles, concepts, beliefs, and reasoning that underlie foreign legal rules and institutions. Comparativists can be seen as non-dogmatic to the extent that they are interested in ideas relevant to or significant in the molding of (foreign) jurists' legal reasoning. The object of comparative law is perceptual

Law 2, no. 1 (2015); Rikardo Simarmata, "Pendekatan Positivistik dalam Studi Hukum Adat," *Jurnal Mimbar Hukum* 30, no. 3 (2018), 463–487.

5 Geoffrey Samuel, "Comparative law and jurisprudence" *International & Comparative Law Quarterly* 47, no. 4 (1988) 817–836; Salaymeh, "Decolonial Comparative Law: A Conceptual Beginning,". In Samuel's term, this study is concerned with the epistemological dimension of 'comparative' and 'law'.

6 Pier Giuseppe Monateri, "Form and Substance in Comparative Law and Legal Interpretation" *International Journal for the Semiotics of Law-Revue internationale de Sémiotique juridique* 37 (2024), 1553–1556.

7 Gilles Deleuze, *Difference and repetition* (New York: Columbia University Press, 1994); Christos Marneros, "Gilles Deleuze: Jurisprudence," *Critical Legal Thinking: Key Concepts* (2019), online:<https://criticallegalthinking.com/2019/11/14/gilles-deleuze-jurisprudence/>; Paul Patton, "Immanence, transcendence, and the creation of rights" in *Deleuze and Law,* eds. Laurent de Sutter and Kyle McGee (Edinburgh: University of Edinburgh Press, 2012), 15–31 .

understanding of law's internal participant—that is, comparativists compare law in minds.[8]

But why is this framework significant in explaining the critiques of comparative law? One reason is that it can help comparativists escape from the transferability of one dogma from one territory to another, risking comparative law to escape from any critical visions.[9] The perils of norms transferability is best found in the non-European critiques of comparative law.[10] In this sense, as Jaakko Husa claims, comparativists may encounter that "[t]he mental challenge of comparison comes from the difference in legal cultures—diversity and hybridity present their own challenges."[11]

This article is presented into three sections. *First*, it highlights mode of differentiation as the underlying rule in doing comparative law. *Second*, I survey four major strands that reflect the images of critical comparative law. *Third*, I argue that the four modes of differentiation can be justified through the lens of theories of legal reasoning to the extent that comparativists are assigned to be attentive to difference. It asserts that the non-dogmatic image of comparative law is best represented through differentiation of perceptual understanding of law's internal participant.

B. Comparison and Differentiation

The conversation between Geoffrey Samuel and Pierre Legrand published in *Journal of Comparative Law* sparks an interesting and shrewd

8 William Ewald, "Comparative Jurisprudence (I): What Was It Like to Try a Rat," *University of Pennsylvania Law Review* 143 (1994),1889–2149; William Ewald, "Comparative Jurisprudence (II): The Logic of Legal Transplants," *The American Journal of Comparative Law* 43, no. 4 (1994), 489–510.

9 *See* Mathias Siems, *Comparative law* (Cambridge: Cambridge University Press, 2022). To highlight this peculiar aspect of comparativist's way of explaining variation, Siems suggests that, "[t]o explain differences in the laws, the comparative lawyer will, in all likelihood, start with a legal analysis that explains how these differences are related to more general and other specific elements of the legal systems under examination. For this purpose, she may also refer to relevant conceptual structures that courts and legal scholars have developed." 24-25.

10 Emile Zitzke, "Decolonial Comparative Law: Thoughts from South Africa" *The Rabel Journal of Comparative and International Private Law* 86, no. 1 (2022), 189–225. Through a decolonial lens, Zitzke argues that "… a comparison between common and customary law in South Africa, as an iteration of decolonial comparative law, requires a rejection of approaches that we might call "separatism," "mimicry," and "universality". Instead, it requires an embrace of "hybridity," "delinking," and "pluri-versality". 192.

11 Jaakko Husa, *A new introduction to comparative law* (London: Bloomsbury Publishing, 2015), 15.

insight for today's legal comparativists to reflect on.[12] Talking like two old friends exchanging memories in a school reunion, their conversation provides important contexts from which we can find the roots of contemporary epistemology of comparative law. In the early 1990s, as Samuel recalls, "[m] any existing courses on comparative law in other universities were often introductions to another system or, worse, a kind of legal tourism."[13] In their time, this sort of legal tourism was predominantly guided by the supremacy of single authoritative publication, such as one written by Zweigert and Kötz. Theoretical developments of comparative law at that time, as they self-reflect, have been pegged by this traditional functional approach and the lack of effort "to relinquish its epistemic yoke" has been "a gigantic epistemic predicament" amongst legal comparativists.[14] Paramount in their conversation is comparative law's attention to difference. In Legrand's vision, "a practice like comparative law *can* play a role as an antidote to the intellectual forces of retrenchment and stigmatization—a small-scale role, to be sure, but a role all the same, for example, as regards the edification of respect for difference."[15] Just like our plain familiarity with the term tourists, which implies short-sighted, surface level travelers, it is important to examine how and the extent to which legal tourism can be regarded as part of Legrand's "edification of respect for difference"

This section builds on the idea of difference from the Deleuzian jurisprudential viewpoint. This jurisprudential investigation is an approach to understanding and theorizing law through Deleuze's thoughts, which include philosophical elements of difference, desire, and creativity.[16] In that sense, Deleuze's jurisprudence fundamentally appreciates a system of cases, which is inferred by many writers as a kind of philosophy of legal singularity.[17]

