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UNIVERSITY OF SOUTHAMPTON

FACULTY OF BUSINESS, LAW AND ART

School of Law

Asking comparison with Heidegger

by

Ida Petretta

Thesis for the degree of Doctor of Philosophy

November 2017

UNIVERSITY OF SOUTHAMPTON

ABSTRACT

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ASKING COMPARISON WITH HEIDEGGER

Ida Petretta

Comparison is pervasive throughout the legal world. Comparison has a prominent role in the doctrine of precedent helping to create certainty and consistency in the law, by building a path through like-cases-treated-alike. We trust comparison to assist us to weigh-up and decide matters of law and justice. But why should like-cases-be-treated-alike? And what strange stake does comparison have in these matters? The legal world relies heavily on comparison, and yet the law seldom thinks of comparison. This investigation seeks to ask comparison. Asking comparison implies comparison is not yet thought. In the pockets where law recognises comparison, in comparative endeavours, it has been seen as a transparent and useful tool, but not itself worthy of investigation. Asking comparison in law inter-rupts our legal comparisons, bringing comparison to the open to interrogate it carefully. The claim is not that no one has ever thought about comparison, the thesis engages with the different ways writers have thought about comparison. There is a two-fold sense to the '*not yet*' asking comparison. In the first sense, the *not yet* in law refers to the way mainstream Western legal thought generally passes over the role comparison has in its day-to-day and like-to-like functioning. The thesis distinguishes between ontic comparison (legal comparison) and the origin of comparison. In another primordial way comparison is *not yet* asked. Our question is itself a rupture: asking comparison is seeking-out the out-of-which (the source) that send itself to us. Comparison is a bringing-forth. What determines the movement of comparison? Asking comparison always arrives too late, drawn into that which has already drawn away from us. Asking comparison is always belatedly asking the question of origin, which keeps turning itself away from us. Asking comparison is an opening to the Greek world. The thesis unfolds itself with the question.

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Academic Thesis: Declaration Of Authorship

I, *Ida Petretta*

declare that this thesis and the work presented in it are my own and has been generated by me as the result of my own original research.

Asking comparison with Heidegger.....

I confirm that:

1. This work was done wholly or mainly while in candidature for a research degree at this University;
2. Where any part of this thesis has previously been submitted for a degree or any other qualification at this University or any other institution, this has been clearly stated;
3. Where I have consulted the published work of others, this is always clearly attributed;
4. Where I have quoted from the work of others, the source is always given. With the exception of such quotations, this thesis is entirely my own work;
5. I have acknowledged all main sources of help;
6. Where the thesis is based on work done by myself jointly with others, I have made clear exactly what was done by others and what I have contributed myself;
7. None of this work has been published before submission:

Signed:

Date:

Acknowledgements

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To my parents, my brother and my sister thank you for being there and for propping me up.

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0. Introduction

Why do I care about comparison?

1. We live so much of our lives in comparison and I do not understand it. Comparison has such an enormous stake in every kind of relationship. People are said to belong together. They fall together and grow apart based on sameness and difference. Togetherness somehow requires comparison. It is part of our shared lived experience, from the most basic interactions among family, friends, and strangers, to the belonging of people to a place. We are tangled in comparison. It seems to have a fundamental relationship to how we are, how we understand one another, and how we form and maintain relationships. These relentless comparisons led me down the path of questioning comparison. In short, it provoked me into asking it. Comparison followed me into my studies. I began by examining comparative law methods in my dissertation. This project emerges from where I last ‘left’ comparison in my undergraduate studies. The more I thought about the way law works the more comparison cropped up. Comparison was always there, in every judgment we compare the legal arguments, we compare previous cases, and we navigate the legal world with like-cases-decided-alike. Comparison proved to be more evasive as I looked into it, and so I kept digging.

What is the point of this thesis?

2. The legal world is saturated by comparison. Comparison is pervasive in our understanding of fairness, procedural justice and equality before the law. It is ubiquitous in the doctrine of precedent and even the relationship of the general to the particular is one of comparison. Despite the bountiful manifestations of comparison throughout the law, comparison has bafflingly evaded our attention. Comparison has remained largely invisible to the law, harmlessly sitting there, between law and justice. In the pockets where law recognises comparison, in comparative endeavours, it has been seen as a transparent and useful tool. Given the importance of comparison to the law, it is important to interrogate comparison carefully. We need to ask comparison; how can we ask comparison? To begin to ask comparison we need to first gain a foothold on what comparison is? What determines the movement of comparison? Where does comparison live? We need to attempt understand comparison by slowing

down our comparisons. This project will be seeking to question comparison carefully, exposing how pervasive comparison is within our daily lives, and how comparison remains unasked.

Asking comparison with Heidegger: in conversation with the text

3. Asking comparison is asking Greek thought to think itself. Our question flows-back into itself, to think the out-of-which that sends itself to us. By retracing Martin Heidegger's footsteps, we are finding the path which thought with the Greeks. The Greeks who first stood at the inception of Western thought. Greek thought does not necessarily speak of a particular time when there was an attentiveness to Being - not all thinkers who lived at a particular time and place were primordial thinkers.¹ Asking comparison always arrives too late, drawn into that which has already drawn away from us. We think under the reverberations of the withdrawal.² It holds-back and we are pushed forward into this way of thought that sends itself to us. To approach our question, we must first leap over our current historiographical thinking which only 'thinks back' chronologically and move to thinking History.³ Our question is itself a rupture: asking comparison is seeking-out the source and asking the question of origin. It is an opening to the Greek world.

Asking comparison in law ruptures by first inter-rupting our legal comparisons, thus bringing comparison to the open. Asking comparison implies comparison is *not yet* thought. The legal world relies heavily on comparison. We find comparison most prominently in the doctrine of precedent, where it creates some consistency and certainty in the law with our like-cases-treated-alike. Yet the law seldom thinks of comparison. When the legal world does consider comparison, it is usually viewed as a useful tool, but not itself worthy of investigation. This work seeks to pierce through our

¹ Greek thinking means: 'neither an ethnic nor national, neither a cultural nor an anthropological characteristic. What is Greek is that dawn of destiny as which being itself lights itself up in beings and lay claim to an essence of humanity, a humanity which, as destined, receives its historical path, a path sometimes preserved in, sometimes released from, but never separated from being.' Martin Heidegger, 'Anaximander's Saying' in Julian Young and Kenneth Haynes (eds), *Off the Beaten Track (Holzwege)* (Cambridge University Press 2002), 253.

² Miguel de Beistegui, *Thinking with Heidegger Displacements* (Indiana University Press 2003), 6.

³ Martin Heidegger, *Introduction to philosophy-thinking and poetizing* (Phillip Jacques Braunstein tr, Indiana University Press 2011), 52.

legal comparisons to bring comparison to the open. There is a two-fold sense to the '*not yet*' asking comparison. In the first sense, the '*not yet*' in law refers to the way mainstream Western legal thinking generally passes over the central role comparison has in its day-to-day functioning. The claim is not that no one has ever thought about comparison. This work engages with the different ways writers have thought about comparison. There is also another more primordial way comparison is *not yet* asked; what is meant by that will become clearer through the work. The thesis unfolds itself together with the question.

4. To say this thesis adopts a Heideggerian approach would be inaccurate because it is not possible, such an undertaking would be like trying to fake a work of art. It would always fall-short, lacking the integrity of the original.⁴ We cannot take a Heideggerian approach, but we can still follow his footsteps and share the thinker's thought.⁵ This text is a little unusual in approach, it brings Heidegger's *way* of thinking to comparison. Heidegger was an original thinker. He attempted to think that which is most thought-provoking of all. He was a thinker who responded to the call for thoughtful questioning, where all too often attentiveness can only be found for immediate answers.⁶ Heidegger's *way* of thinking is vital for this project. The thesis actively adopts Heidegger's *way* of questioning. '*Asking comparison with Heidegger*' attempts to make comparison question-worthy, by allowing the questions to emerge organically through the text. This work does not necessarily seek to 'answer' or 'solve' the problem of comparison. It is odd. It should not be read only as a work that has *views about* comparison, views it maintains as accurate through a comparative analysis of others who have also had *views about* comparison. Why not? It is a text which must do that to some extent. Yet, it seeks to problematize the apparent un-question-worthiness of comparison, to show through questioning how we are still not asking comparison and why we should be. This text attempts to think through the way of questioning. Thoughtful questioning can be a way of bringing into the open our relation

⁴ As Arendt puts it: 'Innumerable attempts have been made to write a la Kafka, all of them dismal failures, have only served to emphasize Kafka's uniqueness, that absolute originality which can be traced to no predecessor and suffers no followers'. Hannah Arendt, 'Introduction Walter Benjamin: 1892-1940, by Hannah Arendt' in Harry Zorn (ed), *Walter Benjamin, Illuminations, Edited with an Introduction by Hannah Arendt* (Pimlico 1999), .9.

⁵ Martin Heidegger, *What is Called Thinking?* (Glenn Gray tr, Harper & Row, Publishers 1954).

⁶ Rüdiger Safranski writes that Heidegger had a passion for 'asking questions, not providing answers. That which he asked questions about and that which he was seeking, he called Being.' Rüdiger Safranski, *Martin Heidegger Between Good and Evil* (Ewald Osers tr, Harvard University Press 1998). Preface: A Master From Germany.

to comparison, a relation currently not thought. In asking comparison, there is an asking for a space for inquisitive questioning and potential new ways of thinking.⁷ Can questions be thought-provoking? Or is it only the answers that give us food for thought?

5. The ‘*with Heidegger*’ subtitle of the thesis may seem strange. The subtitle is pointing to how we come to understand texts. Implicitly the thesis adopts a hermeneutic approach. We understand a text through conversation between the text and the reader of the text. This is not a conversation between the reader and author of the text because texts are fixed expressions of life. It is for this reason that we can speak about a conversation between the text and reader. The text lives through the reader. It is understood and animated through the reader.⁸ We understand a text through projection. The reader of the text is always projecting his/her own fore-meanings onto the text as soon as some initial meaning emerges. The initial meaning emerges only because (s)he is reading the text with a certain expectation to its meaning. The expectations to meaning are our fore-meanings and prejudices that enable our understanding of the text; working-out this fore-projection *is* understanding.⁹ So understanding has a circular motion going backwards and forwards between our expectations in reading the section of text and the whole of the text. The reader is re-evaluating what (s)he finds, as soon as some initial meaning emerges. We are constantly projecting and anticipating meaning whereby the whole is imagined, the circular movement of understanding goes from the whole to the part and back to the whole.¹⁰ The conversation between the text and reader is not fixed or a reciting; no one knows in advance what will come from the conversation.¹¹ Hence, we can still talk of a conversation with Heidegger, even though the author of the works lived and died a long time before these words were written. Naturally, it does not mean that Heidegger approves such a conversation, but then the author of a text cannot decide how the text will be taken-up.

⁷We need to think a little more carefully about what an academic community *is*, whether it can accommodate different voices, and on what basis? Jacques Derrida’s concern for the nomads resonates; he was worried that the community had become a fort with walls on every side - a fortifying (*munire*) ‘our’-selves all around (*com*). John D Caputo, *More Radical Hermeneutics* (Bloomington 2000),, 57.

⁸ Hans-Georg Gadamer, *Truth and Method* (J Weisheimer tr, Continuum 2004),,389.

⁹ Gadamer, *Truth and Method*,,269.

¹⁰ Gadamer, *Truth and Method*,,291.

¹¹ Gadamer, *Truth and Method*,,385.

6. It might seem somewhat odd that this thesis is called ‘*with Heidegger*’ when Heidegger never spoke of comparison. While Heidegger did not speak of comparison, comparison speaks through Heidegger. It is necessarily part of the rich unsaid of his writings. Part of the ‘*with Heidegger*’ is following the movement of his thoughts. How we think through the texts and come to write is not a neutral or readily available to us. Some texts are more approachable than others (like people). There is no doubt that the text relies on the reader to provide the breath of life and therefore, there is a helplessness of the text because of its form. The subtle starting point for conversation is so important. There is a burden on the reader to not close-off the discussion before the text speaks. The importance of being open to the text cannot be underestimated. Where there is no openness, it does not matter what the other says: we do not hear them.¹² We should be careful to reflect on such ‘constraints’ and the balance of power between the reader and text. Still, we can be open and allow the text to speak; allowing it to speak and aware of this inequity in power.¹³

That said, we must also acknowledge that no investigation can be neutral or objective because we are always already projecting our fore-meanings, preconceptions and prejudices onto the text as soon as some meaning emerges; moreover, the meaning emerges due to our preconceptions and fore-meanings, which we utilise to understand the text. Consequently, there can be no objectivity in any investigation because we are always projecting our fore-meanings and we are always understanding within tradition.¹⁴ Again, we are unable to avoid the possibility of misunderstanding a text, but we can keep an openness to the text and constantly re-vise our understanding based on the emerging text.

¹² In these instances, there is no genuine conversation, and we find ourselves (sometimes unwittingly) only reciting: ‘Reciting is the opposite of speaking. When we recite, we already know what is coming, and the possible advantage of a sudden inspiration is precluded.’ Gadamer, *Truth and Method.*,552.

¹³ Gadamer, *Truth and Method.*,335.

¹⁴ Throughout this work (unless explicitly stated otherwise) ‘tradition’ is meant in a Gadamerian sense. We are always already situated within tradition. It encompasses, but is not limited to, both language (and) fore-meanings. Tradition is not fixed; we are always in an open horizon of meaning which is always in motion. Gadamer, *Truth and Method.*,302-303.

7. Martin Heidegger was born on 26th September 1889 and he died on 26th May 1976.¹⁵

‘He was born, he worked, and he died’, so began one of Heidegger’s lectures on Aristotle.¹⁶ For Heidegger to understand a thinker, it was important to know the time in which they were operating, and attitude taken towards Being and truth given by the time.¹⁷ Hence, why one of the most important things to know about any thinker remains when they were born and when they died. Heidegger wanted to be known for his works and less for who he was personally.¹⁸ Hans-Georg Gadamer famously remarked Heidegger was the greatest of thinkers and smallest of men.¹⁹ This work does briefly touch on Heidegger’s engagement with National Socialism, but not in detail as such an exploration would require its own full attention.²⁰

8. Introductions are made to provide structure to a work. To give the reader a guide and to signpost the journey. Introductions are a way for the reader to find some purchase, to ground themselves, to understand what will be said and where this work is going.

Reassuringly in this (belated) introduction, the reader will find a brief justification the

¹⁵ Thomas Sheehan, ‘Heidegger’s Early Years: Fragments for a Philosophical Biography’ in Thomas Sheehan (ed), *Heidegger The Man and The Thinker* (Precedent Publishing, Inc. 1981),,3.

¹⁶ Safranski, *Martin Heidegger Between Good and Evil*,,1.

¹⁷ ‘Every sort of thought, however, is always only the execution and consequence of the historical mode of being (Dasein) at that time, of the fundamental position taken toward what is and toward the way in which what is, is manifest as such, i.e., to the truth’ Martin Heidegger, *What is a thing?* (W.B. Jr Barton, Deutsch Vera, tr, Gateway Editions Ltd 1967),,96.

¹⁸ In a 1949 letter to Karl Jaspers, Hannah Arendt revealed some of her thoughts on Heidegger: ‘...Heidegger...What you call impurity, I’d call lack of character, but in the sense that he has literally none, certainly not an especially bad one....I read the letter against humanism [Martin Heidegger, ‘Ueber den Humanismus,’ Letter to Jean Beaufret, Bern, 1947], also very questionable and must too often ambiguous, yet still the first thing he wrote that is up to his old standard. (I have read here [Heidegger’s work] about Hölderlin, and the absolutely horrible, chatty lectures on Nietzsche.) That life in Todtnauberg, this railing against civilization, and writing Sein with a y is in reality a kind of mouse hole into which he withdrew, assuming with good reason that the only people he will have to see are pilgrims filled with admiration for him; no one is likely to climb 1200 meters just to make a scene. And even if someone did just that, then he will lie through his teeth and hope to God that nobody will call him a liar to his face. He certainly believed that by using this stratagem he could buy off the whole world at the lowest possible price and cheat his way out of everything that is embarrassing to him, and then do nothing but philosophize.’ Elżbieta Ettinger, *Hannah Arendt Martin Heidegger* (Yale University Press 1995),,67.

¹⁹ Berel Lang, *Heidegger’s Silence* (Cornell University Press 1996),, 86.

²⁰The depth of Heidegger’s involvement with Nazism is difficult to assess. Heidegger was a member of the National Socialist German Workers Party (NSDAP) from 1933 until it was dissolved in 1945, see Ettinger, *Hannah Arendt Martin Heidegger*,,10. There are many writings dedicated to Heidegger’s troubling relationship with the Nazi party: Hans Sluga, *Heidegger’s Crisis Philosophy and Politics in Nazi Germany* (Harvard University Press 1993). ; Richard Wolin (ed) *The Heidegger Controversy A Critical Reader* (The MIT Press 1993). ;Lang, *Heidegger’s Silence*.; Tom Rockmore, *On Heidegger’s Nazism and Philosophy* (Harvester Wheatsheaf 1992). ;Julian Young, *Heidegger, philosophy, Nazism* (Cambridge University Press 1997).

approach taken to the work, a little about Heidegger (above), and how and why this project is original. There will also be a light summary of each of the chapters outlining where the argument is going. Elsewhere in this work the reader will find a text box at the start of each chapter emphasising some of the main movements in the chapter showing the path taken. The approach taken throughout this work enables the questions to emerge organically through the text.

Etymology: letting language speak (etymology as ‘method’)

9. The etymological study of comparison features heavily in this investigation of comparison. It is important for finding a way of disclosing a hidden unsaid from language. The approach to the investigation is innovative. The etymology exposes essential concealed relations between the words investigated. It shows our boundedness to language despite the different roots. Within the fragmentations there is the unity of the belonging-together with Being through language.²¹ We are revealing our belonging together in language through etymological relations and only this; there are no great civilizations, or chosen people.²² The approach taken to the etymology is partially following Heidegger’s etymological path of investigation, which itself is grounded in Heidegger’s understanding of Greek thinking. This investigation has also sought to corroborate Heidegger’s etymological findings with authoritative lexicons to be as diligent as possible. It is nevertheless acknowledged that any uncovered meaning is never definite and almost always disputed and controversial.²³
10. The historical analysis of comparison is a point of departure from the current literature on comparison. The literature mostly traces the etymology of comparison to the Latin

²¹Language allows for the openness of beings, it is a clearing, by first bringing them into the open by naming beings. Language is itself poesy: ‘Language is not poetry because it is ur-poesy; rather, poesy happens in language because the latter preserves the primordial essence of poetry.’ Heidegger, ‘The Origin of The Work of Art (1935-36)’, 46.

²²Through researching the etymology of comparison, we are not seeking to show some kind of ‘superiority’ of any language or people with Greek thought as an indication of self-proclaimed ‘greatness’. The very notion of ‘civilisation’ is problematic: ‘There is no document of civilization which is not at the same time a document of barbarism. And just as such a document is not free of barbarism, barbarism taints also the manner in which it was transmitted from one owner to another.’ Walter Benjamin, ‘Theses on the Philosophy of History’ in Harry Zorn (ed), *Illuminations* (Pimlico 1999), 248.

²³ Heidegger was no stranger to the fury of philologists and historians with his renewed understanding of the Pre-Socratics, see Mark Wrathall, ‘Heidegger’s place in the history of being’ in James Faulconer and Mark Wrathall (eds), *Appropriating Heidegger* (Cambridge University Press 2000), 17.

definition: to ‘*compare*’ is to ‘speak of or represent as similar’, derived from the word *comparare* meaning to ‘pair together, couple, match, bring together’.²⁴ The Greek etymology of comparison has been traced to *παραβολή parable* meaning ‘a placing side by side, comparison analogy’, in Hellenistic Greek *parable* was also a proverb.²⁵ The link from the Latin *comparison* and Greek *parable* was drawn through a number of authoritative lexicons, from different eras. The lexicons also cited their sources for their definitions, and these were also investigated (e.g. the Bible).²⁶ The etymological work has revealed many connections between *comparison*, *parable* and *parola*; and between *doxa*, *com-parison* and *parere*. The etymological discoveries show how the tradition has mistakenly seen comparison as only a ‘making equal’, when the etymology shows it is much richer.

The etymological analysis is a novel and innovative way of approaching comparison. Beginning any investigation is challenging, we are faced with many questions regarding how to ground the investigation. How to begin? The investigation has attempted ground itself in its rootedness to language, this bounded relation enables us to bring-out an interrelatedness of the saying and our findings in thinking-back *with* language. Coming through language, we find a sameness of the saying: showing the self-same in a different way. By sameness we do not mean a repetition of the identical. The notion of sameness is *das Selbe* - a different kind of fittedness, which will become clearer as we go on.²⁷ We build on the etymological study throughout the chapters. The historical analysis also provides us with the insight that the current way of seeing, the present paradigm is not the *only* way of seeing.

²⁴ Oxford English Dictionary, “*compare*, v.1” (Oxford University Press).

²⁵ Oxford English Dictionary, “*parable*, n.” (Oxford University Press).

²⁶ N/A, *King James Bible* (Collins Clays Ltd).

²⁷Heidegger distinguishes between two notions of ‘*the same*’. *Das Selbe*: ‘the Same’ entailing retrieval with difference and *das Gleiche*: ‘the same’ is the mere repetition of what is self-same or identical. Martin Heidegger, *The History of Beyng* (William McNeill and Jeffrey Powell trs, Indiana University Press 2015). Translator’s footnote.

11. There are limitations arising from any etymological study. It is difficult to trace words throughout time and languages. This investigation shows strong connections between the words investigated, while also acknowledging that we cannot necessarily isolate precisely how a word has been carried through and between languages. The approach taken is to consider etymology not as a thing we are isolating, defining, refining, and ‘investigating’; rather etymology is language, a language we live. The etymological study is akin to driftwood brought down through tradition which does mean treating words like dead and decaying objects, we live them, they *are* us. We *are* our past and bound into this way of thinking that comes before us. The etymological investigation is a way of listening to language, through making the most of the tidings the tide brings in, and not forcing interpretations.

12. We have used several lexicons and other sources to check the consistency of what has been said (correctness). *Parable* has been shown to be the Greek root of *comparison*. *Comparison* has been followed through the Latin to the Greek, through a comparison of different sources, in different languages and throughout time. The consistency between sources suggests we are on the right (correct) path. The thesis acknowledges when a word has multiple meanings, it does not simply take the first meaning or the one convenient for the argument. The Latin root *pārēre* has a many different meanings which have not been concealed by the thesis, instead it seeks to work pragmatically with whatever it finds in the tradition. The thesis does not attempt to impose order. The approach to questioning comparison is a holding-back, allowing the tradition to speak through whatever emerges from the etymology, and again, not ‘making’ something appear.

13. Part of the thinking behind the etymological investigation is implicitly endorsing the Heideggerian thought that the Greek world first stood at the inception of Western thought and, that it still has more to tell us. This means that part of the investigation is an attempt to access a ‘Historical’ world. There are two assumptions: (1) Greek thinking is primordial, (2) we can access the primordial world of the Greeks through language and that language carries this essential saying. How do we access this world? This investigation does aim for correctness, to ensure correctness we have consulted a number of sources and tried to find consistency between sources. We have also

attempted to understand the meaning of *parable* in context, by understanding how significant it was for the Biblical revelations. It was a way of saying which could reveal the mysteries of the world.²⁸ It was considered so important that it survived through the tradition. Etymological investigations are habitually hindered by a lack of materials and written sources determining how words were understood at a particular time. These studies often suffer the affliction of being critiqued for stripping words from their time, context and meaning. The usual reply to these criticisms entails taking a more reflexive approach, to become more aware of our prejudices and the power-structure involved in these investigations. However, as we already have already noted with regards to our question, ‘Historical’ does not only speak chronologically to a time when the Greeks lived. Historical is primordial, it refers to the unfolding of the destiny of Western thought.²⁹ We are following Heidegger’s path: ‘All historiography calculates what is to come from its images of the past, images which are determined by the present. Historiography is the continual destruction of the future and our historical relation to the advent of destiny’.³⁰ The ‘advent of destiny’ is a nearness to Being, which we may be able to access through language, despite historiography and our chronological gulf between the present and the Greek world. The investigation of the etymology of a word is to access the essential saying carried through language. The saying will become clearer as we progress. Suffice to say for now that we are not only going in search of correctness, but also seeking the necessary conditions allowing for it.

14. We must also acknowledge that selected texts mentioned in the thesis are translations. Translation involves a dialogue between the work and the translator, and the translated text and the reader, thus doubling the hermeneutical process: ‘there is one conversation between the interpreter and the other, and a second between the interpreter and oneself’.³¹ However, the separation of the text and the author also implies that the author of a text does not have a monopoly over the meaning of the text, therefore the

²⁸ ‘All these things spake Jesus unto the multitude in parables; and without a parable spake he not unto them: That it might be fulfilled which was spoken by the prophet, saying, I will open my mouth in parables; I will utter things which have been kept secret from the foundation of the world’ N/A, *King James Bible* , Matthew 13:34-35.

²⁹ Heidegger, *Introduction to philosophy-thinking and poetizing*., 52.

³⁰ Heidegger, ‘Anaximander’s Saying’., 246.

³¹ Gadamer, *Truth and Method*.,387.

thoughts can be taken up by another. While Heidegger does not speak English - Be-ing does.³²

15. The word '*Being*' will appear frequently in this thesis. The thesis capitalises the noun *Being* to emphasize the distinction between Being and a being. Whether to capitalise *Being* and the implications of doing so, has created much disagreement between scholars. Turning *Sein* into *Being* follows the path taken by many of the translators of Heidegger's works (e.g. Macquarrie and Robinson). Many other scholars argue *Being* creates more confusion (e.g. implying God), these authors choose translate *Sein* as *being*.³³ *Being as event* is translated as *Be-ing*, although many writers use the word *Beyng* to translate *Seyn*. So, what does Being mean? Read on.

Overview of the chapters

16. The thesis begins by (1) analysing the literature on comparison and the law, which points to the absence of a deeper exploration of comparison; (2) providing a brief introduction to situate Martin Heidegger's thinking; (3) shows the pervasiveness of ontic comparison within our everydayness; (4) highlights the relationship between comparison and truth; (5) explores a leap out of our current thinking (through ontic comparison) and into inceptual-thinking: thinking our relation with Being, our *belonging-together* with Being.

	Thesis structure.
0.	Introduction.
1.	On not yet asking comparison.
2.	The importance of Being / <i>Seinsvergessenheit</i> .
3.	<i>Belonging-together</i> : ontic comparison.
4.	Truth and comparison.
5.	Identity and difference: <i>Belonging-together</i> .
6.	Coda.

³² 'It is impossible to make Heidegger speak English, but it is not impossible for English to speak of be-ing. Of course, it is not enough to differ from Heidegger in our choice of words. We must be independent enough to consider alternative paths, and even to try to catch sight of the blind spot that accompanies him, making his thinking possible yet never itself coming into view. According to Heidegger, every thinker has such a blind spot- the gift of a rich "unthought"', Richard Polt, *The Emergency of Being On Heidegger's Contributions to Philosophy* (Cornell University Press 2006), 19.

³³ William Blattner, *Heidegger's Being and Time A Reader's Guide* (Continuum International Publishing Group 2006), 16, Julian Young and Kenneth Haynes (eds), *Martin Heidegger Off the beaten track* (Julian Young and Kenneth Haynes trs, Cambridge University Press 2002).

I. On not yet asking comparison.

17. Chapter one seeks to show how pervasive comparison is within the legal and how it remains unasked. Our starting point does not assume too much, instead we try to show how comparison is important because the law is doing comparison most of the time. Comparison features in the main pillars of law: in the doctrine of precedent, in our adversarial system, and it is central to the relationship between law and justice. The more we examine the law, the more Russian dolls of comparison keep cropping up. We trust comparison to weigh-up and decide matters of justice for us, to decide truth by weighing accounts of the defence and the prosecution, and to create some consistency and fairness through the doctrine of precedent. Comparison is a key component of legal reasoning. We move merrily from like-to-like within the system of precedent, whenever we distinguish or apply a case we evoke comparison. The law could not function without comparison, and yet the legal world has overlooked comparison by not recognising the stake it has in these matters. The chapter begins by showing comparison at work in within the common law, the doctrine of precedent and legal reasoning. The chapter turns to uncovering precisely what comparison is through the common law tradition of practice. The common law began as a pragmatic practice, and it is through the tradition of practice that we find the space where the law and comparison are most openly and obviously present, that is, in comparative law. We begin by asking the comparative law tradition: *what is comparison?* Moving through the literature, the chapter brings insights from philosophy and anthropology to the conversation to better understand comparison in practice. Inspired by James Tully's aspectival-games we explore the play of aspects in comparison. The argument develops building on earlier work by Igor Stramignoni showing legal comparison as symptomatic of a certain kind of thinking (calculative thinking). This chapter is calling on us to slow down our comparisons, so that we can begin to question comparison itself. Asking comparison in law is an inter-ruption.

II. The Importance of Being / Seinsvergessenheit.

18. Chapter two has the modest aim of introducing Heidegger to the reader. It provides a basic and very limited account of some of the important aspects of Heidegger's thinking. We begin this chapter by introducing some of the main works inspiring this thesis to help situate these works in relation to Heidegger's working life. The chapter then moves into a discussion of *die Kehre*, introducing the reader to some of the

complexities of ‘interpreting’ Heidegger’s works. We then turn to Heidegger’s background and discuss some key concepts and aspects of his work. The selection cannot possibly do any justice to the richness of the debates. There are thousands of articles and books written about Heidegger’s works, so this chapter cannot possibly say enough. It is an extremely limited attempt to present an introduction to Heidegger’s thought. It is not an all-encompassing history of Heidegger’s thinking. It is a starting point with some of the main movements of the tradition through Heidegger. It is merely an attempt to bring us all onto the same page, showing how the themes discussed in chapter one developed, and it also provides a little more context on Heidegger’s thought, which is so central to this project.

III. Belonging-together: Ontic Comparison.

19. Chapter three shows how comparison is a primordial way of revealing arising from the withdrawal of Be-ing (as event) itself. The chapter also highlights how comparison has become for us an instrumental way of thinking, a means to an end. It shows how comparison is a necessary and fundamental part of our everyday comportment, which indirectly shines a light on the Event. The chapter uncovers the primordial origin of comparison which has become distorted in machination. In machination comparison becomes ‘ontic comparison’ and we become the makers of all things. The rise of machination, whereby all making is a human activity is a consequence of our abandonment of Being and Be-ing’s withdrawal from us. It leads us to make determinations of beingness, to bring beings to representational thought, and it also allows for the rise of metaphysics and mathematical subject-object determinations, with us as the centre of thinking. Comparison is prior to machination, both chronologically and primordially; but it has become distorted within machination. The argument develops showing how we cannot make determinations of beingness without comparison. The essence of comparison is bringing-forth: *poiēsis*.

IV. Truth and Comparison.

20. The beginning of chapter four discusses our everyday notion of truth *adaequatio* (or truth as comparison). The chapter also retrieves *doxa* from the tradition. *Doxa* is usually thought to mean opinion. The chapter discusses how *doxa* has been cut-off from its seeming root and its essential relation to the emergence *phusis*. *Doxa* means aspect. To understand *doxa* more primordially we would need to understand how it is entwined with our understanding. *Doxa* also means the view an extant gives itself-

presence. *Doxa* has a strange belonging together with *phusis* (Being as appearing). We have followed this relation etymologically through the German Schein (appearance/shining/Being) and also to the Latin/Italian *parere* revealing the relationship between *doxa*, *phusis* and comparison. The tradition has usually thought comparison to mean only a making-equal. We have shown the Latin etymology to be much richer. We can trace the present Italian *parere* back to the Latin *parere*. The Italian *parere* conceals *doxa* as it is the word for semblance, resemblance and opinion all in one. It is also from the Latin *parere* that the words appear/apparent eventually developed (*ad-* and *-parere*). The tradition has kept this essential relation hidden between *com-parison*, *doxa* and *phusis*.

V. Identity and Difference: *Belonging-together*.

21. Chapter five challenges our current ways of thinking togetherness. It begins by exposing how we think things within space and time, and how we use space and time as things. It questions our current understanding of the present and presencing. It asks us to think a little more about the kind of thinking we ourselves in. Could there be a more primordial understanding of place and time that has been dis-placed? Where and how do we belong? The chapter shows us that there can be another way of thinking *belonging-together*, which is able to think the *belonging* first. It is this kind of *belonging-together* holding within itself the possibility of thinking our relation to Being through language. But, how are we to think the *belonging-together*?

VI. Coda.

22. The coda is deliberately an untraditional ‘conclusion’. It does not attempt to tidy together loose ends of the argument. The coda does tie ontic comparisons back to legal comparisons showing how these are one. The legal has learnt ontic comparison as a part of our everyday machinations. The thesis leaves the essence of law an open question. The thesis is not attempting to ‘solve’ the problem of comparison. It is an attempt to find an opening to begin to ask the question of comparison and to sustain it.

1. On not yet asking comparison.

‘A man will be *imprisoned* in a room with a door that’s unlocked and opens inwards; as long as it does not occur to him to *pull* rather than push it’³⁴

Chapter one seeks to show how pervasive comparison is within the legal and how it remains unasked. Comparison is a key component of legal reasoning, we move merrily from like-to-like within the system of precedent, whenever we distinguish or apply a case we evoke comparison. The law could not function without comparison, and yet the legal world has overlooked comparison by not recognising the stake it has in these matters. The chapter begins by showing comparison at work in within the common law, the doctrine of precedent and legal reasoning. The chapter turns to uncovering precisely what comparison is, through the common law tradition of practice. The common law began as a pragmatic practice and it is through the tradition of practice that we can find the space where the law and comparison are most openly and obviously present - in comparative law. We begin by asking the comparative law tradition: what is comparison? Moving through the literature, the chapter brings insights from philosophy and anthropology to the conversation to better understand comparison in practice. Inspired by James Tully’s aspectival-games, we explore the play of aspects in comparison. How are all the different things identified by comparatists are linked to comparison? When did function or efficiency become linked to comparison? To take seriously the uneasiness manifested by the literature through the debates of identity, sameness, and difference, we need to open up a space where comparison can be asked. We discover that although there seems to be a play of different things in comparison it is the same kind of thought driving comparison. The argument develops building on earlier work by Igor Stramignoni showing legal comparison as symptomatic of a certain kind of thinking (calculative thinking). This chapter is calling on us to slow down our comparisons, to begin to question comparison itself. Asking comparison in law is an interruption, a way to begin to befriend the Heideggerian thought that there is a forgetfulness of Being.

Comparison turns the legal world

1. One of the earliest statements on reasoning in law was preserved in writing by Henry Bracton in the thirteenth century: if ‘like matters arise let them be decided by like, since the occasion is a good one for proceeding *a similibus ad similia*’.³⁵ The English

³⁴ G.H. Von Wright (ed) *Culture and Value* (Peter Winch tr, 2nd Edition edn, Basil Blackwell Publisher 1980).,42e.

³⁵ Bracton, *Bracton On the Laws and Customs of England*, vol 1 (Samuel Thorne tr, The Belknap Press of Harvard University Press 1968)., 21. Bracton’s treatise has been called the ‘greatest medieval work on the common law’ because of its attempt to systematize English law using insights from the rest of Europe, see J.W. Tubbs, *The Common Law Mind* (The Johns Hopkins University Press 2000)., 15. Prior to Bracton there were two 12th century books describing English law. The first was the *Leges Henrici Primi* which collected laws introduced by Henry I, it was a disorganised book centred on the division of English law into three geographical areas: Wessex, Mercia and Danelawm, Tubbs, *The Common Law Mind*., 2. There was also another 12th century treatise on common law, the *Tractatus de Legibus et Consuetudinibus Regni Angliae tempore Regis Henrici Secundi*, also known as the *Glanvill* text (possibly written by Ranulf de Glanvill or

common law emerged from unwritten law and local customs which varied between each county.³⁶ Fragmented through place and language, the law developed itself pragmatically.³⁷ The courts provided retrospective adjudication and previous decisions were not binding, but wise judges used their own recollections of prior cases to guide them.³⁸ There was a wider movement from memory to writing in the twelfth and thirteenth centuries which also seeped into legal practice with the reporting of more cases.³⁹ The earliest known reports of cases detailing the words of litigants, their

Godfrey de Lucy), these writers were not yet seen as professional lawyers or judges rather they served King Henry II in various capacities, Ralph V Turner, *The English Judiciary in the Age of Glanvill and Bracton, c.1176-1239* (Cambridge University Press 1985)., 38-40; Corinne Saunders, 'The Medieval Law of Rape'(2000) 11 KCLJ 19., 30. These texts emerged out of the wider shift from memory to writing, *summae* were an attempt to organise and make sense of the many different documents in a logical way. M.T. Clanchy, *From Memory to Written Record England 1066-1307* (3 edn, Wiley-Blackwell 2013)., 108-110. Despite these *summae* and other written documents, the common law continued to be seen as a practice largely consisting of custom and reason, Sir Edward Coke and Sir John Davies in 17th century maintained the common law could not be reduced to writing but was to be found in the memory and behaviour of the people: it was a continuous practice, see Gerald J. Postema, 'Classical Common Law Jurisprudence (Part 1)'(2002) 2 Oxford University Commonwealth Law Journal 155.,169.

³⁶On the one hand, customs were considered immemorial beyond memory and ancient, and on the other, they were malleable bending to change, see J.G.A. Pocock, *The Ancient Constitution and the Feudal Law A study of English Historial Thought in the Seventeenth Century* (Cambridge University Press 1957).,36. J.W. Tubbs suggests the evidence from the medieval period is too unclear to establish whether custom was viewed as the only or even a primary way of understanding the common law, Tubbs, *The Common Law Mind.*,1-20. Tubbs re-examined Henry Bracton's writings and found these do not suggest Bracton thought law to be solely custom, writs were also at the heart of developing the common law, Tubbs also shows how Bracton's definitions of law and custom rely heavily on Roman law sources, Tubbs, *The Common Law Mind.*, 11-13,14-15. Legal history is contested and constantly rediscovering itself. Rest assured, what follows is not an ill-conceived attempt to write an all-embracing linear history of the common law, there is a rich and distinguished field dedicated to English legal history. This chapter does not even seek to partially reconstruct an account the history of common law; rather this chapter just shines a torch on something important and you will see what is meant by that as we go on.

³⁷ The extant writings by the Romans on English legal customs also display a complex mixed system with Roman citizens bound by Roman laws and the *peregrini* (non-citizens) living under local Celtic codes of law, Sheppard Frere, *Britannia A History of Roman Britain* (4 edn, Routledge and Keegan 1994).,181-185. The first reported English case took place (circa 85 A.D.) and the Anglo-Saxons also introduced some written laws (around 600 A.D.), but these writings did not codify existing practices or create new laws, J.H. Baker, *An introduction to English legal history* (4 edn, Oxford University Press 2011).,1-3. The laws of the medieval period show how Latin and Old English lived side-by-side. While the medieval world was written mostly in Latin, the Anglo-Saxon's ensured a shared space by making their marks also in Old English. Latin was the official language (to be *literate* was to know *Latin*), but the earliest known English laws (the laws of King Aethelberht of Kent) were written in Old English between 597-616, Clanchy, *From Memory to Written Record England 1066-1307.*, 23,32-33; Saunders, 'The Medieval Law of Rape', 23. There is no evidence to suggest that the common law collated of the 'best' or most popular rules, customs and practices from each county, Postema, 'Classical Common Law Jurisprudence (Part 1)', 159. Those taking part in it wrote it and legislation mostly affirmed what the courts were already doing or tended to anomalies made by the courts, Postema, 'Classical Common Law Jurisprudence (Part 1)', 157- 165, 169.

³⁸ Larry Alexander and Emily Sherwin, *Demystifying Legal Reasoning* (Cambridge University Press 2008)., 28.

³⁹ Written records proved to be a useful tool for governing to create centralised archives and as a way of 'memory-making', e.g. post-Norman Conquest: the *Domesday Book* (1086) collected the oral verdicts of thousands of jurors and translated these into Latin; however, the oral tradition still persisted for more than two centuries after the Norman Conquest, Clanchy, *From Memory to Written Record England 1066-1307.*,19-44,66. Many historians maintain it was Henry II, in the 12th century, who set the common law in motion by establishing a centralised institutional framework, whereas others suggest it began much later in 17th century, Postema, 'Classical Common Law Jurisprudence (Part 1)', 157-158; Turner, *The English*

counsel and judges date from 1244.⁴⁰ Bracton was one of a number of jurists keeping a record of laws, customs and cases to avoid the laws being misapplied by the unwise.⁴¹ He made notes from 2,000 cases in order to compile a *summa* on the ‘*Laws and Customs of England*’, the work has often been cited as the basis for the English system of precedent.⁴² Bracton liberally peppered his writings with plenty of prior cases, but this was to show how the more contemporary cases were distorting the earlier case law.⁴³ From like-to-like meant something different in Bracton’s time. Although proceeding *de similibus ad similia* is said to be one of the main distinguishing features between the English common law and Roman law, it was actually a standard Roman legal doctrine, but it meant emphasizing the authority of a group of cases creating a precedent, rather than being bound by the judgments of a superior court.⁴⁴ Our current way of moving from like-to-like may seem topsy-turvy when viewed through Bracton’s work. Today it is the most recent like-case *ratio* from a superior court which is binding.⁴⁵ The maxim *stare decisis et non quieta movere* meaning to ‘stand by things decided and not to disturb settled points’ was originally found in a canonical expression.⁴⁶ Sometime between the late eighteenth to nineteenth century the present doctrine of *stare decisis* was adopted, assisted by the greater reporting of local cases and an increased importance of judicial opinions.⁴⁷ John Selden aptly called the

Judiciary in the Age of Glanvill and Bracton, c.1176-1239., 17. Stating with any certainty when the common law began is not possible, it is a determination made by the writer (and a problem of boxing – infra).

⁴⁰ Clanchy, *From Memory to Written Record England 1066-1307.*, 100.

⁴¹ Bracton, *Bracton On the Laws and Customs of England.*, 19.

⁴² Alfred Denning, *What Next in the Law* (Butterworths 1982)., 5.

⁴³ Tubbs, *The Common Law Mind.*, 19-20.

⁴⁴ Tubbs, *The Common Law Mind.*, 19.

⁴⁵ ‘The doctrine of binding precedent, or *stare decisis*, lies at the heart of the English legal system. The doctrine refers to the fact that, within the hierarchical structure of the English courts, a decision of a higher court will be binding on a court lower than it in that hierarchy. In general terms, this means that when judges try cases, they will check to see if a similar situation has come before a court previously. If the precedent was set by a court of equal or higher status to the court deciding the new case, then the judge in the present case should follow the rule of law established in the earlier case.’ Gary Slapper and David Kelly, *The English Legal System Seventeenth Edition 2016-2017* (Routledge 2016)., 137.

⁴⁶ Scott Hershovitz, ‘Integrity and Stare Decisis’ in Scott Hershovitz (ed), *Exploring Law’s Empire The Jurisprudence of Ronald Dworkin* (Oxford University Press 2008)., 104. ‘The argument from precedent says that if a statutory provision has previously been subject to judicial interpretation, it ought to be interpreted in conformity with the interpretation given to it by other courts’ Neil MacCormick, *Rhetoric and The Rule of Law A Theory of Legal Reasoning* (Oxford University Press 2005)., 128.

⁴⁷ See Gerald J. Postema, ‘Classical Common Law Jurisprudence (Part 2)’(2003) 3 Oxford University Commonwealth Law Journal 1., 12; A.W.B Simpson, ‘The Common Law and Legal Theory’ in A.W.B Simpson (ed), *Oxford Essays in Jurisprudence* (Clarendon Press 1973)., 77-78;Tubbs, *The Common Law Mind.*, 18.

common law the English Janus.⁴⁸ Each decision involves a fine balance, with one face fixed on the past while the other is drawn (into) the future.

2. Law required the refined art of reason. It evolved as a system of laws, customs and reason, and reason meant ‘reason *in* the law’, so each judgment had to fit, be reasonable and consistent within the coherent whole of the local practice.⁴⁹ Reason in law can be found in medieval sources, however, it was the seventeenth century writers who made the relationship explicit.⁵⁰ The distinction between natural reason and legal reasoning also became clearer in the seventeenth century when judges and lawyers started reflecting a little more on the practice of law.⁵¹ Sir Edward Coke famously defined law as ‘artificial reason’: a learned art of reasoning from within the practice of law based on experience.⁵² It was Coke’s admiration of rhetoric which led him to distinguish ‘artificial reason’ from natural reasoning, based on the way rhetoricians distinguish ‘artificial logic’ from natural reason.⁵³ Rhetoric does not speak to us in the same way.⁵⁴ The fall of rhetoric ought to be situated, acknowledging both the ancient

⁴⁸ ‘*Jani Anglorum Facies Altera*’ (1610), see Pocock, *The Ancient Constitution and the Feudal Law A study of English Historial Thought in the Seventeenth Century.*, 36; Allen D. Boyer, ‘Sir Edward Coke, Ciceronianus: Classical rhetoric and the common law tradition’ (1997) 10 *Revue internationale de semiotique juridique* 3,3.

⁴⁹ Postema, ‘Classical Common Law Jurisprudence (Part 1)’, 178; Postema, ‘Classical Common Law Jurisprudence (Part 2)’, 10.

⁵⁰ Tubbs, *The Common Law Mind.*, 148.

⁵¹ Postema, ‘Classical Common Law Jurisprudence (Part 1)’, 157. From Bracton’s treatises (1256) to Blackstone’s lectures (1758) there appears to little written on English common law theory, only the Year Books have survived, see Tubbs, *The Common Law Mind.*, 22-23. He suggests this shift was partly due to the growth in the professional bar and a new focus on the technicalities of common law pleading and procedure, Tubbs, *The Common Law Mind.*, 23.

⁵² Harold J. Berman, ‘- The Origins of Historical Jurisprudence: Coke, Selden, Hale’ - Yale LJ., 1689-1694. The common law required a different kind of skilled reasoning, reason in law was a result of an immersion in the practice of law, it was pragmatically finding solutions to legal problems in each particular case and with an eye to later cases, Postema, ‘Classical Common Law Jurisprudence (Part 1)’, 2-9. Sir Edward Coke saw the common law as ‘nothing else but reason which is to be understood [as] an artificial perfection of reason gotten by long study, observation, and experience,’ Coke in Berman, ‘- The Origins of Historical Jurisprudence: Coke, Selden, Hale’, 1690. During the Elizabethan age, when Coke was writing, there was a renewed interest in Ciceronian rhetoric, see Boyer, ‘Sir Edward Coke, Ciceronianus: Classical rhetoric and the common law tradition’, 4. Coke’s writings are a product of his many years of experience, crafted through Ciceronian rhetoric. The Romans held rhetoric in high esteem, it was essentially linked to *vita activa*. ‘For from eloquence the state receives many benefits, provided only it is accompanied by wisdom, the guide of all human affairs. From eloquence those who have acquired it obtain glory and honour and high esteem. From eloquence comes the surest and safest protection for one’s friends. Furthermore, I think that men, although lower and weaker than animals in many respects, excel them most by having the power of speech. Therefore that man appears to me to have won a splendid possession who excels men themselves in that ability by which men excel beasts’, Cicero, *De Inventione De Optimo Genere Oratorum Topica* (H.M. Hubbell tr, Harvard University Press 1960), 13 (I,iv).

⁵³ Boyer, ‘Sir Edward Coke, Ciceronianus: Classical rhetoric and the common law tradition’, 32.

⁵⁴ C.S. Lewis once called rhetoric: ‘the greatest barrier between us and our ancestors’, C.S. Lewis, *English Literature in the Sixteenth Century Excluding Drama* (Clarendon Press 1994), 61. Of course, death is the greatest (ultimate) barrier between us and our ancestors, but rhetoric died with them. Rhetoric has come to be

fissure between Plato and the sophists, and the current the scientific grounding of this age.⁵⁵ While rhetoric may have lost its gloss, we must be careful not uproot law from its proper base. Rhetoric and law have always belonged together, the first known teachers of rhetoric, between 471-463 BC, were teaching the first rule-based methods for handing judicial disputes.⁵⁶ Bracton's advice to move from like-to-like in law

a term of disparagement, describing the deceitful use of language, in short, it is 'the abuse of language', Peter Goodrich, *Legal Discourse Studies in Linguistics, Rhetoric and Legal Analysis* (The Macmillian Press 1987)., 85; Boyer, 'Sir Edward Coke, Ciceronianus: Classical rhetoric and the common law tradition'., 10. 'Rhetoric has had a bad press lately. Either it is thought of a poor (and somewhat shady) cousin to the noble enterprise of philosophy, or, worse yet, it is deemed to be an unprincipled form of casuistry in which the form is routinely mistaken for the substance', Sandra Berns, *To Speak as a Judge Difference, voice and power* (Ashgate 1999).,157.

⁵⁵ The fall of rhetoric can be at least partially attributed to the current scientific age, which created binary oppositions between 'true knowledge': the knowledge that exists independent of all our preconceptions and beliefs, and the partial incomplete truths: informed by our prejudices. On the one hand, we have a faithful reporting of facts untainted by personal opinions, and on the other hand, we find our rose-tinted glasses colouring our language and distorting the 'facts', see Stanley Fish, *Doing What Comes Naturally* (Duke University Press 1989)., 472-501. There is so much more to say about these debates, and the role our preconceptions have in forming our understanding. Lewis understood the importance of rhetoric, not only in the sixteenth century, but also the radical relationship the Greek world had with rhetoric: 'In rhetoric, more than in anything else, the continuity of the old European tradition was embodied. Older than the Church, older than Roman Law, older than all Latin literature, it descends from the age of the Greek Sophists.'.... 'Nearly all our older poetry was written and read by men to whom the distinction between poetry and rhetoric, in its modern form, would have been meaningless', Lewis, *English Literature in the Sixteenth Century Excluding Drama* , 61. Plato's dialogue about Gorgias also demonstrates the early entwined relationship between law and rhetoric. 'GORGIAS: I'm referring to the ability to persuade by speeches judges in a law court, councillors in a council meeting, and assemblymen in an assembly or in any other political gathering that might take place', John Cooper and D.S Hutchinson (eds), *Complete works of Plato* (Hackett Publishers 1997)., 798 (452e). Gorgias speaks about the power of the rhetorician to persuade, and Socrates is unconvinced both by Gorgias and rhetoric (reflecting Plato's views). A little later on Socrates says: 'And so an orator is not a teacher of law courts and other gatherings about things that are just and unjust, either, but merely a persuader, for I don't suppose that he could teach such a large gathering about matters so important in a short time', Cooper and Hutchinson, *Complete works of Plato* ., 800 (455b). Aristotle elevated rhetoric, showing how it was a necessary part of the art of public speaking and logical discussion, in *Rhetoric*: '...It thus appears that rhetoric is an offshoot of dialectic and also of ethical studies...Neither rhetoric nor dialectic is the scientific study of any one separate subject: both are faculties for providing arguments', Richard McKeon (ed) *The Basic Works of Aristotle* (The Modern Library 2001)., 1330 (1355b). Note, there was a wider battle between the sophists (Gorgias and Isocrates) who had always embraced rhetoric and the philosophers (Plato and Aristotle). Brian Vickers, *In Defence of Rhetoric* (2 edn, Clarendon Press 1997)., chapters 2 and 3.

