

HUMAN RIGHTS AND INTERCULTURAL DIALOGUE

AN ANTHROPOLOGICAL PERSPECTIVE

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Introduction

We seem to be invited to rethink the contemporary paradigm of human rights’ thought and practice as it seems less and less able to respond to the challenges facing us. First, human rights are de facto not universal. They are not universally guaranteed to every human being. They are violated, and often grossly, all over the world. Second, even their abstract universality is more and more challenged. This is especially the case through their increasing questioning by non-western cultural traditions. The Vienna World Conference on human rights of 1993 provided a good illustration of this trend. There the western character of the universal declaration of human rights of 1948 has been criticised by a group of Asian, African and Middle East countries. It has for example been advanced that collective rights should get their place next to individual rights, economical rights next to political rights, and that rights should be counterbalanced by corresponding duties. It has been argued that these demands express specific civilisational values.

Thus posing our western theory and practice of human rights as universal without further questioning, becomes a less and less tenable and intellectually satisfying position. Nevertheless it is as untenable to deny that by its development of human rights through its culture and history, the western tradition has touched upon something universal. The respect for human life, the ideal of human fraternity (see articles 1 and 3 of the declaration of 1948) cannot be reduced to a western invention. They bear something more, plunging its roots in the most profound depths of human experience.

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* This text is based on Eberhard 1997, 2000b and 2001. The development can be taken much further in Eberhard 2000a.

Engaging into an intercultural dialogue on human rights should thus not be interpreted as the taking of a completely relativistic standpoint, or as the negating of any universality of human rights. Engaging in intercultural dialogue on human rights should in my mind rather be seen as a constructive, rather than as a destructive endeavour. The point is not to deconstruct the western approach by refuting its universality. The point is rather to enrich this approach through different cultural perspectives in order to progressively move towards an intercultural praxis of human rights. As Panikkar (1984a, p. 30) puts it, human rights are only one window through which human beings envisage a just human order - it is paramount nowadays to recognize the plurality of existing windows and to mutually enrich their perspectives and to move from a logic of the exclusion of contraries to a logic of complementarity of differences.

1. The Challenges for an Intercultural Approach to Human Rights

1.1. Human Rights, Globalization and Cultural Diversity

1.1.1 Human Rights and Globalization

In discussions on globalisation we find formulations running parallel to the ones of Human Rights' universalism or relativism. Globalization is sometimes thought of as a process of uniformization, or westernization. Some even speak of "McDonaldization" or "Cocacolonization". And sometimes it is thought of as a process vivifying the cultural particularisms and thus rather contributing to a dismantling of a global unity than to its building. If it is trendy nowadays to speak of a "global village", Rouland (1993, p. 214) wonders if this "global village" is not an illusion, which under a thin unified surface of quicker person and information exchange, made possible by modern technology, hides a conflictual reality where cultures are far from vibrating in harmony. With the rise of particularisms, the contemporary situation may rather evoke, a "planetary archipelago" than a "global village". Thus globalization is confronted with the same problematics of universalism and relativism as are Human Rights.

We are thus invited to reflect upon ways to articulate the "global" and the "local", to pay tribute to our common human condition while acknowledging our differences, or in other words to engage into a healthy pluralism. Furthermore, the human rights debate seems not only to run parallel to the globalization debate, but also to offer a privileged site (or *topos*) to reflect upon the "shaping of our

global condition”. Indeed for Robertson (1996, p. 20-21) “(...) *the concept of globalization per se should be applied to a particular series of developments concerning ‘the concrete structuration of the world as a whole. The term ‘structuration’ has been calculatedly chosen. (...) It has to contribute to the understanding of how the global system has been and continues to be ‘made’. It has to be focused upon the production and reproduction of ‘the world’ as the most salient plausibility structure of our time. (...) It is upon this heavily contested problem of the concrete patterning of the world - including resistance to globality - that I seek to center the concept and the discourse of globalization.*”

Human rights research in so far as it tries to work out a paradigm for a global life in peace and dignity for individuals and their groups of belonging has much to contribute to the reflexion upon the “structuration of our global condition” (see Eberhard 1998). Especially if it is carried out in a legal anthropological perspective such as the one we are developing here. This will become very clear during the lecture. “Human Rights” try to represent, Peace, Human Dignity, mutual Respect, and thus they point to what should be considered as vital in our global culture. A reflection on “Human rights law” should permit to realize this ideal by structuring our global condition, by permitting to produce and reproduce it, in a way that this ideal can be realized. Human rights research cannot dwell on a purely legal point of view. It must try to contribute to work out paradigms permitting to rethink and actively shape the globalization process in such a way that an embodiment of the “human rights’ ideal” in reality, is made possible. But in order to do so we must first of all break out of the alternative between universalism and relativism.

1.1.2. Human Rights between Universalism and Relativism

The problem with the universalistic position is that it is highly ethnocentric, as it turns in an undue manner values and conceptions of the society of belonging into universal ones (Todorov 1992, p. 21-22). Dialogue thus becomes impossible. Indeed dialogue is first of all “duo-logue” (Panikkar 1979 : 346). It demands respect for the other and for the other’s perspective. Therefore what necessarily arises out of the universalistic position is a monologue, which is potentially oppressive to those who do not share our values and conceptions. In the “human rights’ context” the universalistic position leads to a “globalized Western localism” which is doubly counterproductive in our search for universality, or for an interculturally shared outlook on human rights. First it does not permit the mutual enrichment of our and the other cultures. By negating the voice of the other we cannot learn from him or her, nor can we

fecundate him or her. Sharing, which is giving and taking, is only possible through the recognition of the other. Without recognition, no sharing. And without sharing, no reaching of a consensus, no building of a common future. Therefore, second, the universalistic position takes us from a logic of complementarity and of exchange to a logic of exclusion and of power. This favours particularistic withdrawals which can partly be seen as defensive reactions against the “western steam-roller” (Latouche 1991, p. 8 ; Abou 1992, p. 16). It makes the building of a human rights’ community impossible. Thus the universalistic position instead of strengthening the universality of human rights rather turns out to weaken it by cutting off through exclusion its most fundamental basements : the different peoples of the world.

The problem with the relativistic position is that it absolutizes differences and completely forgets about our common human nature and condition. It is so deeply stuck in “our differences” that it only sees the “differences” and forgets completely about the “our”. The relativistic position emphasizes so much the different perspectives that it forgets about the common horizon. Reaching any kind of universality becomes in that view impossible. Each culture has its own values, conceptions and world view which cannot be challenged, and not even understood or even questioned by other cultures. The picture is the one of a fundamental “Other” with whom no dialogue is conceivable, with whom no mutual enrichment is possible. The best to be expected is mere more or less harmonious coexistence. But no real living together, no mutual understanding, no sharing, no building of a common future seems possible. Such a relativistic outlook can either lead to an imposition of one’s own values on the others (which comes very close to the universalism described above) or in the case of an acknowledgement of an absolute right to difference can lead, in the words of Abou (1992, p. 34-35), to a “right to confinement” (“droit à l’enfermement”), or even to a “right to oppression” (“droit à l’oppression”) or to a “right to death” (“droit à la mort”).