12 Geoffrey Samuel & Pierre Legrand, "A Conversation on Comparative Law" *Journal of Comparative Law* 15, no. 2 (2020), 371–393.
13 *Ibid*, 371.
14 *Ibid*, 373.
15 *Ibid*, 393. (emphasis original).
16 Laurent de Sutter, *Deleuze's philosophy of law (trans. Nils F. Schott)* (Edinburgh: Edinburgh University Press, 2022).
17 Alexandre Lefebvre, "A new image of law: Deleuze and jurisprudence," *Telos: Critical Theory of the Contemporary* 130 (2005), 103–126; Kyle McGee, "Creation, Duration, Adjudication: A Review of Alexandre Lefebvre's The Image of Law: Deleuze, Bergson, Spinoza," *Law & Literature* 21, no. 3 (2009), 480–491 21; Nathan Moore, "Icons of control: Deleuze, Signs, Law" *International Journal for the Semiotics of Law-Revue internationale de Sémiotique Juridique* 20,

Relatedly, Marneros, as one of the theorists in the field, claims that, "*[a] Deleuzian jurisprudence becomes a practical and creative philosophy of law—not a law that is reduced to the institutionally or systemically dogmatic sense of the word, but one which acquires a new impetus as to how to organize, how to respond to singular situations and how to live*."[18] In that sense, the power of differentiation is found in the system of (legal) cases. That is to say, differentiation through Deleuze's eyes is the difference of (legal) singularities: It builds upon 'anti-oedipal' desire from which difference needs to be understood as difference of flows of desire. If law, as in life, flows of desire, the image of it cannot be derived from a static, pre-given identity.[19] (The images of) Law and legal practice, therefore, do not suppress life but rather part of or immanent to life.[20] Should we accept this proposition, we need to reexamine our mode of thinking as comparativists which is traditionally infused by a dogmatic thought of law as an institution.

We can highlight two differing views of thinking: representational and real thinking. To push back against the dogmatic mode of representational thinking of law is probably the most fundamental aspect in the Deleuzian jurisprudence.[21] Let us first indicate some critical notes on the logic of representation.[22] According to Deleuze, representation is "*a site of transcendental illusion*."[23] This illusion is found in four interrelated forms of: thought, sensibility, the Idea and being. By thinking in representational mode thought is "*covered over by an 'image' made up of postulates which distort both its operation and its genesis*."[24] Following Deleuze's strand of works, according to Colebrook, representational thinking "*assumes that there is an*

---

no. 1 (2007), 33–54.

18 Christos Marneros, *Human Rights After Deleuze: Towards an An-archic Jurisprudence* (London: Bloomsbury Publishing, 2022), 167.

19 Our stance is particularly against a propositional attitude of thinking, which is, according to the epistemologist Ernest Sosa, "*a mental state of someone with proposition for its object: beliefs, hopes and fears provide examples*." *See* Ernest Sosa, "The raft and the pyramid: Coherence versus foundations in the theory of knowledge" (1980) 5:1 *Midwest Studies in Philosophy* 5, no. 1 (1980), 6.

20 Gilles Deleuze, "Immanence: A Life..." *Theory, Culture & Society* 14, no. 2 (1997), 3–7.

21 Lefebvre, "A New Image of Law;" Alexandre Lefebvre*, The Image of Law: Deleuze, Bergson, Spinoza* (Stanford: Stanford University Press, 2008).

22 *See* Henry Somers-Hall, *Hegel, Deleuze, and the critique of representation: Dialectics of negation and difference* (New York: State University of New York Press, 2012) ,ch. IV.

23 Deleuze, *Difference and repetition,* 265.

24 *Ibid*.

ordered and differentiated world, which we then dutifully represent; it does not allow for thought itself to make a difference, and it does not see difference as a positive and creative power to differentiate."[25]

Real thinking, as opposed to representational thinking, underlies on stupidity: it is "*not the manipulation of symbols within a system that we all recognize; it is asystemic, unrecognizable, perhaps 'inhuman*'." [26] It hinges on stupidity, but it is not a mistake, as "stupidity has not just made a mistake within the norms for good thinking. It does not have the same norms. It adopts an entirely different or perverse logic."[27] Against structuralism difference in a Deleuzian sense bears its own distinction, that is,

"*difference is itself different in each of its affirmations: sexual difference between bodies is different in each case (although we generalize and refer to men and women); genetic difference creates differently in each mutation (although we generalize and refer to species); visual differences are in each case different (although we generalize and refer to the color spectrum). Life itself is difference, and this difference is in each case different.*"[28]

But one may ask, what does it mean to do real thinking in (comparative) law? One of the very few indications of Deleuze's concern with law and jurisprudence is reflected by the way he envisioned the idea of human rights. In *What it means to be on the Left*, Deleuze asserts that,

"*All the abominations that humans undergo are cases, not elements of abstract rights. These are abominable cases. You might tell me that these cases resemble each other, but these are situations of jurisprudence. This Armenian problem is typically what can be called an extraordinary, complex problem of jurisprudence. What can we do to save the Armenians and to help them save themselves from this crazy situation they find themselves in? Then, an earthquake occurs, an earthquake, so there are all these constructions that had not been built as well as they should have been. All these are cases of jurisprudence. To act for freedom, becoming-revolutionary, is to operate in jurisprudence when one turns to the justice system. Justice doesn't exist, 'rights of man' do not exist, it concerns jurisprudence … That's what the*

25 Claire Colebrook, *Understanding Deleuze* (New South Wales: Allen & Unwin, 2002) at 3.
26 *Ibid* at 5.
27 *Ibid*.
28 *Ibid* at 27.

invention of law or rights [du droit] is."[29]

Such an approach toward difference helps us put forward differentiated images of law and legal practices since there is the power of law to create different senses *through*, as in our case, comparison. In this framework, difference is not imposed or structured but rather positive and singular. It seems agreeable to say that, following Colebrook, "… *the very essence of difference is its imperceptibility; a perceived difference has already been identified, reduced or 'contracted'*."[30] To wit, Colebrook exemplifies that "*[w]hen we perceive the difference between red and blue we do so only because we do not perceive the difference of each vibration of light; our eye contracts complex data into a single shade or object of red or blue*."[31] In light of this philosophical view of difference, we can now proceed to examine legal tourism in a new key, that is, one that engenders an alternative way of scrutinizing comparative law's account for edification of respect for difference.

