

# Human Rights and Intercultural Dialogue: European Challenges and Perspectives

CHRISTOPH EBERHARD

*Researcher and invited professor in Anthropology and Theory of Law at the Facultés universitaires Saint Louis, Brussels.*

Published in Léonce Bekemans (dir.), *A Culturally Oriented and Value Driven European Future*, Peter Lang, 242 p (97-112).

## Introduction

“What are the cultural and value roots for intercultural dialogue in a European context?” This deep and important question raised by the Jean Monnet Centre of Excellence “Intercultural dialogue, Human Rights and Multi-level Governance” and the Interdepartmental Centre on Human Rights and the Rights of Peoples of the University of Padua constitutes the red thread of an ongoing exploration that has already resulted in a previous publication “*Intercultural Dialogue and Citizenship. Translating Values into Actions. A Common Project for Europeans and their Partners.*”<sup>1</sup>

In the introduction to the fourth Part of this publication which deals with “Intercultural Dialogue and Human Rights, Civil Society and World Order Issues”, Marco Mascia<sup>2</sup> pointed out that “analysis on intercultural dialogue was extended to comprise dialogue that is internal and external to the European Union to find a common thread to enable and enhance its orientation towards ‘dialogue’ and its vocation to be a

---

<sup>1</sup> L. Bekemans et al., (eds.), *Intercultural Dialogue and Citizenship. Translating Values into Actions. A Common Project for Europeans and their Partners*, Venice, Marsilio, 2007.

<sup>2</sup> *Ibidem*, p. 447.

‘civil’ actor endowed with soft power within the world system.” In his concluding remarks, Léonce Bekemans<sup>3</sup> summed up a few important points to keep in mind for that orientation, so that from a multi- and interdisciplinary perspective, the human rights paradigm may assume the role of a “powerful trans-cultural facilitator to move from the (increasingly) conflicting stage of multi-culturality to the dialogic stage of interculturality”. This affirmation has various consequences: 1) Intercultural dialogue is a very complex process knotting together political, anthropological and psychological aspects and having implications in Europe as well as vis-à-vis other cultures; 2) Intercultural dialogue is becoming a major issue in contemporary political debates in Europe urging to clarify what its stakes and challenges are; and 3) Intercultural dialogue requires a redefinition and practical reinvention of terms such as identity, citizenship, democracy, responsibility from the most local to the most global levels.<sup>4</sup>

## 1. Premises

Tackling the question of human rights and intercultural dialogue from the perspective of legal anthropology<sup>5</sup> allows to take these reflections even further. Indeed, through its emphasis on the comparison of human experiences, it allows to gain awareness of the European originality by contrasting it with other cultural traditions, while at the same time opening up the European window and inviting a welcome intercultural dialogue within Europe and also with the broader world.<sup>6</sup> Through its focus on fieldwork, and thus not only dwelling on theories or system’s approaches, it brings into the picture the nexus between theories and practices and sheds an original light on the interactions of diverse global and local fields, like the global fields of the transnational human rights institutions and advocacy groups and the more local, regional, national or infra-national field realities.<sup>7</sup>

The question of human rights and intercultural dialogue crystallises challenges that Europe is currently facing, while offering an interesting

---

<sup>3</sup> *Ibidem*, pp. 654-655.

<sup>4</sup> See in this context M.-C. Foblets, J.-F. Gaudreault-Desbiens, A. Dundes Renteln (dir.), *Cultural Diversity and the Law. State Responses from Around the World*, Bruxelles, Bruylant/Éditions Yvon Blais, 2010.

<sup>5</sup> C. Eberhard, *Droits de l’homme et dialogue interculturel*, Paris, Connaissances et savoirs, 2011<sup>2</sup>.

<sup>6</sup> *Idem*, *Le Droit au miroir des cultures. Pour une autre mondialisation*, Paris, LGDJ/Lextenso, Col. Droit et Société Classics, 2010<sup>2</sup>.

<sup>7</sup> *Idem*, “Law and Anthropology in a ‘Glocal’ World. The Challenge of Dialogue,” in *Current Legal Issues 2009 – Law and Anthropology*, vol. 12, 2009, pp. 67-88.

and original perspective on our global living together and on what the specific European contribution to it may be. It plunges into the depths of European thinking and experience on living together between the unity of humankind and the diversity of its manifestations. It invites a global approach that articulates the European perspective with other cultural perspectives within the broader global horizon.