Let us already note here that it seems, as Gérald Berthoud (1992, p. 142) notices, that the two extremes of universalism and relativism constitute two opposite and nevertheless inseparable universes (which are in fact a product of the “encompassing of the contrary” as we will show in I.2.2), which trap us in an alternative not really permitting to tackle the issue of the “Human” nor of “human rights” in a satisfying way.

1.1.3. The challenges of pluralism and pragmatism

The way we therefore choose, is the way of “healthy” pluralism. This way entails a fundamental paradigmatic change in human rights’ thought. As Boaventura de Sousa Santos notes it is not enough in a period of paradigmatic transition to criticize the old paradigms, new paradigms must be built and therefore *“The only route (...), is utopia (...) the exploration by imagination of new modes of human possibility and styles of will, and the confrontation by imagination of the necessity of whatever exists- just because it exists- on behalf of something radically better that is worth fighting for, and to which humanity is fully entitled.”* (de Sousa Santos 1995, p. 479).

We will in the following pages engage in “utopia”, or rather in “heterotopia” which *“Rather than the invention of a place elsewhere or nowhere”* is *“a radical displacement within the same place : ours.”* (de Sousa Santos 1995, p. 481). By walking on the path of healthy pluralism we do not intend to “leave” this world. We will rather try to see it in a different perspective enabling us to stand up to the contemporary challenges facing us. This new perspective is not a perspective out of the blue, separated from our past and radically different from it. Rather the displacement will result from the putting into dialogue of our perspective with other perspectives. It will be the result of a building on our past through its enrichment by our present, which becomes more and more intercultural and thus also demands us to build on the other cultures’ pasts and presents. Healthy pluralism is thus based on mutual dialogue permitting us respectively to discover the others and ourselves, to discover their and our past and present, and to build together a common future.

1.1.4. The need for rethinking Human Rights to rethink Law and Modernity

In order to move towards dialogical, intercultural and pluralist approaches to human rights we are invited to rethink modernity and modern Law. Indeed for the moment there is a tendency to assume that the ultimate horizon of globalization is given by Western “modernity”¹ and its constructs : human rights, state, democracy, market etc, all Western style ... This view is underpinned by the myth of a teleological move towards unity through a uniformization of our ways of living together, of constructing meaning for our lives, of relating to our environment. Even though we observe differences, we suppose and even may wish that little by little they give way to a universal culture,

¹ even though it may already have become or is becoming what some would call “postmodern”.

identified for the moment with “Western” culture. It even seems that ultimately most of the discourses promoting the respect of cultural diversity and intercultural dialogue are embedded in this paradigm. Indeed, usually, diversity is seen as only a second moment in our living together : it only enriches us mutually once our social cohesion is already secured by a uniform framework providing unity. We may accept cultural diversity - but 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 worldview underlying it, is far from being universal and does only appear so from a “Western” or at least “Westernized” point of view. We do not live in a “universe” as Gustavo Esteva and Madhu Suri Prakash (1998, p. 36) put it, but in a “pluriverse”. And this pluriverse is not only a pluriverse of contents but more fundamentally a pluriverse in the ways itself we play our lives in relation to the others, to the cosmos, to the divine. Anthropology of Law helps us to get aware of this pluralist predicament 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”² - and there are a lot of original ways of doing so. Thus our attention is immediately drawn to the challenges of pluralism and interculturalism and a possibility seems to exist to open up spaces for the actualization of the latter’s “emergent myth”(Vachon 1997).

1.2. Towards a dialogical approach

1.2.1. The predicament of the legal anthropologist

The position of the anthropologist of Law could be best described as an “in-between”. On the one hand, his “legal rooting” first makes him see things through the prism “of how they should be”, of how they should be organized to permit the peaceful reproduction of society. Being in the continental-european tradition a spokesman of the Law and of the State it is through a “statist” perspective - which is of course deeply rooted in his cosmovision - that he/she tackles this issue. Furthermore, State and Law being in the modern tradition associated with Reason, for the jurist his/her categories and solutions seem universal and ready to be applied everywhere. For him/her they do not seem to be linked to a particular outlook on Reality, Reason being by definition universal. “Legal laws” are therefore approached like “natural laws” or the “laws of nature”.

² This could be the working definition, of Law such as approached at the LAJP. It builds on definitions by Michel Alliot (1983 : 83), Pierre Bourdieu (1986 : 41) and Pierre Legendre (quoted in Le Roy 1998 : 39)

On the other hand, the anthropologist rather than the top-down approach exposed above takes a bottom-up perspective. He/she tries to understand “how things are”, and thus often questions and challenges the myths and fabrications of the jurist. Confronted to interculturality, he/she cannot but notice the non-universality of Western conceptions and is obliged to look in other cultures for homeomorphic equivalents (Panikkar 1984a, p. 29 ff) to what we call “Law” in the West (and in the “West” itself, even though we share a same matrix, our conceptions of “Law” largely differ). In order to do so, he/she enlarges the notion of Law to emancipate it from the understanding of “Law as State law” or of “Law as general and impersonal rules” to approach it as the “mystery” which permits to put into forms and puts forms (shapes) to the reproduction of humanity, of societies in the domains they consider as being vital.

If this perspectives are very different, it nevertheless seems paramount to somehow be able to articulate both - and this is not a purely academic matter. Indeed, the transfer of the Western models of Law and of the State all over the world have failed. It is unavoidable to rethink differently the questions of “Justice”, of the “Rule of Law”, of “Human Rights”, of the “pacification of societies” by starting from the indigenous experiences without nevertheless negating the external bringing-ins which are a reality and cannot be ignored. It seems paramount to move towards *métissages* (cultural cross-fertilizations) or rather towards articulations which organize different elements although keeping their mutual specificities. When reflecting upon contemporary issues we cannot confine ourselves in “exotic constructions” of the “other”, freezing him/her in a far away space or time. The Western State and legal models which have already spread over the whole planet are a reality and they continue to be largely promoted and imposed (see the structural adjustment plans imposed by the IMF for example). One can thus not just ignore the “globalized” aspect of reality and its constraints when one reflects upon particular situations. If anthropology invites us to start from the grass-roots perspectives, we also have to figure out how the more global structures can be opened up and relativized, how the modern law and state and science, and more generally the modern worldview, can be transformed through the teachings and challenges of pluralism.