C. Legal Tourism in a New Key

I have noted earlier that critical views on comparative law have been focusing on the ways in which comparatists-at-law represent the image of comparative law. At the heart of the image of comparative law is what we may call *mode of differentiation*. It is important to note that the term *image* should be seen as a style of (re)presentation of modes of differentiation coined or expressed by comparative law theorists. Image therefore is not a category—from which we can think of the term image is too strict and difficult to shape. Image basically results from the critics toward the way comparatists compare 'the other' or 'the different'.

This section aims to canvass some modes of differentiation through a brief survey on critical approaches to traditional-functionalist comparative law. It parses the way some critical scholars of comparative law differentiate differentiation in comparative law. Specifically, we want to discuss comparatists-at-law's modes of thought which intuit forces of desire that

29 Gilles Deleuze, Claire Parnet & Pierre-André Boutang, *L'abécédaire de Gilles Deleuze,* ed. Montparnasse, (2004).
30 Colebrook, *Understanding Deleuze,* 28.
31 *Ibid*.

produce representations of difference. Based on the current development in the field, I select four major critics of comparative law: Frankenberg's comparative law as critique, Ewald's comparative jurisprudence, Legrand's negative comparative law and Zumbansen's legal transnationalism. Reading these works together helps us to canvass some features of critical comparison in comparative law.

Frankenberg's *critical comparative law* embarks on four epistemic scenes of comparative law. In his 1985 article, Frankenberg's critique emanates from two primary reasons in that comparative law is deemed as (1) a reinforcement of justificatory construction of domestic reality and (2) a marginalization of the Other or the legally irrelevant phenomena. It is thus suggested that the way comparativists compare and determine the world is through imposing their own standard or angle of visions.

The mode of differentiation in Frankenberg's approach pivots on what is called *distancing* and *differencing*. These two operations exist because the important thing for comparativists, according to Frankenberg, is a dialogue between settled knowledge and a new one. Distancing is understood as a mode (1) "to gain a vantage on who we are and what we are doing and thinking," (2) "to break away from firmly held beliefs and settled knowledge," and (3) "to resist the power of prejudice and ignorance."[32] Distancing and differencing are regarded as a mode to flourish diversity and heterogeneity of mind, and, importantly, to establish a kind of subjectivity. Differencing, argued Frankenberg, inquires into "the neutrality and universality of all criteria; it rejects the notion (entertained by many comparatists and travelers alike) that the categories and concepts with which new experiences are grasped, classified, and compared have nothing whatsoever to do with socio-cultural context of those who see in terms of them."[33] Practically speaking, distancing can be reflected in comparativist's self-criticism during her comparative inquiry, while differencing insists a shift from legocentrism to a critique of law, that is, from a given law that separates law from reality, legal from social practices, to the law's interdependence and law as equivocal phenomenon.[34]

32 Günter Frankenberg, "Critical Comparisons: Re-thinking Comparative Law," Harvard International Law Journal 26, no. 2 (1985), 414.
33 *Ibid*.
34 *Ibid* at 445–47.

Differencing is therefore about distancing and exposing "law deficiencies, contradictions, ideological components and competing visions."[35]

While Frankenberg's critical inquiry was highly influential to the comparative law field in the early 90s, William Ewald's inquiry in *What Was it Like to Try a Rat?* has arguably shifted the discipline to another realm of critique. Ewald's vision is about comparative law that works as an intermediary between the competing approaches of textualism and contextualism in comparative law. Ewald's central claim is that "if comparative law is appropriately combined with legal philosophy the result is a substantially new discipline, "comparative jurisprudence," which is capable of furnishing, not just new knowledge, but a new kind of knowledge about foreign legal systems."[36] Comparative jurisprudence could be framed as a comparativist's attempt to evade comparative law's external perspective, working instead from an internal point of view. Seeing comparison internally, Ewald's mission is to *reconcile* the disjunction between comparative law and legal philosophy which have been inclined to go separate ways.

The mode of differentiation in Ewald's approach is about understanding or learning *how* about (rather than learning *that*) difference. The methodological position suggested by comparative jurisprudence is the participants point of view to the extent that "what we should be seeking to understand is not *law in books* nor law in *action* but *law in minds*."[37] By showing comparative jurisprudence in practice, Ewald tries to understand extensively the law of contract in German lawyers' minds. Through a comparative style of thinking, his reading on this doctrinal issue presents that,

"*… when a German lawyer goes to analyze a problem in contract law, the entire intellectual frame of reference is different: the lawyer brings to the concrete problem a different range of sensibilities, and is alert to a different range of issues. We may sum up this observation by saying that the black-letter rules of the German legal system are conceptually differently wired than the American rules. And this observation brings us back, by another route, to*

35 *Ibid* at 448.
36 Ewald, *"Comparative Jurisprudence (I),"* 1891.
37 William Ewald, "The Jurisprudential Approach to Comparative Law: a Field Guide to 'Rats'" in *Legal Theory and the Legal Academy* eds. Maksymilian Del Mar, William Twining & Michael Guidice (London: Routledge, 2017) 333 at 704. (emphasis original)

our second hunch, namely, that traditional comparative law has paid too little attention to the ideas and the turns of mind that lie behind the black-letter doctrines of a foreign legal system."[38]

This two-way interaction—between rules and the working of rules through a jurist's mind—is key to understanding the methodological underpinning of comparative jurisprudence. Such a view requires comparativists attentive to legal epistemology which is interested in not only what but also how foreign lawyers know the law. One challenge for comparative jurisprudence is that, seeing from our interest in mode of differentiation, it falls short of the critique of Othering. The question of Othering, which is significant in construing modes of differentiation, is arguably critical in understanding one of the methodological aspects in comparative jurisprudence, namely immersion.