The *problématique* also reveals the complexity of the current world situation. It highlights the paradigmatic shifts that we are experiencing. The postmodern transition as some call it, is challenging our modern assumptions on law, politics, social sciences and their relationships. Central concepts that shaped modern perceptions of the world and its organisation are being redefined: “governance” replaces or at least complements the notion of “government”; “good governance” complements the “rule of law”, “accountability” complements “human rights”. The state loses its centrality and its monopoly on politics and regulation; citizenship emerges as a pluralist concept.<sup>8</sup> Analyses bridging the distance between the diverse local and global fields as defined above are on the rise<sup>9</sup>. Inclusive notions such as participation, inclusion and dialogue become cornerstones of an emerging pluralist and intercultural horizon of living together. The challenges are multiple as approaches emancipate themselves from monodisciplinarity and increasingly embrace multi-, inter- and even trans-disciplinarity<sup>10</sup>, not to forget the timid opening up to more intercultural approaches to our contemporary human predicament.

This paper will explore the European originality of the question of human rights and intercultural dialogue. It will highlight major changes that occurred over the last decade and that contribute to emancipating human rights thought and practice in the intercultural dialogue from a universe familiar to us to a pluriverse that we are still struggling to understand.<sup>11</sup> Four poles will delineate the pluralist horizon of living

---

<sup>8</sup> See A.-J. Arnaud, *Critique de la raison juridique 2. Gouvernants sans frontières. Entre mondialisation et post-mondialisation*, Paris, LGDJ, 2003.

<sup>9</sup> See M. Goodale, S. E. Merry, *The Practice of Human Rights. Tracking Law Between the Global and the Local*, New York, Cambridge University Press, 2007; S. E. Merry, *Human Rights and Gender Violence. Translating International Law into Local Contexts*, Chicago and London, The University of Chicago Press, 2006;

<sup>10</sup> F. Ost, M. van de Kerchove, *Jalons pour une théorie critique du droit*, Bruxelles, Publications des Facultés universitaires Saint-Louis, 1987.

<sup>11</sup> C. Eberhard, « De l'univers au plurivers. Fatalité, utopie, alternative ? », A.-M. Dillens (dir.), *La mondialisation : utopie, fatalité, alternatives*, Bruxelles, Publications des Facultés universitaires Saint Louis, 2008, pp 67-104; C. Eberhard *Oser le plurivers. Pour une globalisation interculturelle et responsable*, Paris, LGDJ/Lextenso, forthcoming.

together: alterity, complexity, interculturality and humanity.<sup>12</sup> These four sensitivities or landmarks that I call “pole”, also constitute four cultural disarmaments<sup>13</sup>, four ways to become aware and go beyond our ethnocentrism. Walking the path outlined between these four poles will avoid the pitfalls of oppressive universalism or the ghetto of particularisms and may lead to a pluralist horizon of responsibility.

## 2. Law and anthropology: universalism and relativism

The question of human rights and intercultural dialogue draws on two important streams of European thinking: the law tradition and the social sciences tradition, especially anthropology. Although these two approaches appear quite different, they draw on European humanistic core questions: how to make sense out of unity and diversity? How to organise a living together between unity and diversity? How to reach a universal understanding of humanity that necessarily has to take into account the diversity of its expressions and has to start from the observation of this diversity in order to distillate what is the same? How to build legal systems based on equality, which entails simultaneously a recognition of what binds us as well as what distinguishes us?

It has become perfectly clear that is not enough to refer to the other as formally equal: we must open up to his or her self-understanding. The objective claim to universality which is deeply embedded in the European’s quest for Reason, paradoxically compels us to deal with the subjectivities of human beings. It is by observing the differences that one can understand the commonalities as Rousseau remarked in a famous quote that anthropologists like to use as a credo for their research.<sup>14</sup> This tension between unity and diversity, implicitly resting on the horizon of the universality of the human nature, is central to European thinking.

Generally speaking lawyers have emphasised the pole of unity in this equation and have embraced a universalistic approach. Anthropologists on the other hand have favoured more relativistic positions. Partly, this difference can be understood as the result of two different aims: law is

---

<sup>12</sup> For an introduction to the “path” of the legal anthropologist between these poles see C. Eberhard, *Le Droit au miroir des cultures*, *op. cit.* pp. 23 *et seq.*

<sup>13</sup> See R. Panikkar, *Cultural Disarmament - The Way to Peace*, USA, Westminster John Knox Press, 1995; R. Vachon, « Le désarmement culturel et la Paix », *Interculture*, 1985, Vol. XVIII, n° 4, Cahier 89, pp 37-43

<sup>14</sup> “Quand on veut étudier les hommes, il faut regarder près de soi; mais pour étudier l’homme, il faut apprendre à porter sa vue au loin; il faut d’abord observer les différences pour découvrir les propriétés.” *Essai sur l’origine des langues*, Ch. VIII quoted in C. Lévi-Strauss, *Anthropologie structurale*, Paris, Plon, 1995 (1958), p. 413.

about *Sollen*, it is about how things should be, how they need to be organised. The perspective is a top-down perspective, a perspective which is meant to see the world in a certain way – through legal glasses – in order to be able to deal with it, to impact it and to organise it. Anthropology is about *Sein*, about how things are. The main aim is understanding, not acting. It is to look beyond the accepted perspectives, to put on different glasses to reveal the reality of human beings living together. The approach is thus more a bottom-up approach: it starts from the actors, their actions, perceptions, worldviews, and not from the point of view of a system. It is quite destabilising and disrupting to any existing system that looks at the world in one given way. In short, both approaches have their legitimacy and hold part of the truth. Universalism points to the important insight that we do share a common destiny. Relativism reminds us of the irreducible originality of every living being.