1.2.2. A first approach to dialogue

For this a dialogical approach is necessary. It consists in an existential process in which a journey through different logics, or discourses, occurs in order to go through and beyond them (*dia*: through -

logos : discourse) to reach the frame underlying them, their *mythos* and to make it explicit, permitting thus true mutual enrichment and exchange. This “journey” needs a space where it can take place. We could conceptualize it as the “in-between” (*entre-deux*) which Michel van de Kerchove and François Ost develop in their dialectical approach to Law and which follows from their *interdisciplinary* epistemological positioning (van de Kerchove & Ost 1992, p. 51 ff) which parallels our *intercultural* epistemological positioning. Let us nevertheless note, that our “in-between” is a dialogical and not a merely dialectical one. The “in-between” must furthermore be potentially fruitful. If the “in-between” constitutes the space where the dialogue can take place, then the rhetoric can be seen as that which shapes this space and can turn it into either a fruitful, or sterile or even destructive frame for the dialogue. We will therefore have a closer look now at the rhetoric of the dialogue.

A rather obvious consequence of the search for a fruitful rhetoric is to try to achieve a cooperative dialogue (*dialogue coopératif*), which means that the partners genuinely seek mutual understanding and enrichment and a possible consensus. The “cooperative dialogue” thus excludes cheating or imposing one’s own point of view on the other by taking advantage of own’s dominating position, making thus up alone the questions and the answers (van de Kerchove & Ost 1992, p. 63-64). But if theoretically it appears easy to judge the “cooperative” character of a dialogue, in practice this is far less obvious, as a dialogue can turn out to be “uncooperative” not because of a lack of conscious good faith but rather because unconsciously the partners to the dialogue position themselves in a way which does not really permit them to engage in a true “cooperative dialogue”. Todorov (1992, p. 71) illustrates very well the danger of the unconscious obstacles to “cooperative dialogue” which stem from an unconscious positioning of oneself in the dialogue with his example of the “unconscious universalist” : *“The relativist does not judge others. The conscious universalist can condemn them ; but he does so in the light of an openly assumed morality, which thus can be challenged. The unconscious universalist is unassailable, as he pretends to be a relativist; but this does not hinder him to judge others and to impose his ideal upon them. He has the aggressiveness of the second and the clear conscience of the first : he is an assimilator in complete innocence, because he is not aware of the differences of the others.”*³

Thus the unconscious framing of the dialogue by assuming different unconscious attitudes may constitute important obstacles to the emergence of a really “cooperative” dialogue. For Panikkar (1978)

³ All the translations from the originally French quotations have been made by the author.

three attitudes can frame the rhetoric of the dialogue. We should keep them in mind if we want to transcend them in order to be really able to dialogue. They are *exclusivism*, *inclusivism* and *parallelism*. Two of them are already quite familiar to us : *exclusivism* which is closely linked to the “universalism” discussed above and *parallelism* which is closely related to the problem of cultural “relativism”

Exclusivism is the attitude where one is convinced that one’s own truth is the only truth and that therefore there can exist no other truths. The most obvious danger with this attitude is a lack of tolerance towards different points of views. This can lead to the violent attempt to impose one’s own views. A less obvious danger is to make a distinction between “objective” and “subjective” truth, considering of course one’s own as the objective one, and accepting the other’s as only some “subjective” truths (Panikkar 1978, p. xiv, xv). The universalistic attitude can lead to a justification of relativism, foreclosing any dialogue : we have discovered the objective truth of human equality and thus accept that all cultures should live according to their respective subjective truths (see Todorov above). We thus can find ourselves through exclusivism in an attitude of *parallelism*.

In the latter attitude we consider that no world view, no culture is perfect and that we should therefore not try to convert or even interfere with others. We should only try to deepen the understanding of our own culture which may permit us to find points of contact with other cultures (Panikkar 1978, p. xviii-xix). The problem with this attitude is that it denies the need of mutual learning and furthermore does not give an adequate solution to our present global condition in which we cannot dwell solely on our own tradition but have to “live with the others”. *Exclusivism* and *parallelism* are the two attitudes we should avoid in order not to fall in the pitfalls of neither dogmatic universalism nor overvalorisation of particularisms (Le Roy 1994, p. 60).

The third attitude, *inclusivism*, does not exclude different truths nor does it consider them as “parallel truths” with which one should not mingle : “The inclusivistic attitude will tend to reinterpret things in such a way as to make them not only palatable but also assimilable. Whenever facing a plain contradiction, for instance, it will make the necessary distinctions between different planes so as to be able to overcome that contradiction. It will tend to become a universalism of an existential or formal nature rather than of essential content.” (Panikkar 1978, p. xvi). Paradoxically such an attitude also makes “cooperative dialogue” impossible : it is too “conciliatory”, as it sees no conflicts. It absorbs what are perceived by others as “conflicts”, in its own system, thus finally appearing as the “true

system” as it encompasses all the others. We must be especially aware of this trap in a pluralist approach like ours.

We have now outlined the broad rhetoric of the dialogue, let us now deal more specifically with one major bias of present intercultural dialogue, the “encompassing of the contrary”, before we develop alternatives to break out of it.

1.2.3. The encompassing of the contrary or the danger of modern ethnocentrism

Dumont formulated the principle of the «encompassing of the contrary » in order to explain the fate of hierarchy in our modern ideology based on the idea of equality. According to Dumont (1991, p. 140-141), hierarchy has not disappeared in our modern societies but it is occluded by the myth of equality : what we value is implicitly constructed as the point of reference for a general category encompassing different values. For example in the encounter of cultures we construct the other as our equal, encompassing him/her in the general category of humankind. But at the same time the implicit reference from which our image of “humankind” is constructed is our own standpoint. Thus the different values and modes of organisation are explicitly constructed as equal to ours. If we have Law, other societies too must have Law. Nevertheless, the reference being our own values and conceptions, implicitly the others’ values and conceptions are in fact constructed as hierarchically inferior. Their originality is disqualified and often the image of the other, of their values, conceptions and institutions, consists but in the reversed and inferiorized image of ourselves and of our values, conceptions and institutions, as we have noted in reference to African custom above. So the first step in order to engage in a non-ethnocentric science of Law was to try to emancipate research from the “encompassing of the contrary”. This emancipation will also permit is to leave the dead end of the alternative between universalism and relativism. As Berthoud (1992, p. 142) notes the latter are just the two sides of a same coin and he illustrates this opposition in the following table :

| Universalism | Relativism |
|------------------------------|-----------------|
| Humanity (universal culture) | Cultures |
| Abstract and free being | Social being |
| Human identity | Social identity |

This is a perfect illustration, although Berhoud himself is not explicitly referring to Dumont, of the principle of the encompassing of the contrary, the first column exemplifying the encompassing poles and the second the encompassed realities.