An immersion-related strand of critique can be found in Legrand's negative comparative law. For Legrand, the critical mode of differentiation is based on the view that "*[t]here is no foreignly given, ... all is interpretation*."[39] Legrand's negative critique of comparative law embarks on the assessment of comparativists' desire that seeks for equivalences and resemblances. Alas, claimed Legrand, this desire for sameness "*breeds the expectation of sameness that begets the discovery of sameness*."[40] As a response, Legrand proposes comparatist's negative duty, that is, "*if a comparatist wants to understand what it is to research foreign law, to compare laws, he has to say no to comparative law's orthodoxy as it claims both that comparison must be objective and true (which is disabling) and that comparison can be objective and true (which is misleading)*."[41]

It is fair to say that the mode of differentiation in Legrand's approach pertains to the comparatist's engagement with Otherness.[42] In this context,

38 Ewald, "Comparative Jurisprudence (I)," 21-28.

39 Pierre Legrand, *Comparative Law and the Task of Negative Critique* (Oxford & New York: Routledge, 2023), 379.

40 *Ibid* at 3.

41 *Ibid* at 376–7.

42 Legrand, "The impossibility of 'legal transplants'". According to Legrand, "*This field of research can shed light on such fundamental questions as how much a French lawyer can ever understand English law. When a French lawyer researches English law, how much does Frenchness stand in the way of a genuine appreciation of English law as English law? Is it ever possible for a French lawyer to think like an English lawyer? Is it even desirable that a French lawyer should think like an English lawyer? Should one not be content with a French lawyer not thinking like an English lawyer and bringing to bear a different insight, a different perspective on English law?*

Otherness reflects an awareness of cognitive frameworks, that is, of epistemological assumptions, "which are hidden behind the judicial decision or the statute and which determine them."[43] In this framework, differentiation is fundamentally about:

"*re-articulation of the comparison of laws in terms of the laws' difference and of differential analysis of the laws' difference, a meaning-making strategy with considerable liberatory epistemic promise, a new kind of arrangement leaving the laws enisled, that is, 'outside one another', an interpretive stance 'respecting and preserving this exteriority and this distance' so that, instead of any enforced subsumption under a prescribed and artificial overarching harmony, dispersion ultimately holds, thereby bringing to bear upon the comparison of laws 'an extraordinary force of justice.'*"[44]

Following Beckett's paramountcy of nescience, Legrand suggests that "even as the comparatist's 'knowledge' of otherness-in-the-law is structurally doomed to vagueness, the comparatist must persist in seeking knowledge, ever more sophisticated knowledge of otherness-in-the-law. One must seek to generate an ever-stronger interpretive yield."[45] That is to say,

"*... what the observant comparatist can see happening in France is the French self-in-the-law re-signifying itself through the incorporation into its 'body legal' of an infusion of 'otherness-in-the- law'. The self thus becomes a revised self on account of the other. But although it is now affected by the other, it is still a self, it is still itself – which is to say that it continues as itself and has emphatically not become the other*."[46]

Notably, Legrand's view on foreignness is not some kind of abstract epistemology in a way that foreign law is no longer necessarily foreign for comparativists. In his comments, Legrand stipulates that,

"*For foreign law to be foreign, it has to be located beyond the comparatist's grasp. It has to be, literally, foreign to the comparatist. But if*

If, intervening as a comparatist, I try to reproduce, to re-present, to present anew, the experience of law as lived in a foreign legal order, what am I supposed to achieve? Should I try to convey a sense of the foreigner's vision of her law? In other words, am I to attempt to reproduce the way in which an Italian lawyer sees Italian law in Italy, or am I to reproduce Italian law as I see it from my Canadian standpoint? I could continue." 238-239 (emphasis original).

43 *Ibid* at 237.

44 Legrand, *Comparative Law*, 4.

45 *Ibid* at 36.

46 *Ibid* at 95.

the comparatist is dealing in the beyond-one's-grasp, how can he convincingly talk about existence? By definition, so to speak, the comparatist cannot have any knowledge of what lies beyond his grasp. So, the comparatist cannot know that what lies beyond his grasp exists as 'law' elsewhere, as foreign law. Only when the comparatist 'connects' with the foreign law can he be satisfied that there is that entity, 'foreign law', there, in existence."[47]

Critical to Legrand's approach is Zumbansen's legal transnationalism. This theoretical vision calls for legal comparativists to be sensitive to the so-called "idiosyncratic, historically and geographically particular" as opposed to the binary foundation "on which to distinguish between developed and developing, modern, civilized and "primitive" societies."[48] In this framework law is understood as transnational, and comparative law thereby "*seeks to focus on the actors, norms and processes that are involved in generating, enforcing, adjudicating but also resisting law in a global context*."[49]

The mode of differentiation in Zumbansen's approach is about difference of *movement* (of idiosyncratic, historical and geographical particularities). In this sense, movement is grasped as an escape from common rhetoric enshrined under certain linguistic and conceptual frameworks (e.g., war on terror, globalization, rule of law). Such an escape from the rhetoric impels comparison to be a sort of "continuous, critical engagement with time capsules and with the vocabulary through which its inhabitants sought to understand themselves and the world around them."[50] At the heart of this critical transnational legal theory is a relativization of time (and history!) which includes a differentiation of "the modes through which one is inclined to define and endorse reference points, and to construct and rationalize the narrative of a particular trajectory."[51]

Our brief survey on the critiques of comparative law earlier brings us to view legal tourism in a new key through a reflection on a non-dogmatic mode of differentiation. Based on the critical thoughts examined above, we can think of several points of departure. First, borrowing from Frankenberg

47 Samuel & Legrand, "A Conversation on Comparative Law," 391.
48 Peer Zumbansen, "Transnational Law as Socio-Legal Theory and Critique: Prospects for Law and Society in a Divided World," Buffalo Law Review 67 (2019), 959.
49 *Ibid* at 917.
50 *Ibid* at 927.
51 *Ibid*.

view, we can identify that differentiation necessitates *distancing*. Second, from Ewald, we may notice that differentiation is a matter of faculties of the mind, meaning that it is about historically *perceptual* thinking. Third, from Legrand differentiation in comparative law is essentially about *Othering*. And fourth, differentiation in Zumbansen's theory can be discerned as *movement*. That said, the non-dogmatic image of comparative law is composed of a range of modes of differentiation, namely: distancing, perception, otherness, and movement.