⁵⁶ The first known teachers of rhetoric (Gorgias, Corax and his pupil Tisias), in the Greek Sicily, taught methods for handling judicial disputes. There were no public prosecutors, citizens had to argue their own cases in a single speech, hence the focus on being able to articulate oneself coherently, see Vickers, *In Defence of Rhetoric*., 6. See also Thomas M. Conley, *Rhetoric in the European Tradition* (The University of Chicago Press 1990). Law has always been linked to rhetoric, 16th century sources show those who studied at the Inns of Court studied Ciceronian rhetoric, and there are also many different scholarly works on rhetoric and the law from the same period, Peter Goodrich, *Languages of Law from Logics of Memory to Nomadic Masks* (Northwestern University Press 1990)., 92-93. 'When it comes to the logic of law we thus find this most basic underpinning of the method of legal science is itself, properly speaking, rhetorical. Logic is defined as the art of right definition and division', Goodrich, *Languages of Law from Logics of Memory to Nomadic Masks*.,102. We cannot embark on a detailed analysis of the fundamental relationship between law and rhetoric, much has already been written on this point, see Berns, *To Speak as a Judge Difference, voice and power*.; Goodrich, *Languages of Law from Logics of Memory to Nomadic Masks*.;Goodrich, *Legal Discourse Studies in Linguistics, Rhetoric and Legal Analysis*. ;Boyer, 'Sir Edward Coke, Ciceronianus: Classical rhetoric and the common law tradition'.

remains sound, but we would also need to turn back further still to find the source of ‘*a similibus ad similia*’ in Aristotle’s writings.⁵⁷

3. Proceeding from like-to-like has always been at the heart of legal reasoning and it persists.⁵⁸ For Bracton deciding like-cases-alike was a principle of interpretation known as the ‘equity of a statute’, which extended the statute beyond its literal words to situations of ‘equal mischief’ to those covered in the statute.⁵⁹ The equity of a statute (a form of analogical reasoning) enabled the law to extend itself into a new situation without exposing itself. In short, it provided the law with an edge to grasp to bridge the gap given by the new situation of ‘equal mischief’. Yet, there was no general theory explaining how the ‘equity of a statute’ concept worked, or how situations of ‘equal mischief’ were defined.⁶⁰ So we are left to wonder what it was that made one case of ‘equal mischief’ to warrant the application of a statute where it did not literally belong: what was ‘alike’ and why?

⁵⁷ Reasoning from the part to the part and from like-to-like can be traced to Aristotle’s works on Prior Analytics and Rhetoric, McKeon, *The Basic Works of Aristotle.*,103; Gerald J. Postema, ‘Analogical Thinking in Law’ in Douglas Edlin (ed), *Common Law Theory* (Cambridge University Press 2007).,106.

⁵⁸Judges use inductive reasoning and reasoning by analogy to decide cases. At first glance it may seem that legal reasoning requires deductive logic to apply the legal principle established to the facts of the case. The *ratio* of a case is never explicitly separated out from a previous case and applied mechanically, rather, the *ratio* (general principle) from the previous relevant case is determined by the judge in the current case from the particular facts of the prior case, Slapper and Kelly, *The English Legal System Seventeenth Edition 2016-2017.*, 502-503. Legal reasoning involves analogical reasoning from one case to another, Lloyd L. Weinreb, *Legal Reason The Use of Analogy in Legal Argument* (Cambridge University Press 2005).. Gerald Postema also shows how analogical reasoning is found throughout the legal system embedded from the medieval period, it can also be found the construction of statutes via the *ejusdem generis* doctrine, through to arguing from the example of a particular statute to broad changes (2007, p.103-104), ‘Much of legal reasoning is analogical: is case A like case B? Or instead like case C?’ Cass Sunstein, *Legal Reasoning and Political Conflict* (Oxford University Press 1996)., 62. Cass Sunstein suggests reasoning by analogy in law has four overlapping features: (a) principled consistency, (b) focus on particulars, (c) incompletely theorised judgments, and (d) principles operating at a low or intermediate level of abstraction, Sunstein, *Legal Reasoning and Political Conflict.*, 67-69. Not all legal theorists share the view of analogical legal decision-making is a learned and distinct craft. Larry Alexander and Emily Sherwin argue judges have no special-decision-making tools, rather the judges resolving disputes by analogy are intuitively perceiving similarities between cases, or they are applying rules of similarity using ordinary ways of reasoning Alexander and Sherwin, *Demystifying Legal Reasoning.*,104, 234. An interesting recent development and approach to analogical legal reasoning (ALR) has been the use of empirical data analysing U.S. maritime salvage cases to create a formal model of judicial behaviour in this area Joshua Teitelbaum, ‘Analogical Legal Reasoning: Theory and Evidence’(2015) 17 American Law and Economics Review 160.

⁵⁹ Tubbs, *The Common Law Mind.*, 40; Postema, ‘Analogical Thinking in Law’., 102.

⁶⁰ The ‘equity of a statute’ concept has been traced back to Bracton, it was widely applied in the 15th century, however, later texts (the Year Books) did not disclose any further explanations about how worked, Tubbs, *The Common Law Mind.*, 40-41.

4. A precedent can function either as a rule or an analogy depending on the similarities and differences between the present case and the precedent.⁶¹ Previous decisions which are similar to the present case are relevant, and often prove pivotal to the way in which the present case is decided.⁶² Where there are significant dissimilarities between the current case and the precedent a court may choose to distinguish a prior precedent and create a new path. The law moves from like-to-like, one of the basic elements necessary for criminal liability (mens rea) can be found through likeness. The doctrine of transferred malice shows how a defendant can be found guilty of an offence where (s)he intended the *same* crime against a different victim, e.g. where the defendant strikes X with a belt but also hits Y: *Latimer*; transferred malice cannot apply where the defendant intended a *different* offence to the one committed, so where the defendant throws stones at X but misses hitting a window: *Pemberton*.⁶³ We can trace the tides of similarities and differences gently drifting the meaning of the mens rea element for recklessness from subjective to objective and back again. To be as succinct as possible we will focus on three main movements from the *Cunningham* test for recklessness (subjective) to the *Caldwell* test (objective) and again, back to *Cunningham* via *G* (objective).⁶⁴ The Malicious Damage Act 1861 had caused some

⁶¹ Sunstein, *Legal Reasoning and Political Conflict.*, 71-72.

⁶² ‘Our common-law system consists in the applying to new combinations of circumstances those rules of law which we derive from legal principles and judicial precedents; and for the sake of attaining uniformity, consistency and certainty, we must apply those rules, where they are not plainly unreasonable and inconvenient, to all cases which arise; and we are not at liberty to reject them, and to abandon all analogy to them, in those to which they have not yet been judicially applied, because we think that the rules are not as convenient and reasonable as we ourselves could have devised. It appears to me to be of great importance to keep this principle of decision steadily in view, not merely for the determination of the particular case, but for the interests of law as a science.’ Thomas Henry Mirehouse, and William Squire Mirehouse v Frances Henrietta Rennell, Widow and Administratrix of Thomas Rennell, Clerk, deceased (1833) 1 Clark & Finnelly 527, 547.

⁶³ ‘It is common knowledge that a man who has an unlawful and malicious intent against another, and, in attempting to carry it out, injures a third person, is guilty of what the law deems malice against the person injured, because the offender is doing an unlawful act, and has that which the judges call general malice, and that is enough’ Lord Coleridge C.J. in *Latimer* (1886) 17 Q.B.D. 359, 361. ‘...the statute says that the act must be unlawful and malicious, and malice may be defined to be “where any person wilfully does an act injurious to another without lawful excuse.” Can this man be considered, on the case submitted to us, as having wilfully broken a pane of glass? The jury might perhaps have found on this evidence that the act was malicious, because they might have found that the prisoner knew that the natural consequence of his act would be to break the glass, and although that was not his wish, yet that he was reckless whether he did it or not; but the jury have not so found, and I think it is impossible to say in this case that the prisoner has maliciously done an act which he did not intend to do.’ Blackburn J in *The Queen v Henry Pemberton* (1874) (1872-75) L.R. 2 C.C.R. 119, 122.

⁶⁴ *R v Cunningham* [1957] 2 Q.B. 396; *R v Caldwell* [1982] A.C. 341; *R v G and Another* [2003] UKHL 50. There are many other significant cases, including *R v Lawrence* [1982] A.C. 510 a judgment given on the same day as *Caldwell* and it also expanded the *Caldwell* objective recklessness test. What follows cannot be a comprehensive analysis of this difficult and complex area. These examples merely the tip of the iceberg, illustrating how the law moves from like-to-like. Within these debates there are many fundamental issues which strike at the heart of the criminal justice system. When is someone blameworthy? What personal

confusion with the word ‘maliciously’, so there were many cases to refine this technical term, culminating in *R v Cunningham*.⁶⁵ It resulted in the ‘subjective’ test for recklessness, that is, the defendant would have to appreciate that there was a risk that someone’s property could be damaged and continued to do the act anyway. Parliament replaced the Malicious Damage Act 1861 with the Criminal Damage Act 1971. The new Act provided an opportunity to revisit the meaning of recklessness. Lord Diplock in *R v Caldwell* did not see why there needed to be a distinction between someone who had foreseen the risk and continued anyway and a person who had not thought about the risk to others of his act, as these were both blameworthy, and only the accused would know his/her thought processes.⁶⁶ Accordingly, the previous case of *Cunningham* was distinguished as having ‘no bearing’ on the meaning of ‘reckless’ in the new Act.⁶⁷ Lord Diplock devised a new test whereby a person would be reckless if:

(1) (s)he does an act which creates an obvious risk that property will be destroyed/damaged and (2) when (s)he does the act (s)he has either has not given any thought to the possibility of there being any such risk or has recognised that there was some risk involved and has nonetheless gone on to do it.⁶⁸ This became known as the *Caldwell* test and was seen widely as changing the test for recklessness in *Cunningham* from a subjective test to an objective standard.⁶⁹

The *Caldwell* test was applied in *Elliot v C* where a 14-year-old had poured white spirit on the floor of a shed and set it alight, destroying the shed.⁷⁰ At trial it was submitted

attributes and characteristics should the law take into account? Is the law still fair, clear and consistent if it applies different standards to different people? How do we as a society protect people from harm?

⁶⁵ Cunningham approved a definition written in 1902 by Professor Kenny: ‘In any statutory definition of crime, malice must be taken...as requiring either (1) an actual intention to do the particular kind of harm that in fact was done; or (2) recklessness as to whether such harm should occur or not (i.e., the accused has foreseen that the particular kind of harm might be done and yet has gone on to take the risk of it)’ cited by Lord Diplock in *R v Caldwell* [1982] A.C. 341, p.351; *R v Cunningham* [1957] 2 Q.B. 396, 398.

Cunningham applied *R v Pembliton* (1874) (1872-75) L.R. 2 C.C.R.119 to show how Professor Kenny’s statement also describes the current state of the law *R v Cunningham* [1957] 2 Q.B. 396, p.400. *Pembliton* interpreted ‘maliciously’, in the Malicious Damage Act 1861, to mean requiring proof of intention, ‘but were inclined to accept that intention could be shown by proof of reckless disregard of a perceived risk (*Pembliton* was also mentioned by Lord Bingham in *R v G and Another* [2003] UKHL 50; [2004] 1 A.C. 1034, 1044).

⁶⁶ *R v Caldwell* [1982] A.C. 341, 352

⁶⁷ The Criminal Damage Act 1971, s 1 *R v Caldwell* [1982] A.C. 341, 351

⁶⁸ I am paraphrasing Lord Diplock in *R v Caldwell* [1982] A.C. 341, 354

⁶⁹ Cath Crosby, ‘Recklessness - the continuing search for a definition’(2008) *Journal of Criminal Law* 313.; Kumaralingam Amirthalingam, ‘Caldwell Recklessness is Dead, Long Live Mens Rea’s Fecklessness’(2004) 67 *Modern Law Review* 491.; David Ibbetson, ‘Recklessness restored’(2004) 63 *Cambridge Law Journal* 13.; John Child and David Ormerod, *Smith, Hogan, and Ormerod’s Essentials of Criminal Law* (2nd edn, Oxford University Press 2017).. Those commenting on *Caldwell* have mostly critiqued the approach taken. A few writers have praised Lord Diplock’s approach in *Caldwell*, but they have suggested it should have been widely applied, Amirthalingam, ‘Caldwell Recklessness is Dead, Long Live Mens Rea’s Fecklessness’..

⁷⁰ *Elliot v C* (A Minor) [1983] 1 W.L.R. 939, 943-944

that the risk of setting fire to the shed, would have to have been an obvious risk to the particular 14-year-old girl in question, and thus they found her not guilty of arson.⁷¹

This decision was reversed as the *Caldwell* test required that it was an ‘obvious risk’ to the reasonably prudent man and not necessarily to the particular defendant.⁷² Goff LJ did not mask his reluctance to apply *Caldwell*, nonetheless, he felt compelled to follow the precedent of the House of Lords because the *Caldwell* decision was deemed similar to the *Elliot v C* facts.⁷³

We might feel some dissatisfaction in the way in which *Elliot v C* was decided when we compare it with the similar case of *R v G*, which also concerned children.⁷⁴ In *G*, the defendants had set fire to some newspapers in a large plastic bin causing damage costing £1 million. They were charged and convicted of arson.⁷⁵ However, the House of Lords quashed their conviction and revisited the *Caldwell* decision. The *Caldwell* decision had failed to follow the intentions of parliament, the Law Commission Report detailing how there was to be no relevant change to the mens rea proof for the offence should have been placed before the court, and the court had ‘fell into understandable but clearly demonstrable error’ in treating *Cunningham* as irrelevant to the construction of ‘reckless’.⁷⁶ Further, the House claimed the *Caldwell* decision was

⁷¹ It was not obvious to her given that she had not thought about the risk, not handled white spirit before, she was tired at the time and of low-intelligence for her age. Contrary to the Criminal Damage Act (1971), section 1(1) *Elliot v C (A Minor)* [1983] 1 W.L.R. 939, 945.

⁷² *Elliot v C (A Minor)* [1983] 1 W.L.R. 939, 945.

⁷³ ‘...I have considered anxiously whether there is any other interpretation which the court could legitimately place upon Lord Diplock’s statement of principle in *Reg. v. Caldwell* [1982] A.C. 341, which would lead to the conclusion which. I would prefer to reach, that the defendant was not reckless whether the shed and contents would be destroyed by fire. I have discovered none which would not involve what I would regard as constituting, in relation to the relevant offence, an illegitimate departure from that statement of principle.’ Goff LJ in *Elliot v C (A Minor)* [1983] 1 W.L.R. 939, 947-948.

⁷⁴ *Regina v G and Another* [2003] UKHL 50; [2004] 1 A.C. 1034.

⁷⁵ Contrary to the Criminal Damage Act 1971, section 1(1). The trial judge was bound to follow the *Caldwell* test no allowance was given for age/immaturity, the jury convicted them and the Court of Appeal dismissed the appeal, *Regina v G and Another* [2003] UKHL 50; [2004] 1 A.C. 1034-1043.

⁷⁶ Lord Bingham returned to what parliament meant by ‘reckless’ in the 1971 Act by going back to the Law Commission report and looking at why the changes were made to the legislation, he found that the *Caldwell* judgment had misinterpreted the law. ‘It cannot be supposed that by “reckless” Parliament meant anything different from the Law Commission. The Law Commission’s meaning was made plain both in its report (Law Com No 29) and in Working Paper No. 23 which preceded it, these materials (not, it would seem, placed before the House in *R v Caldwell* [1982] AC 341) reveal a very plain intention to replace the old-fashioned and misleading expression “maliciously” by the more familiar expression “reckless” but to give the latter expression the meaning which *R v Cunningham* [1957] 2 QB 396 and Professor Kenny had given to the former. In entertaining this authority as irrelevant to the construction of “reckless” the majority fell into understandable but clearly demonstrable error. No relevant change in the mens rea necessary for proof of the offence was intended, and in holding otherwise the majority misconstrued section 1 of the Act.’ Lord Bingham in *Regina v G* [2003] UKHL 50; [2004] 1 A.C. 1034, 1054. Lord Bingham also pointed to other failings in the *Caldwell* approach, the basic rule of criminal law *actus non facit reum nisi mens sit rea*, the obvious unfairness in subsequent cases bound to apply *Caldwell* and also the concerns expressed by academics and judges Lord Bingham in *Regina v G* [2003] UKHL 50; [2004] 1 A.C. 1034, 1055.

‘radical departure’ from the previous law.⁷⁷ Given both *Elliot v C* and *G* involve children, a similar act and that like-cases should-be-decided-alike we may see the different outcomes in these decisions as undesirable.

Within the doctrine of precedent, where like-cases-are-decided-alike is one of the many places where comparison first becomes visible in the legal world. All this begs the question at what point is there a break, where we can say that something is so radically different it is a new beginning and not part of a constant evolution? Why was *Cunningham* treated as irrelevant in *Caldwell*? Did Lord Diplock see too many differences where there were few? What is it that tilts the fine balance, when we decide we can no longer continue on the basis of past decisions and must instead create a new path? How similar or different does something need to be? And why exactly do like cases need to be treated alike?

5. Comparison is omnipresent in precedent and it creeps into our justification for it too.

For Ronald Dworkin between justice, fairness and due process lies integrity.⁷⁸ Integrity does the work that justice and fairness cannot in justifying precedent. Integrity explains why we do not resort to checkerboard solutions of justice where like-cases are not decided in a similar manner, even if these have an internal fairness.⁷⁹ There are certain constraints facing any judge, they must show the law in its best possible light and any new interpretation must ‘fit’ the existing legal practice and past decisions.⁸⁰ Integrity is

‘In my view the very high threshold for departing from a previous decision of the House has been satisfied in this particular case. In summary I would reduce my reasons to three propositions. First, in the *R v Caldwell* the majority should have accepted with equivocation that before the passing of the 1971 Act foresight of consequences was an essential element in recklessness in the context of damage to property under section 51 of the Malicious Damage Act 1861. Secondly, the matrix immediately preceding Law Commission recommendations shows convincingly that the purpose of section 1 of the 1971 Act was to replace the out of date language of “maliciously” causing damage by more modern language while not changing the substance of the mental element in any way. Foresight of consequences was to remain an ingredient of reckless in regard to damage to property. Thirdly, experience has shown that by bringing within the reach of section 1(1) cases of inadvertent recklessness the decision in *R v Caldwell* became a source of serious potential injustice which cannot possibly be justified on policy grounds.’ Lord Steyn in *Regina v G* [2003] UKHL 50; [2004] 1 A.C. 1034, 1058-1059.

⁷⁷ Lord Steyn in *Regina v G* [2003] UKHL 50; [2004] 1 A.C. 1034, 1062.

⁷⁸ Dworkin divides integrity into two practical principles: (1) integrity in legislation – requires those creating law keep law coherent in principle; (2) integrity in adjudication – requires those deciding what the law is and enforcing it act in a coherent manner. Integrity in adjudication explains why the past has a special power in court. ‘It explains why judges must conceive the body of law they administer as a whole rather than as a set of discrete decisions that they are free to make or amend one by one, with nothing but a strategic interest in the rest’ Ronald Dworkin, *Law’s Empire* (Hart Publishing 1998), 167.

⁷⁹ Dworkin, *Law’s Empire*, 180-183.

⁸⁰ Dworkin, *Law’s Empire*, 225-238; Costas Douzinas, Shaun McVeigh and Ronnie Warrington, ‘Is Hermes Hercules’ Twin? Hermeneutics and Legal Theory’ in Alun Hunt (ed), *Reading Dworkin Critically* (Berg Publishers 1992), 134-135. Dworkin refines constructive interpretation into 3 main stages of interpretation: (a) the pre-interpretive stage – whereby a judge selects her materials, the rules and standards of the practice are identified; (b) the interpretive stage- where the interpreter settles on a general justification for the main

not simply about repeating past decisions, it is a commitment to a common coherence and an understanding of how previous decisions should influence the present.⁸¹ It is a way of rooting new decisions (new chapters) in, fitting these together with the previous decisions (novel) of the law.⁸² Integrity is thusly a commitment displayed over time.⁸³ The thought is that we want the state to act as a moral agent with a coherent set of principles.⁸⁴ Such a commitment to coherence (integrity) still requires comparison. Judges committed to integrity justify their decisions based on certain similarities between the current case and the previous cases, or distinguish a previous case on a difference, reaching for another case which they deem similar.⁸⁵ Integrity keeps the

elements selected in the preinterpretive stage; (c) the postinterpretive stage –a reforming stage allowing the interpreter to adjust her arguments made in the interpretive stage to serve what the practice ‘really’ needs, Dworkin, *Law’s Empire*., 65-66. Dworkin concedes actual interpretation is less deliberate and consists of ‘seeing’ the dimensions of the practice, the purpose/aim of the practice, Dworkin, *Law’s Empire*., 66-67.

⁸¹ Gerald Postema identifies 6 main components of the idea of integrity. These cannot be adequately summarized here, only crudely put; nevertheless, to give the reader a flavour of these main components: (1) it is a norm of unification those bound by integrity view the community as a single moral agent, (2) integrity draws together principles and norms from past decisions: it asks for internal justification, (3) integrity seeks principles of justice and fairness, (4) integrity calls on officials and citizens to view their practice as a coherent set of principles (in a weak sense) meaning intelligible, integrity views coherence as an ideal, (5) integrity is historically situated taking past decisions as a point of departure, (6) integrity requires officials and citizens to find common, public principles of justice in their common past, Gerald J. Postema, ‘Integrity: Justice in Workclothes’ in Justine Burley (ed), *Dworkin and his critics* (Blackwell Publishing Ltd 2004)., 294-295. Postema does not simply outline Dworkin’s theory of integrity, there are many aspects where he disagrees with Dworkin’s approach, e.g. Postema suggests integrity should have a self-critical attitude which he calls ‘regret’ without this element the interpretation of our past is ‘disengaged’. Dworkin’s notion of showing the practice in its ‘best light’ sees past elements of the practice which do not fit the interpretation as ‘mistakes’ and not essential features of the practice, Postema, ‘Integrity: Justice in Workclothes’., 296-297.

⁸² Dworkin, *Law’s Empire*., 228. ‘Judges who accept the interpretive ideal of integrity decide hard cases by trying to find, in some coherent set of principles about people’s rights and duties, the best constructive interpretation of the political structure and the legal doctrine of their community. They try to make that complex structure and record the best these can be. It is analytically useful to distinguish different dimension or aspects of any working theory. It will include convictions about both fit and justification.’ Dworkin, *Law’s Empire*., 255.

⁸³ Integrity is found when we examine a person’s actions as a whole and find a commitment to a coherent moral view. In the same way, we want people to act in a principled way towards us, even if acting in a principled morally coherent way does not mean that people always act in the right way, Hershovitz, ‘Integrity and Stare Decisis’., 114. ‘Someone who acts with integrity may nevertheless do something she ought not to do from time to time. But someone who acts without integrity, someone who acts incoherently or capriciously in matters of importance, simply cannot be acting morally except by happenstance. A lack of integrity signifies a lack of a commitment to act morally’, Hershovitz, ‘Integrity and Stare Decisis’., 104,114. Courts can also display integrity through time when we examine its decisions as a whole and find a pattern of coherent and defensible decisions, Hershovitz, ‘Integrity and Stare Decisis’.,115.

⁸⁴ Dworkin, *Law’s Empire*., 166.

⁸⁵ Integrity was a third way between the formalism and realism positions. “[r]ather than avoiding the Scylla of legal realism (‘making it up wholesale’) and the Charybdis of strict constructional (‘finding the law just “there”’), [Dworkin] commits himself to both”, Fish, *Doing What Comes Naturally*., 115. Integrity was a way of reconciling Dworkin’s view of law as closed system with some liberal freedom within it, Douzinas, McVeigh and Warrington, ‘Is Hermes Hercules’ Twin? Hermeneutics and Legal Theory’.133. There are many important disagreements between Dworkin and other theorists in the field which will not be address. For instance, Douzinas et al showed how Dworkin’s theory of interpretation was an impoverished Gadamerian hermeneutics, Douzinas, McVeigh and Warrington, ‘Is Hermes Hercules’ Twin? Hermeneutics and Legal Theory’.,135. Stanley Fish and Ronald Dworkin disagreed about the difference between

narrative going, but only through comparison. The work-horse is comparison and the word ‘integrity’ is sustained by it, and yet, it would seem integrity has a binding force which comparison does not. Gerald Postema summarizes how integrity in law informs current decisions: ‘Law is a framework of practical reasoning that anchors the public justification of decisions and actions to past communal decisions and actions. This is not exclusively true of reasoning from precedent, but it is most clearly and immediately evident there. Reasoning from precedent by analogy is not mere imitation, nor is it a matter of prediction, nor some version of formal consistency. It is an evaluatively informed assessment of the normative significance of the past decision for the instant case, as well as of the significance it might hold for the future’.⁸⁶ Still, we do not simply stumble over the inherent similarity between case A and B. Similarity between this case and another is argued *for*, meaning it has to be established, it is a relational argument which can be disputed by a later case, or by another judge.⁸⁷ Similarity is not simply ‘there’ in the case for a subsequent judge to find, it is an *assessment* of which previous case is similar and significant to the present circumstances. Dworkin does not deny there are many disagreements about whether a particular rule or principle should be cited, indeed, he acknowledges ‘the argument *for* a particular rule may be more important than the argument *from* that rule to the particular case’.⁸⁸ Again, we could ask the same questions, how similar does a case need to be in order to be relevant and significant, or when can we say something is so radically different to be distinguished from previous cases? Dworkin’s argument is that despite the disagreements between judges about which rule or case applies, they all agree that earlier decisions do have a gravitational force.⁸⁹ So where does the gravitational force from previous cases come from? Law’s Neptune? Later Dworkin would say the force was a manifestation of integrity and that integrity is law’s Neptune.⁹⁰ Integrity is helpful to explain why past

‘explaining’ and ‘changing’, (see Fish’s essays on ‘Working on the Chain Gang’ and ‘Wrong Again’ in Fish, *Doing What Comes Naturally*.. The dispute has important implications for the normative aspect of Dworkin’s chain novel.

⁸⁶ Postema, ‘Integrity: Justice in Workclothes’., 312.

⁸⁷ Fish, *Doing What Comes Naturally*., 94.

⁸⁸ Ronald Dworkin, *Taking Rights Seriously* (Harvard University Press 1977)., 112.

⁸⁹ Dworkin, *Taking Rights Seriously*., 112.

⁹⁰ ‘Astronomers postulated Neptune before they discovered it. They knew that only another planet, whose orbit lay beyond those already recognized, could explain the behavior of the nearer planets. Our instincts about internal compromise suggest another political ideal standing beside justice and fairness. Integrity is our Neptune. The most natural explanation of why we oppose checkerboard statutes appeals to that ideal: we say that a state that adopts these internal compromises is acting in an unprincipled way, even though no single official who voted for or enforces the compromise has done anything which, judging his individual actions by the ordinary standards of personal morality, he ought not to have done’, Dworkin, *Law’s Empire*., 183-184. ‘Checkerboard’ is where the law treats similar situations differently, Dworkin, *Law’s Empire*., 179.

decisions should inform our current actions and why we cannot settle for checkerboard solutions. But, in asking how integrity works we fall back into the debates about similarities and differences, we fall into comparison. The questions arising from comparison seem to be of little interest. What is the relationship between comparison and integrity? How are they linked? How does comparison allow integrity to function? And why does comparison lie in integrity? These are not questions receiving too much attention. It could be just that there is little to say about comparison. But then we would have already decided its place and function as a helpful tool. Early Dworkin offers a slightly different answer to the question: *where does the gravitational force from previous cases come from?* ‘The gravitational force of a precedent may be explained by appeal, not to the wisdom of enforcing enactments, but to the fairness of treating like cases alike. A precedent is the report of an earlier political decision; the very fact of that decision, as a piece of political history, provides some reason for deciding other cases in a similar way’.⁹¹ Early Dworkin finds the gravitational pull of previous cases in the fairness of treating-like-cases-alike, that is, in comparison. The similar previous decision as history provides sufficient reason to ground the decision of a later case. Dworkin’s earlier and later positions can be reconciled, reflecting on why like cases should be treated alike: the later Dworkin finds integrity. In any case, comparison is prevalent in and thusly has some kind of relationship to these all. Yet comparison is seldom discussed. If it is at all considered, it is seen as means of transport for integrity, helpfully there to enable like cases to be treated alike, and yet not really worthy of further questioning. Why does comparison lie in and in-between justice, fairness and due-process?

6. The legal world seems saturated by comparisons. It is at the centre of every judgment. The adversarial legal system cannot function without comparison.⁹² When deciding a

Essentially, ‘checkerboard’ is where like-is-not-treated-alike. (Note, Law’s Empire was first published in 1986).

⁹¹ Dworkin, *Taking Rights Seriously*., 112-113. Dworkin distinguishes between (a) the enactment force of a precedent, which requires later judges to follow the rules/principles in the earlier cases as if these were laid down in statutes, and (b) the gravitational force of precedents, which ‘tugs on later cases that are plainly beyond the language of any such rule or principle’, Ronald Dworkin, *Taking Rights Seriously* (4th edn, Gerald Duckworth Press 1984)., 318. There is a helpful section in Dworkin’s reply to Greenwalt’s critique where Dworkin clarifies his notion of ‘gravitational force’ Dworkin, *Taking Rights Seriously*., 318-322,113.

⁹² Comparison is embedded into the language of the court room. Reformulating what the people say in the court room occurs frequently because it is a controlled sphere, discourse must follow a pre-established course, one must speak at appropriate times and in the language of the court, Goodrich, *Languages of Law from Logics of Memory to Nomadic Masks*.,193-208. Reformulation not only masks an imbalance in power between the one speaking and the one subtly correcting, but it also requires comparison. ‘Paraphrase, of course, may involve either a relation of equivalence or symmetrical substitution between elements (words,

case there is a weighing-up, a comparison, of the arguments to see whether the defence or prosecution has the stronger case. Judges often have differences of opinion in cases, there are many dissenting opinions and arguments are ‘weighed’ or ‘balanced’ against each other in law.⁹³ The idea of judges weighing-up legal arguments and past decisions is not in itself enough to guide judges in reaching decisions.⁹⁴ Again, what tilts the fine balance one way or another? What is masked in weighing-up?⁹⁵ We find comparison nestled in-between our well-worn apophthegm that like cases-should-be-treated-alike.

expressions, propositions) such that the elements *a* and *b* ‘mean the same thing’ in the relevant discourse, or a relation of implication or orientated substitutability such that the relation of substitution *a* to *b* is not the same as the relation *b* to *a*’ Goodrich, *Languages of Law from Logics of Memory to Nomadic Masks.*, 197. A number of recent studies have shown how small tweaks to what an alleged victim has said through the subsequent questioning can help create a narrative the defence wants to push, John M Conley and William M O’Barr, *Just Words Law, Language and Power* (2nd edn, The University of Chicago Press 2005), 15-38. John M. Conley and William O’Barr show how the defence lawyer cross-examining the alleged victim wanted to develop a narrative that the alleged victim was scorned and seeking revenge. To that end there is a subtle ‘upgrading’ by the defence lawyer from ‘very smug’ to ‘arrogant’ and then from ‘indifference’ to ‘cold and indifferent’ Conley and O’Barr, *Just Words Law, Language and Power.*, 33.

‘WITNESS: He had his ankle up on his knee.

LAWYER: And you say that he was very calm at that time?

WITNESS: And very smug.

LAWYER: And arrogant? Made you madder than you were?

WITNESS: It didn’t make me mad. It confused me.’ Mateosian 1995, 684 in Conley and O’Barr, *Just Words Law, Language and Power.*, 33.

‘LAWYER: He was calm and arrogant, you say?

WITNESS: Yes sir.

LAWYER: He was certainly not being very nice to you.

WITNESS: It was more an indifference.

LAWYER: He was cold and indifferent?

WITNESS: Yes sir.’ Mateosian 1995, 684 in Conley and O’Barr, *Just Words Law, Language and Power.*, 33. Following the court room comparisons we have the comparisons of judgments, which themselves are only a selective and half-written legal remembering of the relevant ‘facts’ of whatever the original detailed events which took place, Berns, *To Speak as a Judge Difference, voice and power.*, 176. Sandra Berns highlights how the facts of a case can be constructed in a multiplicity of ways leading to different legal implications, Berns, *To Speak as a Judge Difference, voice and power.*, 176-183.

⁹³ MacCormick, *Rhetoric and The Rule of Law A Theory of Legal Reasoning.*, 337.

⁹⁴ Alexander and Sherwin, *Demystifying Legal Reasoning.*, 102. Legal texts and proceedings are not simple or unitary, within legal proceedings there comes the moment: ‘when no testimony remains to be given; no argument remains to be put. All is in the balance, awaiting judgment. If the judge is to be ‘properly judicial’ she has no alternative but to act’, Berns, *To Speak as a Judge Difference, voice and power.*, 162.

⁹⁵ ‘On every side arguments are offered, this explanation rather than that, these authorities in preference to those, this truth in preference to that. At the moment of judgment, what had been fecund and plural becomes singular, unitary. Only at the moment of judgment (and only where the decision is that of a single judge) can this singularity be sustained, even for a moment. Once the judge must herself justify her decision, construct written arguments which have the potential to persuade her sister judges that her decision is proper fecundity returns as she seeks ways of justifying her decisions to others, shapes arguments and reasons which will persuade them. Generations of law students have embarked upon a quest for the *ratio decidendi*, the reason for judgment, and the single authoritative sentence that epitomises law. Yet reason is seldom, if ever, as perspicacious as this endeavour suggests. Allusion, image, the dense accretion of fact and symbol and argument, the weaving of these into a whole which (if successful) draws the mind irresistibly in a particular direction: all of these highlight the rhetorical structure of the written judgment. Those who attempt to reduce plurality to singularity are likely to be unable to capture the reasons why a particular judgment is, or is not, persuasive. Even more to the point, their efforts are likely to be frustrated by the shade and play of meaning in the judgment, the half formulated second argument, the absence of the kind of precise singularity they are seeking’, Berns, *To Speak as a Judge Difference, voice and power.*, 166-167.

Comparison is a key component of legal reasoning, we move from like-to-like within the system of precedent, whenever we apply or distinguish a case we are doing comparison. The law conceals comparison in other areas too, whenever the law talks of 'reasonableness' it is comparing. Reasonableness requires comparison, that is, a measuring-up of what was done with what could have been done to find out whether X was reasonable in the circumstances.⁹⁶ Comparison also makes its presence felt in our political sphere, where groups are demanding recognition between and within communities. Comparison is fundamental to our political lives as it is how we identify ourselves as belonging to certain groups and how we distinguish ourselves from other groups. The law could not function without comparison, and yet the legal world has not quite given comparison the attention it deserves. Despite the abundance said about comparison and law, we have not yet reached into questioning fully the stake comparison has in these matters. Comparison is somehow important for legal, moral, and logical consistency.

The attentive reader may be thinking that it is marvellous to notice the relationship between comparison and the law, but, so what? Well, that is partially my point. Comparison itself is seldom seen as significant, more often we encounter it uncritically as a useful tool. Questioning comparison is not only an acknowledgement that comparison underpins our system, it also challenges the status quo, how we find moral consistency and how we 'do' law. Questioning comparison opens-up the movement that turns the legal world. A common coherency speaks in deciding like-cases-alike. Despite all the bountiful manifestations of comparison throughout the legal world, it is somewhat baffling how it has side-stepped serious attention. Whilst the mainstream jurisprudential writings do consider judicial reasoning meticulously at length, the questioning arising from comparison has not been explored. There has been little said on the role of comparison in the law, what comparison is, or how it came to be so prolific. Given how central comparison is to law, this chapter seeks to examine the literature on legal comparisons thoroughly. The chapter seeks to explore comparison

⁹⁶ 'In the spectrum from purely descriptive to purely evaluative, "reasonable" seems to belong more toward the evaluative than the descriptive pole, not that there is no element of the descriptive in it. If I say that the care manufacturers took in manufacturing some article fell short of the care it would have been reasonable for them to take in the given setting, I am not describing the care they took or failed to take, I am evaluating the care they took. I am comparing what was done with what could have been done, and assessing whether a reasonable evaluation of the risks would have left an actor in that situation satisfied with the degree of care that was taken, or not so satisfied', Neil MacCormick, 'Reasonableness and Objectivity'(1999) 74 *Notre Dame Law Review* 1575., 1576; 1578. My emphasis added on the word 'comparing'.

through the common law tradition of practice. It is through the tradition of practice we find the space where the law and comparison are most openly and obviously present, that is, in comparative law. By using this approach, we are seeing how comparison works. We begin by asking the comparative law tradition: *what is comparison?* Moving through the literature, the paper will bring insights from philosophy and anthropology to the conversation to better understand the notion of comparison. It draws heavily on James Tully's aspectival-work on Ludwig Wittgenstein to show how comparison is a play of aspects. The argument develops building on earlier work by Igor Stramignoni showing comparison as symptomatic of a particular kind of thinking (calculative thinking). Comparative law seems to be a fitting place to begin this investigation into comparison as it is a dynamic space where comparison and law are most visibly present together, thus one would expect to find comparison addressed squarely. There are undoubtedly constraints and limitations that arise in any review of the literature. We cannot possibly address every approach to comparison. There are multiple approaches even by the same author as they each refine and develop their thoughts throughout their writings. This is not claiming to be an all-encompassing review of everything ever written on comparison. The purpose of this review is to seek out what comparison is, to find how each approach discussed thinks about comparison and the *thinking which underlies* their approach.

Familiar-games

7. Our investigation into comparison will begin with the basic features of comparison: the comparatist bringing together things in some kind of unity. If you are a functionalist you will see function as a point of friendship to bring these things together, but how does this work? For the functionalist comparatist that which needs to be the same in comparison, are that the laws selected are doing the same thing in each legal system under comparison, that they are functionally-equivalent. The presupposition at the centre of the basic principle of functional-equivalence is the *praesumptio similitudinis* principle, which assumes that every social community shares similar problems and each society solves these problems with similar results.⁹⁷ It

⁹⁷ Many societies were faced with the need to create human milk legislation after various technological advances enabled a greater separation between the female body and the milk product. One of the pivotal disembodiment moments came about with the invention of the electric breast pump [in the 1920s], it paved the way for breast milk to become a standardised product, Mathilde Cohen, 'Regulating Milk: Women and

provides some certainty by guiding comparatists employing a functionalist approach to discover similarities between legal systems. A functionalist comparatist might provide an answer to the question ‘*what is comparison?*’ by resorting to sameness of function between the different laws and systems being compared. Functional-equivalence are the pegs used to hold-comparisons-up, on the continuous washing line of the *praesumptio similitudinis* principle. Without these pegs there would be nothing for the comparatist to grasp. If laws are not functionally-equivalent they are incomparables and these cannot be usefully compared.⁹⁸ The functionalist approach falls silent on describing exactly what the nature of incomparables are and what space they inhabit? Instead, it offers a word of advice to comparatists who have found differences between systems, suggesting that they check again their search area and whether their research question was posed solely in functional terms.⁹⁹ The functionalist approach, therefore, can accommodate some difference within principle of functionality, that is, within its

Cows in France and the United States’(2017) 65 *The American Journal of Comparative Law* 469., 490. These advances created new problems for legislators. Mathilde Cohen examined the different approaches to human milk legislation in France and the United States. In France, human milk banking began in the early part of the twentieth century and was based on the earlier 1890s *Goutte de lait* movement, which provided safe cow’s milk for babies, after the Second World War, human milk banks were seen as a public health issue, funded by the French state and heavily regulated, Cohen, ‘Regulating Milk: Women and Cows in France and the United States’., 490-492. The sale of human milk is still heavily regulated and can only be processed and distributed by lactariums, human milk is a categorised as a bodily part like an organ and cannot be sold [according to Article 16-1 of the French Civil Code] Cohen, ‘Regulating Milk: Women and Cows in France and the United States’.,494. In contrast, in the United States milk banks were organised by private individuals and with limited state intervention, and with formula being seen as a more popular alternative than milk banks, Cohen, ‘Regulating Milk: Women and Cows in France and the United States’., 490-492. The United States have taken a more *laissez-faire* approach staying silent and leaving human milk exchanges unregulated, by omitting human milk from federal regulations surrounding blood and other bodily tissues implicitly the U.S. government views human milk as a food and not a bodily part, Cohen, ‘Regulating Milk: Women and Cows in France and the United States’.,495. In the 1980s post-HIV crisis the milk banks in the U.S. founded their own professional organisation the Human Milk Banking Association of North America (HMBANA) and after the U.S. government failed to regulate milk banks, they created their own voluntary guidelines, Cohen, ‘Regulating Milk: Women and Cows in France and the United States’., 496. Cohen notes many similarities in the processing of human milk and animal milk despite the ‘different regulatory frameworks in place in the United States and in France, milk banking follows in the footsteps of animal milk when it comes to quality assurance’, Cohen, ‘Regulating Milk: Women and Cows in France and the United States’., 499. These examples show how societies can be faced with similar problems (how to regulate human milk exchanges) and find different solutions based on their existing practices, laws and cultures, so, the same substance can be categorised as a food and also as a bodily part by different societies, but these societies come to similar results (processing the milk/ safeguards) through the various frameworks employed.

⁹⁸ Accordingly, functionalists claim that the basic methodological principle of all comparative law is functionality, Konrad Zweigert and Hein Kötz, *An Introduction to Comparative Law* (Tony Weir tr, 3rd edn, Clarendon Press 1998)., 34. Functionalism was seen as a radical twentieth century ‘scientific’ break-through in comparative law, allowing for a greater understanding of ‘context’ by examining closely the function of legal rules, Annelise Riles, ‘Wigmore’s Treasure Box: Comparative Law in the Era of Information’(1999) 40 *Harvard International Law Journal* 221., 228. The nineteenth century definition of law have been much more narrow law as rules approach, containing non-scientific groupings of legal systems, and would often come back with ‘no law’ in foreign legal systems, Riles, ‘Wigmore’s Treasure Box: Comparative Law in the Era of Information’.,228. See also Laura Nader, ‘Law and the Theory of the Lack’(2005) 28 *Hastings International & Comparative Law Review* 191. (infra).

⁹⁹ Zweigert and Kötz, *An Introduction to Comparative Law*., 40.

sphere. Still, we might be left with a sense of dissatisfaction with this explanation of comparison. Why is it that function matters above-all in comparison? What makes function the queen of comparison, deciding what is comparable and its very absence determining incomparability between objects? Can functionalism accommodate a radical difference outside the sphere of recognised functional sameness? What is function? And how is function related to the thing? These questions seem too obvious to warrant any further consideration.

8. We know that all things are said to have characteristics, properties, or aspects, and that these belong to things. Just like oak's mightiness might be a property making it useful for construction, so it seems function too, is somehow an aspect of a legal thing enabling comparisons to take place. Saying function is an aspect of a thing and helpful for comparison is almost not worth saying, it is all too evident. But if aspects belong to things and we are only comparing functional-equivalent things, then, there must also be other aspects also belonging to the thing - which are not included in the comparison? Where go they go? And where do they reside anyway? What kind of relationship do the aspects have with the things? Are the aspects inside the material thing, in its thingliness? Or external to the thing? With these questions in mind we might reform our view to take into account the other aspects not shown in the comparison.

The *tertium comparationis* binds together the aspects coming into focus in the comparison and the reasons for the comparison. It is a Latin term meaning the third element in comparison and in a comparable manner/comparably, there are usually multiple *tertium comparationis*.¹⁰⁰ So we might want to say, where certain aspects of the things under comparison are not the focus of the comparison, these *fade* into the background and are *concealed* by the comparison. The implications of this view are (a) every comparison focuses on a certain aspect of the things under comparison, (b) the same things can be found to be different or the same depending on the aspects which come into focus. Even within a thing there are a variety of different aspects being concealed and revealed: to point to a piece of paper's shape and then colour is to point

¹⁰⁰ Oxford English Dictionary, "*tertium comparationis, n.*" (Oxford University Press). The *tertium comparationis* are a direct result of what matters to the comparatist Jansen Nils, 'Comparative Law and Comparative Knowledge' in Mathias Reimann and Reinhard Zimmerman (eds), *The Oxford Handbook of Comparative Law* (Oxford University Press 2006)., 312-314. The *tertium comparationis* are covering values which usually take the form of x is 'better than', 'as valuable as'/'worse than' y with respect to V (covering value) Ruth Chang (ed) *Incommensurability, Incomparability, and Practical Reason* (Harvard University Press 1997).

at the *identical thing* and mean something different.¹⁰¹ Where is the colour? Where is the shape? Without the comparatist would there be aspects? Comparison can thusly be seen as a game of bringing to light different aspects of the things under comparison. The way in which similarities show themselves by cropping-up and disappearing from view when other aspects are brought to the foreground are called *family resemblances* as these are like resemblances between family members.¹⁰²

9. The politics of cultural recognition was coined by James Tully to describe the constitutional problem of cultural diversity. Our political sphere is peppered with different voices calling for recognition.¹⁰³ The *spirit of Haida Gwaii* evokes a sense of belonging that also recognises diversity. Relatedness and mutual recognition seem key features of identity.¹⁰⁴ Tully demonstrates how cultural identity changes as approached, different aspects come into view, the identity and meaning of any culture is *aspectival* rather than *essential*.¹⁰⁵ Cultural identity and truth flows, it is contested and constantly re-imagined depending on which aspects are coming into view. Many comparatists also share the kaleidoscope of aspects, recognising the co-presence of similarities and differences within the legal cultures, traditions, and mixed-families. David Nelken presents legal culture as contested, fragmented, consisting of sedimented historical memories, traditions and any claim to coherence or unity is projected by the outsider onto the culture.¹⁰⁶ It acknowledges that great care must be taken when employing the

¹⁰¹ This point can be further illustrated by Wittgenstein; ‘Point at a piece of paper. –And now point at its shape–now at its colour –now at its number (that sounds odd). –well, how did you do it? – you’ll say that you ‘meant’ something different each time you pointed. And if I ask how that is done, you’ll say you concentrated your attention on the colour, the shape, and so on. But now I ask again: how is *that* done? Suppose someone points to a vase and says “Look at the marvellous blue – forget about the shape”. Or: “Look at the marvellous shape – the colour doesn’t matter.” No doubt you’ll do something *different* in each case, when you do what he asks you. But do you always do the *same* thing when you direct your attention to the colour?” Ludwig Wittgenstein, *Philosophical Investigations* (G.E.M. Anscombe, Hacker P.M.S. and Joachim Schulte trs, 4th Edition edn, Blackwell Publishing 2009).,16e, pa.33.

¹⁰² Whether it is ‘build, features, colour of eyes gait and temperament, etc. etc. overlap and cross-cross in the same way – And I shall say: ‘games’ form a family.’ Wittgenstein, *Philosophical Investigations* , p.32e pa.67

¹⁰³ A multitude of groups and political activities have been calling cultural diversity into question: such as nationalist movements, supranational associations, ethnic minorities, intercultural demands, feminist movements etc, James Tully, *Strange Multiplicity Constitutionalism in an age of diversity* (Cambridge University Press 1995).,2-11.

¹⁰⁴‘This *Xuuya* play is orchestrated by the endless juxtaposition of these diverse and interrelated creatures, the identity of each consisting in the innumerable ways it relates to and interacts with the others. As the assemblage ways it relates to and interacts with the others. As the assemblage is viewed from one point of view, certain aspects are recognised and they give a vision to the whole.’ Tully, *Strange Multiplicity Constitutionalism in an age of diversity*., 204-205.

¹⁰⁵ Tully, *Strange Multiplicity Constitutionalism in an age of diversity*.,11.

¹⁰⁶ David Nelken, ‘Defining and Using the Concept of Legal Culture’ in Esin Örücü and David Nelken (eds), *Comparative Law* (Hart Publishing 2007)., 114-120.

concept of culture as it is easy to fall into making other cultures seem either necessarily similar or intrinsically ‘other’. Similarly, the mixed legal families maintain that all systems are mixed hybrids and constantly blending and melting and solidifying into new shapes.¹⁰⁷ The legal traditions approach also views tradition as continuously fluid information without borders, but with a stable core.¹⁰⁸ Traditions contain varying and conflicting views, that the traditions are constantly in contact with each other and that they are therefore characterised by a toleration of different views.¹⁰⁹ There can be no pure identities or pure traditions, for difference implies isolation and legal traditions are in constant contact with each other.¹¹⁰ The common strand for comparison to take place is the comparatist must decide what to include or what to exclude.

10. Questions have been asked of functionalism and mainstream comparisons in ever new and creative ways.¹¹¹ Pragmatically, functionalism has been found wanting for being too ambiguous to ground the comparison, not distinguishing sufficiently between the intended function of a legal rule and its actual consequences.¹¹² The legal origins approach responded to the indeterminacy by using regression analysis to provide empirical data about the efficiency of legal rules.¹¹³ This response created other

¹⁰⁷ Esin Örücü, ‘Developing Comparative Law’ in Esin Örücü and David Nelkin (eds), *Comparative Law* (Hart Publishing 2007), 180.

¹⁰⁸ Patrick Glenn, *Legal Traditions of the World* (4 edn, Oxford University Press 2010), 13; Patrick H Glenn, ‘Are Legal Traditions Incommensurable?’ (2001) 49 *The American Journal of Comparative Law* 133, 140; Patrick H Glenn, ‘Doin’ the Transsystemic: Legal Systems and Legal Traditions’ (2005) 50 *McGill Law Journal* 863, 897.

¹⁰⁹ Glenn, *Legal Traditions of the World*, 50.

¹¹⁰ ‘Since tradition is best defined as information, however, the (slightest) contact with another tradition implies a variation in the information base of the initial tradition. Its overall identity is no longer what it was, in the sense that the totality of information available to it has expanded. The bran-tub is larger. Given any form of contact between traditions, the overall identity of each becomes non-exclusive; each contains elements of the other, which may find support in the various tendencies in the receiving tradition. In today’s world there are therefore no pure identities of tradition’, Glenn, *Legal Traditions of the World*, 35.

¹¹¹ Comparative lawyers have been described by some in the field (usually by critical comparatists) as falling into two broad camps. The ‘mainstream’ adopt a formalist, legal positivist notion of legal validity and strive for neutrality and objectivity, and then there are ‘critical’ comparatists, Günter Frankenberg, *Comparative Law as Critique* (Edward Elgar Publishing Limited 2016), 6-7. See also Simone Glanert and Pierre Legrand, ‘Law, Comparatism, Epistemic Governance: There Is Critique and Critique’ (2017) 18 *German Law Journal* 701.. There are also many more comparatists unhappy with the mainstream and for many different reasons. These debates within the field are important, but there is not the space to make the case for each view fully in this article.

¹¹² Christopher Whytock, ‘Legal Origins, Functionalism and the Future of Comparative Law’ (2009) *Bingham Young University Law Review* 1879, 1889.

¹¹³ By distinguishing between a legal rule’s *intended* function and its *actual* consequences we are able to tell if the legal rule has fulfilled its function, Whytock, ‘Legal Origins, Functionalism and the Future of Comparative Law’, 1890. The legal origins approach was developed by the economists Rafael La Porta, Florencio Lopez de Silanes, Andrei Schleifer, and Robert W Vishny following a study they conducted in 1997 based on investor protection, Rafael La Porta and others, ‘Law and Finance’ (1998) 106 *Journal of Political Economy* 1113.; Rafael La Porta, Florencio Lopez-de-Silanes and Andrei Shleifer, ‘The Economic Consequences of Legal Origins’ (2008) 46 *Journal of Economic Literature* 285.; Edward Glaeser and Andrei

difficulties in the field, it changed comparative law from an exploration of similarities and differences between system into a ranking of legal systems.¹¹⁴ The mainstream has long been a brutish tool, unwitting and unreflective about its situatedness within the broader political discourse and its own entanglement with the Cold War.¹¹⁵ Mainstream comparative law propped up colonialism with its myth of the ‘lack’, based on an Anglo-European-centric understanding of law.¹¹⁶ Owing to these roots, the field has wrestled with itself, the functionalist presumption of sameness has been exposed for its suppression of difference.¹¹⁷ Many critical comparatists have pushed-back against the mainstream, claiming it adopts an unreflective, Anglo-European,

Shleifer, ‘Legal Origins’(2002) 117 The Quarterly Journal of Economics 1193.. The need for precision regarding what is measured and how it is measured can be traced back to one of the purposes of comparison, which is to find better law. Comparison can be used to borrow or transplant law from one legal system to another. This is rooted in the idea that we all face similar problems, though we might solve these in different ways, one of these ways may be better than the current system and we should apply that better solution, Zweigert and Kötz, *An Introduction to Comparative Law.*, 1-62. This need for simplicity and certainty has created this new trend using numerical data as the basis for comparisons, and a corresponding push-back against it. See Ralf Michaels opening a dialogue between the legal origins approach and comparative law Ralf Michaels, ‘Comparative Law by Numbers? Legal Origins Thesis, Doing Business Reports, and the Silence of Traditional Comparative Law’(2009) 57 The American Journal of Comparative Law 765..

¹¹⁴ ‘In this vision, legal systems, like academic institutions, restaurants, or phone companies, can be chosen according to their position in the ranking, where the most powerful and rich are invariably on top, thereby objectifying their assumed superiority and blaming the inferiority on the inferior just like poverty is blamed on the poor by the institutions that sponsor this kind of consumer-based approach’ Ugo Mattei, ‘The Cold War and Comparative Law: A Reflection on the Politics of Intellectual Discipline’(2017) 65 The American Journal Comparative Law 567., 606; 605-607.