However, both the universalistic and the relativistic approach are incomplete. The universalistic position is highly ethnocentric. It turns values and conceptions of the society of belonging into universal ones in an undue manner.<sup>15</sup> A monologue arises instead of a needed “duologue.”<sup>16</sup> It is potentially oppressive to those who do not share our values and conceptions. The lack of clear awareness to this predicament makes intercultural dialogue difficult if not impossible. The universalistic position leads to the imposition of a “globalised Western localism” on others.<sup>17</sup>

Such an ethnocentric view is undoubtedly counterproductive in the search for true universality, or for an interculturally shared outlook on human rights. First, by negating the voice of the other, it does not allow for a mutual enrichment between our and other cultures. The recognition of the other is the cornerstone of sharing. No consensus can be reached nor a common future can be built without such a sharing. Second, the universalistic position paves the way to logic of exclusion and of power instead of a much needed logic of complementarity of differences and of exchange. Particularistic withdrawals can partly be seen as defensive

---

<sup>15</sup> T. Todorov, *Nous et les autres - La réflexion française sur la diversité humaine*, Paris, Seuil, 1992, pp. 21-22 *et seq.*

<sup>16</sup> R. Panikkar, *Myth, Faith and Hermeneutics - Cross-cultural studies*, USA, Paulist Press, 1979, p. 346.

<sup>17</sup> B. de Sousa Santos, *Toward a New Common Sense - Law, Science and Politics in the Paradigmatic Transition*, New York-London, Routledge, After the Law Series, 1995, pp. 262 *et seq.*

reactions against the “Western steam-roller.”<sup>18</sup> It appears that instead of strengthening the universality of human rights, the universalistic position may turn out to weaken it, especially when core global players are seen as instrumentalising human rights to further their own interests as is reflected in a selective awareness to human rights issues in the world. The building of a human rights’ community becomes difficult, if not impossible.

The relativistic position absolutises differences and forgets about the common human nature and condition. It is so fascinated by the differences that the similarities become invisible. It emphasises the different perspectives so much that it loses sight of the common horizon. Universality of any kind, therefore appears impossible. The values, conceptions and world views of different cultures cannot be challenged, and not even understood or even questioned by other cultures. The picture is that of a fundamental “Other” with whom no dialogue is conceivable and with whom no mutual enrichment is possible. No mutual understanding, no sharing, no building of a common future, no real living together, seems possible. The best to be expected is a more or less harmonious coexistence. In the words of Sélim Abou,<sup>19</sup> such a relativistic outlook can lead in the case of an acknowledgement of an absolute right to difference, to a “right to confinement”, or even to a “right to oppression” or to a “right to death”.

These two views as well as the related distinction between universalism and particularism reflecting the gap between a general, idealistic, view and the pragmatic realities on the “grass root levels”, constitute two opposite and nevertheless inseparable realities, of the European modern world view.<sup>20</sup> As we will see further, they refer to the modern principle of the “encompassing of the contrary” (*englobement du contraire*) highlighted by Louis Dumont.<sup>21</sup> Lately, these two sensitivities, complementary rather than contradictory, have been reinterpreted through the lenses of the global/local nexus, thus revealing a new emerging reality, i.e. replacing the universe for the pluriverse.

---

<sup>18</sup> S. Latouche, *La planète des naufragés - Essai sur l'après-développement*, Paris, La Découverte, 1991, p. 8; S. Abou, *Cultures et droits de l'homme*, Paris, Hachette, 1992, p. 16.

<sup>19</sup> S. Abou, *Cultures et droits*, *op cit.*, pp. 34-35.

<sup>20</sup> G. Berthoud, *Vers une anthropologie générale. Modernité et altérité*, Suisse, Librairie Droz S. A., 1992, p. 142.

<sup>21</sup> L. Dumont, *Essais sur l'individualisme - Une perspective anthropologique sur l'idéologie moderne*, Paris, Seuil, 1991 (1983), pp. 140-141.