1.2.4. From dialectical towards dialogical dialogue and diatopical hermeneutics

For Alliot (1983, p. 91), the fundamental methodological requirement for a non-ethnocentric science of Law is not to relate the observed institutions of another society to the institutions of one's own society, but to the visible and especially invisible universe of that other society. This intuition can be related to Panikkar's diatopical hermeneutics whose core question is how to understand from the *topos* of one culture the constructs of another (Panikkar 1984a, p. 29). The diatopical approach invites us to make a journey through the different cultural discourses (*dia-logoi*) through replacing them in the different cultural sites from where they emerge (*dia-topoi*). The different cultural discourses thus have to be replaced in their respective underlying myths in order to become mutually intelligible. It is not enough for a fertile intercultural dialogue on Law to become aware of the originality of the socio-legal processes and logics of different cultures. An acknowledgement of their respective legal visions, horizons or universes, their underlying myths is primordial (Vachon 1990, p. 167). And on the level of these myths we are not on the level of dialectics, of reason, but on the level of practice, of lived experience. For Vachon (1990, p. 169) legal cultures “(...) *are not only of the order of logos but of the order of mythos, which means of the order of ultimate differences. And ultimate differences are not dialectical (which does not mean that they are non-dialectical or anti-dialectical).*”

We are thus invited to think in a fundamentally plural way, acknowledging that there may be fundamentally different choices that Men have made to think about their lives and to organize them. Our goal can, in this perspective, no longer be to try to work out an all-comprehensive universal explanatory model, reducing this diversity to an artificial unity. It must rather be to find ways to make our different myths mutually intelligible thus permitting their interfecundation, their articulation, their *métissage*. In the field of human rights engaging in diatopical hermeneutics means according to Panikkar (1984a, p. 28-29) that : “*Meanings are not transferable here. (...) We must dig down to where a homogeneous soil or a similar problematic appears : we must search out the homeomorphic equivalent - to the concept of Human Rights in this case. ‘Homeomorphism is not the same as analogy*

; it represents a peculiar functional equivalence discovered through a topological transformation'. It is 'a kind of existential functional analogy.'”

This explicitation of diatopical hermeneutics enlightens Alliot's approach to Law. But it also points to some epistemological problems which need to be overcome and seem to call for an epistemological break and a new method. Indeed, the acknowledgement of different possible sites (*topoi*) from which different discourses and practices can emerge, entails, from an epistemological point of view, that we have to recognize a dimension in 'Man' (and Reality) which cannot be exhausted by the lights of Reason, the *logos* alone. Panikkar (1979, p. 30) calls this dimension *myth*, “the invisible horizon on which we project our notions of the real” and he notes that “human reality is complex because it is one : You cannot completely cut the *logos* from *myth*. You can distinguish but not separate them, since the one nourishes the other, and all human culture is a texture of *myth* and *logos* (...) they are like two constitutive threads that intertwine to fabricate Reality.” We must recognize that reality cannot be reduced to one single center of intelligibility - next to *logos* there is also *mythos* (Vachon 1997, p. 9). We are invited to move from the pure domain of dialectics to a method also taking into account our respective myths. In order to do so, Panikkar (1984b) proposes the method of the “dialogical dialogue”.

The main point of his argument is that in order to get a more complete view on Reality we should be, or become, aware of the fact that it is not just an “object” but that it is also made up by the interrelations of its “subjects”. Thus, taking “subjects” seriously, *qua* subjects, as sources of knowledge and not only as objects of knowledge, is paramount - concerning our legal problematic this would imply for example to take “indigenous laws” seriously, not only as an object of study, but also as a source of knowledge about ourselves, as they represent specific ways of entering in contact and of creating “Reality”. It seems important to be aware of the fact that modern science and modern law are embedded in a dialectical view of reality which postulates that Reality follows the laws of Reason and can be completely known through them. This approach is legitimate and important in restricted fields of enquiry but can turn out to be counterproductive if we generalize it as *the* way to understand Reality. Dialogical dialogue is thus seen above all as complementary to a dialectical approach and as limiting its “totalitarian pretentiousness”. In the field of comparative law, for example, the dialectical approach can be helpful as long as the compared traditions share a common cultural matrix. It becomes counterproductive when completely different traditions are compared and even potentially oppressive if one of the traditions is considered as being the “standard” to which the other is compared (the trap of

the “encompassing of the contrary”). The dialogical dialogue is thus essentially a process of mutual unveiling. It can be said to be at the core of anthropological endeavour. The legal anthropologist does not approach “Law” from a system’s point of view. He/she tries to understand the diverse actors’ perspectives by referring the observed practices to their underlying logics and worldviews in order to shed some light on what we called previously the “mystery of Law”. Furthermore his/her objective will be to try to find ways to articulate harmoniously our different experiences in order to promote a peaceful and just social reproduction. It goes without saying that such an endeavour opens us up to ourselves and leads to a transformation of ourselves through the others by revealing to us our myths and by thus embedding us in new ones.

The recognition of the dimension of the *mythos*, next to the dimension of the *logos*, also obliges us to recognize the fundamentally plural character of Reality which can ultimately never be reduced to one unique center of intelligibility. By taking into account different perspectives on how to organize the world we are lead to a realize that the dialogical approach constitutes a real epistemological break as “(...) *to deal with a perspective means to deal with very fundamental springs in the knowing subject. A new epistemology is required here. Just as any knowledge of an object requires a certain connaturality and identification with the object to be known, any knowledge of the subject necessitates also a similar identification. This is what has led me to formulate the principle of ‘Understanding as Convincement’ . We cannot understand a person’s ultimate convictions unless we somehow share them.*”. (Panikkar 1984b, p. 214-215).

Maybe it is the legal anthropologists who are best prepared for this epistemological break as they have always aimed to fulfil the “diatopical and dialogical requirement” as appears through their emphasis on field work. Immersion in different cultural contexts is meant to facilitate an understanding from within of different societies thus allowing them to progressively unveil their respective myths - and this in a process where knowledge of the other is intrinsically linked to self-knowledge. Let us now see to what insights concerning Law from an intercultural perspective the legal anthropologists of the Laboratoire d’Anthropologie Juridique de Paris have reached.

2. Law and Human Rights in an intercultural perspective

2.1. (Re) Thinking Law

2.1.1. The attempt of a non-ethnocentric definition of Law

In order to break out of the trap of the “encompassing of the contrary” explicated above, Alliot proposes a definition of Law as “legal phenomenon”, which according to him can be observed in all societies and refers, neither to the state, nor to a formulation of rules, nor to rationality (1983, p. 85-86)⁴:

“Being, is struggling, individually or collectively. But no one can fight on one front of his domain as long as he is not assured of peace on all its other borders. And the fighting of its members is not without danger for the group. In the domains a society considers as vital - and thereupon every society has its own conception- its existence is only possible insofar as its members control, to the extent they can, these struggles or at least the practices that result from them. Living in society, is therefore not only struggling, it is also agreeing on the legitimacy or the illegitimacy of these practices and on the consequences that shall be given to them. Social life calls for consensus. The phenomenon is general because it is linked to the nature of the individual (struggle) and to the requirements of life in society (consensus) . (...) The law of a society is thus ordered around the limits of the spheres of action of all the domains it considers as vital : it is at the same time consensus on these limits and practices, aimed at, or succeeding in, confirming or displacing them. Thus defined, law is not linked by its nature to the existence of a state, nor to the formulation of rules, nor to the recognition of its rationality.”