¹¹⁵ Ugo Mattei also drilled down into those sponsoring comparative law projects, the types of projects being funded and the relationship of the work produced with the political agenda of containment, e.g. the Ford Foundation funding various projects, including the Cornell project on the ‘common core of legal systems’, Mattei, ‘The Cold War and Comparative Law: A Reflection on the Politics of Intellectual Discipline’., 578; 567-572; 607. ‘The Cold War phantom has triggered a massive investment in the so-called annexation of social sciences and in the creation of the international and area studies programs in the United States. My claim is that comparative law came of age the way it did, not only “within” the ideological effort of containment, but more precisely “because of” this capitalist effort to protect itself’, Mattei, ‘The Cold War and Comparative Law: A Reflection on the Politics of Intellectual Discipline’., 579. (Note, also there has been a debate for many years in comparative law circles about the reduction of the field merely to a method – Geoffrey Samuel, ‘Comparative law and its methodology’ in Dawn Watkins and Mandy Burton (eds), *Research Methods in Law* (Routledge 2013)., 100).

¹¹⁶ Laura Nader reminds us of the justifications for the Anglo-European colonial and imperial expansion project: the ‘lack’, the other lacked law, and helpfully it was a ‘lack’ which could be corrected by those inventing its presence. Nader shows how the ‘lack’ provided a justification for the colonial appropriations of lands from the Native Americans, for the British Crown the land was vacant: *Terra Nullius*. ‘Native Americans lacked: they were not capable of holding territorial title, property rights, or jurisdiction over their land. So when the British Crown assumed sovereignty over all American territory they asserted full title and complete jurisdiction as if it were a vacant country’, Nader, ‘Law and the Theory of the Lack’., 194. The ‘lack’ was created and grounded in a particular understanding of ‘law’ and ‘civilised’ people made by comparison. Nader’s argument demonstrates how the ‘lack’ was also applied to other civilizations: including China and Iraq, and also to Islam, Nader, ‘Law and the Theory of the Lack’., 197-204.

¹¹⁷ Pierre Legrand, ‘The Return of the Repressed: Moving Comparative Studies Beyond Pleasure’(2000-2001) 75 Tulane Law Review 1033.,1048-1049;Pierre Legrand, ‘the same and the different ’ in Pierre Legrand and Roderick Munday (eds), *Comparative Legal Studies: Traditions and Transitions* (Cambridge University Press 2003)., 249;288.

positivistic, and rules-based outlook.¹¹⁸ Underpinning mainstream comparison is a misplaced narrow understanding of ‘progression’ which is couched in the calculative language of mathematics, economics and efficiency, a ‘progression’ which displaces culture.¹¹⁹ Pierre Legrand’s stance against sameness, legal transplants and the uniformisation of laws is persistent and political.¹²⁰ This view is tied this cultural approach’s understanding of place as never static or immobile, but rather, it is a dynamic constituent of legal meaning.¹²¹ The understanding of legal culture is understanding the legal *mentalité*, that is, the cognitive structure holding the culture, the underlying assumptions and attitudes of the legal culture.¹²² To the question ‘*what is comparison?*’ we may get an answer based on the suppression of difference and formalist/shallow understanding of law that does not see the role of place as dynamic, constructing our understanding. But can the cultural approach account for sameness? Or are any claims to sameness in some-way a misunderstanding and failing to hold true? Can there ever be a like-case-treated-alike, for the cultural approach, or will this sameness inevitability be at the expense of the recognition of difference? What would this mean for consistency?

11. The differing approaches to comparison are the different-games, bringing-out different family resemblances between the things being compared. The functionalist comparatist shines a torch on function, while at the same time concealing certain other aspects of the systems being compared. The teleological approach highlights and clarifies the

¹¹⁸ Frankenberg, *Comparative Law as Critique*. ; Legrand Pierre, ‘Jameses at Play: A Tractation on the Comparison of Laws’(2017) 65 *The American Journal Comparative Law* 1.

¹¹⁹ Legrand shows how economics is also embedded in culture and its language is a product of its culture, Pierre Legrand, ‘Econocentrism’(2009) 59 *University of Toronto Law Journal* 215., 216-217.

¹²⁰ Legrand also critiques comparative law on the basis that it seeks to ‘pursue the ideal of impartiality by reducing differences in the lifeworld of the law to calculative and instrumental unity, effectively privileges a situated standpoint-that favouring competition and productivity, regulation and juridification-which it allows to project as universal’ Legrand, ‘The Return of the Repressed: Moving Comparative Studies Beyond Pleasure’., 1050.

¹²¹ Legrand, ‘Econocentrism’., 215.

¹²² For Legrand, the *mentalités* of the common law and civil law differ, they are not converging and convergence is undesirable. In this article, he distinguishes between English legal *mentalité* and the civil law *mentalité*. Legrand notes differences in the approach to legal reasoning. English legal systems use inductive/analogue reasoning and empirical/metaphorical notions such as ‘neighbour’ ‘life-in-being’, whereas civil law with its Roman legacy offers an intellectual scheme that classifies the law differently transcending the raw facts of case, civil law reasoning is institutional. The role of custom differs from English legal *mentalité* to civil law *mentalité*; the past is always part of the present in the system of Precedent, whereas Roman law was codified so we can always point to specific time. There are also many other ways the *mentalités* differ; the significance of systematisation, the character of rules, the role of facts, the present of the past, etc. Pierre Legrand, ‘European Legal Systems are not Converging ’(1996) 45 *International and Comparative Law Quarterly* 52., 60-78.

goals the society pursues.¹²³ The defence and prosecution all have in mind a goal for their comparisons, whether it is emphasizing an English precedent, or reaching for another jurisdiction to support their argument. A comparatist working on a unification project is more likely to emphasize the sameness, whereas other comparatists maintain that legal cultures are incommensurable, and would therefore see no significant similarities between the legal systems under comparison because we are all rooted in place.¹²⁴

12. There is a question about the kind of truth disclosed through comparison begging to be asked. For Joseph Raz only incommensurability is in truth because judgments do not say something independent of our valuation, ranking aspects only determines a relative value, it does not get to a deeper truth.¹²⁵ Incommensurability is a space where we can say that neither options are better or worse than each other, or equal to one another.¹²⁶ It is not another valuation of the relative merits and demerits of different aspects, rather it is a rejection of the applicability of such judgments to the aspects in question. It marks the inability of reason to guide our actions. Incommensurability ‘speaks not of

¹²³ James Gordley, ‘Comparison, Law and Culture: A Response to Pierre Legrand’(2017) 65 *The American Journal Comparative Law* 133., 142. James Gordley uses James Whitman’s work on privacy to demonstrate how the teleological approach works: ‘The object of Whitman’s study of privacy is to clarify the goals that European and American societies are pursuing. If the members of these societies were fully aware of them, they would need no clarification, and Whitman would be pointing out the obvious. By clarifying them, Whitman’s study enables members of these societies themselves to understand their goals better. By better understanding their goals, they should be better able to achieve them. Consequently, the teleological approach not only describes these goals but also enables an internal critique of how a society pursues them. One can ask, for example, where a law or judicial decision actually contributes to achieving these goals.’ Gordley, ‘Comparison, Law and Culture: A Response to Pierre Legrand’., 142; James Whitman, ‘The Two Western Cultures of Privacy: Dignity Versus Liberty ’(2004) 113 *Yale Law Journal* 1151.

¹²⁴ It is the appreciation of place as forming understanding leading to Legrand to argue that there is no common ground between legal systems because we cannot overcome estrangement of spatial dislocation. Place as never static or immobile, but rather, it is a dynamic constituent of legal meaning. Place is the out of which law emerges and law is thusly rooted in place – it dwells in place, see Legrand, ‘Econocentrism’., 215-216. This is an important insight into how place constructs our understanding is overlooked by the functionalist mantra, where place is implicitly viewed as inconsequential, and thus we can strip back the law to see it simply satisfying a particular need. Consequently, this cultural approach sees legal transplants as embracing a shallow, formalistic understanding of law, which reduces the legal to rules, Pierre Legrand, ‘The Impossibility of ‘Legal Transplants’’(1997) 4 *Maastricht Journal of European & Comparative Law* 111. These views are consistent with the understanding that meaning is place-based thus one necessarily understands *differently* to a native lawyer so that a ‘meaningful’ legal transplant cannot occur; that you cannot translate a law without changing its meaning, Legrand, ‘The Impossibility of ‘Legal Transplants’’.; Gary Watt, ‘Comparison as deep appreciation’ in Pier-Giuseppe Monateri (ed), *Methods of Comparative Law* (Edward Elgar 2012)., 82-83. The other law is his understanding of the other law, his reading of that law which is necessarily different from a native because of our situated understanding.

¹²⁵ Joseph Raz, *The Morality of Freedom* (Clarendon Press 1986)., 327.

¹²⁶ Raz, *The Morality of Freedom*., 324, 332.

what does escape reason but of what must elude it'.¹²⁷ Questions of comparability clearly raise further questions about the implications for practical reason. Can comparison belong beyond the sphere of comparatist's wilfulness or assertions of comparability? Does comparison seek truth as correctness? Does the judgment of sameness from a comparison hold true in the same way that the boiling point of water is 99.98 °C corresponds to the actuality? What causes incommensurability? What kind of truth does it hold? We will leave this questioning pending for now.

13. We can only catch-up with the unasked in comparison if we slow down further what has been said. *What is comparison?* It is an aspectival-game whereby certain similarities between things are cropping up or disappearing depending on which aspects comparatists are highlighting but that these have no common properties. *Is that our answer?* Bringing out this aspectival relationship is an important insight exposing something about comparison. But the aspectival-game raises more questions about comparison than it answers. For one, what is an aspect? If it is the case that all things consist of aspects; how many honeycombed aspects make up a thing? Are aspects infinitely divisible? Will there forever be another aspect escaping our account?¹²⁸ What is the precise nature of the relationship between the thing and properties? What is a thing? What is the relationship between comparison and the various things comparison has been linked to whether it is function, efficiency or free-flowing information? How is function linked to the thing? Where does function reside? Inside the thing? Outside it? This is still mysterious to us. The aspectival-game thesis still does not explain how, when and why did function, or efficiency become linked to comparison?

14. If we pull at this aspectival thread a little more we will see that the things, the functional-equivalent things that comparatists cling their comparisons on fall away. Our aspectival-games have not halted our questioning. Our questioning of aspects has inevitably pushed us back into the questioning of identity of the things being compared and on the *Being* of the things being compared. *The spirit of Haida Gwaii* moved Tully in a certain way as to show how we can think the demands for constitutional

¹²⁷Raz, *The Morality of Freedom.*, 334. Its mark is a failure of transitivity aRb, bRc, aRc . A is not necessarily connected to C - this does not follow. Raz, *The Morality of Freedom.*, 323.

¹²⁸ Marilyn Strathern calls this problem the perception of increaseable complication – there are always more things for the comparatist to know. Any account produced will only ever be incomplete, we can only ever partially describe individuals/classes/relationships, Marilyn Strathern, *Partial Connections Updated Edition* (AltaMira Press 2004)., xiv.

recognition through the work.¹²⁹ The work opened up a multiplicity of paths to think culture as never fixed but constantly in movement and shifting depending on how we approach it, we will see it differently. Tully's thoughtful engagement with *The spirit of Haida Gwaii* gives us a fruitful way of thinking comparison and cultural identity as constantly in flux, a dance of aspects. But it also provides us with further food for thought. Does cultural identity amount to shifting aspects? Do Cézanne's *Card Players* amount to specks of blue, yellow, red and white paint? Is it the different aspects that move us in the work of art?

15. The aspectival-games require the subject to grasps aspects, and in doing so, (s)he approaching identity in one-way and then another, following from this, the claims made by comparison are in some way linked to and in agreement with the perceived thing. How the perceived and comparison are in agreement is still somewhat ambiguous. There seems to be (1) a drawing out of certain properties of the things under comparison, (2) a joining of these properties back onto each of the things and (3) a judgment of some kind linking properties and things to each other. Thusly, comparison cannot be wholly dependent on the perceived things. The comparatist is drawing out the aspects and making a judgment. A judgment grounded in correctness and somehow in agreement with the perceived. Precisely how the aspects are linked to the perceived or what truth these hold is still not clear. Are aspects there in the thingliness of the thing? Or do the aspects make up the perceivedness of the perceived (thing)? How does the perceivedness of the thing belong to the thing? Or does the perceivedness belong to the comparatist?

The difference

16. The aspectival-games are highlighting what seems to be the language of comparison. It is immersed in a language of aspects, whether functional aspects, or cultural aspects, or examining the efficiency aspect. The highlighting of particular aspects and the simultaneous hiddenness of other aspects. There is nothing remarkable about our language of aspects, of treating legal-systems as things to be grasped by subjects. It is commonplace. It is 'commonplace' quite literally, that is, the *place* where legal space

¹²⁹ Tully, *Strange Multiplicity Constitutionalism in an age of diversity*.

takes place. The problem of aspects and the classification of legal systems is the question of legal space, it is the placing of legal thought, that is, where legal thought takes place.¹³⁰ The placing of legal place is the old problem of the subject-object thinking. The mainstream is full of boxes, there is a box for every-thing: legal traditions, legal cultures, legal families, and even mixed-legal families.¹³¹ Igor Stramignoni diagnoses this problem of ‘boxing’, that is, the obsession to map-out and categorise space as an instance of the ‘all too crazy but all too human will to power’.¹³² ‘By thinking the way we do, we put the world into “boxes” (categories and concepts, territories or *corpora*) but then we end up treating them as natural or real or else as essentially or structurally true – thus forgetting or ignoring the unique being they originally are’.¹³³ Boxing is itself an instance of a kind of thinking concerned with measuring out, a kind of instrumental and calculating thinking, which is prevalent in mainstream comparative law and the western legal tradition.¹³⁴ Calculating thinking dominates the meaning that is there, by deciding *in advance* the approach.¹³⁵ There is a tension within comparison, on the one hand, the reflexive turn has brought new insights, myth of the solitary single comparatist and the one unitary culture has died; we now understand that we cannot represent another culture but only provide a connection it, we understand that cultural identity is fleeting – evasive - in movement,

¹³⁰ Igor Stramignoni, ‘Categories and concepts: mapping maps in Western legal thought’(2005) International Journal of Law in Context 411., 419-423.

¹³¹ There are many writings dedicated to the indeterminacy of the concepts and components of comparison. These writings interrogate various vague concepts such as culture to justify its usefulness in comparison. Culture has also been critiqued as an ambiguous box full of miscellaneous objects, Roger Cotterrell, ‘Comparative Law and Legal Culture’ in Mathias Reimann and Reinhard Zimmerman (eds), *The Oxford Handbook of Comparative Law* (Oxford University Press 2006).,725. At times, culture includes both ideas and behaviour whereas the concept of tradition is seen as a clearer because it is focusing only on information (ideas), William Twining and others, *A Fresh Start for Comparative Legal Studies? A Collective Review of Patrick Glenn's Legal Traditions of the World, 2nd Edition* (2006)., 109-110. This may be why legal traditions are seen as the dominant paradigm, Mathias Reimann, ‘The progress and Failure of Comparative Law in the Second Half of the Twentieth Century’(2002) 50 The American Journal of Comparative Law 671.,677. Legal traditions have a *point of origination*, then there is a *capture* (in memory or writing), thirdly subsequent access and application, and lastly this is followed by a *recapture* of the information of the application, Patrick H Glenn, ‘A Concept of Legal Tradition’(2008-2009) 34 Queen's L J., 435. However, the idea that traditions can be *captured* is problematic, to *capture* traditions requires a ceasing which changes the nature of fluid continuously changing flowing traditions. The mixed legal families also found a similar solution this problem of indeterminacy, namely, by fixing the molten legal systems that cool down and solidify into new shapes, Örücü, ‘Developing Comparative Law’.,180. The solidification of the objects of comparison allows for the comparison to take place by allowing for a certain object to be grasped by the comparison. The talk of indeterminacy and ambiguity in comparison are symptoms of ‘boxing’. Boxing arises through the traditional subject-object thinking and is itself caused by a certain comportment towards ‘things’.

¹³² Stramignoni, ‘Categories and concepts: mapping maps in Western legal thought’., 422.

¹³³ Stramignoni, ‘Categories and concepts: mapping maps in Western legal thought’., 420.

¹³⁴ Igor Stramignoni, ‘Meditating Comparisons, or the Question of Comparative Law’(2003) 4 San Diego International Law Journal 57., 63-65.

¹³⁵ Stramignoni, ‘Meditating Comparisons, or the Question of Comparative Law’., 63.

and yet, we still drive to model nature: it is composed of a multiplicity of entities.¹³⁶ There is still a repetition of the same kind of thought driving comparison.

17. It is not just that comparison assumes that the aspects are there for the comparatist to grasp, calculating thinking acknowledges the stake the comparatist has within this horizon. The comparatist *steers* the meaning through the bringing-together of the different aspects of things under comparison. It is the comparatist steering comparability and (un)making meanings of things/places through the comparison.¹³⁷ It may sound obvious: we make and we unmake comparison, but, it is important and perhaps far from inevitable. The mainstream does not recognise the extent to which the comparatist is (un)making the meaning of things because this kind of thought is so pervasive. In proceeding in this way, the literature fails to recognise that an extant entity becomes an object only when it is being objectified *by* a subject.¹³⁸ This means that objects are not there but for the subject doing the objectifying. Accordingly, aspects only become aspects when we have a subject drawing out aspects in extants, representing these as belonging to each of the extants and making a judgment. Aspects are therefore *being objectified* by a subject.
18. One of Heidegger's most important breakthroughs was his understanding that the perceivedness of a thing does not belong to subject or the object, instead it belongs to *Dasein*'s intentional comportment.¹³⁹ *Dasein* (Being-there) is not simply a replacement for the word human, it is the Being that we *are*.¹⁴⁰ We are distinguishable from other beings because we live in the understanding of Being, in contrast to extants (existing things). We always-already understand extants in their Being because we comport ourselves towards them. With this insight, Heidegger dissolved the traditional subject-object problem within the tradition. We cannot find the perceivedness of the perceived within the extant. It is not a *real* (*what*-content) part of the thing. No-thing is added to

¹³⁶ Strathern, *Partial Connections Updated Edition.*, 7-15.

¹³⁷ Oren Ben-Dor, 'The Gravity of Steering, the Grace of Gliding and Primordiality of Presencing Place: Reflections on Truthfulness, Worlding, Seeing, Saying and Showing in Practical Reasoning and Law' (2012) 26 International Journal for the Semiotics of Law 341., 352 pa.34, 366 pa.76.

¹³⁸ An extant means the way of being of natural things - being-extant/being-at-hand/ vorhandensein, Martin Heidegger, *The Basic Problems of Phenomenology* (Albert Hofstadter tr, Indiana University Press 1988)., 28;157.

¹³⁹ Heidegger, *The Basic Problems of Phenomenology.*, 69.

¹⁴⁰ Martin Heidegger, *Being and Time* (J Macquarrie and E Robinson trs, Blackwell Publishing 2011)., 67-71.

the extant when it is perceived. Instead, the ‘extant *is* the perceived’.¹⁴¹ Accordingly, Heidegger located the perceivedness not in the subject, but in *Dasein*’s intentional comportment toward extants allowing us to apprehend beings in their Being.¹⁴² Our intentional comportment allows us to uncover the extantness of extants, beings in their Being. A being can only be uncovered if it is already understood in its Being.¹⁴³ The distinction between Being and being it is not simply an empty repetition. We always-already understand beings in their Being, we ek-sist already understanding the ontic-ontological distinction. Being is not a *thing* that can be grasped, it is always the Being of a being – it has an ontical foundation.¹⁴⁴ Thinking ontologically, thinking the Being of beings always involves the ontic as the only way through to the ontological.¹⁴⁵ The ontic is necessary ‘because’ Being withdraws. Paradoxically Being is nearest to us, but the ontic is most accessible to us.

What has the ontic-ontological to do with comparison? We have already noted the language of comparison that it is in a certain way approaching extants as aspects to be brought together by the comparatist. Comparison is still located with the subject-object framework, whereby, it is the comparatist’s representations of beings that counts and we slide from one comparatist’s representation to another in each comparison-game. The kind of togetherness within comparison is the togetherness sought by the comparatist. The comparatist makes the belonging-*together*, through togetherness. It is the kind of belonging that thinks the togetherness first, as knotting together by the subject.¹⁴⁶ Therefore, comparison seems to be only concerned with making ontic inquires, we are seeing the extants as an instance of functional-equivalence (doing-the-same-thing) or an instance of information.¹⁴⁷ So while there is no ontological without the ontic, it is difficult to see how comparison allows for thinking Being, thinking the *ontological-difference* when the demands of comparison require the comparatist to steer meanings of ontic aspects. It seems comparison fails to address the *ontological-*

¹⁴¹ Heidegger, *The Basic Problems of Phenomenology*., 69.

¹⁴² Heidegger, *The Basic Problems of Phenomenology*., 70.

¹⁴³ Heidegger, *The Basic Problems of Phenomenology*., 72.

¹⁴⁴ Heidegger, *The Basic Problems of Phenomenology*., 19.

¹⁴⁵ Oren Ben-Dor, *Thinking about law in silence with Heidegger* (Hart Publishing 2007)., 60-61.

¹⁴⁶ Martin Heidegger, *Bremen and Freiburg Lectures* (Andrew Mitchell tr, Indiana University Press 2012).,112.

¹⁴⁷ Ontic inquiries are primarily concerned with entities and the facts about them, Heidegger, *Being and Time*., 3; Ben-Dor, ‘The Gravity of Steering, the Grace of Gliding and Primordiality of Presencing Place: Reflections on Truthfulness, Worlding, Seeing, Saying and Showing in Practical Reasoning and Law’. 348, pa.25.

difference between a being and Being. But are all comparisons inevitability ontic? Can there be a kind of comparison that thinks the *ontological-difference*?

19. There is nothing sinister about ontic comparison. Indeed, it extends beyond comparative law and into our everydayness. Ontic comparison is a kind of *seeing-as* that in a sense stops us seeing. The *seeing-as* is the kind of seeing we hold in subject-object thinking, it is deep-rooted and hinders our thinking because it prevents us seeing other possibilities, *seeing-as* overtakes the *seeing*. What I am saying is that although subject-object thinking holds sway, it is not the only way to think. Wittgenstein names two senses of seeing. The first is to see a drawing, the cat, or an entity in the world. The second sense of seeing is the aspectival seeing we use in ontic comparison. The comparatist is *seeing-as* when controlling and steering the meaning extants. It is to see in the sense of noticing and perceiving similarities or differences between things – noticing aspects.¹⁴⁸ There is a constant movement *seeing* and *seeing as*.¹⁴⁹ But we remain ignorant of our own aspect-blindness and do not recognise something is conditioning seeing at all.¹⁵⁰

Understanding is not visible to us and observing certain traits in things does not make it so. ‘For even supposing I had found something that happened in all those cases of understanding, why should *it* be the understanding?’¹⁵¹ Understanding is does not amount to a gleaning of aspects. Understanding is not some-thing *we* can point to... There is immediacy, a ready-to-handness to aspectival-seeing which does not correspond to one of many possible interpretations of the state-of-affairs.¹⁵² While there are two senses of seeing, *seeing-as* is not in the domain of interpretation. The

¹⁴⁸ ‘Two uses of the word “see”. The one: “What do you see there?” – “I see this” (and then a description, a drawing, a copy). The other: “I see a likeness between these two faces” – let the man I tell this to be seeing the faces as clearly as I do myself. The importance of this is the difference of category between the two ‘objects’ of sight. The one man might make an accurate drawing of the two faces, and the other notice in the drawing the likeness which the former did not see. I contemplate a face, and then suddenly notice its likeness to another. I see that it has not changed; and yet I see it differently. I call this experience “noticing an aspects”, Wittgenstein, *Philosophical Investigations* , 193e xi.

¹⁴⁹ Seeing and seeing-as are constantly playing hide and seek, Ben-Dor, ‘The Gravity of Steering, the Grace of Gliding and Primordiality of Presencing Place: Reflections on Truthfulness, Worlding, Seeing, Saying and Showing in Practical Reasoning and Law’, 347 pa. 20.

¹⁵⁰ Ben-Dor, ‘The Gravity of Steering, the Grace of Gliding and Primordiality of Presencing Place: Reflections on Truthfulness, Worlding, Seeing, Saying and Showing in Practical Reasoning and Law’.,363, pa.67.

¹⁵¹ Wittgenstein, *Philosophical Investigations* , 60e.

¹⁵² Stephen Mulhall, *On Being in the world: Wittgenstein and Heidegger on Seeing Aspects* (Routledge & Kegan Paul Ltd 2014).,22.

unreflectiveness of aspectival-seeing can be demonstrated by the everydayness of it all, as the classic sign-post example shows us. We understand the sign-post through use and we can use the sign-post because we understand it. It would be ambiguous without the convention (practice) following it.¹⁵³ ‘It is not the interpretation which builds the bridge between the sign and what is signified//meant//. Only the practice does that’.¹⁵⁴ Indeed, we could use our familiar practice of precedent as an example. It is through practice of like-cases-alike that we are able to apply and distinguish cases. We are constantly *seeing-as* in precedent, in the legal. We cannot simply place aspectival-seeing in the realm of interpretation. We should also be beginning to see that the role which ontic comparison has in our quotidian life has been underestimated. We reach for ontic comparison immediately, it is bound-up with us somehow and hidden from us. For the most part we are nescient of our daily ontic comparisons. It is only where our comparisons fall-apart that our eyes are opened to comparison. Where understanding breaks-down interpretation comes in: interpretation is the failure of understanding.¹⁵⁵ Interpretation would thusly be required in cases of incommensurability. Incommensurability highlights the unnoticed daily comparisons we make by rupturing through them. The role comparison plays in our daily lives still has not been fully exposed.

Poetic comparisons

20. Stramignoni asks whether we can think afresh, what *is* comparative law? This question is an attempt to overcome a language of description and representation in comparison, which is an important break-through, recognising the terms of the debate. It is an attempt to see beyond the current tradition and into another kind of thought. By asking ‘what *is* comparative law?’ Stramignoni raises the possibility of another way of comparing, which can protect difference through meditating comparisons. Meditating

¹⁵³A sign-post could be ambiguous without the practice (convention) of following it, we might not know whether to climb sign-posts, or follow the opposite direction to the pointed bit of the wood, our practice of using sign-posts guides us, Wittgenstein, *Philosophical Investigations* , 39e pa. 85. See also Tully and Patterson’s explanations of understanding and interpretation in Wittgenstein James Tully, ‘Wittgenstein and Political Philosophy: Understanding Practices of Critical Reflection’(1989) 17 Political Theory 172.,194; Dennis Patterson, ‘Wittgenstein on Understanding and Interpretation (Comments on the work of Thomas Morawetz)’(2006) 29 Philosophical Investigations 129.,134.

¹⁵⁴ Wittgenstein in G.P. Baker and P.M.S Hacker, *Wittgenstein Rules, Grammar and Necessity*, vol 2 (Blackwell Publishers 2000).,136.

¹⁵⁵ Dennis Patterson, ‘Interpretation in Law’(2005) 42 San Diego Law Journal 685., 691.

thinking is original thinking shifting away from calculating thought.¹⁵⁶ Unlike mainstream comparisons (calculating thinking), meditating comparisons do not seek out sameness of function, efficiency or linear-history, but neither are they poetry, or any kind of representational thought of ordinary language.¹⁵⁷ It is poetic thought and the comparatist must become a poet too. Poetry is a kind of dwelling, beyond metaphysical thought.¹⁵⁸ Meditating thinking is the thinking of Being through thinking language as *in-between*, through it - we come to the thought that language is the house of Being.¹⁵⁹ Stramignoni is embracing much of Heidegger's thought, which exposed the forgetfulness of Being.

For Stramignoni a way to think the *ontological difference* in comparative law seems to be through poetic comparisons, which are able to escape the hold of ontic representations and descriptions. The comparatist accesses meditating thinking through belonging to language. It is language that speaks through the law and not man.¹⁶⁰ Law like language shares in-betweenness, law is both calculating thinking and other-thinking (meditating thinking), so poetic comparisons are able to show both law *as* law and the possibility of *other-law*.¹⁶¹ Language is itself a threshold, it is an 'in-between', it is both in thinking and between thinking law *as* law and *other thinking*.¹⁶² Language is never fully present but comes from a sheltered absence: '...the calling of language calls into a presence which can only be within an absence'.¹⁶³ The comparatist poet is able to be aware of this co-presence, the present presence and present absence.¹⁶⁴ The comparatist poets are keepers of this difference. Co-presence is also pointing to how *cum-parare* means to lay out together; that which is 'laid out together comes to appear at the same time, it appears together, it co-appears...'.¹⁶⁵ However, difference is not the traditional way we might understand difference. It is dif-ference, which sustains the world and beings in their Being, keeping them in their unity, to be what they turn out to be; dif-ference here is *phusis*, the emergence.¹⁶⁶

¹⁵⁶ Stramignoni, 'Meditating Comparisons, or the Question of Comparative Law', 76; Igor Stramignoni, 'The King's One Too Many Eyes: Language, Thought, and Comparative Law' (2002) Utah Law Review 739., 753.

¹⁵⁷ Stramignoni, 'Meditating Comparisons, or the Question of Comparative Law', 63.

¹⁵⁸ Stramignoni, 'The King's One Too Many Eyes: Language, Thought, and Comparative Law', 763.

¹⁵⁹ Stramignoni, 'Meditating Comparisons, or the Question of Comparative Law', 72.

¹⁶⁰ Stramignoni, 'Meditating Comparisons, or the Question of Comparative Law', 79.

¹⁶¹ Stramignoni, 'Meditating Comparisons, or the Question of Comparative Law', 71.

¹⁶² Stramignoni, 'Meditating Comparisons, or the Question of Comparative Law', 68.

¹⁶³ Stramignoni, 'Meditating Comparisons, or the Question of Comparative Law', 69.

¹⁶⁴ Stramignoni, 'Meditating Comparisons, or the Question of Comparative Law', 79.

¹⁶⁵ Stramignoni, 'The King's One Too Many Eyes: Language, Thought, and Comparative Law', 769.

¹⁶⁶ Stramignoni, 'The King's One Too Many Eyes: Language, Thought, and Comparative Law', 770. Heidegger called a dif-ference when language speaks the inexpressible, it is the delay between call and

Comparatist poets are able to be guardians of the law: to be aware of a belonging-together of a presence, where they are vigilant of the law's presence and are aware of the absence.¹⁶⁷ To guard means to watch with care, that is, to regard something or somebody meticulously on their own terms.¹⁶⁸ It is through this vigilance and guarding that they are looking at something thoroughly, in their own terms-in their own radical belonging together.¹⁶⁹ The comparatist poet is able to be a comparatist poet, in so far as (s)he is vigilant in the co-presence and a guardian of language.¹⁷⁰ The comparatist poet can be closer to language than most because they are distant from home, and they dwell in the distance.¹⁷¹ In dwelling *in* the distance, the comparatist poet can tell; *what difference the law makes?*¹⁷²

21. Stramignoni recognises the current terms of the debate and is pointing us further away from the legal tradition of calculating thought. Poetic comparisons are not legal comparisons. They are an attempt to re-invent Western legal thinking away from its current form solely in calculative thought.¹⁷³ Poetic comparisons are intimations of a thinking that is still to come, they are a *clearing*, lying in-between, our belonging to language means that we are able to access both thinking law *as* law and *other thinking*, and that law (as language) contains the possibility of both.¹⁷⁴ The way forward for the poetic comparatist is to continuously raise and ask again the question 'what *is* comparative law?'¹⁷⁵ This question about comparative law is asking about the ground for comparative law. It is a *how* rather than merely a *what*: 'how can comparative law

response bringing thingness and the world together and apart in the in-betweenness, Ben-Dor, *Thinking about law in silence with Heidegger*, 68 pa.58

¹⁶⁷The notion of belonging-together is in the sense of *belonging*-together, thinking our *belonging*-together with Being Stramignoni, 'Meditating Comparisons, or the Question of Comparative Law', 74-78; Heidegger, *Bremen and Freiburg Lectures*, 112.

¹⁶⁸Stramignoni, 'Meditating Comparisons, or the Question of Comparative Law', 78.

¹⁶⁹Stramignoni, 'Meditating Comparisons, or the Question of Comparative Law', 78.

¹⁷⁰Stramignoni, 'Meditating Comparisons, or the Question of Comparative Law', 79.

¹⁷¹Stramignoni, 'Meditating Comparisons, or the Question of Comparative Law', 80.

¹⁷²Stramignoni, 'Meditating Comparisons, or the Question of Comparative Law', 80.

¹⁷³Stramignoni, 'Meditating Comparisons, or the Question of Comparative Law', 76.

¹⁷⁴'Conversely, *law* as calculating thinking (law as law) lies each time at the center of language – and so, in that respect, law *is* language itself (ordinary language). By contrast, law as other-thinking lies at the threshold of (ordinary) language – a threshold which is both extended and complex, yet away from its center. But if each time language lies both at the center and at the threshold of law – and if each time law lies both at the center and the threshold of language – then, so poetic comparisons suggest, law can never be *just* calculating thinking (it can never be *just* ordinary language). Instead, law must be always, *also*, other-thinking, that is meditating, up-coming thinking. *In-between calculating thinking and other-thinking, law (like language) lies, each time inter alia*. That is of some importance for poetic comparisons of law's many domains – for it shows how law as law (legal rules, legal procedures, legal concepts etc) *must contain, in itself, the possibility of other-law, of law radically other* (without necessarily being something other-than-law)' Stramignoni, 'Meditating Comparisons, or the Question of Comparative Law', 71.

¹⁷⁵Stramignoni, 'Meditating Comparisons, or the Question of Comparative Law', 78.

be thought afresh?’¹⁷⁶ In asking *how*, it turns comparative law back onto itself, challenging it to think (again). This thesis attempts to build on this work and not only ask whether we can think comparative law, but also whether we can think comparison afresh. The questioning of comparative law raises questions of comparison itself. The basic departure and what this chapter is calling-for, is a slowing down of our comparisons to allow comparison itself to be asked.

22. This chapter is merely a starting point to show the reader we are in comparison and not asking comparison. ‘Not asking comparison’ does not mean that no-one has ever thought about or questioned comparison, the paper shows the rich labyrinth of ways different writers have thought about comparison; rather this chapter is shining a torch on a particular kind of thinking, the kind of thinking requiring ontic comparison. Asking comparison is itself an inter-ruption. We cannot yet *grasp* how to ask comparison ‘because’ asking comparison would require another beginning. To begin we must find another approach, a leap out of our current thinking. Turning back to language as etymology (and language is etymology) may be a way of approaching our originary questioning of comparison. To think comparison etymologically is not to stumble across a decaying ruin and to ponder what it once was, it is a way of letting language speak. We are bound into this way of thinking that comes towards us. The current literature is largely based on the Latin *comparare*, to ‘*compare*’ meaning co-presence, but the word ‘*comparison*’ has its origins in the Greek *parable*. The *Greek-English Lexicon* defines the meaning of *parable* παραβολή as a comparison, illustration, analogy and a proverb.¹⁷⁷ Parable is composed of ‘*para*’ παρά meaning ‘side-by-side’ and βολή ‘bole’ meaning ‘thrown’.¹⁷⁸ The side-by-side of parable lives on, albeit distortedly, in the co-presence of comparison. The relationship between *parable* and *comparison* has been consistently confirmed by a number of other

¹⁷⁶ Stramignoni, ‘Meditating Comparisons, or the Question of Comparative Law’., 89.

¹⁷⁷ Henry Stuart Jones and Roderick Mckenzie (eds), *A Greek-English Lexicon complied by George Liddell and Robert Scott Volume II(1)*, vol II (Clarendon Press 1925-30.), 1305. The ancient Greek etymology παραβολή *parable* meaning ‘a placing side by side, comparison analogy’ and it also means a ‘proverb’ Dictionary, “*parable*, n.”.

¹⁷⁸ The prefix ‘*para*’ παρά means ‘by the side of’ ‘alongside of, by, past, beyond’ ‘In compounds ancient Greek παρά has the same senses as the preposition, along with such cognate adverbial ones as ‘to one side, aside, amiss, faulty, irregular, disordered, improper, wrong’; it also expresses subsidiary relation, alteration, comparison, etc.’ Oxford English Dictionary, “*para*-, prefix1” (Oxford University Press)., *Bole* is + βολή is casting, putting, a throw ‘+ βολή’ a throw (< an ablaut variant of the base of βάλλειν to throw: see [ballista](#) n.),’ Oxford English Dictionary, “*metabole*, n.” (Oxford University Press).

sources.¹⁷⁹ The origins of parable have been traced back to the Bible, where parable appears to refer to the word of the Lord.¹⁸⁰ Jesus also spoke in parables to a crowd gathered. When asked by one of his disciples why he was speaking in parables, the reply was: whereas for the disciples the mysteries of heaven were given, for the crowd their only means of access to the mysteries of heaven were parables.¹⁸¹ Perhaps these revelations have lost the force they once had. (Not)withstanding, they still invite us to think and re-think the kind of truth disclosed by parable. Speaking in parables may be a way of bringing into the open a truth that cannot be accessed in any other way.¹⁸² For the Greek world the parables were a way of bearing the message. As we know there is an important relation between hermeneutics and parables, the link is usually found in the ‘interpretation’ of biblical texts. Concealed within the current view there is also a persisting primordial relation. Hermes was the god bearing the message: responding to the call.¹⁸³ Each source sheds some light and paradoxically, also adds to the intricacy. The etymology relation may be an interesting lead to explore further, particularly in terms of the question of the kind of truth disclosed by parable. Bearing the message may also be endured in poetry and to some extent in analogies which all appear interrelated. These are merely initial thoughts which need to be investigated thoroughly. Even through this initial exploration into the origin of comparison, we have found something retained of *parable* as a placing side-by-side in the current Latin

¹⁷⁹ For instance, one of the most authoritative and oldest English dictionaries describes ‘*parable*’ as ‘a similitude; a ration under which something else is figured’ Alexandre Chalmes (ed) *Samuel Johnson’s Dictionary of the English Language* (Studio Editions Ltd 1994).,521.

¹⁸⁰ ‘And the LORD put a word in Balaam’s mouth, and said, Return unto Balak, and thus thou shalt speak. And he returned unto him, and, lo, he stood by his burnt sacrifice, he, and all the princes of Moab. And he took up his parable, and said, Balak the king of Moab hath brought me from Aram, out of the mountains of the east, *saying*, Come, curse me Jacob, and come, defy Israel’ N/A, *King James Bible* ,Numbers 23: 5-9; Numbers 23: 7.

¹⁸¹ ‘And the disciples came, and said unto him, Why speakest thou unto them in parables? He answered and said unto them, Because it is given unto you to know the mysteries of the kingdom of heaven, but to them it is not given. For whosoever hath, to him shall be given, and he shall have more abundance: but whosoever hath not, from him shall be taken away even that he hath. Therefore speak I to them in parables: because they seeing see not; and hearing they hear not, neither do they understand. And in them is fulfilled the prophecy of Esaias, which saith, By hearing ye shall hear, and shall not understand; and seeing ye shall see, and shall not perceive: For this people’s heart is waxed gross, and *their* ears are dull of hearing, and *their* eyes they have closed; lest at any time they should see with *their* eyes, and hear with *their* ears, and should understand with *their* heart, and should be converted, and I should heal them’ N/A, *King James Bible* , Matthew 13:10-16.

‘All these things spake Jesus unto the multitude in parables; and without a parable spake he not unto them: That it might be fulfilled which was spoken by the prophet, saying, I will open my mouth in parables; I will utter things which have been kept secret from the foundation of the world’, N/A, *King James Bible* , Matthew 13:34-35.

¹⁸² ‘Therefore speak I to them in parables: because they seeing see not; and hearing they hear not, neither do they understand’ N/A, *King James Bible* , Matthew 13:10-16.

¹⁸³ Martin Heidegger, *On The Way To Language* (Peter Hertz tr, HarperCollins 1982)., 29; Oren Ben-Dor, ‘Agonic is not yet demonic?’ in Oren Ben-Dor (ed), *Law and art: justice, ethics and aesthetics* (Routledge 2011)., 117;6.

compare as a bringing-together; simultaneously, we have begun to grasp there was once a place claimed through parable, now lost. Comparison is so much richer than presently thought.

Summary

Turning back to the start of this investigation, where like-cases-are-treated-alike is where comparison first comes to meet us in law. Legal comparison became visible when we investigated proceeding from like-to-like historically, with Henry Bracton's advice and the 'equity of the statute'. Comparison was persistently present through the development of the doctrine of precedent. Comparison was there as we followed more recent cases, in *Caldwell*, the chain of sameness led to *Elliot v C*, where difference ought to have been visible. The unfairness of *Elliot v C* was further compounded when it was compared to the later similar case of *G*. Comparison continued to be present and yet absent when we examined recent legal theory examining the doctrine of precedent, within Dworkin's intergrity we still found comparison. In all these examples comparsion was there still silently working away, but still absent from view. This first chapter acted as an inter-ruption to our legal comparisons. It ruptured through comparison to bring legal comparison into the the open.

The chapter then turned to examining the kind of thinking underlying the current literature on comparison in law. To make some headway, we proceeded by seeking the meaning of comparison through our question: *what is comparison?* We found our like-cases-alike and the literature on legal comparison to be within the realm of ontic comparison and within the aspectival-game. To move beyond ontic comparison we discovered we had to find another way of thinking. The many theories about comparison were not asking the primordial questions arising from comparison. The thesis takes as a point of departure Stramignoni's poetic comparisons, which are an attempt to move into a different kind of thinking away from ontic comparison. This thesis slows-down ontic comparison in-order-to to ask the originary questioning about comparison. Could there be a different kind of thinking which thinks Being? Asking comparison has far reaching implications for the legal, political, ethical worlds.

We will be attempting to ask comparison by reflecting on the questions emerging from this initial exploration. The questions distilled become the central questions the thesis engages to guide our exploration into comparison:

(a) Belonging-together: ontic comparison:

Do we make ontic comparison? How do we make ontic comparison? What role does ontic comparison have in our everydayness? How did ontic comparison become so prolific?

(b) Truth and comparison: Being and seeming

What is truth? What claim to truth does comparison have if it is merely a game of bringing into focus certain aspects of the things under comparison whilst at the same time concealing other aspects? What relationship does comparison have to truth?

(c) Belonging-together: Identity and difference

How are we to think belonging-together? What kind of belonging-together speaks in ontic comparison? Can there be a kind of comparison that thinks Being?

2. The importance of Being/ Seinsvergessenheit

*'Quid autem propinquius meipso mihi?'... 'ego certe labore hic et labore in meipso: factus sum mihi terra difficultatis et sudoris nimii'*¹⁸⁴

Chapter two has the modest aim of introducing Heidegger to the reader. It provides a basic and very limited account of *some* of the important aspects of Heidegger's thinking. We begin by introducing some of the main works inspiring this thesis, in order to help situate these works in relation to Heidegger's working life. The chapter moves into a discussion of *die Kehre*, introducing the reader to some of the complexities of 'interpreting' Heidegger's works. Heidegger's background, some key concepts and aspects of his work are also discussed. It is important to be mindful that the selection provided cannot possibly do any justice to the richness of the debates. There are thousands of articles and books written about Heidegger's works, so this small chapter cannot say much. It is merely an attempt to bring us all onto the same page, showing how the themes discussed in chapter one developed and to provide a little more context on Heidegger's thought, which is so central to this project.

Fallible and a thinker?

1. The introduction of this thesis explains the important hermeneutic distinction between the work and the author of a work. This paper is concerned with Martin Heidegger's works; it does not take heed of the man. Nevertheless, it is also a work which seeks to be truthful, therefore, before embarking on an introduction of Heidegger's works we cannot escape the man. Heidegger's peculiar engagement with National Socialism, his actions during the Third Reich and his subsequent untruthful accounts about his actions blight his legacy and to some extent his works.¹⁸⁵ Heidegger's actions were unbefitting for any human, let alone one who was forever thoughtfully haunted by Being; but we cannot properly respond to that which ab-hors us by running away from it – it must

¹⁸⁴ 'But what is closer to me than myself? Assuredly I labour here and I labour within myself; I have become myself a land of trouble and in ordinate sweat.' St Augustine Confessiones X, 16 This translation and arrangement was used by Heidegger in Heidegger, *Being and Time*., 69 see also authors notes, 488. But there are slightly different ways of translating St Augustine and, the short extract, obviously, does not do justice to the thoughts grappled with: 'Lord, I, truly toil therein, yea and toil in myself; I am become a heavy soil requiring over much *sweat of the brow*...But what is nearer to me than myself?' Saint Augustine, *Confessions of Saint Augustine* (Rev. Dr. E. B. Pusey tr, 2nd edn, Grant Richards 1902)., 247 -248.

¹⁸⁵ There are a kaleidoscope of views about Heidegger's actions and writings during this period. Some texts appear to place an emphasis on Elfride Heidegger (Heidegger's wife) as a supporter of the Nazi party, but this does little to explain Martin Heidegger's own emphatic support of the party. There are also many perturbing episodes: Heidegger as rector of Freiburg University signed a letter forbidding Edmund Husserl from entering the university premises, see Ettinger, *Hannah Arendt Martin Heidegger*., 57;47. Writers disagree about whether Heidegger's writings reflect a commitment to Nazism. See Young, *Heidegger, philosophy, Nazism*.; Rockmore, *On Heidegger's Nazism and Philosophy*.; Wolin, *The Heidegger Controversy A Critical Reader*.; Dominique Janicaud, *The Shadow of That thought* (Gendre Michael tr, Northwestern University Press 1996).

itself become fuel for thought. This thesis does not attempt to reconcile the man with his works. It simply seeks not to conceal these troubling parts from the reader.¹⁸⁶ While Heidegger's personal reputation continues to tarnish and blacken with his notebooks, he still remains one of the most important thinkers of his time.¹⁸⁷ Heidegger's way of thinking inspired many subsequent writers to follow the same thought.¹⁸⁸ In many ways, his work continues to reverberate in the 'post-Heideggerians', even though many

¹⁸⁶ In a letter to Heidegger (dated 28th August 1947), Herbert Marcuse asked Heidegger why he had not fully dissociated himself from the Nazi regime. Heidegger replied to Marcuse, in a letter, on 20th January 1948: '...If I may infer from your letter that you are seriously concerned with [reaching] a correct judgment about my work and person, then your letter shows me precisely how difficult it is to converse with persons who have not been living in Germany since 1933 and who judge the beginning of the National Socialist movement from its end. Regarding the main points of your letter, I would like to say the following:

1. Concerning 1933: I expected from National Socialism a spiritual renewal of life in its entirety, a reconciliation of social antagonisms and a deliverance of Western Dasein from the dangers of communism. These convictions were expressed in my Rectoral Address (have you read this *in its entirety?*), in a lecture on "The Essence of Science" and in two speeches to students of [Freiburg] University. There was also an election appeal of approximately 25-30 lines, published in the [Freiburg] student newspaper. Today I regard a few of the sentences as misleading [*Entgleisung*].
2. In 1934 I recognized my political error and resigned my rectorship in protest against the state and party. That no. I [i.e., Heidegger's Party activities] was exploited for propaganda purposes both here and abroad, no. 2 [his resignation] hushed up for equally propagandistic reasons, failed to come to my attention and cannot be held against me.
3. You are entirely correct that I failed to provide a public, readily comprehensible counter-declaration; it would have been the end of both me and my family. On this point, Jaspers said: that we remain alive is our guilt.
4. In my lectures and courses from 1933-44 I incorporated a standpoint that was so unequivocal that among those who were my students, none fell victim to Nazi ideology. My works from this period, if they ever appear will testify to this fact.
5. An avowal after 1945 was for me impossible: the Nazi supporters announced their change of allegiance in the most loathsome way; I, however, had nothing in common with them.
6. To the serious legitimate charges that you express "about a regime that murdered millions of Jews, that made terror into an everyday phenomenon, and that turned everything that pertains to the ideas of spirit, freedom, and truth into its bloody opposite," I can merely add that if instead of "Jews" you had written "East Germans" [i.e., Germans of the eastern territories], then the same holds true for one of the allies, with the difference that everything that has occurred since 1945 has become public knowledge, while the bloody terror of the Nazis in point of fact had been kept a secret from the German people', Translated by Richard Wolin in Wolin, *The Heidegger Controversy A Critical Reader.*, 160-163.

(See Wolin also for Heidegger's "Only a god can save us" *Der Spiegel* interview, where he broke his silence about his behaviour during the Third Reich. Rudolph Augstein and Georg Folff interviewed Heidegger in September 1966; Heidegger insisted *Der Spiegel* publish the interview after his death. Wolin, *The Heidegger Controversy A Critical Reader.*, 91-116.)

¹⁸⁷ Heidegger's 'Black Notebooks' are thirty-four small (5x7 inch) notebooks containing his thoughts from the early 1930s to the 1970s. These notebooks are slowly becoming available, causing further disputes about the author and his references to 'world-Judaism'. See Richard Rojcewicz (ed) *Martin Heidegger Ponderings II - VI Black Notebooks 1931-1938* (Richard Rojcewicz tr, Indiana University Press 2016). ;Richard Rojcewicz (ed) *Martin Heidegger Ponderings XII-XV Black Notebooks 1939-1941* (Richard Rojcewicz tr, Indiana University Press 2017).

¹⁸⁸ Some of those influenced by Heidegger include: Hannah Arendt, Hans-Georg Gadamer, Jacques Derrida, Herbert Marcuse, Maurice Merleau-Ponty, Jean-Paul Sartre. Wolin, *The Heidegger Controversy A Critical Reader.*, XI. There are many more. See also Fleischacker Samuel (ed) *Heidegger's Jewish Followers essays on Hannah Arendt, Leo Strauss, Hans Jonas, and Emmanuel Levinas* (Duquesne University Press 2008); David Wood (ed) *Of Derrida, Heidegger and Spirit* (Northwestern University Press 1993). Wood, David (ed) *Of Derrida, Heidegger and Spirit*, (Northwestern University Press, Evanston 1993).

have (understandably) sought to distance themselves from him.¹⁸⁹ Tom Rockmore likens Heidegger's influence on French philosophy to a huge, but rarely visible, dark star.¹⁹⁰

'Our rare thinkers (great or less great) might just be dinosaurs –infinitely precious, too fragile, cumbersome, and monstrous. But perhaps we will still learn something by opening up the "eggs" they left behind on our polluted shores; and by not forgetting that –beyond the cold (yet comfortable) blinking of the cursor on our word processors – philosophy has always been in keeping with suffering; philosophy was and remains suffering; it never knew, and still does not know, how to face up to it.'¹⁹¹

Heidegger's works influencing this investigation

2. The thesis is inspired by a variety of Heidegger's works, especially by the later Heidegger's works. The thesis draws heavily from Heidegger's lectures on *Introduction to Metaphysics* (1935), *The Origin of the Work of Art* (1935-6), and the *Principle of Identity* (1957).¹⁹² This work also engages with Heidegger's '*Letter on Humanism*' (1947), which began with Jean Beaufret's correspondence, his questions about Heidegger's work and its relationship to Jean-Paul Sartre's work.¹⁹³ Heidegger's

¹⁸⁹ Paul Veyne summarises the state of affairs: 'We are embarrassed to have to realize that one of the greatest metaphysicians that ever existed could also be a despicable imbecile', in Janicaud, *The Shadow of That thought*, 6; (Heidegger would possibly object to being called - a metaphysician). Robert Bernasconi notes much of the current discourse about Heidegger's involvement with Nazism is also tied to an understanding of a philosopher as a noble (hu)man, who cares about doing good. Within this space it is binary, one cannot be a thinker and not a good man. Bernasconi classifies Heidegger's failures as: (a) a moral failure – letting down friends, colleagues etc; (b) failure of political judgment (a lack of *phronesis*), that is, an inability to see the situation in the 1930s; (c) a failure of thought – he did not see what was so thought-provoking about the events he was living. (Especially, since his starting point has always been our everydayness). Robert Bernasconi, *Heidegger in Question The Art of Existing* (Humanities Press 1993).,56-58.

¹⁹⁰ 'More than 200 years ago, astronomers speculated that a star of sufficient size would, owing to its gravitational pull, absorb rather than emit light and would therefore exert an enormous influence while remaining, literally, invisible. Today, such is the role of Heidegger's philosophy in France.' Tom Rockmore, *Heidegger and French Philosophy* (Routledge 2008)., xi. See also David Pettigrew and François Raffoul (eds), *French Interpretations of Heidegger An Exceptional Reception* (State University of New York Press 2008).