### 3. From universe to pluriverse: towards a pluralist approach

The legal anthropologist's position is one in between law and anthropology, universalism and relativism, theories and practices, top-down and bottom-up, between global and local, and even between these in-betweens. Interestingly enough, although still quite at the margins a decade ago, current main stream approaches to law, cultures, human rights seem increasingly to echo this view. Attention is increasingly drawn to this field of study which nevertheless still remains on the edges of political and legal thought and action.<sup>22</sup>

The current developments of “globalisation” or rather the dynamics of “glocalisation” and of the mutual reinterpretation of local and global realities on the factual and ideological levels, raise awareness of pluralism. They force us to deal with the universal *and* the particular, the global *and* the local. The classical universality/relativity distinction is reinterpreted into the unity/diversity nexus of the “global-local paradigm.”<sup>23</sup> The disillusion of universalist approaches as well as the clear need to go beyond relativist approaches provide fertile ground to take the challenges of pluralism – and of the related interculturalism – seriously. There is a felt need to organise this living together in a responsible and culturally sensitive way. From a social science perspective, this entails understanding diverse normative organisations; from a legal perspective, this implies mapping out new ways to articulate them.<sup>24</sup>

This trend is illustrated in the recent Report of the International Council on Human Rights Policy “*When Legal Worlds Overlap. Human Rights, State and Non-State Law*”. It addresses the burning question of human rights confronted to normative pluralism. In the chapter “Going

---

<sup>22</sup> See for example *Current Legal Issues 2009 – Law and Anthropology*, Volume 12, edited by M. Freeman and more especially on human rights M. Goodale, *Surrendering to Utopia. An Anthropology of Human Rights*, Stanford, Stanford University Press, 2009.

<sup>23</sup> See for example M. Kilani, *Introduction à l'anthropologie*, Lausanne, Payot, 1992. For recent work on human rights in the context of globalisation see S. E. Merry, *Human Rights and Gender Violence. Translating International Law into Local Contexts*, Chicago and London, The University of Chicago Press, 2006; M. Goodale and S. E. Merry, *The Practice of Human Rights. Tracking Law Between the Global and the Local*, New York, Cambridge University Press, 2007.

<sup>24</sup> For an illustration of the stakes of translation and of dialogue between disciplines, cultures, different levels of “globality” and of “locality” in the current socio-legal-political-economic transition see C. Eberhard (ed.), *Traduire nos responsabilités planétaires. Recomposer nos paysages juridiques*, Bruxelles, Bruylant, 2008.

Beyond Common Presumptions about Law, Culture and Human Rights” we read:

The way we think about human rights changes the way we ‘do’ human rights: this point can be applied to many of the ideas that are central to this report. For example, if human rights in the context of plural legal orders are presumably trapped in binaries (such as modern and traditional, or universalism and cultural relativism), then discussion will fail to reflect the complexity of human rights practice or the ways in which plural legal orders are experienced on the ground, and rights protection may be weakened as a result. [...] Many presumptions about concepts associated with plural legal orders need to be interrogated. This chapter starts by discussing the centrality and power of law. Then, since the report prioritizes plural legal orders in the context of cultural diversity, it discusses the relationship between law and culture and whether presumed cultural differences, such as those based on religion and ethnicity, necessarily generates plural legal orders. Finally, it considers some constructive ways of thinking about human rights in the context of cultural differences.<sup>25</sup>

Some insights of legal anthropology help in the current deconstruction and reconstruction process of the modalities of our living together between unity and diversity. The four poles/cultural disarmaments defined above and that will be explained further now, may delineate the rising pluriverse. They are alterity, complexity, interculturality and humanity.

### **Alterity**

Three decades ago, Raimon Panikkar asked in a very influential article<sup>26</sup> if human rights were a Western concept. In his comparisons with classical Indian thought, he came to the conclusion that they were – which in his view did not entail that they are useless or may not have a legitimate claim to universality. But he emphasised that it is a bad question to ask if other cultures have the same institutions as we have. We may miss the mark by assuming that all cultures necessarily share our outlooks and questions. It may be more rewarding to dig down to similar existential problematics and to try to understand how they are played out in diverse cultural contexts.

Panikkar pleads for a search for homeomorphic equivalences, or existential functional analogies from one culture to another.<sup>27</sup> In his

---

<sup>25</sup> International Council on Human Rights Policy (ICHRP), *When Legal Worlds Overlap Human Rights, State and Non-State Law*, Geneva, Switzerland, 2009, p. 17.

<sup>26</sup> R. Panikkar, “Is the notion of Human Rights a Western Concept?,” *Interculture*, vol. XVII, no. 1, Cahier 82, 1984, pp. 28-47.

<sup>27</sup> *Ibidem*, pp. 29 *et seq.*

dialogue with India, he remarked that the Indian notion of Dharma is an equivalent to the Western notion of human rights. Although it does not correspond exactly as it seems to be much more 'cosmic' in outlook and 'relational' in its structure than the Western rights approach, and also focuses a lot on responsibilities and duties, it embraces a similar concern for human dignity and an organisation of living together based on the recognition of this dignity.

Searching for homeomorphic equivalences is always rooted in concrete explorations. Thus, if Dharma appears as a homeomorphic equivalent to human rights when one puts the question from a Western point of view, starting from the Indian context and the notion of Dharma, religion may appear as the European counterpart. It is important to be aware that there are no perfect translations or equivalences from one culture to another as all cultural elements are part of a broader cultural complex which endows them with meaning.<sup>28</sup>

European conceptions of what it is to be human, what Law is about, are not universal. European culture is not the only existing culture. It is not the benchmark to which all human experience must be compared to, nor is it the ultimate horizon of civilisation that eventually all other cultures have to reach.