This working definition of Law as “*struggling and the consensus on the outcomes of the struggling in the domains a society considers as being vital*” proposed by Alliot (1983, p. 83) can be complemented by two other short definitions of Law which may shed light on the way it is approached at the LAJP : Law as “*putting in form (shaping) and putting forms*” borrowing Bourdieu’s definition of codification (1986, p. 41) and Legendre’s definition of Law as “*the dogmatic art of knotting together the social, the biological and the subconscious to assure the reproduction of humanity*” (quoted in Le Roy 1998, p. 39). Building on those two definitions, we could say that in the LAJP Law is often approached as that which puts forms on humanity’s reproduction and puts it into form. It seems worth adding that we are not intending to give here an ultimate definition of Law. The point is rather to locate our own

⁴ For a discussion of Alliot’s definition of Law see Vanderlinden 2000.

perspective so that it can enrich other perspectives on Law. As Rouland (1989 : 90) reminds us : “*On ne peut définir le droit, mais seulement le penser.*” (Law cannot be defined but can only be thought of). So let us now see how we could engage in a genuine dialogue between different ways of “thinking law”.

2.1.2. Legal Archetypes and Logics

Building on the insight that in order to understand how societies handle their reproduction it is paramount to know their respective cosmovisions, Michel Alliot (1983) has explicated three different legal archetypes : the archetypes of identification, of differentiation / manipulation, and of submission⁵.

The archetype of identification is best exemplified by the Chinese and especially by the Confucian thought which is underlaid by an archetype founded on the principle of duality and complementarity, and by the idea of dynamic harmony (Le Roy 1995 : 15). It is best symbolised by the famous symbol of the *Tao*, the *T'ai-chi T'u*, or “Diagram of the Supreme Ultimate” which shows the dynamic intertwinement and harmony of the *yin* and the *yang*, the two fundamental principles standing for the male and the female, the day and the night, the weak and the strong ... No infinite God has created and governs a finite world. There are a plurality of worlds which appear and disappear endlessly during cosmic periods too huge to be apprehended by the human mind. Infinite and finite are as closely intertwined as are the *yin* and the *yang* of which they are an expression. In its dynamism, the world does not seem to be limited by any law imposed on it from the exterior. It regulates itself spontaneously by following its way. The individual has to do the same, in order to conform the human to the cosmic order (Alliot 1983 : 92, Le Roy 1992 : 150). Man must spontaneously follow his/her way which then coincides with the Way, the *Tao* and thus becomes part of the cosmic harmony. Thus it is not a set of rules, or law as we conceive of it, which plays the central role in social organization. The Confucian ideal is an ideal of self-improvement possible through education and of self-discipline guided by the observance of the rites (*li*). *Li* (the set of rites) is the keystone of social organization. It provides the mould in which human action is shaped and becomes meaningful. It determines the models of conduct and of behaviour of individuals and groups, the groups (families, ethnic groups, professional corporations) enjoying an auto regulation parallel to the personal auto discipline. *Fa* (law),

⁵ These archetypes have been complemented by an «archetype of rationalization» specific to modernity and by an «archetype of articulation» which articulates the three archetypes we will develop and that is illustrated by the Indian experience (see Eberhard 2000 : 150 ss : 1997 : 24 ss – without the archetype of rationalization).

or the administrative intervention of the mandarin only had a limited, though complementary, role to play in the organization of the Chinese society : it was reserved to those who either did not respect the rites, the impious, or did not know them, the strangers (Le Roy 1995 : 16) – and these representations of *Li* and *Fa* are still very influential today.

The archetype of differentiation/manipulation can best be illustrated by the diverse “animist” traditions of the world (Alliot 1983 : 95-98 ; Le Roy : 1995 : 18) whose world view is founded on the idea that the universe is built on the basis of a circulation of energies and that its vital principle, the *anima*, itself is regulated by this movement of energies. This movement is headed towards the harmony and the equilibrium of the whole by an unceasing search for interdependence and complementarity. The invisible and the visible universes are conceived on the basis of multiple, specialized and interdependent instances (Le Roy 1995 : 19). In the cosmologies of African animist societies there is no God Creator. The world emerges from chaos, which already contains all the potential future in an indistinct way, through a progressive differentiation. It is thus, unlike as in our myth of creation, the multiple, the unstable and the unorganized which “constitute the foundation” of the world. Man plays an important role in the preservation of the universe’s harmony. The unity of society is not perceived as the result of the obedience to a uniform, superior order but as the affirmation of distinct groups, who mutually need each other and are therefore seen as united in and through their complementary and their mutual interdependence. Differences being conceived as the basis of unity, Western uniformizing legislation, because it erases them, is often perceived as a threat to it. Furthermore as general immutable external rules are rejected, people are themselves responsible for their future - which they create every day anew through custom (*coutume*) which values conciliation and a unanimist spirit (Alliot 1983 : 95-98, 1985 : 93 ff). And “*Custom (la coutume) is not a being, like a set of laws would be : it is the way to be, to speak, to act, permitting everyone to contribute at his best to the preservation of the cohesion of the group*”. The very “*function of cohesion often entails avoidance of the invocation of custom : the ideal is not to let conflicts lead to an open confrontation. And if the latter cannot be avoided, a solution is sought, not so much by relying on previously fixed rules, but in conformity, to what is perceived case by case, as being in the interest of the group. The solution which crystallizes ‘in the womb of the village’ is preferred to the application of law.*” (Alliot 1985 : 87). “Custom”, as the “way of saying the ways of doing of the ancestors” (Le Roy 1995 : 19) constitutes a different form than general and impersonal rules in order to approach the reproduction of society and the handling of conflicts, rather than just a different normative content. This form is malleable and lays

emphasis on the “models of conduct and behaviour” which constitute the reference for the evaluation of social behaviour. It permits to attain the ideal of solving conflicts inside the group that saw them arise (*cii bir u keur*, in the womb of the family, as the Wolof from Senegal say), thus emphasizing the responsibility of the group for its own future (Le Roy 1995 : 19).