¹⁹¹ Janicaud, *The Shadow of That thought*,126.

¹⁹² Heidegger's *Introduction to Metaphysics* has also caused some controversy; Jürgen Habermas wrote a letter to the editors of the *Frankfurter Allgemeine Zeitung*, after he spotted a reference to the "inner truth and greatness" of National Socialism in Heidegger's original 1935 lecture, which still left in the published version of the text in 1953. Martin Heidegger, *Introduction to Metaphysics* (Richard Polt and Gregory Fried trs, 2 edn, Yale University Press 2014).,xv; Heidegger, 'The Origin of The Work of Art (1935-36)' .;Heidegger, *Bremen and Freiburg Lectures*.

¹⁹³ The German text was published in 1947. Martin Heidegger, 'Letter on Humanism' in David Farrell Krell (ed), *Basic Writings* (Routledge 2011). See also Dennis Skocz, 'Postscripts to the "Letter on 'Humanism'"':

Contributions to Philosophy (1936-8) remains one of Heidegger's greatest works. The text was written at the same time as *Mindfulness* (1938-39) and *The History of Beyng* (1938-40).¹⁹⁴ These texts were never part of Heidegger's lecture courses, they are a different point of departure. These works wrestle with thinking Be-ing. The works are necessarily fragmented, tentative and esoteric: 'Heidegger is in search of a language able to articulate a non-metaphysical thinking of being as event'.¹⁹⁵ *Contributions* and Heidegger's later works as a whole are an attempt to think the truth of Be-ing afresh, without any remains of the metaphysical language present in *Being and Time*.

Heidegger's *Being and Time* is still captive of metaphysical language because it seeks to ask the question of Being through Dasein's transcendence into a temporal horizon, thereby falling into 'beingness' by departing from a being (us) and representing another being (the temporal horizon).¹⁹⁶ Similarly, while the ontological-difference is important to make the question of Being first visible, it can also prevent a more original understanding of Being. For the sake of clarity this thesis retains the language of the difference (ontic-ontological).

Die Kehre

3. There has been much written on *die Kehre*, and the unity of Heidegger's writings, I cannot begin to fully outline the different positions in this limited chapter. Joseph Kockelman places the turn in Heidegger's thinking between 1929 and 1935.¹⁹⁷ The distinction between the early and later Heidegger's works was further developed by William Richardson with his Heidegger I and Heidegger II terminology. Heidegger himself seemed to approve of the distinction, with the small caveat that there could not be a Heidegger II without Heidegger I.¹⁹⁸ Much of the unsaid of the earlier works

Heidegger, Sartre, and Being-Human' in David Pettigrew and François Raffoul (eds), *French Interpretations of Heidegger* (State University of New York Press 2008).

¹⁹⁴ Martin Heidegger, *Mindfulness* (Parvis Emad and Thomas Kalary trs, continuum 2006) ;Heidegger, *The History of Beyng*.

¹⁹⁵ Heidegger, *The History of Beyng*., translator's introduction, xiii. Richard Polt also described *Contributions*: 'As an account of the "essential happening of being," the text resembles a treatise; as an investigation of the roots of concepts, it resembles history of philosophy; as an analysis of a crisis, it resembles cultural critique; as an invocation of a moment of decision, it resembles prophecy; as a self-conscious deployment of language, it resembles poetry.' Polt, *The Emergency of Being On Heidegger's Contributions to Philosophy*,6.

¹⁹⁶ Daniela Vallega-Neu, *Heidegger's Contributions to Philosophy : An Introduction* (Indiana University Press 2003), 24-25; see also 9-29.

¹⁹⁷ Joseph Kockelmans (ed) *On Heidegger and Language* (Northwestern University Press 1972),xi.

¹⁹⁸ Heidegger wrote the 'Preface' to Richardson's book Martin Heidegger, 'Preface' in *Heidegger Through Phenomenology to Thought* (3rd edn, Fordham University Press 2003).. Richardson expands on what

appears in the later works. The distinction between Heidegger I and II is not the only way to view Heidegger's works.¹⁹⁹ Reiner Schürmann suggests we should abandon the Heidegger I and II classification, in favour of three moments in Heidegger's thinking: (1) the 'sense of being', (2) the 'truth of being' – as the history of truth [*a-letheia*] and (3) the 'topology of being'.²⁰⁰ Others classify the three different periods of Heidegger's thinking in a slightly different way, according to Heidegger's relationship to Greek philosophy: (1) The early *Being and Time* years, retrieving the question of Being, using the phenomenological destruction method; (2) the 1930s – 1940s reading of the Pre-Socratics to 'refound' [*Grunlegung*] Platonic-Aristotelian metaphysics; (3) the last period which is difficult to chronologically establish, but it is where Heidegger attempts an 'other beginning'.²⁰¹

There are many different views on Heidegger's later writings, as writers tend to place an emphasis on the aspects of Heidegger's later writings which speak to them. The shift in thinking as noted above was in part due to the residual metaphysical language in his earlier writings which prevented a more originary approach to the question of Being. Early Heidegger's *Being and Time* style is often seen as more 'philosophical' and 'scientific' than his later 'poetic' 1930s works.²⁰² The turn has been described as a shift in emphasis from perspective of man to that of Being.²⁰³ Similarly, Daniela Vallega-Neu suggests the early Heidegger attempts to think the question of Being *towards* the origin and the later Heidegger tries to think *from* the origin the truth of Be-

Heidegger said about I/II distinction in his Preface to the U.S. Edition see in particular William Richardson, *Heidegger Through Phenomenology to Thought* (3 edn, Fordham University Press 2003), XXXII –XXXIII

¹⁹⁹ The distinction between the two Heideggers has been disputed by later writers and translators of Heidegger's works, Parvis Emad, *On the Way to Heidegger's Contributions to Philosophy* (University of Wisconsin Press 2007),, see the chapter on 'Questioning Richardson's "Heidegger I, Heidegger II" Distinction and His Response in Light of Contributions to Philosophy'.

²⁰⁰ Reiner Schürmann, *Heidegger on Being and Acting: From Principles To Anarchy* (Christine-Marie Gross, Indiana University Press 1990),, 17.

²⁰¹ Jean-François Courtine, 'The Destruction of Logic: From logos to Language' in David Jacobs (ed), *The Presocratics after Heidegger* (State University of New York Press 1999),,25.

²⁰² Julian Young suggests while Heidegger's later works are 'highly poetic' it does not exclude the possibility Heidegger is also philosophical, Julian Young, *Heidegger's Later Philosophy* (Cambridge University Press 2002),, 1-2. After the war, there was a university peer review committee hearing, where Heidegger was found guilty of political crimes and banned from university teaching for five years. The committee contacted Karl Jaspers for a statement about Heidegger's character and activities, some of those remarks are quite telling about Heidegger's approach: '...He often proceeds as if he combined the seriousness of nihilism with the mystagogy of a magician. In the torrent of his language he is occasionally able, in a clandestine and remarkable way, to strike the core of philosophical thought. In this regards he is, as far as I can see, perhaps unique among contemporary German philosophers...', Karl Jaspers in Wolin, *The Heidegger Controversy A Critical Reader*,3.

²⁰³ Joan Stambaugh, *Thoughts on Heidegger* (The Center for Advanced Research in Phenomenology and University Press of America Inc 1991),,10.

ing (enowning).²⁰⁴ Thomas Sheehan suggests Heidegger's question changed from the *meaning* of Being to the question of the *truth* of Being, and then to the question of the *place* of Being.²⁰⁵ Michel Haar focuses on the 1930s turn of Heidegger's thinking on nature, where it emerges under 'phusis' and 'Earth'.²⁰⁶ The aim of this chapter is to provide a basic starting point, within these debates there are deeper issues at stake; remember Heidegger's 'What is Called Thinking?': A thinker has one thought.²⁰⁷

Background

4. We usually begin to find our bearings by ascribing writers to a particular tradition or school of thought. Heidegger did not land from nowhere. He was schooled in theology, turning to phenomenology and finally to thought.²⁰⁸ Heidegger was influenced by many different ancient and contemporary sources: from the pre-Socratics, mediaeval theologians, phenomenology, and Buddhism; however, he did not simply glue together 'insights' from different areas.²⁰⁹ Heidegger was a thinker, only a thinker could think to ask: *what calls on us to think?*²¹⁰ The majority of Heidegger's published works were derived from Heidegger's notes for his lecture courses. Heidegger's works begin with the tradition, only to then slowly dissolve its traditional problems. One ought to be cautious when reading any work which purports to simplify Heidegger's thoughts. Heidegger's works are not 'obscure' due to clumsiness on his part - his works wrestle

²⁰⁴ Vallega-Neu, *Heidegger's Contributions to Philosophy : An Introduction.*,7,28.

²⁰⁵ Thomas Sheehan, 'Introduction: Heidegger, the Project and the Fulfillment' in Thomas Sheehan (ed), *Heidegger the man and the thinker* (Precedent Publishing 1981).,vii.

²⁰⁶ Michel Haar, *The song of the Earth* (Reginald Lilly and John Sallis trs, Indiana University Press 1993).,10-11.

²⁰⁷ Heidegger, *What is Called Thinking?*

²⁰⁸ Richardson, *Heidegger Through Phenomenology to Thought*. Richardson's book also contains a letter written by Heidegger to the author as a forward to the book, in which he approves and clarifies Richardson's title. See also Safranski, *Martin Heidegger Between Good and Evil.*, 16. Safranski's well-rounded book contains exquisite details about Heidegger's life, including his relationship with his brother; Fritz typed his older brother's manuscript (30,000 pages) and kept it safe during the war. Safranski, *Martin Heidegger Between Good and Evil.*, 8. The book provides an account of Heidegger's academic life, even featuring details about the grant he received from 1913-6 to study Thomist philosophy, his time working with Husserl and beyond, Safranski, *Martin Heidegger Between Good and Evil.*,47. See also Hugo Ott, *Martin Heidegger A Political Life* (Allan Blunden tr, BasicBooks HarperCollinsPublishers 1993).;Thomas Sheehan (ed) *Heidegger the man and the thinker* (Precedent Publishing 1981).

²⁰⁹ Reinhard May, *Heidegger's hidden sources* (Graham Parkes tr, Routledge 1996).; John D Caputo, 'People of God, people of being: the theological presuppositions of Heidegger's path of thought' in James Faulconer and Mark Wrathall (eds), *Appropriating Heidegger* (Cambridge University Press 2000).;John Macquarrie, *Heidegger and Christianity* (SCM Press Ltd 1994).; Ryan Coyne, *Heidegger's Confessions The Remains of Saint Augustine in Being and Time & Beyond* (The University of Chicago Press 2015).; S.J. McGrath, *The Early Heidegger and Medieval Philosophy Phenomenology for the Godforsaken* (The Catholic University of America Press Washington 2006).

²¹⁰ Heidegger, *What is Called Thinking?*, 167.

with one great thought.²¹¹ Being preoccupied his thoughts, precisely, the forgetfulness of Being (*Seinsvergessenheit*). Heidegger's works can be read as a continual challenge to raise and ask again the question of Being (*Seinsfrage*), more simply and powerfully.

Meta-physics

‘...the history of Western thought begins, not by thinking what is most thought-provoking, but by letting it remain forgotten. Western thought thus begins with an omission, perhaps even a failure. So it seems, as long as we regard oblivion only as a deficiency, something negative. Besides, we do not get on the right course here if we pass over an essential distinction. The beginning of Western thought is not the same as its origin. The beginning is, rather, the veil. If that is the situation, then oblivion shows itself in a different light. The origin keeps itself concealed in the beginning.’²¹²

5. Metaphysics was born out of the forgetfulness of Being (*Seinsvergessenheit*). *Meta (beyond) physics* (the *physical* traditionally translated as the Latin *natura*).²¹³ The ‘Being’ discoverable by metaphysics is *beings* (*Seiende*) or *beingness* (*Seiendheit*) (the highest ontological or theological principle); *beingness* (*Seiendheit*) is distinguishable from *Being* (*Sein*) in a primordial sense which is pre-ontological and outside the bounds of metaphysical thought (it cannot be accessed via metaphysics).²¹⁴ Heidegger maintains Plato was the first who distorted the primordial thinkers understanding of Being by interpreting *physis* as *idea*.²¹⁵ Metaphysics forgets to ask about Being as un-concealment – the being of truth and truth of Being. The primordial thinkers understood truth as un-concealment (*a-lētheia*): that which has been torn from hiddenness, whereas metaphysics finds truth in a correspondence between what see and

²¹¹ In Heidegger's words we must get underway. ‘To be underway on the way in order to clear the way- that is one thing. The other thing is to take a position somewhere along the road, and there make conversation about whether, and how, earlier and later stretches of the way may be different, and in their difference might even be incompatible – incompatible that is, for those who never walk the way, nor ever set out on it, but merely take up a position outside, there forever to formulate ideas and make talk about the way’. Heidegger, *What is Called Thinking?*, 169.

²¹²Heidegger, *What is Called Thinking?*, 152.

²¹³Although, this translation as ‘*natura*’ is problematic for reasons we will come to later. Suffice to say for now that in the translation to nature the earlier meaning of the word φύσις as the emergent/that which arises, has been to some extent lost. Martin Heidegger, ‘Why Poets?’ in Julian Young and Kenneth Haynes (eds), *Off The Beaten Track (Holzwege)* (Cambridge University Press 2002)., 208.

²¹⁴Sheehan, ‘Introduction: Heidegger, the Project and the Fulfillment’, ix; Robert Bernasconi, *The Question of Language in Heidegger's History of Being* (Humanity Books 1985)., 5.

²¹⁵Heidegger, *Introduction to Metaphysics*, 200-206.

say.²¹⁶ The ‘cause’ of the forgetfulness of Being is the withdrawal of Be-ing. As Being reveals itself in the being, it withdraws. ‘The unconcealment of the being, the brightness granted it, darkens the light of being’.²¹⁷ This will become clearer (and obscure) as we go on.

6. The *Seinsvergessenheit* is not a mistake on the part of metaphysics - it is an *epoch* in Being’s history.²¹⁸ There are different degrees of forgetfulness of Being throughout different *epochs*.²¹⁹ Heidegger’s notion of History [*Geschichte*] never means a total unveiling, it is where Being is given – sending itself [*schicken*] into the unity of an *epoch*, but it is also ‘holding itself back’ and withdrawing (every *epoch* is an *epoché*).²²⁰ The constellations of presencing (the *epochs*) are dominated by epochal principles that can wither away.²²¹ The *history of being* is the ‘history of withdrawal’ for a *specific* previous history of philosophical thinking (an *epoch*).²²² By ‘overcoming’ metaphysics Heidegger is seeking a radical re-appropriation of metaphysics, rather than a simple denial/destruction of metaphysics.²²³

²¹⁶ Martin Heidegger, *The Essence of Truth* (Ted Sadler tr, Bloomsbury 2013)., 6-9 (Turn to chapter 4 of this thesis for the discussion on truth as correctness).

²¹⁷ ‘light of being’ refers to Being, Heidegger, ‘Anaximander’s Saying’., 253.

²¹⁸ Thomas Fay, *Heidegger: The Critique of Logic* (Martinus Nijhoff 1977)., 13.

²¹⁹ Ben-Dor, *Thinking about law in silence with Heidegger.*, 130 paragraph 30.

²²⁰ Haar, *The song of the Earth.*, 2 *epoché* comes from the Greek *epechō* ‘to withhold’ ‘to refrain’ Jussi Backman, *Complicated Presence Heidegger and the Postmetaphysical Unity of Being* (State University of New York Press 2015)., 235.

²²¹ The epochs have different *historical economies (loci)* where presencing articulates itself differently. ‘As an epoch comes to an end, its principle withers away. The principle of an epoch gives it cohesion, a coherence which, for a time, holds unchallenged. At the end of an epoch, however, it becomes possible to question such coherence. In withering away, the supreme referent of an age becomes problematic. As long as its economy dominates, and as long as its order disposes the paths that life and thought follow, one speaks otherwise than when its hold loosens, giving way to the establishment of a new order.’ Schürmann, *Heidegger on Being and Acting: From Principles To Anarchy*. 12, 25.

²²² ‘These instants are called “epochs” in the sense that in their various articulations of the structure of accessibility, intelligibility, or presence (being), any radical *other* to this intelligibility, any constitutive inaccessibility to immediate and direct apprehending (being), has perpetually been foreclosed or “withheld”’ Backman, *Complicated Presence Heidegger and the Postmetaphysical Unity of Being.*, 235.

²²³ Heidegger, *On The Way To Language* , a dialogue on language, 20. Jacques Taminiaux puts it a little more colourfully: ‘His thought turns everything from the past into timber for its own fire’ Jacques Taminiaux, *Heidegger and the project of fundamental ontology* (Michael Gendre tr, State University of New York Press 1991)., Translator’s preface.

7. To demonstrate some of Heidegger's critique of metaphysics let us examine briefly Heidegger's analysis of Kant's notion that Being is not a real predicate, in the sense that it cannot be added to a thing. This point of departure gave Heidegger a foothold to grapple with outlining the difference between Being and being. Being is not a real predicate means Being is therefore not a thing. Negative thesis: 'Being is manifestly not a real predicate, that is, a concept of something that could be added to the concept of a thing'.²²⁴ For Kant, £1000 does not differ from £1000 imagined pounds in reality (*what-content* of the concept). Kant's concept of reality is not the same as our current understanding of the term. It does not mean the reality of an external world or realism. Reality does not mean actuality, existence or extantness. Instead, reality means 'thingness' and 'thing determinateness'.²²⁵ The real is what pertains to the *res*, a something (*Sache*). Hence, reality does not mean actuality. Reality belongs to quality-*quale* – a what. Reality as a thinghood answers the question of *what a thing is* and not whether it exists or ever existed. The real, that which constitutes the *res*, is a determination of *res* as such.²²⁶ The determination is added to the what of a thing, to the *res*. Determination, *determinatio*, means the determinant of a *res*: it is a real predicate.²²⁷ Hence, reality means the affirmatively posited predicate has some real content. Thus 'Kant's thesis reads: Being is not a real predicate, that is, being in general is not a predicate of any thing at all.'²²⁸ Accordingly, being is not a real predicate signifies that it is not a predicate of a *res*. It is not a predicate at all, but mere position. Kant sees existence as a determination which is 'a predicate that is added to the concept of the subject from beyond it and thus enlarges it. The determination, the

²²⁴ Heidegger, *The Basic Problems of Phenomenology*, 33.

²²⁵ Heidegger, *The Basic Problems of Phenomenology*, 34.

²²⁶ 'That is real which belongs to something, what belongs to the what-content (*Wasgehalt*) of a thing, e.g., to what constitutes a house or tree, what belongs to the essence of something, to the *essentia*. Reality sometimes means the totality of this definition of its essence or its means particular defining elements. Thus, for example, extension is a reality of a natural body as well as weight, density, resistance. All such is real, belongs to the *res*, to something "natural body," regardless of whether the body actually exists or not. For instance, materiality (*Stofflichkeit*) belongs to the reality of a table. For the table, does not need to be real in the present-day sense of "real". Actual being or existence is something, which must first be added to the essence, and in this regard *existentialia* itself was considered a reality. Only Kant first demonstrated that actuality, being present-at-hand, is not a real predicate of a thing; that is, a hundred possible dollars do not in the least differ from a hundred real dollars according to their reality. It is the same, one hundred dollars, the same what (*was*), *res*, whether possible or actual'. Heidegger, *What is a thing?*, 212- 213.

²²⁷ Heidegger, *The Basic Problems of Phenomenology*, 35.

²²⁸ Heidegger, *The Basic Problems of Phenomenology*, 36.

predicate, must not already be contained in the concept. A determination is a real predicate that enlarges the thing, the Sache, res, in its content'.²²⁹

'The real in the appearance, in Kant's sense, is not what is actually in the appearance as contrasted with what is inactual in it and could be mere semblance and illusion (*Schein und Dunst*). The real is that which must be given at all, so that something can be decided with respect to its actuality or inactuality. The real is the pure and first necessary *what* as such. Without the real, the something the object is not only inactual, it is nothing at all i.e. without a *what*, according to which it can determine itself as this or that. In this *what*, the real, the object qualifies itself as encountering thus and so. The real is the first *quale* of the object.'²³⁰

Being is position and existence (actuality) is absolute position. Being in general is one and the same as position in general.²³¹ So where we posit, for instance, functionality as belonging to the thing we are positing a real relationship. Whereas if I say the thing *exists* it is an absolute positing. Accordingly, in positing an *existent thing (actual)* thing: *What* is posited? *Nothing* – as nothing is added to the thing so a possible £1000 is the same as actual £1000 (content-wise we are not adding anything). Actuality does not affect the *what* of the being). *How* is it posited? Something more is posited in the actual £1000 the *absolute position* of the thing itself.²³²

Kant says being is not a real predicate, because the actuality does not change the *what* (the real) of the £1000 (whether it is actual or merely possible). It is for that same

²²⁹ Heidegger, *The Basic Problems of Phenomenology*., 34.

²³⁰ Heidegger, *What is a thing?*, 214.

²³¹ Heidegger cites Kant as saying: 'The concept of position is utterly simple and is one and the same as the concept of being. Now something can be thought as posited merely relatively, or, better, we can think merely the relation (respectus logicus) of something as a mark to a thing, and then being, that is, the position of this relation ["A is B"], is nothing but the combining concept in a judgment. If what is had in view is not merely this relation [that is, if being and "is" are used not merely in the sense of the copula, "A is B"] but instead the thing is posited in and for itself, then this being is tantamount to existence [that is, *Vorhandensein*].'

Existence "is thereby also distinguished from every predicate, which qua predicate is always posited merely relatively to another thing". Heidegger's Kant. Heidegger, *The Basic Problems of Phenomenology*., 39.

²³² 'The synthesis of existential assertion does not concern real characteristics of the thing and their relationships; rather, what is posited in existential assertion is added to the mere representation, to the concept, is "a relation of the actual thing to my own self" The relation that is posited is that of the entire conceptual content, the full reality of the concept to the object of the concept. The thing intended in the concept is posited absolutely in and for itself. Predicative synthesis operates with real relations. Existential synthesis concerns the whole of these real relationship in their relation to their object. This object is posited absolutely. In positing existence we have to go outside the concept. The relation of the concept to the object, to the actual being, is what gets added or ap-posed, synthetically to the concept.' Heidegger, *The Basic Problems of Phenomenology*., 41.

reason Heidegger says *Being is not a being* - because the actuality does not change the *what* of an extant.²³³ Being is not a real predicate = Being is not a being.

Kant grounds actuality in perception: the character of absolute position is perception.²³⁴ Actuality = absolute position = character of absolute position = perception and that perception = being.²³⁵ Therefore, Being is made identical to the absolute position of the beingness of a being. The difficulty with interpreting existence/extantness as perception is that we cannot make clear 'perception' via psychology, rather we must already know what perception in general is.²³⁶ Heidegger maintains existence is not perception as perception itself is something performed by the ego (the actual subject).²³⁷ Heidegger critiques Kant for being unclear with his notion of perception and making use of the intentional structure without being explicit, without recognising its place; Kant recognises perception must reach somewhere, to something actual but does not clarify what he means.²³⁸

²³³ Heidegger, *The Basic Problems of Phenomenology*., 43.

²³⁴ 'In the absolute position the object of the concept, the actual being corresponding to it, is put into relation, as actual, to the concept that is merely thought. Existence consequently expresses a relationship of the object to the cognitive faculty. At the beginning of the explanation of the "postulates of empirical thinking in general" Kant says: The categories of modality [possibility, actuality, necessity] have in themselves the peculiarity that they do not in the least augment the concept to which they are attached as predicates, by determining its object, but express only the relationship [of the object] to the faculty of knowledge.' In contrast, real predicates express the real relationships immanent in the thing. Possibility expresses the relationship of the object with all its determinations, that is, of the entire reality, to the understanding, to mere thinking. Actuality, that is, existence expresses the relationship to the empirical use of the understanding or, as Kant also says, to the empirical faculty of judgment. Necessity expresses the relationship of the object to reason in its application to experience.' Heidegger, *The Basic Problems of Phenomenology*., 45-46. Actuality according to Kant has to do 'only with the question whether such a thing [as we can think it solely according to its possibility] is given to us in such a way that the perception of it can possibly precede the concept' 'The perception, however, which supplies the material to the concept is the sole character of actuality.' Heidegger citing Kant Heidegger, *The Basic Problems of Phenomenology*.,46.

²³⁵ Heidegger, *The Basic Problems of Phenomenology*.,128.

²³⁶ Heidegger, *The Basic Problems of Phenomenology*.,47,55.

²³⁷ Heidegger, *The Basic Problems of Phenomenology*.,47.

²³⁸ Heidegger, *The Basic Problems of Phenomenology*.,67.

8. Edmund Husserl was a prolific writer, his known lecture manuscripts and unpublished books tally up to 45,000 pages; he was also meticulously careful about what he published - largely introductions to phenomenology.²³⁹ It would be brash to pretend we can approach any kind of systematic understanding of Husserl's works in this small section. Once more, the aim of this chapter is simply to provide a flavour of early Heidegger's background, and to try to provide an accurate account of the debt he owed to his mentor. Husserl rejected Kant's opposition between the intelligible world (*noumenon*) – that we can never know and the sensible world (*phenomenon*).²⁴⁰ Husserl believed we could use experience, after it was refined correctly, to say something about us. He was troubled by the unclear, everyday process of seeing, and so he sought the 'pure' or 'reduced' phenomenon of seeing. He wanted to focus on seeing to find out what seeing is (*seeing* and *cogitatio*).²⁴¹ The motto of phenomenology was '*Back to the things themselves!*' '*Zu den Sachen selbst!*', these things were phenomena; whereas for Plato or Kant, a motto may have been something like '*Back to the thing-in-itself; the thing hiding behind the phenomena!*'²⁴² For Husserl, it was necessary to bracket out and suspend (*epochē*) questions of existence, and examine the phenomena given to consciousness to find the *a priori* unhidden structure of the transcendental subject.²⁴³ Husserl's phenomenology became a way to correct the many mistakes and confusions in our natural attitude, by seeking out a 'pure' and 'reduced' object. Phenomenology sought out clarity and desperately wanted to be presuppositionless. There were some assumptions even Husserl was forced to make, namely, that humans all share ideas, rationality and communication – *a priori* and philosophy should think the essences of these ideas.²⁴⁴ Phenomenology was a science, for Husserl, it was a 'method and an attitude of mind, the specifically

²³⁹ Dan Zahavi, *Husserl's Phenomenology* (Stanford University Press 2003).,2.

²⁴⁰ Michael Lewis and Tanja Staehler, *Phenomenology An Introduction* (Continuum 2010).,3.

²⁴¹ Husserl, *The Idea of Phenomenology*., xviii.

²⁴² Michael Lewis and Tanja Staehler, *Phenomenology An Introduction* (Continuum 2010).,5.

²⁴³ Roger Waterhouse, *A Heidegger Critique - A Critical Examination of the Existential Phenomenology of Martin Heidegger* (Harvester Press 1981).,38.

²⁴⁴ Husserl's phenomenology can be viewed in three main parts: (1) ideas, (2) intentionality and the (3) phenomenological method. Waterhouse, *A Heidegger Critique - A Critical Examination of the Existential Phenomenology of Martin Heidegger*.,23-24.

philosophical attitude of mind,’ it was the proper *philosophical method*.²⁴⁵ Husserl and the early Heidegger had differing notions of phenomenology.

Broadly, the formal conception of phenomenology is ‘to let that which shows itself be seen from itself in the very way in which it shows itself from itself’ encompasses both.²⁴⁶ We should also note that the Greeks experienced *phenomena* in a slightly different way, as *phainomena – phainesthai*, which meant to appear, or rather to come into its radiance, since radiance was that which appears.²⁴⁷

Husserl refuted psychologism which he saw as confusing ideality and reality. The truth value of the claim ‘In January 2018, the Prime Minister of the United Kingdom was a woman’ stays true independent of who says it, similarly Pythagoras theorem remains identical whenever it is thought, and the possibility of such repetitions is enough to refute the argument that ideality is reducible to subjective psychical acts.²⁴⁸ In this way, Husserl did not discuss psychological facts, but absolute data. The question of whether something existed as an objective actuality (or not) was bracketed out and suspended. Husserl also thought Kant failed to overcome psychologism and anthropologism, since he lacked the concepts of phenomenology and phenomenological reduction.²⁴⁹ Phenomenology did not assume anything concerning the existence or actuality, of that which is given. In the natural attitude all cognition makes the object transcendent, it posits the object as existent ‘out there’ and claims to reach facts that are not necessarily given to it, not ‘immanent’ to it.²⁵⁰ In our everyday dealings we might think to ourselves ‘where did I leave my keys?’ – the keys are ‘out there’, an object somewhere (transcendent), and not immanently given in my thoughts (usually we think of thought as a representation of the keys). Husserl thought the everyday attitude to transcendence was ambiguous; he found it problematic to talk of an object ‘out there’ contained in the cognitive act.

‘It is only in cognition that the essence of objectivity can be studied at all, with respect to all its basic forms; only in cognition is it truly given, is it evidently “seen”. This evident “seeing” itself is truly *cognition in the fullest sense*. And the object is not a

²⁴⁵ Husserl, *The Idea of Phenomenology*, 18-19.

²⁴⁶ Hubert Dreyfus, *Being-in-the-World a commentary on Heidegger's Being and Time, Division 1* (The MIT Press 1999), 31.

²⁴⁷ Heidegger, *On The Way To Language*, 38.

²⁴⁸ Dan Zahavi, *Husserl's Phenomenology* (Stanford University Press 2003), 9-10.

²⁴⁹ Husserl, *The Idea of Phenomenology*, 38.

²⁵⁰ Husserl, *The Idea of Phenomenology*, 27.

thing which is put into cognition as into a sack, as if cognition were a completely empty form, one and the same empty sack in which now this, now / that is placed. But in givenness we see *that the object is constituted in cognition*, that a number of different basic forms of objectivity are to be distinguished, as well as an equal number of different forms of the given cognitive acts and clusters and interconnections of cognitive acts.²⁵¹

Husserl wanted to get to ‘pure seeing’ via the phenomenological reduction by the bracketing out of the transcendent elements. Husserl’s approach developed throughout his writings, in his early writings he developed a kind of Platonic realism; whereas the later Husserl was more of a subjective idealist through his transcendental-subjectivity.²⁵² For Husserl, each psychic lived experience also corresponded to a given pure phenomenon, ‘...while I am perceiving I can also look, by way of purely “seeing,” at the perception, at itself as it is there, and ignore its relation to the ego, or at least abstract from it. Then the perception which is thereby grasped and delimited in “seeing,” is an absolutely given, pure phenomenon in the phenomenological sense, renouncing anything transcendent. *Thus to each psychic lived process there corresponds through the device of phenomenological reduction a pure phenomenon, which exhibits its intrinsic (immanent) essence (taken individually) as an absolute datum.*²⁵³

‘And so we have dropped anchor on the shore of phenomenology, the existence of the objects of which is assured, as the objects of a scientific investigation should be; not, however, in the manner of components of the ego or of the temporal world, but rather as absolute data grasped in purely immanent “seeing.” And this pure immanence is first of all to be characterized, in our approach, through *phenomenological reduction*: I mean, not with respect to what it refers to beyond itself, but with respect to what is in itself and to what is given as.²⁵⁴

²⁵¹ Edmund Husserl, *The Idea of Phenomenology* (William Alston and George Nakhnikian trs, Martinus Nijhoff 1964).,59.

²⁵² Husserl, *The Idea of Phenomenology*.,xix-xx.

²⁵³ Note: the original quoted text contains a small typo ‘raken’ rather than ‘taken’ individually. Husserl, *The Idea of Phenomenology*.,34-35.

²⁵⁴ Husserl, *The Idea of Phenomenology*.,35.

Husserl's notion of intentionality helped clarify aspects of our everyday natural attitude which were ambiguous. Husserl became acquainted with intentionality through Franz Brentano. Husserl was Brentano's student.²⁵⁵ Brentano developed intentionality after reflecting on the recent developments in psychology during his time. While psychology was busying itself with the methodology and concepts of the natural sciences, Brentano saw it ought to move forward on its own terms, by drawing on what matters in psychology: the connection of the mind with the body and sense organs - what is immediately accessible to us.²⁵⁶ For Brentano also, there was something objective in lived experiences.²⁵⁷ Brentano laid down the following *basic thesis*: *Every psychic phenomenon is itself either a representation or is based upon representations.*²⁵⁸ Whereas Husserl thought our experiences were presentational, in that they present the world to us.²⁵⁹ Several interrelated aspects of Husserl's works laid the ground work for intentionality, so his concepts cannot be understood in isolation, including his critique

²⁵⁵Donn Welton (ed) *The Essential Husserl Basic Writings in Transcendental Phenomenology* (Indiana University Press 1999).,x.

²⁵⁶Psychology from the Empirical Standpoint (1874) 'Empirical' here does not mean inductive in the sense given to it by the natural sciences, but rather drawn from the subject matter without contractions. The first thing, therefore, is to characterize the psychic phenomena themselves, to order their multiplicity according to basic structures; hence the task of 'classification' 'Classification' means dividing and ordering actual elements which are already given. Ordering is always done from a point of view, as everyone says. Point of view is that toward which I look, with regard to which I make certain distinctions in a domain of subject matter. This regard or point of view can vary in kind. I can order a given manifold of objects with regard to a devised scheme; ... 'Second, the point of view can be taken from the objective context which bears a connection with that which is itself to be ordered, in the manner that I order psychic processes with regard to physiological relationships. The attempt was accordingly made to define even thinking and willing in terms of phenomena of neural kinetics. Third, the point of view can itself be drawn from the actual elements to be ordered. No principle is superimposed upon them; it is rather drawn from the actual elements themselves. This is the real maxim, which Brentano follows in his classification: "The order of lived experiences must be natural". An experience must be assigned to a class to which it belongs in accordance with its nature. 'Nature' here means that which is what it is, as seen from itself. When it is genuine, a classification can be made only "from a prior familiarity with the object," "from the study of the objects". I must have prior familiarity with the objects, their basic structures, if I am to order them properly, in accord with the subject matter or object. The question therefore arises, what is the nature of psychic phenomena compared with the physical'. Martin Heidegger, *The History of the Concept of Time* (Theodore Kisiel tr, Indiana University Press 1992).,20-21.

²⁵⁷ There must be distinctions between basic structures in the way in which something is objective in lived experience: the represented in representing, the willed in willing, the judged in judging = principal distinctions of classes among the psychic phenomena = basic structure of the psychic whereby something objective inheres in each lived experience =called the *intentional inexistence* (Brentano). Intentio = directing itself toward – experience directs itself toward something e.g. *the willed* in willing, (etc). Basic structure of psychic phenomena: Brentano maintained there are different kinds of self-directedness towards objects 3 basic classes: representation, judgment and interest. "We speak of a representing whether something appears" wherever something is simply given and the simply given is perceived. Representing in the broadest sense is the simple having of something. Brentano interprets judging as "an accepting as true or a rejecting as false." In contrast to merely having something, judging is taking definite position toward the represented as represented. Brentano designates the third class with different titles: interest, love, emotion. "This class for us shall include all psychic appearances which are not contained in the first two classes" Heidegger, *The History of the Concept of Time*., 22.

²⁵⁸ Heidegger, *The History of the Concept of Time*., 22.

²⁵⁹ Zahavi, *Husserl's Phenomenology* (Stanford University Press 2003).,21.

of psychologism (and the distinction between ideality and reality), and the *epochē* (suspending questions of existence). An intentional act was always ‘of’ or ‘about’, I think of or about, I desired this or that; but the objects did not *have* to exist.²⁶⁰ Consciousness was intentional, in the sense of being directed towards an object: consciousness is consciousness *of something*.²⁶¹ Intentionality meant we were always conscious of an object in a particular way, we intended an object *as something*.²⁶² Cognitive mental processes in their essence had an *intentio* - they referred to something, that which was objective ‘also’ had a givenness in appearance, even though it was not genuinely given within the cognitive phenomenon; to understand the essence of cognition was to understand the essential connections and relatedness belonging to it, and to self-givenness.²⁶³ Husserl was careful to maintain the distinction between the act, the meaning, and the object: the object (either real or ideal) was distinct from the act (the process of meaning something), and it was also distinct from the ideal meaning that enabled us to apprehend the object.²⁶⁴ What was apprehended in its appearing was eidetic and apprehended in its essential features.²⁶⁵

²⁶⁰ Edmund Husserl, *The Idea of Phenomenology* (William Alston and George Nakhnikian trs, Martinus Nijhoff 1964).,xiv.

²⁶¹ Edmund Husserl, *Cartesian Meditations an introduction to phenomenology* (Dorion Cairns tr, Martinus Nijhoff 1960).,11.

²⁶² Zahavi, *Husserl's Phenomenology* (Stanford University Press 2003).,24.

²⁶³ Husserl, *The Idea of Phenomenology*.,43.

²⁶⁴ Zahavi, *Husserl's Phenomenology* (Stanford University Press 2003).,24.

²⁶⁵ The appearing of a house: ‘This appearing, also called a phenomenon, contains features such as redness, extension, form, functional relations, between parts: walls, roof, etc. These features can become, by virtue of *Fundierung*, the object of an ideation (I can apprehend eidetically redness as such) or categorical intuition (I can eidetically apprehend the relationship between whole and parts). But in reverse (and it is here that a true return begins to take place), the universals that stand in a position of surplus or excess vis-à-vis the strict singular sensorial data (exclusively considered by the empirical psychologist) play for my perception a *constitutive* role in the very appearing of that house. Thus, in that appearing, they have a foundational role. They make it possible in its physiognomy. In this sense the eidetic intuition of them is also a transcendental apperception. This transcendental apperception finds my concern perception, in such a fashion that I am entitled to say both (a) that I am seeing what I am describing and (b) that I am describing what I am seeing’. Taminiaux, *Heidegger and the project of fundamental ontology*.,22-23.

9. Heidegger's early hermeneutic phenomenology can be distinguished from Husserl's transcendental phenomenology. Indeed, Heidegger's early works are a response to Husserl's works through his hermeneutic phenomenology. Hermeneutic broadly means 'interpretation' (in early Heidegger), it is key to understanding one of the main differences between Heidegger and Husserl.²⁶⁶ For Husserl, phenomena were self-evidently given to us in our intuition; whereas Heidegger understood phenomena as signs requiring interpretation, which were imbedded in a historical process, and could not simply be given meaning by a subject in intuition as suggested by Husserl.²⁶⁷ Heidegger thought his hermeneutic phenomenology was a primordial way of accessing the sending of Being, in contrast to Husserl's transcendental positivistic accounts of 'essences'.²⁶⁸ Heidegger also thought Husserl was too Cartesian in origin and approach.²⁶⁹ Husserl's artificial starting point, beginning by *epochē* and seeking such a pure and reduce 'scientific' seeing, attempted to expel that which is most fundamental for understanding. One cannot simply discard everyday seeing, it is not some kind of plastic-coated packaging that we can gleefully tear away to get the prized pure phenomena; we cannot, at once, shed our skin. Heidegger found two omissions with Husserl's return to the things themselves: (1) Husserl neglected the being of the intentional (pure consciousness meant suspending our existence – as the being with intentionality); (2) the meaning of *Being* was also taken for granted.²⁷⁰ Husserl's *epochē* bracketed out fundamental questions about Being, '...in elaborating intentionality as the thematic field of phenomenology, *the question of the being of the intentional is left undiscussed*. It is not raised in the field thus secured, pure consciousness; indeed, it is flatly rejected as non-sensical. In the course of securing this field, in the reduction, it is expressly deferred. And where the determinations of being are brought into play, as in the starting position of the reduction, it is likewise not

²⁶⁶ 'In *Being and Time*, hermeneutics means neither the theory of the art of interpretation nor interpretation itself, but rather the attempt first of all to define the nature of interpretation on hermeneutic grounds', Heidegger, *On The Way To Language*, A dialogue on Language, 11.

²⁶⁷ Michael Lewis and Tanja Staehler, *Phenomenology An Introduction* (Continuum 2010), 68.

²⁶⁸ Ben-Dor, *Thinking about law in silence with Heidegger*, 60 paragraph 36.

²⁶⁹ '... Husserl's delimitations of the thematic field of phenomenology and his use of the notion of Being for that purpose were not guided by an ontological concern. What guided him instead was a scientific project, mapped on the idea (Cartesian in origin) of an absolute science whose site is in consciousness. Hence, in many respects, the presence of a specifically modern tradition seems to have blocked the way to the "things themselves," in spite of Husserl's motto. What is more, the very manner in which this access to the "things themselves" is conceived by Husserlian phenomenology (from the moment it intends to be grounded on the region of pure consciousness) betrays a position of the ontological neglect. The mode of access is the phenomenological reduction. The Husserlian reduction, in its very concept, implies an exclusion of Being'. Taminiaux, *Heidegger and the project of fundamental ontology*, 36.

²⁷⁰ Taminiaux, *Heidegger and the project of fundamental ontology*, 37-38.

originally raised. Instead, the being of acts in advance theoretically and dogmatically defined by the sense of being which is taken from the reality of nature. *The question of being itself is left undiscussed.*²⁷¹ Heidegger argued the phenomenological reduction's role to fix Being as consciousness and Being as transcendent never actually inquired into Being.²⁷² 'In drawing this this fundamental distinction of being, not once is a question raised regarding the kind of being which the distinguished members have, or the kind of being which consciousness has, and more basically, regarding what it is which directs the entire process of making this distinction of being, in shore, what the sense of being is. From this it becomes clear that *the question of being is not an optional and merely possible question*, but the most urgent question inherent in the very sense of phenomenology itself...'²⁷³ Heidegger further clarified the two fundamental neglects pertaining to the question of being: '*On the one hand, the question of the being of this specific entity, of the acts, is neglected; on the other, we have the neglect of the question of the sense of being itself.*'²⁷⁴ In what follows, there is an attempt to outline some of the concepts from Heidegger's early works. What follows is merely a starting point and an introduction, rather than a comprehensive analysis.

Early Heidegger

10. Heidegger dissolved the subject-object problem plaguing the tradition by showing intentionality to be a structure that constitutes the comportmental character Dasein. The usual concept of intentionality misunderstood the *toward which*-the perceiving directed itself toward, which led to a false subjectivizing of intentionality: a subject with intentional experiences belonging to the ego.²⁷⁵ Whereas Heidegger showed it was our

²⁷¹ Heidegger, *The History of the Concept of Time.*, 113-114.

²⁷² Heidegger, *The History of the Concept of Time.*, 114.

²⁷³ Heidegger, *The History of the Concept of Time.*, 114-115.

²⁷⁴ Heidegger, *The History of the Concept of Time.*, 115.

²⁷⁵ 'The usual conception of intentionality misunderstands that toward which – in the case of perception – the perceiving directs itself. Accordingly, it also misconstrues the structure of the self-directedness-toward, the intention. This misinterpretation lies in *an erroneous subjectivizing* of intentionality. An ego or subject is supposed, to whose so-call sphere intentional experiences are then supposed to belong. The ego here is something with a sphere in which its intentional experiences are, as it were, encapsulated. But, now, we have seen that the transcending is constituted by the intentional comportments themselves. It follows from this that intentionality must not be misinterpreted on the basis of an arbitrary concept of the subject and ego and the subjective sphere and thus taken for an absurd problem of transcendence; rather, just the reverse, the subject is first of all determined in its essential nature only on the basis of an unbiased view of the character of intentionality and its transcendence. Because the usual separation between a subject with its immanent sphere and an object with its transcendent sphere – because, in general, the distinction between an inner and an outer is constructive and continually gives occasion for further constructions, we shall in the future no longer speak of a subject, of a subjective sphere, but shall understand the being to whom intentional comportments belong

comportment toward extants which allowed us to understand anything at all, to be in this world.

‘...in opposition to the erroneous *subjectivising* of intentionality, we must hold that the intentional structure of comportment is not something which is immanent to the so-called subject and which would first of all be in need of transcendence; rather, the intentional condition of the Dasein’s comportments is precisely the *ontological condition of the possibility of every and any transcendence*. Transcendence, transcending, belongs to the essential nature of the being that exists (on the basis of transcendence) as intentional, that is, exists in the manner of dwelling among the extant. Intentionality is the ratio cognoscendi of transcendence. Transcendence is the ratio essendi of intentionality in its diverse modes.’²⁷⁶

Dasein is always-already dwelling with the extant, it is one of Dasein’s basic constitutions.²⁷⁷ There can be no inside the subject and the outside object, as to say so would be to misunderstand our Being, our ontological structure.²⁷⁸ The subject-object relationship fails to grasp how we are in a world - where we ek-sist beyond ourselves. It does not understand our *Being-in-the-World* and our comportment towards extants. Dasein is always-already dwelling with the extant and the intentional comportment belonging to Dasein is one of Dasein’s basic constitutions.²⁷⁹ It is the intentional constitution of the Dasein which is precisely the ontological condition of the possibility of every transcendence.²⁸⁰ We exist beyond ourselves. We are the transcendent, not in the sense that we are God; transcendent means to pass over, to go beyond, to surpass,

as *Dasein*, and indeed in such a way that it is precisely with the aid of *intentional comportment*, properly understood that we attempt to characterize suitably the being of the Dasein, one of the *Dasein’s basic constitutions*. The statement that the comportments of the Dasein are intentional means that the mode of being of our own self, the Dasein, is essentially such that this being, so far as it is, is always already dwelling with the extant. The idea of a subject which has intentional experiences merely inside its own sphere and is not yet outside it but encapsulated with within itself is an absurdity which misconstrues the basic ontological structure of the being that we ourselves are.’ Heidegger, *The Basic Problems of Phenomenology*., 64.

²⁷⁶ Heidegger, *The Basic Problems of Phenomenology*., 65.

²⁷⁷ Heidegger, *The Basic Problems of Phenomenology*., 64.

²⁷⁸ ‘When Kant talks about a relation of the thing to the cognitive faculty, it now turns out that this way of speaking and the kind of inquiry that arises from it are full of confusion. The thing does not relate to a cognitive faculty interior to the subject; instead, the cognitive faculty itself and with it this subject are structured intentionally in their ontological constitution. The cognitive faculty is not the terminal member of the relation between an external thing and the internal subject; rather, its essence is the relating itself, and indeed in such a way that the intentional Dasein which thus relates itself as an existence is always already immediately dwelling among things. For the Dasein there is no outside, for which reason it also absurd to talk about an inside’ Heidegger, *The Basic Problems of Phenomenology*., 66.

²⁷⁹ Heidegger, *The Basic Problems of Phenomenology*., 64.

²⁸⁰ Heidegger, *The Basic Problems of Phenomenology*., 65.

and we surpass ourselves and comport ourselves toward extants.²⁸¹ We have always-already *stepped out beyond ourselves: we ex-sistere, we are in a world.*²⁸² We have an understanding of the world, but also an understanding of ourselves. The understanding of ourselves is not subjective, rather it is a mode of Being.²⁸³ ‘World-understanding as Dasein-understanding is self-understanding. Self and world belong together in the single entity, the Dasein. Self and world are not two beings, like subject and object, or like I and thou, but self and world are the basic determination of the Dasein itself in the unity of the structure of being-in-the-world.’²⁸⁴

11. Heidegger’s early works are an attempt to show how we are forgetting the question of Being, for Heidegger, the question of Being had not been put.²⁸⁵ Heidegger focused on our curious ability to ask the question of the meaning of Being, such a remarkable ability disclosed something about our Being. We are in the unique position, the only ones to be able to ask this question of Being.²⁸⁶ Our mode of Being is *Dasein* meaning Being-there or existence. We are ontically unique from other beings because we understand Being. So ontically we are distinguishable from all other entities in the world because Being is an *issue* for us.²⁸⁷ ‘*Understanding of Being is itself a definite characteristic of Dasein’s Being.* Dasein is ontically distinctive in that it *is* ontological’.²⁸⁸ Our own existence is an ontical matter for us.²⁸⁹ Every Dasein *is* its mineness, and it can choose to choose itself or not, but its Being is always an issue for it.²⁹⁰ Ontically ‘I’ am Dasein, but Dasein also indicates an ontologically constitutive

²⁸¹ ‘If the world is the determination of being-in-the-world, of the Dasein. If the world is the transcendent, then what *is truly transcendent* is the *Dasein*. With this we first arrive at the *genuine ontological sense of transcendence*, which also ties in with the basic sense of the term from the common standpoint. *Transcendere* means to step over; the *transcendens*, the *transcendent*, is *that which oversteps as such* and not that toward which I step over. The world is transcendent because, belonging to the structure of being-in-the-world, it constitutes stepping-over-to...as such. The Dasein itself oversteps in its being and thus is exactly *not the immanent*. The transcending beings are not the objects – things can never transcend or be transcendent; rather, it is the “subject” – in the proper ontological sense of the Dasein – which transcend, step through and step over themselves. Only a being with the mode of being of the Dasein transcends, in such a way in fact that transcendence is precisely what essentially characterizes its being.’ Heidegger, *The Basic Problems of Phenomenology*,²⁹⁹

²⁸² Heidegger, *The Basic Problems of Phenomenology*,¹⁷⁰

²⁸³ Heidegger, *The Basic Problems of Phenomenology*,¹⁷⁵

²⁸⁴ Heidegger, *The Basic Problems of Phenomenology*,²⁹⁷

²⁸⁵ Heidegger, *Being and Time*,²⁴

²⁸⁶ Heidegger, *Being and Time*,²⁵

²⁸⁷ Heidegger, *Being and Time*,³²

²⁸⁸ Heidegger, *Being and Time*,³²

²⁸⁹ Heidegger, *Being and Time*,³³

²⁹⁰ Heidegger, *Being and Time*,⁶⁷⁻⁶⁸

state.²⁹¹ Dasein is thrown in the world - it is its thereness.²⁹² We directed-toward things, but we ourselves do not exist like things. We can only comport ourselves towards extants knowing in advance how to behave towards them because we live in the understanding of Being; unlike mere things, (and animals also are world-poor).²⁹³ We do not exist as present-at-hand entities which are indifferent toward their Being.²⁹⁴ We are not like other things that exist as a 'what'. The chair has no life of its own, it cannot comport itself towards extants, and it is not Da-sein (being-there). The chair cannot be with or along-side extants in the world, it is present-at-hand and worldless.²⁹⁵ The chair does not have a world where it might understand itself, and it does not have *Being-in-the-world* as its mode of existence.²⁹⁶ Likewise, the plant does not have an inner life or experiences, it does not stand-over against objects.²⁹⁷ Mere things cannot choose themselves, they are never *Being-with* or *alongside*.²⁹⁸ To understand Dasein in this way would be to misunderstand our existential state of *Being-in*.²⁹⁹ We know how to comport ourselves towards the cat, Dasein, the door, and other entities in the world - we already understand these in their Being. Implicitly when I am speaking to someone I am understanding them as another Dasein (ontologically), at the same time I am also ontically understanding them as a being, in a particular place and time, with their own particular features. In every case, Dasein *is* its possibility and it 'has' this possibility not as property (because it is not something present-at-hand). Dasein *is* its own possibility and can choose itself (authentically) or lose itself (inauthentically).³⁰⁰ We find ourselves for the most part in inauthenticity. That which is ontically closest is also ontologically the farthest away, its ontological signification is continuously overlooked.³⁰¹ Dasein exists understandingly, it comports itself toward Being. But prior to both authenticity or inauthenticity Dasein is grounded in a state of Being known as '*Being-in-the-world*'.³⁰²

²⁹¹ Heidegger, *Being and Time*.,150.

²⁹² Heidegger, *Being and Time*.,173-174.

²⁹³ Martin Heidegger, *The fundamental concepts of metaphysics world, finitude, solitude* (William McNeill and Nicholas Walker trs, Indiana University Press 1995)., 268-273.

²⁹⁴ Heidegger, *Being and Time*.,67.

²⁹⁵ Heidegger, *Being and Time*., 81-82.

²⁹⁶ Heidegger, *The Basic Problems of Phenomenology*., 166. Heidegger thinks animals are world-poor. They never die, but simply cease to live.

²⁹⁷ Martin Heidegger, *Ontology- The Hermeneutics of Facticity* (John Van Buren tr, Indiana University Press 2008)., 37.

²⁹⁸ Heidegger, *Being and Time*.,82.

²⁹⁹ Heidegger, *Being and Time*.,82.

³⁰⁰ Heidegger, *Being and Time*.,68.

³⁰¹ Heidegger, *Being and Time*.,69.

³⁰² Heidegger, *Being and Time*.,78.