The recognition of alterity represents a first cultural disarmament: the realisation that our culture, although being wrapped in a universalistic vision, is but one perspective, among others, to apprehend our existence and to live. This is not only an ethical wake-up call. It also entails an epistemological shift. Indeed, in its search for universality, the modern European tradition may have – in all good faith – missed the mark in genuinely understanding and recognising the other, embedded as it was, to use Raimon Panikkar's terms, in a dialectical horizon.

Within this horizon, Reason plays a predominant role and the world is seen as a puzzle to be solved. It mainly appears as an object that can be entirely known through the lights of Reason that allow to reach the underlying unity and order of the plurality of life's manifestations. As it is objective, two different claims cannot be true simultaneously. In other words, the principle of non-contradiction rules.

Raimon Panikkar recognises the importance and the usefulness of the dialectical horizon, but stresses an often ignored precondition for its

---

<sup>28</sup> Further reading in C. Eberhard, *Droits de l'homme et dialogue interculturel*, *op. cit.* An overview in English in *id.*, "Towards an Intercultural Legal Theory – The Dialogical Challenge," *Social & Legal Studies. An International Journal*, no. 10 (2), 2001, pp. 171-201; *id.*, "Human Rights and Intercultural Dialogue. An Anthropological Perspective," *Indian Socio-Legal Journal*, vol. XXVII, 2001, pp. 99-120.

validity: a shared framework of reference. Anthropological research has shown, that although human beings do share the faculty of reasoning, it is nevertheless used in very different ways according to the different world views that people hold. Michel Alliot,<sup>29</sup> a founding father of French legal anthropology expresses this variety with an inspiring aphorism: *Dis-moi comment tu penses le monde; je te dirai comment tu penses le Droit*, implying that our ways of perceiving the world influence our understanding of it and our organisation of it. Our subjectivities do count. Henceforth, the subjective experience of human beings should not be overseen in European history. The rise of Reason was concomitant with the Romantic Movement. Often, especially in the political and legal domain it is the more objective pillar of regulation which tends to come to mind, overshadowing the complementary pillar of emancipation which always counterbalanced it with its emphasis on subjectivity, creativity and poetry.<sup>30</sup>

As long as we remain exclusively dependent on the rhetoric of the dialectical dialogue, and on the pillar of regulation, the danger of falling into the trap of the “encompassing of the contrary” (*englobement du contraire*) as explicated by Louis Dumont is always present<sup>31</sup>. Although explicitly including the other into the category of humanity, we implicitly remain the reference point for what this humanity is. The other although encompassed in the general category of humanity, is nevertheless constructed as our inverted image, often an inferior image of ourselves. This vision has shaped the European understanding of other legal cultures, thus failing to discover the Other behind the other, and to understand him/her in his/her originality.

If European researchers recognized that *Ubi societas, ibi jus* where there is a society, there is law, the law of the traditional African societies for example appeared nevertheless as nothing more than the inferior and inverted image of our own, a law still on a lower step of evolution: in the image of Western law, real law is written... but theirs is oral; real law is abstract from other domains of life such as morals, religion, politics... but theirs is all mixed up with these aspects; law is linked to the state... but they do not even have a state. As a consequence of this line of thought, these more primitive forms of life and sociability needed to be “civilized” according to the colonial terminology, or need “development” in a more contemporary wording, the degree of

---

<sup>29</sup> M. Alliot, *Le droit et le service public au miroir de l'anthropologie* (textes choisis et édités par Camille Kuyu, Paris, Karthala, p. 87.

<sup>30</sup> B. de Sousa Santos, *Toward a New Common Sense*, op. cit., pp. 2 et seq..

<sup>31</sup> L. Dumont, op. cit.

civilization or development being measured by the alikeness to our own model.

For Europeans, there is a tendency to assume that the ultimate horizon of globalisation is given by Western “modernity” and its constructs: human rights, state, democracy, market, development, science, etc. This view is underpinned by the myth of a teleological move towards unity through a uniformisation of our ways of living together, of constructing meaning for our lives, of relating to our environment. Even though we observe differences, we assume – and even may wish – that they slowly move to a universal culture that is identified with “Western” culture. The majority of the discourses promoting the respect of cultural diversity and intercultural dialogue are in fact embedded in this paradigm.