The archetype of submission is shared by the cultures of the religions of the Book. The world is seen as created by a power exterior to it. Being prevails over becoming : differences are not seen as complementary in their mutual interplay but as excluding each other ; the coherence of the world is not founded in the mutual attraction and interplay of its differentiated elements but in universal laws which are imposed on it from the outside. The society’s responsibility for its life and thus for its future gets decentered. It does not lie in its womb. The society’s management is transferred to an exterior authority, God, or its secularized avatar, the State. Modern legal thought, especially the continental European one, giving a central place to the State and to State law is a rationalized version of this archetype. Pushed to its extreme as in French legal thought, society is conceived as a set of individuals enjoying the same plenitude of legal being, whatever their functions or responsibilities. It is the State, secularized avatar of God, unique and all-mighty, centralized and exterior to its citizens which permits them to live by granting them their legal being and the rights through which they can act. The counterpart is their complete submission to the State’s general and impersonal laws and regulations. No Law can be imagined outside the state and its uniform legislation (Alliot 1985 : 81). In addition to the reduction of diversity to homogeneity, this archetype bears a logic of deresponsibilisation and communities tend to be pushed to the background and held down as they are mainly perceived as an obstacle and even a threat to the state’s “mission” and monopoly.

2.2. Towards an Intercultural Legal Theory and an Intercultural Approach to Law and Human Rights

2.2.1. « Multilegalism » : From alterity to complexity

Building on the insights provided by this different archetypes, Étienne Le Roy (1998) has developed a theory of multilegalism (*multijuridisme*) that permits to open up the Western view of Law based on a perception of Law as norms and as general and impersonal rules described above to a more pluralist approach to the legal phenomenon. It permits to move towards an additive logic where Law is understood as the complex interplay of a number of specific elements which cannot be reduced one to

the other and where none is superior to the others but who in their complementary relation make up the “legal”. For Etienne Le Roy (1997, p. 129) : “(...) *the socialisation of human beings in the perspective of the reproduction of humanity can fundamentally operate through **laws and codes** which unite and order prescriptive, general and impersonal rules, through **customs** which express and condense models of conduct and behaviour, and finally through **habitus** which are, according to Pierre Bourdieu, systems of lasting dispositions who are more or less ritualized. According to our anthropological hypotheses, these three referents are present in every society but in different combinations and set ups. Only the Western tradition has organized these responses in hierarchized legal ‘orders’, organized around the three sources of law, precedents (or jurisprudence in the French sense) and doctrine.*”

If the interplay of these three foundations of Law (its three “feet”), general rules, models of conduct and behaviour and habitus contribute to the reproduction of humanity in all societies, they are not valorized in the same way everywhere (Le Roy 1997, p. 131). The theory of multilegalism can thus contribute to an articulation of different logics and worldviews in the “legal” field, according each time to the prevalent archetype and logic in a particular situation. The way is thus open to move from a logic of exclusion of the contraries to a logic of a complementarity of differences⁶ and from a static outlook on reality to a dynamic approach (see Le Roy 1999) that is closer to the big game of life that we are all playing together. It can thus permit to shed a different light on the mobilization of the ressources offered by these diverse feet when we reflect upon the questions of the realization of “human rights” and of a “rule of law”, taken here as symbols for situations where respect for life and for fellow human beings are guaranteed.

Let us note that if different societies value different “feet of Law” thus inviting us to a multilegal approach which permits us to also better understand the working of our own societies, different societies are also characterized by cosmovisions more or less centred on Man (e.g. modernity), the Cosmos (e.g. animist societies) or the Divine (e.g. Islam). And this different focus, again oblige us to open up the Western anthropocentric view, which also underlies the theory of multilegalism, and more generally speaking all of our social sciences. We are on the one hand invited to recognize that our questions on human rights and the Rule of Law take a very different turn when it is not Man, but the Cosmic or the Divine that play the central structuring principle of a worldview. On the other hand, we

⁶ This kind of approaches have already been put into practice in various research domains at the LAJP : human rights, land reforms in Africa, Justice, *État de Droit* (Rule of law) etc. – see Eberhard 2001.

seem invited to again open up our own view and enrich it by permitting an articulation of these different insights – maybe as Raimon Panikkar (1993) proposes it, in a cosmotheandric outlook on reality. But this is another story that we cannot tell now. But we also get aware of the complexity of the legal game. If we take the multilegal approach to Law seriously we must engage in a dynamic and processual anthropology of Law such as illustrated in Étienne Le Roy’s “game of laws” or “*Jeu des lois*” (1999).

2.2.2. The « game of laws » (*Le jeu des lois*) - A dynamic approach to Law

The *Jeu de lois* is a model of a processual approach to Law which has emerged through research of the Laboratoire d’anthropologie juridique de Paris in the domain of African land law and agricultural reforms and for research in the domain of the justice of minors before being presented as a more general theoretical framework. As Le Roy says, the processual approach privileges two essential poles : the point of view of the observer and the individual and collective goals (*enjeux*) that are sought to be achieved (Le Roy 1988, p. 36). The *jeu de lois* enables us to focus on the dynamic character of Law and thus provides us with a welcome complement to our more static models of the legal archetypes. It permits us to undertake the necessary epistemological break which can permit us to think the articulation between traditional Western state-law and the regulations inspired by “living law” or by the “law of practice” in their complexity.

The processual analysis crystallized in the *Jeu de lois* is rooted in “dynamic anthropology” as initiated in Great Britain by Max Gluckman and in France by Georges Balandier and as represented in the United States by Sally Falk Moore, and can ultimately be traced back to Malinowski’s approaches to Law (Le Roy 1988 : 35). As Le Roy notes, it encounters François Ost’s and Michel van de Kerchove’s paradigm of game, as the dynamic approach permits to escape classical hermeneutics and permits to take into account the part of improvisation, the necessary margin of uncertainty which is part of any social game and which Law has to express in the form of rules and norms. It permits to approach the complexity of Law as a dialectical relationship between certainty and uncertainty, which can be summed up in the idea of the “open texture” of Law. Furthermore Le Roy acknowledges that the *Jeu de lois* places itself in the “in-between” paradigm advocated by Ost and van de Kerchove.

The model is presented in the form of a *jeu de l'oie*, a French game similar to the British “Snakes and Ladder’s game”, with ten cases leading to the rules of the social game, and on which “players” do not move by throwing dice but by moving according to the social and legal positions from which he/she can expect to win (or to lose) advantages in the social game (see Le Roy 1999, p. 35 ff)⁷.

1. The first square are the **statutes**. Man is a social being. As such he is always embedded in a network of relationships. He does not exist independently as our abstract individualism may suggest. Thus in order to take an actor’s, or player’s perspective, we must start by locating him in the social context. Every individual has a plurality of statuses, which are related to his inscription in different collectivities or communities and all of us also daily move what Boltanski and Thévenot have called a plurality of worlds. In our research this square is relevant as it invites us to draw attention to the relevant communities, and legal orders for the tackling of different human rights’ problematics. It conditions all the further choices of analysis.