12. The Being of beings is itself not a being, it is not an entity; Being is always the Being of a being.³⁰³ The ontological difference is the difference between Being and being. We have already encountered it negatively Being is not a real predicate. However, we can make this distinction clearer still by distinguishing between (a) the uncoveredness of a being, and (b) the disclosedness of its Being: ‘A being can be uncovered, whether by way of perception or some other mode of access, only if the being of this being is already disclosed- only if I already understand it’.³⁰⁴ The mode of uncovering and the uncoveredness of an extant must be determined by Dasein, the Being uncovers them. The actual requires a Dasein to apprehend it. To be clear, we do not need some extra apparatus to find out the actuality of a being or to understand its Being. We already have some pre-theoretical understanding of Being in our everydayness. We must already understand the Being of the being we are confronted with in our everydayness.

13. Dasein is only intentional because it is determined by temporality, so Dasein is intratemporal; but it also is unique because it temporalizes itself. When we are speaking about temporality we do not mean clock-time, our everyday understanding of time as an infinite stream of nows: now, no-longer-now and not-yet-now. Clock-time is a misunderstanding of the primordial essence of time. Dasein’s ontological constitution is rooted in temporality. The transitionary character of each ‘now’ itself belongs to temporality as ecstatic-horizontal unity (of the future, past and present) which is stretched out within itself. ‘The ecstatic connection of coming-toward-itself (expecting), in which the Dasein at the same time comes back to itself (retains itself), for the first time provides, in unity with an enpresenting, the condition of the possibility that expressed time, the now, is dimensionally future and past, that each now stretches itself out as such, within itself, with respect to the not-yet and the no-longer’.³⁰⁵ Time is determined not by the nows of clock-time, but by the *wheretofore* and *whereto* of Dasein.³⁰⁶ Our familiar clock-time has its origin in *the ecstatic-horizontal temporality*.³⁰⁷ Temporality is both: (a) the condition of the possibility of the

³⁰³ Heidegger, *Being and Time*.,26-29.

³⁰⁴ Heidegger, *The Basic Problems of Phenomenology*.,72.

³⁰⁵ Heidegger, *The Basic Problems of Phenomenology*., 273-274.

³⁰⁶ Heidegger, *The Basic Problems of Phenomenology*.,259.

³⁰⁷ Heidegger, *The Basic Problems of Phenomenology*.,271.

constitution of Dasein's Being (temporality as *Zeitlichkeit*), and (b) also the condition of possibility of the understanding of Being which also belongs to Dasein (Temporality as *Temporalität*).³⁰⁸

14. Dasein grows out of and into a traditional way of understanding itself and the possibilities of Being. It is within this structure or horizon, within this understanding that the possibility of its Being are both disclosed and regulated.³⁰⁹ Heidegger does not mean understanding in our everyday ontic sense of understanding something. Understanding as an existential means we understand Being as existing, we have the potentiality-for-Being.³¹⁰ Again, understanding is not some-thing we have which is added to us - we are Being-possible towards ourselves. Understanding means '*to project oneself upon a possibility*', so in projecting Dasein projects itself as a can-be and also projects upon something and in-doing-so, it is unveiling itself as possibility as a can-be.³¹¹ The nature of understanding is circular, but this is not a *circulus vitiosus*, rather it is the existential fore-structure of Dasein itself.³¹² Dasein is always more than it factually is, and is constantly projecting its own possibilities (Being-towards-possibilities) pushing itself forward into the future, without ever fully-reaching these.³¹³ This projection is what Heidegger calls Dasein's 'sight', which is not simply 'perceiving with the bodily eyes,' nor is it 'pure non-sensory experience'.³¹⁴ Instead, 'seeing' has an existential signification, allowing 'entities which are accessible to be encountered concealedly in themselves'.³¹⁵ The projection of understanding can develop itself (*sich auszubilden*) through interpretation, by working-out the possibilities projected in understanding.³¹⁶

15. In our everyday dealings Dasein always already understands the world. We always already understand world in holding ourselves in a contexture of functionality: *in-order-to*, or *being-for*, which we call the contexture of *significance* [*Bedeutsamkeit*].³¹⁷

³⁰⁸ Heidegger, *The Basic Problems of Phenomenology*, 274.

³⁰⁹ Heidegger, *Being and Time*, 41.

³¹⁰ Heidegger, *Being and Time*, 183.

³¹¹ Heidegger, *The Basic Problems of Phenomenology*, 277.

³¹² Heidegger, *Being and Time*, 194-195.

³¹³ Heidegger, *Being and Time*, 185.

³¹⁴ Heidegger, *Being and Time*, 186-187.

³¹⁵ Heidegger, *Being and Time*, 187.

³¹⁶ Heidegger, *Being and Time*, 188-189.

³¹⁷ Heidegger, *The Basic Problems of Phenomenology*, 164.

In the *in-order-to* something is referred to something else.³¹⁸ We understand equipment ontologically as either *ready-to-hand*, or *present-at-hand*. One cannot understand entities as both *present-at-hand* and *ready-to-hand*, as when something is discovered a *present-at-hand*, it is at the same time a covering-up its *readiness-to-hand*.³¹⁹ In dealing with equipment, where something is ‘put to use’, our relationship and concern with the equipment (e.g. the hammer) is an *in-order-to*. The hammer may be used *in-order-to* fix a nail into the wall, *in-order-to* attach a painting to the wall. The hammer withdraws and becomes *ready-to-hand* in the hammering. It does not draw attention to itself, whilst at the same time revealing its use its manipulability as equipment. The *ready-to-hand* is something ‘*with which*’ we have to do or perform something’.³²⁰ The hammer only becomes *present-at-hand* for us when it breaks, at this point we see the hammer as a ‘what’ and for a time think about the hammer, and the work it was doing becomes visible to us. The work the hammer was doing becomes visible because of a lack – the break in the referential contexts. The hammer becomes no longer useful, it has become unready-to-hand and thus comes into view.³²¹ What announces itself in the break is the ‘there’ of equipment, that was already there, before it came to our attention.

Present-at-hand should not be confused with *presence-at-hand* -which is Dasein’s own most. Dasein understands itself, its ‘is’ as a fact.³²² This is known as Dasein’s *facticity* meaning we are an entity ‘within-the-world’ and have *Being-in-the-World* as our mode of Being, and so we are bound-up with the entities we encounter in the world.³²³

Facticity means ‘*in each case* “this” Dasein in its being-there *for a while at the particular time* (the phenomenon of the “awhileness” of temporal particularity, cf. “whiling,” tarrying for a while, not running away, being-*there-at-home-in....being-there-involved-in...*the being-there of Dasein) insofar as it is, in the character of its being, “*there*” in the manner of *be-ing*.’³²⁴ Facticity is Dasein’s own thereness.

Dasein’s facticity means that its *Being-in-the-World* has divided into definite ways of *Being-in*: producing, attending to, considering something.³²⁵ All these different ways of

³¹⁸ Heidegger, *Being and Time*.,97.

³¹⁹ Heidegger, *Being and Time*.,200.

³²⁰ Heidegger, *Being and Time*.,200.

³²¹ Heidegger, *Being and Time*.,105.

³²² The word ‘facticity’ comes from ‘*a factum*’ - meaning something which is already done (*facere*). Michael Lewis and Tanja Staehler, *Phenomenology An Introduction* (Continuum 2010)., 74.

³²³ Heidegger, *Being and Time*.,82.

³²⁴ Heidegger, *Ontology- The Hermeneutics of Facticity*. ,5.

³²⁵ Heidegger, *Being and Time*.,83.

Being-in have *concern* (*Besorgen*) as their kind of Being. Even when we neglecting something or leaving something undone - these are also ways of *concern*.³²⁶ *Concern* itself is not an ontic expression, it is an ontological existential and itself is a possible way of *Being-in-the-World*.³²⁷ Dasein's Being is itself is made ontologically visible in *care* (*Sorge*).³²⁸ Dasein is *Being-in-the-World*. It does not have *Being-in-the-World* as some kind of property. Being is never a having. The concept of the 'world' can be taken ontically and used in our everydayness to mean all the entities present-at-hand in the world or the where these entities and Dasein lives.³²⁹ Heidegger uses 'world' to signify 'worldhood' the ontological or existential concept that refers to the Being that belongs to Dasein.³³⁰ Similarly, *Being-with* has an *existential-ontological* meaning. It does not mean that Dasein is not alone *factically*, rather *Being-with* is an ontological characteristic.³³¹ Even we are alone we are *Being-with* – the aloneness can only ever be determined by *Being-with*.

16. This chapter of the thesis was intended as a basic introduction to some of the important aspects of Heidegger's thinking, to provide the reader a flavour of his thought. It was not designed to be comprehensive study of Heidegger's works, nor could it contain all the important elements of his thinking. It was merely a place to begin thinking about Heidegger's thinking.

³²⁶ Heidegger, *Being and Time*.,83.

³²⁷ Heidegger, *Being and Time*.,83.

³²⁸ Heidegger, *Being and Time*.,84.

³²⁹ Heidegger, *Being and Time*.,93.

³³⁰ Heidegger, *Being and Time*.,93.

³³¹ Heidegger, *Being and Time*.,156.

3. Belonging-together: Ontic comparison

'If I have exhausted the justifications I have reached bedrock, and my spade is turned. Then I am inclined to say: This is simply what I do.'³³²

Chapter three shows how comparison is a primordial way of revealing. Comparison arises from the withdrawal of Be-ing (as event) itself. The essence of comparison is bringing-forth: *poiēsis*. Yet, comparison has become for us an instrumental way of thinking, a means to an end. Comparison is a necessary and fundamental part of our everyday comportment, which indirectly shines a light on the Event. The primordial origin of comparison has become distorted in machination, it has become 'ontic comparison' and we have become the makers of all things, and the centre of thinking. We cannot make determinations of beingness without comparison 'because' it is an essential bringing-forth. Comparison is prior to machination, both chronologically and primordially. But comparison has become distorted within machination. The rise of machination, whereby all making is a human activity is a consequence of our abandonment of Being and Be-ing's withdrawal from us. It led us to make determinations of beingness, to bring beings to representational thought, and it also allowed for the rise of metaphysics and mathematical subject-object determinations, with us as the centre of thinking.

Poieis and our productive comportment

1. The first investigation established comparison is aspectival and an act of synthesis. Comparison requires a subject making determinations of thingness, so we make comparison. We make comparison by taking aspects and comparing them; this is the form that comparison takes (the *causa formalis* of comparison) and the *causa materialis*: the matter the comparison is made from.³³³ We are both the *causa finalis* and the *causa efficiens* of comparison. The *causa finalis* is the end (the end of comparison is the reason for the comparison), and the *causa efficiens* means that which brings about the effect.³³⁴ After all, the comparatist brings about the actual comparison. Comparison is, thusly, something produced by us. This all seems simple enough, and our delineating and distinguishing the different kinds of making does not seem to have advanced our investigation into comparison. But, why should we not simply overlook our making of comparison because it is *given*? What if there is more to making which

³³² Wittgenstein, *Philosophical Investigations*, 217.

³³³ Martin Heidegger, 'The Question Concerning Technology' in David Farrell Krell (ed), *Basic Writings* (2nd edn, Routledge 2000), 313.

³³⁴ Heidegger, 'The Question Concerning Technology', 313-314.

can help us on our way to grasping comparison? Are there different kinds of making? Do we make comparison? Comparison must 'live' in its relationship to us as it only seems to exist in relation to us. To get a foothold on this 'making' we should till the soil we have been comfortably standing on...

2. *The Deposition (Florence Pietà)* sits in the *Museo dell'Opera di Santa Maria* in Florence.³³⁵ Sometime in 1550, its creator, Michelangelo gazed upon a large block of Carrara marble and saw the potential for it to be something else. In one way he was able to see beyond its present form and imagine how it could be, and in another, he understood the stone as stone. The properties of the marble and some certainty about how the stone will behave when tools are applied. At work in the sculpting process is both an idea of what the materials can be, and a deep attunement and understanding of the stone and the craft of sculpting itself. The tools then become an extension of oneself, a self which is perhaps lost in the making of a work of art.

The idea by Michelangelo was prior to the form the work took. The initial idea was projected onto the stone, carved in the understanding of materials and the vision of the whole, in a continuous hermeneutic movement from the part to the whole. During the making process there is not a tentative naming and methodological adherence to each 'stage', now this bit, then this. Instead, there is an immersion in the work of art - together with a different kind of knowing. Distinct from everyday knowing, it requires a different kind of attunement to the work - understanding it in its Being.³³⁶ The *Florence Pietà* is particularly noteworthy in this respect, it will stay forever incomplete: half-stone and half-carved by Michelangelo's hand and (in his) image. Showing us how the material has been transformed and yet is still raw. Walking behind the piece, you will find the stone exposed and undefined. Its creation was disrupted - the immersion fractured. The work failed to live up to Michelangelo's idea and he failed the work.³³⁷ Michelangelo attempted to destroy it. Sometime later

³³⁵ Jack Wasserman, *Michelangelo's Florence Pietà* (Princeton University Press 2003), 17.

³³⁶ Everyday knowing is deficient, lacking the concern and attunement with the work, its Being. In everyday knowing we find ourselves and our place through the steering meanings and having mastery of and over things, their properties. Whereas Essential knowing 'concerns the being in its ground-it intends Being. Essential 'knowing' does not lord it over what it knows but is solicitous towards it' Martin Heidegger, *Parmenides* (Andre Schuwer and Richard Rojcewicz trs, Indiana University Press 1992), 3.

³³⁷ There are conflicting accounts as to why Michelangelo attempted the destruction of this work, by his biographer and friend Giorgio Vasari. Vasari claimed: (a) the stone was too difficult to carve and had many cracks frustrating Michelangelo; (b) the artist's idea was too great for the work; (c) a servant (Urbino) kept on asking when the work would be finished, a work he had now come to hate, in Wasserman, *Michelangelo's*

another artist restored the work, and eventually it found itself in the *Museo dell'Opera di Santa Maria*, half-a-living-sculpture and half-raw-stone.

3. Creating a work of art is clearly different to the everyday manufacturing of things.

Most would agree that much, the making process of a drinking vessel, or a bookshelf is not the same kind of making of a work of art. For one, the moment of inspiration (and from where) is different. Even so, we should concede there are some basic shared features in the making of everyday things - the idea still comes prior to the form. The potter has an idea of what the finished cup will look like prior to the moulding of the clay. (S)he understands how to work the clay to achieve the prior cup-shape. A stonemason understands how to handle and tap the slate to cause a break at a specific point to fit into the rest in the roof. Again, the stonemason's hammer becomes an extension of oneself used in a ready-to-hand manner. There is a rhythm to creating a roof with slate or building a wall with stone and once more an immersion in the task.

That said, we should also acknowledge that the original craft of making has largely been lost in our era of machines and 3D printing. The manufacturing process of machines has lost the direct grasp of the potter and his/her wheel. The moulding a drinking vessel from clay or glass does still occur, albeit the exception rather than the rule. Despite this, even in the mechanical there are characteristics shared with the other kinds of making, the idea of the manufactured cup is still prior to its form. It is just that now we would find it programmed into the machines using algorithms. There is still a predictability and reliability using the materials. The clay will still behave in the same way with the mould - taking-up the required shape. When heated the clay changes its form once more. However, in the manufacture via machines there is no immersion or direct link to the potter. The stages of production are now more prominent.

4. Reflecting on making yields new insights. There are different kinds of making but some aspects remain the same. The constancy of the materials, there is a reliability and predictability in the materials, taking up the shape required and drying out when the water in the clay boils away at high temperatures. Moreover, with each example of making there is an *idea*, which shapes the form the product takes. The idea of the shape

Florence Pietà, 17-19. In all of these cases there would have been a perceived failure of the work and prior to that perception already a rupture in the immersion required to continue the work.

of the drinking vessel is prior to the potter making it; the potter projects the idea onto the clay to form the cup. We also have an understanding of the materials. The materials show themselves to us in a certain way that we can predict how the application of force and heat will cause a desired outcome. There is an understanding of the materials and an understanding of how to apply the tools successfully to create. The stonemason seldom focuses on the hammer itself. The hammer withdraws into making process and is put to use as an in-order-to.³³⁸ It is only when the hammer breaks that it becomes clear and visible to us in a present-at-hand fashion what work the blade was doing.

What kind of making is at play in comparison? Can we really say that making comparison is the same as making a work of art or a cup? Do we grasp the materials of comparison is the same way that the potter moulds clay? Does the comparatist have an understanding of the things under comparison in the same way that the potter can rely on clay to dry out when heated? All these questions *about* comparison are looking for comparison by *comparing* the making of the drinking vessel with comparison itself. Pursuing this kind of questioning is not getting to the heart of comparison. Even within the simple making of the drinking vessel comparison is already at play.

5. Comparison is present in our understanding of how the materials change in the firing process from soft to being capable of retaining liquids when fired. The process of making requires an understanding of the *constancy* that the materials, knowing the material will do the same thing in production. Understanding the clay will harden when fired due to a loss of water - is an aspectival-understanding of the properties of the materials. We approach the clay already in a certain way, as a 'seeing-as' - together with the tools to mould the clay into a cup and the *idea* of what the cup should look like (which is prior to the form the clay later takes up during production). Within the understanding of the clay there is always-already comparison and aspectival thinking: the kind of thinking behind the understanding of the properties of the clay as clay. The clay's nature as a material which can be moulded, acquiring a particular shape, taking up and holding when heat is applied. What allows comparison to manifest? How do the materials show themselves? Surely, this is the key to how comparison takes hold.

³³⁸ This is what is meant by the ready-to-hand. See Heidegger's discussion on equipment / the ready-to-hand Heidegger, *Being and Time*., 97-100.

We need to rely on the materials staying the same. To understand the clay as something that changes when heated, we need the clay to react the same when heat is applied. Is it constancy which makes comparison and all aspectival-thinking possible? The ‘look’ can only emerge from constancy of the materials used in production. If the clay does not show itself to change its properties when fired it cannot be used for the making of a cup. It would no longer be useful for us as the drinking vessel would dissolve with the liquid. The clay shows itself to us in a certain way which means it is predictable for us. We can form patterns about the cup. We can make plans for production and it is from these basic determinations that all manufacturing turns.

The clay showing itself is not sufficient for comparison to occur. Concealing itself is how we approach the materials and our fundamental attitude towards things which allows us to compare. We are able to form plans for the materials and ideas about how the materials are useful for us. Consequently, comparison cannot be in its essence comparative. The aspects or comparing itself cannot determine the movement of comparison. Aspectival-thinking does not determine comparison. It is a sign that we are doing comparison, but it is not the movement of comparison. So what is aspectival thinking? What are aspects? And where does comparison begin? At the most basic, aspects are fragments of beingness, and comparison must begin with how we approach materials, how we are able to see the constancy of the clay and its properties- the precision in the determining the boiling point of water, attributing a number to what we see.

6. Where does aspectival-thinking originate? It is a difficult question to approach, given that as soon as we attempt anything approaching an answer we fall back into making determinations of beingness.³³⁹ Comparison is a necessary part of our productive comportment. The determinations for the thingness or reality of a being originate in our productive activity: the comprehension of Being by way of production.³⁴⁰ Our horizon of understanding is productive. The actual comes to hand, we apprehend it as something produced by a production. Producing (*Herstellen*) to produce means to place-here, *her-stellen*, ‘means at the same time to bring into the narrower or wider circuit of the accessible, here to this place, to the Da, so that the produce being *stands*

³³⁹ Rest assured, we will return to this point in a little while.

³⁴⁰ Heidegger, *The Basic Problems of Phenomenology*, 105.

for itself on its own account and remains able to be found there and to *lie-before there* [*vorliegen*] as something established stably for itself.³⁴¹ Within the productive comportment we also come up against and understand that which does not need to be produced. We do not create the *quiddities* (whatness) of things.³⁴² Our productive comportment is part of our basic constitution and within it we understand beings in their Being.³⁴³ Comparison is implied in our productive comportment because it is itself a way of bringing-forth (*poiēsis*). The Greek notion of whatever comes into presencing from that which is not is called *poiēsis*: a bringing-forth (*Her-vor-bringen*).³⁴⁴ *Poīēsis* can mean both that which is brought-forth by an artist (handicraft), and it can also refer to *phusis*: the bringing-forth out of itself.³⁴⁵ Corresponding to these ways of *poiēsis* the Greeks characterised knowledge in two ways: the knowledge of what occurs from out of itself, and the knowledge of what is produced.³⁴⁶

7. The *essence* of comparison (that which allows it to be what and how it is) is *poiēsis*. It is a fundamental way of dis-closing which enables us to stand in the openness; the primordial openness whereby we already understand beings in their Being. If we examine closely not only the *what* of what we have said but also the *way* of arriving, we will see we have been in comparison. We are thrown into comparison. It has a peculiar relationship to how we understand, but we are oblivious to it. Our fundamental relationship to comparison has been forgotten, but not in the sense of a human subject ‘forgetting’ the place of comparison. We are not yet asking comparison because comparison withdraws from us. Comparison is evasive, it withdraws and turns away from us, and into the movement of the withdrawal. Comparison could derive its *origin* from the withdrawal itself, and yet it is problematic to speak of the possible origin of comparison. Comparison is something we are still not thinking because it is itself turning away from us. Returning to our question ‘asking comparison’, it always arrives too late because comparison is turning away from us. Asking comparison is chasing after this question of origin which is holding-itself back. Asking comparison is a way

³⁴¹ Heidegger, *The Basic Problems of Phenomenology*.,108.

³⁴² Returning to the potter and the clay there was a prior constancy, the materials showing themselves to us in the same way, each time.

³⁴³ The productive comportment is a definite way of our Being-in-the-world. Heidegger, *Being and Time*.,83.

³⁴⁴ Martin Heidegger, *The Question Concerning Technology and Other Essays* (William Lovitt tr, Harper Colophon Books 1977).,10.

³⁴⁵ For example, the bringing-forth out of itself, such as the bursting of a blossom into bloom. We did not ‘make’ the flower bloom. Heidegger, ‘The Question Concerning Technology ’.,317.

³⁴⁶ Heidegger, *What is a thing?*., 81.

of thinking-back, but not in a historiographical way. Thinking-back is memory: ‘Memory, Mother of the Muses - the thinking back to what is to be thought is the source and ground of poesy. This is why poesy is the water that at times flows backward toward the source, toward thinking as a thinking back, a recollection.’³⁴⁷ In an originary way, we are ‘not yet asking comparison’ not because no one has ever thought *about* comparison, rather, we are not yet asking comparison because comparison keeps itself turned away from us.

Making determinations of beingness

8. ‘The nearby can indeed be called in an emphatic sense that which presences. In what lies nearby, nearness remains outstanding. In what presences, *presencing* withdraws. Because it withdraws itself and has so withdrawn, we never encounter it – least of all in the way that we are accustomed to encounter something – *in representation*. Lying nearby are what we name things. What is this – a thing?’³⁴⁸
9. Comparison has become something instrumental. It has become a means to an end for us. Our current relationship to comparison is part of our captivity within a certain kind of thinking in machination, which already determines every-thing by the approach. In machination we make everything represented and representable to ourselves.³⁴⁹ Comparison is an enabling condition allowing us to machinate. Machination is the notion that making is a ‘human activity’, it is only possible when we ground our interpretation of beings in terms of *constancy* and *presence* and we make *constancy* and *presence* a determination of *beingness*.³⁵⁰ It names a specific truth of beings (the beingness of beings), which we grasp in objectivity when we bring beings as objects of representation.³⁵¹ The fact that something makes itself by itself is the interpretation of the φύσις (*phusis* self-emergent/ nature) carried out in terms of τέχνη techne (know-how) and its outlook on things (τέχνη techne and ιδέα idea) are what is machination.³⁵² This making comportment is not simply a kind of human comportment; rather, it is

³⁴⁷ Heidegger, *What is Called Thinking?*, 11.

³⁴⁸ Heidegger, *Bremen and Freiburg Lectures*., appendix Insight Into That Which is [23], 22.

³⁴⁹ Martin Heidegger, *Contributions to philosophy (to the event)* (Richard Rojcewicz and Daniela Vallega-Neu trs, Indiana University Press 2012), 87.

³⁵⁰ Heidegger, *Contributions to philosophy (to the event)*, 100.

³⁵¹ Heidegger, *Contributions to philosophy (to the event)*, 104.

³⁵² What is called machination? Machination and constant presence; ‘making’ -‘know how’, Heidegger, *Contributions to philosophy (to the event)*, 86.

itself the emerging of essence of Be-ing which is a distorted emergence.³⁵³ It is the distorted essence of Be-ing which grounds the possibility of all ‘undertakings’.³⁵⁴ We are abandoned *by* Be-ing (what is abandoned is being by the Be-ing belonging to them) and we are also in the abandonment *of* Being.³⁵⁵ There is a disguising of the abandonment by Be-ing through *machination* and *lived experience*, a disguising which belongs to the abandonment itself.³⁵⁶ What appears as the abandonment by Be-ing is itself due to the self-withdrawing concealment of Be-ing. The self-withdrawing concealment of Be-ing leaves us to machinate, to make determinations to beingness. *Machination* and *lived experience* belong-together and together these constitute an earlier formula of *Being and thinking: Being as beingness and thinking as representational grasping* because what we can count as ‘being’ is actually the object of lived experience - what we can bring to and before ourselves.³⁵⁷

10. Comparison does not leave us in machination. It becomes distorted within it.

Machination becomes a lens filtering and concealing both the *essence* and *origin* of comparison. The essence of comparison *poiēsis* (the essential bringing-forth) becomes concealed through ontic comparison. Ontic comparison allows us to make determinations of beingness: without ontic comparison there could not be machination. Machination pushes itself forward along the path of a continuous bringing-together attempting to impose an order on everything. In machination comparison becomes a human-steering-centred enterprise. We become the centre of thinking, making and unmaking meanings of all aspects and of all things. We decide what belongs-together and what does not in ontic comparison. The origin of comparison becomes disguised in machination. Comparison is prior (chronologically and primordially) to machination arising from the withdrawal of Be-ing. To attempt to speak of the origin of comparison is already falling back into beingness – another approach would be required.³⁵⁸ Everything is ‘thought-provoking’ and yet most thought-provoking of all is that we are still not thinking.³⁵⁹

³⁵³ Heidegger, *Contributions to philosophy (to the event)*.,99.

³⁵⁴ Heidegger, *Contributions to philosophy (to the event)*.,67.

³⁵⁵ Be-ing refers to the Event – it is an archaic spelling of Being which refers to the Event of Appropriation specifically. The Event of Appropriation has also been translated as enowning. Heidegger, *Mindfulness*.

³⁵⁶ Heidegger, *Contributions to philosophy (to the event)*.,101.

³⁵⁷ Heidegger, *Contributions to philosophy (to the event)*.,101-102.

³⁵⁸ We will return to this point a little later.

³⁵⁹ Heidegger, *What is Called Thinking?*

11. To understand the rise of machination and how it gained a grip on thinking we need to turn back to the mathematical.³⁶⁰ The Greek word for learning is the mathematical. It has two meanings: what can be learned and the manner of learning/the process itself.³⁶¹ ‘The mathematical is the evident *aspect of things* within which we are always already moving and according to which we experience them as things at all, and as such things’.³⁶² It is the fundamental position we take towards things as given to us, it is that which we already know ‘about’ things.³⁶³ For instance, mathematics also belongs to the mathematical, knowing there are four chairs and one table in front of us, does not tell us anything we did not already know about these things. Mathematics determines things without ever disclosing anything about the mode of being of those things it determines. Knowing that there are four chairs does not speak of their Being. Mathematics is independent of what is being counted, that is why it can and does determine the chairs and the table and any-thing.³⁶⁴

12. The mathematical mandates us to find a foundation for all positing to be possible, which cannot be taken from somewhere else. If the mathematical as a projection is the fundamental presupposition of the knowledge of things, then it must be axiomatical in essence. It must form special axioms which are the foundations or basic principles we can ground any and all knowledge on.³⁶⁵ If these axioms are to be the foundation they cannot be subject to other conditions, they must be self-evident and certain, and in advance establish everything that is, what it is in being, from where and how the thingness of the thing is determined.³⁶⁶ There can be no pre-given things. If we are to take the mathematical seriously, we must question all knowledge up to this point and before. All propositions must be based on a foundation. Modern philosophy is said to have begun with René Descartes (1596-1650), who was forced to doubt everything because took the mathematical seriously.³⁶⁷ There can be no pre-given possibilities,

³⁶⁰ Note – the rise of machination is separate from its ‘cause’ (the withdrawal of Be-ing).

³⁶¹ Heidegger, *What is a thing?*, 75.

³⁶² My emphasis on ‘aspects’ Heidegger, *What is a thing?*, 75.

³⁶³ Heidegger, *What is a thing?*, 74.

³⁶⁴ See discussion on temporality Heidegger, *The Basic Problems of Phenomenology*., 249.

³⁶⁵ Heidegger, *What is a thing?*, 102.

³⁶⁶ Heidegger, *What is a thing?*, 103.

³⁶⁷ If anything is given at all, it is only the *proposition* in general *as such*, i.e., the positing, the position, in the sense of a thinking that asserts. The positing, the proposition, only has itself as that which can be posited. Only where thinking thinks itself, is it absolutely mathematical, i.e., a taking cognizance of that which we already have. Insofar as thinking and positing directs itself toward itself, it finds the following: whatever and in whatever sense anything may be asserted, this asserting and thinking is always an “*I think.*” Thinking is

everything has to have a foundation, and following this, there is only the doubter left and so he began with the ‘I posit’, ‘I-think’. The mathematical instructed Descartes to posit the ‘I-think’ subject talking about/of an object to avoid being groundless. This positing of the ‘I-think’ is the origin of modern subject-object thinking, where human subjectivity became the centre of thought.

13. We no longer pause to think the subject is saying something about an object. It is self-evident. We take for granted that we are obviously the centre of thinking and making determinations of thingness, of beingness. The subject stands over and against objects. It is through the subject, through the ‘I-posit’, that things receive their thingness. Simultaneously, the subjectivity of the subject also comes to be defined as the I-ness (ichheit) which is already present for representation, re-presentation of all the things, the objective.³⁶⁸ Still, as Heidegger notes the subject saying something about an object is incidental and not primordial, a misunderstanding of our essence.³⁶⁹

14. Ontic comparison can be best shown through Calvino’s fictional account of Mr Palomar’s obsessive (and futile) phenomenological investigation of a single wave. The observation of the wave begins simply with the ‘rise in the distance, grow, approach, change form and color, fold over itself, break, vanish, and flow again.’³⁷⁰ Mr Palomar soon encounters the tricky task of sealing off one wave from the rest: ‘But it is very difficult to isolate one wave, separating it from the wave immediately following it, which seems to push it and at times overtakes it and sweeps it away; just as it is difficult to separate that one wave from the wave that precedes it and seems to drag it towards the shore, unless it turns against its followers as if to arrest it. Then if you consider the breadth of the wave, parallel to the shore, it is hard to decide where the advancing front extends regularly and where it is separated and segmented into independent waves, distinguished by their speed, shape, force, direction’.³⁷¹ Faced with the unbounded ocean, Mr Palomar obeys his will to precision and tries to restrict the

always an “I think,” *ego cogito*. Therein lies: I am, *sum. Cogito, sum* – this is the highest certainty lying immediately in the proposition as such.’ Heidegger, *What is a thing?*, 103-104.

³⁶⁸ Heidegger, *What is a thing?*, 105.

³⁶⁹ ‘This “I,” which has been raised to be the special subjectum on the basis of the mathematical, is, in its meaning, nothing “subjective” at all, in the sense of an incidental quality of just this particular human being. This “subject” designated in the “I think,” this I, is subjectivistic only when its essence is no longer understood, i.e., is not unfolded from its origin considered in terms of its mode of being (seins mässigen Herkunft).’ Heidegger, *What is a thing?*, 105.

³⁷⁰ Italo Calvino, *Mr Palomar* (William Weaver tr, Vintage 1999), 3-4.

³⁷¹ Calvino, *Mr Palomar*, 3-4.

field of vision to a square zone of ten meters of sea; naturally, the sea moves, and his boundaries fall away. Still, Mr Palomar persists: ‘at each moment he thinks he has managed to see everything to be seen from his observation-point, but then something always crops up that he had not borne in mind.’³⁷²

Calvino tries to show us how the waves escape Mr Palomar’s account. Mr Palomar’s feeble scientific attempts to exert some control over his space of vision and record the single wave was doomed to fail because the wave is never a single thing, but always just a movement of water. Although the water rises and falls and in a sense the wave presences, there has never been a thing called a wave because it *is* its beginning and end as the movement of water.³⁷³ The wave is never a thing, we are not subjects looking over at the object. ‘The wave thing’ is merely the movement of the water. Mr Palomar stuck in machinational thought and ontic comparison, sees the water *as*-wave or a series of waves, and calculates the wave to try to impose an order. The imposing of an order is a way of bringing-together synthesizing what Mr Palomar sees: a specific instance of ‘wave’. The further we push along the synthesizing order, with us steering the representations and calculations of ontic comparison - the more we become deaf to the call of Being.

Properties of Being: the transcendentals

15. The state-of-affairs where subject-object thinking and the mathematical dominate has not forever been the case. There was a distinct shift in thinking during Descartes’ time. Prior to the mathematical there was the domination of authority, which had a grip on the ways of thinking through Christian doctrine. Whatever showed itself was attributed to the supernatural, faith, the Church, and these were the source of the true. Both the mathematical and authority co-existed for a time in the medieval period. It is strange that this kind of authoritative thinking intertwined with the rise of philosophy as an academic discipline. One is said to be reason (*ratio*) and the other faith (*fides*). However, the early medieval thinkers incorporated much Platonic and Aristotelian thought within their writings and one can hear these thinkers in their later thinking.³⁷⁴

³⁷² Calvino, *Mr Palomar*.,5.

³⁷³ Ben-Dor, ‘The Gravity of Steering, the Grace of Gliding and Primordiality of Presencing Place: Reflections on Truthfulness, Worlding, Seeing, Saying and Showing in Practical Reasoning and Law’.,27. The wave (the movement of the water) was used as a metaphor for belonging to Being.

³⁷⁴ The relationship between medieval thought and Plato’s works has also been noted by many writing on this period. Joseph Koterski maintains that the Platonic doctrine of ideas becomes for the medieval thinkers the

They interpreted these early Greek thinkers together with the Christian doctrine. Early Christian writers also had another motivation for appealing to the Greek philosophers, not only did they want to tell the world beyond their lands their beliefs, but it was also a way of universalising specific historical claims about God into the language of reason.³⁷⁵

16. While truth as comparison (*adaequatio*) maybe our metaphysical notion of truth, it has also been appropriated by the tradition in different ways. Truth as comparison does not simply speak of our relation to things, namely, that we are to state of what is that it is and what is not that it is not. It is also concerned with how things are created, and their correspondence with the creator: God.³⁷⁶ While Thomas Aquinas agreed with Aristotle that the true is a synthesis found 'in a conforming of thing and intellect.'³⁷⁷ For Aquinas, there was another important aspect to truth connecting us to the divine mind: he believe that it was through our likeness to the divine mind that we are able to know anything at all.³⁷⁸ Aquinas's account of truth relied on a likeness between Man and God and that we participated in God's likeness in our own way.³⁷⁹ For Aquinas, X was true when it conformed to its Godliness in its own way. So everything in being (that *is*),

doctrine of Divine Ideas within the mind of God Joseph Koterski, *An Introduction to Medieval Philosophy Basic Concepts* (Wiley-Blackwell 2009)., 63 see chapter 3 (Divine ideas). Nicholas de Cusa, Pseudo-Dionysius and many other thinkers deeply valued Proclus' *Commentary on Parmenides*, see Proclus, *Proclus' commentary on Plato's Parmenides* (Glenn Morrow and John Dillon trs, Princeton University Press 1987).,ix. The roots of Dionysian's 'mystical theology' and Saint Augustine's philosophy are found in the Platonic Parmenides / the interpretation of this dialogue by Plotinus, Syrianus and Proclus. See Raymond Klibansky, *The Continuity of the Platonic tradition during the Middle Ages* (Kraus International Publications 1981).25 see also Ronald Nash, *The light of the mind: St Augustine's Theory of Knowledge* (The University Press of Kentucky 1969).4

³⁷⁵ Koterski, *An Introduction to Medieval Philosophy Basic Concepts.*,13.

³⁷⁶Heidegger, *What is a thing?*,117.

³⁷⁷ Saint Thomas Aquinas, *Truth*, vol 1 (Robert Mulligan and S.J. trs, Hackett Publishing Company Inc 1994). question 1 article 3, page13 See also Aertsen discussion on Aquinas's and Aristotle truth in the intellect Jan Aertsen, *Medieval Philosophy and the Transcendentals The Case of Thomas Aquinas* (E. J. Brill 1996). 250.

³⁷⁸ There is much dispute between theologians/philosophers regarding Aquinas' (Thomist) notion of truth and various different interpretations. John Milbank and Catherine Pickstock, *Truth in Aquinas* (Routledge 2001).5-7.

³⁷⁹ 'a thing is said to be true because it fulfils what it was assigned to it in the divine mind by retaining its own nature, so a proposition is also said to be true by retaining its own nature which was also allotted to it in the divine mind;...' Aquinas, *Truth.*, 33-34 Question 1, Article 6. 'In regard in God, truth can be taken in two ways: properly and, as it were, metaphorically. If truth is taken properly, then it will imply an equality of the divine intellect and of a thing. Since the first thing the divine intellect knows is its own essence, through which it knows all other things, truth in God principally implies an equality between the divine intellect and a thing which is its essence; and, in a secondary sense, truth likewise implies an equality of the divine intellect with created things. The divine intellect and the divine essence are not, however, made equal to each other in the way in which a measure is related to what is measured, since one is not the source of the other, but both are entirely identical. Consequently, the truth resulting from such equality does not involve its having the character of a source, which it be considered from the standpoint of the essence or from that of the intellect, since both in this case are one and the same' Aquinas, *Truth.*, 35 Question 1, Article 7.

for Aquinas, was related to the Divine intellect and true.³⁸⁰ Falsity was also related to the Divine mind, but not caused by Him.³⁸¹ Falsity was an unlikeness.³⁸² Essentially, Aquinas believed falsity came from unlikeness, and the soul's judgement was deceived by the shared aspects, e.g. the similar aspects of false gold with true gold.³⁸³ Strictly speaking nothing could be false because in relation to the divine intellect, everything in being, is true.³⁸⁴

17. The medieval philosophers adopted a realist position and claimed to know being as being (beingness), meaning they understood things as they are in themselves.³⁸⁵ However, our finite understanding always meant we could only see aspects of being, the transcendentals. The transcendentals were the general properties of being as being and not something constructed by us. The medieval thinkers claimed we could understand every being as a being (beingness) because there was a form present within that being which was already understood by God. The transcendentals were also important for how the medieval understood the being of God.³⁸⁶ This doctrine recognised we cannot overcome our condition as finite beings - we cannot know God. The more profoundly we learn this (our) ignorance, namely, that we cannot vertically transcend our position in the hierarchy of being (with God at the highest point), the closer we draw to truth itself.³⁸⁷

³⁸⁰ Aquinas, *Truth.*,45.

³⁸¹ 'Just as truth consists in an equation of thing and intellect, so falsity consists in an inequality between them. Now, as was said, a thing is related to divine and human intellects. In regard to everything that is positively predicated of things or found in them, it is related to the divine in one way as the measured to its measure; for all such things come from the divine intellect's art. A thing is related in another way to the divine intellect: as a thing known is related to the knower. In this way even negations and defects are equated to the divine intellect, since God knows all these even though He does not cause them. It is clear, then, that a thing is conformed to the divine intellect in whatever way it exists, under any form whatsoever or even under a privation or a defect. Consequently, it is clear that everything is true in its relation to the divine intellect' Aquinas, *Truth.*, 44, Question 1, Article 10.

³⁸² 'In relation to the human intellect, however, an inequality of thing with intellect, caused in some way by the thing, is occasionally found; for a thing makes itself known in the soul by its exterior appearance, since our cognition takes its beginning from sense, whose direct object is sensible qualities.' Aquinas, *Truth.*, 44, Question 1, Article 10. Accordingly, Aquinas appears to be saying that the thing causes falsity; he uses the example of false gold which gives itself the appearance of gold but lacks the nature of gold.

³⁸³ Aquinas cites Augustine 'falsity arises from unlikeness and appears to follow him' Aquinas, *Truth.*, 46

³⁸⁴ Aquinas, *Truth.*, 45, Question 1, Article 10.

³⁸⁵ Koterski, *An Introduction to Medieval Philosophy Basic Concepts.*,113.

³⁸⁶ Koterski, *An Introduction to Medieval Philosophy Basic Concepts.*,116.

³⁸⁷ Nicholas Cusa, 'On Learned Ignorance (De docta ignorantia 1440)' in H. Lawrence Bond (ed), *Nicholas of Cusa selected spiritual writings* (Paulist Press 1997). 91 see also Ray Petry (ed) *Late Medieval Mysticism* (Westminster John Knox Press 2006).,360-388.

18. There was no consensus on the number, or whatness of the aspects of being. Koterski named at least three: one, true, and the good; accordingly, every being was said to be one (*unum*) because it remains undivided and therefore had a unity; every being was said to possess a truth (*verum*); and every being had a goodness (*bonum*) because it was created by an infinitely good God.³⁸⁸ These properties of being as being were considered to be ‘transcendental’ in the horizontal sense of the term, as ‘cross-categorical’ they range across: the categories, rather than being category-specific.³⁸⁹ The transcendentals were said to be understood by us because they were already understood by God, and we were participating in His likeness, in our own way. Therefore, linked to the transcendentals and the understanding of being was also the understanding of God. Dionysius had many different names for the transcendence: hiddenness, God, life, being, light, word.³⁹⁰ Thinking about unity of the Divine Trinity (God the Father, the Son and the Holy Spirit) posed many difficulties, namely, how to differentiate each of these, without dividing the *ousia* (being/substance) of God into separate beings.³⁹¹ There was a borrowing from the Greek *homoousios* (Latin *consubstantialis*) to show that the Father was of the same substance as the Son of God.³⁹² Within all these discussions we find the problems of unity and difference, how to think belonging-together.

19. The Christian doctrine may not necessarily be opposed to the mathematical project, after-all it seeks a ground for all beings and finds it in God. Indeed, we can see mathematical elements in the medieval philosophers’ attempts to know being as being, the careful delineation and naming of the transcendentals. The idea that we are able to know and understand all things because they are already understood by God. Is this not the subject making determinations of all things, of objects? We can see machination [*machenschaft*] again, the notion that all making is a human activity.³⁹³ Machination comes to play in Christian thought – we are made and caused by something (God). This cause-effect relationship becomes the norm, all things must be caused by something and God as *causa sui*. And yet it is this kind of thinking that is not only making

³⁸⁸ Koterski, *An Introduction to Medieval Philosophy Basic Concepts.*, 114-116.

³⁸⁹ Koterski, *An Introduction to Medieval Philosophy Basic Concepts.*, 116.

³⁹⁰ Pseudo- Dionysius, *Pseudo-Dionysius-The Complete Works* (Colm Luibheid and Paul Rorem trs, Paulist Press 1987.), 64 (The divine names 645B).

³⁹¹ Koterski, *An Introduction to Medieval Philosophy Basic Concepts.*, 54.

³⁹² Koterski, *An Introduction to Medieval Philosophy Basic Concepts.*, 14.

³⁹³ Heidegger, *Contributions to philosophy (to the event)*, 100.

determinations of beingness, but is also making determinations of God. The mechanistic and the biologicistic modes of thinking are always only the consequences of the concealed machinational interpretations of beings.³⁹⁴ Through Christianity questions of the beingness of beings take on a thinkable and logical form: we are created by God.³⁹⁵ We should also be able to see a little further than this, namely, that we have yet to leave ontic comparison here. We can find not only machination, but also aspectival-thinking in the division and delineation of the transcendentals. We are still making meanings of God through steering. We are still very much in the grip of ontic comparison.

Machinating principles of thinking

20. Meanwhile, let us creep forward a little more into this highly significant period, where our understanding of Being started to coagulate together with the rise of philosophy as an academic discipline. It was during the medieval period that philosophy and theology developed as university disciplines.³⁹⁶ Our familiar and obvious principles of thought were crystallised here. The principle of identity, non-contradiction and the excluded middle. These short-hands, or rather, short cuts of thinking were developed as explanations for scientific demonstrations, but they also themselves grounded in a necessary understanding of Being. The principles of thought stretch back to Aristotle. The tradition says A cannot be not A at the same time. ‘For it is impossible for any one to believe the same thing to be and not to be,’³⁹⁷ ‘If contrary attributes cannot at the same time belong to the same subject (again presupposing all necessary qualifications), and if any belief is (*as an attribute of the thinker*) contrary to the contradictory *belief*, then obviously no one can at the same time *believe* the same thing to be and not to be. Otherwise he would hold two contrary opinions at the same time’.³⁹⁸ Connected to the principles of non-contradiction / identity is the principle of excluded middle: ‘There

³⁹⁴ Heidegger, *Contributions to philosophy (to the event)*, 100.

³⁹⁵ Heidegger, *Contributions to philosophy (to the event)*, 88.

³⁹⁶ Koterski, *An Introduction to Medieval Philosophy Basic Concepts*, 27.

³⁹⁷ Aristotle, *Aristotle's Metaphysics* (Hippocrates Apostle tr, Indiana University Press 1975). 59 Book Γ1005b 20.

Aristotle, ‘Metaphysics’ in Jonathan Barnes (ed), *The Complete Works of Aristotle*, vol 2 (6th edn, Princeton University Press 1985), 1588.

³⁹⁸ Aristotle, ‘III. Scope of Metaphysics: Part I (Book Γ)’ in John Warrington (ed), *Aristotle's Metaphysics* (Dent & Sons 1956), 124.

can be no intermediate between contradictories; any given predicate must be either affirmed or denied of one subject'.³⁹⁹ The principles tell us that things may appear to each of us in different ways, and sometimes in contradictory ways, so something may appear to be like honey, but not taste like it, for example; but this will not occur to the same sense, in the same way and at the same time.⁴⁰⁰ Something cannot appear to be honey and not appear to be honey at same time, place and way. If contradictories are true, it would mean that all things are one and we would be a wall, ship, and a mortal all at once.⁴⁰¹ The principles of thinking are metaphysical principles of reality, and they tell us that we can know the ontological structure of things through recognising their same form, species, or genus.⁴⁰²

21. The principles of thinking are the basic roads leading us quickly onto further discussions. Our thinking was settled during this period, becoming compressed throughout time. Seldom do we consider the principles of thinking. These are used for us as ready-to-hand, unreflectively useful and again self-evident. The principles of thinking are an attempt to ground all thinking, scientifically, and thusly are grounded in the mathematical. They speak of what is, of Being. They are a foundation for thought, for truth, giving us the parameters within which we can play. We are able to form and follow the principles of thinking because we are rational, therefore, bound-up with the principles of thinking is an understanding of the human as a *rational animal*. The principles of thinking both allow us to machinate and to be in ontic comparison, whilst, at the same time restricting us. The principles inform us of what does and can go together, and what does not. Hence, we know that a contradiction cannot hold truth. So it does not really need to be said that it cannot be both that it rains and it does not rain at the same time, in the same place. There is no middle ground between the affirmation and negation of something and, to think otherwise is to simply not understand that 'one must say of a given being that it is or that it is not'.⁴⁰³

As the principles dictate, one must assert what is as true, what is not as not and anything in the middle of these positions is not true. Not only are we machinating

³⁹⁹ Aristotle, 'III. Scope of Metaphysics: Part I (Book Γ)', 142.

⁴⁰⁰ Aristotle, 'Metaphysics', 1596-1597.

⁴⁰¹ Aristotle, 'Metaphysics', 1591.

⁴⁰² Koterski, *An Introduction to Medieval Philosophy Basic Concepts*., 29.

⁴⁰³ Koterski, *An Introduction to Medieval Philosophy Basic Concepts*., 30.

principles of thought, but those principles of thought then tell us what can be true or false, what counts as a being or not. The principles of thought are deeply rooted, preventing any change of understanding and we move from one machinational thinking to another. All the while, the machinational holds sway. We can steer meanings, (un)make meanings because these are grounded in the principles of thought.

The principles of thinking themselves shed some light on machination, because they try to ground all thinking and truth. But are the principles of thinking the *only* way to think? Is it necessarily the case that the contradictory cannot hold truth? What does truth mean here? What is the kind of belonging between the principles and truth? What does opposite mean? Do all words have opposites – what is the opposite of red?⁴⁰⁴ Not red? Not read? Is the opposite of Being -Not Being? What kind of language –game are we playing? Does ontic comparison adhere to the rules of the principles of thinking or is it contained within them? What kind of togetherness is within ontic comparison? Is Being what is true? Does Being have to be what is the case? Is being not the case still Being? What is the difference then between the true and Being? How do the principles of thinking stand with Being? How does truth as comparison (correctness) relate to Being and to our drive to machinate? The clarity and simplicity found through our distilled principles has begrimed. We will leave these questions here for now.

22. One thing is becoming increasingly clear, for the most part, we find ourselves unburdened by these questions. They are not part of our daily-churn and irrelevant. We do not seek out ontic comparison, and yet we find ourselves in it. There is a small fracture beginning to open-up, showing us that we are asleep within a public way of understanding. We do not need reflection or quiet contemplation of the principles of thinking. We do not need to question the subject-object relationship, meanwhile, it has become the only way to see. We are unaware of our condition. We find ourselves in *the They*, in the public way of understanding which we do not question. *The They* does not have a primordial relationship to Being and yet it controls how we see the world. In this *Being-with-one-another* we often lose ourselves amongst the chatter. Dasein is absorbed into *They-Self* and it must find itself once more.⁴⁰⁵ The inauthenticity speaks to our fundamental relationship to Being which has been lost. *The They* becomes the

⁴⁰⁴ Wittgenstein, *Philosophical Investigations* ,14e.

⁴⁰⁵ Heidegger, *Being and Time*.,167.

standard way of seeing, we find shocking what *the They* finds shocking. By publicness everything gets obscured, and what has thus been *covered up* becomes the simple and familiar that is accessible to all.⁴⁰⁶

23. The withdrawal of Be-ing allows beings to become objects of machination ‘because’ Be-ing conceals itself in the manifestness of beings.⁴⁰⁷ This allows us to make determinations of beingness through ontic comparison, machination and lived experience. We are the centre of thinking, making and unmaking meanings of all aspects and of all things. We decide what belongs-together and what does not in ontic comparison, machinating our principles of thought to assist us in making determinations of beingness. Nevertheless, beings and Being are somehow already disclosed for us and so we can *make* truth as ontic comparison, which itself is rooted in the primordial openness in which we stand. Within truth as ontic comparison is always already a primordial disclosing, our path is illuminated (and still concealing). We can only understand because of our prior ontological comportment toward extants. The interplay between the ontic and ontological is part of our everydayness.

24. Earlier we went some way along the way to interrogate the principles of thinking. We found that the principles of thinking are an attempt to ground all thinking scientifically. The principles of thinking are, thusly, fused with an understanding of the human as a rational being capable of reason. The principles themselves appear to enable us to be in ontic comparison because they provide us with a foundation to continue along the path of making and steering meanings of all things. They dictate how things go together. We follow them and think *through* them. Nonetheless, the principles are not the *only* way to think. This machinational thinking is dominant and does not allow us to even consider other possibilities. There are no roads out of the principle of contradiction. One obeys, or one speaks non-sense. The problem with the rootedness of the principles of thinking in the conception of Man as a *rational animal* is that we are determining ourselves, our essence in a certain way, and doing so without ever asking the question of our essence. The *rational animal* is a metaphysical concept that does not ask about the truth of Be-ing.

⁴⁰⁶ Heidegger, *Being and Time*., 165.

⁴⁰⁷ Heidegger, *Contributions to philosophy (to the event)*., 88.