Diversity is usually perceived as only a secondary aspect in our living together: it enriches us once our social cohesion is already secured by a uniform framework providing unity. Cultural diversity is accepted only as long as it conforms and integrates in the broader, seemingly universal, modern and secular frame. The problem is that this frame and the world vision underlying it, are far from being universal and do only appear so from a “Western” or at least “Westernised” point of view.<sup>32</sup>

We may not live in a “universe” but in a “pluriverse”, a world where our differences are as constitutive of our world as our unity. This pluriverse is not only a pluriverse of contents but more fundamentally a pluriverse in the ways we construct meaning and organize our living together<sup>33</sup> in relation to the others, to the cosmos, to the divine as Raimon Panikkar elaborates it in his cross-cultural exploration of his cosmotheandric intuition.<sup>34</sup> Anthropology of Law helps us to become aware of this pluralist view when it sees “Law” not as a set of rules (linked or not to the state) but as that which “puts forms and puts into forms the reproduction of humanity in the domains a society considers as being vital”.

As a consequence, the dialectical dialogue needs to be complemented by another form of dialogue, i.e. the dialogical

---

<sup>32</sup> See R. Vachon, “Beyond the Universalisation and Interculturalisation of Human Rights, the Law and Negotiated Order,” *Interculture*, 2004, n° 146, pp 15-30.

<sup>33</sup> C. Eberhard, « De l’univers au plurivers. Fatalité, utopie, alternative ? », A.-M. Dillens (dir.), *La mondialisation : utopie, fatalité, alternatives*, Bruxelles, Publications des Facultés universitaires Saint Louis, 2008, pp 67-104; C. Eberhard *Oser le plurivers. Pour une globalisation interculturelle et responsable*, Paris, LGDJ/Lextenso, forthcoming.

<sup>34</sup> R. Panikkar, *The Cosmotheandric Experience – Emerging Religious Consciousness*, New York, Orbis Books, 1993.

dialogue.<sup>35</sup> The dialogical dialogue cares less about the object to be discussed than about the subjects discussing it. Its aim is to unveil the hidden assumptions or “myths” of the partners to the dialogue. These myths only become apparent when confronted to a different myth, a different ultimate horizon of intelligibility, a complete different perspective on life and the world than our own, where for example as in a Buddhist view humans have no special status amongst all other sentient beings, or where as in Hindu thought, a human being is a being reincarnating endless times within universes that themselves are inscribed in huge cycles of creation and destruction and where the notion of right is much less present than that of duty. The dialogical dialogue is a dialogue that recognises that the world is not only an objective reality, but is also made up of self-understandings and subjectivities of the human beings living in it. The world appears as being fundamentally pluralistic: there are as many subjectivities as human beings. In other words. Logos or Reason is not the sole center of intelligibility, there is also mythos.<sup>36</sup>

Our universe turns into a pluriverse. This does not only entail a move from the one to the many, but also results in a shift from a static to a dynamic perception of reality, from a simple to a complex view.

### **Complexity**

In recent years, notions such as “governance”, “sustainable development”, and “participation” are increasingly used to understand the emerging socio-legal-economic-political world. They reflect a change of perception which may be assessed in two opposite directions. A closed approach may lead to more “oppressing universalisms” than the former concepts of “government”, “state”, “growth” while a more open-ended view may result in a more emancipatory approach to normative organisation<sup>37</sup>, to use de Sousa Santos’ s terminology.<sup>38</sup> Indeed, contrary to the former universalisms, these new “universalisms” do explicitly point to the necessity to take into account “particularisms” and to replace more segmentary by more holistic approaches.

Taking participation seriously implies the recognition of the role of the state, the official law, the market, etc., while *simultaneously*

---

<sup>35</sup> *Id.*, “The Dialogical Dialogue,” in F. Whaling (ed.), *The World’s Religious Traditions*, Edinburgh, T. & T. Clark, 1984, pp. 201-221.

<sup>36</sup> See R. Panikkar, *Myth, Faith and Hermeneutics*, *op. cit.*

<sup>37</sup> To deepen this statement, that I cannot develop here, see for example C. Eberhard, « Préliminaires pour des approches participatives du Droit, de la gouvernance et du développement durable », *Revue Interdisciplinaire d’Études Juridiques* 2009. 62, pp 125-151.

<sup>38</sup> De Sousa Santos, *Toward a New Common Sense*, *op. cit.*

realising that these are not exclusive realities. Legal anthropology may be of help in trying to tackle these delicate agendas and to rethink contemporary legal issues in more holistic and pluralistic ways. The current political, legal and economic situation of the “glocalising” world indeed invites us to engage in what de Sousa Santos called “heterotopia,”<sup>39</sup> “a displacement in the very world we live in – from the center to the margins”, or in what Panikkar calls a “healthy pluralism.”<sup>40</sup>

This second cultural disarmament of complexity focuses on the totality and the dynamics of experience. The first cultural disarmament consisted in revealing alterity by unveiling structural differences between cultures. Although a very important step, the problem is that in the process there is a tendency to “freeze” realities, as when one takes a photograph of a situation in order to compare it with another photograph. If one gets stuck at this step and gets fascinated by the beautiful pictures, he/ she may find himself/herself trapped in a relativistic or culturalist outlook and may not be able to perceive the film of life as it unfolds.