2. The square of **resources** invites us to consider the material, human and ideal resources available to the actor. Different ways of practising human rights may necessitate different material resources. Our Western way for example needs a huge bureaucratic and administrative institutionalisation. This is a pragmatic obstacle to the transfer of our model in contexts where the necessary infrastructures are lacking and cannot be established and entertained. But not only the material resources must fit to enable an effective human rights’ practice. The ideal world of the concerned societies must provide a resource for human rights’ theory and practice. If cultural specificities are taken into account in the local praxes of human rights, the local ideal worlds can be turned into such resources instead of being perceived as obstacles, and of being an obstacle to an unadapted and exterior system. Building on local conceptions and already existing legal practices may also help to resolve the problem of often lacking material resources and seems to be more realistic than trying to create a completely new system out of the blue. In this context the acknowledgement of human resources also becomes very important. We often neglect them as we favour institutional thought. But human relationships, networks, communities are what constitutes our living together. They hold a tremendous potential for the realisation of a human rights’ ideal.

⁷ Let me just note that we should keep in mind that the *jeu des lois* reflects an anthropocentric “social sciences” approach. It could be useful to introduce another first square : the one of our metaphysical positionings. Indeed, as we have noted above, there are worldvisions which are less anthropocentered than ours and more cosmocentered or theocentered. This

3. Conducts can be differentiated in tactics and strategies. Tactics are reactive or adaptative conducts. They are the support of our practice in daily life which permit to display the habitus, our encultured systems of lasting dispositions. They are the precondition for strategies which are more long term oriented. It is through tactics and strategies that the actors' models of conduct and behaviour are operationalized. Sometimes the actors apply these models, sometimes they try to adapt or modify them. But they always try to use them in a way permitting them to achieve their goals. They thus introduce us to the logics existing in a social field and which we will deal with in the next square. Focus on tactics and strategies is important because it provides a glance at the feed-back that human rights' "policies" can produce. They capture attention on what is actually done with the proposed human rights' system. It can thus open to a rethinking of the proposed model rendering it more effective. The focus on tactics and strategies also invites us, as we will develop further in square six on time processes, to reflect upon the frame of our actions.

4. There is not one legal **logic**. We can at least distinguish an institutional and a functional logic. This square invites us to think of both and to think them in a complementary and not in a mutually exclusive way. It can also invite us to take into account the predominant logics in globalisation thought and discourse ? Is it an economic logic which conceives globalization in terms of market ? Is it a cultural logic seeing it in terms of cultural imperialism, relativism or *métissages* ?.. What is the relationship between those logics ? What are the relevant relations to think and practice a human rights' community between politics, economics, law ? Must new logics be invented and be put into practice ?

5. Scales of analysis are paramount to determine our perspective. What is true on one scale is not necessarily true on another, because of a different qualification, and thus of a specific use. It can be very productive here to deepen de Sousa Santos' approach to Law as "a map of misreading" (de Sousa Santos 1987, p. 287-288) where he distinguishes three different legal spaces and their correspondent forms of law : local, national and world legality to which correspond. *large-scale* legality, *medium-scale* and *small-scale* legality which further give rise to phenomena of interlegality.

would change the whole perspective on our "cosmic or divine game". But this is more of the realm of an intercultural approach to Law that we will present as a horizon after our presentation of the "game of laws".

6. Processes. Sally Falk Moore has underlined that a processual analysis is not merely analysis of social change. It also has to be considered as the way in which diverse experiences acquire meaning and coherence in relation to a specifically chosen period (Le Roy 1999, p. 119 ff ; Moore 1983, p. 42 ff). The emphasis on different temporalities is all the more important as we sometimes tend to think of Law as timeless, as above time, as eternal. Even if we acknowledge that Law can change through the ages we seldom are aware of the fact that society is not determined by a unique temporality, attuned to Law, but that it shares in different temporalities. It may thus be useful to draw “temporal maps” of our societies. Mega-processes correspond to the very long term (centuries or milleniums), like the rise of the notion of individual in Western thought for example. The macro-processes correspond to at least several decades but usually more. An example of a macro-process would be the present move towards what some call “postmodern” conceptions of Law. The meso-processes correspond to the period of a generation, after which the meaning of founding events get lost. For example for the contemporary African elites, the access to political independence does not bear the same signification anymore as for the first heads of government, at least in terms of legitimacy. The micro-processes are processes lasting a few months, at the most of a few years, periods during which the founding event is always remembered and provides justification for solidarities, oppositions, conflicts or struggles which are of the domain of tactics evoked above. It is in the micro-process that the daily social game is played and where the actor can deploy all his social skills. This square, as suggested above, also invites us to rethink the role of time in Law, and to leave the current *tabula rasa* approach (see Ost 1999)

7. This square of the **forums** is a transitional square between the previous (statuses, resources, conducts, logics, scales, time processes) and the following ones (orders, stakes, rules of the game). We can say that the forums of interaction are constituted through all the squares we have seen above. They are the places in which actors in their statuses mobilize their resources, and turn them into conducts according to logics. All this in order to project themselves in a more or less near future in reference to their scale of action. The processes observed here are always processes of confrontation and of negotiation. Of confrontation because the forums are a meeting place for different and often diverging interests. Of negotiation because at least minimal consensuses must be found in order to maintain the “social contract”. As we will see in the next square, solutions can be formalised differently according to the privileged social orders, in more or less adequate ways in relation to the pursued objectives, which constitute the substance of our square nine, the stakes. Forums, places of encounter and exchange are paramount for the regulation of the social game. But as Le Roy notes, they must be

adapted to the problems they intend to tackle. They must also be invested by a certain authority so that its decisions can bear concrete effects. In Africa, for example, the context seems “critical” as often neither the traditional forums like the “chieftains’ tribunals” (*tribunal de chefferie*) or the “council tree” (*arbre à palabre*), nor the modern forums constituted by administrations, legal institutions or parties enjoy the necessary legitimacy and authority to pacify social relationships, protect minorities and securize the actors (1996, p. 203). We seem thus invited to reflect in our human rights’ problematic on the elaboration of adequate forums through which the tackling of diverse problems can be efficiently operationalized. To do so, sociological analysis of the different contexts is necessary but also a more general reflection upon the relations between the forums, the stakes, and the relevant social orders.

8. Orders. In order efficiently to put into forms human rights problematics in different cultural contexts, the proposed forms should be adapted to the orders valorised in those different cultural contexts. Approaching for example human rights from the point of view of imposed order (cf. archetype of submission) in societies valorising the negotiated (cf archetype of differentiation or manipulation) or accepted order (cf the archetype of identification) turns out to be problematic. Furthermore, next to the specific contexts of action, the purpose of the action itself should be taken into account in the choice to valorise an approach in the terms of one order or another, or in the choice of their articulation. In the long run for example it appears more appropriate to build on shared models of conduct and behaviour pertaining to the negotiated order or on the accepted order and its correlated habitus. In short term operations, an imposed order approach, to maintain peace for example, may reveal itself necessary.