While most theorists have claimed for *the* essence of differentiation in comparative law, I contend that the image of comparative law lies instead on the power of differentiation. Some theories tend to lean on the power of differentiation about the *who* (does the comparison) while others put weight on the *what* to compare (system, tradition, rules, etc.)—although of course there is a kind of mixture between the two which can be seen in some of Legrand's arguments.[52] That said, I would suggest that critical comparitivism of law is about differentiation of the pre-representational. That is, comparison is not (and cannot be) imposed or structured. Rather, it is always positive and singular.

That being the case, two follow-up questions arise: can we say that all these modes of difference emanate from a somewhat *undifferentiated* origin? And how can we trace the genealogy of difference in comparison? The next section showcases a genealogical explanation of difference through the system of cases.

D. Comparativist's Epistemic Thinking

The above re-reading of critiques of comparative law displays difference as something pre-representational. Difference features a certain way of thought in thinking about comparative law. When we are thinking about comparative law, the four modes of differentiation (i.e., distancing, perception, otherness and movement) are therefore comparativist's epistemic thinking. It is, as one may suggest, a primordial trust rather than a refined theoretical representation.

52 Legrand, "The impossibility of 'legal transplants';" Pierre Legrand, "Comparative legal studies and commitment to theory," *The Modern Law Review* 58, No. 2 (1995): 262-273; Legrand, *Comparative Law,* 40.

In that sense, distancing, perception, otherness and movement are primarily comparativist-at-law's endeavors to understand conscious idea at work and to attend to the concept-creation of law and lawful relations in foreign legal systems. Or, to put otherwise, the four modes of differentiation *preexist* cases, which are seen as a singularity of events.

To explain how comparativists build singularity (of cases) in doing comparison, let us first recall Ewald's idea of comparative jurisprudence. The philosophical issues upon which Ewald attempts to navigate include the limits of intelligibility and the genealogy of moral sentiment.[53] As suggested earlier, Ewald's comparative jurisprudence is about comparing law in mind: It is a matter of the ways (foreign) lawyers think of a case in a historically-given legal context.[54] Applying Deleuze's thought into Ewald's jurisprudence accounts for seeing cases as singularity, that is, to appreciate legal judgment that casts a productive interaction between cases and rules.[55] It sees law, broadly speaking, as a kind of action rather than a power.[56] Reading Ewald from a Deleuzian lens demonstrates that, borrowing from Colebrooke, "*[t]he way we think, speak, desire and see the world is itself political; it produces relations, effects, and organizes our bodies.*"[57] The ways lawyers think hence need to be understood within this desiring network which consists of multiple dots or points.[58] It is a network of "dialectic between the subjective and objective aspects of social life," to borrow from Balkin.[59] Nonetheless, it is equally important to note that, as Colebrook aptly writes,

"*[w]e cannot even say that each 'point' of life differentiates itself in its own way, because life is not a collection of different or distinct points. It is continuous difference, and between any two points that we might locate on this continuum of difference there is an infinity of further difference, each different in 'its' own way*."[60]

53 Ewald, "Comparative Jurisprudence (I)," 1935–1936.
54 See also Valcke, "Comparative Law," 200.
55 Lefebvre, "A New Image of Law," 58.
56 Moore, "Icons of control: Deleuze, Signs, Law,"18.
57 Colebrook, *Understanding Deleuze*, xxxviii.
58 Harison Citrawan, "A Deleuzian Reading on Hart's Internal Point of View," *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 9, no. 1 (2022), 135–151.
59 Jack M Balkin, "Understanding legal understanding: The legal subject and the problem of legal coherence," Yale Law Journal (1993), 108. I thank the anonymous reviewer for this suggestion.
60 Colebrook, *Understanding Deleuze,* 29.

As a jurisprudential inquiry, this continuum of difference creates a system of cases—which has been seen as the basic tenet of Deleuze's vision of jurisprudence.[61] As many have suggested, the system of cases is best reflected by Deleuze's taxi in Paris story that implies the creative process of law through jurisprudence:

"*So, a time came when people were no longer permitted to smoke in taxis. The first taxi drivers who forbid people smoking in the taxis created quite a stir because there were smokers who protested, and there was one, a lawyer ... [...] there is a guy who does not want to be prevented from smoking in the taxi, so he sues the cab. I remember this quite well because I got involved in listening to the arguments leading up to the decision. The cab lost the case – today it would not have happened, even with the same kind of trial, the cab driver would not have lost. But at the start, the cab lost, and on what grounds? On the grounds that when someone takes a taxi, he is renting it, so the taxi occupant is assimilated to the [status of] renter or tenant, and the tenant has the right to smoke in his rented location, he has the right of use and abuse. It's as if he were renting, it's as if my landlady told me, 'No, you're not going to smoke in your place ...' 'Yes, yes, I am the tenant and I'm going to smoke where I live'. The taxi is assimilated to being a rolling apartment of which the customer is the tenant. Ten years later, that [practice] has become universalized, there are no taxis, or practically none, in which one can smoke. On what grounds? The taxi is no longer assimilated to renting an apartment, it has become assimilated instead to being a form of public service. In a mode of public service, there exists the right to forbid smoking*."[62]

In this context, Deleuze suggests that the *case* is "no longer a question of the right of this or of that, it's a question of situations, of situations that evolve, and fighting for freedom is really to engage in jurisprudence."[63] In that sense, the mode of differentiation in comparative law should be directed to singularity, and by the same token, Ewald's comparison of *law in mind* is therefore an awareness of comparativists to continuous difference and their