Pluralism runs deeper than the recognition of otherness. The awareness of pluralism triggered by the encounter with the other ultimately leads to the discovery of the pluralist nature of oneself. This can be illustrated by Le Roy’s theory of *multijuridisme* and of a tripod law<sup>41</sup>. Building on Michel Alliot’s insights of the existence of diverse legal archetypes in different societies<sup>42</sup>, Etienne Le Roy argued that different mechanisms for shaping the organisation of our societies and the organisation of our living together as well as for solving our conflicts in relation to each legal archetype actually are present in all societies. These mechanisms are general and impersonal norms linked to an imposed ordering, models of conduct and behavior related to a negotiated ordering and systems of lasting dispositions to action, or ‘habitus’, related to an accepted ordering. They constitute the “three feet” of Law.

The articulation of these mechanisms varies from one society to another, and what is valued in one may be much neglected or even

---

<sup>39</sup> *Ibidem*.

<sup>40</sup> R. Panikkar, “Is the notion of Human Rights,” *op. cit.*

<sup>41</sup> É. Le Roy, « L’hypothèse du multijuridisme dans un contexte de sortie de modernité », A. Lajoie, R. MacDonald, R. Janda Richard, G. Rocher, *Théories et émergence du droit : pluralisme, surdétermination et effectivité*, Bruxelles, Bruylant/Thémis, 1998, pp 29-43.

<sup>42</sup> M. Alliot, « Anthropologie et juristique. Sur les conditions de l’élaboration d’une science du droit », in M. Alliot, *Le droit et le service public au miroir de l’anthropologie. Textes choisis et édités par Camille Kuyu*, Paris, Karthala, 2003, pp 283-305.

obscured in others.<sup>43</sup> Raimon Panikkar<sup>44</sup> points to a similar insight on the perception of Life. He argues that some cultures seem to value a more anthropocentric outlook; others are more cosmocentric and still others put much weight on the divine and the underlying mystery of existence. However, according to Panikkar, it appears that all cultures and human beings share a cosmotheandric experience, containing aspects of all three but actualising and articulating them in their own original way.

Seen in its dynamic framework, the second disarmament also invites us to de-absolutise the notion of culture, being sometimes invoked as a monolithical excuse for not entering into dialogue, under the excuse that “it is cultural”, implying that it is “sacred and non negotiable”. However, historical, social, economic, political and geographical factors do play a role in shaping societies. From the acknowledgement of cultural differences, we need to emancipate ourselves from the purely culturalist framework.<sup>45</sup> The Law is a complex and plural phenomenon. As Etienne Le Roy illustrates in his dynamic approach to Law, the Game of Laws or *Jeu des Lois*<sup>46</sup>, we need to understand how the three feet of Law presented above actually “walk”. But the challenges do not stop with this recognition of dynamic complexity. Indeed pluralism is not only a problem of the *logos*, it also reaches to our existential realities, our *mythos*.

## **Interculturality**

Recognising *alterity* is like opening up our own window on the world more, after having looked at it through other cultural windows, in order to enrich and broaden our outlook. *Interculturality* gives credit to the fact that even opening up one’s window on the world wider in order to see things to which our attention is drawn from the perspective offered by another cultural window is nevertheless not to be equated with looking at the world through that other cultural window.

The translation of a different culture’s perspective into one’s own necessarily translates the latter. For example, the recognition of indigenous people’s rights by the predominant Western world-view transforms their claims into anthropocentric claims on collective rights.

---

<sup>43</sup> To deepen the presentation of this tripod approach to Law and its cultural variations see E. Le Roy, *Le jeu des lois. Une anthropologie “dynamique” du Droit*, Paris, LGDJ, p. 203.

<sup>44</sup> R. Panikkar, *The Cosmotheandric Experience*, *op. cit.*

<sup>45</sup> See in this context S. E. Merry, *Human Rights and Gender Violence*, *op. cit.*, pp. 10 *et seq*; A. Sen, *Identity & Violence. The Illusion of Destiny*, London, Penguin Books, 2007.

<sup>46</sup> E. Le Roy, *Le jeu des lois*, *op. cit.*

It does not deal with the cosmic aspect of these approaches to Life and to “Law”.

The main question that has to be addressed beyond the opening up of socio-legal sciences to alterity and complexity is how to deal with the more radical intercultural pluralism which can never be unified in any system.<sup>48</sup> In other words, what happens between windows? A dialogue between Chinese and European partners may happen in English. But once the dialogue is over, how does each of the partners take home what they shared? How do they fit it into their language and worldview? We can know various languages, but we cannot speak them all at the same time. Our general perception may have been increased by knowing different linguistic and cultural universes. But as soon as we speak we enter one of the existing windows, though opening it up more, while other windows continue to coexist.