9. Stakes are what gives meaning to the game. These stakes can be material as well as immaterial, just like the resources we have encountered on Square Two. These stakes can also be more or less explicit or implicit. In the social game, strategies and tactics trying to hide the players’ aims are commonplace. Furthermore, the actors themselves may not always pursue some very clearly defined aims. The expected gains also need not to be immediate but could be differed in time. Stakes bring us back to the reflections developed around strategies and tactics. What are the aims we pursue ? What is at stake ? Is it the well being of our generation, of future generations, of individuals, of communities ? Is it the well being of a more local or of a more global community ? Is it a more material or immaterial well being? Is it life in dignity, peace ? Is a life in dignity a life in which a minimum of material conditions are fulfilled ? Is it a life which is recognized by the community or the communities of belonging and which

can actively participate in the community's or the communities' life or lives ? Furthermore, this square reminds us that in the social game different players want to get different things. In our human rights' thought we must not forget to take into consideration that there may be very diverse political, economical, sociological, cultural etc ... stakes.

10. By patiently playing our human rights' *jeu de lois* we may little by little be able to work out the rules of an intercultural human rights' game. On the global level this may help us to operationalize our human rights' community and to deepen our understanding of it. The patient advancement, step by step, from square to square may permit us, on the one hand to help shedding light on partial human rights' games which make up (or could make up) the global game, thus enabling their articulation, and, on the other to take us deeper into the mechanisms (those already existing and those still to be invented) necessary to understand and to play the global intercultural human rights' game.

Conclusion : Horizons for a *ius pacis* or Law of Peace

The *jeu des lois* has introduced us to the complexity of the legal game. If recognizing alterity and pluralism form the base of any intercultural approach to human rights, it is paramount to keep in mind the complexity of the legal game. But we should now draw an impressionist picture of the broader horizon to which our dialogical approach may lead in the field of human rights.

Robert Vachon (1990) shows very well, that if we take Panikkar's insights seriously we cannot reduce a pluralistic or intercultural approach to Law to an "intercultural legal theory". The study of "legal pluralism" goes beyond mere "multiperspectivism". Indeed, for all cultures constructing their universes which give meaning to their lives, the challenge of an intercultural dialogue cannot be reduced to understand how the others put the question of Law, because the question itself is not the same. Why talk in terms of legal pluralism, rather than, for example, in terms of "dharmic pluralism", from an Indian point of view, asks Vachon (1990, p. 171) ? The intercultural, dialogical approach to Law, cannot be reduced to a theory it may produce. Indeed it is located on the level of *mythos*, of our *praxis*, and not on the level of *logos*, of rational constructions. It is therefore essentially an attitude of openness towards the other and a "method" pointing to the importance not to reduce our dialogue partners to mere objects, and our encounter to a mere meeting of theories. It is a method urging us never to forget that all partners are subjects and that our encounter could never be exhausted through the mere *logos*.

Sharing in the *mythos*, which is not objectifiable⁸, is the invitation a dialogical approach to Law presents to us. It thus goes much further than any theory of Law could go as the intercultural encounter must not be framed in terms of “Law”. An intercultural dialogical meeting is above all an encounter where we share in a new myth. Through this encounter the mutual enlightening of our respective myths, of for example, *Dharma* (India), *Li* (China), and Law (the West), becomes possible and it enriches and changes each of them⁹ - this process also demands the invention of a new language as we cannot be content putting everything back into the legal frame as if this was the ultimate referent (see Vachon’s remark above on dharmic pluralism)¹⁰.

We will quickly propose a Dianthropological Praxis of human rights as a symbol that may provide a larger horizon. As we will see, the Dianthropological Praxis of human rights (in upper case) results of the articulation of two dianthropological praxes (in lower case): the “Social Sciences’ dianthropological praxis of human rights” and the “spiritual dianthropological praxis of human rights”. In using the term “Dianthropological”, I wish to emphasize the three etymological roots on which it is built : *dia* : through, *anthropos* : man, and *logos*: discourse or logic. In its first sense “dianthropological” praxis wants to designate a praxis stemming from a journey through the different anthropologies, through the different logics and discourses of Man. It is thus closely related to dialogue (*dia-logos*). The emphasis on “anthropologos” and not merely on “logos” is due to my intent to bring also the practices of men in the picture next to the logics and the discourses. The term “dianthropological”, through the presence of “anthropos” in its middle already evokes an association of the logics, with incarnated human life and thus practice and praxis. In its second sense

⁸ Objectified it would not pertain to the domain of *mythos* anymore. As Panikkar (1982 : 14) notes : “*Myth is escaping us. Myth, we believe in it or we don’t. Furthermore when we get aware that we do believe in the myth, we cease to believe in it, because myth is that in which we believe so strongly that we do not think that we believe in it. (...) Speaking of the myth we are already changing it.*”

⁹ Let us note that even in this presentation we stay in a Western perspective because we start out from what we consider as homeomorphic equivalents of our law but homeomorphism is not symmetric. For example, if we look for a homeomorphic equivalent of Human Rights in Indian culture we may find *dharma*. But if we start from *dharma* and try to find a Western equivalent we may find religion. Further, if in our culture the implicit presupposition is that Law is Man-centered its homeomorphic equivalents may be God or Cosmos-centered (see Panikkar 1984a : 42).

¹⁰ Robert Vachon (1995a, 1995b, 1995c - also available in English) has in our sense wonderfully illustrated the “intercultural approach to Law” in a study on the intercultural foundations for Peace between the Mohawk Nation and North American Nation-States. By recognizing the importance of *mythos*, and thus emancipating the dialogue from the realm of dialectics alone, he opens up a shared pluralist horizon between the partners of the dialogue. Through the dialogical methodology he proposes, he sheds completely new light on what is usually seen as merely an issue of “the recognition of indigenous peoples’ rights”. Indeed he completely emancipates the whole endeavour towards Peace between the Mohawk Nation and the North American Nation-States from its modern frame where State and Law are taken for granted. He shows that the stakes of a dialogue between the Mohawk Nation and the North American Nation-States reach far beyond the question of minority rights. What is at stake is an encounter of cosmo-visions that ultimately should change and enrich both and should allow for the emergence of a new shared pluralist and intercultural myth.

“dianthropological praxis” intends to point towards a praxis originating beyond the domain of the logos of Man. It points towards praxis originating in the most profound spiritual experience in which man has already gone through the domain of logos, and in which he directly experiences reality.

Such a Praxis could be delineated by three corner stones, three symbols able to provide an open horizon for action : Love, Wisdom and Peace, which could be declined as Love as Link, Responsibility and Respect, Wisdom as Theory, Praxis and Dialogue and Peace as Harmony, Freedom and Justice (see Eberhard 1997 : 102 ff). This could contribute to the emergence of a *jus pacis*, a Law not only “of Peace” but originating in Peace, which means necessarily in an open and dialogical attitude towards the others, ourselves and the World (Eberhard 2000 : 391 ff).

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