61 *See* Lefebvre, "A New Image of Law," 22; Sutter, *Deleuze's philosophy of law,* 17; Marneros, *Human Rights,* 19.
62 *L'abécédaire de Gilles Deleuze avec Claire Parnet*, by Pierre-André Boutang (2004).
63 *Ibid*.

attentiveness to the case as accidental and necessary to the formation of law.[64]

The implication of this view would be a peculiar way of framing legal singularities that expresses, instead of representing, the law. This critical view from Deleuze can be found in reading his critical and aesthetic analysis of (legal) judgment. In a Deleuzian sense, judgment of a case is an activity—which bears *active* character rather than simply seen as a *passive* reaction of ressentiment.[65] In that context, the way one could think of an 'acted' or 'performed' judgments is through literally acting them. As Mussawir reckons,

"*[i]f judgment seems to have an innate communion with reactive feeling—with ressentiment and the spirit of revenge—then the question would not necessarily be how to suppress these reactive forces but rather how in fact to 'act' them: to prevent them from forming the kind of community or association with other reactive forces that leaves judgment in an interior and representational dimension*."[66]

Recall that I have argued earlier that comparing law in mind is about (1) differentiating conscious ideas at work and (2) attending to the concept-creation of lawful relations in foreign legal systems. In this framework, the real activity of judgment "does not have an historic meaning but at most a 'prehistoric' meaning and a 'post-historic' meaning."[67] To wit, the *activity* of legal judgment can be understood as Idea in Deleuze's term as it is a pre-figured, pre-representational state. As a consequence, the object of comparative law is not about some pre-figured concepts, e.g., legal tradition, legal cases, norms and regulations, but rather the Idea from which the concepts being nested.

At this point, we may want to further ask, how could this way of thinking work together with legal epistemology? In responding to that question, I would first suggest that the way lawyers think cannot be reduced to some traditional -isms of legal reasoning. Rather, the way we think, as Samuel advocates, involves a more complex epistemological network with a scheme of intelligibility, structure, and paradigms.[68] I have discussed this

64 Lefebvre, *"*A New Image of Law," 58.
65 Edward Mussawir, "The Activity of Judgment: Deleuze, Jurisdiction and the Procedural Genre of Jurisprudence" *Law, Culture and the Humanities* 7, no. 3 (2011), 463–483.
66 *Ibid,* 123.
67 *Ibid*, 124.
68 Geoffrey Samuel, *Epistemology and method in law* (London & New York: Routledge, 2016); Geoffrey Samuel, "Epistemology and comparative law: contributions from sciences and social

epistemological assessment elsewhere,[69] but the crucial point at the moment is that, seeing from comparativists' epistemic capacity, law as jurisprudence allows for comparability of legal system. That is, according to Valcke,

"*[t]he legal system under law as jurisprudence is akin to an autopoietic organic system that would combine a fact dimension, the organic systematicity of positivism, and an ideal dimension, the synthetic systematicity of naturalism. ... As ideal system, it is one: the juridical system, and a factual system, it is many: the legal systems of the world*."[70]

This ideal/factual views of legal system is vital for comparativists in scrutinizing the characteristics of perceptual understanding of law's internal participant. If we take Deleuze's philosophy of difference seriously, the ideal/factual views can now enter into a new fora, that is, a non-dogmatic comparative law. This non-dogmatic image derives from our earlier discussion regarding the way judgment expresses the law of a particular jurisdiction. Comparativists, therefore, need to see this expression as a sort of creation of law by foreign lawyers.

Our epistemological investigation in this section somehow encapsulates a kind of ethos of creation in comparison. Borrowing from Deleuze's an-archic vision of law, according to Marneros, "for the jurisprudent and its ethos, the creation of the law becomes more than, simply, a matter of strictly disciplinary boundaries (e.g., in the form of legal decisions by the courts) but instead, is or could be a matter of being attentive to the specificities of life and enabling one to respond in innovative ways, by re-evaluating values."[71] In that sense, the ethos fundamentally lies upon an *an-archic nomos* which is "an ethico-political action that aims to break the boundaries of the dogmatic mode of thinking and existing that is promoted with the law, a supposedly *archist* morality re-establishing the primacy of a concrete notion of identity, as opposed to the constant movement of *becoming."*[72]

---

sciences" in *Epistemology and methodology of comparative law,* ed. Mark Van Hoecke (Oxford and Portland, OR: Hart, 2004), 35.

69 Harison Citrawan, *Law, Time and Historical Injustices: A Critical Analysis of Intuitive Judicial Reasoning* (Oxon and New York: Routledge, 2024). See also Harison Citrawan, "Proses Kreasi dalam Penalaran Hukum dari Lensa Temporalitas," *Undang: Jurnal Hukum* 6, no.3 (2023), 309-349.

70 Valcke, "Comparative Law," 739.

71 Marneros, *Human Rights*, 173.

72 Christos Marneros, "'It Is a Nomos Very Different from the Law': on Anarchy and the Law" *Acta*

E. Conclusion

We have discussed the critical images of comparative jurisprudence which are underpinned by *distancing*, *perception*, *otherness*, and *movement*. These modes of differentiation can largely be supportive of interpretive account of comparative law fundamental to the critical dimensions of comparativists. As studies have suggested, interpretive account of law pivots on the idea of meaning and values in understanding social realities.[73] Generally, this account works around contextualization and the inescapable subjectivity in comparative law. Referring back to his conversation with Geoffrey Samuel, Pierre Legrand says,