The living spring of man

25. The Greeks had a different understanding of mankind not as a *rational animal*, but as *zoon logon echon* meaning the being that emerges from itself and in this emerging it has the word, which allows us to comport ourselves towards beings whilst being among beings.⁴⁰⁸ *Zoon* means *living being* which becomes animal and *logos* becomes *ratio*. (*Echon* related to *échein* meaning to have or to be in a certain state).⁴⁰⁹ Fused with ek-sisting is the *logos*. So, we are not merely rational animals, we are beings that ek-sist with the *logos*. The *zoon logon echon* is pointing to our ek-sisting, ek-sistence allows for the possibility of reason.⁴¹⁰ The Greeks had no word for language, the word *logos* was sufficient; λόγος ‘a word, a thing uttered...speech, language talk...’⁴¹¹ Logic itself also derives from *logos* meaning the art of good thinking.⁴¹² Intriguingly, the word *logos* does not just mean *word*, it also means *to gather*.⁴¹³ *Logos* λόγος belongs to the verb λέγειν meaning to ‘gather, to lay one beside the other’.⁴¹⁴ λέγω ‘to lay, to arrange, to gather; to say....to speak.’⁴¹⁵ ‘*Logos* da λέγω (*lego*) dire, favola, ragione, detto’.⁴¹⁶ The relation between *logos* and gathering strikes us as odd. What could gathering mean? How do we gather? Gather what? We need to break out of our current thinking. We are not entities who have the word or gather words like things. ‘Language is the house of Being’ - meaning that we ek-sist by dwelling, and in doing so are guardians of the truth of Being.⁴¹⁷ Again, this ‘phrase’ may seem inaccessible. It is both unfamiliar and nearest to us.

⁴⁰⁸ Heidegger, *Parmenides*, 68.

⁴⁰⁹ F. E. Peters, *Greek Philosophical Terms A Historical Lexicon* (University of London Press Limited 1967).,45.

⁴¹⁰ Martin Heidegger, ‘Letter on Humanism’ in David Farrel Krell (ed), *Basic Writings* (Routledge 2000).,226-228.

⁴¹¹ N/A, *The Analytical Greek Lexicon* (Samuel Bagster and Sons Circa 1860).,249.

⁴¹² Logica da λόγος (logos), discorso ‘Arte di ben pensare’ Marco Aurelio Marchi, *Dizionario Tecnico-Etimologico-Filologico* vol 1 (Giacomo Pirola 1828).,489.

⁴¹³ Martin Heidegger, *Introduction to Metaphysics* (Gregory Fried and Richard Polt trs, Yale University Press 2000).,186.

⁴¹⁴ Martin Heidegger, *The principle of reason* (Reginald Lilly tr, Indiana University Press 1996).,107

⁴¹⁵ N/A, *The Analytical Greek Lexicon*., 248.

⁴¹⁶ Marchi, *Dizionario Tecnico-Etimologico-Filologico*, 489.

⁴¹⁷ Martin Heidegger, ‘Letter on Humanism’ in David Farrell Krell (ed), *Martin Heidegger Basic Writings* (HarperCollins Publishers 1993).,236-237.

26. The significance of *logos* will become clearer. Suffice to say for now, we are not merely *rational animals*, and we are not seeking an irrational or illogical thinking as an opposite of the logical thinking, because such thinking would still be of the same kind. Our questioning of the principles of thinking is not seeking to overthrow the principles, nor set them aside. We are merely seeking to expose the pervasiveness of doing ontic comparison in a machinational way and showing how it sets thinking. We move from different kinds of machinations without ever raising the possibility of a more primordial thinking.

27. To bring together our initial exposition of ontic comparison we should also return to the etymological aspect of our research. We began by highlighting the prior *parable* as potentiality a different beginning to think comparison. Parable a thrown (*παρά*) side-by-side (*βάλλω*). Parable *παραβολή* means: ‘*placing one thing by the side of another; a comparing; a parallel case cited in illustration; a comparison, simile, similitude...a parable*, a short relation under which something else is figured, or in which that which is fictitious is employed to represent that which is real....’.⁴¹⁸ Parable seems significantly different from an ontic bringing together because it was a way of recounting a truth or a moral story in a veiled way.⁴¹⁹ Could parable be a way of coming to a fundamental truth without the steering of ontic comparison? When speaking in parables one does not simply say what one means directly.⁴²⁰ The earliest known source of parable is the Bible, parable could be older still, but we cannot find any earlier sources. Many sources have confirmed the peculiar relationship parable has in both the Biblical stories and later interpretations of ecclesiastical texts.⁴²¹ It is

⁴¹⁸ N/A, *The Analytical Greek Lexicon*.,300-301.

⁴¹⁹ ‘Parábola da παρά ; presso, e da βάλλω (ballō), gettare. ‘Racconto allegorico ed istruttivo, fondato sopra cosa reale od apparente, o sulla storia paragonata con altra cosa che immediatamente interessi, deducendone una moralità’ Marchi, *Dizionario Tecnico-Etimologico-Filologico* ,19.

⁴²⁰ Parábole ‘Lett. Eccl. Libro sacro, intitolato anche Dei Proverbi, comunemente attribuito a Salomone, il quale contiene alcune sentenze gravi e divine, in cui la verità trovasi ordinariamente velata sotto immagini di quanto succede nella natura; ed il senso delle quali, dice Sant’Agostino (Epist. 119 cap. 11), alletta tanto più, e fa un’impressione tanto più viva sulla mente e sul cuore, in quanto che la detta verità non si presenta a primo aspetto, ma fa d’uopo di qualche lume e di qualche applicazione per scoprirla. Il discorso parabolico si osò, fin da’ più remote tempi, dagli Orientali: nè lo sdegnò lo stesso nostro divin. Legislatore, il quale, al dir di S. Matteo (cap. XIII) = sine parabolis non loquebatur eis = Le favole di Esopo sono oltracciò anch’esse tante utili Parabole, onde svelar francamente gli altrui difetti, e praticar la virtù. È pur notissima la Parabola conservata da T. Livio (II, 32), colla quale Menenio Agrippa giunse a calmar la romana Plebe ammunitinata sul Monte Sacro’ Appendix Marchi, *Dizionario Tecnico-Etimologico-Filologico* ,669.

⁴²¹ ‘pär̥bölā / pär̥bölē meaning a comparison but it has several meanings transferred from eccl. Latin ‘an allegorical relation, a parable, a proverb, a taunting speech, any speech (esp. in phrase assumptā parabolā, Vul. Num. 23,7’ Carlton Lewis and Charles Short, *A Latin Dictionary Founded on Andrew’s Edition of Freund’s Latin Dictionary* (Clarendon Press 1958).,1300.

significant for our investigation into comparison that parable does not seem to rely directly on truth as comparison *adaequatio*, but on an earlier way of disclosing truth via revelations.⁴²² Yet, it is difficult to imagine truth through revelation because Biblical texts have been constantly been reinterpreted by the tradition in light of new philosophical developments. So often, such thinking folds back into *adaequatio* (truth as comparison) or a likeness with the divine mind.

The earlier etymology hinted at the relation between parable and speech when we discussed the Biblical references and to speak in parables,⁴²³ ‘parabol/a parobola (eccl.) c 1310 parable; parabola (geom0. 1686; e (pl) the Book of Proverbs c1197.....to speak in parables 1344’.⁴²⁴ The way of saying differently to disclose a truth is retained in parable, it seems to be other than ontic comparison’s steering and may be an important development. We do not have the space to discuss in detail the etymology of *word*, however, briefly glancing at the etymologies of the English /Celtic /Greek /Latin words for *word* we still find an essential relation to truth as the living spring of man: ‘*Word; Gair; Rema; Verbum*’. ‘*Gair* is from *agw-uer*, the spring or truth from man; or from *ag-wr*, the action of man; whence *gwir*, truth; *verbum* is *ver-bi-um*, my living spring; or from *ur-vi-iu*, it is man’s life; whence *rema*, by transposition; *word* is from *w-er-id*, it is the spring; or from *wr-id*, it is man’.⁴²⁵

⁴²² See chapter 4 of the thesis for further information on truth as comparison.

⁴²³ It has been shown by many sources that *parable* means an allegory, proverb, discourse, speech, talk Dictionary, “*parable, n.*”.

⁴²⁴ R.E. Latham, *RE Latham, Revised Medieval Latin Word-List From British and Irish Sources* (Oxford University Press 1965).,331. The relation between parable (*parabola*) and speech appears to have been carried through the tradition to develop into *parola* (1250) meaning ‘utterance, a word’ in Italian. Oxford English Dictionary, “*parol, n. and adj.*” (Oxford University Press). Tradition throws up surprising developments, especially when we consider the Latin for *word* was ‘*verbum, vocabulum, vox; dicta (words)*’ Francis Gardner, *An Abridgment of Leverett’s Latin Lexicon* (J.H. Wilkin’s and R.B Carter 1840).314 see also See also *vōcābūlūm (voco)* ‘The appellation of a thing, a word, term, name’. *Vōcālīs (vox)* that may be heard, sounding, vocal, having a voice, sonorous speaking and *Vōcātūs (voco)* ‘a calling to or upon, an invoking, a call, invocation,...II. a calling, a summoning...’ Gardner, *An Abridgment of Leverett’s Latin Lexicon* ,412.

⁴²⁵ (Note : *rema (rhema)* another word for utterance/thing said Greek).Rowland Jones, *The Origin of Language and Nations Hieroglyphically, Etymologically, and Topographically Defined and fixed, after the method of an English, Celtic, Greek and Latin* (J. Hughs 1764)., (wo-wr) my italics added. (N.B. These texts are a product of their time. The word ‘Celtic’ is highly problematic. The ‘Celts’ / ‘Celtic’ was developed in the eighteenth century to describe a sameness between the Welsh, Scottish, Cornish, Irish and Manx, in contrast to ‘Anglo-Saxons’ those that considered themselves ‘better’. (This is touched on the argument in identity and difference chapter ‘belonging-there’). See Laura O’Connor, *Haunted English : The Celtic Fringe, the British Empire, and De-Anglicization* (Johns Hopkins University Press 2006). xii) In this instance, ‘Celtic’ means Welsh, *gair* meaning word, *gwir* meaning truth /true (*gwirder* also truth) Meurig Evans and W.O. Thomas, *Y Geiriadur Mawr The Complete Welsh-English English-Welsh Dictionary* (7 edn, Salesbury Press 1976)., 316, 266.

28. Chapter three challenged our unquestioned notions of what it means to belong together.

We are left with many lingering questions and with no easy answers; these questions will continue to be raised throughout the rest of the text. How do machination and lived experience belong-together? How can this be the same saying that has survived in Parmenides fragment thinking and Being belong-together? Can we talk intelligibly of Be-ing of the event without having defined it? Can Be-ing be thought? What is the relationship between Be-ing and thought? Can we overcome machination? How can we think the relation between: (a) Being and us; (b) Be-ing and us; (c) Being and truth; (d) Truth and us? Can we raise the possibility of another way of thinking that does not fold-back into the ontic, a thinking which is asking the question of Being?

4. Truth and comparison

‘In our society any man who doesn’t cry at his mother’s funeral is liable to be condemned to death’.⁴²⁶

‘The way to Being is unavoidable
 The way to Nothing is inaccessible
 The way to seeming is always accessible and travelled, but it can be bypassed’.⁴²⁷

The correspondence theory of truth is truth as (ontic) comparison also known as *adaequatio*. It is tied to our understanding of ourselves as subjects over objects.

Chapter four thinks the essential relation between seeming and comparison. We expose how *doxa* has been misunderstood by the tradition usually meaning only opinion. To understand *doxa* as meaning solely opinion is to understand *doxa* only in an ontic sense. To understand *doxa* more primordially we would need to understand how it is entwined with our understanding. *Doxa* also means the view an extant gives itself. *Doxa* has a strange belonging together with *phusis* (Being as appearing). We have followed this relation etymologically through the German *Schein* (appearance/shining/Being) and also to the Latin/Italian *parere* revealing the relationship between *doxa*, *phusis* and *comparison*. The tradition has thought comparison as only a making-equal. We have shown the Latin etymology to be much richer. We can trace the present Italian *parere* back to the Latin *parere*. The Italian *parere* conceals *doxa* as it is the word for semblance, resemblance and opinion all in one. It is also from the Latin *parere* that the words appear/apparent eventually developed (*ad-* and *-parere*). The tradition has kept this essential relation hidden between *com-parison*, *doxa* and *phusis*.

Doxa still within the domain of truth as comparison relying on us to decide through comparison whether the view (the *doxa*) that an extant gives itself is in truth (corresponding to *phusis*). *Doxa* (seeming/appearance) is linked essentially to *phusis* (unconcealment/Being). *Doxa* relies on us to decide through truth as ontic comparison whether the *doxa* an extant gives itself corresponds to *phusis*. So it is still for the most part within a machinational frame arising from both our distortion of Being and the withdrawal of Be-ing. But, *doxa* still has some kind of relation to the emergence, to *phusis*.

The tradition calls Being *idea* (*eidos*), *idea* is the distortion of *doxa*. Through metaphysics *idea* rises up. *Idea* conceals the essence of *doxa* as chiaroscuro both clear and obscure that is both revealing and concealing at the same time. Ontic comparison is in truth when it turns back towards itself and thinks the unsaid essence of *doxa*, both revealing and *concealing*.

This chapter is an attempt to find an opening to engage these questions of the look (*eidos*), aspect/seeming (*doxa*), constancy (*phusis*), of truth and the relationship between comparison and truth and truth of be-ing.

⁴²⁶ Afterword’ Camus summed up *The Outsider* in this sentence. Albert Camus, *The Outsider* (Joseph Laredo tr, Penguin Books 1983), 118.

⁴²⁷ Heidegger, *Introduction to Metaphysics*, 125.

1. How do things come to presence? How do they appear? If it is the case that things can be not as they seem, where does deception come from? What is seeming? To know whether we have fallen into deception we need a standard to measure truth, what is seeming judged against?
2. A statement can be proved true or false because it *represents* some-thing(s) outside of itself, the actual. There is some kind of correspondence between the proposition and the way things are. Essentially, what we mean by truth is stating what is the case. This notion of truth can be also traced back to Aristotle. Truth is stating what we see as the case as the case or what is not as not the case: ‘Falsehood consists in saying of that which is that it is not, or of that which is not that it is. Truth consists in saying of that which is that it is, or of that which is not that it is not.’⁴²⁸ Accordingly, what we find in Aristotle is a synthesizing of P and what we see. Again, this can be shown in ‘As regards *being* and *not-being* (which correspond respectively to truth and falsity): in the case of composites there is truth if subject and attribute are really united, falsity if they are not’.⁴²⁹ For example, we said that comparison seems to consist of (1) a simple drawing out of certain properties of the things under comparison; (2) a joining of these properties back onto each of the things; (3) a judgment of some kind linking properties and things to each other. Let us examine this a little more closely through a concrete everyday example: ‘over there is my red teapot’. We can find the red in the teapot, by drawing out the colour as an aspect of the extant (the teapot) and then presenting it as an attribute of the teapot. There is a drawing in of the whole unity of the teapot, a selection of red and presentation of red belonging to the teapot. Now, how does ‘red’ belong to the teapot? It is obvious that I am combining red with the teapot. When we state that ‘the teapot is red’, we are bringing the teapot into a relation with red. Connecting the subject (teapot) with the predicate (red) via the copula (is). The predicate is that which is asserted in an assertion (judgment).⁴³⁰ For Immanuel Kant, the basic action of understanding is an ‘*I combine*’. ‘This characterization of the nature of assertion is a purely formal definition or, as Kant also says, a formal-logical

⁴²⁸ John Warrington (ed) *Aristotle's Metaphysics* (John Warrington tr, J.M. Dent & Sons Ltd 1956). chapter vii the law of the excluded middle, 142.

⁴²⁹ Warrington, *Aristotle's Metaphysics*. chapter x the nature of truth, 244.

⁴³⁰ Heidegger, *The Basic Problems of Phenomenology*., 33.

characterization, in which abstraction is made from *what* it is that is combined with something else. Each predicate is always something determinate, material.⁴³¹

3. How do we know whether the proposition corresponds to the actuality? The propositions are subject to a comparison with what we see to find out whether it is true. If a map corresponds to our field of vision, the map tells us the truth about where we are and we can use the marks on the paper to work out how to get to our destination. This is our everyday truth, the correspondence theory of truth, which has its origins in *adaequatio*, ‘making equal’: *veritas est adaequatio intellectus ad rem*.⁴³²

In our everydayness knowing some-thing is governed by *adaequatio*, a matching-up of P with the actual; to that end, we can talk of beliefs as opposed to knowledge. Both belief and knowledge are governed by *adaequatio*. There seems to be less of an expectation that the statement is ‘made-equal’, that it matches-up to the actuality in a statement of belief, than that of knowledge. The standard of proof for a belief is lower than a claim to knowledge; if the belief proves false, it dies away swiftly.⁴³³ Whereas knowing something means understanding its properties having a mastery over it.⁴³⁴ The knowledge sort by truth as comparison, the making-equal requires *techne téχνη* ‘a generating, building, and knowing pro-ducting’.⁴³⁵ *Techne* is ‘the knowing disposal over the free planning and arranging and controlling of arrangements’.⁴³⁶

Adaequatio displays the traditional ground of correspondence theories, they are referring truth to being.⁴³⁷ We can begin to see a relation between truth and being (the perceived) in the correspondence, but the relation has been viewed a static relation, traditionally as a subject over an object. Does the relation still remain question-worthy? What kind of relation is there between truth and being, and do we make equal? How are we able to access the perceived? What determines our ability to perceive? How is it

⁴³¹ Heidegger, *The Basic Problems of Phenomenology*, 33.

⁴³² We cannot be certain of the origin of this this formulation of truth. It is believed to have been derived from Avicenna (Ibn Sina c. 980-1037) Aertsen, *Medieval Philosophy and the Transcendentals The Case of Thomas Aquinas*, 244.

⁴³³ (Or as Bernard Williams puts it, it goes into hiding ‘Assertions are different from beliefs, a belief like an assertion aims at the truth, but, the belief immediately goes into hiding when it is shown to be false.’) Bernard Williams, *Truth and Truthfulness* (Princeton University Press 2004), 67.

⁴³⁴ Heidegger, *Parmenides*, 3.

⁴³⁵ Heidegger, *Introduction to Metaphysics*, 18-19.

⁴³⁶ Heidegger, *Introduction to Metaphysics*, 18-19.

⁴³⁷ Milbank and Pickstock, *Truth in Aquinas*, 8.

possible? *What allows truth as adaequatio to manifest itself*: there must be something allowing us to determine how things are?

4. *Adaequatio* requires a uniting the P and the actual. It involves a measuring of the proposition with the perceived and a judgment by the subject. The subject is thusly willing the connection between the object of knowledge (the aspects) of the thing discussed in P and the actual as perceived. Therefore, *adaequatio* requires a judgment and a synethesis between P and the perceived. The etymology of synthesis can be traced the earlier synthème and through the late Latin synthēma ‘watchword, permit’ to the Greek σύνθεσις ‘composition’. The Greek σύνθεσις is made up for an earlier word συντίθέναι to put together, < σύν- prefix + τίθέναι (root θε-) to place.⁴³⁸ Essentially, the word synthesis is a way of putting together. To place together. We are putting together the perceived and proposition and this is our everyday notion of truth. But precisely how are putting together the perceived and the P? It is through *adaequatio* we are making determinations of how things are. We compare and unite the P with the state of affairs. We can only do so because our minds are capable of accessing the actuality. Therefore, there must be something allowing us to access the actuality. How can we determine how things are? How is *truth as comparison* tied together with the actual? *And precisely, how do we make equal?* The trouble with comparison is that what is made equal is completely different in kind, but that is the point.

Backward turning

5. Comparison is pervasive in our everyday understanding of truth, yet in this investigation we are not only seeking correctness, but also that which allows for it. Heidegger thought Parmenides, Anaximander, and Heraclitus were the first primordial thinkers of the West.⁴³⁹ Our introduction has already told us that the word *primordial* does not just mean earlier chronologically, of course the thinkers mentioned lived in a different time to us. But primordial also means thinking with Greek thought. In

⁴³⁸ Oxford English Dictionary, "synthesis, n." (Oxford University Press) ;Oxford English Dictionary, "synthème, n." (Oxford University Press).

⁴³⁹ 'Parmenides and Heraclitus – these are the names of the two thinkers, contemporaries in the decades between 540 and 460, who at the outset of Western thought uniquely belong together in thinking the true.' Heidegger, *Parmenides*. , 1 'The first primordial thinker was named Anaximander. The two others, the only others besides Anaximander, were Parmenides and Heraclitus.' Heidegger, *Parmenides*.,2.

thinking with Greek thought, we are seeking an earlier kind of thinking that is not just chronologically distant from us, we are attempting to think *the beginning*. We are using the beginning/primordial in the Heideggerian sense of ‘what is to be thought and what is thought’.⁴⁴⁰ The beginning is distinguishable from seeking correctness regarding how a word was used at a particular-time, based on the agreement of the sources presently available (truth as comparison). Recall that such an investigation would have already taken up a certain attitude towards truth and Being. It would need to assume that we can find the truth of the matter by comparing the seen in the writings available.⁴⁴¹ Even investigations of context or ‘thick description’ of the seen are also within the realm of this same kind of thinking.⁴⁴²

What kind of relationship is there between the emergence and what we see?

6. The Greeks had one word for both seeming and appearance: *phusis* φύσις. *Phusis* was distinguishable from and also bound to *eidos ειδος*.⁴⁴³ *Phusis* φύσις (self-emergent/nature) was the emerging sway. The Greek thinkers thought Being unfolded itself as *phusis*, they thought seeming was not distinct from appearance; the emerging sway (seeming) meant standing-there, standing-in-itself, standing in unconcealment. Appearing was an emergence, a letting appear from concealment. *Phusis* was also the name for Being. Being essentially unfolded as *phusis*.⁴⁴⁴ Being opened itself up to the Greeks as *phusis*, the roots *phu-* and *pha-* named the same thing, *phuein* meant the emerging that reposes in itself, it was *phainesthai*, a lighting-up, self-showing, an appearing.⁴⁴⁵ Truth belonged to the essence of Being. Being was linked to seeming,

⁴⁴⁰ The Greeks distinguished between ‘*outset*’ the age in which the thinker’s thoughts first emerged and ‘*beginning*’. Thinking also has a different meaning here, not represented acts but ‘the historical process in which a thinker arises, says his word, and so provides to truth a place within a historical humanity. As for time, it signifies here less the point of time calculated according to a year and day than it means “age,” the situation of human things and man’s dwelling place therein.’ Heidegger, *Parmenides*.,7.

⁴⁴¹ Heidegger, *Parmenides*.,6.

⁴⁴² Thick description / more context is still within the realm of truth as comparison, seeking a ‘better’ understanding of an imagined field, based on a comparison of the available sources. The assumption is that truth can be found by the seeing, representing and comparing of sources. See Geertz for ‘*Thick description*’ - I am not saying that thick description was not an important development for ethnographical research. I am just saying that it is within truth as comparison. Clifford Geertz, *The interpretation of cultures* (Basic Books 1973).

⁴⁴³ *Eidos* is defined by the Greek-English lexicon ‘that which is seen, form, shape, Latin species, forma, the appearance, look,...II A form, sort, particular kind or nature,III a class, a kind, sort, whether genus or species’ Jones and Mckenzie, *A Greek-English Lexicon complied by George Liddell and Robert Scott Volume II(1)*,414.

⁴⁴⁴Heidegger, *Introduction to Metaphysics*.,111.

⁴⁴⁵Heidegger, *Introduction to Metaphysics*.,110.

appearance and truth. How were these all found in one? Is Being the same as being true? It would mean all things that are, are true. What is linked Being and truth? What notion of truth did the Greeks hold onto? How is the current notion of truth and the Greek understanding of truth related?

7. It sounds somewhat offbeat to us that seeming and appearance were one for the Greeks. Seeming suggests a kind of probability, which is often opposed to certainty. When people say it seems so, we give them a little leeway. Seeming seems more akin to a belief with its relationship to truth. It suggests a fleeting and volatile view, in motion, temporal, now here, then there. Seeming suggests both an opening up and closing off, because in seeming we can be deceived. It is because we can be deceived that we do not put too much emphasis on what someone says, when they suggest a state-of-affairs where it seems likely that something will take place. The seeming and the belief aim at the truth like knowledge, but in seeming it does not necessarily reach its target.⁴⁴⁶ There are many kinds of seeming which do not belong to the order of wilful deception. They arise in and of themselves. Say, when we find ourselves witnessing the sun setting whilst promenading. What makes itself apparent is the sun *seeming* to fall into the sea. The sun never actually disappears into the sea. Still, we must concede it does seem to and, therefore *for us* it does. Is this all we need for something to be true, the sun *seeming* to have fallen into the sea, because it seems so, and seeming is the same as being true? Is the sun falling into the sea like kindness or evil? To what kind of truth are we appealing? The deception follows us through truth as comparison, as the sun seeming to fall into the sea would be enough for us to find the (seeming) actual corresponding to our proposition. Obviously, we know the sun does not fall into the sea, science tells us that much. All this does tell us something we already know, we can be deluded and the delusion has to come from somewhere. *How can we reconcile the sun showing itself as disappearing into the sea with the knowledge that our seeing is deceiving us?* Where does this deception come from? How do we reconcile this intuitive rupture between seeming as a fleeting moment and the constancy of *phusis*?

⁴⁴⁶ Williams, *Truth and Truthfulness*., See Williams's discussion on belief and knowledge.

8. We should begin by returning once more to the Greeks, the Greeks who had another word for seeming: *doxa* δόξα. *Doxa* is already very familiar to us, for it has long been understood by the tradition as meaning *only* opinion. The *Greek-English Lexicon* also confirms that *doxa* is ‘a notion, opinion which one has of a thing, true or false’.⁴⁴⁷ The *Oxford English Dictionary* does not deal with *doxa* directly, but it does feature *adox*, (meaning unexpected, improbable), it has the same root the prefix *a* and *dox* meaning opinion, glory, (inglorious St Augustine).⁴⁴⁸ The translators of Heidegger’s *Introduction to Metaphysics* (Gregory Fried and Richard Polt) remind us *dokein* is usually translated ‘to seem’ and the related noun is *doxa* δόξα translated a ‘seeming’ or ‘opinion’.⁴⁴⁹ Consistent with this view, other sources also distinguish between *doxa* and *dokein*. *Doxa* is a ‘belief’ or ‘opinion’ and a cognate with *dokein* ‘to seem’ ‘to appear’.⁴⁵⁰ Now, is it at all significant that we usually think *doxa* to mean only an opinion by a mortal? Where does the *doxa* come from? Plainly, the subject *has* these opinions. And yet, it is not sufficient to simply say the subject self-evidently has opinions. *Doxa* is significant because it is demonstrating an entrenchment of a certain kind of thinking. The concept of *doxa* is firmly within the domain of truth as comparison, as every opinion is subject to a measuring-up, a comparison between the proposition and actuality. In this sense, opinions aim at the truth. We want to be accurate. To that end, we wilfully steer meanings of things to accuracy. We are familiar with this notion of *doxa* because we find ourselves within it most of the time. *Doxa* is within the realm of the ontic, and firmly entrenched in the subject-object schema. The subject has opinions about things. Now, what is the relationship between *doxa* and seeming?

9. If we were to pay close attention to how extants presence we would find the other sense of *doxa*. The essence of appearance is a dynamic seeing in one-way, and then another, concealing, revealing, seeing differently. Our earlier assumption about the essence of appearance as a static constancy is put into question. The everyday meaning of *doxa*

⁴⁴⁷Henry George Liddell and Robert Scott, *Greek-English Lexicon* (7 edn, Clarendon Press 1882).,383

⁴⁴⁸Oxford English Dictionary, "† *adox*, n." (Oxford University Press).

⁴⁴⁹Heidegger, *Introduction to Metaphysics*,,112.

⁴⁵⁰David Gallop, *Parmenides of Elea Fragments A Text and Translation* (David Gallop tr, University of Toronto 2000).,41.

arises from our ontic understanding of *Being-in* in the sense of knowing extants, having a belief about things in the world. When we carefully consider our *Being-in-the-World* a primordial and forgotten meaning of *doxa* emerges. It arises from how extants come to presence, and it is pointing to the ontological dimension of *doxa* and the essential relation of *Being-in-the-World* (and it can only point to). *Doxa* thought in this way means an aspect or view, namely, how an extant presences and comes into view. *Doxa* is the way in which one stands. It refers to the aspect or look an extant gives itself.⁴⁵¹ What is gives itself an aspect (*dokei*). This understanding of *doxa* as a seeming or view appears closer to the Pre-Socratic understanding of *doxa*. The *doxa* does not only refer to the look or vista an extant gives itself. When the tide comes in the sea announces itself, not merely in the look, but also the sound of the sea roaring, both smashing into and covering the rocks once more: *doxa* extends beyond the look. Therefore, we have used *aspect* to describe *doxa*. The word *Dokeō* δοκέω derived from *doxa* meaning ‘I show myself, I appear, I step into the light’.⁴⁵² The Greek-English Lexicon translates δοκέω as ‘of the action of the Mind itself....II. of the action of an Object on the Mind, videor, to seem’.⁴⁵³ δοκέω means to to think, imagine, suppose, presume, to seem and δόξα is ‘a seeming; appearance; a notion, imagination, opinion’.⁴⁵⁴ Again, *doxa* seems to be bonded somehow to *physis* and the emerging, presencing from unconcealment. But we do not know how.

10. The pre-Socratic possible meaning of *doxa* can be further supported by a closer examination of Parmenides poem on the path of truth and of opinions (*doxa*). Many interpretations of Parmenides’s poem on ‘opinions’ on the have skipped over his use of the plural ‘*doxai*’ in instead of ‘*doxa*’ and the plural use of related expressions ‘*ta dokounta*’ meaning things that appear’ or ‘things that seem’.⁴⁵⁵ Gadamer maintains it is not accurate to suggest that Parmenides speaks about the ‘*doxa*’ in his second poem, the word ‘*doxa*’, he claims, is Platonic concept that comes to prominence together with *aisthesis* and *logos* to define *knowledge* in *Theatetus*.⁴⁵⁶ It could further support the

⁴⁵¹ Heidegger, *Introduction to Metaphysics*.,113.

⁴⁵² Heidegger, *Introduction to Metaphysics*.,113.

⁴⁵³H.G. Liddell and R. Scott, *A Greek-English Lexicon* (9th edn, Clarendon Press).,381.

⁴⁵⁴ N/A, *The Analytical Greek Lexicon*.,104.

⁴⁵⁵ Hans-Georg Gadamer, *The Beginning of Philosophy* (Rod Colman tr, Continuum 2000).,109.

⁴⁵⁶ Gadamer, *The Beginning of Philosophy*.,109. There is some disagreement between Gadamer and Heidegger about the pre-Socratics. Gadamer also disputes Heidegger’s interpretation of Parmenides. The disagreement between Heidegger and Gadamer is not so important for our discussion here on the *doxa* (*doxai*). Gadamer disputed Heidegger’s Parmenides, that Parmenides’ theme was mainly identity, he believed this was steering meaning and doing violence to the text. Gadamer did not reject Heidegger’s

view that *doxa* has been misunderstood by the tradition as only meaning opinion, whereas a Pre-Socratic understanding of the word was interchangeable with how things seem. Examining the etymology of δοκέω (seeming) further suggests that there has been cutting-off of *doxa* from its seeming roots. As we know the word δοκέω means to seem, be of the opinion, related to δοκέω are the words δοκεῖ μοι ‘it seems to me’ δοκένω ‘watch observe’. δοκέω could derive from older δοκένω and δοκάζω ‘to wait’ or alternatively it may belong to δοχομαί.⁴⁵⁷

There may also be a hint of the primordial relation between *phusis* and *doxa* in the German word for appearance: *Schein*. *Schein* can mean semblance or deception but also Being. Heidegger distinguishes between three modes of *Schein*: (a) *Schein* meaning luster or glow; (b) *Schein* / *Scheinen* meaning appearing (*erscheinen*) or manifestation (*Vor-schein*); (c) *Scheinen* meaning semblance (*Anschein*) / seeming.⁴⁵⁸ The meaning of *Schein* and *Scheinen* has been confirmed by many sources. *Schein* has been shown to mean ‘deceptive, moment, delusion, illusion, phantom, and *Scheinen* has also been shown to mean ‘shine, give light, gleam’.⁴⁵⁹ Nietzsche also used *Schein* to mean both illusion and mere appearance.⁴⁶⁰ Nietzsche related the illusion of *Schein* and the dream world to its embodiment by the Greeks in Apollo, the god of light, all plastic energies, the ‘shining one’ (*Der ‘Scheinende’*) and the ruler of ‘beautiful illusion’.⁴⁶¹ Again these intriguing links could possibly show us the ancient relationship

thoughts on Parmenides completely; he agreed that the ontological difference is present in Parmenides thinking. ‘I can well understand why Heidegger wanted to hold onto the idea that Parmenides’ main theme was identity (*to auto*). In Heidegger’s eyes, this would have meant that Parmenides himself would thereby have anticipated a thesis that is later interpreted metaphysically in Western philosophy and has only come into its own in Heidegger’s philosophy. Nevertheless, in his last essays Heidegger himself realized that this was an error and that his thesis that Parmenides had to some extent anticipated his own philosophy could not be maintained.’ Those are Gadamer’s thoughts on Heidegger’s thoughts about Parmenides. This is not part of our current engagement with Parmenides/Heidegger. (But, Gadamer does not appear to name the later Heidegger’s essays on Parmenides where he thinks that Parmenides is not speaking of identity. In ‘*Identity and Difference*’ (1957) Heidegger engages Parmenides on identity...) Also, Gadamer does have some sympathy for his old teacher’s thoughts on Parmenides and the ontological difference. ‘...Heidegger apparently feels himself drawn toward Parmenides. Parmenides, too, goes beyond the multiplicity of existing things and places *to eon* at the beginning. In a way, this *to eon* expresses Heidegger’s “ontological difference.”’ Gadamer goes on to say ‘This difference is not something introduced by the philosopher’s thinking so as to distinguish between being and beings. – Our reading of Parmenides’ didactic poem, I believe, makes it quite clear that Heidegger was correct in this matter. The ontological difference [just] is; it is not introduced [by us], but rather opens itself up.’ [*to eon* = being see footnotes in section] in ‘*Parmenides and Being*’ in Gadamer, *The Beginning of Philosophy*.,111-124.

⁴⁵⁷ Robert Beekes and Lucien Van Beek, *Etymological Dictionary of Greek*, vol 1 (Brill 2010).,344-345.

⁴⁵⁸ Heidegger, *Introduction to Metaphysics*.,109.

⁴⁵⁹ Harold Betteridge, *Cassell’s German -English Dictionary* (Cassell and Co Publishing 1978).,516.

⁴⁶⁰ Friedrich Nietzsche, ‘The Birth of Tragedy’ in Walter Kaufmann (ed), *Basic Writings of Nietzsche* (Modern Library Edition 2000).,34-35.

⁴⁶¹ Nietzsche, ‘The Birth of Tragedy’, 35. Note, also *māyā* the Sanskrit word for illusion/appearance/deception/magic ‘In Hindu mythology: illusion, magic; the supernatural power wielded by gods and demons. In Hindu and Buddhist philosophy: the power by which the universe becomes manifest;

between *doxa* and *phusis* concealed in *Apollo* as both a shining and *light*. Heidegger also sees the relation between seeming, appearance, and Being through the emerging-abiding sway (*phusis*) which is also a seeming and an appearing.⁴⁶²

There may also be an echoing of the important relation between the *doxa* and *phusis* and *comparison* in the Latin and Italian. Our earlier etymological work found the Latin origin of *compare* (com- pare), deriving from the words com (cum) with and pare (peer) and comparare meaning to ‘pair together, couple, match, bring together’.⁴⁶³ Earlier we rashly dismissed the Latin entirely as hindering our understanding of comparison. We tried to shed the Latin because it had become the paradigm definition, the only way to see *com-parison*, as a bringing together or a matching-up. The Latin was deemed somewhat unhelpful and clouding our vision of an earlier understanding of comparison as parable. The standard understanding of *cum-parare* as a matching-up is not the only way to understand the Latin. Our etymological journeys have guided us through the many undiscovered possibilities of thinking-back. Again, there may be more the etymology can tell us. We should retrace our steps through the tradition from the present. The current Italian word for comparison is *paragone*.⁴⁶⁴ Related to *com-parare* we find the present Italian *parere* meaning: (1) ‘(sembrare) to appear, to seem, to look’; (2) (assomigliare) to look like’; (3) ‘(ritenere, credere) to think’.⁴⁶⁵ The second entry for *parere* ‘advice, opinion, judgment, mind, view’.⁴⁶⁶ In the present *parere* we find *doxa* related and entwined with *com-parison*.

Returning to the Latin once more, unsurprisingly, we find that *pār̄io* meant ‘to make equal’ or ‘be equal’.⁴⁶⁷ Unexpectedly, *pār̄io* also meant ‘to produce, create, bring about accomplish...’ *Pār̄io* is related to *partus* ‘that has borne’.⁴⁶⁸ To give birth/ deliver,

the illusion or appearance of the phenomenal world.’ Oxford English Dictionary, “*maya, n.1*” (Oxford University Press).

⁴⁶² Heidegger, *Introduction to Metaphysics*., 109.

⁴⁶³ Dictionary, “*compare*, v.1”.

⁴⁶⁴ Maria Cristina Bareggi, Luisa Bozzo and Katia Brocanelli (eds), *DII Dizionario Inglese Italiano* (Paravia / Oxford University Press 2001)., 2141.

⁴⁶⁵ It also used in the context of asking someone what they think about x. Bareggi, Bozzo and Brocanelli, *DII Dizionario Inglese Italiano*., 2143-2144.

⁴⁶⁶ Bareggi, Bozzo and Brocanelli, *DII Dizionario Inglese Italiano*., 2144.

⁴⁶⁷ Carlton Lewis and Charles Short, *A Latin Dictionary J-Z founded on Andrew's Edition of Freund's Latin Dictionary* (Clarendon Press 1998)., 1304.

⁴⁶⁸ Lewis and Short, *A Latin Dictionary J-Z founded on Andrew's Edition of Freund's Latin Dictionary*., 1304.

‘parto’ / ‘partorire’, / ‘dare alla luce;’ (to give to light).⁴⁶⁹ It is also possible *parènte*, the Latin for *parent* comes from the same root *pärere* to generate.⁴⁷⁰ In Latin, *pärēo* (*parrēo*) was a form of *paro* meaning to make ready: *pārio*, to bring forth; hence to be ready, at hand] *to come forth, appear, be visible show one’s self; to be present or at hand*.⁴⁷¹ The essential relation between *parére* coming to light has been retained throughout different languages: ‘*Parent[i] –parens, vb parére, v. parit[i]*’.⁴⁷²

The relation between comparison and *doxa* seems to be hidden in plain sight in the *apparent* too. We all know what *apparent* means that which shows itself and makes itself visible.⁴⁷³ *Apparent* comes from the Latin word *appārēō* (-ēre). It is composed of (*ad-* and *pāreō*) meaning to be to be seen or visible, to show itself, to come forth, to appear.⁴⁷⁴ It is also the origin of the word *appear*. The Latin ‘to appear’ was *adpārēre*, *appārēre* < *ad* to + *pārēre*, meaning to come in sight, come forth.⁴⁷⁵ Com-*pare* also holds the relation, the Latin *cum-parare* meant to lay out together: ‘laid out together comes to appear at the same time, it appears together, it co-appears...’⁴⁷⁶ (Intriguingly, the Italian word for *learning* may also contain another hidden relation to *doxa*).⁴⁷⁷ Tentatively, we might perhaps begin to see a relation between *phusis* (coming to

⁴⁶⁹ Gabriella Bacchelli, Susie Beattie and Andrea Cavatori (eds), *Collin's Italian Dictionary* (3rd edn, HarperCollins Publishers 2013), 66.

⁴⁷⁰ Parènte (Latin Parénte (m) genitore dalla stessa radice indeur. Di *pärere* ‘generare’ ac. 1250) Nicola Zingarelli, *Lo Zingarelli vocabolario della lingua Italiana* vol 2 (12 edn, Zanichelli 2002). 1269 Note, that the root *parere* also shows itself as the root source for *parenti* in different sources. ‘par(ent)(i) – parens, nitis, vb parere; v genera(t)(i)’ Georges Lurquin, *Georges Elsevier's Dictionary of Greek and Latin word Constituents: English, French, German, Dutch, Spanish* (Elsevier 1998), 725-726.

⁴⁷¹ Lewis and Short, *A Latin Dictionary J-Z founded on Andrew's Edition of Freund's Latin Dictionary*, 1303.

⁴⁷² *Parent[i] –parens, vb parére, v. parit[i]* meaning ‘appear, disappear, appearance, transparency, (allowing light to pass through so that objects behind can be clearly seen), apparent (Gb), paraître, apparaître, disparaître, comparître (comparoir) parère (certificat écrit constatant authentiquement un usage), transparent, transparency, apparent, apparence, comparant (il) appert (Fr), Erscheinen) parieren (gwehorchen), transparent (durchscheinend), Komparse (auf der Bühne oder im Film mitterscheinende stumme Personen, Statisten in Theater oder Film), Verschijnen, transparant (door-schijnend), pareren, compareren, comparant(e) (Nl), parere, comparire, compares, comparente, apparente, apparenze, trasparenza, sparire, scomparire (It), parecer, aparecer, aparente, apariencia, comparecer, comparecencia, transparencia, transparente, desaparecido’. Lurquin, *Georges Elsevier's Dictionary of Greek and Latin word Constituents: English, French, German, Dutch, Spanish*, 725.

⁴⁷³ Oxford English Dictionary, “*apparent, adj. and n.*” (Oxford University Press).

⁴⁷⁴ P.G.W. Glare, *Oxford Latin Dictionary* vol 1 A-L (2nd edn, Oxford University Press 2012), 164

⁴⁷⁵ Oxford English Dictionary, “*appear, v.*” (Oxford University Press). see also *appārēō* ‘to become visible, to appear’ in D.P. Simpson, *Cassell's New Latin Dictionary* (5th edn, Macmillan Publishing Co 1977), 51

⁴⁷⁶ Stramignoni, ‘The King's One Too Many Eyes: Language, Thought, and Comparative Law’, 769

⁴⁷⁷ It would require further investigation. But it is curious that the Italian for learning is *imparare*, composed of the Latin *im-* and *parare*. There is some disagreement about the root of *im-parare*. It has been linked to *apparere* (to prepare) Carlo Battisti and Giovanni Alessio, *Dizionario Etimologico Italiano Istituto Di Glottologia Università di Firenze* vol 1 (Università di Firenze 1949). 250 Whereas others find the origin of *im-parare* in the Latin ‘*impārere* prendere (parare) in (in-) possesso acquistare’ in use from 1319 Zingarelli, *Lo Zingarelli vocabolario della lingua Italiana*, 857.

presence), *doxa* (view) and comparison. Although, we are not sure how these belong-together. We cannot know why, or when ‘to make equal’ became the dominant and *only* way to see comparison. The etymology could be hinting at a primordial belonging together of *doxa*, *physis*, and *comparison*, but these can only ever be possible relations. There is no certainty with etymological investigations. When we discuss the etymology in an attempt to think-back, we are most probably swimming against the tide of current conventions. We are not too concerned with correctness. But then, what else is there, if not correctness?⁴⁷⁸ We are discussing possible connections between these words in order to assist us to think-back. The tradition has retained and bears the hidden relations within it, these relations are not necessarily immediately obvious. We will return to the etymology a little later on.

11. We need to think carefully about the role of the *doxa* in ontic comparison. We are attempting to disentangle two senses of *doxa*. The first, *doxa* as opinion is within the ontic realm, whereby a subject has opinions about things. We have established that *doxa* relies on truth as comparison to ascertain whether it conforms to the actuality. Within it there is also a primordial unsaid, which speaks of how extants come to presence and seem and in doing so, it is hinting at its connectedness to Being-in-the-world. Heidegger acknowledged *doxa* has more than one meaning: ‘The term *doxa* names various things: 1. Aspect, or respect, as glory; 2. Aspect as the sheering view that something offers; 3. Aspect as merely looking-so, “seeming” as mere semblance; 4. A view that a person constructs for himself, opinion. This multiple meaning of the word is not looseness of language, but a play with deep foundations in the mature wisdom of a great language, a multiplicity that preserves the essential traits of Being in the word.’⁴⁷⁹ Heidegger also said: ‘The word δόξα also belongs among these fundamental meanings: I come forth; that which comes forth, that is, strikes others as such as such, that which shows itself; the look, the appearance of something, the respect in which something—an achievement, a person-stands; also fame. δόξα in the

⁴⁷⁸ ‘Whether the etymology proposed by Heidegger is “true” or not is not the question. What is truth of our word “truth”? According to Heidegger, it is but a Roman falsity. Latin translation is a complete catastrophe, perhaps even the major catastrophe in history for Heidegger. It re-covers precisely what is the very heart (through already occulted from the Greeks) of aletheia, that is, what Heidegger dis-discovered: the precedence of the withdrawal, the retrait, of all “presence” (that is true, effective, has appeared, etcetera). Veritas is a defensive and even obstructive word.’ Marc Froment-Meurice, *That Is To Say: Heidegger’s Poetics* (Jan Plug tr, Stanford University Press 1998).,35.

⁴⁷⁹ Heidegger, *Introduction to Metaphysics*.,115.

New Testament = the majesty of God. But what is decisive is this meaning of δόξα: *looking* a certain way, standing in *visibility and respectability*.⁴⁸⁰ Elsewhere Heidegger gives doxa a two-fold meaning: the first meaning corresponds to *perception* (it shows itself) and the second to *thought*.⁴⁸¹ Heidegger also says that *doxa* is the view.⁴⁸²

Just to emphasize the point a little more, we are building on Heidegger's understanding of *doxa* as view or aspect, delineating and distinguishing carefully between the *doxa* as opinion, and the unsaid of the notion pointing to seeming, the view, and how extants presence. The distinction is concealing the essential relationship between *phusis* and *doxa*. The important point being made is that *doxa* is somehow linked to the emergence, to *phusis*. Herein is the mystery, how is it that *doxa*, these fragments of beingness come to find us? How are they connected to the emergence? How are these parts connected to the emergence and, therefore to the whole? How are we to think the belonging-together of *doxa* and *phusis*? The puzzle of how *doxa* fits together is one in the same riddle of belonging-together that still haunts us.

12. *Doxa* is still enigmatic to us, not least because we cannot reconcile how the essence of appearance involves the flickering and movement of *doxa*, whereby there something held-back and constantly changes, and yet is constantly the same. 'The essence of appearance involves this stepping-forth and stepping away, this hither and hence in the genuinely demonstrative, indicative sense. Being is thus dispersed into manifold beings. These display themselves here, there and, everywhere as what is close by in each instance. As what appears, what is gives itself an aspect, *dokei*. *Doxa* means aspect, namely, the respect in which one stands.'⁴⁸³ *Doxa* refers to the aspect or look, the view that a being has in itself: 'The vista that offers itself alters with each new viewpoint. Thus, this view is also one that we take and make for ourselves. In experiencing and busying ourselves with beings, we constantly construct views for ourselves from their look'.⁴⁸⁴

⁴⁸⁰ Heidegger *Being and Truth*, 189.

⁴⁸¹ Martin Heidegger, *Being and Truth* (Indiana University Press 2010), 190.

⁴⁸² Heidegger, *Being and Truth*, 189.

⁴⁸³ Heidegger, *Introduction to Metaphysics*, 112.

⁴⁸⁴ Heidegger, *Introduction to Metaphysics*, 114.

13. *Doxa* is also significant because it is beginning to show us the essential relation between aspect as the way in which one stands and lived experience. It does begin to shed some light on experiencing, in that it is forcing us to think about how something strikes us: ‘experiencing is a striking up against something, something that strikes us, touches us and we must take it in, something that befalls us’.⁴⁸⁵ Accordingly, *doxa* appears - e.g. the clay showing itself in a certain way, with a certain view, there is an initial striking us, that it is doing something, and then that it could be useful to us. What follows from this initial striking is a process of testing and finding a rule – to find out when and whether it shows itself in the same way.⁴⁸⁶ We can see this kind of testing clearly in scientific research. For example, Albert Einstein’s theory of relativity predicted the existence of gravitational waves over century ago, many different scientists attempted without success to detect the waves, in 2015, scientists finally found a way of detecting, measuring and recording their signal.⁴⁸⁷ While the process of testing is obvious in science, it also plays a significant role in our everydayness. Going back to our earlier example, the clay initially strikes us as mouldable, through a process of trial and error we find out at what temperatures it needs firing, to change itself to tough and capable of holding liquids. That said, describing how we may find something useful is not the same as finding the understanding. Understanding is not disclosed to us.⁴⁸⁸ Knowing is never present-at-hand for us.⁴⁸⁹ Observing certain (traits) aspects of understanding does not mean we find the essence of understanding. The initial striking is so important and yet it is in the dark, we are in the dark. The mathematical, our learning, cannot account for how something strikes us or why. The *doxa* simply presences and, in doing so it leaves us with the thought that the view comes to find us somehow. The Greek *morphe* (*forma*/form) was said to provide the

⁴⁸⁵Heidegger, *Contributions to philosophy (to the event)*,125.

⁴⁸⁶ Heidegger maintains that this is so in the scientific experimentation sphere, however, one can see, we do this anyway, in our everydayness. See Heidegger’s discussion of the essence of *experiri* – *experiential* – *experimentus* – “*experimentation*” Heidegger, *Contributions to philosophy (to the event)*,124.

⁴⁸⁷ Adrian Cho, ‘Gravitational waves, Einstein’s ripples in spacetime, spotted for first time’ (2016) <<https://www.sciencemag.org/news/2016/02/gravitational-waves-einstein-s-ripples-spacetime-spotted-first-time>> accessed 03/10/2018.; ‘LIGO Scientific Collaboration ’ (2018) <https://www.ligo.org/students_teachers_public/read.php> accessed 03/10/2018.

⁴⁸⁸‘We are trying to get hold of the mental process of understanding which seems to be hidden behind those coarser and therefore more readily visible accompaniments. But we do not succeed; or, rather, it does not get as far as a real attempt. For even supposing I had found something that happened in all those cases of understanding,-why should *it* be the understanding? And how can the process of understanding have been hidden, when I said “Now I understand” *because* I understood?! And if I say it is hidden then how do I know what I have to look for? I am in a muddle.’ ‘Understanding a principle is not the same as ‘the formula occurs to me’ Wittgenstein, *Philosophical Investigations* 60e, 153-154.

⁴⁸⁹ Heidegger, *Being and Time*,81.

eidos (look). In antiquity, the *morphe* provided the *eidos*. The order was later reversed by ontology because of the insights from perception, it was deemed that the *eidos* provides the *morphe*. Whereas if we return to our productive comportment and remember once more the potter and moulding a cup we will arrive back to the potter projecting and imagining the cup prior to the shaping of the cup. The cup is shaped according to the likeness with an imagined cup (the anticipated look/*eidos*) and it is this imagined cup (*eidos*) which is *that which the being already was*.⁴⁹⁰ The imagined cup can only be grounded on that which is emerging, that which shows itself.

Notwithstanding, the seeming occurring within us, we are also compelled to admit that it is not us making the extants presence in a certain way, *doxa* is the view the extant gives itself, which is revealing at the same time as concealing. We do not create the quiddities (whatness) of things. If we pause and return to the potter and the clay - there was a prior constancy, the materials showing themselves to us in the same way, each time. We know if we heat the clay the water will evaporate. Clay is useful for us, because it shows itself in the same way. There must be something distinguishing the look (*eidos*), our grasping of what emerges, the emergence, and the constancy of what shows itself. To put it another way: we are not ‘making’ the clay show itself as tough when fired at high temperatures. The clay shows itself as soft and mouldable in its natural state and tough and brittle when fired. It gives itself the look and the constancy. The emergence, must therefore, be something primordial, more fundamental and, separate from *eidos*, the look and our learning of what occurs. That said, there must be also some kind of relationship between the emergence, what we see and what we understand, because we are able to understand (if we did not, we could not write about it). *Doxa* is clearly part of our seeming, but we do not create the emergence, even if this kind of ontic thinking dominates.

14. By now, *doxa* should be sounding remarkably familiar to us, resembling our earlier aspectival-games, and yet our earlier aspectival-games said nothing of *phusis* or Being. Whereas *doxa* seems to be a fundamental mode of Being. There is an essential and mysterious relation between *phusis* (the emergence/Being) and *doxa*. Aspectival-thinking is therefore distinguishable from *doxa*. Yet *doxa* still relies on truth as comparison (correctness), it is still machinational, but even if this currently holds sway, there is also a primordial unsaid within *doxa* binding it to Being, *phusis*.

⁴⁹⁰ Heidegger, *The Basic Problems of Phenomenology*, 106-107.