Robert Vachon rightly remarks in his reflections of intercultural approaches to Peace that:

No one culture, religion, wisdom – no matter how modern, traditional or even intercultural it may be, is self-sufficient, even to properly ask the question (of Peace). To deepen as much as possible the various cultures of Man is a prerequisite. But it is not enough. [...] Peace is not simply a matter of preserving our traditional cultures, of opening up to modernity or to post-modernity, or even of accepting our different ways of living, and co-existing in mutual indifference or resigned tolerance. It requires meeting, understanding (‘standing under’...), a common horizon, and a new vision. But this requires that we acknowledge together a center – a circle – which transcends the intelligence that we have or can have of it, at a particular moment of space and time. In short, in order to be at peace, we cannot start with the presupposition that we know what peace is. Neither before, during, nor after, our peace attempt. [...] Peace requires that we overcome our individualisms, sociocentrism and monoculturalisms; that we relativise not only the convictions, beliefs, ‘myths’ that we are aware of (assumptions), but even the presuppositions that we are not aware of. [...] Strictly speaking, nothing is purely cultural; we are always within a transcultural reality. Yet, nothing is purely transcultural: we are always in a concrete culture. To speak thus of the radical relativity [...] of peace, is not to fall into the relativism of agnosticism and skepticism. We are dealing here with wisdom of peace that is constitutively in search of itself. [...] What we are proposing is to approach peace together in an intercultural way, which involves a cultural disarmament, but is accorded the greatest cultural authenticity and fidelity. It is the way of non-duality, in a world which is ripped apart by the tyranny of monism and the cancer of dualism. It is a path of homeostatic

---

<sup>48</sup> R. Panikkar, “*The Pluralism of Truth*,” in H. J. Carger (ed.), *Invisible Harmony. Essays on Contemplation and Responsibility*, USA, Fortress Press, 1990, pp. 92-101.

balance between cultural authenticity, interculturalism, cultural disarmament and Peace.<sup>49</sup>

## **Humanity and the Emergence of a Horizon of Responsible Pluralism**

The disarmament of *interculturality* leads us to a fourth existential disarmament: the recognition that we are humans. This disarmament of *humanity* is closely related to an attitude of humility. We are not Gods, we are not perfect, we are not immortal, and we are not beyond suffering. We are incomplete, fragile and open-minded beings. By carrying its interpretation of universalism to the world through its former colonial endeavours and the still important contemporary Western global power, the European tradition has conjured up a picture of a Western steamroller in the eyes of many cultures. Its emphasis on knowledge building through Reason in order to master and rationally organise the world has remained the main focus of attention and has become increasingly become a target for criticism. But, the European tradition is also a tradition that hints to the fundamental fragility of the human condition and invites to a very humble approach to life.

In comparison with other cultures, the European culture seems to put much focus on doubt, on the recognition that actually we do not really know who we are and what we are, but that we have to try to find out. This is destabilising and is perceived by many cultures as being destructive. It should therefore be criticised and deconstructed in order to find its true validity. This approach actually also is a particular way of being, a tradition in itself. The European tradition has emphasised the freedom of choice of the individual. It centers on the individual and on the tool of Reason and has derived its approaches to rights and responsibilities from there.<sup>50</sup>

A humble approach of critical self-awareness, individual and collective, coupled with a sense of the ensuing responsibilities may be what the European tradition could contribute to the intercultural dialogue not only on human rights but also on the underlying question of human dignity. By opening up to the positive insights of other

---

<sup>49</sup> R. Vachon, "Guswenta or the Intercultural Imperative. Part 2: A Common Horizon," *Interculture*, no. 128, 1995, pp. 38-40.

<sup>50</sup> C. Eberhard, "Responsibility in France. A Juridical Approach in the Face of the Complexity of the World," in É. Sizoo (ed.), *Responsibility and Cultures of the World: Dialogue Around a Collective Challenge*, Brussels, Peter Lang, 2010, pp 113-134.

cultures – although they may seem strange or disturbing at first sight<sup>51</sup> – we may achieve a more complete, responsible, maybe cosmotheandric, horizon of pluralism and interculturalism.<sup>52</sup> By furthering the European tradition of dialogue and debate through a genuine dialogical awareness of alterity, complexity, interculturality and humanity, it may be possible to unveil parts of the mystery that we are in relationship with others and share it in peace?

---

<sup>51</sup> For an example of an unsettling but enriching dialogue with the Buddhist world see *id.*, *Vers une société éveillée. Une approche bouddhiste d'un vivre-ensemble responsable et solidaire*, Paris, Connaissances et savoirs, 2012.

<sup>52</sup> C. Eberhard, "Au-delà de l'universalisme et du relativisme: L'horizon d'un pluralisme responsable," *Anthropologie et Sociétés – De l'anthropologie des moralités à l'éthnoéthique*, vol. 33, no. 3, pp. 79-100.