"*My basic point is that, strictly speaking, although the structure is on the move and affixing itself in various locales along the merry way, it is, strictly speaking, never repeating itself. Despite what appearances may suggest, a transformation of the structure will have been taking place every time it 'landed' somewhere. This transformation could have been happening because in the local language the word for 'possessio' carries a slightly different semantic extension than in the language whence it came. Or it could have been because the concept's local interpreters — say, judges or doctrinal writers — assign a slightly different meaning to the term. Be that as it may, there cannot not have been a transformation — or so I contend. To draw on Bruno Latour, the philosopher and sociologist of science, if there is transportation, there is transformation. Therefore, we can say that what we have, each and every time, is repetition with a transformation (which is, in effect, loose language, because if rigorous expression be upheld, there is no repetition). Again, every implementation of the structure carries with it a transformation. And that transformation, that change, is at once necessary and inevitable*."[74]

Supportive to interpretivism, these critical images of comparative law are therefore based on three main features: *First*, comparative law seeks not *conceptual*, but *perceptual* understanding of Idea. This suggests that

Universitatis Lodziensis Folia Iuridica 96 (2021), 125–139 at 136. (emphasis original)

73 Legrand, *Comparative Law*; Richard Hyland, *Gifts: a study in comparative law* (Oxford: Oxford University Press, 2009); Monateri, "Form and Substance in Comparative Law and Legal Interpretation," 11.

74 Samuel & Legrand, "A Conversation on Comparative Law," 289.

what is worth comparing should be perception, reflecting "an idiosyncratic epistemological trajectory."[75] We can think of how Legrand contemplates on this reflective aspect of an act of comparison:

"*If, intervening as a comparatist, I try to reproduce, to re-present, to present anew, the experience of law as lived in a foreign legal order, what am I supposed to achieve? Should I try to convey a sense of the foreigner's vision of her law? In other words, am I to attempt to reproduce the way in which an Italian lawyer sees Italian law in Italy, or am I to reproduce Italian law as I see it from my Canadian standpoint*."[76]

Second, comparative law is non-dogmatic in a way that it escapes from the transcendence in comparison thus mapping the constant becoming of legal assemblages. As I have noted elsewhere that "*the participants or subject-citizens could be seen as 'desiring machines' whose acceptance to rule is basically a form of communication. It has no definite root or source ... It does not believe in the transcendental. It is a network that traverses the landscape of law and legal system*."[77] That is to say comparativists-at-law view the law as both unified and plural. *Third*, as a consequence, non-dogmatic comparativists-at-law need to abandon hierarchization in a sense that comparativeness is directed to an openness to problematize, experiment and create in the law and legal system.

BIBLIOGRAPHY

Balkin, Jack M, "Understanding legal understanding: The legal subject and the problem of legal coherence," *Yale Law Journal* (1993), 105–176.

Boutang, Pierre-André, *L'abécédaire de Gilles Deleuze avec Claire Parnet*, by Pierre-André Boutang (2004).

Citrawan, Harison, "A Deleuzian Reading on Hart's Internal Point of View," *Padjadjaran Jurnal Ilmu Hukum* 9 No. 1 (2022), 135–151.

Citrawan, Harison, *Law, Time and Historical Injustices: A Critical Analysis of Intuitive Judicial Reasoning* (Oxon and New York: Routledge, 2024).

Citrawan, Harison, "Proses Kreasi dalam Penalaran Hukum dari Lensa Temporalitas," *Undang: Jurnal Hukum* 6 no.3 (2023), 309-349.

Colebrook, Claire, *Understanding deleuze*. Crows Nest New South Wales: Allen & Unwin, 2002.

75 Legrand, "The Impossibility of 'Legal Transplants'," 239.
76 *Ibid*.
77 Citrawan,"A Deleuzian Reading," 148.

Deleuze, Gilles, *Difference and repetition*. New York: Columbia University Press, 1994.

Deleuze, Gilles, Claire Parnet & Pierre-André Boutang, *L'abécédaire de Gilles Deleuze*, ed. Montparnasse, (2004).

Deleuze, Gilles, "Immanence: A Life..." , *Theory, Culture & Society* 14 No. 2 (1997): 3–7.

Eberle, Edward J, "The methodology of comparative law" *Roger Williams UL Rev* 16 (2011): 51.

Engel, Christoph & Gerd Gigerenzer, "Law and heuristics: An interdisciplinary venture" in *Heuristics and the law*, edited by Gerd Gigerenzer & Christoph Engel. Cambridge, MA: The MIT Press, 2006.

Ewald, William, "Comparative jurisprudence (I): what was it like to try a rat," *University of Pennsylvania Law Review* 143 (1994): 1889–2149.

Ewald, William. "Comparative jurisprudence (II): the logic of legal transplants," *The American Journal of Comparative Law* 43 No. 4 (1995): 489–510.

Ewald, William. "The jurisprudential approach to comparative law: a field guide to 'rats'" in *Legal Theory and the Legal Academy,* edited by Maksymilian Del Mar, William Twining & Michael Guidice. London: Routledge, 2017.

Frankenberg, Günter, "Critical comparisons: Re-thinking comparative law." *Harvard International Law Journal* 26 No. 2 (1985): 411–455.

Husa, Jaakko, *A new introduction to comparative law*. London: Bloomsbury Publishing, 2015.

Hyland, Richard, *Gifts: a study in comparative law*. Oxford: Oxford University Press, 2009.

Lefebvre, Alexandre, *The Image of Law: Deleuze, Bergson, Spinoza*. Stanford: Stanford University Press, 2008.

Lefebvre, Alexandre. "A new image of law: Deleuze and jurisprudence," *Telos: Critical Theory of the Contemporary* 130 (2005), 103–126.

Lefebvre, Alexandre. "The impossibility of 'legal transplants'" *Maastricht journal of European and Comparative Law* 4 No. 2 (1997): 111–124.

Legrand, Pierre, *Comparative Law and the Task of Negative Critique*. Oxford & New York: Routledge, 2023.

Legrand, Pierre, "Comparative legal studies and commitment to theory," *The Modern Law Review* 58, No. 2 (1995): 262-273.