15. There is a strange relationship between *eidos* (the look or appearance), *doxa* and Being.

The kind of play between *doxa*, *phusis* and *eidos*, the relation between these warrants thought. Heidegger maintains Being itself surrenders itself to appearance, to $\delta\acute{o}\xi\alpha$, this could hold true (by what measure...we will come back to that soon). $\Delta\acute{o}\xi\alpha$ presences and it must have a relationship with Being/*phusis*. Whether they are one is not clear, *phusis* and *doxa* do not *seem* indistinguishable, they are not identical, but there must be a belonging. Therefore, there are two senses of appearance: *phusis* is the authentic ripping open of space, and the second sense of appearance is coming into a prepared space, viewed within a fixed space,⁴⁹¹ which is *doxa*: the aspect an extant gives itself. $\grave{\alpha}\lambda\acute{h}\theta\acute{e}\iota\alpha$ (unconcealment of *phusis*) must be related to $\delta\acute{o}\xi\alpha$, they belong-together somehow. Heidegger tells us that *doxa* is *phusis*, but *aletheia* (un-concealment) is the essence of *phusis*. ‘ $\delta\acute{o}\xi\alpha$ is $\varphi\acute{u}\sigma\iota\varsigma$. (But $\grave{\alpha}\lambda\acute{h}\theta\acute{e}\iota\alpha$ the *essence* of $\varphi\acute{u}\sigma\iota\varsigma$.)’⁴⁹² (The essence of *doxa* is both revealing and concealing, hence chiaroscuro speaks to the essence of *phusis/doxa*). We will hold back on delineating what, how and where *doxa*, *phusis* and *eidos* belong, we will not assign these a definite role because what is required here is a different kind of thinking, other than the steering of meanings. *Doxa*, *phusis*, *eidos*, Being are not things we have dominion over. Here, we are also seeking to avoid reproducing another aspectival-game with us at the centre, making determinations of beingness. To cut up where *doxa* ends and where *phusis* is at a beginning is not possible, we can only say that there is a relation and that this calls for thinking. In any case, we would not be able think such a relation from that beginning. We would need another beginning, certainly other than this kind of representational-continuum thinking, drawing imagined lines between these two ‘things’.

‘Because in the first beginning beyng and truth are ungrounded in the abyssal ground, because beyng does *not* occurs *inceptually* in the mode of the transition, and because what is first in the beginning is emergence, being itself surrenders itself to appearance, *dokeiv*, beings (are perceived accordingly, and so one $\delta\acute{o}\xi\alpha$ then stands against the others and all their manifoldness against the one, $\acute{e}v$, of pure seeming itself. $\delta\acute{o}\xi\alpha$ as occasioning the advancement to the idea. To $\grave{\alpha}\lambda\acute{h}\theta\acute{e}\iota\alpha$ belongs the outward look in the

⁴⁹¹ Heidegger, *Introduction to Metaphysics*., 203-204.

⁴⁹² Martin Heidegger, *The Event* (Richard Rojcewicz tr, Indiana University Press 2013)., 27.

appearance, which is at one an appearance that seems to be such *to me* and the *only* seems to be such.⁴⁹³

16. There appears to be an implicit distinction between aspects. Heidegger states: 'If the aspect, corresponding to what emerges in it, is an eminent one, then *doxa* means brilliance and glory'.⁴⁹⁴ (Glory does not mean fame; rather it means to provide constancy – Being).⁴⁹⁵ 'Along some pathway or other, and on some ground or other, we arrive at a view about the thing. We construct an opinion for ourselves about it. Thus, it can happen that the view that we adopt has no support in the thing itself. It is then a mere view, an assumption.'⁴⁹⁶ There are therefore at least two kinds of aspects – aspects that adhere to *physis* and those that do not. This is an important point, it shows us *doxa* is still within the realm of truth as comparison. It is relying on a human centred and steering notion of the true to distinguish whether the view that shows itself corresponds to the emergence. How are we able to move beyond truth as comparison to another kind of thinking, which does not fold back into such ontic comparison? What would another kind of thinking be?

Coincidence of opposites?

17. We may have been a little too impulsive dismissing the medieval thinkers. There may be still something more we can recover from them. Nicholas De Cusa developed the doctrine of the coincidence of opposites to resolve contradictions without violating the integrity of the contrary elements. Coincidence of opposites is a direct challenge to the principle of the excluded middle. It is an attempt to resolve contradictions without forcing or seizing the differences and synthesizing these out. The doctrine seems to be other to ontic comparison, which is an attempt to synthesize and bring-together. The infinite is a realm without aspectival thought, and thus without synthesis, without comparison in our ontic sense. The infinite does not consist of parts or things broken up. There are no things. 'It is evident that there is no proportion between the infinite and the finite, it is very clear that where we encounter a greater/lesser we do not reach

⁴⁹³ Heidegger, *The Event.*, 24.

⁴⁹⁴ Heidegger, *Introduction to Metaphysics.*, 113.

⁴⁹⁵ Heidegger, *Introduction to Metaphysics.*, 113.

⁴⁹⁶ Heidegger, *Introduction to Metaphysics.*, 114.

the simply maximum. For things that are greater and lesser are finite, but such a maximum has to be infinite.⁴⁹⁷ Cusa says we cannot think the infinite, it is beyond our finite intellect. So we can never quite grasp it. It is not a thing and not not a thing, but both and neither. But even in this relationship between man and the infinite, do we still not fall back into subject-object thinking? Aspectival thought? Two things man and infinite. There is a different understanding of unity and one, in contemplative thought, which does not amount to a synthesis. The unity is Being.⁴⁹⁸ Cusa is not thinking unity in the sense of a connection or synthesis. He makes clear the difference between unity and sameness and what is a belonging, which is not a synthesis. However, the coincidence of opposites requires a little more thought, if we are not to fall-back into attempting to think the infinite as a realm without aspects. If aspects are fragments of beingness, then there is no space without beingness. Other thinking could not be simply the absence of aspects. The infinite is an aspect, and so we find a repetition of the same kind of thinking from the parts to the whole. Still, there is something intriguing about Cusa's possibility of opposites belonging-together in a way that does not synthesize them. Cusa's ambitions for thought are admirable. It requires a leap to attempt to break out of our current thinking, even if he falls back into ontic thinking. Retracing Cusa's footsteps along the way to other thinking may provide us with some clues as to how he is still in ontic thinking, and perhaps it may prevent us falling into the same well.

18. Cusa began with *learned ignorance* to reach through to the *coincidence of opposites*.

Learned ignorance requires an admission of our own finite understanding: 'the more learned, the more one knows that one is ignorant'.⁴⁹⁹ Once we have grasped that we are ignorant, we can leap into the infinite where there are no opposites. *Learned ignorance* is a precondition for accessing a partial truth, a truth that is never fully complete (because by definition –we cannot access the infinite). We cannot transcend our imperfect, incomplete and finite condition. And the more profoundly learned we are in this ignorance, the more closely we draw near truth itself.⁵⁰⁰ The notion of *learned ignorance* is troublesome because it amounts to ignorance: an absence/ deficit of knowledge. It is a notion of ignorance grounded in the human lacking knowledge, therefore, it is again folding back into the subject-object thinking. Knowledge is

⁴⁹⁷ Cusa, 'On Learned Ignorance (De docta ignorantia 1440)', 90.

⁴⁹⁸ Cusa, 'On Learned Ignorance (De docta ignorantia 1440)', 97.

⁴⁹⁹ Cusa, 'On Learned Ignorance (De docta ignorantia 1440)', 89.

⁵⁰⁰ Cusa, 'On Learned Ignorance (De docta ignorantia 1440)', 91.

important as the other side of the ignorance coin. Both knowledge and ignorance (unknowing) are grounded in truth as comparison (*adaequatio*). Again, these are rooted in steering meanings and representational thinking. The notion of *learned ignorance* is still within the realm of ontic thinking. Knowing something means understanding its properties having a mastery over it.⁵⁰¹ Unknowing belongs to the same realm. Cusa's point is that we cannot know, as finite beings, what the precise truth of things via likeness;⁵⁰² and yet the notion of ignorance is bound to knowledge and to truth as comparison.⁵⁰³ Cusa is seeking correctness, and therefore is still within the subject-object thinking.

Chiaroscuro: Both a letting appear and concealing

19. We might still be able to recover something from learned ignorance and the coincidences of opposites. Perhaps *learned ignorance* can point us away from truth as comparison to *face ignorance*, rather than *being ignorant*.⁵⁰⁴ Facing ignorance is a leap. By facing of ignorance, we can first grasp our guardianship of Being, whereby it is not *us* speaking Being, we are being spoken to by Being.⁵⁰⁵ It is other to the subject-making determinations of an object and other to ontic comparison and machinations. Learning to face ignorance entails wonder. Being spoken to by Being must not require a 'method' because we would be falling-back into the ontic. So how are we to face ignorance?

⁵⁰¹ Heidegger, *Parmenides*., 3.

⁵⁰² Cusa, 'On Learned Ignorance (De docta ignorantia 1440)', 90-91.

⁵⁰³ If we ought to learn ignorance, and it is beyond our understanding to obtain the maximum; then it is a little odd that Cusa proposes to attempt to do so via mathematics. (What I am saying is (1) If we are to learn ignorance there cannot be a 'method' to climb out of our ignorance (2) learned ignorance is ultimately grounded in correctness, subject understanding an object. 'When, therefore, we propose to investigate this maximum by means of symbols, we must leap beyond simple likeness. For all mathematical are finite; otherwise they could not even be imagined. Therefore, if we want to use finite things as a method of ascending to the simply maximum, we must first consider finite mathematical figures along with their attributes and relations; then we must transfer these relations to corresponding infinite figures; and finally we must, at a still higher level, apply the relations of the infinite figures to the infinite simple, which is entirely independent even of every figure. And then, as we labor in the dark of enigma, our ignorance will be taught incomprehensibly how we are to think of the Most High **more correctly** and more truly'. My emphasis on the 'more correctly', learned ignorance as presented by Cusa seeks more correctness. Cusa, 'On Learned Ignorance (De docta ignorantia 1440)', 102.

⁵⁰⁴ ...If there is a role for ignorance it is not just in *being ignorant* but in *facing ignorance*... 82. But we must emphasize that facing ignorance merely as the craving for further theory is not yet facing it anxiously. To crave for theory is the ontic way of covering up this anxiety, not listening to the call that this anxiety generates. The gap of knowledge is not the same as the abyss of nearness that characterises anxiety 'Ben-Dor, *Thinking about law in silence with Heidegger*. 78, paragraphs 81- 82.

⁵⁰⁵ 'Ben-Dor, *Thinking about law in silence with Heidegger*. 78, paragraph 81.

20. We have to start from where we find ourselves in-order-to find the unsaid in the said.

We are inauthentically in the *look*, sliding backwards and forwards from one *look* to another. We are lost in the *doxa*. In one way, we are in the happening, and yet in another we are away (absently-present). We are thusly, always in *doxa*, by this I mean that we are situated unreflectively seeing-in one way and now another. The *doxa* games still fall within the domain of *lived experience* and *machination*, which belongs to the abandonment itself. Remember, what can ‘count’ as a being is only ever the product of lived experience – what we can bring to and before ourselves – what we can *represent* to ourselves.⁵⁰⁶ This is why the aspects (*doxa*) rely on truth as ontic comparison because we ground our interpretation of beings in constancy and presence, make constancy and presence determinations of beingness. Every *is* (for us) is based on lived experience and machination, brought together via ontic comparison.

Machination and lived experience are the originary saying of Parmenides *Being* and *thinking* are the same, which means *beingness* and *thinking* (as representational grasping) are the same.⁵⁰⁷ The reason that machination and lived experience are closer to us than *Being* and *thinking* because we find ourselves in the abandonment of *Being* and the withdrawal by *Be-ing*, this is the default. Machination arises from the withdrawal itself. What *is* – is represented before ourselves in *lived experience*. To do this, we use *constancy* and *presence* as determinations of beingness and in-doing-so we place ourselves as the makers of extants (we machinate *phusis* and *techne* together). We can only machinate using ontic comparison. Ontic comparison is the bringing-together of what we represent before ourselves: the *doxa*, the fragments of beingness based on the constancy (*phusis*) and presence (*doxa/the view*) of what shows itself, we tie together what we see using a representational grasping ‘mastery’ of extants (*techne* know-how).

We should dwell on the distortion instead of rashly trying to ‘correct’ it. We need to ask a little more carefully, why and how is *Being* distorted? Again, where does the deception come from? We know that *Be-ing* is withdrawing, which leaves us to become objects of machination. We also know machination and lived experience drive

⁵⁰⁶ Heidegger, *Contributions to philosophy (to the event)*.,102.

⁵⁰⁷ Heidegger, *Contributions to philosophy (to the event)*., 101.

each other and conceal the withdrawal by Be-ing. But in concealing it also revealing. We are not stagnating, there is also disclosing, a distorted revealing. Making determinations of beingness is itself, a comportment grounded in machination, which is not a human conduct, but a mode of the essential occurrence of Be-ing.⁵⁰⁸ We come to beingness through ontic comparison and that this is grounded in constancy and presence (*phusis* and *doxa*). We know that constancy and presence are requirements of beingness because when a mortal dies they are said to be in ‘non-being’ - they are not. We can only determine something as ‘non-being’ if beingness is thought in terms of constancy and presence.⁵⁰⁹

21. The distortion, therefore, belongs to appearance itself. *Visibility is* the beginning of the distortion. Un-concealment ($\dot{\alpha}$ -λήθεια) becomes only light, *chiaro*, the visible, what shows itself, what makes itself manifest what can be perceived by us and what is the object of lived experience and, concealment (the *oscuro*) is *not* and withdraws from us. That which presences *seems* nearest to us and thus easily representable to us. Appearances deceive. The distortion comes from Being (Being as *phusis*). The distortion is where ontic comparison thrives and allows us the comportment to machinate *phusis* and *techne* together. The proper essence of *techne* (know-how) is un-concealment (*phusis*), the bringing-forth of that which presences from the concealment.⁵¹⁰ *Techne* is fused with our learning.

‘... $\dot{\alpha}$ λήθεια becomes [“light”], i.e., is understood in terms of luminosity, the character of the alpha-privative is also lost. The *concealedness* and the concealing, their origin and their ground – these never become a question. What is taken into account is only, so to speak, the “positive” aspects of unconcealedness, what is freely accessible and the bestowal of access; and therefore $\dot{\alpha}$ λήθεια in this regard as well loses its original depth and its abyssal character assuming $\dot{\alpha}$ λήθεια was ever thoughtfully interrogated along those lines.’⁵¹¹

Other writings on *learned ignorance* come close to this same thought (even if the one thought is approached in a different way):

⁵⁰⁸ Heidegger, *Contributions to philosophy (to the event)*, 99.

⁵⁰⁹ Heidegger, *Contributions to philosophy (to the event)*, 153.

⁵¹⁰ Heidegger, ‘The Origin of The Work of Art (1935-36)’, 35.

⁵¹¹ Heidegger, *Contributions to philosophy (to the event)*, 262-263.

‘But when the eye strives to gaze at the light unveiled, it looks beyond all visible light, because all such light is less than what it seems. But since the eye seeks to see the light which it cannot see, it knows that so long as it sees anything, what it sees is not what it is seeking. Therefore, it must leap beyond every visible light. Whoever, therefore, has to leap beyond every light must enter into that which lack visible light and thus is darkness to the eye.’⁵¹²

22. It follows from the distorting appearance belonging to Being, that we further distort Being machinating beingness throughout metaphysics. Our machinational inclinations promote the distortion of Being, which in turn results in us making determinations of beingness as what it is (*essentia/quidditas*) and that it is (*existentia*) based on the seen. Metaphysics has contributed to the distortion of Be-ing by allowing for an entrenchment of ontic thinking. Where Being is *not* a being, metaphysics only *sees* beings. *Idea* (*eidos*) has been the name of *Being* through modern metaphysics.⁵¹³ *Eidos* as we know is also the word for *look* and *idea*.⁵¹⁴ ‘The word *idea* means what is seen in the visible, the view that something offers. What is offered in the current look or *eidos* of whatever we encounter. The look of a thing is that within which, as we say, it presents itself to us, re-presents itself and as such stands before us; the look is that within which and as which the thing comes-to-presence, that is, in the Greek sense, *is*.’⁵¹⁵ *Idea* seems indistinguishable from *doxa*, what shows itself, the view an extant gives itself. Nevertheless, *idea* is a distortion of *doxa*, of *Being* because it does not understand the essence of *doxa* as *chiaroscuro*. It is the darkness allowing for all presencing. The dark is not merely the absence of light; ‘the dark keeps the light to itself’.⁵¹⁶ Light accepts the clearing but does not create it.⁵¹⁷ Chiaro is a becoming clear rather than only meaning light.⁵¹⁸ (Note, chiaroscuro is ἀλήθεια un-concealment, it is

⁵¹² Nicholas Cusa, ‘On the Vision of God (De visione Dei 1453)’ in H. Lawrence Bond (ed), *Nicholas of Cusa Selected Spiritual Writings* (Paulist Press 1997), 245.

⁵¹³ Heidegger, *Introduction to Metaphysics*, 200.

⁵¹⁴ *Eidos* is defined by the Greek-English lexicon ‘that which is seen, form, shape, Latin species, forma, the appearance, look,... II A form, sort, particular kind or nature,III a class, a kind, sort, whether genus or species’ Jones and Mckenzie, *A Greek-English Lexicon compiled by George Liddell and Robert Scott Volume II(1)*, 414.

⁵¹⁵ Heidegger, *Introduction to Metaphysics*, 201.

⁵¹⁶ Heidegger, *Bremen and Freiburg Lectures*, 88.

⁵¹⁷ Heidegger, ‘The End of Philosophy and the Task of Thinking’, 442.

⁵¹⁸ In the essay, ‘*The End of Philosophy and the Task of Thinking*’, Heidegger discusses the German word for *clearing* – the openness that allows for presencing. Heidegger suggests that the word ‘*clearing*’ *Lichtung* comes from the French word *clairière*, which itself is derived from the words *Waldung* [forestation] and

just that chiaroscuro has an essential relation to art that is not heard in un-concealment).⁵¹⁹

One of the implications of the rise of Being as idea is the rise of truth as comparison because the *idea* as *whatness* becomes what really *is*, so we do not pay attention to that which allows truth as comparison to be, the (un)concealment/chiaroscuro of *phusis - doxa*. Instead, we make the *doxa* only mere opinion, *doxa* now comes under our domain, we posit and re-present what shows itself (*idea*). This then becomes truth as comparison: P is true if it corresponds to what shows itself. If P does not correspond to what shows itself, then it is false. Truth as comparison likens P and the actuality. It relies on us making a liking *homoiōsis*,⁵²⁰ to the actuality, and thus, it has arisen in

Feldung [fielding]. Tracing the origin of *Lichtung*, Heidegger goes back to the verb *lichten* and then *licht* (light) – meaning to lighten something, bring it into the open. Heidegger suggests this word is not the same as the adjective ‘light’ to ‘brighten’ as light presupposes the clearing and does not create it. This is the difference between light and clearing. Clearing is much more fundamental than light. (N.B. *chiaro* has the same root as the French word *clairière*. See the next footnote) Heidegger, ‘The End of Philosophy and the Task of Thinking’., 441-442.

⁵¹⁹ Chiaroscuro is doxa’s essence. It means clear-obscur Italian; *chiaro* (< Latin *clārus*) clear, bright + *oscuro* (< Latin *obscūrus*) dark; thence French *clair-obscur*. *Oxford English Dictionary*, “chiaroscuro, n.” (Oxford University Press). The term was also used previously described a technique of painting light and shade to create the work. It is difficult to pin-point precisely when the word was first used. There are detailed writings from 1483-6 suggesting that Leonardo Da Vinci had radically altered the techniques of depicting light and shade in pictures. ‘Shadow is of greater power than light. In that it can impede and entirely deprive bodies of light and the light can never chase away all the shadows of bodies.’(Ash.II,22R). Martin Kemp, *Leonardo Da Vinci The Marvellous Works of Nature and Man* (J.M. Dent and Sons Ltd 1989)., 97 Other sources trace the chiaroscuro drawing to a particular kind of pen and ink drawing made with a wash and white highlighting on coloured paper (employed by Vasari, Raffaello Borghini, and Giovanni Battista Armenini). Achim Gnann, David Ekserdjian and Michael Foster, *The Chiaroscuro Woodcut: An Introduction* (Royal Academy of Arts 2014)., 14-15. Others still, suggest the term comes from Italian silverpoint workshop studies done on tinted grounds. The technique described is the same – a silverpoint pen/brush heightening with a coloured background. Peter Parshall and David Landau, *The Renaissance Print 1470-1550* (Yale University Press 1994).180. We are not seeking to refine/limit the notion of chiaroscuro to a particular period or technique. The origin of the word and what it refers to is clear-obscur – revealing-concealing, with this insight, all paintings, in a sense are chiaro-oscuro. It is the play of darkness and clarity that first allows all paintings to emerge. Note, David Farrell Krell in his analysis of Heidegger’s thinking on art has suggested that chiaroscuro may be a way of describing the way that art reveals the unhiddenness of beings. (But it is also the unhiddenness of Being. Chiaroscuro has an essential connection to art, which is particularly important for us and hence it is a particular fitting way to describe the playfulness of chiaro-oscuro, revealing, concealing, deceiving) Martin Heidegger, *Nietzsche Volume 1 The Will to Power as Art* (David Farrell Krell tr, Routledge and Kegan Paul 1981)., See the Analysis section by Farrell Krell, 256-257

⁵²⁰ ὁμοιος ‘like, similar, resembling’, ὁμοίωσις ‘assimilation; likeness, resemblance’ there is also ὁμοίωμα, ἀτος το meaning that which is conformed or assimilated; form shape figure....likeness, resemblance, similitude’ N/A, *The Analytical Greek Lexicon.*,288 ; Liddell and Scott Dictionary- *homoiōsis* – likeness, assimilation, resemblance Liddell and Scott, *Greek-English Lexicon.*; *Oxford English Dictionary* does not have an entry for *homoiōsis* but there is an entry for *homoeosis* – etymology ‘Greek ὁμοίωσις a becoming like, < ὁμοιος like’. This word only survived in medical terminology. *Oxford English Dictionary*, “*homoeosis*, n.” (Oxford University Press).

conjunction with our misunderstanding of Being as idea. One of the problems Heidegger has with metaphysics is the characterisation of *phusis*, as *idea*.⁵²¹ ‘Because the idea is what really is, and the idea is the prototype, all opening up of beings must be directed toward equalling the prototype, resembling the archetype, directing itself according to the idea. The truth of *phusis* – *alētheia* as the unconcealment that essentially unfolds in the emerging sway – now becomes *homoiōsis* and *mimēsis*: resemblance, directedness, the correctness of seeing, the correctness of apprehending as representing’.⁵²²

23. Part of our present prejudice must be that we need consistency and certainty. The craving for certainty is what drives us to rely on ourselves to provide the certainty, recall the origin of our positing of the I-think the ego as the ground for thinking (thinking as representational grasping). (a) *Phusis* and *doxa* have been misunderstood as only *idea* (*eidos*): the presencing of the ‘what’ – whatness. (b) The *whatness* is that which comes into view – what is represented/ can be brought before ourselves through the ego – which is the ‘*ego percipio* as *cogito me cogitare*; the co-representing of *oneself* as that *to whom* something is represented and that in *whose* sight and countenance the look of something appears’.⁵²³ So the extant gives itself a view and constancy but we are seeing what presences as a what, which, we re-present to ourselves; this creates a self-certainty. Representedness of an ob-jectivity ‘I have a self-representation of myself and so am certain of myself’.⁵²⁴ (Thinking as representational grasping). (c). We come to think of ourselves as the centre of the world. We see extants showing themselves, giving themselves a view and constancy (*doxa* and *phusis*). The way the clay shows itself as tough when fired now becomes seen as properties of an object. We are now subjects over objects deciding the beingness of extants – what-thing, that-thing, this one. Every-thing comes under our domain, truth as comparison. We want our ratio to be in line with the actuality – as we see it. Implicitly, a being is a being because it is seen by us, its ‘*seen-ness*’ makes it in being.⁵²⁵ We decide how

⁵²¹ ‘What remains decisive is not the fact in itself that *phusis* was characterized as *idea*, but that the idea rises up as the sole and definitive interpretation of Being’ Heidegger, *Introduction to Metaphysics*.,203.

⁵²² Heidegger, *Introduction to Metaphysics*.,206.

⁵²³ Heidegger, *Contributions to philosophy (to the event)*.,168.

⁵²⁴ see discussion on German idealism in contributions – all of it very important but what I am driving at here is especially ‘b) *representing as ego percipio*, representedness as such for the I think, which is itself an I think of myself, I have a self-representation of myself and so am certain of myself. Origin of the priority of the *ego* lies in the will to certainty, *self-certainty*, self reliance’. Heidegger, *Contributions to philosophy (to the event)*.,158.

⁵²⁵ Heidegger, *Contributions to philosophy (to the event)*.,163.

things belong-together. (d). Ontic comparison and I-think (the I-think entails ontic comparison as bringing together of extants in the machinational order) are both manifestations of the will to certainty and the need to order. (e). There is no need for further questioning because we gain certainty via truth as comparison. We do not need to question truth because we are certain that if we put our hand in the fire we will burn (to use Wittgenstein's example).⁵²⁶ We are not in falsity when we burn our hands. What more is there to question? The certainty created by truth as ontic comparison has closed-off questioning.

24. Our everyday notion of truth as comparison does not ask what allows us to 'make equal'. What is truth as comparison grounded in? We are certain that if we put our hand in the fire it will be affected by the heat, the fire shows itself as giving off heat, and we learn this. Beings in their Being must already be disclosed to us somehow, in order for there to be truth as comparison.⁵²⁷ Prior to truth as comparison must be the unconcealment (chiaro-oscuro) of *phusis*, that is of beings in their Being. *Chiaroscuro* points to a strife between chiaro-(clearing)-oscuro-(concealment) that allows for presencing – truth as un-concealment is a happening rather than mere being present.⁵²⁸ The doxa-dawning is grasping the happening – something is becoming manifest, showing itself differently. The unity found in chiaro-oscuro is not a synthesis, but a unity that does not synthesize out, homogenize the two 'opposing' notions, the unity is a strife between chiaro-oscuro. The essence of truth is this strife within which all beings (including us) stand, and out of which the beings withdraw to themselves.⁵²⁹ Being is drawn towards concealment. Fused with un-concealment is our ek-sistence, we are able to stand out in the understanding – from the darkness (oscuro) it becomes chiaro, a clearing. This clearing allows us encounter beings in their Being, but at the same time as beings are presencing for us, something is also held-back and concealed from us.⁵³⁰ There is a two-fold concealment from us (*a) concealment as refusal*: the

⁵²⁶ For in truth as comparison we must be able to reconcile the perceived with the proposition/map we must be able to connect these two, and fuse them. We are certain, as Wittgenstein says, that if we put our hand in the fire it will burn: '474. I shall get burnt if I put my hand in the fire: that is certainty. That is to say: here we see the meaning of certainty. (What it amounts to, not just the meaning of the word "certainty.")' Wittgenstein, *Philosophical Investigations*, 135e.

⁵²⁷ Heidegger, 'The Origin of The Work of Art (1935-36)', 29.

⁵²⁸ Heidegger, 'The Origin of The Work of Art (1935-36)', 30-31.

⁵²⁹ Paraphrasing Heidegger: 'The essence of truth is in itself the ur-strife [Urstreit] in which is won that open center within which beings stand, and from out of which they withdraw into themselves. This open happens in the midst of beings' Heidegger, 'The Origin of The Work of Art (1935-36)', 31.

⁵³⁰ Heidegger, 'The Origin of The Work of Art (1935-36)', 30.

refusal of beings to be reduced and pin-pointed to what meet – this does not amount to a deficit of our knowledge, but it is the very beginning of the clearing and, (b) *concealment as obstructing* [Verstellen]: this occurs within the open realm where beings present themselves other than they are (seeming realm).⁵³¹ To say that *doxa* belongs to the seeming realm would not be accurate, as in the moment of *doxa*-dawning there is something else happening, bound to the emergence. One cannot say *doxa* dances along the seeming route without the connection to *concealment as refusal*. Both *concealment as refusal* and *concealment as obstructing* are bound-together, they are not two entirely separate ways. Together *concealment as obstructing* and *concealment as refusal* allow for presencing: ‘Truth, in essence, is un-truth’.⁵³² Truth is un-truth means that truth can only presence within the strife between chiaro-(clearing) and concealment (*as refusal/obstructing*) both are required for presencing to occur.

⁵³¹ Heidegger, ‘The Origin of The Work of Art (1935-36)’, 30-31.

⁵³² Heidegger, ‘The Origin of The Work of Art (1935-36)’, 31.

5. *Belonging-together: Identity and difference*

“As I see it there are two sorts of people: one man sees a bird sitting on a telegraph wire and says to himself: “Why is that bird sitting just there?”, the other man replies “Damn it all, the bird has to sit somewhere””.⁵³³

‘309. What is your aim in philosophy? – To shew the fly the way out of the fly-bottle’.⁵³⁴

Chapter five challenges our current ways of thinking togetherness. It begins by exposing how we think things within space and time and how we use space and time as things. It seeks to interrogate our current understanding of space and time to find out a little more about being present, presencing, and the *doxa*-dawning. In what kind of thought do we find ourselves in, in and through our everyday notions of space and time? Could there be a more primordial understanding of place and time which has been dis-placed? Where and how do we belong? How do we think belonging-together? How are we to think *belonging*-together? Ontic comparison thinks the belonging-together, in a particular way, as a bringing together of aspects by a subject. This chapter shows us that there can be another way of thinking belonging-together, which is able to think the *belonging* first, that is the relation. It is this kind of belonging-together, which holds within itself the possibility of thinking our relation to Being through language. Perhaps parable still speaks...

Making ordo: space and time

25. The last chapter showed truth as comparison is our everyday truth, and yet the truth of comparison is not a determination we can make. The withdrawal of Be-ing and our abandonment of Being led us to engage in ontic comparison and make determinations of beingness. Implicitly, a being is a being because of its seen-ness by us; the extant gives itself a *doxa* taken-up by us to make determinations of beingness. The seen-ness then becomes whatness and idea within the tradition. Our productive comportment enables us to delimit, bound (*horos/horismos*) to make determinations of beingness, of whatness, of that thing. So although we do not make the clay show itself as soft and mouldable and then tough when fired we take up what does show itself in a certain way and determine its whatness and wayness. We already come to understand the clay in its wayness because we are able to comport ourselves toward the clay as a material and equipment so we understand it in its wayness (and not say another Dasein). We do this

⁵³³ M.O'C Drury, *The Danger of Words* (Routledge & Kegan Paul 1973).,xi.

⁵³⁴ Wittgenstein, *Philosophical Investigations* ,103e.

through ontic comparison which itself is a manifestation of our machinational drive to *ordo*.

26. The oscuro (that which does not show itself) is concealing. There is a danger that when we try to bring the oscuro (concealment) into explanation and into a causal relationship that we are trying to explain away our ignorance. Attempting to bring what is not disclosed to us into the realm of explanation does not gather it. Nonetheless, we can still say something about that which does show itself and in doing so it might be able to assist us in some way in moving forward; of course, the oscuro must have some kind of relation to what does show itself? There must be some kind of relation as they are one. The way *doxa* shows itself in *one-way* and *then* another is significant. This also goes back to where we began our discussion with the strangeness of *constancy* and *presence* being one. In part, it is a problem of reliability (constancy), the same again, each time. The ‘*and then*’ is significant. The ‘*and then*’ is later in time but it occupies the same thing, the same place. We can make sense of our world and talk intelligibly about everything that *is* because each thing has a time and place. We will also need to think the relation between place and space. Place seems to be more specific than space – often place indicates somewhere or a belonging, whereas space seems to mean what *is* as space is the place where extants presence. Something can only be a ‘*this one*’, that is, a particular because when we encounter it, it occupies a particular point in time and space.

27. Space and time have become a means for us to create *ordo* a way of delineating and understanding the overwhelming there. For only within space and time can we distinguish different things: because they occupy a different place or/and a different time. ‘Place and time point make even absolutely identical things just these (*je diesen*), i.e., different ones.’⁵³⁵ Every extant *has* a particular time and place. Time and place must belong to each thing somehow. There remains the question whether space/place and time are ‘added’ to thing or part of it, and how? Moreover, the *doxa* must have some kind of belonging to both time and place to allow these to be determined. There must be certain necessary conditions for our creation of *ordo*. One of these we have already discussed at length, ontic comparison. This comportment is based on *what shows itself* and *how it shows itself* (constancy and presence). What shows itself must

⁵³⁵ Heidegger, *What is a thing?*, 17.

show itself in the same way each time. We need to think carefully and open up a little more presence and constancy, to understand how extants presence in space and time, and how we come to understanding. How have space and time become a means for us to create *ordo*, a way of delineating and understanding the overwhelming there?

28. We will begin by thinking about space, as it is one of the necessary conditions for *presencing*. How does space allow for extants to presence? Space itself opens up and allows a place for presencing to occur. It is a necessary condition for presencing. Space itself is not made up of spaces and any border ‘delimiting’ space is always already within space and part of it, therefore, the measuring and delimitation of space is always belated.⁵³⁶ There cannot be an inside, or outer border of space, we are in it!⁵³⁷ We do not really need to ask the question where is space? It is obviously all around us. We have already noted that any delimiting boundary is always already too late, as it will be forever in space, therefore, when we delimit an extant its whatness (*horos/horismos*) and make our determinations of beingness, we are always too late. The bound(ary) was already there, present in space. Asking the question: ‘*where is space?*’ does not really have the same force as ‘*where is time?*’ We think space as evident. Space is here, there and every-where. Even if we may think have resolved our differences with space and want to focus our attention on time, we should not be complacent. For sure, we may accept that space is simply ‘there’ and that our boundaries come too late. Still, it does not preclude us asking whether space is inside and outside everything in Being and not-Being? What space does Being take up? When someone dies we say her time has come, she passed away –where?

29. Things also presence in time. They *have* time point meaning that there is some kind of relation with time. Since Aristotle we have thought of time as a ‘now’ which is infinitely divisible: ‘between any two nows, another now could always have been marked’.⁵³⁸ If we focus on the tree for fifteen clock-time minutes, it will still be

⁵³⁶ Heidegger, *What is a thing?*, 197.

⁵³⁷ Heidegger, *What is a thing?*, 21.

⁵³⁸ Ursula Cope, *Time for Aristotle Physics IV. 10-14* (Clarendon University Press 2005), 28. Aristotle sees time as continuous and not a collection of nows, and yet we can count time by counting the nows. ‘When we count a now, we make a potential division in time. In doing so, we also make (and count) a potential division in any change that is then occurring. Time is essentially a kind of *number* because it is, by definition, something that gets counted when we count the series of nows that Aristotle calls ‘the before and after in time’. It is a number of *change with respect to the before and after* because in counting this series of nows we also count all changes, and we do so in such a way as to reflect the before and after orders within of them. To define time as something that is counted in this way is to define it as something that is essentially ordered.

showing itself each time in the same way, because the tree is continuously showing itself in the same way, we think it constant and a particular: ‘*this one*’. We do not really think about how many times the tree needs to show itself in the same way for us to say it is a ‘*this one*’? *Constancy* itself means a *persisting presence*. *Constancy* is a continuing *standing there* by which we can understand that something is there - it *exists*.⁵³⁹ Accordingly, the way something *shows itself* continuously as standing before us is how we determine that it is there. The persistence of constancy is the *doxa* showing itself as the same each time. The clay will change its form when fired at high temperatures each time. It shows itself in that way. But where is time? How does time belong to the *doxa*?

30. There are certain conditions required for the tree to keep showing itself in the same way. There needs to be adequate sun, water and soil. If there is not sufficient water the tree will change, affected by the heat of the sun it will discolour and eventually die. Those who work with plants come to understand them. They learn conditions needed for the plant to thrive, *each-time-the-same*. They know when and where to cut the branches of a fruit tree, when they flower – what season and how long it takes to mature. The tree shows itself in the same way each time for this learning to occur and yet the plant is continuously changing. The tree also has some understanding of the passage of time. It bears the marks of such an understanding in the thickness and colour of the concentric circles which make up its trunk, and in its entwined dependency on the seasons.⁵⁴⁰

31. While this focus on place is all very touching, it is easy to see place as no longer important. We live in an age of driverless cars, soon accident-algorithms may decide, in advance, the best possible outcome for a collision.⁵⁴¹ Drones have made remote

Time is a universal order within which all changes are related.’ See Cope, *Time for Aristotle Physics IV. 10-14,86.*

⁵³⁹ ‘...constancy in one sense means that which stands here (*Dastehen*), the presence. But constancy also means continuance (*Fortwahren*) enduring (*Beharren*). In the term ‘constancy’ we hear both in one. It suggests the continuous presence, existence of the object’. We can easily see that presence and presentness contain a relation to time just as do continuance and enduring. Principles which are concerned with the determination of the constancy of the object, therefore, necessarily and in an exceptional sense have to do with time.’ Heidegger, *What is a thing?*,229.

⁵⁴⁰ Haar, *The song of the Earth.*,24.

⁵⁴¹ Sven Nyholm and Jilles Smids, ‘The Ethics of Accident-Algorithms for Self-Driving Cars: an Applied Trolley Problem?’(2016) 19 Ethical Theory and Moral Practice 1275.; ‘The fact that you’re still driving is a bug, not a feature.’ Anthony Levandowski, Business Lead on Google’s Self-Driving Car Project, in Daniel

white-collar warfare possible, and even more fatal for those crossing their path.⁵⁴² Post-globalisation the distance-less dominates, place is no longer ‘that’ important. Still, in a radical sense we are rooted in place. We still consider people ‘of a place’, not only in trivial sense, it is taken for granted that one must have a fixed-address, but also in a primordial sense of belonging somewhere. We also still count-up the years, almost in a tree-like fashion marking each mile-stone.

32. Over hundreds of years space and time have been thought in different ways by the Greeks and philosophy.⁵⁴³ Before science the attempts to understand the world based on religious and philosophical ideas. Demokritos thought space as a container ‘the void’ in which atoms moved about, whereas Aristotle viewed space as a relational concept with no independent existence (space was place).⁵⁴⁴ These two positions became known as the absolute and relational concepts of space and time. Today, when we speak of space and time these usually fall under the domain of science. The medieval theories of motion (largely based on Aristotle’s writings) were challenged by Galileo Galilei (1564-1642), he clarified the concepts of velocity, acceleration, force and inertia; enabling Isaac Newton (1642-1727) to write *Principia* (published in 1687), it included the definitions of space and time, the three laws of motion, and the theory of gravity.⁵⁴⁵ Technological improvements in the seventeenth century paved the way for more experimental empirical and quantitative methods.⁵⁴⁶ Questions about space and time have since become the property of science, and only ever properly determinable by science. So, it seems there is little to be gained examining these questions in any other way. It has become all too common to dismiss any other attempt to grapple with

Kowalski, *The Integration of Driverless Vehicles in Commercial Carsharing Schemes in Germany: A Prefeasibility Study* (Diplomica Verlag 2013).,30.

⁵⁴² Elspeth Carruthers, ‘Mortality data in the age of drones’(2018) 34 Medicine, Conflict and Survival 39.

⁵⁴³For Immanuel Kant (1724-1804) space and time were immediately given: space was an intuition (*Anschauung*) conditioning every possible ‘where’ and ‘there’, and time was limitless given in advance, an a priori intuition. Heidegger, *What is a thing?*,198, 230. Accordingly, if we take the view that both time and space are intuitions and the translation of intuition (from the Latin intuition to the German) is *looking at* (*Anschauung*). Human looking at is always directed at something – we are approached by some-thing. ‘Earlier we defined intuition as the immediate representing of a particular. Something is given to us through this representing. Intuition is a giving representing, not a making one, or one which first forms something through combining. Intuition (*Anschauung*) in the sense of something looked at (*Angeschaute*) is the represented, in the sense of a given.’ Footnote says: ‘in interpreting both Kant and Heidegger it is helpful to recall that the Latin and English ‘intuition’ is the usual translation of the ordinary German word ‘looking at’ (*Anschauung*).’ Heidegger, *What is a thing?*,197; 142-143.

⁵⁴⁴ Abhay Ashtekar, *100 Years of Relativity : Space-Time Structure - Einstein and Beyond* (World Scientific Publishing Co Pte Ltd 2005).,8.

⁵⁴⁵ Classical physics developed between 1650-1900, see Steve Adams, *Relativity: An Introduction to space-time physics* (Taylor and Francis 1997).1-3.

⁵⁴⁶ Adams, *Relativity: An Introduction to space-time physics.*,3.

questions. In a book called ‘*What is Called thinking?*’ Heidegger (in)famously wrote: ‘Science does not think.’⁵⁴⁷ To engage with the ‘mattering’ in a non-scientific way is not to ignore science, or to devalue great leaps made, instead, perhaps it is doing something else.⁵⁴⁸

Place: belonging to its kind

33. For the most part we do not concern ourselves with the coordinates or positions of things we use in our daily living. We use these in a ready-to-hand (*zuhanden*) manner of proximity without the need to measure where the coffee sits in relation to the keyboard. The closeness in using equipment is not of the kind that requires us to measure precisely like a present-at-hand thing would, instead the closeness of equipment regulates itself circumspectively through using.⁵⁴⁹ (*Circumspection* is the translation of ‘*Umsicht*’ meaning a special kind of sight ‘*um*’ also meant in the sense of *around* or *in-order-to*).⁵⁵⁰ The readiness-to-hand of the equipment means that it is not simply lying around, rather each piece of equipment has its own place, and it *belongs somewhere*.⁵⁵¹ The ready-to-hand is that which is nearest to us. The nearness is not the kind of nearness that amounts to measurements of present-at-hand things. Even when we step out of our house, we do not encounter distance in this linear form. Distance is that which concernfully approaches us. Where it does not concern us, it still concernfully approaches us when we are passing it indifferently.⁵⁵² Distance is, therefore, not the space between two points. We need to abandon our current *representations* of space.

⁵⁴⁷ Heidegger, *What is Called Thinking?*, 8.

⁵⁴⁸ ‘GUIDE: Can you ever with your own methods –that is, with the methods of physics –investigate the essential structure of physics?’

SCIENTIST: This could admittedly not be done. After all, it would entail having to make physics as a science into an object of a physics experiment, in order to gain well-founded physical knowledge of the essence of thinking in physics.’, Martin Heidegger, *Country Path Conversations* (Bret Davis tr, Indiana University Press 2010), 23. Note, the ‘mattering’ is a term borrowed from Ben-Dor, ‘The Gravity of Steering, the Grace of Gliding and Primordiality of Presencing Place: Reflections on Truthfulness, Worlding, Seeing, Saying and Showing in Practical Reasoning and Law’, meaning ‘that which matters’.

⁵⁴⁹ Heidegger, *Being and Time*, 134-137. David Cerbone, ‘Heidegger on Space and Spatiality’ in Mark Wrathall (ed), *The Cambridge Companion to Heidegger’s Being and Time* (Cambridge University Press 2013), 132-133.

⁵⁵⁰ Heidegger, *Being and Time*, 98-99.

⁵⁵¹ Heidegger, *Being and Time*, 136 see also space and spatiality. Cerbone, ‘Heidegger on Space and Spatiality’, 133.

⁵⁵² Heidegger, *Bremen and Freiburg Lectures*, 24.

34. The kind of belonging in place found in our relation to the ready-to-hand and distance in our everydayness is pointing to an earlier Greek notion of place as a belonging to its kind. The notion of place changed from the Greek understanding of place as a belonging according to its own nature. The belonging together of kind between earth, water, fire and air is present at least as far back as Empedocles' fragments; 'we see earth with earth, water with water'.⁵⁵³ Elley Leonard has a slightly different translation 'And earth through earth her figure magnifies and air through air'.⁵⁵⁴ Wright: Fragment 77(109) '*With earth we perceive earth, with water water, with air divine air, with fire destructive fire, with love love, and strife with baneful strife*'.⁵⁵⁵ Empedocles' fragments reveal a world where the belonging-together between water, earth, air and fire are contemplated. Indeed, the relation between water *with* water, earth *with* earth is thought.

35. Where does the notion of place fit with Empedocles fragments and the belonging-together of the four elements water, earth, fire and air? The notion of place was once thought as a place *according to its kind*. The *according to its kind* is thinking the relation between and within the elements as thought by Empedocles: 'Each body has *its place according to its kind*, and its strives toward that place. Around the earth is water, around this, the air, and around this, fire – the four elements. When our body moves in its place, the motion accords with nature *κατά φύσιν*'.⁵⁵⁶ *κατά* meaning from above to below and *κατά φύσιν* meaning in accordance with nature.⁵⁵⁷ The change in the notion of place shifts post-Newton from the body's belonging according to its own nature to now mean only 'a position in relation to other positions'.⁵⁵⁸ Motion also changes to mean a change of position, or a distance between two points.⁵⁵⁹ The change in the notion of place also has an impact on the concept of nature, it no longer means the inner principles out of which the motion of the body follows. Nature has been taken as 'the mode of the variety of the changing relative positions of bodies, the manner in

⁵⁵³ Peters, *Greek Philosophical Terms A Historical Lexicon*, 87.

⁵⁵⁴ William Ellery Leonard, *The Fragments of Empedocles* (The Open Court Publishing Company 1908), 32.

⁵⁵⁵ M.R. Wright (ed) *Empedocles: The Extant Fragments* (Yale University Press 1981), 233.

⁵⁵⁶ Heidegger, *What is a thing?*, 83-84.

⁵⁵⁷ We will leave this notion of *φύσιν* (physis) to stand for now, *natura* is a mischaracterisation of *φύσιν* as we showed earlier tracing the etymology (not phusis but it has the same root) (Lexicon) Heidegger, *What is a thing?*, 310.

⁵⁵⁸ Heidegger, *What is a thing?*, 86.

⁵⁵⁹ Heidegger, *What is a thing?*, 87.

which they are present in space and time, which themselves are domains of possible positional orders and determinations of order and have no special traits anywhere'.⁵⁶⁰

36. The subtle change in the meaning of nature led to bodies being secured and rooted into the space-time motion-ordering frame because they were part of nature, and nature was obviously grounded in space-time.⁵⁶¹ The rise of this view of nature coincided with the rise of the ontic approach to the mathematical, determining beforehand how things were taken-up. The approach ensured a further entrenchment of ontic thinking through the careful delineation of what we see, as being determinable as a *what* and *how*, the approach tells us how beings are to be evaluated beforehand.⁵⁶² 'Bodies have no concealed qualities, powers, and capacities. Natural bodies are now only what they *show* themselves as, within this projected realm. Things now show themselves only in the relations of places and time points and in the measures of mass and working forces. How they show themselves is prefigured in the project. Therefore, the project also determines the mode of taking in and studying of what shows itself, experience, the *experiri*.'⁵⁶³ This leads us to a further distortion of φύσις ('nature') and place contributing to the hardening of ontic thinking and the abandonment of Being.

37. Scientific thinking has made giant leaps since Newton's time, and yet the latest scientific theory is simply an instance of the same kind of thinking, itself traceable to Newton's time. What we are shining a torch on is a particular kind of thinking, which changed our approach to place, rather than critiquing a particular scientific theory from with the field of physics. Recalling once more Heidegger's *Country Path Conversation*, the scientist tells us that physics cannot investigate its own methods through physics.⁵⁶⁴ Accordingly, the claim is not that Albert Einstein's work is not revolutionary. The argument is not even an 'anti-scientific' argument. Instead, we are tracing the rise of a particular kind of thinking and how it set out thinking on these matters.

⁵⁶⁰ Heidegger, *What is a thing?*, 88.

⁵⁶¹ Heidegger, *What is a thing?*, 92.

⁵⁶² Heidegger, *What is a thing?*, 92.

⁵⁶³ Heidegger, *What is a thing?*, 93.

⁵⁶⁴ 'GUIDE: Can you ever with your own methods –that is, with the methods of physics –investigate the essential structure of physics?

SCIENTIST: This could admittedly not be done. After all, it would entail having to make physics as a science into an object of a physics experiment, in order to gain well-founded physical knowledge of the essence of thinking in physics.', Heidegger, *Country Path Conversations*, 23.

38. The mode of taking in and studying of what shows itself determined the approach. The Greek understanding of place as a belonging-to-its kind has been dis-placed. Today we seldom think of the belonging-together of earth, water, fire and air: ‘we see earth with earth, water with water’.⁵⁶⁵ Empedocles’ fragments are left to gather dust. Nor do we think our belonging-together with nature. There is now a greater focus on how natural bodies *show themselves*, how *these presence* in space and time and according to our modes of taking in and studying what shows itself. The focus on what shows itself is fused with the rise of metaphysical thinking as what is present, *eidos/idea* what shows itself. Our steering of the seen determines how we approach extants. Space and time are coordinates we tie together to pin-point and anchor extants in-order-to make sense of the world. Space and time have also become things we use and represent before ourselves to make sense of the world. Space as quantity and time as a continuum of nows. They are representations, things, which we tie together. Within this framework we also find our traditional understanding of legal space – in ‘linear, measurable, calculable Space’.⁵⁶⁶

39. The displacement of the earlier place, the belonging-together to its kind has contributed to the entrenchment of the ontic. The belonging together of kind, Empedocles’ sayings that between earth, water, fire and air we see earth with earth, water with water⁵⁶⁷ are far from insignificant, even if we do not recognise them as such. The importance of the belonging-together of kind has serious implications for our notion of place as a coordinate between positions. It is also plausible that our beloved platitude ‘like is known by like’ may have its origins in an earlier belonging-together in kind.

40. Accordingly, we need to think more carefully how the space and time have come to dominate our thinking as representations we use to ordo. Further, how constancy and presence have become distorted in our thinking of space and time as quantities? Thinking space and time as quantities has contributed to the displacement of place as a

⁵⁶⁵ Peters, *Greek Philosophical Terms A Historical Lexicon*.,87.

⁵⁶⁶ ‘Western legal jurisdictions normally return a linear, ultimately calculable concept of neutral, universal space that may be fictional, yet it is always represented and representable as a physical or institutional “thing” of sorts.’ Igor Stramignoni, ‘Francesco’s Devilish Venus: Notations on the Matter of Legal Space’(2004-2005) 41 California Western Law Review 147.,207,183.185.

⁵⁶⁷ Peters, *Greek Philosophical Terms A Historical Lexicon*.,87.

belonging-together to its kind. We should also take this opportunity to dwell a little on what could be meant by a belonging together with its kind. Water is said to belong with the earth but these are not the same as one another, they are essentially of a different kind. What does belonging-together even mean? How do the earth and water belong-together? How does ontic comparison think the belonging-together? Is the belonging together of earth and water an ontic togetherness of things? Alternatively, can there be another kind of togetherness which thinks from a belonging? How do we belong-together with other mortals? How does place relate to space and time?

Belonging there

41. What do we mean by a belonging together of kind? The Dutch named the people of their colonies ‘*inlanders*’ (‘*natives*’) who ‘belonged there’ and were seen as inferior when compared to the Dutch.⁵⁶⁸ When the Europeans ‘discovered’ America they encountered Native Indians and concluded that their way of life was essential better, hunting was considered to be more ‘*bestiarum*’ and to live by tilling the soil more ‘*humano*’.⁵⁶⁹ It may be worth thinking a little more in-depth about the sense of belonging meant. What did the belonging-there mean? ‘The Dutch’ there, already we find a belonging. Benedict Anderson put his finger on the strange truth that we have nationalities as parts of us like hands or feet, and he began to question why. Anderson attributed the spread of nationalism to the intelligentsia with their knowledge of languages together with the rise of the printed word.⁵⁷⁰ For Anderson the sense of belonging might be an imagined community.⁵⁷¹ The belonging-there, racism was not born from nationalism, rather its source was the class system.⁵⁷² Our investigation into comparison is not so concerned with scrutinising nationalism or racism in themselves. These specific instances of belonging-together are raised only to highlight how this kind of thinking is symptomatic of a thinking which misunderstands the human *being*. The belonging-together of kind is not based on such distinctions between humans. The

⁵⁶⁸ Anderson, 122.

⁵⁶⁹ Marcus Cunliffe (ed) *The Penguin History of Literature: American Literature to 1900*, vol 8 (Penguin Group 1993)., 4.

⁵⁷⁰ Benedict Anderson, *A life Beyond Boundaries* (Verso 2016)., 126.

⁵⁷¹ Others have criticised the notion of an imagined communities for failing to recognise the extent to which identities have become institutionalized and codified through the law. The state identifies, defines and enforces who belongs and who does not. John Torpey, *The Invention of the Passport* (Cambridge University Press 2000).,13.