Lukito, Ratno, "'Compare But Not to Compare': Kajian Perbandingan Hukum di Indonesia" *Undang: Jurnal Hukum* 5, No. 2 (2022): 257–291.

Marneros, Christos, "Gilles Deleuze: Jurisprudence," (2019), online: *Critical Legal Thinking: Key Concepts* <https://criticallegalthinking.com/2019/11/14/gilles-deleuze-jurisprudence/>.

Marneros, Christos, "It Is a Nomos Very Different from the Law': on Anarchy and the Law" *Acta Universitatis Lodziensis Folia Iuridica* 96 (2021), 125–139.

Mattei, Ugo, "Comparative law and critical legal studies" in *The Oxford*

Handbook of Comparative Law, edited by Mathias Reimann and Reinhard Zimmermann (Oxford: Oxford University Press, 2019).

McGee, Kyle, "Creation, Duration, Adjudication: A Review of Alexandre Lefebvre's The Image of Law: Deleuze, Bergson, Spinoza" *Law & Literature* 21, No. 3 (2009): 480–491.

Monateri, Pier Giuseppe, "Form and Substance in Comparative Law and Legal Interpretation" *International Journal for the Semiotics of Law-Revue internationale de Sémiotique juridique* 37 (2024): 1–24.

Moore, Nathan, "Icons of control: Deleuze, signs, law" *International Journal for the Semiotics of Law-Revue internationale de Sémiotique juridique* 20, No. 1 (2007): 33–54.

Mussawir, Edward, *Jurisdiction in Deleuze: The expression and representation of law*. London: Routledge, 2011.

Mussawir, Edward, "The Activity of Judgment: Deleuze, Jurisdiction and the Procedural Genre of Jurisprudence" *Law, Culture and the Humanities* 7, No. 3 (2011). 463–483.

Patton, Paul, "Immanence, transcendence, and the creation of rights" in *Deleuze and Law,* edited by Laurent de Sutter and Kyle McGee. Edinburgh: University of Edinburgh Press, 2012.

Peters, Anne & Heiner Schwenke, "Comparative law beyond post-modernism" *International & Comparative Law Quarterly* 49, No. 4 (2000): 800–834.

Salaymeh, Lena, "'Comparing' Jewish and Islamic Legal Traditions: Between Disciplinarity and Critical Historical Jurisprudence" *Critical analysis of Law* 2, No.1 (2015): 153.

Salaymeh, Lena & Ralf Michaels, "Decolonial Comparative Law: A Conceptual Beginning" *Rabel Journal of Comparative and International Private Law (RabelsZ)* 86, No. 1 (2022): 166–188.

Samuel, Geoffrey, "Can legal reasoning be demystified?" *Legal Studies* 29, No 1 (2009): 181–210.

Samuel, Geoffrey, "Comparative law and jurisprudence," International & Comparative Law Quarterly 47, No. 4 (1998): 817–836.

Samuel, Geoffrey, "Epistemology and comparative law: contributions from sciences and social sciences" in Epistemology and methodology of comparative law, edited by Mark Van Hoecke. Oxford and Portland, OR: Hart, 2004.

Samuel, Geoffrey & Pierre Legrand, "A Conversation on Comparative Law" Journal of Comparative Law 15 No. 2 (2020), 371–393.

Samuel, Geoffrey, Epistemology and method in law. London & New York: Routledge, 2016.

Shidarta, Hukum penalaran dan penalaran hukum (Buku 1 Akar Filosofis). Yogyakarta: Genta Publishing, 2013.

Shidarta, Multisentrisme humaniora digital: Filsafat hukum masa depan dan masa

(2009): 181–210.
Samuel, Geoffrey, "Comparative law and jurisprudence," International & Comparative Law Quarterly 47, No. 4 (1998): 817–836.
Samuel, Geoffrey, "Epistemology and comparative law: contributions from sciences and social sciences" in Epistemology and methodology of comparative law, edited by Mark Van Hoecke. Oxford and Portland, OR: Hart, 2004.
Samuel, Geoffrey & Pierre Legrand, "A Conversation on Comparative Law" Journal of Comparative Law 15 No. 2 (2020), 371–393.
Samuel, Geoffrey, Epistemology and method in law. London & New York: Routledge, 2016.
Shidarta, Hukum penalaran dan penalaran hukum (Buku 1 Akar Filosofis). Yogyakarta: Genta Publishing, 2013.
Shidarta, Multisentrisme humaniora digital: Filsafat hukum masa depan dan masa depan filsafat hukum. Jakarta: Universitas Bina Nusantara, 2022.
Siems, Mathias, Comparative law. Cambridge: Cambridge University Press, 2022.
Somers-Hall, Henry, Hegel, Deleuze, and the critique of representation: Dialectics Dialectics of negation and difference. New York: State University of New York Press, 2012.
Sutter, Laurent de, Deleuze's philosophy of law (trans. Nils F. Schott). Edinburgh: Edinburgh University Press, 2022.
Simarmata, Rikardo, "Pendekatan positivistik dalam studi hukum adat," Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada 30 No. 3 (2018): 463–487.
Sosa, Ernest, "The raft and the pyramid: Coherence versus foundations in the theory of knowledge," Midwest studies in philosophy 5, No. 1 (1980): 3–26.
Valcke, Catherine, "Comparative law as comparative jurisprudence-The comparability of legal systems." American Journal of Comparative Law 52 (2004): 713.
Zitzke, Emile, "A decolonial critique of private law and human rights." South African Journal on Human Rights 34, No.3 (2018), 492–516.
Zitzke, Emile, "Decolonial Comparative Law: Thoughts from South Africa," Rabels Zeitschrift für ausländisches und internationales Privatrecht/The Rabel Journal of Comparative and International Private Law (2022): 189–225.
Zumbansen, Peer, "Transnational Law as Socio-Legal Theory and Critique: Prospects for Law and Society in a Divided World," Buffalo Law Review 67 (2019): 909.