⁵⁷² Benedict Anderson, *Imagined Communities* (2nd edn, Verso 2006).,149.

belonging-together thought in nationality or racial group is an ontic togetherness which arises from our abandonment of Being. All these petty delineations do not touch our primordial belongingness to Being. They tell us that have become deaf to the call of Being.

The *Belonging-together* of Being and thinking

42. A belonging-together of kind is not calling for a calculative delineation based on distinctions. The kind of belonging-together in a belonging-there is a misunderstanding of our Being. So again, what could a belonging together of kind mean? Humanity does belong to the order of Being, like all living creatures and everything that *is*. We all belong to the earth. Yet we are distinct from other living beings because only we die. The distinction made by dying is saying that we are thinking-beings. Other animals never have death before or after them, these creatures simply cease to live.⁵⁷³ We are face-to-face with Being. ‘Man *is* essentially this relationship of responding to Being, and he is only this.’⁵⁷⁴

43. We are thinking-beings who respond to Being and yet we are also in a sense in the dark and helpless. Heidegger points to our unique position in helplessness and knowing awareness in a curious extract ‘*The knowing-awareness*’

‘Certainly we *are* never the knowing ones,
Yet in knowing-awareness we are those who *are*’.⁵⁷⁵

How can we be both not knowing and in a knowing awareness? It seems what Heidegger might be alluding to is that we are both ignorant and yet it is only us, humans who face Being, in contrast to other beings. We are the only ones in a relationship with Being. The *belonging-together* of Being and thinking is the *belonging-together* of the human and Being. Thought is a distinctive characteristic of

⁵⁷³ Heidegger tells us animals are ‘world-poor’, which is not the same as ‘world-less’. Still, Heidegger’s dismissal of all animals sits uneasy, as Wittgenstein famously remarked: ‘If a lion could talk, we could not understand him.’ Wittgenstein, *Philosophical Investigations*, 223e. Perhaps we cannot make the determination *for* animals to say they are world-poor, so we will leave it an open question and focus on Dasein.

⁵⁷⁴ Martin Heidegger, *Identity and Difference* (Joan Stambaugh tr, The university of chicago press 2002)., 31

⁵⁷⁵ Heidegger, *Mindfulness*, 5.

humankind.⁵⁷⁶ Accordingly, our belonging-together of kind is a belonging together with Being through being a thinking-being. So how are we to think our belonging-together? What does it mean to ‘think’?

44. There will be no attempt made to grasp at some kind of ‘answer’ or ‘solution’ to the question ‘*what is thinking?*’: We are *not yet* thinking.⁵⁷⁷ While we are not yet thinking, in our everydayness, thinking is said to have something to do with the *doxa*, both in terms of having views / opinions *parere*. Views, opinions, aspects are things belonging to a subject. These thoughts *about* thinking are ontic. The kind of belonging together thought in the ontic is a connection based on the togetherness, we connect things together and assign these a place in the order of a ‘together’.⁵⁷⁸ It is a unity of a system, a nexus and connexion.⁵⁷⁹ Is it this kind of belonging-together also binding Being and thinking? Being and us? Or can there be any other kind of belonging together?

45. We are seeking the possibility of a different kind of belonging-together from the kind found in synthesis, in ontic comparison. There is an important distinction between a ‘belonging-together’, which is determined by the *together*; and a ‘*belonging*-together’ which thinks ‘belonging’. In the first form, the belonging-*together* with the emphasis on the ‘togetherness’ determines the belonging by its unity. This sense of belonging-*together* is made from aspects, the fragments of beingness being brought together. We find ontic comparison here. Such a belonging-together through togetherness is difficult to escape. If we continue to make statements ‘*about* something’ *about* space, *about* time we do not operate within the field of questioning, objects must be avoided.⁵⁸⁰ To think *about* some-thing is to make that ‘thing’ thought an object.⁵⁸¹ It is falling back into ontic comparison. We need to try to think the *aboutness*⁵⁸² of a thing. What would be required is to think space and time as something non-calculable, not as a thing,

⁵⁷⁶ Heidegger, *Identity and Difference*. 30.

⁵⁷⁷ Heidegger, *What is Called Thinking?* Note, the ‘*not yet*’ is important. Heidegger is not saying that we are not at all thinking, or that there was a time when we thought. Heidegger is pointing to the unfolding of Western thinking and not to a chronological back in time. de Beistegui, *Thinking with Heidegger Displacements* 2-9.

⁵⁷⁸ Heidegger, *Identity and Difference*., 29.

⁵⁷⁹ ‘classical Latin nexus (plural *nexus*) the action of binding, a bond, tie, a type of legal obligation, a combination, connected group < *nectere* to bind, connect (see net n.1) + -tus, suffix forming verbal nouns’. Oxford English Dictionary, “*nexus*, n.” (Oxford University Press).

⁵⁸⁰ Heidegger, *Mindfulness*.,53.

⁵⁸¹ Heidegger, *What is Called Thinking?*,21.

⁵⁸² Ben-Dor, *Thinking about law in silence with Heidegger.*, 43-46.

something un-quantitative.⁵⁸³ We need to leap into a different kind of questioning and thinking. It would require *inceptual-thinking* of our relationship with time and space. *Inceptual-thinking* derives from the Latin *capere* to catch, and so *inceptual-thinking* catches that which is thrown to us.⁵⁸⁴ *Inceptual-thinking* thinks our *belonging*-together with Being. ‘We never come to thoughts. They come to us.’⁵⁸⁵

46. The primordial *belonging*-together is where the togetherness is defined by the *belonging*, and not in terms of the unity of a together.⁵⁸⁶ This form of belonging takes what belongs together as its starting point. So, what belongs together? Heidegger thinking with Parmenides comes to think what belongs together is thinking and Being.⁵⁸⁷ Parmenides definition of identical, the ‘same, namely, is perceiving (thinking) as well as also being’, which Heidegger restates as ‘being belongs with thinking in the same’.⁵⁸⁸ Parmenides and Heidegger both say Being and thinking belong together. But the saying in the *belonging*-together is not of the same kind found in our everyday dealings. To understand how Being and thinking belong we need to grasp how they are thought the ‘same’? What is sameness here? How are thinking and Being joined?

47. To think the *belonging*-together of Being and thinking we need to authentically think where we are, by leaping into it. We already have access to the belonging to Being. For only with us can Being be present as Being.⁵⁸⁹ We are thinking-beings after all, and only we have this relationship to Being. We are thinking-beings ek-sisting with the word, *zoon logon echon*. Earlier we found the Greek *logos* λόγος belongs to the verb λέγειν meaning to ‘gather, to lay one beside the other’.⁵⁹⁰ Gathering was puzzlingly included in the realm where the *ratio* presently dominates. λέγειν for the Greeks meant a poetic telling, a laying out what lies before them and is closest to them.⁵⁹¹ λέγειν also survives in reading (*legere*), but in reading we are still not gathering words like things,

⁵⁸³ Heidegger, *Contributions to philosophy (to the event)*.,107.

⁵⁸⁴ The German word ‘*anfänglich*’ is ‘*fangen*’ ‘to capture’, Vallega-Neu, *Heidegger's Contributions to Philosophy : An Introduction*.,33;Oxford English Dictionary, “*inception, n.*” (Oxford University Press).;Oxford English Dictionary, “*capture, n.*” (Oxford University Press).

⁵⁸⁵ Martin Heidegger, ‘The Thinker as Poet’ in Albert Hofstadter (ed), *Poetry, Language and Thought* (Harper & Row Publishers 1971).6.

⁵⁸⁶ Heidegger, *Bremen and Freiburg Lectures*.,113.

⁵⁸⁷ Heidegger, *Bremen and Freiburg Lectures*.,113.

⁵⁸⁸ Heidegger, *Bremen and Freiburg Lectures*.,111.

⁵⁸⁹ Heidegger, *Identity and Difference*., 31.

⁵⁹⁰ Heidegger, *The principle of reason* 107 see also N/A, *The Analytical Greek Lexicon*.,248.

⁵⁹¹ Heidegger, *What is Called Thinking?*, 204 -205.

instead it is an unfolding letting-lie-before us.⁵⁹² We now hear the laying-beside-one-another of parable a new light. There is some kind of relation between parable and λέγειν.

We are not rational animals ‘existing with the word’; we are gatherers preserving the Being of beings against the covering.⁵⁹³ The Greek word which became known to us as the *proposition* ἀπόφανσις (*apophansis*)⁵⁹⁴ also contains the essential relation between the *logos*, as the gathering, and the revealing-concealing play. ἀπόφανσις did not always mean proposition. It appeared together with the *logos* as λόγος ἀπόφανσις meaning the laying-together which ‘lets appear what was already-lying-together’.⁵⁹⁵ The word ἀπόφανσις is holding the relation of concealing-revealing / the chiaroscuro, as a word composed of both ἀπό ‘going away’ and φανσις ‘light’.⁵⁹⁶ Everything that *is* lies before us and emerges into appearance, so letting-appear is related to the emergence (*phusis*) and to concealment. To emerge is to always to come from darkness.

48. If we recall, parable was made up of two Greek words παρα- *para-* meaning ‘by the side of, beside’ ‘alongside of, by, past, beyond’,⁵⁹⁷ and βολή *bole* ‘casting, putting, a throw’.⁵⁹⁸ Παρα seems to have been particularly significant for the Greeks, who did not think presence in the same way as us as a being present in terms of constancy / endurance. Instead, one of the modes of being present was παρα / *para-* which meant a ‘coming closer’ / ‘close by’, παρα was thought together with ἀπό ‘going away’, both these together meant being present.⁵⁹⁹ Παρα meant a nearness to us, it was unconcealment (chiaro-) and ἀπό was concealment (-oscuro). *Bole* (the casting) of *parable* remains in the shadows for us.⁶⁰⁰ However, it is plausible that there *could* be a

⁵⁹² Heidegger, *What is Called Thinking?*, 208.

⁵⁹³ Heidegger, *Introduction to Metaphysics*, 186.

⁵⁹⁴ ἀπόφαν-σις a declaration, statement (Aristotle), logic a predication. Liddell and Scott, *A Greek-English Lexicon*, 225.

⁵⁹⁵ Heidegger, *Bremen and Freiburg Lectures*, 134-135.

⁵⁹⁶ ἀπό meaning far away, away from’ Beekes and Van Beek, *Etymological Dictionary of Greek*, 117, and φανσις is related to φανσις. The etymology of both leads us back to φαος ‘light daylight’ also metaphorically ‘shine’ φανσις ‘shining, bright, pure’. From φως ‘glowing, light bright’ also φαε ‘lighted up, appeared’. φανσις is cited as belonging to the primary verb φανσις ‘enlightenment, illumination’ Robert Beekes and Lucien Van Beek, *Etymological Dictionary of Greek* vol 2 (Brill 2010), 1551-1552.

⁵⁹⁷ Dictionary, “*para*-, prefix1”.

⁵⁹⁸ Dictionary, “*parable*, n.”.

⁵⁹⁹ Heidegger, *What is Called Thinking?*, 236.

⁶⁰⁰ The origin of βαλλω (bole) ‘to throw hit, originally probably to reach, hit by throwing’ The origin of βλη has been traced to εβλητο / εβλην Beekes and Van Beek, *Etymological Dictionary of Greek*, 197. The

relation between the casting, the throwing (of bole) and the ‘going away’ *ἀπό*. This relation within parable (nearness-casting) would be pointing us back to the essence of parable, its movement: chiaroscuro.

49. In *παρά / ἀπό* we become mindful of the loss of our understanding that all presencing requires darkness, and the stark bareness of the current view that all-things are what they show themselves to be. Our current representations of time as presence and constancy do not grasp this earlier understanding of presencing which is more primordial un-concealment. The thought that there is a deficiency in our current understanding of presencing and constancy, and thinking space and time through things is fused together with our prior simplistic distinctions between be-coming and Being, and Being and seeming. When we think how we approach these in our everydayness, we think these as presencing in clock-time in the same place and time. The *doxa* was seen first in one way, *and then* the doxa-dawning showed it in a new light. So it came to us to ask how the *doxa* could be the same and not the same all at once? What was the distinction between Being and seeming, and Being and be-coming? The coming into Being is fused with the chiaroscuro the un-concealment. It is a coming into presence. Be-coming is the seeming of Being because be-coming is not yet what it will be and at the same time it is not nothing, and so, be-coming has the character of a ‘no longer and not yet’.⁶⁰¹ Be-coming and seeming are not separate from Being. Be-coming is coming into Being.⁶⁰² The apparent separation between seeming and Being and, Being and becoming is concealing and pointing to a deeper unity between them.⁶⁰³ Here we find another way of arriving at our earlier riddle about the *doxa* and *physis*, how the unfolding emerging-sway and seeming are mysteriously one. It is the belonging-together concealing the concealment and withdrawal of Be-ing. ‘Being remains inclined toward concealment, whether in great veiling and silence, or in the most superficial distorting and obscuring. The immediate proximity of *physis* and *kruptesthai* reveals the intimacy of Being and seeming as the strife between them.’⁶⁰⁴

relation of *βαλλω* to *εβλητο* appears to be confirmed by the Liddell Scott dictionary too; under *εβλητο* cite the word *βαλλω* (bole) Liddell and Scott, *A Greek-English Lexicon.*, 467.

⁶⁰¹ Heidegger, *Introduction to Metaphysics.*, 126-127.

⁶⁰² Heidegger, *Introduction to Metaphysics.*, 72.

⁶⁰³ Heidegger, *Introduction to Metaphysics.*, 107-108.

⁶⁰⁴ Heidegger, *Introduction to Metaphysics.*, 126.

50. Heidegger tells us true thinking is a letting-appear lighting-up that which is concealed, however, that this light remains a dark-light.⁶⁰⁵ If true thinking lights up a dark-light, then darkness cannot merely be the absence of light. How light be a dark-light? It leaves us to ponder the darkness. It is from darkness that light can spring. The basic chiaro-oscuro movement (un-concealment) allowing for presencing. The wellspring springs out of the darkness to become 'my' living spring. The living spring speaks us from the darkness; but it seeps away from us. While we are recalling that language is the *house of Being*,⁶⁰⁶ we seldom recognise it as home. How are we to think the belonging together of Being and thinking? How can there be any homeliness here, when the saying seems all so estranged from us?

51. While the saying of the *house of Being* may be *un-heimlich* to us, the estrangement may be a foothold indicating that we do not sufficiently reside where we are. The essence of language is not a matter of signs, we only arrive at beings by going through the house of Being.⁶⁰⁷ Language names and first allows beings to become present in their Being, nominating 'beings to their being and *from out of* that being'.⁶⁰⁸ Language is the *house of Being*, makes manifest the *belonging*-together of Being *with* thinking *through* language. Language is the *house* meaning the 'protection, guardianship, container [*Be-hältnis*], relationship [*Ver-hältnis*] to Being'.⁶⁰⁹ Meaning language is not something the human has: language is the home 'as protection, as relationship'.⁶¹⁰ The home is the *belonging*-together of Being *with* thinking, the home lets Being as Being be.⁶¹¹ We can experience the *belonging*-together by leaping into it. Leaping into the

⁶⁰⁵ Heidegger, *What is Called Thinking?*, 102.

⁶⁰⁶ Heidegger, 'Letter on Humanism'.

⁶⁰⁷ I am paraphrasing Heidegger: 'Being traverses, as itself, its precinct [*Bezirk*] which is demarcated [*bezirk*] (*τέμνειν, tempus*) by the fact that it essences in the word. Language is the precinct (*templum*), i.e., the house of being. The essence of language is neither exhausted in reference, nor is it only a matter of signs and ciphers. Since language is the house of being, we therefore arrive at beings by constantly going through this house. If we go to the fountain, if we go through the woods, we are already going through the word "fountain," through the word "wood," even if we are not saying these word aloud or have any thoughts about language.' Heidegger, 'Why Poets?', 232-233.

⁶⁰⁸ Note, that the 'to their being' refers to their Being, and the 'from out of that being' refers to Being. Heidegger, 'The Origin of The Work of Art (1935-36)', 45-46.

⁶⁰⁹ Heidegger, *Bremen and Freiburg Lectures*, 158.

⁶¹⁰ Heidegger, *Bremen and Freiburg Lectures*, 158.

⁶¹¹ Heidegger, *Bremen and Freiburg Lectures*, 158.

abyss, and away from our current conception of ontic comparison. Away from subjects, objects, and representational thought and into Being; but how?

52. We mostly inhabit the world inauthentically in ontic comparison. We would need to abandon our current representations of space and time, our current bringing-together through ontic comparison, truth as comparison, and dive into a different kind of thinking which thinks the truth of Be-ing and the being of truth. It would require us to move away from metaphysical and humanistic thinking as steering, in the abandonment of Being is where ontic comparison thrives. The turning away of the human from Being is characterised by an underlying kind of thinking whereby the human synthesizes and puts together. What is desperately needed is a different relationship to language and different kind of thinking, a kind of thinking which rediscovers the primordial relationship between Being and us. There is no ‘method’ for leaping out of our current thinking. It makes no sense to talk *about* the leap, to position oneself somewhere along the way to leaping.

53. We can only arrive at such thinking through a leap. A leap into *inceptual-thinking* is an inversion of thinking whereby ‘beings are not grounded on the human being, but humanness on beyng.’⁶¹² Such *inceptual-thinking* would require us to catch what is thrown. The leap enables us to enter *en-owning* or the *event of appropriation* [*ereignis*] whereby Being and mankind appropriate one another. The *belonging*-together thus is a belonging-together to Being through an appropriation. *oikeiōsis* [*oíκείωσις*] is appropriation.⁶¹³ The ancient Greek word for appropriation *oikeiōsis*, a word that is bound to the familiar, household and self-love, instead of our common understanding of an appropriation a thing. *Oikeiōsis* is ‘self-appropriation, self-acceptance, self-love’.⁶¹⁴ It derives from *oikos* [*oīkōs*] meaning the familiar / household / family relations,⁶¹⁵ ‘the act of rendering familiar, or domestic; appropriation; adaption; accommodation; conciliation’.⁶¹⁶ The *event* is where we already inhabit and essentially belong. ‘In the event of appropriation vibrates the active nature of what speaks as

⁶¹²By Beyng we mean Be-ing (Beyng archaic spelling of Seyn) Heidegger, *Contributions to philosophy (to the event)*, 145.

⁶¹³Jones and Mckenzie, *A Greek-English Lexicon complied by George Liddell and Robert Scott Volume II(1)*.

⁶¹⁴Peters, *Greek Philosophical Terms A Historical Lexicon*, 140.

⁶¹⁵James Donnegan, *A New Greek And English Lexicon* (Second British Edition, First American edn, Hilliard Gray and Co 1840), 890.

⁶¹⁶Donnegan, *A New Greek And English Lexicon*, 890.

language, which at one time was call the house of Being'.⁶¹⁷ The *belonging*-together in the *event* is akin to a kinship, in the *belonging*-together the fragments of a ruptured vessel harmonise in a fitting-together that is not a basic repetition of sameness.⁶¹⁸ The harmony between Being and thinking is a self-sameness, not an empty repetition, but a primordial oneness. Whereby each fragment is not identical to one another, but they still belong. Here we hear Parmenides clearly Being and thinking belong in the same ('τὸ αὐτό').⁶¹⁹ The 'τὸ αὐτό' is 'the same', meaning a sameness of what *belongs* together as kinship not a repetition. So too, as Empedocles' fragments asserted the earth *with* water belongs.

The *belonging*-together of *Being* and *thinking* is strange. When we think of sameness we implicitly reach for principle of identity. Something is the same as itself *with* itself, as the tradition thinks it, therefore there is a relation with within every 'one'. A is A speaks of a sameness of something with itself. Identity consists of this relation with oneself.⁶²⁰ 'For every being as such there belongs identity, the unity with itself'.⁶²¹ Empedocles' fragments also said the same: water *with* water belongs. Being and thinking is not this kind of belonging together. The relation between Being and thinking is difficult to grasp. There is not a specific entity, thing, or 'event' we can point to and say of it, there is the *event of appropriation*. Over there is the *belonging*-together of Being and thinking! To think in this way is to stay within the ontic comparison and representational thinking. We need to leap into where we already are, within us there is always-already a *belonging*-together with Being.

The *event of appropriation* is a self-resonating realm. Being mindful of Be-ing requires us to be mindful of ourselves, 'meditation on beyng, necessarily meditation on oneself'.⁶²² We need to inhabit the world where we are already present, but differently. We already belong to Being, uniquely so through language. Recall that the human *is*

⁶¹⁷Heidegger, *Identity and Difference*., 39.

⁶¹⁸'fragments of a vessel which are to be glued together must match one another in the smallest details although they need not be like one another. In the same way a translation instead of resembling the meaning of the original must lovingly and in detail incorporate the original's mode of signification, thus marking both the original and the translation recognizable as fragments of a greater language just as fragments are part of a vessel.' Benjamin, 'The task of the translator',79.

⁶¹⁹ Heidegger, *Identity and Difference*.

⁶²⁰ Heidegger, *Bremen and Freiburg Lectures*.,109.

⁶²¹ Heidegger, *Bremen and Freiburg Lectures*.,110.

⁶²² Heidegger, *Contributions to philosophy (to the event)*.,39.

this responding to Being.⁶²³ Being and humankind are appropriated to one another. We can open-up this realm. Being in knowing-awareness leads us to be preservers of Being. To place ourselves before Be-ing towards the openness of the open realm by thinking and questioning the essence of truth.⁶²⁴ We need to move towards the open realm, the open realm is turning-back towards ourselves. Perhaps Parmenides was pointing us somewhere after-all, with the enigmatic saying that ‘the path of all is backward-turning’.⁶²⁵ Back towards ourselves to thoughtfully question: *who are we?* Not as individual human beings, to attempt to engage such a question meaningfully would be to reverse our current thinking of the human subject and think the be-ingness. Asking ‘*who are we?*’ thoughtfully is to ask the truth of Be-ing.⁶²⁶ The event of appropriation is responding to the reverberating call of Be-ing speaking from language. ‘Thinking receives the tools for this self-suspended structure from language. For language is the most delicate and thus the most susceptible vibration holding everything within the suspended structure of the appropriation. We dwell in the appropriation in as much as our active nature is given over to language’.⁶²⁷

54. Here we have attempted to say something *about* the event of appropriation, *about* leaping, *about* the possibility of another way of thinking. Thinking that thinks the *belonging-together* of Being and thinking. We have fallen short of such a leap in an explanation of the leap. Words have become blunt. Be-ing is becoming a thing in the naming, an address we must discover to inhabit, and any sense of authenticity is lost.

55. The failure of words to capture the saying in the event and the truth of Be-ing is a necessary part of leaping. Words do fail us. Why do words fail us?⁶²⁸ Rather, how do words fail us? To ask such a question is to ask the unsayable. Be-ing is drawn towards concealment. It conceals itself. Conceals itself through machination, which is the cloak of Be-ing. It refuses arrival to the realm of the open – we cannot bring to presence

⁶²³ Heidegger, *Identity and Difference*., 31.

⁶²⁴ Heidegger, *Contributions to philosophy (to the event)*., 16-17.

⁶²⁵ Gallop, *Parmenides of Elea Fragments A Text and Translation* , 61.

⁶²⁶ Heidegger, *Contributions to philosophy (to the event)*., 42.

⁶²⁷ Heidegger, *Identity and Difference*., 38.

⁶²⁸ Shadows which you see with difficulty, and whose boundaries you cannot define – but which you only apprehend and reproduce in your work with some hesitation of judgment-these you should not represent as finished or sharply defined, for the result would be that your work would seem wooden. (MS.2038,Bib.Nat 14 v)’ Leonardo Da Vinci, *Leonardo Da Vinci's Note-Books* (Edward McCurdy tr, Duckworth and Co 1906)., 223 (...Especially when you are attempting to move away from such representations....)

through the naming of the word.⁶²⁹ ... We ourselves are pointers, pointing towards that withdrawing of Be-ing: 'When man is drawing into what withdraws, he points into what withdraws. As we are drawing that way we are a sign, a pointer. But we are pointing then at something which has not, not yet, been transposed into the language of our speech. We are a sign that is not read.'⁶³⁰ The failure of words to come to speech is the beginning of the leap, requiring a different attunement to language – distinct from our everyday use. 'Words do not yet come to speech at all, but it is precisely in failing us that they arrive at the first leap. This failing is the event as intimation and incursion of beyng. This failing us is the inceptual condition for the self-unfolding possibility of an original (poetic) naming of beyng. Language and the great stillness, the simple nearness of the essence, and the bright remoteness of beings, when words once again are effective. When will such a time come?'⁶³¹

56. For the most part our comparisons do not breakdown. We are in ontic comparison and eager to move along within this realm. We can continue along the path through ontic comparison and within it, the ontological is always shining. But should we deceive ourselves into believing that in inauthenticity is the only possible way to think and be? Any other kind of thinking needs a neophyte⁶³² to make the first leap into wakefulness, without it there will never be any other kind of thinking. But the neophyte is only ever a *responding* to the call of Be-ing, a calling which comes to meet us.

57. Earlier in the ontic comparison chapter, I mentioned one ought to attend to the *way* not only the saying. I said we had not left ontic comparison. Throughout this work, there are a few small ruptures where an attempt has been made to pierce through ontic

⁶²⁹ 'To name something- that is to call it by name. More fundamentally, to name is to call and clothe something with a word. What is called so called, is then at the call of the word. What is called appears as what is present, and in its presence it is brought into the keeping. It is commanded, called into the calling word. So called by name, called into a presence, it in turn calls. It is named, has the name. By naming, we call on what is present to arrive. Arrive where? That remains to be thought about.' Heidegger, *What is Called Thinking?*, 120

⁶³⁰ The last line 'We are a sign that is not read', Heidegger is citing Hoelderlin's draft of the hymn 'Mnemosyne' Heidegger, *What is Called Thinking?*, 18

⁶³¹ beyng means Be-ing Heidegger, *Contributions to philosophy (to the event)*., 30

⁶³² In the original sense; a new plant, a new shoot. '< post-classical Latin *neophytus* new convert (Vulgate; late 2nd or early 3rd cent. in Tertullian), novice (from a705 in British sources), inexperienced person (from late 7th or early 8th cent. in British sources), also as adjective in sense newly planted (4th cent.) < ancient Greek *νεόφυτος* newly planted, in Hellenistic Greek also newly converted, new convert (in 1 Timothy 3:6 and later Christian use) < *νέο-* neo- comb. form + *φυτόν* plant (see -phyte comb. form). Compare Middle French *neophyte* (1495 in sense 'recent convert to a religion'), French *néophyte* (1639 in sense 'beginner in an art or science', 1680 as *néophyte*), Italian *neofita*, *neofito*' Oxford English Dictionary, "neophyte, n. and adj." (Oxford University Press).

comparison to show you the possibility of another kind of thinking. Almost immediately, such thinking is covered over in the explanation. This work is mostly in ontic comparison...

Still, there are a few flickers of authenticity rupturing the form...

58. ‘You either see a painting straight away or you never see it. Explanations have no value. What is the point of a commentary?’⁶³³ Paintings do not require explanations, but they do need preservers...⁶³⁴

Artworks do not seem to rely directly on truth as comparison. These works seem to be of a different kind of comparison (composition) to the bringing together through togetherness of ontic comparison... Unless we like Schapiro tying the painting’s shoes around van Gogh’s actual feet?⁶³⁵ ... What presences in a work of art?⁶³⁶ How does it presence? Again, is it the aspects that move us in the work?⁶³⁷ ... What kind of belonging-together is in the work, and what kind of belonging-together is in the making of the work? Are artworks parables –emerging in-between the chiaroscuro, the revealing-concealing: the para-ble?⁶³⁸

⁶³³ Richard Kendall (ed) *Cézanne by himself* (Macdonald and Co 1990). Cézanne’s words, ‘*The motif*’, 304

⁶³⁴ Heidegger, ‘The Origin of The Work of Art (1935-36)’, 44.

⁶³⁵ I am paraphrasing Jacques Derrida: ‘-Schapiro tightens the picture’s laces around “real” feet.’ Derrida is referring to Meyer Schapiro’s criticism of Heidegger’s *The Origin of the Work of Art*. Schapiro points out the shoes depicted in the painting are Vincent van Gogh’s own shoes (a city dweller’s shoes) and, not those of a peasant woman (as claimed by Heidegger). Is the point of a painting a representation of the actual shoes? Jacques Derrida, *The Truth in Painting* (Geoffrey Bennington and McLeod Ian trs, The University of Chicago Press 1987), 313; Jacques Derrida, ‘Restitutions’ in Joseph Tanke and Colin McQuillan (eds), *The Bloomsbury Anthology of Aesthetics* (Bloomsbury 2012); see also Heidegger, ‘The Origin of the Work of Art’, 158.

⁶³⁶ The Montagne Sainte-Victoire? Evermore simply. ‘Cézanne lets the *montagne St. Victoire* appear in his paintings gain and again and the mountain presences as the mountain ever more simply and powerfully, then this does not lie solely, nor even primarily, in that Cézanne discovers himself ever more decisively through his painterly technique, but rather in that the “topic” moves, i.e., speaks ever more simply’ Heidegger, *Bremen and Freiburg Lectures*, 131.

⁶³⁷ Of course, artworks do have aspects. They share many features with other man-made things. We can appreciate the different aspects. An art critic/ fellow artist/ stonemason may look at the painting in a different way. We can examine the various techniques used, how the paint sits on the background, the style used, the prevalence of particular colours in her work and how/where she was working. We can lift the work from the wall and experience the texture and heaviness of the work. But works of art are also doing something else... they themselves are opening up a world and, it is a different world from the world of the art critic, fellow artist, and stonemason.

⁶³⁸ Para-ble separated to highlight para- (coming closer) –ble (casting) essential relation contained in the word. We are returning to the essence of comparison: *poiēsis*.

Paintings do not hold chiaroscuro within them: chiaroscuro *is* the painting. Chiaroscuro is both *un-concealment* and *Earthliness*⁶³⁹ the *light-shade* composition of the painting. It allows the painting to emerge by withdrawing (*oscuro*). The composition withdraws sustaining the parable, itself a *para-ble*.⁶⁴⁰ It is the harmony and contrast in the painting, the Earthly aspect of the painting which withdraws / shelters, the *out of which* - the *para-ble* springs. But, even the withdrawal still obeys *phusis* as it still enters the shining light of Being (*chiaro*) - it must, because it is still accessible to us.⁶⁴¹ In a different way, through withdrawing it shows itself.⁶⁴²

‘Ils m’ont appelé l’Obscure et j’habitais l’éclat.’⁶⁴³

Chiaroscuro does not only provide the ground for the work, but also the strife sustaining the parable worlding. It ruptures (bursts out) bearing the parable, letting it come into Being.⁶⁴⁴ They need each other.

⁶³⁹ By light-shade (chiaroscuro) I do not mean that Earth is *only* an arrangement of paint. Earth does not mean only nature, material or mere thing. ‘That into which the work sets itself back, and thereby allows to come forth, is what we called “the earth”. Earth is the coming-forth-concealing [*Hervorkommend-Bergende*]. Earth is that which cannot be forced, that which is effortless and untiring. On and in the earth. Historical man finds his dwelling in the world. In setting up a world, the work sets forth the earth. “Setting forth [*Herstellen*]” is to be thought, here, in the strict sense of the word. The work moves the earth into the open of a world and holds it there. *The work lets the earth be an earth*’ Heidegger, ‘The Origin of The Work of Art (1935-36)’, 24. ‘The earth is illuminated as itself only where it is apprehended and preserved as the essentially undisclosable, as that which withdraws from every disclosure, in other words, keeps itself constantly closed up. All the things of the earth, the earth itself in its entirety, flow together in reciprocal harmony. But this confluence is no blurring of outlines. What flows here is the self-sustaining stream of boundary-setting, a stream which bounds everything that presences into its presence. So in every self-secluding thing there is the same not-knowing-one-another. The earth is self-secluding. To set forth the earth means: to bring it into the open as the self-secluding. This setting forth of the earth is what the work achieves by setting itself back into the earth. The self-seclusion of the earth is, however, no uniform, inflexible staying-in-the-dark [*Verhangenbleien*], but unfolds rather, into an inexhaustible richness of simple modes and shapes.’ Heidegger, ‘The Origin of The Work of Art (1935-36)’, 25 (earth is Earth). The Earth is ‘...Communicating with the withdrawal of being, it opens a space which, escaping historical mutations, abides unscathed.’ Haar, *The song of the Earth.*, 14.

⁶⁴⁰ *Chiaroscuro* (as un-concealment clear-*obscure*) and *para-ble* (coming closer / casting away) are expressing the self-same thought. (*Composition* means *chiaroscuro* as *light-shade* speaks of the aspects of the painting; it is an Earth).

⁶⁴¹ Haar, *The song of the Earth.*, 99.

⁶⁴² Michelangelo never used the stone up.

⁶⁴³ ‘They called me the Dark One and I dwelt in radiance’ Saint John Perse, *Seamounts* (Wallace Fowlie tr, Pantheon 1958). ... ‘Dark One’ (*oscuro*).... ‘éclat’ means to burst out... ‘French *éclat*, Old French *esclat*, related to *éclater*, Old French *esclater* to burst, burst out.’ Oxford English Dictionary, “*éclat, n.*” (Oxford University Press).. For a broader discussion on Perse and the *oscuro* see Judith Kopenhagen-Urian, ‘Delicious Abyss: The Biblical Darkness in the Poetry of Saint-John Perse.’ (1999) 36 Comparative Literature Studies 195.. Note - there are a few ways of understanding this extract; Reginald Lily translates this line as ‘*They called me the Obscure and I lived in the Light*’. For Haar, the Light is the lighting flash of Being – that of which the poet speaks – the source of language. Haar, *The song of the Earth.*, 155

⁶⁴⁴ (Chiaroscuro as an Earth) ‘The world is the self-opening openness of the broad paths of simple and essential decisions in the destiny of a historical people. The earth is the unforced coming forth of the continually self-closing, and in that way, self-sheltering. World and earth are essentially different and yet

59. Artworks let truth come into Being. The *origin* of the work of art (creators, preservers and thus the historical existence of a people) *is* art because art is an origin, ‘a distinctive way in which truth comes into being, becomes, that is, historical’.⁶⁴⁵ Not in the sense that it is chronologically part of the passage of time or that it marks an X in time.⁶⁴⁶ Artworks are not like the typewriters of yesterday, stamping out (-and-getting-st[r]uck-together-) the relation to a defunct world. Art is essentially the *ground of history* because art allows truth to arise – bringing it into Being. The *essence* of art is poetry in the sense it allows the open to happen in the midst of beings, it brings them to shine and sound.⁶⁴⁷ That which allows the work to first emerge, for the truth to come into Being in an ontic way would be the artist, in the sense of truth as comparison, a work can only be a work because the artist creates. Yet, Cézanne understood that he was not the author of the work: ‘...but I am only a poor painter and without doubt it is rather the brush which heaven has put into my hands as a means of expression.’⁶⁴⁸ The truth closest to us in our everydayness, truth as comparison, conceals the para-ble within it.

Parable may be another way of keeping a poetic saying. A way of unfolding the dawn of destiny that comes towards us. A mystical saying which does not amount a mundane bringing-together through togetherness. There could be a way of speaking in parables

never separated from one another. World is grounded on earth, and earth rises up through world.’ (earth means Earth here). Heidegger, ‘The Origin of The Work of Art (1935-36)’, 26. ‘The earth cannot do without the openness of world if it is to appear in the liberating surge of its self-closedness. World, on the other hand, cannot float away from the earth if, as the prevailing breadth and path of all essential destiny, it is to ground itself on something decisive. In setting up world and setting forth earth the work instigates this strife.’

Heidegger, ‘The Origin of The Work of Art (1935-36)’, 27. The world is not simply the open and earth is not simply the concealed: ‘To the open belongs a world and the earth. But world is not simply the open which corresponds to the clear, earth is not simply the closed that corresponds to concealment. World, rather, is the clearing of the paths of the essential directives with which every decision complies. Every decision, however, is grounded in something that cannot be mastered, something concealed, something disconcerting. Otherwise it would never be a decision. Earth is not simply the closed but that which rises up as self-closing. World and earth are essentially in conflict, intrinsically belligerent. Only as such do they enter the strife of clearing and concealing’ Heidegger, ‘The Origin of The Work of Art (1935-36)’, 31.

⁶⁴⁵ Art allows truth to arise [*entspringen*]. Art arises as the founding preservation of the truth of beings in the work. To allow something to arise, to bring something into being from out of the essential source in the founding leap [*Sprung*] is what is meant by the word “origin [*Ursprung*]”. Heidegger, ‘The Origin of The Work of Art (1935-36)’, 49 This distinguishes artworks from other man-made things, artworks are ‘*pointing out the truth as such*.’ Haar, *The song of the Earth*., 99.

⁶⁴⁶ ‘People still hold the view that what is handed down to us by tradition is what in reality lies behind us-while in fact it comes toward us because we are its captives and destined to it.’ Heidegger, *What is Called Thinking?*, 76.

⁶⁴⁷ Heidegger, ‘The Origin of The Work of Art (1935-36)’, 45.

⁶⁴⁸ An extract from Cézanne’s letter to Louis Aurenche (October 1901) Kendall, *Cézanne by himself*., 229.

without folding-back into a causal relationship of faithfulness and fearfulness. Since the dawn of thinking, primordial thinkers spoke in parables. Perhaps through parable, like Hermes, we can bear the message of the gods.⁶⁴⁹ To speak in parables was a way of revealing a truth unsayable in any other way. Parables allowed for a different attunement to language. While the world of the parable has somewhat decayed – they still speak. Parables still tell us, if we listen carefully, the mysteries of the world.⁶⁵⁰ Parables let language speak, by doing so, they create an opening to think the presencing (Being) as well as being present.⁶⁵¹ Parables allow for a way of thinking the difference through language.⁶⁵² The presencing (un-concealment) always *is* from and through concealment.⁶⁵³ While coming closer, it casts away: para-ble...

‘Catch only what you’ve thrown yourself, all is

Mere skill and little gain;

But when you’re the catcher of a ball

Thrown by an eternal partner

With accurate and measured swing

Towards you, to your centre, in an arch

From the great bridgebuilding of God:

Why catching then becomes a power –

Not yours, a world’s.’⁶⁵⁴

⁶⁴⁹ *Hermeneutic* derives from the Greek verb *hermeneuein* and related to the noun *hermeneus*, and can ultimately be traced back to the Greek god *Hermes*, the one that bears the message. ‘Hermes is the divine messenger. He brings the message of destiny; *hermeneuein* is that exposition which brings tidings because it can listen to a message. Such exposition becomes an interpretation of what has been said earlier by the poets who, according to Socrates in Plato’s Ion (534e), *hermenes eisin ton theon-* “are interpreters of the gods”’ Heidegger, *On The Way To Language* , A dialogue on language, 29.

⁶⁵⁰ N/A, *King James Bible* , Matthew 13:34-35.

⁶⁵¹ ‘The essence of presence together with the difference between presence and what is present remains forgotten. The oblivion of being is oblivion to the difference between being and the being. But oblivion to the difference is by no means the result of a forgetfulness of thinking. Oblivion of being belongs to that essence of being which it itself conceals. It belongs so essentially to the destiny of being that the dawn of this destiny begins as the unveiling of what presences in its presence. This means: the destiny of being begins with oblivion of being so that being, together with its essence, its difference from the being, keeps to itself. The difference collapses. It remains forgotten.’ ‘being’ means ‘Being’, ‘the being’ means ‘being’, Heidegger, ‘Anaximander’s Saying’., 275.

⁶⁵² ‘The difference between being and the being, however, can be experienced as something forgotten only if it is unveiled along with the presencing of what is present; only if it has left a trace, which remains preserved in the language, to which being comes’. ‘being’ means ‘Being’, ‘the being’ means ‘being’. Heidegger, ‘Anaximander’s Saying’., 275.

⁶⁵³ ‘By revealing itself in the being, being withdraws’, ‘being withdraws’ refers to ‘Being’. Heidegger, ‘Anaximander’s Saying’., 253.

⁶⁵⁴ Taken from an untitled poem by Rainer Maria Rilke, written in 1922, in Gadamer, *Truth and Method*; see also Márton Dornbach, *Receptive Spirit : German Idealism and the Dynamics of Cultural Transmission* (University of Virginia Press 2016), 1-6.

6. Coda

'This is what makes me write, for nothing has happened since I left you last June which could give me reason to write a letter, although you did ask me in your last letter to give you news of myself. Tomorrow was so similar to yesterday that I didn't know what to tell you.'⁶⁵⁵

What have ontic comparisons got to do with the law?

1. What I am exposing is that our legal comparisons are ontic comparisons. These are not separate or of a different order to our everyday comparisons. We are enchanted by comparison, and so dormant in this public way of understanding. Legal comparisons are simply an instance of ontic comparison, showing us our entrenchment in the ontic, and not some far removed 'specialised' kind of comparison away from our daily lives. The legal has studiously learnt ontic comparison. We machinate our legal principles through ontic comparison. Ontic comparison determines the approach and comportment toward each case, scoping what can count as an argument, what can be included or excluded in each case and how it is to be framed.
2. Ontic comparison regulates the legal. The legal cherishes ontic comparison as it holds the legal in place and helps it grow. Ontic comparisons nurture the law, furnishing it with a never-ending thread of comparisons – there will always be another link in the chain, to use Dworkin's analogy.⁶⁵⁶ Dworkin's *integrity* is not only a binding instruction, but it is also the manifestation of ontic comparison in the legal. We bring together what we represent before ourselves and to try find how it belongs in the practice of law. In this way, each case belongs *together* with another of the same kind. Comparison is still enigmatic: what tilts the fine balance, what creates the break, between continuing along the path of sameness, or distinguishing to somewhere new? The *doxa-dawning* means we can find shared or different aspects depending on how we approach the case. There will always be another link, another comparison, because ontic comparisons provide the *ground* for the legal to continue to push its way forward. Ontic comparison replenishes the legal, preventing it from stagnating. Whenever there is genuine difference it may be that our comparisons are disturbed momentarily. But

⁶⁵⁵ An extract from a letter from Paul Cézanne to his friend, Emile Zola (24th September 1879) Kendall, *Cézanne by himself.*, 72.

⁶⁵⁶ Dworkin, *Law's Empire*.

soon enough, we can find a way of moving forward through comparison within this same realm. We are able to navigate the legal through ontic comparison, with our *bringing-together* through togetherness. The legal finds itself in, and through ontic comparison. Without ontic comparison where would the law be? How could it be? It certainly could not be as it is, we could not affirm our beloved incantation: *like-cases-treated-alike* and move onwards.

3. Bracton's advice on proceeding like-by-like still holds firm.⁶⁵⁷ It holds together because ontic comparisons are pointing us toward how we understand. Bracton's advice was a way of creating consistency to protect us from the unwise.⁶⁵⁸ It was a way of ensuring that the legal does the same thing, when presented with the same thing. The showing itself each-time-the-same makes sure we can learn what the legal does, and judges know how to make their comparisons. The legal has to do the same-thing-each-time and we learn it. This doing-the-same-thing each time has an important stake in our sense of fairness and equality of treatment, because we see ourselves through ontic comparison and like-must-be-treated-alike. We should also now be able to hear the doing-the-same-thing in each legal system, functionalism, in its proper light. The ambition of the functionalist to see without preconceptions will never be met.⁶⁵⁹ What comes to meet the functionalist is ontic comparison, function belongs to ontic comparison - doing the same-thing again.

Concealed within ontic comparison is the ontological. We can understand because beings and Being are disclosed to us: we ek-sist. Even within the hardening of ontic thinking Be-ing is still nearest to us. While the essence and origin of comparison may have become obscured, the essential bringing-forth (*poiēsis*) is still bringing-forth, whether we hear it or not. We are the wanderers distancing ourselves from the spring, as we lay dying of thirst – is it not the case that the spring pursues us evermore violently?⁶⁶⁰

⁶⁵⁷Bracton, *Bracton On the Laws and Customs of England.*, 21.

⁶⁵⁸Bracton, *Bracton On the Laws and Customs of England.*, 19.

⁶⁵⁹ The functional requirement to see the other's legal system 'purely in functional terms' and 'without any reference to the concepts of one's own legal system' Zweigert and Kötz, *An Introduction to Comparative Law.*,32.

⁶⁶⁰ Martin Heidegger, *The Beginning of Western Philosophy: interpretation of Anaximander and Parmenides* (Richard Rojcewicz tr, Indiana University Press 2015).,31.

4. We hinted earlier that our like-cases-alike could have been, perhaps, more originally thought as part of Empedocles' saying 'according to its kind'.⁶⁶¹ The *belonging-together* thought by Empedocles was akin to a self-sameness between water and earth, and the relation within itself, water and water, earth and earth. This could, perhaps, be a chronologically earlier like-cases-alike, but also a more primordial way of thinking a *belonging-together*. In Wittgenstein's family resemblances there was a hint of Empedocles saying. Still, Empedocles is speaking of a primordial *belonging* together between the elements; whereas the familiar-games speak of a criss-crossing and cropping up of similarities and differences, brought together by someone, thusly it is a belonging together that thinks the *togetherness* first.

5. There could be a more primordial way of being within the law which is attentive to the call of Being. It may even be likely that the essence of law is *not* the legal.⁶⁶² These questions about the essence of the law still call for thoughtfulness. The thesis purposefully leaves the question open as to whether there could be a more primordial *belonging* together within the law. The belonging together which thinks our *belonging-together* with Being. Why? It is difficult to say how the legal would be without the unity of the togetherness of ontic comparison. The ontic has taken over and the legal inhabits this realm. Every-thing is as it shows itself to be. Albert Camus once wrote that his beloved and tragic Mr Meursault was 'a poor and naked man, in love with a sun which leaves no shadows'.⁶⁶³ The shadows were lies and deliberate omissions, Camus was referring to the character's truthfulness. The child-like naivety which led him to say he felt annoyance rather than regret, when asked about the crime he had committed. We are what we show ourselves to be; still, there are different kinds of shadows, beyond our wilfulness or insincerity. The primordial thinkers understood the difference between being present and presencing.⁶⁶⁴ There was a different kind of attunement to Being. To emerge is to always come from darkness to presence. The Greeks understood παρα- as 'coming closer', which was thought together with ἀπό

⁶⁶¹ Heidegger, *What is a thing?* 83-84.

⁶⁶² Ben-Dor, *Thinking about law in silence with Heidegger.*, 136-137 paragraph 54; The 'not' is not a negation (as that would be within the representational thought), but speaks to the ontic occurrence of law and the relationship with its essence; this is the 'not', both the ontic distortion of the Being of law and the temporal 'not yet'. Ben-Dor, *Thinking about law in silence with Heidegger.*, 122 paragraph 8; The 'not' is pointing to the ontological difference, Ben-Dor, *Thinking about law in silence with Heidegger.*, 160 paragraph 123

⁶⁶³ Camus, *The Outsider.*, Afterword, 119.

⁶⁶⁴ Heidegger, 'Anaximander's Saying', 275.

‘going away’, both these together meant being present.⁶⁶⁵ Everything which *is* lies before us and emerges into appearance *λόγος ἀπόφαντις*. Letting-appear is related to the emergence (*phusis*) and to concealment. The Greeks understood the essence of un-concealment is concealment, and that un-concealment emerges out of the strife, in-between the concealment. The self-sheltering concealment ‘*conceals that it conceals*’.⁶⁶⁶ Today, presencing is thought as a constant endurance, we think in clock-time nows. We determine beforehand the approach, what and how beings are, including human-beings.

6. Asking comparison is part of the tradition of ‘poetic comparisons of law’, so it seeks not only to sit within the tradition, but also rip open the space.⁶⁶⁷ Asking comparison is a way to con-front the representations and descriptions the law makes, in short, it is a way of facing ontic comparison.⁶⁶⁸ It drags us to think the many different distinctions made by the law, of the same kind. We live our lives in these ontic distinctions. Everywhere today, we find people joining together for recognition, from the Chagos Islanders, Catalonia, feminist movements, to black-lives-matter. The politics of cultural recognition, as Tully coined it, is ubiquitous.⁶⁶⁹ The zeitgeist is a thick and hazy smog full of ontic comparisons. But, what is at stake in these claims? What kind of belonging-together is sought? The question of comparison has never been so critical.

⁶⁶⁵ Heidegger, *What is Called Thinking?*, 236.

⁶⁶⁶ Ben-Dor, ‘Agonic is not yet demonic?’, 120-121 paragraphs 25-32.

⁶⁶⁷ ‘In a post-Heideggerian analytics of space, language would indeed be where we would want to start from in an attempt fruitfully to capture and then to respond to some of the more puzzling complexities of today’s Western societies – beginning, of course, with those concerning democracy and the rule of law. For example, what elsewhere I have called *poetic comparisons of law* would indeed start just there: they would start by thinking afresh the complex relationships between law, space, history and politics as mainstream comparative law normally knows them, so that eventually the legal tests and institutional contexts of mainstream comparative law can begin to be seen for what they truly seem to be – that is, the result of a heartland more than the source of functional networks, structures, etc. Poetic comparisons of law, that is, would want to tackle what is, quite literally, the matter of legal space and see what difference does it make.’Stramignoni, ‘Francesco’s Devilish Venus: Notations on the Matter of Legal Space’.,210.

⁶⁶⁸ Con-front means *Com*-together *front*-face. (but also to adjoin a barrier) Oxford English Dictionary, “*confront*, v.” (Oxford University Press).

⁶⁶⁹ Tully, *Strange Multiplicity Constitutionalism in an age of diversity*.

7. We began by noticing the pervasiveness of comparison throughout the legal sphere.

The thesis demonstrated how the Western legal tradition largely ignored comparison, whilst at the same time relying heavily on it, in its day-to-day, like-to-like affairs. In comparative endeavours, where the law actively engaged comparison, it chose to see comparison as means to an end. The instrumental relationship the legal world has with comparison was not (and still is not) something which concerned it.

8. We saw how legal comparisons were ontic comparisons and part of machinational thinking. We exposed our relationship to ontic comparison, machinating *techne* and *phusis* together; a comportment which had already taken up an attitude towards Being and truth. We showed how we are always-already delineating and determining how, what, and the why of beings are on the based-on constancy and presence; and even now, in truth *adaequatio* (truth as comparison), we are still tying together what we saw with what we said. This kind of belonging-together is one of togetherness determined by us.

9. What allows comparison to manifest? Comparison is prior to machination, both chronologically and primordially, even if in our current time, it has become distortedly part of it. It is not the aspects, or comparison itself which determine the movement of comparison.

10. The essence of comparison is *poiēsis* (bringing-forth). It is a primordial way of revealing, itself arising from the Event. This is the ‘why’ like-by-like holds sway, even if it is distorted in machination. The primordial para-ble: para-(coming closer) –ble (casting away) is mostly no longer heard. Asking comparison turns towards it.

11. To those seeking a polished ‘solution’ to the problem posed by comparison, you will not find it here, that was never my goal.⁶⁷⁰ Nothing said in this thesis anywhere is an

⁶⁷⁰ ‘If anyone should think he has solved the problem of life and feels like telling himself that everything is quite easy now, he can see that he is wrong just by recalling that there was a time when this “solution” had not been discovered; but it must have been possible to live *then* too and the solution which has now been discovered seems fortuitous in relation to how things were then. And it is the same in the study of logic. If there were a “solution” to the problems of logic (philosophy) we should only need to caution ourselves that

attempt to halt the questioning. The thesis is an attempt to seek an opening to begin to ask comparison and that is all this thesis ‘*does*’. It shows you, how we are not yet asking comparison and that it warrants thought. This project is a beginning, it is not the last word on comparison. We are talking about beginnings at its end.⁶⁷¹ The thesis actively adopts an untraditional approach, while of course acknowledging its debt to the tradition, after-all it is situated within it; but the point is the tradition does not hear comparison, not in the legal and not in our everydayness. **The saying of this thesis can be summarised in the following: Not only does comparison lack an answer, it lacks a question.**

*Asking comparison is asking us to thoughtfully catch that which sends itself to us,
as it casts away.*

there was a time when they had not been solved (and even at that time people must have known how to live and think).’ Ludwig Wittgenstein, in G.H. Von Wright and Heikki Nyman (eds), *Culture and Value* (Basil Blackwell 1980), 4e.

⁶⁷¹ In a letter to the former prefect of the clerical seminary, Heidegger wrote: ‘Perhaps philosophy shows most forcibly and persistently how much Man is a beginner. Philosophizing ultimately means nothing other than being a beginner.’ Safranski, *Martin Heidegger Between Good and Evil*, 1.

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